

1 15A NCAC 03O .0112 is amended with changes as published in 29:07 NCR 752 as follows:

2

3 **15A NCAC 03O .0112 ~~FOR HIRE~~ **FOR-HIRE** COASTAL RECREATIONAL FISHING**

4 ~~(a) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket~~  
5 ~~Coastal Recreational Fishing License (CRFL) for the vessel or a Division of Marine Fisheries For Hire Fishing~~  
6 ~~Permit for the vessel as provided in 15A NCAC 03O .0503(k).~~

7 ~~(b)~~(a) It is unlawful for a ~~For Hire Vessel for-hire~~ operator to operate ~~under the For Hire Blanket CRFL~~ without:

8 (1) Holding the ~~USCG United States Coast Guard~~ certification required in 15A NCAC 03O  
9 .0101(a)(13);

10 (2) Having ~~the For Hire Blanket CRFL for the vessel or copy thereof~~ a copy of the for-hire license in  
11 possession and ready at hand for inspection; and

12 (3) Having current picture identification in possession and ready at hand for inspection.

13 ~~(c) It is unlawful for the holder of the For Hire Blanket CRFL to fail to participate in and provide accurate~~  
14 ~~information as requested by the Division for biological sampling and survey programs.~~

15 ~~(d) It is unlawful to fail to display a current For Hire Blanket CRFL decal mounted on an exterior surface of the~~  
16 ~~vessel so as to be visible when viewed from the port side while engaged in for hire recreational fishing.~~

17 (b) It is unlawful to operate a vessel in a for-hire operation without the vessel having a valid Commercial Fishing  
18 Vessel Registration with a for-hire endorsement, a Blanket For-Hire Vessel Coastal Recreational Fishing License or  
19 a Non-Blanket For-Hire Vessel License.

20 (c) It is unlawful for the responsible party of a for-hire license to fail to provide to the Division of Marine Fisheries  
21 by ~~Monday~~ **Tuesday** of each week a completed for-hire logbook detailing the fishing activity, or a no-activity  
22 report, for the previous week. For the purposes of this Paragraph, week is defined as Sunday through Saturday.

23

24 *History Note: Authority G.S. 113-134; 113-174.3; 143B-289.52;*

25 *Eff. July 1, 2008;*

26 *Amended Eff. May 1, 2015.*



## **NORTH CAROLINA MARINE FISHERIES COMMISSION DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

### COMMISSIONERS

**PAT MCCRORY**  
Governor

**DONALD VAN DER VAART**  
Secretary

**SAMMY CORBETT**  
Chairman

**ANNA BECKWITH**  
Morehead City  
**MIKEY DANIELS**  
Wanchese  
**KELLY DARDEN**  
Greenville  
**MARK GORGES**  
Wrightsville Beach

**CHUCK LAUGHRIDGE**  
Harkers Island  
**JOE SHUTE**  
Morehead City  
**MIKE WICKER**  
Raleigh  
**ALISON WILLIS**  
Harkers Island

Feb. 10, 2015

Secretary Donald van der Vaart  
N.C. Department of Environment and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Dear Secretary van der Vaart:

Enclosed for your signature is a letter to Governor McCrory endorsing the nomination of a slate of qualified candidates for consideration by the U.S. Secretary of Commerce for an at-large appointment to the Mid-Atlantic Fishery Management Council. The Magnuson-Stevens Fishery Conservation and Management Act specifies that state governors must submit a slate of not less than three qualified individuals for each applicable council vacancy. Council appointments will be effective August 2015. Mr. Preston Pate currently serves as a North Carolina at-large appointee to the Mid-Atlantic Fishery Management Council and is seeking reappointment. State governors must submit nominations for council appointments to the National Marine Fisheries Service no later than March 15, 2015.

The N.C. Marine Fisheries Commission compiled a slate of nominees for an at-large appointment to the Mid-Atlantic Fishery Management Council in accordance with N.C. General Statute 113-260. The commission submits the names of Mr. Preston Pate, Dr. Roger Rulifson and Ms. Sara Winslow for your review and Governor McCrory's consideration as nominees for a N.C. at-large appointment to the Mid-Atlantic Fishery Management Council. All of the nominees are North Carolina residents, and by reason of their occupational or other experience, scientific expertise or training, are knowledgeable regarding the conservation and management of the commercial or recreational harvest of North Carolina's fisheries resources.

The enclosed draft letter from Governor McCrory to the National Oceanic and Atmospheric Administration Assistant Administrator for Fisheries addresses the requirements of the Magnuson-Stevens Fishery Conservation and Management Act concerning the nominees' residency, knowledge of fisheries of the council's geographical area, and persons that were consulted in the recreational and commercial communities regarding the nominations. The Division of Marine Fisheries has reviewed the nomination materials submitted by the candidates to ensure all forms are complete and all required information is provided. It is requested the enclosed nomination materials be forwarded to Mr. Charles Duckett in the governor's office as soon as possible. The governor's letter and the enclosed nomination materials must be received by the National Marine Fisheries Service no later than March 15, 2015.

Secretary van der Vaart

Feb. 10, 2015

Page 2

Thank you for the opportunity to participate in the nomination process for an at-large appointment to the Mid-Atlantic Fishery Management Council. Should you have questions or need additional information concerning the nominees or the nomination process, please feel free to contact me or Dr. Michelle Duval, Executive Assistant for Councils, Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557, phone 252-808-8011.

Sincerely,



Sammy Corbett, Chairman  
N.C. Marine Fisheries Commission

MD/nf

Enclosure

cc (letter only):     Mary Joan Pugh             Louis Daniel  
                          Charles Duckett            Nancy Fish  
                          John Broome               Michelle Duval  
                          Brad Knott                 Caroline Daly



## **NORTH CAROLINA MARINE FISHERIES COMMISSION DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

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Feb. 10, 2015

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Sincerely,



Sammy Corbett, Chairman  
N.C. Marine Fisheries Commission

MD/nf

Enclosure

cc (letter only):     Mary Joan Pugh             Louis Daniel  
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                          John Broome               Michelle Duval  
                          Brad Knott                 Caroline Daly



# Atlantic States Marine Fisheries Commission

## 2015 Winter Meeting Summary

*Vision: Sustainably Managing Atlantic Coastal Fisheries*

2015 Winter Meeting  
Alexandria, Virginia  
February 3-5, 2015

Toni Kerns, ISFMP, or  
Tina Berger, Communications  
For more information, please contact  
the identified individual at  
703.842.0740

### Meeting Summaries, Press Releases and Motions

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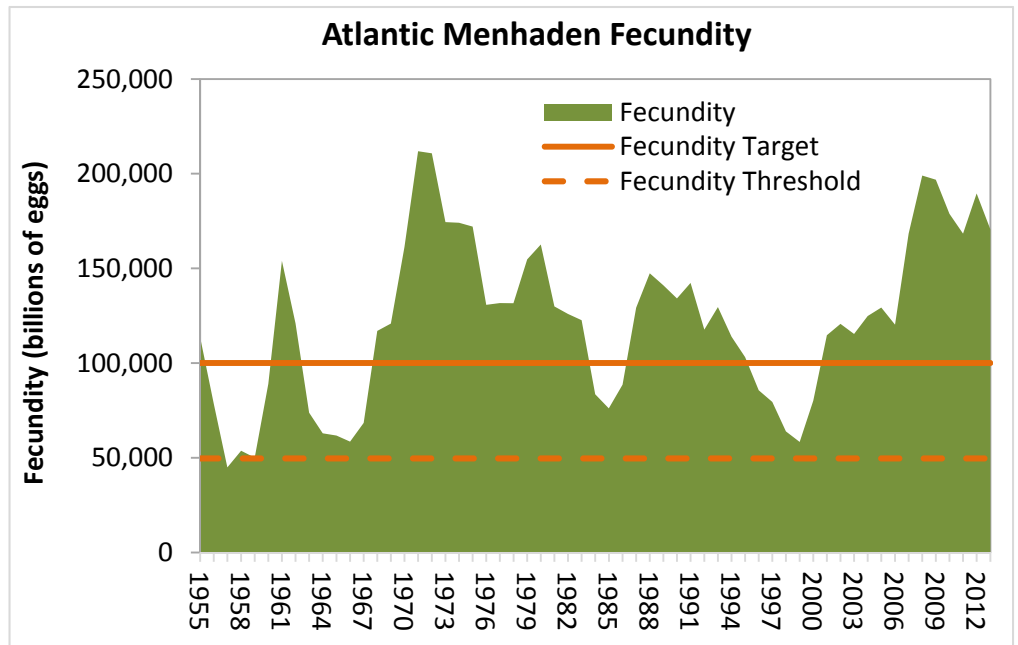
**ATLANTIC MENHADEN MANAGEMENT BOARD (FEBRUARY 3, 2015)**

**Press Release**

**Atlantic Menhaden Benchmark Assessment Finds Resource Not Overfished and Overfishing Not Occurring**

Alexandria, VA – The 2015 Atlantic menhaden benchmark assessment indicates the resource is not overfished nor experiencing overfishing relative to the current maximum spawning potential (MSP) based biological reference points. Population fecundity, a measure of reproductive capacity, is estimated to be 71% higher than the target value (100 trillion eggs). Additionally, total fishing mortality is estimated to be 0.27, below both the fishing mortality threshold (2.98) and target (1.03). The Atlantic Menhaden Management Board approved the benchmark stock assessment for management use.

“The assessment findings bring good news regarding the status of the Atlantic menhaden resource and sets the stage for the Board to begin to discuss how it wants to move forward in sustainably managing Atlantic menhaden. This discussion will include Board management objectives that address the needs of the reduction and bait fisheries as well as the ecological services menhaden provides as an important prey species,” stated Board Chair Robert



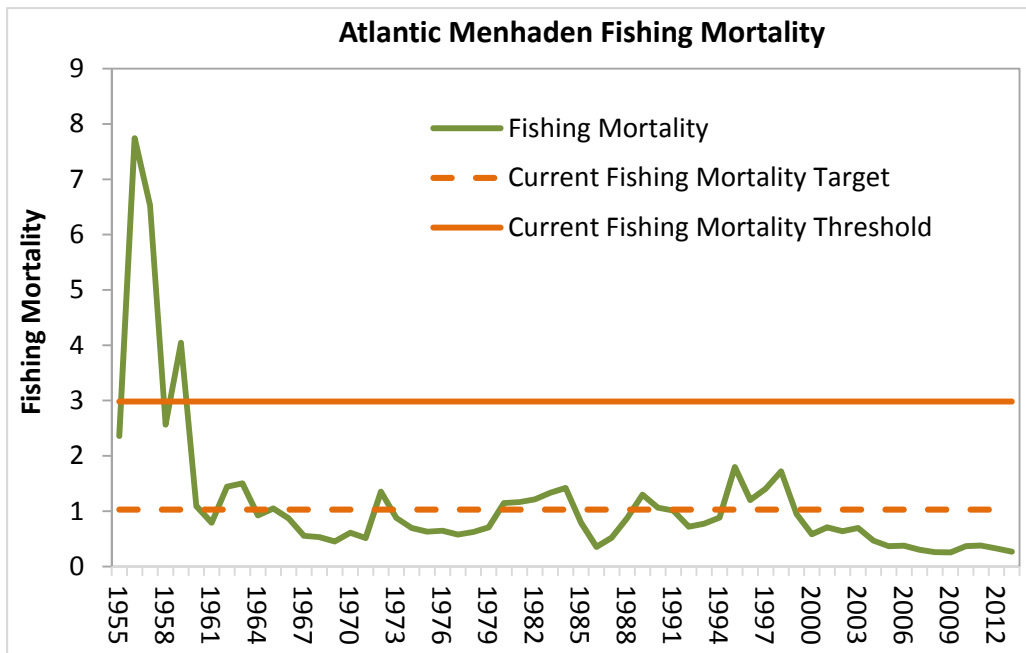
Boyles from South Carolina. “The assessment results are different from prior assessments and this is in large part due to the tremendous efforts of stakeholders, and state and federal scientists to improve upon both the data and modeling approaches used in the assessment. We are grateful for their hard work and dedication in advancing our understanding of the Atlantic menhaden stock status.”

Atlantic menhaden is harvested by both commercial reduction and bait fisheries. From 2010 to 2012, reduction fishery landings averaged 172,600 metric tons and are substantially lower than historical levels. Conversely, total bait landings have been increasing in recent years, averaging about 52,900 metric tons during 2010-2012, with peak landings of about 63,540 metric tons in 2012. In 2013, landings for both fisheries were reduced by 20%, consistent with the requirements of Amendment 2.

Through the consideration of new and existing datasets and the exploration of alternative model configurations, significant changes were made during the 2015 assessment to address the issues identified with the 2010 assessment. Below are a few of the major changes that led to significantly different assessment results.



- Using new datasets, maturity at age was corrected, resulting in a higher estimated proportion of mature fish at ages 1, 2, and 3. This higher proportion of mature fish at the earlier ages resulted in a stock that had higher reproductive potential (i.e., increased fecundity) than previously estimated.
- Two composite adult indices of relative abundance were created using nine new standardized fishery-independent indices that spanned a much broader spatial scale. This was a significant improvement from the 2010 benchmark assessment that used one Chesapeake Bay fishery-dependent pound net index to characterize adult abundance for the entire stock.
- Dome-shaped selectivity for all fishery fleets was used to account for the fact that larger sized individuals were observed in multiple fishery-independent surveys than captured by the bait and reduction fisheries during the entire history of sampling. This ultimately results in more fish at older ages because the larger fish are not being captured by the fisheries.



All these improvements combined led to significantly different assessment results. A more detailed description of the stock assessment results is available on the Commission’s website at [http://www.asmfc.org/uploads/file/54d26f852015MenhadenStockAssessmentOverview\\_Feb2015.pdf](http://www.asmfc.org/uploads/file/54d26f852015MenhadenStockAssessmentOverview_Feb2015.pdf).

Following the acceptance of the assessment, the Board tasked the Technical Committee with conducting a thorough review of the peer review findings and performing projections that explore different constant harvest scenarios based on the results of the assessment and the current stock status. The Board will review the projection analyses at the Commission’s Spring Meeting and further deliberate on management objectives that address the needs of the reduction and bait fisheries as well as the ecological services menhaden provides. The final assessment and peer review will be posted to the Commission website the week of February 9<sup>th</sup>, [www.asmfc.org](http://www.asmfc.org), on the Atlantic Menhaden webpage. For more information, please contact Mike Waine, Senior Fishery Management Plan Coordinator, at 703.842.0740 or [mwaine@asmfc.org](mailto:mwaine@asmfc.org).

###

PR15-02

**Motions**

**Motion to accept the Atlantic menhaden stock assessment report and peer review report for Management use.**

Motion made by Dr. Daniel and seconded by Mr. Grout. Motion carries without objection.

**Move to approve John Dean and David Sikorski to the Atlantic Menhaden Advisory Panel**

Motion made by Mr. Adler and seconded by Mr. Train. Motion carries without objection

**EXECUTIVE COMMITTEE (FEBRUARY 4, 2015)**

***Meeting Summary***

The Executive Committee met in a closed session to discuss staff tenure and workload. The Committee reviewed the plans to meet in St. Augustine, Florida for the 2015 ASMFC Annual Meeting. Staff provided an update on the review of the Commission's guidance documents. Staff will provide suggested changes to the ISFMP Charter and the Rules and Regulations for Executive Committee review at the Spring Meeting.

Under other business, the Executive Committee discussed the trade-offs between three and four day meetings. The Committee agreed that there is little cost savings if Commissioners are required to travel the day before a three day meeting. The Committee agreed to consider providing additional detail on the criteria that can be used to appeal a Commission decision. Staff will provide draft language for consideration at the Spring Meeting. The final issue discussed was potential for increased weather related travel problems for winter meetings. The Committee did not make any recommended changes to the meeting schedule. For more information, please contact Laura Leach, Director of Finance and Administration, at [lleach@asmfc.org](mailto:lleach@asmfc.org) or 703.842.0740.

**INTERSTATE FISHERIES MANAGEMENT PROGRAM POLICY BOARD (FEBRUARY 4, 2015)**

***Meeting Summary***

The ISFMP Policy Board met to discuss meeting protocols for the Northern Shrimp Section, the roles and responsibilities of the Committee on Economics and Social Science (CESS), the Highly Migratory Species (HMS) Shark Draft Amendment 6, and the 2016 weakfish benchmark stock assessment terms of reference (TORs).

Under the ISFMP Charter, management boards and sections operate under Roberts Rules of Order, which includes voting on actions taken by the boards and sections. The Northern Shrimp Section is comprised of 3 states. Given the small number of states vested in the fishery, there was a request by one of the Section members that the Section consider acting by consensus versus voting. The Board discussed the request but decided to maintain the process outlined in the Charter in order to maintain consistency among its boards and sections.

The Board reviewed the roles and responsibilities of the Committee on Economics and Social Sciences (CESS). CESS requested the Board increase current Committee participation on ASMFC Technical Committees and Plan Development Teams. The CESS will continue assist the Board in identifying significant socioeconomic data gaps with Commission managed species and, when appropriate and budgetarily feasible, create Requests for Proposals. CESS will review and recommend to the Board its preferred consultants or researchers for socioeconomic data collection or analysis initiatives. The Board also suggested CESS create a set of standard socioeconomic data to be included in FMPs, in addition to the socioeconomic information already provided.

NOAA Fisheries HMS staff presented Draft Amendment 6 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), which proposes a range of management measures for the commercial shark fisheries, including pelagic, bottom longline, or gillnet gear fisheries. The proposed measures respond to a number of issues in these fisheries, including commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, derby fishing conditions due to small quotas and short seasons, increasing numbers of regulatory discards, and declining market prices. In addition, these measures are based on recent determinations made by NOAA Fisheries as a result of the 2013 stock assessments for Atlantic sharpnose, which was found to be not overfished and not experiencing overfishing, and bonnethead sharks, whose stock status remains unknown because the assessment was not accepted.

The preferred alternatives are in the draft for the Atlantic coast include:

- **Permit Stacking:** Do not implement permit stacking (No Action).
- **Commercial Retention Limit:** Increase the LCS retention limit for directed permit holders to 55 LCS other than sandbar sharks per trip and adjust the sandbar shark research fishery quota to 75.7 mt dw (166,826 lb dw).
- **Atlantic Regional and Sub-Regional Quotas:** Split the Atlantic regional commercial quotas for certain LCS and SCS management groups along 34° 00' N Lat.; maintain SCS quota linkages in the southern sub-region; remove the SCS quota linkages in the northern sub-region and prohibit the harvest and landing of blacknose sharks in that sub-region; and establish a non-blacknose SCS TAC and maintain the current commercial base annual quota of 176.1 mt dw (388,222 lb dw).
- **Commercial Vessel Upgrading Restrictions:** Remove current upgrading restrictions for shark limited access permit holders.

The Board reviewed and approved the 2016 weakfish benchmark stock assessment and peer review TORs. The Board discussed the need for the stock assessment to explore the spatial component of the stock due to differences seen in stock availability north and south of Cape Hatteras, North Carolina. For more information, please contact Toni Kerns, ISFMP Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org) or 703.842.0740.

### ***Motions***

**Move to approve the Terms of Reference for the Stock Assessment for Weakfish as well as the Peer Review Panel for Weakfish.**

Motion made by Mr. O'Reilly and seconded by Mr. Miller. Motion carries.

## **WINTER FLOUNDER MANAGEMENT BOARD (FEBRUARY 4, 2015)**

### ***Press Release***

## **ASMFC Winter Flounder Board Sets 2015 Commercial and Recreational Measures for Inshore Stocks**

Alexandria, VA – The Commission's Winter Flounder Management Board maintained its winter flounder commercial and recreational management measures for the inshore waters of the Gulf of Maine (GOM) and Southern New England/Mid-Atlantic (SNE/MA) for the 2015 fishing season (see Table 1).

Table 1. Minimum commercial and recreational management measures for the Inshore Winter Flounder FMP.

Stock	Sector	Trip Limit/ Possession Limit	Size Limit	Season	Gear
GOM	Commercial	500 lbs/trip/ day	12"	Maintain Closures	Minimum 6.5" square or diamond mesh in cod-end
	Recreational	8 fish	12"	NA	
SNE/MA	Commercial	50 lbs 38 fish/trip/day	12"	Maintain Closures	Minimum 6.5" square or diamond mesh in cod-end 100-lb mesh trigger
	Recreational	2 fish	12"	March 1 – December 31	

The Board maintains its commitment to work with the New England Fishery Management Council and NOAA Fisheries Greater Atlantic Regional Fisheries Office to collaboratively manage winter flounder stocks throughout their range. For more information, please contact, Melissa Yuen, Fishery Management Plan Coordinator, at [myuen@asmfc.org](mailto:myuen@asmfc.org) or 703.842.0740.

PR15-04

**Motions**

**No motions made.**

**AMERICAN LOBSTER MANAGEMENT BOARD (FEBRUARY 4, 2015)**

***Press Release***

**ASMFC American Lobster Board Approves Draft Addendum XXIV for Public Comment**

Alexandria, VA – The Commission’s American Lobster Management Board approved Draft Addendum XXIV to Amendment 3 to the Interstate Lobster Fishery Management Plan for public comment. Draft Addendum XXIV responds to recently finalized trap transfer regulations for the federal waters of Lobster Conservation Management Areas 2, 3, and Outer Cape Cod. While the majority of the implemented federal water measures are based on Commission recommendations and are consistent with the Commission plan, there are a few measures which are either inconsistent or are not addressed by the Commission plan. Specifically, the Draft Addendum includes options to better align state and federal measures regarding the conservation tax on trap allocations when whole fishing businesses are transferred, trap allocation transfer increments, and restrictions on trap allocation transfers among permit holders who are authorized to fish both state and federal waters within a single lobster management area.

States are not anticipated to conduct hearings on the Draft Addendum, since NOAA Fisheries has already held hearings on the same issues. Fishermen and other interested groups are encouraged to provide input on Draft Addendum XXIV, which can be obtained at [http://www.asmfc.org/files/PublicInput/AmLobsterDraftAddendumXXIV\\_PublicComment.pdf](http://www.asmfc.org/files/PublicInput/AmLobsterDraftAddendumXXIV_PublicComment.pdf) or via the Commission’s website, [www.asmfc.org](http://www.asmfc.org), under *Public Input*. Public comment will be accepted until 5:00 PM (EST) on March 20, 2015 and should be forwarded to the Atlantic States Marine Fisheries

Commission, 1050 N. Highland St, Suite A-N, Arlington, VA 22201; 703.842.0741 (FAX) or at [comments@asmfc.org](mailto:comments@asmfc.org) (Subject line: Lobster Draft Addendum XXIV).

For more information, please contact Toni Kerns, ISFMP Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org) or 703.842.0740.

###

PR15-03

### ***Meeting Summary***

The American Lobster Management Board met to address a number of issues including review and approval of Draft Addendum XXIV for public comment, consider changes to the closed season for Lobster Conservation Management Area 5 (LCMA 5), and receive a progress report on the development of the Jonah Crab Fishery Management Plan. Draft Addendum XXIV, which addresses improving consistency between state and federal trap transfer processes was approved for public comment (see above press release). The Board also approved Maryland's request to remove the mandatory season closure for LCMA 5 in April and May. LCMA 5 will remain closed for February and March, and will re-open in April. Further management for the areas will be considered when the benchmark stock assessment is finalized, which will be in 2015.

To aid in the development of the Jonah Crab FMP, Board members from Massachusetts and Rhode Island will work with Plan Development Team to address a number of outstanding issues. These issues include 1) determining what constitutes a directed trip versus a non-directed trip to help characterize the fishery; 2) identify current fishery practices to help determine appropriate management options for inclusion in the Draft FMP; and 3) determining permit requirements for participants in the Jonah crab fishery. For more information, please contact Toni Kerns, ISFMP Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org) or 703.842.0740.

### ***Motions***

**Move to approve Draft Addendum XXIV for Public Comment, contingent on changes discussed during the Board meeting.**

Motion made by Mr. Adler and seconded by Mr. Baum. Motion passes unanimously.

### ***Main Motion***

**Move to reconsider the following motion from October 2014:**

**Move to approve a closed season from April 30 to May 31 for Lobster Conservation Management Area 4 and 5 to achieve the required 10% reduction in Addendum XVII, and allow the setting of unbaited lobster traps 1 week prior to the season reopening, and replace the following measures for LCMA 5: a closed season of February 1-March 31 and with mandatory v-notching.**

Motion made by Mr. O'Connell and seconded by Mr. Clark. Motion passes (Roll Call: In Favor – ME, NH, MA, RI, CT, NY, DE, MD, VA; Opposed – NJ; Abstention – NMFS).

### ***Motion to Amend***

**Motion to amend to include LCMA 4.**

Motion made by Mr. Baum and second by Mr. Hasbrouck. Motion fails.

**Move to endorse Maine’s pilot trap tag program for one year.**

Motion made by Mr. Train and seconded by Mr. Adler. Motion passes (9 in favor, 2 opposed).

**NORTHEAST AREA MONITORING AND ASSESSMENT PROGRAM BOARD (FEBRUARY 4, 2015)**

***Meeting Summary***

The Northeast Area Monitoring and Assessment Program (NEAMAP) Board met to receive reports from its three surveys and technical committees, as well as to discuss emerging issues. The Southern New England/Mid-Atlantic Nearshore Trawl Survey, the Maine-New Hampshire Inshore Trawl Survey, and the Massachusetts Division of Marine Fisheries Bottom Trawl Survey provided updates on their 2014 activities and summarized the increasing use of survey data in stock assessments. The Board also received reports from the Operations and Data Management Committees and provided feedback on how best to achieve Committee tasks. The Operations Committee presented the 2015 Operations Plan for Board review. The NEAMAP Board offered a number of suggested minor edits to the 2015 Operations Plan. The Operations Committee will review the changes and finalize the Plan for Board approval. Finally, Board members discussed the creation of an Industry Advisory Panel to provide guidance to the surveys. The Board noted that this Panel would need clearly defined goals for advice recommendations and agreed to follow-up on the idea in the future. For more information, please contact Shanna Madsen, Fisheries Science Coordinator, [smadsen@asmfc.org](mailto:smadsen@asmfc.org) or 703.842.0740.

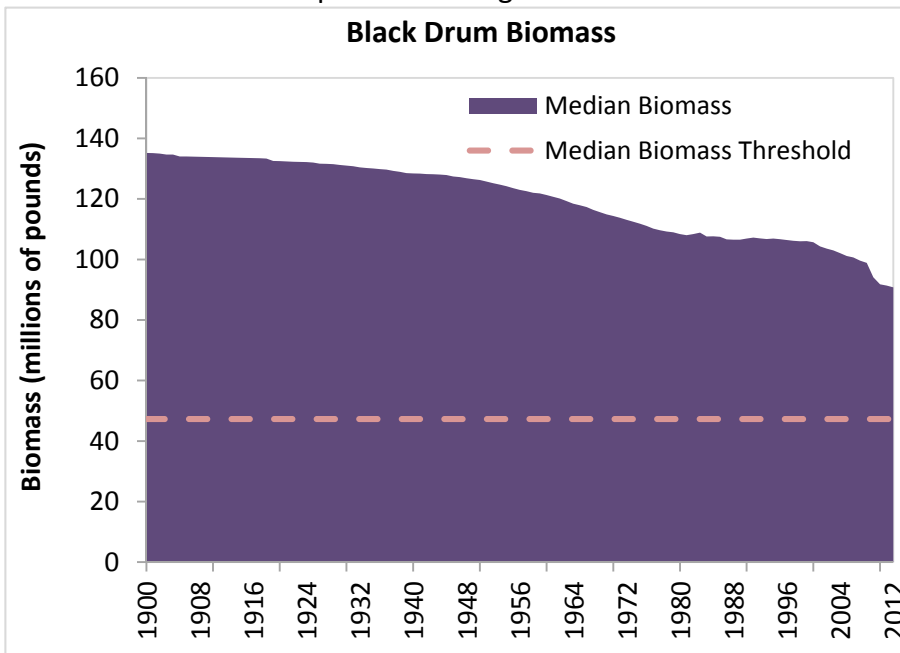
**SOUTH ATLANTIC STATE/FEDERAL FISHERIES MANAGEMENT BOARD (FEBRUARY 4, 2015)**

***Press Release***

**Black Drum Benchmark Assessment Finds Resource Not Overfished and Overfishing Not Occurring**

Alexandria, VA – The Commission’s South Atlantic State/Federal Management Board approved the 2015 Black Drum Benchmark Stock Assessment and Peer Review Report for management use. Based on the

assessment results, black drum is not overfished and not experiencing overfishing. Median biomass was estimated to have declined slowly and steadily from 135.2 million pounds in 1900 to 90.78 million pounds in 2012, though the median biomass estimate in 2012 is still well above the median biomass that produces maximum sustainable yield ( $B_{MSY}$ ; 47.26 million pounds). The median maximum sustainable yield (MSY) estimate is 2.12 million pounds and provides an annual catch target that can be used to sustainably manage the fishery. The median



overfishing limit (OFL), which provides a catch threshold indicating when overfishing is occurring, is estimated to be 4.12 million pounds.

Black drum are a data-poor species. Their rarity and migratory patterns lead to highly variable levels of encounter in state surveys and fisheries. Further, limited size composition data has been collected, making the use of age-structured models unreliable. For these reasons, data-poor, catch-based modeling methods were used for the assessment. These models estimate reference points based on historical catch data and life history information.

Three modeling methods were evaluated to estimate catch reference points for assessing population health such as MSY and OFL. These methods included Depletion-Corrected Average Catch, Catch-MSY, and Depletion-Based Stock Reduction analysis (DB-SRA). These methods have been evaluated against data-rich assessments and are considered robust given inputs and assumptions are correct. DB-SRA was selected as the preferred method based on the underlying configuration of the methods, the required inputs, and performance of the methods evaluated through sensitivity analysis and simulated projections.

The Black Drum Stock Assessment Subcommittee noted the black drum stock assessment would be improved by applying a more complex, data-rich assessment method such as a statistical catch-at-age model. Data limitations that need to be addressed to successfully make this transition are biological sampling (length and age) of recreational and commercial fisheries and a fishery-independent survey tracking abundance and the age structure of the mature stock. Additionally, information about fish discarded in commercial fisheries and movement of fish would improve the assessment.

Under the Black Drum Fishery Management Plan (FMP), which was approved in 2013, states were required to implement a maximum possession limit and minimum size limit (of at least 12 inches) by January 1, 2014, with an additional increase of the minimum size limit to at least 14 inches required by January 1, 2016. The FMP also includes a management framework to adaptively respond to future concerns or changes in the fishery or population. Given the assessment findings, the Board choose to not make any additional changes to the management program at this time.

A more detailed description of the stock assessment results is available on the Commission's website at [http://www.asmfc.org/uploads/file/54d3a0462015BlackDrumAssessmentOverview\\_Feb2015.pdf](http://www.asmfc.org/uploads/file/54d3a0462015BlackDrumAssessmentOverview_Feb2015.pdf). The final assessment and peer review reports will be posted to the Commission website the week of February 9<sup>th</sup>, [www.asmfc.org](http://www.asmfc.org), on the Black Drum webpage. For more information on the Stock Assessment, please contact Jeff Kipp, Stock Assessment Scientist, at [jkipp@asmfc.org](mailto:jkipp@asmfc.org); and for more information on black drum management, please contact Kirby Rootes-Murdy, FMP Coordinator, at [krootes-murdy@asmfc.org](mailto:krootes-murdy@asmfc.org).

###

PR15-05

### ***Meeting Summary***

The South Atlantic State/Federal Management Board met to review a number of items including the Black Drum Benchmark Stock Assessment and Peer Review Report, an update on southern flounder management, and the recent publication of Amendment 20B to the South Atlantic Fishery Management Council (SAFMC) Coastal Migratory Pelagic Species Fishery Management Plan (FMP).

Dr. Daniel provided an overview on a recent southern flounder stock assessment conducted by North Carolina Division of Marine Fisheries (NC DMF). Southern flounder range from Virginia through the Gulf of Mexico, seasonally migrating from coastal estuaries offshore to the continental shelf to spawn in the fall through winter. Southern flounder are understood to be single stock in the South Atlantic from Virginia to Florida based on tagging studies from NC DMF (1980s-1990s) and state Sea Grant programs (2000s). Additionally, genetics research have shown that stock mixing may be occurring in the South Atlantic, further highlighting the migratory nature of the resource, not only nearshore to offshore, but also from north to south. In terms of harvest and landings, Virginia to Florida recreationally harvest southern flounder, and a significant commercial inshore fishery is prosecuted from in North Carolina and Florida. Currently, Virginia through Florida manage southern flounder through individual state by state FMPs. The NC DMF stock assessment indicated there has been decadal decline in indices of abundance, as well as a declining trend in North Carolina commercial landings. Due to significant emigration of the resource out of the North Carolina coastal estuarine system, the state-level stock assessment was rejected by the peer review panel. To address management and abundance concerns moving forward, the Board discussed ways to improve the exchange of data and cooperation between the South Atlantic states of Virginia to Florida to improve interstate management and move toward the development of a regional stock assessment. The Board did not move forward with initiating a new ASMFC FMP or stock assessment.

The Board was briefed on Amendment 20B to the SAFMC Coastal Migratory Pelagic Species FMP. Amendment 20B was published on January 27, 2015 and stipulates changes to the Atlantic Spanish mackerel commercial quota, creating two new subzones on the Atlantic coast (Northern subzone: New York/Connecticut/Rhode Island to the North Carolina/South Carolina border; and Southern subzone: North Carolina/South Carolina border south to the Florida Miami-Dade County line). Amendment 20B was initiated to address concerns that the previous Atlantic commercial quota could be filled by fishermen in one state before fish are available to fishermen in other states. Approximately 19.9% of the coastwide annual catch limit/quota will be allocated to the Northern subzone, with the remaining 80.1% allocated to the Southern subzone. Quota for each of the new subzones can be transferred between zones, with consent from the states in each zone. NOAA Fisheries will monitor the commercial quotas separately by zone, and close federal waters in each zone when the respective quota is met or expected to be met. Amendment 20B will take effect on March 1<sup>st</sup>, 2015. The Board decided to not take any action in response to the Amendment 20B at this time.

For more information, please contact Kirby Rootes-Murdy, Fishery Management Plan Coordinator, at [krootes-murdy@asmfc.org](mailto:krootes-murdy@asmfc.org) or 703.842.0740.

### ***Motions***

**Move to approve the Black Drum stock assessment and peer review report for management use.**

Motion made by Dr. Daniel and seconded by Mr. Grist. Motion carries.



## **SUMMER FLOUNDER, SCUP AND BLACK SEA BASS MANAGEMENT BOARD (FEBRUARY 4, 2015)**

### ***Press Release***

### **ASMFC Summer Flounder, Scup, and Black Sea Bass Board Continues Summer Flounder Recreational Regional Management for 2015 & Approves State Plans for 2015 Recreational Black Sea Bass & Scup Fisheries**

Alexandria, VA –The Commission’s Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVI to the Summer Flounder and Black Sea Bass Fishery Management Plan, continuing adaptive regional management for the 2015 recreational summer flounder fisheries. The approved regions are Massachusetts; Rhode Island; Connecticut through New Jersey; Delaware through Virginia; and North Carolina. The Addendum provides the option for the Board to extend the adaptive regional management approach into 2016 through Board action.

Addendum XXVI was initiated to consider a continuation of regional management approved in Addendum XXV. Both addenda address concern that summer flounder management measures under state-by-state conservation equivalency were not providing recreational fishermen along the coast with equitable harvest opportunities to the resource. The adaptive regional management approach is designed to respond to changes in resource availability and effort in the fishery. The Board decided to continue 2014 management measures for the 2015 fishing season.

For black sea bass, the Board approved the methodologies used by the states of Massachusetts through New Jersey to establish their minimum size, bag limits, and season lengths to achieve a 33% reduction in the 2015 recreational harvest levels from the 2014 harvest level. The 33% reduction is required in order to achieve but not exceed that 2015 recreational harvest limit.

For scup, the Board approved the maintenance of 2014 recreational management measures for the 2015 fishing season, with the exception of Connecticut which will increase its size and possession limit to be consistent with the other states’ private and for-hire fisheries. States will finalize their regulations over the next couple of weeks for the recreational summer flounder, black sea bass, and scup fisheries.

Addendum XXVI will be available on the Commission website by the end of February. For more information, please contact Kirby Rootes-Murdy, Fishery Management Plan Coordinator, at [krootes-murdy@asmfc.org](mailto:krootes-murdy@asmfc.org) or 703.842.0740.

###

PR15-06

### ***Motions***

#### **Move to approve Option 2 Adaptive Regional Management as the management program under Addendum XXVI.**

Motion made by Mr. Gilmore and seconded by Mr. Simpson. Motion passes.

#### **Move to approve regional option 1, status quo.**

Motion made by Mr. Simpson and seconded by Mr. Hasbrouck. Motion passes (Roll Call: In favor – MA, RI, CT, NY, DE, MD, PRFC, VA, NC; Opposed – NJ; Abstentions – USFWS, NMFS).

**Move to approve Option 2 under Section 3.1.1 Timeframe for Summer Flounder Measures.**

Motion made by Mr. Simpson and seconded by Mr. Gilmore. Motion carries.

**Move to approve Addendum XXVI as modified today.**

Motion made by Mr. Adler and seconded by Mr. Hasbrouck. Motion passes (Roll Call: In favor – MA, RI, CT, NY, DE, MD, PRFC, VA, NC; Opposed – NJ; Abstentions – USFWS, NMFS).

**Move to approve the black sea bass proposals and methodologies for use in 2015 management as approved by the technical committee.**

Motion made by Mr. Simpson and seconded by Mr. Adler. Motion carries (Roll Call: In favor – ME, NH, MA, RI, CT, DE, MD, PRFC, VA, NC; Opposed – NJ; Abstentions – NY, USFWS, NMFS).

**Move to approve Connecticut’s reduction in minimum size (10”) and increase in bag limit to 30 fish to be consistent with the states of Rhode Island, Massachusetts and New York for 2015.**

Motion made by Mr. Simpson and seconded by Mr. Gilmore. Roll call vote; motion carries without objection.

**ATLANTIC STRIPED BASS MANAGEMENT BOARD (FEBRUARY 5, 2015)**

*Press Release*

**ASMFC Atlantic Striped Bass Board  
Approves State Implementation Plans to Reduce Harvest**

Alexandria, VA – The Commission’s Atlantic Striped Bass Management Board approved Addendum IV implementation plans and conservation equivalency proposals for all the states and jurisdictions. The implementation plans, which were reviewed and approved by the Technical Committee, contain state-specific management options that achieve a 25% reduction in harvest from 2013 levels for the coastal fishery and 20.5% reduction in harvest from 2012 levels for the Chesapeake Bay fishery. Given the wide range of options being considered, the Board recommended neighboring states and jurisdictions work together to implement consistent management measures, especially on shared water bodies. This recommendation was also supported by the Commission’s Law Enforcement Committee. Additionally, the Board reminded states there is greater certainty in the percent reductions of simple management measures (i.e., changes in bag or size limits) relative to more complex measures (e.g., slot/trophy fish and mode-specific options).

The Board also tasked the Technical Committee with expanding the exploration of stock-specific reference points to include the other producer areas, such as the Delaware Bay and the Hudson River stocks, in addition to the Chesapeake Bay. The Board will review progress on the stock-specific reference points at its Spring Meeting in May.

States and jurisdictions must have final measures for implementing Addendum IV in place by the beginning of their 2015 fishing seasons. For more information, please contact Mike Waine, Senior Fishery Management Plan Coordinator, at [mwaine@asmfc.org](mailto:mwaine@asmfc.org) or 703.842.0740.

###

PR15-08

## ***Motions***

### **Main Motion**

**Move to approve all state implementation plans including any conservation equivalency proposals for both Recreational and Commercial fisheries submitted to and approved by the Technical Committee for the states and jurisdictions of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Potomac River Fisheries Commission, Virginia, and North Carolina.**

Motion made by Mr. White and seconded by Mr. Fote. Motion amended.

### **Motion to Amend**

**Move to amend the motion to include an additional option for Maryland and the Potomac River Fisheries Commission for a spring trophy fishery, pending approval by the TC, of one fish at 28-36" or one fish over 40".**

Motion made by Mr. O'Connell and seconded by Mr. Gary. Motion carries unanimously.

### **Main Motion as Amended**

**Move to approve all state implementation plans including any conservation equivalency proposals for both Recreational and Commercial fisheries submitted to and approved by the Technical Committee for the states and jurisdictions of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Potomac River Fisheries Commission, Virginia, and North Carolina and to include an additional option for Maryland and the Potomac River Fisheries Commission for a spring trophy fishery, pending approval by the TC, of one fish at 28-36" or one fish over 40".**

Roll call vote; motion passes unanimously.

## **TAUTOG MANAGEMENT BOARD (FEBRUARY 5, 2015)**

### ***Meeting Summary***

The Tautog Management Board accepted the 2015 Benchmark Stock Assessment and Peer Review Report for management use. Unlike previous assessments, which assessed the stock on a coastwide basis, the 2015 assessment evaluated stock status regionally to reflect differences in life history information and exploitation patterns. The stock assessment is the most comprehensive to date, and provides multiple alternatives for how tautog can be managed regionally.

The assessment presents a preferred three-unit stock structure: Southern New England (Massachusetts, Rhode Island and Connecticut), Mid-Atlantic (New York/New Jersey), and DelMarVa (Delaware, Maryland, and Virginia). In addition, the assessment provides an alternative three-region definition where Connecticut is part of the Mid-Atlantic region, and a two-region definition with a Northern stock (MA through NY) and a Southern stock (NJ through NC). The assessment proposed new biomass and fishing mortality reference points for all regional stock structures as alternatives for management use.

Upon acceptance of the assessment and peer review, the Board tasked the Tautog Technical Committee to continue exploring reference points for all possible stock unit definitions. This analysis will be presented to the Board at the Commission's Spring Meeting at which time the Board will consider next steps for management.

A press release and stock assessment overview on the details of the benchmark assessment will be released by February 10<sup>th</sup>. For more information, please contact Melissa Yuen, Fishery Management Plan Coordinator, at [myuen@asmfc.org](mailto:myuen@asmfc.org) or 703.842.0740.

### **Motions**

**Move to accept the Tautog Stock Assessment and Peer Review Report for management use.**

Motion made by Mr. Augustine and seconded by Mr. Fote. Motion passes (7 in favor, 2 opposed, 1 null).

### **Main Motion**

**Move to move forward with exploration of two regions, northern and southern, for tautog management.**

Motion made by Mr. Simpson and seconded by Mr. Augustine.

### **Motion to Amend**

**Move to amend to add “with management measures in each region to end overfishing and rebuild overfished regions to target biomass levels.”**

Motion made by Dr. Pierce and seconded by Mr. Simpson. Motion fails (4 in favor, 4 opposed, 2 abstentions).

### **Main Motion**

**Move to move forward with exploration of two regions, northern and southern, for tautog management with management measures in each region to end overfishing and rebuild overfished regions to target biomass levels.**

### **Motion to Substitute**

**Move to substitute to develop an addendum with 3 regions, northern, southern, and DelMarVa, with management measures in each region to end overfishing and rebuild overfished regions to target biomass levels.**

Motion made by Dr. Pierce and seconded by Mr. Bellavance. Motion tabled.

**Move to table motion until May meeting.**

Motion made by Mr. Augustine and seconded by Mr. Allen. Motion carries (8 in favor, 2 abstentions).

**Move to approve the 2013 FMP report and *de minimis* status for Delaware and North Carolina for commercial fisheries for 2015.**

Motion made by Mr. Augustine and seconded by Mr. O’Reilly. Motion carries unanimously.

## **SHAD & RIVER HERRING MANAGEMENT BOARD (FEBRUARY 5, 2015)**

### ***Meeting Summary***

The Shad and River Herring Board reviewed state compliance and the FMP Review for the 2013 fishing season. The Board granted Maine, New Hampshire, and Massachusetts *de minimis* status for shad, and New Hampshire and Massachusetts *de minimis* status for river herring. All of these states have been granted *de minimis* in the past. The Board approved New Hampshire's request to remove the monitoring requirement for the Taylor River. The Board also received updates on Mid-Atlantic Fishery Management Council, New England Fishery Management Council and River Herring Technical Expert Working Group (TEWG) actions and progress. For more information, please contact Marin Hawk, Fishery Management Plan Coordinator, at [mhawk@asmfc.org](mailto:mhawk@asmfc.org) or 703.842.0740.

***Motions***

**Move to approve the 2014 FMP Review and *de minimis* status for shad for the states of Maine, New Hampshire, and Massachusetts; and *de minimis* status for river herring for the states of New Hampshire and Massachusetts for the 2015 fishery.**

Motion made by Mr. Augustine and seconded by Mr. Bellavance. Motion approved without objection.

**Move to approve the proposal from New Hampshire to discontinue monitoring on the Taylor River**

Motion made by Mr. Augustine and seconded by Mr. Grout. Motion approved without objection

-----Original Message-----

From: Tim Hergenrader [<mailto:twherg@gmail.com>]

Sent: Friday, February 06, 2015 8:32 AM

To: Fish, Nancy

Cc: David Sneed; Dick Hamilton; Joe Albea

Subject: MFC

Please forward this to the MFC members for their consideration at their upcoming meeting.

On the issue of shrimp trawling, I am sure you know my feelings. I stand by my petition for rule change requiring all trawlers be excluded from inshore waters. This will protect our nursery areas from further degradation. This move will show immediate benefits in vegetative restoration and important bottom dwelling organisms such as oysters.

The present proposal of 220 feet of head rope is an insult. At a minimum, it should be 50 feet. This regulation, with more aggressive designations of nursery areas, should prove beneficial to the resource. Also, establish minimum count size for opening the season. However, all this can be facilitated with a simple no trawling inside the colregs demarcation lines.

The large mesh gill net fishery is a sham and is in shambles. The DMF spends more money mismanaging this most important specie, flounder, than the fishery returns. Banish the large mesh gill net fishery. Establish TAC's, increased size limits and appropriate seasons in conjunction with strict law enforcement and allow pound netting and gigging of the flounder.

This would also eliminate the problems with turtle interactions as well as the much discussed by catch of red drum and other species.

DO NOT opt for larger mesh sizes. This will simply increase turtle catches and put more pressure on the larger red drum.

It is my firm belief that all gill nets should be forbidden in our inshore waters. With proper regulations based upon scientific data, a fair and equitable system of rod and reel commercial fishing can be established. Gill nets should be relics of our past, not part of our future.

Sent from my iPad

**From:** Chris McCaffity [<mailto:freefish7@hotmail.com>]  
**Sent:** Thursday, February 12, 2015 7:42 AM  
**To:** Egbert, Beth; Brown, Kevin; Fish, Nancy  
**Subject:** Public Comments Regarding Kingfish Management

## Public Comments Regarding Kingfish Management

I am Chris McCaffity. Please keep an open mind as you think about these solutions that could be applied to managing most seafood including kingfish and herring.

Start by deciding how many kingfish their existing habitat can support. Establish reasonable recreational/charter and consumer/commercial quotas. Allow stakeholders to decide how each sector's annual quotas will be managed with a 2/3 majority vote from participating permit/license holders. Stock kingfish in rotation with other species as needed to support desired harvest levels. Take practical steps to enhance habitat so our waters can support more marine life. Reward fishermen and consumers with higher quotas as stocks reach desired levels. Process scraps from cleaned seafood into aquaculture feed.

Hatcheries and habitat enhancement could be the perfect union of mariculture and wild-caught seafood that lives free and self-sufficient until harvested. Stocked species would thrive and produce at Optimum Yield even as we harvest more. These proven solutions would feed more people while creating more recreational opportunity and generating more revenue. It is time to focus more on enhancing our fisheries than restricting access to them.

Thank you for your thoughtful consideration of these positive solutions. I am happy to answer any questions. [freefish7@hotmail.com](mailto:freefish7@hotmail.com)



February 10, 2015

By electronic transmission to [samjcorbett3@gmail.com](mailto:samjcorbett3@gmail.com)

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Mr. Sammy Corbett, Chair  
North Carolina Marine Fisheries Commission  
3441 Arendell Street  
Morehead City, NC 28557

Dear Commissioner Corbett,

The Coastal Conservation Association North Carolina (CCANC), like many interested parties, has been extremely concerned for a long time about the fate of Southern flounder in North Carolina. What was once a robust fishery and strong economic driver has been in decline for decades now. As reflected in the North Carolina Division of Marine Fisheries' (Division) relevant stock status reports and stock assessments, Southern flounder were classified as "overfished" from 2002-2005, and "depleted" from 2006-2013. In 2005, as mandated by state law, a Fisheries Management Plan (FMP) was adopted by the North Carolina Marine Fisheries Commission (Commission) to end overfishing of Southern flounder and achieve a sustainable harvest. *Ten years later, there are no data indicating the purposes of the FMP – to end overfishing, and get back to a sustainable harvest - have been met.* To the contrary, the recent 2014 stock assessment indicates that overfishing continues unabated, and to make matters worse, much of the overfishing is "recruitment overfishing"- due in large part to the fact that the current North Carolina Southern flounder stock now consists primarily of younger fish. The data indicate that as the years go by matters will only get worse.

A suggestion has been made that the future management of Southern flounder may be more appropriate by "a regional assessment approach," by an organization such as the Atlantic States Marine Fisheries Commission. That may be appropriate given the fisheries data indicating that the species is a highly mobile, South Atlantic coast-wide stock. However, it is indisputable that such a regional approach, if it ever comes to fruition at all, will take years to have any effect. *Meanwhile, immediate action in North Carolina is needed to stem the decline of Southern flounder in North Carolina, and that action should be taken by the Commission, which retains not only the authority but the statutory duty to do so.* Neither the concept of a future regional approach for managing the species, nor the questionable treatment of the recent flounder stock assessment by the Division that is discussed below, are proper grounds for the Commission to delay in doing what is necessary to immediately end overfishing of Southern flounder in North Carolina.

*Dedicated to the Conservation of North Carolina's Marine Resources*

4809 Hargrove Road, Suite 123 Raleigh, NC 27616

(919) 781-3474 (FISH) Fax (919) 781-3475 [contact@ccanc.org](mailto:contact@ccanc.org)

[www.ccanc.org](http://www.ccanc.org)



Future Southern flounder fisheries management is being considered at a critical juncture in North Carolina in terms of resource management, and the precedential consequences of poor or failed management here could be disastrous. Those problems are only exacerbated by the Division's recent rejection of the Southern flounder stock assessment. Consequently, discussion of those statutes that give the Commission primary fisheries management responsibility in our state, including the adoption of FMPs, are discussed below.

The Commission's powers and duties are set forth in G.S. § 143B-289.52, where the General Assembly provided the Commission with an array of tools that can be employed to achieve legislative policy regarding coastal fisheries management—to end overfishing of a species and re-establish a sustainable harvest. These include its general, broad authority to: authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

- (1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;
- (2) Seasons for taking fish; and
- (3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

G.S. § 143B-289.52(a)(1).

In exercising those authorities, the Commission is given the specific duty to adopt an FMP for a specific species “to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries.” G.S. §§ 143B-289.52(a)(10); 113-182.1(b). Notably, the Division prepares such plans, but the Commission approves and adopts them.

Under G.S. § 113-182.1(b)(5), each FMP for a species like Southern flounder that is not producing a sustainable harvest must “specify a time period, not to exceed two years from the date of the adoption of the plan, for ending overfishing.” In related fashion, G.S. § 113-182.1(b)(6) requires the Commission, after ending overfishing, to achieve a sustainable fishery for each commercial and recreationally significant stock within a decade.

“Overfishing” is defined as “[f]ishing that causes a level of mortality that prevents a fishery from producing a sustainable harvest.” G.S. § 113-129(12d). “Sustainable harvest,” in turn, is defined in the statutes as “[t]he amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished.” G.S. § 113-129(14a).

Southern flounder is, and has been for well over a decade, just such an overfished species. For the directives of G.S. § 113-182.1(b)(5) and (b)(6) to have actual meaning, each FMP must be developed with an eye towards ending overfishing and achieving a sustainable harvest, and each FMP must subsequently be evaluated to see if the legislative mandates have been met.

The FMP statute does give the Fisheries Director the authorities both to suspend the two year deadline to end overfishing and the 10 year deadline to reach a sustainable harvest, **but only under very limited circumstances**. Specifically, the Director may do so if “the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision [*i.e.*, the deadlines] incompatible with professional standards for fisheries management.” G.S. § 113-182.1(b)(5)-(b)(7). Of necessity, such a determination by the Fisheries Director should be made only under the most exceptional of circumstances, since it guts the basic

premise of North Carolina FMPs and renders the heart of the legislature’s management directive – to end overfishing and to create sustainable fisheries in a public resource – *inoperable absent action by the Commission.*

In a recent memo dated January 22, 2015 to the Commission, the Fisheries Director, Dr. Louis Daniel, indicated the Division has done just that and suspended the deadlines in the Southern flounder FMP to end overfishing and reach a sustainable harvest. In that letter, Dr. Daniel states that “...the 2014 southern flounder stock assessment was not accepted for management by the division due to legitimate and substantial concerns raised by the peer reviewers, concerns with which the division agrees.” CCANC notes that the Division made that determination despite the fact that two of the three peer reviewers of that document expressly indicated their belief that the stock assessment is sufficient and appropriate for future management of the North Carolina Southern flounder stock. The Director goes on to state that:

“[t]he original Southern Flounder Fishery Management Plan was adopted in 2005 to end overfishing and rebuild the stock. The purpose of the 2014 stock assessment was to determine if those goals had been met in the set time frame. The fact that the stock assessment was not accepted for management provides no answer as to whether those 2005 goals were appropriate or met. *Consequently, in the absence of a quantified estimate of the overfished and overfishing condition, N.C. Division of Marine Fisheries Management Policy 2014-1 (which addresses the statutory requirements to set a time period to end overfishing within two years and to set a time period to rebuild the stock within 10 years from the time a fishery management plan is adopted), “Rebuilding Schedules, implementing G.S. 113-182.1 (b)5) and (b)(6)” does not apply.... (As a result) the current southern flounder stock assessment model cannot be used for management and timelines cannot apply....*” (emphasis added).

The Division’s (Fisheries Director) suspension of the deadlines to end overfishing and reach a sustainable harvest for Southern flounder in the FMP, for the reasons cited in the January 22 memo, raises a host of questions that should be raised and discussed before the Commission. For instance, could not the stock assessment be revised to address any concerns raised by any peer reviewer? And was it proper use of the Fisheries Director’s authority to essentially reject the assessment for management purposes when two of the three peer reviewers indicated in their judgment it could be?

Regardless of the answer to any of those questions, the Division’s (Fisheries Director) decision to use the authority to suspend the deadlines for ending overfishing and reaching a sustainable harvest for Southern flounder under the FMP does not tie the Commission’s hands nor negate its broad statutory authority under G.S. § 143B-289.52 to implement the measures necessary to end overfishing on Southern flounder in North Carolina.

To that point, as the Fisheries Director notes in his recent memo, “The original Southern Flounder Fishery Management Plan was adopted in 2005 to end overfishing and rebuild the stock.” *See* Daniel letter. Now, without presenting any evidence to the Commission that the status of the stock has recovered or that Southern flounder are no longer overfished, the Division maintains that it is appropriate to reject a stock assessment approved for Southern flounder management by two of three peer reviewers. Moreover, the Division (Fisheries Director) postulates that, with rejection of the stock assessment, it is entirely appropriate to invoke the “overfishing mandate suspension authority,” and thereby completely abandon the statutory FMP mandate to end the overfishing that is currently occurring in the Southern flounder fishery.

The Division is entitled to conclude that the 2014 Southern flounder stock assessment is inappropriate for use to manage the species. Similarly, the Division may determine that existing Southern flounder management data are insufficient to make the statutory prohibition of overfishing mandatory, though under the factual circumstances CCANC believes both determinations are highly questionable.

In any case, the Commission is in no way bound by those conclusions concerning the stock assessment and the status of Southern flounder management data as a whole. Instead, the Commission should and must make its own determination regarding the appropriate measures for managing Southern flounder. To put it another way, the fact that the Division (Fisheries Director) has made a suspect determination as to the acceptability of the 2014 Southern flounder stock assessment, as well as to the adequacy of current Southern flounder fisheries data for managing the fishery, does not render the Commission powerless in this instance, nor make the adoption of additional restrictions to end overfishing in the fishery a moot point. The Division's suspension of G.S. § 113-182.1(b)(5)'s mandate to timely end overfishing does not mean that action by the Commission to end overfishing is not timely and appropriate—just that it can't legally be compelled to do so under this specific FMP provision—and there is nothing in the statutes that would prohibit the Commission from acting to that end, despite the Division's (Fisheries Director) actions.

Immediate Commission action to end overfishing of Southern flounder is called for given a number of relevant facts. First, as noted, two of three peer reviewers of the Division's 2014 stock assessment determined, contrary to the position of the Division, that the current data for Southern flounder are sufficient to manage the stock in North Carolina, and those data show that overfishing continues. Secondly, given the Division's rejection of the 2014 stock assessment, the valid, relevant information before the Commission regarding Southern flounder is the prior stock assessment conducted in 2009, which indicates that Southern flounder are overfished. And thirdly, there is no clear and convincing current evidence to show that overfishing is no longer occurring in the Southern flounder fishery; by contrast, the most recent data indicate that overfishing continues, and as noted, that much of the overfishing that is currently occurring is "recruitment overfishing" since the stock now consists primarily of younger fish. Those data do not bode well for the future of Southern flounder in North Carolina absent immediate action by the Commission.

The nature of the FMP framework in place in North Carolina, including the legislative mandates to end overfishing and to create sustainable fisheries, means that in managing Southern flounder or other commercially or recreationally significant fish stocks the Commission must err on the side of caution in protecting public coastal fisheries resources. That principle remains true even where the Division determines that the existence of insufficient fisheries data for a species make it appropriate to suspend the legislative mandate that overfishing must be ended within two years. The absence of data does not mean that overfishing is not occurring, and so it makes no sense to simply throw caution to the wind by abandoning additional fishing restrictions indefinitely. It is almost a foregone conclusion that following such a policy would in this case result in the Southern flounder fishery moving further and further away from a sustainable state, and perhaps to the point of fisheries collapse, while additional data are gathered.

Consequently, the relevant question in this instance is not "Do the data (stock assessment and other relevant data) prove that Southern flounder *continue* to be overfished?" but rather, "Do the data show that Southern flounder *are no longer* overfished?" In the absence of clear evidence that overfishing is no longer occurring in the Southern flounder fishery—and there is no such evidence here—the Commission should act to end continued overfishing, whether or not such

action is mandated by the FMP statute in light of the Fisheries Director's unilateral action to suspend that provision of law.

For all of those reasons, it is very clear to CCANC that the Commission should immediately begin a robust, open discussion of the management measures necessary to end overfishing of the Southern flounder fishery. Time is of the essence in achieving that end, and the Commission should take immediate action, rather than deferring new Southern flounder management measures to some unspecified future date as the Division advocates. CCANC is prepared, and expects the opportunity, to constructively participate in that discussion before any action is taken by the Commission, and is certain that other organizations and individuals with an interest in fisheries management will have the same expectation. Management actions to end overfishing in the Southern flounder fishery will necessarily affect both the recreational and commercial sectors of the fishing community, and there will no doubt be substantial outcry against any such action. However, state law mandates nothing less, and no potential management measure, regardless of how potentially severe its effect, can be off the table for consideration in order to stop the overfishing of Southern flounder. CCANC will advocate for reasonable new measures on the recreational side of the fishery, but it is clear that in the commercial sector significant new restrictions in the large mesh gillnet fishery must be a major part of the discussion. The 2014 stock assessment indicates commercial gillnets harvest 41.8% of all Southern flounder, and 63% of the total commercial pounds. Consideration of additional restrictions in the gill net fishery is particularly relevant given the substantial current harvest of Southern flounder by gillnets and the fact that the commercial quota of Southern flounder can fully be harvested using less destructive commercial gears than gillnets. An appropriate evaluation of the economic value of a recovered Southern flounder stock would be extremely useful to the Commission in managing the fishery, and CCANC suggests that it would be appropriate for the Commission to request that information from the Division.

While it would be easy—and has at some times in the past been the tendency of the Commission acting as a corporate body—for the Commission to ignore its independent fisheries management duties and to allow the Division to set state fisheries management policy by simply “rubber-stamping” Division actions and recommendations, that absconion both ignores the requirements of state law and potentially leaves public resources at greater risk for poor management. Instead, CCANC strongly urges the Commission to take the reins in resolving the very serious issues pertaining to the management of Southern flounder, as well as other critical coastal resource management issues facing the Commission.<sup>1</sup>

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<sup>1</sup> Sometimes, there appears to be continuing confusion between the Commission and the Division as to exactly who is in charge of managing North Carolina's public resource coastal fisheries. It is up to the Commission to determine—independent of the Division or the Fisheries Director—its own role under state fishery management statutes, and in doing so the Commission's interpretation of statutory law does not have to agree with the Division's interpretation of those laws. That is precisely why both the Commission and the Division are independently represented by different legal counsel. Under North Carolina law, *all* regulatory (rulemaking) authority is vested in the Commission (G.S. § 143B-289.52. Marine Fisheries Commission – powers and duties.). That authority includes the directive to the Commission to adopt and implement Fisheries Management Plans (FMPs) for all commercially and recreationally significant species. G.S. §§ 113-182.1(a) and 143B-289.52(a)(10). There is no concomitant legislative vesting of regulatory authority in the Division or its Director, and the *only* direct management authorities existing in the Division are those specifically ceded by the Commission to the Director through “proclamation authority” (15A NCAC 03H.0103 is the Commission rule giving the Director proclamation authority), and the specific provisions of G.S. § 113-182.1(a)(5)—(7) allowing the Director to suspend statutory overfishing and sustainable fishery mandates in an FMP *under appropriate circumstances*. Consequently, the primary role of the Division in fisheries management is to be the arms and legs of the Commission

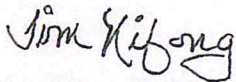
The absence of such affirmative action will ultimately leave CCANC or other outside organizations with no options but to bring the courts into the fisheries management arena in lieu of the Commission and Division complying with their respective statutory duties regarding public resource fisheries management.

CCANC thanks the Commission for both its full consideration of the points raised in this letter, and for its diligence and hard work in resolving the fisheries management issues facing North Carolina. We look forward to working with the Commission in managing our precious public, coastal fishery resources in a manner that conserves and protects them for all current and future citizens.

Sincerely,



Bud Abbott, President CCANC



Tim Nifong, Ph.D., J.D., General Counsel CCANC

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both in supplying the fisheries management information necessary to the Commission to formulate sound management policy, and in implementing the policies chosen by the Commission through rulemaking and oversight directives. The general policy role of the Division in the coastal fisheries management process is contained in its ability to make management recommendations to the Commission in FMPs or otherwise pertaining to coastal fisheries management. But in most instances they are just that—recommendations. The Commission is free to adopt or reject those recommendations in whole or in part in exercising its management authorities and duties. That is precisely how it should be, since the Commission is comprised of stakeholders representing both private sector interests and the overall public interest in the management of its coastal fisheries resources.



February 11, 2015

NC Division of Marine Fisheries  
3441 Arendell Street  
Morehead City, NC 28557

Dear Director Daniel,

The North Carolina Watermen United (NCWU) is continuing to seek answers to the problem of sea turtles and its effect on fishing. We sent you a letter on November 11, 2014 regarding this issue. We appreciate that the letter and its list of questions was entered into the briefing books at the NCMFC meeting on November 19 – 21, 2014. We asked that the questions be answered within a reasonable timetable between Thanksgiving and Christmas and also appreciate that we received an answer from Chris Batsavage on December 22, 2014. However, we have further questions brought up by some of the answers which are attached to this letter.

We also asked for a “Sit-down” with representatives from all stakeholders in the sea turtle issue – including NOAA, NCDMF, NCWU, Jean Beasley from the Karen Beasley Foundation and selected fishermen from the commercial community, to discuss reassessments and possible amendments to the ITP permit for 2015. We have not received an answer to this. Can the Division set this meeting up or should we pick up the phone ourselves? We are willing to travel to meet with any of these groups or would be more than happy to host them here in North Carolina. It is already February 2015 and there are at best 90 – 120 days before our fishermen will be back on the water. Let’s not let this time go by without making an effort to keep them working – in one of the oldest industries in the state.

At this time, we are requesting that this matter be added to the briefing books for the NCMFC meeting to be held next week, February 18 – 20, 2015. We are asking that our questions be answered (See attachment). And we are asking to be involved in a meeting with the aforementioned parties concerning this sea turtle issue to avoid many of the fishery closures and to help our fishermen keep fishing.

Thank you. A copy of the original questions and Chris Batsavage’s reply are also attached.

Yours truly,

BOARD OF DIRECTORS

*Ernie Doshier*

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Duke Spencer

Bradley Styron

ED: mm

cc: NCMFC

Chris Batsavage

Some of the answers to our original questions lead to more questions. We realize that many inquiries involving both state and federal issues are complex, but we are hoping to receive some definitive answers and not keep “running in circles.”

#### ITP QUESTIONS –

- Question 3. We are asking to be involved with the stakeholder input as cited in the answer.
- Question 4. We would like to suggest amendments during the review process.  
We also have a question about the DMF Biologists who set nets under an ITP as well. They are allowed 8 interactions per year. According to Batsavage, they caught 7 in 2014. Why were they still allowed to set nets after catching 7 when the total is 8? Are they under the federal restriction that they cannot set nets for one year, like the commercial fishermen restriction?
- Question 5. Since it took 3-and-a-half years to get approval for the 10-year plan, should we be working on the new one now?
- Question 7. Will fishermen be able to fish seven nights a week when there are no turtles? Is it possible for either the southern or northern area to fish when there are no turtles?
- Question 8. No fisherman has ever set out to intentionally harm any species in any way. The word, “act” sounds like intentional behavior. We are still asking that the words be re-defined to be more specific.
- Question 10. We feel that our state should be leading the charge for its fishermen in gear modification and research. Any fewer numbers of interactions could be the difference in fishermen being able to earn a living.

#### OBSERVATIONS

- Question 1. How recent is the data that was cited? If older data is being used, it would be good to re-compute, since there are fewer fishermen now. Are the number of gill net permits used to determine yardage in an area? Fewer people fishing plus more interactions equals more turtles.
- Question 4. The numbers – 900, 720, 642 are an example of inexact numbers and bad peer review; Is this bad science or flawed numbers?
- Question 5. The 34 interactions cited; is that for the entire state? We are still not clear on the extrapolation process.

#### LAW ENFORCEMENT OFFICERS AND OTHER OBSERVERS

- Question 7. We believe that fishermen should sign and receive a copy of an Observation without having to ask for it, whether the Observer is onboard, on another boat or if a LEO is doing the observing.

#### MISCELLANEOUS

- Question 2. Fishermen need to be able to take advantage of the weather in the fall season; fish don't always move in the numbers needed for a fisherman to make a living from Monday – Thursday. We need to provide a way for the arbitrarily chosen nights to be changed or altered so that fishermen can work on the most productive days. To restrict fishing to the days when it is efficient for Observers to schedule trips only adds more hardships to fishermen.



NC Division of Marine Fisheries  
3441 Arendell Street  
Morehead City, NC 28557

November 12, 2014

Dear Director Daniel,

The North Carolina Watermen United (NCWU) remains concerned about the sea turtle issue and its continuing effects on fishing, especially the commercial fishing industry. We have compiled a list of questions – just some of the questions that are being asked in every fishing community. The list is below.

We are sending this list to be included in the briefing books for the NCMFC meeting on November 19 - 21, 2014. We would like to have these questions answered within a reasonable timetable – perhaps between Thanksgiving and Christmas this year. Then in January 2015, we would like to have a “Sit-down” in the same room with representatives from all stakeholders in the sea turtle and fishermen issue - including NOAA, NCDMF, NCWU, Jean Beasley from the Karen Beasley Foundation and selected fishermen from the commercial community, to discuss reassessments and possible amendments to the ITP permit for 2015.

We would like to work with these groups to avoid many of the fishery closures and to help our fishermen keep fishing.

Yours truly,

*Britton Shackelford*

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Glen Hopkins	

BTS: mm  
cc: MFC



Your answers just lead to more questions which most federal and state issues of this sort do, around in a circle. A few more questions/comments at the bottom of original questions.

## ITP QUESTIONS -

1. When did the Pamlico Sound Management area ITP expire? When did our new statewide ITP come into full effect?

The PSGNRA ITP expired on December 31, 2010. The statewide ITP became effective September 2013. NMFS extended the PSGNRA ITP with the remaining sea turtle takes for 2011 and 2012 with the understanding that the statewide ITP would encompass the areas of the PSGNRA once effective. It was the understanding of NCDMF with NMFS that the statewide ITP would be in effect in 2011.

2. When the psgrna permit expired on 12-31-2010, could it have been renewed before it expired?

The PSGNRA ITP was not able to be renewed. A new application would have been required. However, at that time a statewide ITP was required due to litigation. It was the understanding of NCDMF with NMFS that the statewide ITP would be in effect in 2011. However, the final permit was not issued until September 2013.

3. Who wrote the ITP? Was the commercial sector consulted? Would it be possible for future ITP rule-making to involve the most prominent stakeholders, specifically several representatives from the commercial fishing sector and the Karen Beasley Foundation in the process? In not, what must be changed to insure that these stakeholders can be included?

The ITP application was written by NCDMF staff with revisions incorporated from NMFS. It is possible to solicit stakeholder input for future ITPs applications.

4. When NOAA conducts the yearly review of the ITP, as it states on the first page of the permit, will anyone from the commercial sector take part in the process? The commercial sector needs to be involved in the reassessment and review of the ITP with NOAA.

The annual report to NMFS will be completed by NCDMF staff. According to section 4.2.6.1 of the Sea Turtle ITP Implementing Agreement, NMFS will review progress reports and annual reports and provide technical assistance to the NCDMF for the duration of the permit. The Implementing Agreement states that there can be no increase or change in the number of takes in the ITP. To do so would require a new ITP that would require public comment. Section 14.4 of the Implementing Agreement describes that there can be no increase or change in take. This section does not authorize any modifications that would result in an increase in the amount or change the nature of take, or increase the impacts of take, of Covered Species beyond that analyzed under the original Plan and any amendments thereto.

The commercial sector can suggest amendments during the review process. However, there can be no modifications made to the number of takes allowed and gear modifications must stay within the parameters set forth in the Settlement Agreement and cannot be any less restrictive.

5. The 10-year ITP has been observed to be too long and more rigid than necessary. What is the rationale behind the 10-year plan?

The current ITP took 3.5 years to get approval from NMFS with multiple revisions having to go out for public comment. A 10-year plan was used for both Atlantic sturgeon and sea turtles to

ensure there would be no lag time in between ITPs where the fisheries could not operate. All ITP applications must go out for public comment and are lengthy processes.

6. Since the NCMFC is made up of 9 members, why do you as an individual have the right to come up with proclamations on your own, shouldn't they all be voted on by the NCMFC? Can any member of the NCMFC make an individual decision?

The N.C. General Assembly has authorized the Marine Fisheries Commission to delegate to the Fisheries Director the authority to issue proclamations (G.S. 113-221.1 and 143B-289.52.) This delegation of authority is done by way of Marine Fisheries Commission rules. Additionally, as set out in general statute, the Fisheries Director's proclamation authority is for the purpose of suspending or implementing Marine Fisheries Commission rules that may be affected by variable conditions. Variable conditions are also provided in Marine Fisheries Commission rules. Within the constraints of Marine Fisheries Commission rules, a proclamation can implement a management measure, it can suspend a Marine Fisheries Commission rule or part of a rule, or it can do both.

Once the authority for the Fisheries Director to issue a proclamation is established, it is up to the discretion of the Fisheries Director to issue or not issue a proclamation within the constraints and requirements of a given rule or rules that provide the authority. Proclamations provide the necessary flexibility to address variable conditions that may occur in a fishery. The proclamation authority granted to the Fisheries Director includes the ability to open and close seasons and fishing areas, set harvest and gear limits, and establish conditions governing various fishing activities. Regulations implemented by proclamation can be effective immediately for public health issues and quota-managed fisheries, and in as little as 48 hours for other issues.

Having the Marine Fisheries Commission vote on proclamations prior to issuance would be impractical for managing protected species interactions in the estuarine gill net fishery. The Fisheries Director would have to wait for the next Marine Fisheries Commission meeting or the Marine Fisheries Commission would need to schedule a special meeting in order to issue proclamations that prevent exceeding the allowed sea turtle or sturgeon takes for a particular management unit. In addition, the Fisheries Director's proclamation authority is required in the Sea Turtle ITP under Section IV B 5:

*Adaptive Management.* NCDMF shall use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality and prohibit fishing in management units where incidental take thresholds are approaching authorized take levels. NCDMF will use proclamation authority to implement management measures necessary to reduce sea turtle takes. Proclamation authority allows NCDMF to implement timely responses (i.e., within 48 hours) that may provide increased protection of sea turtles. For example, appropriate restrictions may include gear or area restrictions, attendance requirements, modifications in observer coverage, increased enforcement, or a combination of these and other restrictions. The need for additional management measures or better direction of resources will be determined by NCDMF in consultation with NMFS OPR. NCDMF and NMFS consultations must include analyses of relevant data, including but not limited to at-sea monitoring, NC Trip Ticket Program, fish house checks, enforcement, and strandings. Consultations will be among staff from NCDMF and NMFS OPR. If there is a disagreement about any changes to management not specified within the permit, NMFS will convene, at NCDMF's request, a consultation with the Assistant Administrator for Fisheries for a final decision on the disagreement.

Potential adaptive management restrictions may include gear or area restrictions, attendance requirements, modifications in observer coverage, increased enforcement, or a combination of these and other restrictions. The NCDMF will consult regularly with the NMFS OPR to ensure that monitoring and management programs maintain the flexibility for the NCDMF to monitor, anticipate, respond, and implement needed action. As with all measures in the Permit, the

adaptive management measures will be evaluated on an annual basis to determine which, if any, management changes were effective.

Decisions are not made by individual members of the Marine Fisheries Commission. Issues are deliberated by the commission at its business meetings and then voted on by the body.

7. Will NCDMF or the commercial sector be able to ask for or suggest possible amendments during the review process, such as, but not limited to “Will fishermen be able to fish seven (7) nights a week while the season is open?”

The commercial sector and NCDMF can suggest amendments during the review process. However, the four night and five night fishing weeks were part of the Settlement Agreement and is a condition of the ITP. As part of the Settlement Agreement, the Sea Turtle ITP had to incorporate the Settlement Agreement’s management measures. If NCDMF were to go out of compliance with such matters, it would jeopardize the ITPs and it could reopen litigation.

Even if the number of fishing nights per week was negotiable with NMFS, it is important to realize that more fishing nights per week could result in allowable sea turtle and Atlantic sturgeon takes being reached quicker by increasing fishing effort and chances for interactions.

8. We would like to offer these suggestions to define the terms – “take,” “interaction,” “injured turtle interaction,” and “sighting ” –

- “Take” would be defined as a dead turtle.
- “Interaction” would be defined as a turtle that is released unharmed and can be documented as such; consequently, it would not count as a “Take.”
- “Injured Turtle Interaction” would be defined as a turtle that is injured and requires rehab. After the turtle is put in the boat, the division contacted and arrangements made to get it into the proper place for rehab, the turtle will be monitored. If the turtle survives, this does not count as a “Take.”
- “Sighting” would be defined as seeing a turtle that was not caught, injured or interacted with. This would not count as a “Take.”

A “Take” is defined in the Endangered Species Act and means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct, any Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where such modification or degradation actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering. Therefore “Take” cannot be redefined as set forth in the Endangered Species Act. Sightings do not count as a take in either the sea turtle or Atlantic sturgeon ITP.

9. In the application from NCDMF dated 9-6-2012 and updated 1-18-13, the report stated that 78% of turtles in interactions were released alive. Of the 22%, how many were injured and brought in for rehab and how many were actually dead?

Of the 22% of sea turtles that were deceased, the majority of the animals were dead at the boat and therefore not brought in for rehab. However, there has been a small percentage throughout the years that have been resuscitated and given to the NCWRC for hospitalization.

10. The Karen Beasley Foundation has research techniques and innovations that have proven to reduce turtle interactions and that may help minimize the impact on turtles. Given the quality of the Foundation's work and its long-standing concern for the turtle population, why has the DMF not done more to help co-ordinate efforts between the Foundation and the commercial fishing industry to seriously "Field Test" the innovations. The Foundation wants them tested by our fishermen and then studied to see if they are effective. Why has this not been done?

NCDMF welcomes any efforts made to "Field Test" innovations in the fishery. To test gear outside the parameters of the gear configurations set forth in the ITP or other gill net restrictions set forth through proclamation, a fisherman would need to apply for a permit for scientific research (ESA Section 10(a)(1)(A)) through NMFS. If gear configurations are within the parameters of current proclamations, the Sea Turtle ITP would cover any research. A scientific collection permit through NCDMF would be required if this was the case. Currently, there is one researcher field testing gill net under the Atlantic Sturgeon ITP and another who plans to field test a low profile gill net under the Sea Turtle ITP.

## **OBSERVATION QUESTIONS –**

1. How was the number of turtle interactions per unit determined?

Data collected from the commercial fishery observer programs were used to develop models for estimating sea turtle interactions. Total effort was estimated by combining information from three NCDMF monitoring programs: Sea Turtle Bycatch Monitoring Program (Program 466), North Carolina Trip Ticket Program, and Commercial Fish House Sampling Program (Program 461). Information gathered from these three programs was used to characterize North Carolina's estuarine gill-net fisheries and to determine total effort of gill net (passive gears only) used by year, mesh size, management unit, and season. Data from Program 461 and Program 466 were used to determine the average gill-net effort (yards fished and soak time) for both small (<4-inch stretched mesh) and large (≥4 stretched mesh) gill-net fisheries. These data were then applied to the data from the Trip Ticket Program to determine trip-level effort for all trips taken. Estimated numbers of total annual interactions were computed for each species using fishing effort data and observer data. The statistical model was applied to predict interaction numbers for each management unit by season and mesh size. If data was lacking for a specific species in a management unit and the model was unable to estimate the number of takes, observed takes were assigned for each of those species in large or small mesh gill nets for each management unit.

2. Aren't the number of interactions per unit, the actual 6-unit idea and the type of net restrictions all part of the required Habitat Conservation Plan that the ITP requires from the permit holder?

Yes

3. Is North Carolina allowed 900 turtle interactions?

No. The Sea Turtle ITP allows for n = 720 annual total estimated and observed sea turtle interactions. Table 1 details the number of annual estimated takes for the large mesh fishery. It also shows what the actual number of takes that is with 7% and 10% observer coverage being used as examples. Table 2 shows the number of annual observed takes for the large mesh fishery (these are not estimated). Table 3 shows the number of annual observed takes for management units A and C for large and small mesh gill nets (these are not estimated and are not dependent on disposition). Table 4 shows the number of annual observed takes for the small mesh fishery (these are not estimated).

Table 1. The number of allowed estimated takes by species and management unit for large mesh gill nets with applied observer coverage showing the number of allowed takes depending on the amount of observer coverage.

Management Unit B			Allowed takes with observer coverage <sup>1</sup>			
Species	Estimated Takes		Alive		Dead	
	Alive	Dead	10%	7%	10%	7%
Green	225	112	23	16	11	8
Kemp's ridley	53	26	5	4	5	2

Management Unit D1			Allowed takes with observer coverage <sup>1</sup>			
Species	Estimated Takes		Alive		Dead	
	Alive	Dead	10%	7%	10%	7%
Green	9	5	1	0	0	0
Kemp's ridley	15	7	2	0	0	0

Management Unit D2			Allowed takes with observer coverage <sup>1</sup>			
Species	Estimated Takes		Alive		Dead	
	Alive	Dead	10%	7%	10%	7%
Kemp's ridley	6	3	1	0	0	0

Management Unit E			Allowed takes with observer coverage <sup>1</sup>			
Species	Estimated Takes		Alive		Dead	
	Alive	Dead	10%	7%	10%	7%
Green	96	48	10	7	5	4
Kemp's ridley	24	13	2	2	1	1

<sup>1</sup> Rounded numbers used for examples. Exact observer coverage is used when making estimates.

Table 2. The number of allowed observed takes by species and management unit (except management unit A) for large mesh gill nets.

Management Unit B	
Species	Observed Takes
Hawksbill	1
Leatherback	1
Loggerhead	3

Management Unit D1	
Species	Observed Takes
Hawksbill	1
Leatherback	1
Loggerhead	3

Management Unit D2	
Species	Observed Takes
Green	6
Hawksbill	1
Leatherback	1
Loggerhead	3

Management Unit E	
Species	Observed Takes
Hawksbill	1
Leatherback	1
Loggerhead	3

Table 3. The number of allowed observed takes for all species for large and small mesh gill nets in management unit A and C.

Management Unit A	
Species	Observed Takes
All	4

Management Unit C	
Species	Observed Takes
All	4

Table 4. The number of allowed observed takes by species and management unit (except management unit A and C) for small mesh gill nets.

Management Unit B	
Species	Observed Takes
Green	3
Kemp's ridley	3
Hawksbill	1
Leatherback	1
Loggerhead	3

Management Unit D1	
Species	Observed Takes
Green	3
Kemp's ridley	3
Hawksbill	1
Leatherback	1
Loggerhead	3

Management Unit D2	
Species	Observed Takes
Green	3
Kemp's ridley	3
Hawksbill	1
Leatherback	1
Loggerhead	3

Management Unit E	
Species	Observed Takes
Green	3
Kemp's ridley	3
Hawksbill	1
Leatherback	1
Loggerhead	3

4. If NC is allowed 900 interactions, why do the charts showing allowed interactions per unit from Jacob Boyd, NCDMF Biologist, only add up to about 650 total?

The tables add up to  $n = 720$  as shown above to include observed and estimate sea turtle interactions in large and small mesh gill nets. I believe you were only adding up the number of allowed estimated takes in the large mesh gill-net fishery which is  $n = 642$ .

5. What is the total number of turtles observed to date in 2014?

As of 11/17/2014 there have been  $n = 34$  sea turtle interactions observed with two of them being unidentified sea turtles.

6. Of the total number of turtles observed to date in 2014 how many were in large mesh nets?

n = 33

7. Why was any part of Unit B closed to large mesh gill nets when unit B is allowed a total of 28 alive observed turtles at 10% coverage?

Observer coverage fluctuates and is based on the previous year's fishing effort. According to the Implementing Agreement, NCDMF is to use Adaptive Management anytime the allowable takes are "approached" to ensure we do not go over the number of allowed takes. There was a lot of sea turtle activity in the area at the time and water temperatures were still warm. Therefore, to ensure the number of allowed takes were not breached a closure was put in. These closures also prevented very long closures if the allowed takes for any species of disposition of sea turtles were reached.

8. Has the federal government closed any waters in NC to large mesh nets in 2014?

The annual closure of the deep water portions of Pamlico Sound was closed to large mesh gill nets from September 1 through December 15, 2014. This annual closure has been in place since 2001. In addition, the annual closure also includes the shallow water portions of Pamlico Sound, but the ITPs allow these to remain open.

9. The Karen Beasley Foundation wants LEOs to get turtles that had been involved in interactions to a turtle hospital, in order to study long term impacts of gill net interactions. Survivability could have been used as a percentage to modify our "takes" in the future. Why is this not being done?

The Sea Turtle ITP requires the immediate release of live, uninjured sea and injured, lethargic or dead sea turtles be transferred to a rehabilitation facility. With the locality of the sea turtle hospital to where we observe most of our sea turtle interactions it would not be feasible to transport the live, uninjured sea turtles to Surf City. It would be detrimental to the turtles to try and transport them there unless there was a life threatening emergency that required it. This might lead to an increase in the number of mortalities which the ITP has fewer allowed interactions.

An increase in the number of takes is not allowed without applying for another ITP and going out for public comment. If post-release mortality is applied to the number of live interactions allowed, then a portion of these live interactions would count as dead interactions. This would increase the chance of reaching the number of allowed dead interactions for any given management unit.

## **LAW ENFORCEMENT OFFICERS AND OTHER OBSERVERS –**

1. NCWU requested that NC Law Enforcement Officers (LEOs) accomplish Observations; The Karen Beasley Foundation requested that the LEOs perform Observations. Why was this not done?

Marine Patrol has performed observations for much of the time period since the Settlement Agreement management measures were implemented in May 2010.



2. What is the total amount of money owed to the LEOs? And how many of them are currently owed back pay?

The law enforcement classifications are under the career banded salary administration policy. The law enforcement officer is usually hired in at the contributing level. After completing probation and upon successfully completing a full performance cycle, the LEO's supervisor may submit the employee for an assessment to the journey level where he is demonstrating the higher level competencies. The action to seek approval for assessment to the higher level depends on Legislative edicts, agency salary restrictions and budget limitations. Regardless, the division adds the employee/action to the division's salary reserve list along with any other salary actions. The actions are worked in the order they were placed on the salary reserve list, taking into consideration allowable increases. The division currently has one LEO assessment in process and six additional LEOs on the salary reserve list. Again, their actions will be worked in the order that they are on the division salary reserve list. All actions on the salary reserve list are processed on a current basis. State policy does not allow agencies to promise increases, therefore there is no "owed" amount for any employee on the salary reserve list.

3. What percentage of Observer coverage did LEOs accomplish in the old ITP?

The PSGNRA ITPs only covered the shallow water portions of the Pamlico Sound in the fall months. The observer coverage required for this small area compared to the entire state did not require the resources of Marine Patrol.

4. How many total Observers have been hired? How many have been fired? How many have quit? How many are currently employed?

There are currently (late November 2014) 12 observers working for the Division with one application package waiting to be filled. Since 2010, there have been two temporary observers fired (2011 and 2014) and one permanent observer fired in 2012. As with any other profession, the Observer Program loses some employees who move on to other jobs.

5. How many different Observers were hired by NCDMF in 2014?

Five permanent and four new temporary observers were hired in 2014.

6. What percentage of Observer coverage has been accomplished by NCDMF Observers - excluding LEOs – in 2014?

To date (11/21/2014) NCDMF observers have accomplished 77.4% of the total number of large and small mesh gill net trips observed in estuarine waters.

7. Do fishermen have the right to get a copy of the Observer report that is filled out on Observed trips?

Yes. Fishermen can request a copy of the data sheet from the trip they provided.

8. Do fishermen have to sign the Observer reports? Most people – not just fishermen – are not expected to sign anything without having a copy for their records.

No. Fishermen do not have to sign observer reports.

9. How many times did an Observer use an alternate platform?

To date (11/21/2014) NCDMF observers completed n = 154 alternative platform trips in 2014.

10. How many sea turtles did the NCDMF Biologist have interactions with in 2014?

To date (11/21/2014), seven sea turtle incidental takes have occurred in NCDMF's independent surveys in 2014.

11. Did the NCDMF Biologist have more hands-on interactions or did the large mesh fishery have more hands-on documented interactions?

The large mesh gill net fishery has had n = 33 hands-on interactions while the NCDMF independent surveys have had n = 7 hands-on interactions to date (11/21/2014) in 2014.

12. Could the Observers contact fishermen mid-day before they set, so they can plan for weather and other variables caused by having an extra person on the boat? That would allow the Observer to contact someone else if the first fishermen is not going to set.

Observers begin trying to contact fishermen each afternoon when they get off the water from that day's trip to try and set-up trips for the following day. In some cases, observers are able to set-up trips a few days in advance that are weather dependent.

## MISCELLANEOUS -

1. What is being protected by doing away with large mesh runaround, strike and drop nets? The application from NCDMF dated 9-6-12 and updated 1-8-13 states that strike nets are executed quickly enough that interactions, if any, are minimal.

The large mesh runaround, strike and drop nets were not being fished properly. Instead of these nets being immediately retrieved, fishermen were anchoring the ends of the nets and letting them soak for an extended time period. This practice resulted in fishermen using net configurations in a way that is not allowed in the sea turtle ITP.

2. Fishermen need to be able to fish seven nights a week to earn a living, but if they are reduced to four, the fishermen should be able to choose the nights that they fish – instead of the arbitrarily chosen, Monday – Thursday schedule, to increase their success rate

The Monday – Thursday schedule is appropriate for observers to be able schedule trips efficiently and for Marine Patrol to be able to monitor the fisheries properly.

3. Why was a 10-year ITP signed for sturgeons 6 months prior to a 2015 stock assessment?

The Atlantic Sturgeon ITP was implemented this year because Atlantic sturgeon was listed as endangered species in April 2012 and therefore making unauthorized interactions illegal.

The results of the 2015 stock assessment will not necessarily remove or down list any distinct population segments of Atlantic sturgeon from the Endangered or Threatened species lists and any changes would not occur immediately.

4. We have copies of sturgeon telemetry reports. NC has a tremendous amount of data disproving the NMFS assertion that sturgeon should be on the endangered list. NC has not even finished an FMP for sturgeon and yet we are operating under an ITP. Why is NC overreacting to federal demands when our data disproves it?

Atlantic sturgeon was listed as endangered on the federal endangered species list. Therefore, interactions are illegal to without a permit. Georgia has an ITP for Atlantic and shortnose sturgeon, and Virginia is currently working on an ITP application for Atlantic sturgeon.

5. What is the rationale for keeping the flounder season closed in December?

The December closure is part of the Southern Flounder FMP.

6. Where can we obtain copies of the annual audit of NCDMF as required by NC General Statute?

Can you please clarify as to which audit you are requesting?

Questions 3/4- Possible stakeholder input. Is that going to be in 10 years? Maybe we need to be asking for a new ITP while we are operating under the current one. One that does take into account commercial communities suggestions. Why not ask for a small increase in takes? It seems to take such a small number of interactions/takes to shut things down it may only take a minute increase to keep people WORKING and still have minimal interactions. As a recent report (dec 2014) from the HOUSE NATURAL RESOURCES COMMITTEE has stated flawed numbers in many ESA listings. Who's to say the same flawed numbers were not used to determine turtle numbers. Folks who are on the water every day have seen the increase.

Question 5 - If it took 3 1/2 years to get this permit you better get started on the next one now.

Question 7 - The nights fished was an example question but how does the commercial community suggest amendments and know they are getting to the right people as there is little or no access to these administrators. Also with the nights fished if mon thru thur is to reduce interactions ONLY will fishermen be able to fish fri, sat, sun during the winter when there are no turtles. Is there a problem in the southern areas this time of year. Good place for an amendment if that is the case, northern areas could fish all week.

Question 8 - Nobody has set out to intentionally harm any species in any way. Sounds like the word "act" means to do it intentionally. If you don't (or won't) ask for a word to be redefined it won't be. Why shouldn't we be the ones to ask?

Question 10 - The state should be leading the charge in gear modification and research. As stated before it takes such a small number to shut things down anything that would result in just a few less interactions could be the difference in fishermen being able to WORK.

#### Observers

Question 1 - How recent is the data being used. Every year there are less fishermen because they are being regulated off the water. If data from who knows how far back is being used to figure yardage being fished and anything else, you probably need to recompute. Do you use the number of gill net permits to help determine yardage in an area? Less people fishing + more interactions = more turtles.

Question 5 - Is that 34 interactions for the whole state? Still not clear on the whole extrapolation process nor is anybody else really.

Question 7/8 - I would think fishermen would need to sign and receive (without having to ask for it) a copy of any observer report they take part in. Whether the observer is onboard, in another boat or if an LEO is doing the observing. These documents drive the whole thing. Not saying anyone has or would change on but there are folks who have their own ideas and agendas that may not be in the best interest of North Carolina, NCDMF, the fishermen or the resource.

#### Miscellaneous

Question 2 - Mon thru thur fishing only. Fishermen need to be able to take advantage of the weather in the fall season. Fish don't move in the numbers needed to make a living unless it blows. Slick calm mon thru wed and the good shift fri night does not do this. There needs to be a way to make this happen. With all the closures making for fewer fishing days they need to be able to fish the most productive days, unless there is some other reason for fri thru mon no fishing. How many observers might be in an area on any given day?

Guess the bottom line question is the one that did not get answered. Can we, the commercial fishing community get a sitdown in the same room with the folks from NOAA/NMFS who make these decisions? Assist Admin OF Fisheries Eileen Sobeck, Protected Resources Director Donna Weiting, admin for the southeast Roy Crabtree. Seems like NOAA/NMFS has a lot of turnover but best I could tell those folks were still in those positions. Would the division set something like this up or should we take the initiative and pick up the phone ourselves. It is time for someone to ask for some things to be changed. In 10 years a third of the LMGN crowd won't be fishing because you won't be able to be on the water enough hours to make a living. Everybody can't afford a stand of poundnets but that's probably the next target anyway.

So how do we move forward with this? We are willing to travel to meet with any of these folks or be more than happy to host them here in N.C. It is already Jan 22nd so there at best 90 to 120 days before the crowd will be wanting to get back on the water and WORKING. Let's not let this time go by with no effort to make some changes to keep these men and women WORKING in one of the oldest industries in the state.

Look forward to hearing something back from you within a week of your receiving this.



February 13, 2015

NC Division of Marine Fisheries  
3441 Arendell Street  
Morehead City, NC 28557

Director Daniel,

The NCWU would like to take this opportunity to express our opposition to the state's proposed logbooks. Our charter fishermen already have MRIP, intercept, phone and mail-in surveys being conducted. North Carolina commercial fishermen have a trip ticket reporting mechanism which is the best in the country. In addition, law enforcement has traditionally done observations on gillnet activity which has been a very good indicator of bycatch, but LEOs have been removed from this job, and now, 7 to 10 percent of all gillnet activity is being observed.

North Carolina has a very bad track record of subjugating our fishermen to federal and state regulations derived with faulty data and faulty modeling. Red drum, large coastal sharks, menhaden, tilefish, groupers, snappers, speckled trout and grey trout are a few examples.

Red drum have been at, or above, a 40% s.p.r. for how many years? Yet, no commercial, recreational or charter access has been increased, and in many instances, access has been decreased.

North Carolina used to have a robust directed shark fishery. Data collected by our fishermen in joint venture data collection was ignored, as state regulators sat back and watched our directed shark fishery disappear.

Menhaden is a travesty. Our state had better data than any other Atlantic state on menhaden, and yet it was ignored, even as the NCMFC entertained a motion to halt menhaden fishing in coastal waters. This motion passed, and the same commissioner who proposed the motion still sits on the Commission. The menhaden closure has since been proven to be fatally flawed in peer review, but, our state knew it was flawed beforehand, and yet passed a closure anyway.

Our state is going to allow SAFMC to effectively close our tilefish fishery to commercial, recreational, and charter harvest.

Vast units of catch and effort have been left out of yet another fatally flawed model. Our Deepwater snowy grouper fishery was closed, effectively, to all fishermen with data from a

shallow water headboat survey from South Carolina. North Carolina sat idly by as we lost a very important fishery to all users.

Red snapper, and b-liners have also fallen to the whim of the SAFMC. Again, not a whimper from our state that had better data and better modeling.

Grey trout are special. Even as our state took a devastating cut in catch and effort, the scientific community recognized that effort reduction would not increase biomass, but only an increased reduction by predators, namely dogfish and cormorants. The NCWU request to increase trout retention by all groups of fishermen has been ignored, and the explanation led to us waiting a future ASMFC ruling.

Speckled trout have been pointedly referred to as a species totally unable to be managed by the Division. You, Director Daniel, are on record as proclaiming that this is because of cold stun events outside of man's control. Yet, our fishermen have suffered continual cuts in recreational, charter and commercial creel limits, and we all have seen minimum sizes increased.

These are some examples of our state not using our data, not using the best data, using wrong models or allowing the wrong model to be used with detrimental loss to all fishermen of our state.

Doug Mumford was told over three years ago at a small stakeholder meeting in Manteo that we could not support a logbook program administered by the state.

We reiterate – we are absolutely opposed to the state Logbooks.

Yours truly,

BOARD OR DIRECTORS

*Britt Shackelford*

Britt Shackelford  
President, NCWU  
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Capt Sonny Davis	Jamie Meyer
Ernie Doshier	Duke Spencer
Ernie Foster	Bradley Styron
Tom Harper	Rom Whitaker
Glen Hopkins	

BTS: mm

cc: MFC

Doug Mumford



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

Donald R. van der Vaart  
Secretary

**MEMORANDUM**

TO: N.C. Marine Fisheries Commission

FROM: Louis Daniel III, Director  
Division of Marine Fisheries, NCDENR

DATE: Feb. 17, 2015

SUBJECT: Declaratory Ruling Request

Please find attached a request for a declaratory ruling submitted by Mr. Richard Allyn with American Eel Farm, LLC (Petitioner). The Petitioner seeks a ruling regarding the applicability of N.C. Marine Fisheries Commission (Commission) Rule 15A NCAC 03M .0510, as it relates to the possession by the Petitioner of eels under nine inches. The N.C. Division of Marine Fisheries (Division) is joining the Petitioner in this request for a declaratory ruling.

In addition to the rule cited by the Petitioner, the Division has included the following authorities rules to supplement the request: N.C. Gen. Stat. §§ 113-134, 113-170.4, 113-170.5, 113-182, 113-221.1, 143B-289.52; Commission Rules 15A NCAC 03H .0103, 03I .0102 and 03M .0512; and Proclamation FF-71-2014, issued November 25, 2014 and effective November 28, 2014. The Petitioner does not object to the inclusion of the additional bases in support of the request.

As the members may be aware, the administrative rules associated with the American Eel Fishery Management Plan (FMP) is predicated on the FMP adopted by the Atlantic States Marine Fisheries Commission (ASMFC). Through the adoption of Amendment III to the American Eel FMP, the ASMFC instituted new size and possession limits, necessitating a change to the size and possession limits for North Carolina.

Additional information will be provided during the Commission's upcoming meeting. The Petitioner and Division thank the Commission for its consideration of the attached request.



American Eel Farm

*American Eel Farm LLC*

*Aquaculture & Processing*

Farm Certified

February 10, 2015

Richard Allyn  
American Eel Farm, LLC  
1633 Highway 41  
Trenton, NC 28585  
(252) 448-0037

Mr. Sammy Corbett  
Chairman, North Carolina Marine Fisheries Commission  
P.O. Box 769  
Morehead City, NC 28557

Re: American Eel Farm Aquaculture Permit #1634393

Dear Mr. Corbett,

The North Carolina Eel Farm began operating in 2002 under the ownership of George Koonce. It operated successfully until 2010 and restarted again in 2013 under the new ownership of American Eel Farm LLC. AEF is proposing to continue to rear American eel (*Anguilla rostrata*) elvers/glass eels to a marketable size for the local bait and food markets. As well as consider the market opportunities in overseas markets. This project meets a growing demand for American eel consumption both overseas and in the U.S. It complements and enhances the mission statement of the U.S. Department of Commerce in promoting job creation and economic growth that is environmentally sound. Also, it is supported by the National Aquaculture Act approved by Congress on September 26, 1980. Additionally, it meets the goals of the North Carolina Rural Economic Development Center by creating job opportunities in economically depressed counties, like Jones County, which has a population of approximately 10,300 and is classified as a Tier 1 area by the North Carolina Department of Commerce. This classification indicates the county is economically distressed.

1633 NC HWY 41 West  
Trenton, NC 28585

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252-448-0037  
info@aefnc.com



American Eel Farm LLC currently holds an Aquaculture Operation Permit from North Carolina Department of Agriculture valid until 2017. And has had the same from the NC Division of Marine Fisheries since 2013 renewing each year as required.

There is no successful commercial hatchery for the American eel in the US. For that matter there is no successful hatchery for this species of eel anywhere on the planet. This is the case in spite of millions of dollars spent on this research all over the globe. As a result the AEF is forced to do what all eel farmers do in other countries which is to purchase its seed stock from fisherman/dealers that have caught them in the wild.

AEF proposes to purchase American eel elvers/glass eels (under nine inches) from commercial fishermen in Maine and South Carolina. Currently Maine and South Carolina are the only states authorized by the Atlantic States Marine Fisheries Commission (ASMFC) to harvest American eel elvers/glass eels. The American eel glass eels will be grown out in a state-of-the-art closed recirculating system located in Jones County. The impact to the economy of Jones County is immeasurable. The AEF operated successfully for many years under the ownership of George Koonce until his health failed. Currently AEF is in full operation with 100% of the facility operable. AEF has already hired several consultants and a farm manager to operate and improve the facility and its operations.

We understand the N.C. Marine Fisheries Commission (NCMFC) rule regarding possession of American eels under nine (9) inches and the reasoning behind the rule. The AEF would like a declaratory ruling on NCMFC Rule 15A NCAC 03M .0510 allowing the AEF to possess undersize American eels in North Carolina for grow out. We are willing to provide all chain of custody documents regarding all American eel glass eels purchased. The facility has been visited by the North Carolina Marine Patrol and will be open for inspection at any time by.

Timing is critical for this venture to be successful. The harvest season for American eel glass eels in South Carolina is January 1 to March 31 and from March 22 to May 31 in Maine. We propose to purchase one crop once we have permission to possess them in North Carolina. This crop should be ready for market by October 2015. Any delay in receiving a declaratory ruling will cause a full year setback and jeopardize the ability to locate this industry in North Carolina.

Previously, in 2002 the AEF (then the North Carolina Eel Farm) received a declaratory ruling allowing the possession of undersize American eels (Attachment 1). The declaratory ruling became invalid once Proclamation FF-74-2013 (superseded by Proclamation FF-71-2014) was issued to prohibit the possession of American eels less than nine inches to comply with ASMFC Addendum III to the American Eel Fishery Management Plan until a rule change could be made to NCMFC Rule 15A NCAC 03M .0510. This action caused the declaratory ruling to become invalid under the conditions set forth in NCMFC Rule 15A NCAC 03P .0203 which states "a

declaratory ruling shall be deemed to be "in effect" until the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed..."

We respectfully ask for your prompt consideration for a declaratory ruling allowing the AEF to possess undersize American eels for aquaculture purposes. We are available to answer any questions and address any concerns you may have.

Respectfully,

A handwritten signature in cursive script that reads "Richard Allyn". The signature is written in black ink and is positioned to the right of the typed name.

Richard Allyn

CC: Dr. Louis Daniel  
Mrs. Anna Barrios-Beckwith  
Mr. Mikey Daniels  
Mr. Kelly Darden Jr.  
Mr. Mark Gorges  
Mr. Chuck Laughridge  
Mr. Joe Shute  
Mr. Mike Wicker  
Mrs. Alison Willis

Statement of Facts:

I. SUBJECT

Mr. Richard Allyn with American Eel Farm, LLC (Petitioner) requests a declaratory ruling from the N.C. Marine Fisheries Commission (Commission) regarding the applicability of the size limitations. The Petitioner seeks a ruling regarding the applicability of N.C. Marine Fisheries Commission (Commission) Rule 15A NCAC 03M .0510, as it relates to the possession by the Petitioner of eels under nine inches. The N.C. Division of Marine Fisheries (Division) is joining the Petitioner in this request for a declaratory ruling.

II. ORGANIZATION

By a letter dated February 10, 2015 and received February 13, 2015, the American Eel Farm, LLC requests a declaratory ruling on Commission Rule 15A NCAC 03M .0510 to allow the American Eel Farm, LLC to possess undersize American eels in North Carolina for grow out. Paragraph (a) of N.C. General Statute Section 150B-4, Declaratory rulings, states the “agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued.” These rules are set forth in Title 15A (Environment and Natural Resources) of the N.C. Administrative Code, Chapter 03 (Marine Fisheries), Subchapter 03P (Hearing Procedures), Section .0200 (Declaratory Rulings).

III. BACKGROUND

Petitioner is requesting a declaratory ruling regarding the applicability of Commission Rule 15A NCAC 03M .0510, prohibiting the possession of American eel under the allowable size limit as it relates to an aquaculture operation where imported glass eels and elvers would be raised, and upon reaching legal size, sold in local bait and food markets. Petitioner, formerly known as North Carolina Eel Farm from 2002 until 2010, undertook ownership of its predecessor’s operation in 2013.

In 2002 on behalf of North Carolina Eel Farm (now the American Eel Farm), George Koonce and Alexis Blanchard requested a declaratory ruling as to the applicability of the same rule that is the subject of the current request predicated on substantially similar facts. The Commission issued a declaratory ruling allowing the North Carolina Eel Farm (now the American Eel Farm), which had been issued a valid aquaculture operation permit by the Division, to possess (not harvest or sale) American eels under six-inches (termed glass eels) for the purpose of grow out. The Commission’s ruling allowed the North Carolina Eel Farm to purchase glass eels from Maine or South Carolina and import them into North Carolina with the appropriate permits for grow out.

Petitioner continued operation of the facility under the 2002 declaratory ruling, until Commission Rule 15A NCAC 03M .0510 was suspended by Proclamation to comply with Addendum III of the American Eel Fishery Management Plan adopted by the Atlantic States

Marine Fisheries Commission (ASMFC). Addendum III increased the minimum size limit to prohibit the possession of American eel less than nine inches. The Commission's 2002 declaratory ruling was nullified by the suspension of the rule.

Petitioner has been issued an Aquaculture Operation Permit annually since 2013 (permits are valid for one year from the date of issuance), and is seeking a declaratory ruling allowing for the continued operation of the facility as described above. Additional facts are contained in Petitioner's request, a copy of which accompanies this document, and will be discussed by the Division during its presentation of the request. Further discussion is also contained in this document, below.

#### IV. AUTHORITY

a. North Carolina General Statutes

§§ 113-134, 113-170.4, 113-170.5, 113-182, 113-221.1, 143B-289.52

b. N.C. Marine Fisheries Commission Rules

15A NCAC 03H .0103, 03I .0102, 03M .0512, and 03P .0201-.0203

c. Proclamation

FF-71-2014, issued November 25, 2014 and effective November 28, 2014

d. Atlantic States Marine Fisheries Commission

Addendum III to the Interstate Fishery Management Plan for American Eel

#### V. DISCUSSION

American eel are managed by the ASMFC Interstate Fishery Management Plan for American Eel, adopted initially in 2000. Federal law requires the conservation management actions approved through an ASMFC or regional federal council Fishery Management Plan be implemented by the state of North Carolina. Based on the ASMFC Interstate Fishery Management Plan for American Eel adopted in 2000, the Commission was required to maintain Rule 15A NCAC 03M .0510, which made unlawful the possession, sell or taking of American eels less than six inches in length. In 2013 the ASMFC adopted Addendum III which increased the minimum size limit for possession of American eel from six inches to nine inches.

American eel is included in the North Carolina Interjurisdictional Fishery Management Plan. The goal of the North Carolina Interjurisdictional Fishery Management Plan is to adopt Fishery Management Plans, consistent with North Carolina law, approved by Councils or ASMFC by reference and implement corresponding fishery regulations in North Carolina to provide compliance or compatibility with approved Fishery Management Plans and amendments, now and in the future.

In order to maintain compliance with the increased size limit required by Addendum III, Proclamation FF-74-2013 (superseded by Proclamation FF-71-2014) was issued by the Fisheries

Director on December 18, 2013. The proclamation suspended Commission Rule 15A NCAC 03M .0510 in its entirety (effective January 1, 2014), and instituted restrictions consistent with those contained in Addendum III. The suspension by proclamation will remain in place until a complementary rule is adopted by the Commission and becomes effective. Proposed amendments to Commission Rule 15A NCAC 03M .0510 that would implement new size and possession limits for American eel in compliance with the ASMFC are scheduled to be voted on for final adoption at the Marine Fisheries Commission's February 18-20, 2015 business meeting.

North Carolina General Statute Section 113-132 authorizes the Commission to regulate aquaculture facilities which cultivate or rear marine and estuarine resources. The Commission is also authorized to issue permits for specialized activities pursuant to N.C. General Statute §113-169.1, and to regulate the importation and exportation of fish pursuant to N.C. General Statute §113-170. The Commission has adopted regulations establishing an Aquaculture Operations Permit which, at the discretion of the Director, may be conditional as to species, quantity, size, time or location (NCMFC Rules 15A NCAC 03O .0501, .0502, and .0503), and has adopted regulations establishing a Permit to Introduce, Transfer or Hold Imported Marine Estuarine Organisms (15A NCAC 03I .0104). These authorities and permits allow the Commission the ability regulate aquaculture facilities, including the size of the species to be reared, and has implemented its statutory authority regarding aquaculture operation permits through its rules.

The Commission's 2002 declaratory ruling held that the prohibition on possession of American eels less than six inches in length did not apply to an aquaculture facility issued a valid Division of Marine Fisheries aquaculture operation permit for the cultivation or rearing of eels legally harvested outside North Carolina and imported into this State. The ruling further held that such facilities were subject to the conditions of the permit issued by the Division.

Mr. Richard Allyn purchased the American Eel Farm in 2012 and was operating under the Commission's 2002 declaratory ruling, which allowed the American Eel Farm to purchase legally obtained out-of-state American eel glass eels for grow out. The American Eel Farm currently possesses a valid Division of Marine Fisheries Aquaculture Operation permit and has done so since 2013.

As noted above, the Division has joined Petitioner's request, and is in favor of the request being granted by the Commission. The Division notes that, should the Commission grant the request, the Petitioner's facility and operations would continue to be subject to the Aquaculture Operation Permit issued by the Division and any other applicable statutes and regulations.

On December 18, 2013, Proclamation FF-74-2013 (superseded by Proclamation FF-71-2014) was issued which suspended NCMFC Rule 15A NCAC 03M .0510 in its entirety (effective January 1, 2014) to comply with Addendum III to the ASMFC Interstate Fishery Management

Plan for American Eel. The proclamation was issued so North Carolina could raise the minimum size limit for American eel from six inches to nine inches and remain in compliance with Addendum III to the ASMFC Interstate Fishery Management Plan for American Eel until a rule change to NCMFC Rule 15A NCAC 03M .0510 could be adopted. The rule change is scheduled for adoption at the Marine Fisheries Commission's business meeting in February 2015. Issuing the proclamation caused the declaratory ruling to become null and void in accordance with NCMFC Rule 15A NCAC 03P .0203 which states "*a declaratory ruling shall be deemed to be "in effect" until the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed...*"

STATE OF NORTH CAROLINA  
COUNTY OF JONES

BEFORE THE  
NORTH CAROLINA MARINE  
FISHERIES COMMISSION

IN THE MATTER OF: )  
PETITION FOR DECLARATORY RULING BY )  
RICHARD ALLYN )  
CONCERNING THE APPLICATION OF )  
COMMISSION RULE 15A NCAC 03M .0510 )  
TO AQUACULTURE OPERATIONS )

**DECLARATORY RULING**

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THIS MATTER came before the North Carolina Marine Fisheries Commission (hereinafter the Commission) at its regularly scheduled meeting in Wilmington, North Carolina on 19 February 2015 as a request for a declaratory ruling pursuant to N.C.G.S. §150B-4 by Richard Allyn (hereafter Petitioner). Petitioner sought a ruling concerning the application of Commission rule, 15A NCAC 03M .0510, prohibiting the possession of American eels less than nine (9) inches in length as it relates to a proposed aquaculture operation where imported American eel glass eels would be reared until they are sold outside of North Carolina or, upon reaching the legal size of nine (9) inches, sold as bait in the recreational fishing market or other markets within the state.

The Petitioner and the Division of Marine Fisheries through the Director stipulated to the facts presented in Petitioner’s 12 February 2015 petition for a declaratory ruling of rule 15A NCAC 03M .0510 and jointly requested the Commission to consider the petition as a petition for a declaratory ruling. The Commission accepted the petition as one requesting a declaratory ruling upon the applicability of the rule and, upon review of the record documents and stipulated facts, the Commission makes the following:

**FINDINGS OF FACT**

1. Petitioner Richard Allyn proposes to operate the American Eel Farm on Highway 41, Trenton, Jones County, North Carolina. The facility includes a building housing 24 self-contained (closed loop) 1,000 gallon and two 7,500 gallon, automated, self-cleaning and oxygenated holding tanks in which American eels are to be reared until they are sold

outside the state of North Carolina or until they reach nine (9) inches or greater in length and then sold to bait shops and/or bait brokers or other markets who are subject to the requirements and limitations of 15A NCAC 03M .0510 and all other applicable State and Federal laws and regulations.

2. Glass eels are American eels less than nine (9) inches in total length.
3. Petitioner will not possess, buy or sell American eel glass eels collected from North Carolina's coastal and inland waters.
4. Petitioner intends to purchase American eel glass eels from sources authorized to harvest American eel glass eels in Maine and South Carolina or the Maritime Provinces of Canada. In Maine, the harvest season for elvers is from March 22 to May 31. South Carolina's harvest season runs from January 1 to March 31.
5. Legally obtained out-of-state stocks of this marine resource qualify as artificially propagated stocks of marine resources under the rule defining aquaculture operation, [15A NCAC 03I .0101(2)(a)].
6. Petitioner will maintain and make available for inspection all records of their transactions for the purchase of American eel glass eels and the sale undersize American eels outside of North Carolina or the sale of legal size American eels to bait shops, bait brokers, or other markets within the state.
7. Commission rule titled American Eel, 15A NCAC 03M .0510 restricts the possession of American eels and provides in part: It is unlawful to possess, sell or take eels less than nine (9) inches in length.
8. In accord with its authority to regulate aquaculture facilities which cultivate or rear marine resources pursuant to N.C.G.S. §113-132, to issue permits for specialized activities pursuant to N.C.G.S. §113-169.1, and to regulate the importation and exportation of fish pursuant to N.C.G.S. §113.70, the Commission has adopted regulations establishing an aquaculture operations permit which, in the discretion of the



Director, may be conditioned as to species, quantity, size, time or locations (15A NCAC 03O .0501, .0502, and .0503 and adopted regulations establishing a permit for the importation and transfer of marine and estuarine organisms (15A NCAC 03I .0104).

9. Petitioner seeks a declaratory ruling on the issue of whether the nine (9) inch possession limit for American eels (15A NCAC 03M .0510) applies to an aquaculture facility that is permitted under an Aquaculture Operation Permit issued pursuant to N.C.G.S. §113-169.1 and Commission rules 15A NCAC 03O .0501, .0502, and .0503?

Based upon the foregoing findings of fact the North Carolina Marine Fisheries Commission makes the following:

**DECLARATORY RULING**

The 15A NCAC 03M .0510 prohibition on possession of American eels less than nine (9) inches in length does not apply to an aquaculture facility issued a valid Division of Marine Fisheries Aquaculture Operation Permit for the cultivation or rearing of eels legally harvested outside North Carolina and imported into this State. This Declaratory Ruling does not exempt an aquaculture facility permitted by the Division of Marine Fisheries from complying with the requirements of all applicable State and Federal laws and regulations

This the \_\_\_\_\_ day of February, 2015

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Sammy Corbett, Chairman  
Marine Fisheries Commission