

# N.C. Wildlife Federation Petition for Rulemaking

N.C. Marine Fisheries Commission  
February 16, 2017



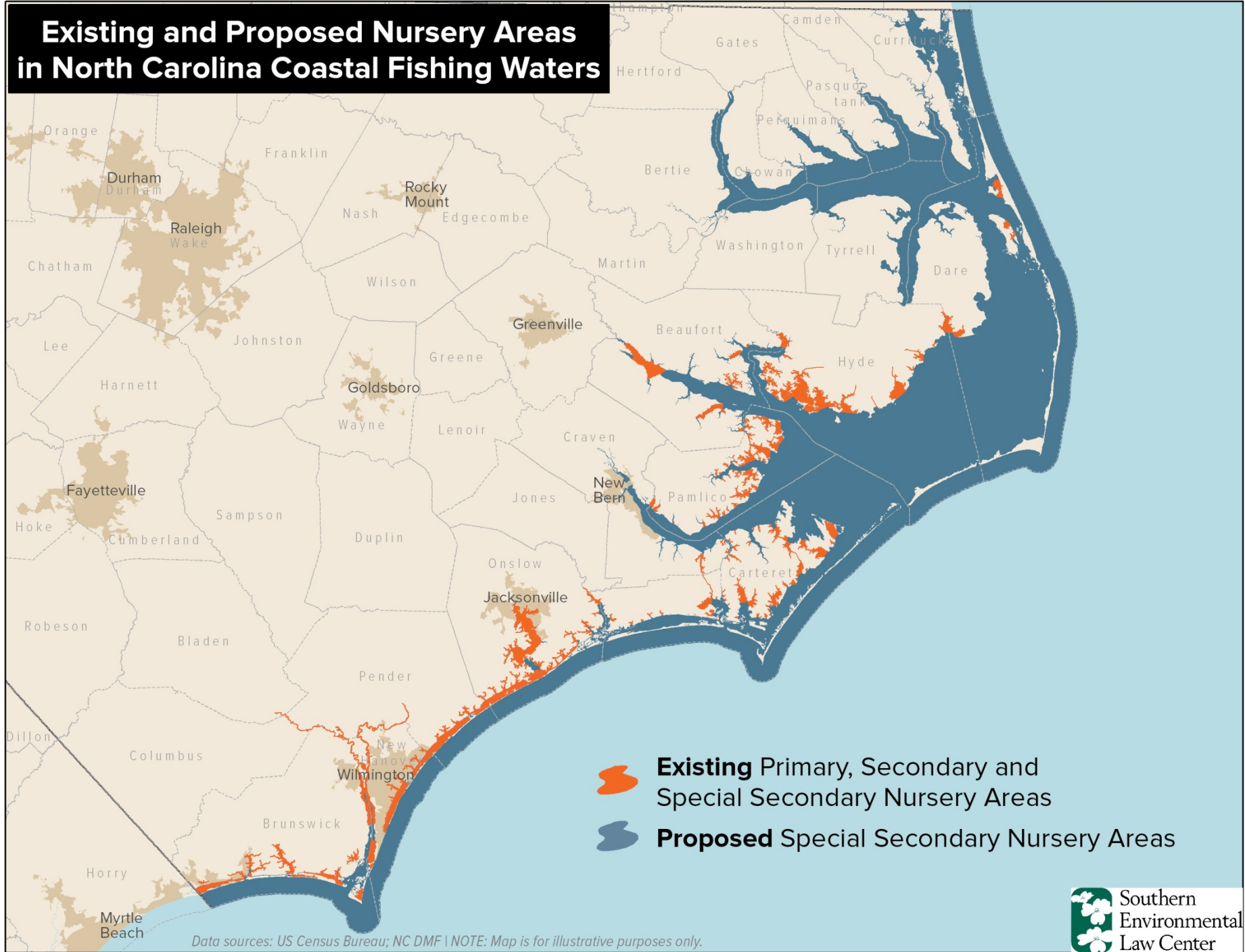
# Overview

- Introduction of petition, Derb Carter, Southern Environmental Law Center
- Technical background, Dr. Louis Daniel
- Concluding thoughts, David Knight, Policy Advisor, N.C. Wildlife Federation
- Questions

# Details of Petition

- 1. Modifies the definition of secondary nursery areas to include ocean waters
  - 15A N.C. Admin. Code 3I.0101(4)(f)
- 2. Designates all inshore and near shore (0-3 miles) coastal fishing waters as SSNAs
  - 15A N.C. Admin. Code 3R.0105(13)

# Existing and Proposed Nursery Areas in North Carolina Coastal Fishing Waters



# Details of Petition (cont'd)

- 3. Implements management strategies in newly designated SSNAs open to trawling
  - Three days per week of trawling in inshore SSNAs, four days per week of trawling in ocean SSNAs
  - Daytime trawling only
  - Tow times limited to 45 minutes
  - 15A N.C. Admin. Code 3N.0105(c)
- 4. Provides clear guidelines to Fisheries Director for opening of shrimp season
  - 15A N.C. Admin. Code 3L.0101(b)

# Details of Petition (cont'd)

- 5. Caps combined headrope length at 90 feet in inshore waters and 110 feet in ocean waters
  - 15A N.C. Admin. Code 3L.0103
- 6. Requires the use of two BRDs in all trawl nets used in coastal fishing waters
  - 15A N.C. Admin. Code 3L.0103
- 7. Implements 8 inch size limit for spot and 10 inch size limit for Atlantic croaker
  - 15A N.C. Admin. Code 3M.0522 (spot)
  - 15A N.C. Admin. Code 3M.0523 (Atlantic croaker)

**§ 143B-289.52. Marine Fisheries Commission - powers and duties.**

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

- (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
    - a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
    - b. Seasons for taking fish.
    - c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.
  - (2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.
  - (3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.
  - (4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.
  - (5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).
  - (6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.
  - (7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.
  - (8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221.1.
  - (9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.
  - (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.
  - (11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.
  - (12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.
  - (13) To adopt rules to define fishing gear as either recreational gear or commercial gear.
- (b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:
- (1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.
  - (2) To manage the disposition of confiscated property as set forth in G.S. 113-137.
  - (3) To govern all license requirements prescribed in Article 14A of Chapter 113 of the General Statutes.
  - (4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.
  - (5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.
  - (6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.
  - (7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.
  - (8) To govern the utilization of private fisheries, as provided in G.S. 113-205.
  - (9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.
  - (10) To regulate the location and utilization of artificial reefs in coastal waters.
  - (11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.
- (c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:
- (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.
  - (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.
- (d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.
- (d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. The Commission may use any additional criteria aside from holding a Standard Commercial Fishing License to develop limited-entry fisheries. The Commission may establish a fee for each license established pursuant to this subsection in an amount that does not exceed five hundred dollars (\$500.00).
- (d2) To ensure an orderly transition from one permit year to the next, the Division may issue a permit prior to July 1 of the permit year for which the permit is valid. Revenue that the Division receives for the issuance of a permit prior to the beginning of a permit year shall not revert at the end of the fiscal year in which the revenue is received and shall be credited and available to the Division for the permit year in which the permit is valid.

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- (2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.
- (3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

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# Process Moving Forward

- If Commission grants N.C. Wildlife Federation's petition for rulemaking today, the Federation recommends the following:
  - 1. Expedite the revision of the Shrimp Fishery Management Plan
  - 2. Clearly define the scope of the Shrimp FMP revision
  - 3. Initiate rulemaking on the proposed rules as part of revised FMP process

# **A Technical Review of a Proposal Submitted by the N.C. Wildlife Federation to Reduce Mortality of Juvenile Fishes in N.C.**

Presented by Dr. Louis Daniel



# Primary Sources of Data and Science

- 31 reports reviewed
- Atlantic States Marine Fisheries Commission FMPs and Habitat Assessments
- NC Division of Marine Fisheries characterizations of state shrimp trawl fishery
- Alverson's global assessment of fisheries bycatch

# Initial Compelling Factors

- Sustainable harvest depends on reliable recruitment of juveniles into the adult population
- Bycatch mortality increases as fish move out of the current gear restricted nursery areas, defeating their purpose
- In October 2016, ASMFC unanimously recommended no trawling in Sciaenid HAPCs
- Prior to decline in late 1980s, spot, croaker, and weakfish were major components of NC's commercial and recreational fisheries

# Initial Compelling Factors

- When bycatch approaches or exceeds commercial directed removals, the likelihood of negative impacts is great. When most of the bycatch is juveniles, the problem is magnified.
- In 2014, shrimp trawl bycatch of spot, croaker, and weakfish was estimated at 15.6 million lbs—or 4 times the combined NC commercial and recreational harvest and approaching total coast wide harvest of 18.7 million lbs of these species.



# Technical Issues

- Nursery area designation
- Fishery stock status
- Shrimp trawl management criteria

# Nursery Area Designation

- The majority of species encountered in trawl surveys of Pamlico Sound are juveniles
- Current nursery areas contain small fraction of occupied habitat areas in NC waters
- Only difference between currently designated nursery areas and the rest of the estuarine and nearshore coastal ocean is the size of the juveniles encountered

# Protect all Estuarine and Near Coastal Waters

- Action is consistent with the recommendations of the N.C. Coastal Habitat Protection Plan
- Action is consistent with ASMFC Habitat Plan
  - In October 2016, ASMFC unanimously approved a report designating all estuaries as HAPCs for spot and croaker and advised that fishing gear having a negative impact on these habitats be prohibited
  - A 2016 ASMFC study indicates that trawls impact sciaenid habitats by removing epifauna, altering bathymetry, and changing organism assemblages; these habitats take months to years to recover

# Response to DMF Concerns

- Thorough review by DMF raises important considerations
- DMF recognizes that data are available to further characterize inshore nursery habitats
- DMF recognizes that coastal surveys such as SEAMAP contain useful information to designate nearshore coastal regions as nursery areas for juvenile fishes
- DMF summarizes nursery area program to conclude measures are in place to protect fishery habitat

# Nursery Area Summary

- Decades of survey data are available that support additional nursery area designations
- These survey data indicate that virtually all samples within the survey design consist primarily of juvenile fishes
- Surveys occur within the primary inshore shrimping grounds
- The current surveys, coupled with detailed shrimp trawl characterization studies, provide ample evidence and the acceptable data necessary to expand our current, rudimentary nursery area designations
- The precise intent of this petition is to acknowledge the available data and designate the new nursery areas as proposed

# Fishery Stock Status

- Atlantic croaker - Concern
- Spot - Concern
- Weakfish - Depleted
- Summer flounder - Concern
- Southern flounder - Concern
- Blue crab - Concern

# Stock Status Concerns

- Uncertainty in stock assessments as a result of shrimp trawl bycatch
- Continuous decline in landings compared to other states
- Heavy reliance on juvenile fishes in directed fishery

# Shrimp Trawl Management Criteria

- Virtually all of the measures proposed have been enacted in other shrimp fishing jurisdictions successfully
- The primary intent of these measures is to reduce bycatch and minimize opportunities for recoupment while still permitting a shrimp trawl fishery to take place in estuarine and nearshore coastal waters



# General Comments

- DMF concerns should be addressed moving forward, but should not delay action on petition's proposals
- The use of bycatch reduction devices alone is insufficient to address the concerns raised in the petition
- We urge action and precaution over delay or status quo

# Conclusions

- Management measures proposed by N.C. Wildlife Federation will protect important nursery habitat and limit harvest of juvenile species
- Only difference between current defined nursery areas and the rest of NC's estuaries is the size of the juvenile fishes present
- Protection of the juveniles throughout the system is necessary to allow these fish to contribute to the health of their stock by spawning at least once
- Spot, croaker, and weakfish were major components of NC's fisheries and can be again

# N.C. Wildlife Federation Petition for Rulemaking

David Knight, Policy Advisor, N.C.  
Wildlife Federation



# Concluding Thoughts

- NC is the only state on east coast to allow trawlers in internal, estuarine waters
- NC has the weakest shrimp trawl regulations on the east coast
- Stocks are in decline and important habitat areas have been left unprotected
- Shrimp trawls are the largest source of bycatch in NC waters
- Goals of the Fisheries Reform Act and Coastal Habitat Protection Plan have not been realized
- The time to act is now

Questions?