

February 2023 Briefing Materials



N.C. Marine Fisheries Commission
Business Meeting
February 22-24, 2023
New Bern, NC

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AGENDA

Doubletree Hotel, New Bern, NC
February 22-24, 2023

N.C.G.S. 138A-15(e) mandates at the beginning of any meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest under Chapter 138. The chair also shall inquire as to whether there is any known conflict of interest with respect to any matters coming before the board at that time.

N.C.G.S. 143B-289.54.(g)(2) states a member of the Marine Fisheries Commission shall not vote on any issue before the Commission that would have a "significant and predictable effect" on the member's financial interest. For purposes of this subdivision, "significant and predictable effect" means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

Commissioners having questions about a conflict of interest or appearance of conflict should consult with counsel to the Marine Fisheries Commission or the secretary's ethics liaison. Upon discovering a conflict, the commissioner should inform the chair of the commission in accordance with N.C.G.S. 138A-15(e).

Wednesday, February 22nd

6:00 p.m. Public Comment Period

Thursday, February 23rd

9:00 a.m. Public Comment Period

9:30 a.m. Preliminary Matters

- Commission Call to Order* – Rob Bizzell, Chairman
- Moment of Silence and Pledge of Allegiance
- Conflict of Interest Reminder
- Roll Call
- **Approval of Agenda ****
- **Approval of Meeting Minutes****

9:45 a.m. Chairman's Report

- Letters and Online Comments
- Ethics Training and Statement of Economic Interest Reminder
- 2023 Meeting Schedule
- Commission Committee Assignments
- Committee Reports
 - Northern Regional Advisory Committee
 - Southern Regional Advisory Committee
 - Finfish Standing Advisory Committee
 - Shellfish/Crustacean Advisory Committee
 - Habitat and Water Quality Advisory Committee

*** Times indicated are merely for guidance. The commission will proceed through the agenda until completed.**

****Probable Action Items**

Thursday, February 23rd continued...

- Joint Meeting of the MFC Commercial Resources Fund Committee and the Funding Committee for the N. C. Commercial Fishing Resource Fund

10:00 a.m. **Consideration of Resolution from Stakeholder Engagement for Collaborative Coastal Habitat Initiative**

10:30 a.m. Director's Report – Kathy Rawls

- Division of Marine Fisheries Quarterly Update
- Atlantic States Marine Fisheries Commission – Chris Batsavage
- Mid-Atlantic Fishery Management Council Update – Chris Batsavage
- South Atlantic Fishery Management Council Update – Trish Murphey
- Marine Patrol Update – Col. Carter Witten
- Shellfish Lease Program Update – Owen Mulvey-McFerron
- Update on Conclusion of Relay Program – Jacob Boyd
- Coastal Habitat Protection Plan Update – Anne Deaton
- Protected Resources Update – Barbie Byrd
- Southern Flounder Updates – Anne Markwith
- Informational Materials and Memos:
 - Highly Migratory Species
 - Observer Program Memo
 - Incidental Take Permit Reports
 - Landings Updates
 - Rule Suspensions

12:00 p.m. Lunch Break

1:30 p.m. False Albacore Information Paper Overview – Mclean Seward, Anne Markwith

2:30 p.m. Fishery Management Plans

- Status of ongoing plans – Corrin Flora
- Spotted Seatrout Fishery Overview – Lucas Pensinger, Jason Rock
- Striped Mullet FMP – Dan Zapf, Jeff Dobbs, Willow Patten
 - Fishery Characterization
 - Supplement to Amendment 1 of the Striped Mullet FMP
 - Review public comment
 - **Vote on final approval ****

Friday, February 24th

9:00 a.m. Rulemaking Update – Catherine Blum

- 2021-2022 Annual Rulemaking Cycle Update
- 2022-2023 Annual Rulemaking Cycle
 - **Vote on final approval of Mutilated Finfish Rule (15A NCAC 03M .0101) and Marinas, Mooring Areas, and Other Docking Facilities Rule (15A NCAC 18A .0911)****
- 2023-2024 Annual Rulemaking cycle

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***Probable Action Items*

- **Vote on management option and associated proposed language for rulemaking for "Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources" issue paper****

Friday, February 24th continued...

- **Vote on management option and associated proposed language for rulemaking for "Oyster Sanctuary Rule Changes" issue paper****
- **Vote on management option and associated proposed language for rulemaking for "Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises" issue paper****

9:30 a.m. Issues from Commissioners

10:00 a.m. Meeting Assignments and Preview of Agenda Items for Next Meeting – Lara Klibansky

10:30 a.m. Adjourn

DRAFT

** Times indicated are merely for guidance. The commission will proceed through the agenda until completed.*

***Probable Action Items*

Marine Fisheries Commission Business Meeting Minutes
Islander Hotel & Resort
Emerald Isle, North Carolina
Nov. 16-18, 2022

The commission held a business meeting Nov. 16-18 at the Islander Hotel & Resort in Emerald Isle, North Carolina. In addition to the public comment session, members of the public submitted public comment online or via U.S. mail. To view the public comment, go to: <https://deq.nc.gov/media/32122/open>

The briefing materials, presentations, and full audio from this meeting are available at: <https://deq.nc.gov/about/divisions/marine-fisheries/marine-fisheries-commission/mfc-meetings/past-marine-fisheries-commission-meetings#QuarterlyBusinessMeeting-November16-17-11865>

Actions and motions from the meeting are listed in **bolded** type.

BUSINESS MEETING - MOTIONS AND ACTIONS

On Nov. 16, a public comment session was held beginning at 6 p.m. Chairman Rob Bizzell called the meeting to order. The Chairman opened the comment period with Renee Cahoon, Chair N.C. Coastal Resources Commission and followed with the public comment period. The following comments were received:

Delineation of Inland and Coastal Fishing Water Boundaries Comment
Renee Cahoon, Chair N.C. Coastal Resources Commission

By statute, both the North Carolina Marine Fisheries Commission and the North Carolina Wildlife Resources Commission exercise concurrent jurisdiction over joint fishing waters of the state. (N.C.G.S. § 113-132) As part of their joint administration of these resources, the Marine Fisheries Commission and WRC have adopted joint rules which delineate the boundary between estuarine waters and inland fishing waters. The boundary of the coastal/inland waters established by these rules has significance far beyond jurisdiction for fisheries regulation.

Several state laws for which my Commission is responsible, including the Coastal Area Management Act (G.S. 113A-100, et seq.) and the State Dredge and Fill Act (G.S. 113-229), refer to the boundary between coastal and inland waters as the extent of the state's estuarine resources. As a result, if the Marine Fisheries Commission and WRC change the boundary of coastal and inland waters, or repeal the rule establishing that boundary, then the estuarine shoreline and waters critical to the state's estuarine fisheries could be removed from protection under coastal management, water quality, and habitat protection programs. At the very least, changing this boundary could cause significant uncertainty about where the CRC's more protective Estuarine

Shoreline rules could be enforced. Because our jurisdiction is set by statute, my Commission cannot fix any problems caused by changes to the joint rules through rulemaking.

For these reasons, my Commission has been following the readoption of joint rules by the Marine Fisheries Commission and the Wildlife Resources Commission establishing the boundary between estuarine waters and inland fishing waters very closely over the last several years. I am providing 2019 and 2022 letters from the Department of Environmental Quality detailing concerns over these proposed rule changes to provide more information about our concerns.

Most recently, on March 18, 2022, I submitted comments to the Rules Review Commission after learning that the North Carolina Wildlife Resources Commission has proposed amended and adopted rules in 15A NCAC 10C (published in the North Carolina Register on January 18, 2022) that will unilaterally change the jurisdictional boundary between coastal and inland waters. I also alerted Governor Cooper to the Coastal Resources Commission's ongoing concerns regarding proposed changes to the WRC and MFC's Joint Rules establishing the boundary between coastal and inland waters.

In my comments objecting to the proposed rule change, I noted that for the last several years, the Coastal Resources Commission has reached out to the WRC and its staff and asked for a meeting to express its concerns over changes to this boundary. Given the significant implications of changing the rule relating to the boundary between coastal and inland waters the Coastal Resources Commission is troubled by the WRC's failure to articulate any justification for the proposed rule changes.

State law makes clear that the decision on coastal/inland waters jurisdiction with respect to the Coastal Area Management Act and State Dredge and Fill Act must be by agreement between the MFC and the WRC. Unfortunately, it appears that the WRC has chosen to move ahead with its proposed rule changes in the face of significant objections from the Coastal Resources Commission and others.

The North Carolina General Assembly created the Marine Fisheries Commission, the Environmental Management Commission, and the Coastal Resources Commission to work together to protect and restore fish habitats. One way we do this is through the Coastal Habitat Protection Plan. That Plan recognizes that while the Marine Fisheries Commission can protect fish habitat from fishing related activities, it cannot regulate land-based activities to improve water quality or protect fish habitat. The EMC and my Commission have responsibilities for regulating impervious surface limits, vegetated buffers, and shoreline stabilization. I understand that the EMC is also responsible for stormwater management, and water quality standards. It would be very unfortunate if changes to the joint rules of the MFC and the WRC resulted in unintended negative impacts to my Commission's jurisdiction which allow it to protect estuarine shorelines and the state's estuarine resources.

The Coastal Resources Commission supports efforts by both WRC and MFC to work towards updating the joint rules in a manner that addresses the Coastal Resources Commission's concerns and that are designed to narrowly address any problems identified by the WRC and the MFC.

I want to express my thanks to Chair Bizzell for listening to the Coastal Resource Commission's concerns and for allowing me to speak to you today.

Public Comment Period

Ron McCoy, from Wilmington, commended the commissioners for serving on the MFC. He said it is time consuming, thankless work and the MFC is criticized no matter what it does. The system was created from the 1997 Fisheries Reform Act. The system is designed to make decisions that divide our saltwater resource catch between user groups, not manage the resource for stability and growth. He said, simply put, this 25-year-old law and the system it created has failed the resource. He said he speaks in support of the resource and in support of striped bass. He asked the MFC if its vote for striped bass is for resource management or dividing the catch. He said the MFC should vote for resource management and keep the gill nets out of the Neuse and Pamlico rivers. In closing, he said to manage the resource the MFC must change the failed system. He suggested the MFC call a special meeting to work on changes. He said the change must include having an MFC that represents the entire State, not just the coast; the change should stop dividing catch; the change should make timely decisions; the change should be insulated from user group politics; the change should learn from other Atlantic and Gulf states that clearly have done a better job managing their saltwater resource. He said the resource cannot manage itself; that is the MFC's job.

Bobby Brewer, owner of Bald-Headed Bobby's Guide Service in Oriental, said prior to the closure three years ago, he ran a lot of striped bass trips in the New Bern area. He said after the closure, he lost those trips and revenues and he educated himself on why the closure was necessary. He read information on the marine fisheries website, he spoke to marine biologists, and reviewed independent studies. Prior to the closure, he said he was catching 16-22" or 23" fish, and occasionally a 25" or 26" fish. He said about six weeks ago he fished in the same area for fun and the first fish he caught was 27 and 1/2" and a friend caught a 30" fish, which they did not catch before the closure. He said this is significant because those 22-23" fish have a quarter million eggs each; a 27-30" fish has a million eggs. He said we do not yet have the 9-to-10-year-old fish that are 35-40" with two million eggs and we need those in the fishery. He went to the marine fisheries website to understand the MFC's responsibilities, which include managing, protecting, preserving, and enhancing marine and estuarine resources. He said the MFC will make a vote in the next couple of days. He said he would like for the MFC to continue the closure of the Neuse and Tar/Pamlico River systems for recreational, for-hire, and commercial fishing. He recommended continuing the ban on netting above the ferry lines in both river systems. He asked the MFC to protect, preserve, and enhance that fishery.

Tim Faircloth said two years ago he came to a MFC meeting and asked about cast net studies in the estuaries and about destroying shrimp in the estuaries. He asked the MFC to get with him and research the issue, but he never heard from anyone. He said he and his father are commercial fishermen and they pull nets in the waterway. He said he questioned two years ago if the commissioners had ever thrown a cast net and gotten slime; he asked if they knew they were killing fish and shrimp for the next year's catch, but no one answered. So, he did his own research. He caught fish, put them in a bucket, and examined them under a microscope and determined we are killing fish. He said no one has researched this, but the MFC wants to keep putting the commercial fishermen down that is dragging his net in the waterway. He asked the commissioners if they have

ever thought about everyone that is in a boat with a cast net in the estuaries traveling at 60 mph and what they are destroying. He said the MFC never got back with him to send someone to research this. He said the amount of boat traffic in the waterways is insane. When he first chartered fishing trips in 2001, there were nine in-shore charters from Sneads Ferry to Emerald Isle. He asked how many there are now. He said we are all guilty, but he asked if we are all guilty of damaging the fish populations and not knowing it.

Allen Faircloth, from Hampstead, said he has a Standard Commercial Fishing License and he primarily shrimps and he flounder nets. He shared concerns about opening the shrimp season this year. He said several fishermen started calling the Wilmington division office in August about opening the season and they were told it would open Sept. 11. He said the fishermen started calling the Morehead City division office and as a result, shrimping opened Sept. 1 for the preferred waters in North Topsail Beach, etc. He said if it had not opened it until Sept. 11, it would have been a repeat of 2021 when the shrimp were gone by the time it was opened. He also provided comments about the southern flounder season. He said people envision that nets are destroying everything, but this is absolutely false. He said he fishes with five nets that are each about 275 feet in length and that is all he can handle and pick up the next morning. As he moved through the first four days of the southern flounder season, he took a day off for a doctor appointment and while he was there he was told the quota had been met. He said when he got back home he started asking questions and found out there was quota remaining, but the gear was switched to hook and line and gigging only. He said he is not a fan of gigging because he cannot look in the water two feet down and tell how big something is. He said commercial fishermen have hung their heads on the net business. Giggers are allowed to catch 50 fish, but he has netted for the last 10 years and has never put more than 22 fish on his boat.

Jimmie Goodwin said a 73% southern flounder reduction was obviously intended to run commercial fishermen out of business with only four days for southern flounder harvest with gill nets. He said Core Sound only had five days for pound net harvest and it takes about \$5,000 to set a pound net; this is unfair. He said there are about 780,000 recreational license holders and only 5,000 commercial license holders, with about 10.4 million people in North Carolina. There are a few people, roughly 4,000 N.C. Coastal Conservation Association members, that can afford to come to the coast on weekends and catch the fish; most people do not have the money to do so. He asked the MFC where these people are going to get their fish if the MFC continues to decimate commercial fishing. He said the MFC is not allowing some people to survive; he suggested a 25% reduction and opening some hatcheries with part of the \$22 million in license fees the MFC gets every year to have a hatchery in every river, to enhance the fisheries. He said the MFC could open hatcheries in each river and then focus on whatever fish was low that year and give that up and down flow, which is continuous in fishing. Predators rise, prey drops, and the reverse. He said this is the way fishing works and has since the beginning of time. He said you can't manage mother nature. He said to manage fisheries, you help to enhance it; no one can manage mother nature. For spotted seatrout, he said three years is the maximum the MFC should ever have on a rebuilding plan because you will have a freeze from mother nature and decimate them. He said if there was ever a problem in the flounder industry, it was from the freeze; he rode up and down the Banks and saw flounder upside down from the freeze, not from commercial nets. He repeated that you cannot manage mother nature. He said 9.6 million people in North Carolina rely on commercial fishermen to get their fish.

Donald Willis, owner of Custom Marine Fabrication, said he has been in the fishing tackle business and been attending fisheries meetings for over 30 years. He spoke about the Estuarine Striped Bass Fishery Management Plan Amendment 2. He said for three years, the rivers have been closed. This cost him money and he said he does not mind. But to open the rivers back up to nets before we know what it has done, to not check if anyone with scientific interest can determine if we can bring it back to a spawning river, to destroy it before we know what we are doing, would be a travesty. He said to just destroy what he and anglers have sacrificed would be a slap in the face. He asked how the MFC could do this. The fishery above the ferry lines is a whole different fishery than on the other side. He said he has heard fishermen say that during the closure nets only catch what they are targeting and fishermen are not hurting the resource, but it is a different story by what these rivers tell you in reality. He urged the MFC to look at it for themselves. He said he has people driving from Oriental to New Bern to catch fish, because there are no fish to catch in Oriental. He has a fisherman building a house in the lower Broad Creek area and he is going to New Bern to catch fish because there are no fish in his area. He said what the MFC has been told is not true. He is proud of the sacrifices he and anglers made; he reiterated the need to see what has been done before opening the rivers back up to recreational or commercial fishing. He said to keep the rivers closed, study it, and see what is going on.

Tim Hergenrader, a recreational fisherman and conservationist from Pamlico County, addressed the possible reopening of gill nets in the Neuse, Tar, and Pamlico rivers. He said the first rationale for reopening was for the harvest of shad, even though it is overfished with overfishing continuing. Fortunately, that effort was stymied. The next rationale was for the harvest of striped mullet, which is overfished with overfishing continuing, for more money in their coffers. He said the rivers are serving as nurseries for mullet and other species. He said the mullet will leave the rivers to spawn and the netters will have their opportunity to slaughter them for their eggs as the fish move to the coast. He said killing fish on their spawning runs is the height of irresponsibility, so it is no wonder to him that striped mullet are overfished. He asked why the river closures are so egregious as to warrant one attempt after another to reopen the rivers, especially since the alleged target fish are overfished with overfishing continuing. He said it is not about the fish; the closures prove that with the nets gone, the fish populations increase. The commercial fishing industry cannot abide by this. The fish populations in the Neuse River have increased since the closure was implemented, at least based on anecdotal information since there have been no studies. He said in the Neuse River, the striped mullet are omnipresent, as are virtually every predator that feasts on them and menhaden. He said if the rivers are reopened to netting, the carnage will commence. He said the DMF is looking at a 30% reduction in striped mullet harvest, yet the MFC is considering an increase in harvest. This shows the left hand does not know or care what the right hand is doing. He urged the MFC to leave the net moratorium in place, move the closures to the tie-down lines, and the MFC will solve the 30% for striped mullet and provide more protection for striped bass, the fish the closure was intended to protect. He said if the MFC opens the rivers to netting, the striped bass will be gone as a viable species, floating belly up in the rivers as bycatch.

Willy Phillips, presented a resolution from Tyrell County opposing jurisdictional expansion by the N.C. Wildlife Resources Commission to eliminate the joint waters, would effectively eliminate commercial fishing in numerous rivers in the Albemarle Sound and further south. He said other surrounding counties are in agreement with the resolution. He said he buys from 100 fishermen per

year in his business. He has been in commercial fishing for 50 years and has worked with numerous members of the DMF staff through the years and some of the commissioners. He said it has taken 25 years of PTSD therapy after serving on the MFC for four years to come back to speak, but he understands the struggles the MFC deals with in figuring out allocation issues. That is the issue; it is not possible to raise enough fish for everyone. He said we are divided and are fighting over the crumbs. Pollution has turned the sounds and rivers into nursery areas that can't function. So, no matter what we do in this assembled group, we can't fix it until we fix the habitat and water quality situation. He said there are 82 discharges in the Roanoke River before it ever hits the Albemarle Sound; all that takes out is the poop. It does not take out any of the estrogen that causes sex changes, or any of the forever chemicals, so we can't raise fish and we can't have enough fish for everyone. He said the MFC has someone now, Dr. Rader, that can help guide the commission in addressing this. He said he hopes the MFC can put that pack on his back so this can be addressed and all the people of North Carolina can enjoy the bounty.

Wayne Dunbar, a commercial fisherman for 46 years, said the net ban above the ferry line is unjust to the 10 million residents of North Carolina because it allows a small group of anglers to fish and keep fish for their own personal use. He said the previous MFC has given recreational anglers a private 75,000-acre fishing pond, or about 132 square miles, while leaving the other 10 million citizens of North Carolina without access to buy fish provided by commercial fishermen caught from these waters, like restaurants, fish markets, farmers markets, fish houses, and grocery stores. He said the scientific data shows small mesh gill nets are not hurting the striped bass population, but hook-and-line fishermen continue to catch striped bass in these areas while research data show that recreational dead discards of striped bass are about 40-48%. He said not all recreational fishermen are throwing back those striped bass. As a commercial fisherman of 46 years, he said they traditionally fish in the spring for menhaden for bait. He said crab bait has gone from \$10 to \$30 per flat in the last couple years, so it is important to the crab industry to be able to fish for menhaden up these rivers. He said commercial fishermen also fish in spring, summer, and fall for spots, which stay in high demand for consumers of North Carolina. He said DMF data show for mullet, over the last 20 years, there has been an average of 1.7 million pounds of harvest per year, with an average of 700 commercial fishermen participating and an average of 8,000 trip tickets per year. This results in an average of 212 pounds of mullet per trip ticket. He said he does not see where the mullets are overfished, and this year might be a record year for harvest; striped mullet are doing fine. For spotted seatrout, Mr. Dunbar said over the last 20 years, per DMF data, commercial landings have averaged about 280,000 pounds annually and recreational harvest has averaged about seven times the commercial harvest, or about two million pounds. He said recreational discards is double the amount of fish kept, so discards are about four million at a 25% mortality rate, or one million pounds of dead discards. He said he owns Paradise Shores Seafood and Paradise Shores Guide Service, and he has studied fish and wildlife management and most importantly has spent 46 years on the waters of eastern North Carolina as a commercial fisherman and guide.

Steve Ethridge, a full-time commercial fisherman, asked the MFC not to adopt Supplement A to the Striped Mullet FMP, for two main reasons. He said the mullet fishermen do not agree with the data; in 2018, DMF biologists told the MFC no management action should be taken since the stock assessment update indicated overfishing was not occurring. The 2018 information also included the recommendation that in the next stock assessment striped mullet should be considered a forage

species; that would raise the spawning stock biomass from 25% to 35%. He said these are the main points that were used as data that he sees as inaccurate and troubling. The main data sets came from fisheries independent gill net studies. He said this consists of DMF staff setting gill nets in random grids; the idea of unprofessional fishermen determining the lives and livelihoods of hardworking professional fishermen is disturbing and unacceptable. The DMF data does not match commercial mullet landings because many important factors are not considered by the biologists, like COVID, hurricanes and the loss of freezers in Florida, and fluctuations in fisheries, like one year shrimping being better and the next year crabbing being better. He again asked the MFC not to adopt Supplement A because the data is incorrect. He said the DMF just asked in October to form a committee of mullet fishermen and concerned parties for peer review. He asked the MFC to allow that peer review committee to meet with biologists for two years to help straighten out the data.

Tony Cuthrell said he has been living in New Bern for 15 years. He has fished the Chowan, Roanoke, Cashie, Tar, Pamlico, Neuse, and Trent rivers. He said when he lived in Gates County in the 1980s, he used to dip herring and fill up a 14-foot boat, but you cannot even find them anymore because of the netters. He said you can't get striped bass from the Roanoke River anymore because the fish can't get past the dams to breed. He said the Roanoke River used to be the number one striped bass fishery on the East Coast. He said he is starting to see some fish back in the Neuse and Trent rivers in the New Bern area. He said if the MFC allows the netters to come back where they want to go, and everybody has a right to earn a living, the MFC is going to take away the breeding stock and all the babies, the bycatch will be unbelievable, and within three years we won't have a fishery; it will be a fishery no one can live on. He said fishermen now can only catch one weakfish, four spotted seatrout, one flounder, and one red drum; with that kind of catch, he questioned what the netters are coming up the rivers with nets to catch. He asked the MFC to give these fish a chance to mature, spawn, grow, and live to where we can all have a good time and make a living, commercial and recreational. If the commercial fishermen keep bringing their nets up the rivers it will be the end for everybody. He asked what the commercial fishermen would do then and who they would blame. He said we all need help, we all need fish, and we all need a place to catch them. He said that is the MFC's job and acknowledged it is not easy. He said the MFC has to think about everybody, and give the fish a chance to live and all of us a chance to fish for them and eat them, because they are good to eat.

Rocky Carter spoke about striped mullet, flounder, and striped bass. He said striped mullet is listed as depleted and the stock assessment results predict a continued decline in the population due to their limited spawning biomass; striped mullet have a 15-year lifespan. He said according to the data collected, most of these fish are less than three years old. Regarding flounder, he said they are listed as depleted and the estimated number of spawning females is well below what is needed for a sustainable fishery. He said 20 years of neglecting data from marine biologists has taken a toll on North Carolina's most sought-after fish. In 1997 the Fisheries Reform Act was passed into law. He said it clearly states the MFC shall adopt rules to be followed in the management, preservation, and enhancement of the marine and estuarine resources; this includes conservation and management measure that prevent overfishing. He said in 1997 when the law was passed the bag limit for flounder was 10 fish per day all year; 25 years later, there are four weeks to target flounder with a recreational limit of one fish. Regarding striped bass, he said DMF has insufficient data for a current stock assessment, so he looked at the last available data and its conclusion: striped bass populations in the Tar, Neuse, and Cape Fear rivers are depressed to an extent that sustainability is unlikely at

any level of fishing mortality. He said that sounds like a depleted status. He said striped bass have many obstacles to overcome if they are to become sustainable; currently, over 90% are hatchery raised and less than 10% are born in the wild. Conditions have to be almost perfect for a successful wild hatch. He said we have to protect existing populations to allow the big females, who can lay one to two million eggs, to repopulate our sounds, bays, and estuaries. He said he spent considerable time on the Neuse River in summer and fall of this year and he saw drum, striped bass, tarpon, and trout, all feeding on schools of mullet and menhaden. He said it is amazing what three years of recovery can mean to an expansive river like the Neuse. He said striped mullet, flounder, and striped bass live above the ferry lines.

Dan Moses, president of Eastern Carolina Saltwater Fishing Club of New Bern. He said the club has been in existence since the late 1990s, with a peak membership of approximately 90 people during the 2010s, with members ranging in age from the 30s to the 80s. He said the membership has a cumulative experience of many years fishing in the local rivers and creeks. He said he has lived in the area since retiring in 2005 and has been an avid fisherman since that time. He said his comments come from his personal observations and of those of his club members and relate to the fisheries resources that the MFC is charged with managing for all people of North Carolina. He said to aid in the recovery of the striped bass fishery that had become unsustainable, the MFC adopted Amendment 2 of the FMP; one of the provisions was a ban on gill nets above the ferry line in the Neuse River, an area he is very familiar with. He said prior to the gill net ban, fishing stocks of other gamefish such as spotted seatrout, red drum, flounder, and tarpon, were also declining in the Neuse River; this was apparent from fishing experiences by him and other members of his club who had fished these waters extensively for many years. He said as recently as five years ago, it had become increasingly difficult to catch a legal-size fish of these species, but over the last three years since the gill net ban was implemented, they have seen improvements in the numbers and sizes of these inshore gamefish species in each year. He said these gamefish all inhabit the same areas in the creeks and rivers and chase the same baitfish. He said you cannot manage one species without interacting and affecting all the other species; you have to manage the whole ecosystem. He said he spent a career managing and caring for our country's natural resources; one of the things he learned is that it does not always take a lot of analysis for an obvious conclusion. The gill net ban is working as intended for striped bass; it also has had a positive effect on the other fisheries resources in the upper Neuse River. He said for the benefit of the fisheries resource it would make no logical sense to allow the gill nets to return. If the MFC wants to continue to manage the sustainable fishery resource, which the MFC is entrusted to do for all the people of North Carolina, the MFC should look at a more proactive approach for fisheries resource degradation rather than a reactionary approach. He said a good place to start would be banning gill nets in all Eastern North Carolina river estuaries that serve as nursery areas for these fish species.

Ashley King, of Keep Catching Charters, has been guiding for nine years on the Neuse River and has been leading charters since 2005. He said back in the day, seeing a 26" striped bass was like seeing Sasquatch, but since 2019 and since the gill net closure it is common to take a trip and catch eight to ten fish from 25-30". The closure for the nets above the ferry terminal have helped the striped bass quality and numbers. It is common see a school of striped bass feeding on bait fish. He said he has lost charter trips because fishermen can't keep striped bass and they don't want to target them, but because of the closure to nets he is seeing a lot of drum and trout; there has not been a cold stun for the last four to six years. He said he has never seen the bait and mullet around New

Bern as thick as they are now; in the 17 years he has spent on the Neuse River he has never seen the tarpon run like this year. He said the amount of older drum that have been biting around New Bern has been phenomenal; he has had people that stay in Oriental and they come to New Bern for an old drum trip because of the bait that is there. He said the whole point of this closure for the nets was to help striped bass and herring reproduce and come back 10-fold, so if the MFC lets the nets come back there, fishermen will catch these striped bass as bycatch, which is not going to help the striped bass population. He urged the MFC to vote to keep the nets below the ferry terminal. For fishermen trying to make a living, he said he understands. The numbers downriver for the fish they are targeting are increasing, so he questioned why the MFC would let nets come back above the ferry line to catch a fish that is benefitting from the net ban. Also, he said side imaging is great tool; there are fishermen strike netting in the creeks of New Bern at night and he can show the MFC the evidence by taking them out on his boat.

Ray Howell said he retired and moved to Swansboro in 2008 primarily because of the fishing opportunities. Since then, he has seen a decline in the fisheries that has been impactful in all these waters. He expressed his appreciation to MFC members, who are between a rock and a hard place and have to do difficult things. He spoke about the Neuse and Tar/Pamlico rivers; he said as the MFC looks at the rebound of fisheries in areas above the netting, there is good evidence for what the biologists have talked about for years about getting the biomass sufficient to have good healthy spawns, especially in the Neuse River. He said steps toward that have started at the ferry lines with the net ban. He encouraged the MFC to be firm about leaving those in place because using an excuse of an overfished and depleted species is incredible; the word "rapacious" comes to mind. He said to leave these fish alone and let the biomass expand. He said he did research at NIH before he moved here, so he knows the importance of quality research and honest, true data. He said the MFC should institute good studies to validate what is happening in the Neuse and Tar-Pamlico rivers as a positive thing. He said Mark Twain made the observation that figures don't lie, but liars figure; so, in hearing lots of numbers thrown around, good data is imperative to protect the species as a public trust.

Bruce MacLachlan said the gill net ban above the ferry lines in the CSMA is working. He said he won't repeat what others have said, but it is a tangible, noticeable difference in that area for the improvement that has occurred over the last three years. He said that alone is reason enough to maintain the moratorium, but there is another reason. He asked what fishermen would be fishing for with gill nets above the ferry lines. He said the moratorium is intended to protect striped bass, which are so depleted there is no harvest allowed in the CSMA, nor should it be. He said there are endangered sturgeon in those waters, the river herring fishery has collapsed, and southern flounder is so severely depleted that we had a 30-day recreational season and the commercial quota was reached in five days. He said he killed one Gulf flounder at AR345; he said Commissioner Roller taught him how to distinguish the difference. He said American Shad is severely depleted throughout the Atlantic coast, the DMF has categorized striped mullet as overfished with overfishing occurring, and spotted seatrout is experiencing overfishing but is not overfished, so it is a concern. He said with all of those factors there is no valid reason to return gill nets above the ferry lines in these rivers; the MFC should consider extending those downriver to the tie down lines. Regarding the Rachels and Ricks paper of 2017 for the N.C. Wildlife Resources Commission, he said he realizes the paper is disputed by some of the DMF scientists, but it cites the primary reason for riverine striped bass mortality as gill net interactions, yet many MFC members and DMF

scientists stubbornly resist those conclusions. He said the only way we can restore that fishery is to increase the spawning stock biomass, and we do that by advancing the older females in the population. Putting gill nets back in the waters is not going to do that.

Don Simpson said he lives in the Fairfield Harbor section of New Bern and is a recreational fisherman. He said he fishes as often as he can, either by boat or along the banks of the Neuse River. He said he practices catch and release for the vast majority of his catch and he views the regulations as the minimum standard to protect the resource. For example, he practices release over 20" for spotted seatrout, because they are the breeders. He has noticed a marked improvement in the quality and quantity of fish available in the Neuse in the area of New Bern since 2019 when the gill nets were prohibited upstream of the ferry crossing. He said the MFC has all the data necessary to document the fish population on the Neuse; he does not need to repeat it. He said there is one positive impact the improved fishing has had on the community. He is retired, so he is either fishing or walking his dogs. He has the opportunity to meet new neighbors and discuss why they chose to relocate to the neighborhood. He said most of them include the quality of the fishing and boating on the Neuse River as reasons to choose New Bern. He requested the MFC consider the current regulations prohibiting gill nets above the ferry line on the Neuse; in addition, he asked the MFC to consider moving the closure even farther downstream.

Dennis Cox, a commercial fisherman and seafood dealer, said he understands the recreational side of the story. But one issue that has not been mentioned is the effect of farms and spray chemicals on the water; he asked about the number of people moving here that build houses and spray their yards; he said that is what is killing the fish. He said he wishes they would quit blaming the commercial fishermen for everything that is out there. He said now all commercial fishermen do is drop net and all they catch is catfish, which are a problem. In Albemarle Sound 1.9 million catfish are caught and they eat everything; they will eat a beer can if they can. Catfish are dying from eating so many clams that they get stopped up, can't breathe, and die. He guesses that is the commercial fisherman's fault too. He said people can't keep blaming commercial fishermen. He said if someone wants to catch a fish, then catch a fish, but commercial fishermen put fish on the table for everybody. He said recreational fishermen throw fish back and commercial fishermen catch them and feed people. He said he doesn't want tilapia or catfish from China; this is America and we should eat American food. He questioned how the MFC could let a former WRC officer on this commission and let him propose a gill net closure. He said the MFC can't let a WRC officer crossover to a commercial, marine fisheries board, but we are still fighting this. Commercial fishermen have talked to the governor and senators, and they are all against this. He asked why the MFC continuously tries to take commercial fishermen's jobs. He said he called Director Rawls and told her he just wants to fish. He said he respects the laws, but the striped bass stock assessment was wrong; you cannot drag a net behind a little boat and catch what is there. Once you destroy the home or the habitat you cannot drag that spot for a year or two. He said the data will never be sufficient if you keep dragging the same spot.

Tyler Dewald spoke about the Albemarle Sound, specifically the Chowan and Perquimans rivers where the boundary lines are proposed to be moved. He said he is in his thirties and has been in the commercial fishing business for about 10 years, and fishing is his livelihood. If it wasn't for invasive species like catfish, he said he probably wouldn't be doing this anymore. He said if the boundary lines are moved, the blue catfish will demolish the fisheries in these rivers. They eat clams, even

grass from the bottoms of the rivers. The perch fishery has mostly ended due to small catfish getting entwined in the nets. He asked the MFC to vote against moving the boundary lines, as it will demolish commercial fishing for that end of the Sound; the Perquimans, Little River, Yeopim, Scuppernong, and Chowan rivers are big crabbing grounds and that would end. Perquimans River contains the number "one" pound net for North Carolina and represents a lot of history; it was the first one ever in North Carolina. He urged the MFC to vote against this; save the fish from these animals [catfish] that are coming to demolish them. Five years ago, he did not see a blue catfish in the Perquimans River, but these animals are adapting to the saltwater in Virginia all the way to Wanchese; that is a big range. He said these fish don't care what they eat.

Vaughn Waterfield, a commercial fisherman in Albemarle Sound, spoke about the proposal to move the inland waters boundaries. He said doing this will hurt a lot of fishermen in his area. He said he fishes gill nets and he crabs. This year the water was so salty he said the jimmy crabs pushed far upriver for fresher water; he said they were crabbing way up river and had never seen the crabs up that far. He said the catfish are taking over, without a doubt. He said they have caught catfish in crab pots, and they eat the soft shell crabs and anything in their path. If the MFC moves the boundaries, he said it will really hurt commercial fishermen.

Earl Ward said he will be short because he is from the same group as the previous three speakers and agree on the same thing, but he heard another speaker say there is a shortage of herring. He said if someone does not want to see herring they do not want to see them. He is on the Western part of the sound and last year, in Gatesville, the water rose very high and there were hundreds of thousands of herring in the road and at that boat ramp; those fish quickly disappeared and there were a lot of foot tracks in the mud. Regarding striped bass in the sounds, he questioned why the quota was caught so quickly if there are not that many fish. He said there is a girl at Albemarle Boats to check people's catches during striped bass season. When they came in, she had her feet propped on the dash, asleep, with the windows up; maybe she was scared to talk to people, but the data are not accurate for that fishery. Pollution in the sound is a problem; he drop nets in the sound and there are striped bass floating everywhere. He said he thinks it is related to the spraying, rain, and runoff. He said he is catfishing now and is trying to catch as much as he can to help, because the catfish are eating what recreational fishermen want: striped bass and trout; catfish are a predator fish and that's what commercial fishermen are for. In closing, he said he is against the lines being moved and he asked the MFC to take that into consideration.

Don Yuska, a rec fisherman, said other speakers have listed all the overfished species. He said the MFC members were appointed to their positions to save our fisheries, not destroy them. If fishermen see signs it is working by keeping these nets out of the area, he suggested lowering the closure further down river and giving the fisheries more space to produce. He said if the numbers go up there will be more fish, which is beneficial for everybody. He said an earlier speaker was talking about throw nets compare to gill nets, but a gill net is about 100 to 200 yards, where a throw net is about 10 feet and is throw by hand. He urged the MFC to keep the ban in place and let the fisheries grow for everybody.

William Troutman said he moved here in 2002 when he retired from the field of education. He enjoys the water and fishing and taught his three grandchildren how to fish; if you teach someone how to fish you teach them how to live. In 2002 when he first moved here, near the Emerald Isle

bridge, there were so many fishermen you could probably walk from one boat to another, especially during spot season. He told the MFC not to look there today because there is nothing being caught but pinfish. Where he lives, he listens at night and he has eyes to see; he goes out to the Intracoastal Waterway and hears big diesel engines running and said he knows what is happening; there are no fish; the fish are gone. He said his name is Troutman and he loves trout fishing. He said nets are ruining the fishery, particularly from in the Intracoastal Waterway from Emerald Isle to Morehead City.

Drake Hollander said he started his path in school with wildlife and fisheries biology, moved to New Bern about six years ago, is a part-time fishing guide and manufacturer's rep for the outdoor industry, he sells a lot of products like crab lines, buoys, fishing rods and reels, and terminal tackle, and has seen economic growth in the last three to five years, which aligns with the gill net closures. He said there is also additional economic impact from the amount of people getting into fishing and teaching kids to fish, on the tackle shops, which are a huge part of the business. He said businesses grow and then they grow the economy, all different sides of the economy for surrounding areas, which has been a huge success. He said he appreciates what the MFC has already done and urged the MFC to continue on that path. If the measures weren't working then commercial fishermen would not want to expand upriver; if the fish weren't there the commercial fishermen would not want to be there.

Jerry Wilkins started fishing in the 1960s with his father and he fished extensively in the 1960s, 70s, and 80s from the Chowan River to Wilmington for everything from striped bass, herring, red drum, and trout. He has seen the fishery decline, starting mostly in the mid-1980s, through the 1990s, and into the 2000s. He said it has been very sad for someone who likes to fish to hardly catch a fish or catch one small fish. Finally in the last couple years since the net ban, fishing in the Neuse River improved drastically from what it had been for the last 10 to 12 years. He urged the MFC to keep the nets out for a while and see if fish populations can get back to what they were in the 1960s and 70s when everyone was catching fish.

Paul Dale, a recreational fisherman from New Bern, asked the MFC to not kick the can down the road, to keep the progress going, and try to increase it rather than back up.

Ken Thomas said he grew up fishing with his grandfather in the 1970s and moved back here about 10 years ago. He said he wanted to pass along that experience to his grandchildren, but he can't catch a fish he can keep; he can stop at the fish market on the way home and pick up 12-13" flounder and trout, but he can't catch one and bring it home. He said the netting is a big issue. When his grandfather had his place in Atlantic Beach, he used to find starfish, seahorses, and sea urchins, but that wildlife is now gone; recreational fishing is ending. He urged the MFC to please do something about this net situation.

Stuart Creighton said the MFC is charged with recovering, conserving, and saving the marine fisheries we all enjoy, and they are in trouble. He said the MFC has some unenviable decisions to make during the meeting this week. His comments focus on striped bass; he provided written copies of his comments that include data he asked the MFC to reference as he gives his comments. He said it is vital to maintain the current gill net restrictions on the Neuse and the Tar/Pamlico river systems because they are working. He said even though the numerous speakers tonight have provided

anecdotal reports, the fisheries, with striped bass first and foremost, are improving. He said the number of observations in his handout can't be ignored; the MFC has to pay attention to that because what it says is universal. He said the fisheries are improving, and it is not just striped bass, but also tarpon, red drum, and trout; they are all benefitting from this closure. He urged the MFC to pay attention to that and follow it up with careful DMF study. He said the documentation for Amendment 2 to the Estuarine Striped Bass FMP shows what the public wants: 60% of online responses want the restrictions to remain and only 12% want gill nets put back in those areas. The public comments given at the February 2022 MFC meeting were overwhelmingly in support of maintaining the gill net closures; the comments were relatively even at the May and August MFC meetings. He asked the MFC what the online public comments for this meeting looked like; he would like to hear what they represent. Returning gill nets to these areas will put undue pressure on numerous species that are either in decline, depleted, or collapsed. He said it is important to take stock in how many fisheries are in trouble. Regarding the Albemarle Sound Management Area, that is the last naturally reproducing striped bass population, so he said the MFC has got to get that right; the MFC cannot allow Albemarle Sound striped bass to go away. He said that cannot be allowed to return to a put and take fishery.

Bobby Rice, of Carteret County, said the gill net closure is working; it is a testament to what little bit we can do and what a big deal it can make for the environment. He asked the MFC to consider keeping the closures and to consider other areas of the state that need help as well. He said the MFC has done a great thing, but if they put the nets back in the rivers they will destroy everything they have built.

Bill Praven said last year, he moved to Minnesott Beach just upriver from the ferry and across the river from Marine Corps Air Station Cherry Point. He said he joined Facebook fishing groups to learn about fishing in the Neuse River and he noticed frequent postings by service personnel inquiring where to fish in Hancock and Slocum creeks, and in the Neuse River area that borders the base. He said the volume and details of comments back to them was incredible. He said his son and daughter both serve in the Army, which gives him an emotional connection to the men and women in the military that are serving our country and is why he came to speak to the MFC at this meeting. He said in the past weekend, there was a posting by Cherry Point on Facebook that said the Marine Corps Community Services hosted a fishing tournament. The tournament allowed U.S. marines and their families and air station civilians the opportunity to gather for fun and collective competition. He asked his neighbor that works at Cherry Point if this was a common event; his neighbor said the rumor on base was people are starting to catch fish around the base and the fish are big, so powers that be wanted to capture the momentum of this enthusiasm. He asked the MFC to do what they can to ensure that Slocum and Hancock creeks and the Neuse River around the base and surrounding community, where the service men and women and their families live have an abundance of fish. He said the military is the second largest contributor to the North Carolina economy.

Chris Chadwick, a Carteret County commissioner, said the Carteret County Board of Commissioners passed a resolution opposing the continuation of the gill net ban in the upper Neuse and Pamlico rivers that they presented at the last MFC meeting. He said they asked the MFC to take action this week to remove the ban based on the reasons presented in the resolution. The Carteret County commissioners are also concerned that potential action by the MFC may be taken for the conservation of striped mullet. Carteret County has been and continues to be one of the most

important areas for the N.C. mullet fishery. Beaufort was historically known as Fish Town due to its extensive mullet fishery. The Carteret County Board of Commissioners urged the MFC to consider the economic and social impacts of the proposed 30% reduction in harvest, especially based on a population assessment that appears not to match with what the fishermen are observing. This year was one of the largest years of mullet that he can remember. He said the Carteret County Board of Commissioners cannot understand how scientific experts can say the data and the prior fishery management plans show that overfishing was not occurring in 2005, 2015, and 2018 in the mullet fishery, but now say that overfishing has been occurring for almost 18 years, that the population is in trouble, and immediate action is required using only more recent information. He said fishermen this year have reported highest proportions of mature mullet males with the larger females that are primarily harvested, as well as high catches. He said the prior scientific assessments and current observations are not indicative of a population that is in such dire straits that an immediate 30% reduction in harvest is necessary and raises serious questions about the accuracy of the population assessments. The Carteret County Board of Commissioners asked the MFC to consider these uncertainties and contradictions when the MFC makes its decisions this week. He said he thinks all commercial and recreational fishermen can agree that a lot of the problem he sees in the rivers comes downstream from Raleigh, sewage being allowed to be dumped in the millions of gallons, and the hurricanes that wash all that down here. He said people should be down here to Cedar Island Beach after Hurricane Florence or some of the more recent hurricanes to see everything from school desks to sewage products that comes down on them. He said that is a big problem with a lot of the small fisheries up the rivers.

Cameron Pappas said the DEQ has numbers listed on commercial harvests in pounds and said just keep in mind when he's going over some of these numbers, flounder season started in 2019. So, 2021 there was 200,396 pounds, that's the highest since 2013. Spotted seatrout; 2019: 378,000; 2020: 568,000; 2021: 694,000. He said that is the highest recorded as far as he could see back to 1972. The average from 2000 to 2019 for spotted seatrout was 237,000 so over double in 2021. Now for striped mullet you know 2020 was 1,299,000 pounds, 2021 was 2,135,000 pounds. He stated this is the highest since 2002. So if the argument is to put gill nets back above the ferry lines to target striped mullet well you've got 2,135,000 pounds in 2021 that's the highest since 2002. He urged the commission to look at these numbers, try to come to a conclusion, and stated that his fear is that because the flounder season is active, which he's not opposed to, again. But now all these other game fish are getting targeted. And then if spotted seatrout comes back as depleted, if red drum comes back and is depleted, are we going to have seasons on those too? Because if that's the case, if we have seasons on all these game fish if that's not a sign of a poorly managed fishery, he doesn't know what is. That's all, thanks.

Anthony Osborne, North Carolina native and full-time fishing guide, said good evening and he wasn't going to beat a dead horse or anything. He said his name's Ozzie. He said pretty much everything he was going to say has been touched on. He said y'all are well aware that the devastation that gill nets can have if you move them back up the ferry lines. He said he thinks you're well aware of the state revenue that can be made in the recreational fishing industry and he's not going to hit on that, but what he does want to ask you is he thinks that the netters aren't the only ones dropping their boats every morning to make their living. He feels like the guides are not getting much advocacy. There's a lot of rules that kind of seem to cater to the commercial guys and the netters and he just feels like the full-time guides or the part-time guides are not getting much advocacy.

Mr. Osborne said he would definitely ask you to take that into consideration. He said that's pretty much everything he has that hadn't already been hit on. He said he appreciates your time, thank you for what you're doing.

Bradley Styron said he had several questions he wanted to ask, but some of them have already been answered. But the one that bothers him most is the independent gill net survey. He said, that's the way that you're determining how these fish are overfished. They've said it's been going on for 20 years and it's still being overfished. He said he's been around here as long as most people have and he has seen it come and go. And he said that's just as far from the truth and he'll give an example of the independent gill net survey. He said he ran up with a couple people one time this summer and they were setting nets and he stopped to them and he asked them what they were doing you know if they'll catch anything and they said we're not doing much.

He said he noticed the gear they had and he asked them why are you using such varied gear? They said we're contracted by the North Carolina Division of Marine Fishers to do independent gill net surveys. He said to them so you're deciding who's going to get what. He said where they were using the gear, the only thing he ever saw caught was menhaden. So you know if you're going to take an approach like you're taking to put people out of business at least do it the right way. Get somebody that knows what they're doing. Why don't you go ahead and get some of these commercial fishermen, you got some of the best fishermen there is in North Carolina. They can show you where it's at and how to do it. He said if you're going to do it at least give us a fighting chance. He said this is ludicrous what's going on here, you're talking about taking the better part of the season in 2020 there was no season, there was no roe to be bought because of the COVID deal. Alright 2021 most of the boys that are fishing now were shrimping. And this year there's not been many shrimps so they're mullet fishing. But if you talk to our trip tickets if you go back to the trip tickets then how are you going to get an accurate assessment by using trip tickets? He said in 2020 there was no roe season, in 2021 the boys went shrimping. Now they've had to revert back to it. Mr. Styron said he thinks you've got a tale of two different people here. You've got people that really want to stop the commercial end of it and then you've got the people that depend on it. And you look back here and these people behind me they're families. They have children and this is how they make their living and I feel like if you're going to make draconian changes like this at least do it with the best data. Don't go hard on somebody that doesn't know what they're doing.

Cayton Daniels, fifth generation full-time commercial fisherman from Carteret County, said that after reading the 182-page paper on the stock assessment on striped mullet he found all that any of us in this room here need to focus on in the fifth paragraph on the bottom part of page 26. He quoted "subsequent management options were developed by the NC DMF and presented to the Finfish, Southern, and Northern advisory committees in July of 2018 to receive input prior to finalizing the NC DMF recommendation. Recommendations were then presented to the NC MFC at its August 2018 business meeting. The DMF and the advisory committees recommended that no management action be taken since the stock assessment update indicated overfishing was not occurring. The DMF would continue to monitor trends into commercial fishery and fisheries independent indices. The recommendation was approved by the NC MFC." He said that further down it also states that commercial landings were reduced in 2019 and 2020. He asked, what happened from 2017 and 2018 when all this was done and now? With the 20 years of data that was studied before that was that no good? Mr. Daniels stated that he thinks we can call it what it is, it's no more than another

nail in the coffin of the commercial fishermen in North Carolina. We can't stand but just so much. We've been took from and took from and took from. He said he heard someone he wanted to call a gentleman but can't, talk about the sacrifice that he had made. He said, they don't know nothing about sacrifice. He said that if you want to talk about sacrifice, talk to some of these families and men that's been through what we've been through. Mr. Daniels stated that he is 27 years old trying to raise a family and he has invested everything he has in this industry. He asked what future does he have? He said he looks around and he looks 10 years ahead, what future is there for him to stay in this industry? Do y'all want fresh local seafood to be able to be caught? If you do we can't be robbed from anymore. There's got to be something left for us to do. We've sacrificed all we can sacrifice. There's obviously no trouble with the striped mullet. He stated that he has seen more striped mullet this fall than he has seen his entire life. He said that in 2020 there wasn't a roe season. He stated that he usually shrimps, but this year there isn't any white shrimp so he mullet fished. We go after the money, not the fish. He said he is asking you to please use common sense and may God bless you to make the right decision that's all.

Pam Morris, with the Carteret County Fishermen's Association, stated that she is not here on behalf of them, but on behalf of herself. She just wanted to say she's heard this a couple of times now and two things maybe three really pop up to her about this. One is the last time we heard striped mullet everything was just grand and now here we are two years later and now everything's not grand. So what's changed? Well one thing, the formula they're using has changed. And it's like you're comparing apples to apples. Same thing happened with red drum, same thing happened with spotted seatrout. She said she is a little weary of this formula being used against the commercial fisherman and therefore all the consumers in the state of North Carolina because you're denying them, who are the biggest user group, access to seafood. And as far as this net thing goes, this so-called net ban has not saved one fish; what you're doing is taking fish away again from the greater public for the benefit of a few people and she doesn't think that's right and she thinks that's something that is for everybody. She said this whole vilifying of gill nets is getting a little weary and they are very selective gear. Ms. Morris stated that if you knew anything about them at all you'd know this. And if they are executed properly they are very good fishing gear to use. But all this doesn't produce any more fish. You're going to have the amount of fish you're going to have and what determines that mainly is not fishing effort at all, it is environmental issues. And she feels like the commercial fishermen all through the years, and she's been around, she said look at these gray hairs. She's been around this block a long time and we are always getting the short end of the stick always without fail always because they can't do anything to anybody else except us and that's not fair, so thank you very much. She said she hopes you remember us tomorrow or whenever you vote on this stuff.

Bradley Smith said that he got stationed here in 2002, he is a prior Marine just recently retired. He said he became a full-time charter captain once he retired and he did that just solely because he had a passion for putting people on fish and things like that so that's kind of what he has done since he has been here. And with that he has seen other fisheries outside of North Carolina do greater things. He said he knows this meeting is solely for Amendment 2 for the striped bass fishery going north above the ferry lines. He said we've seen tremendous output on the striped bass going that way forward, everything you can do what you want to on that. We've seen a great rebound on that. He said that what he has also observed since being here is he got the privilege to write a paper on doing things, what he sees from the outside perspective was the South Marine Atlantic Fisheries trying to come into North Carolina to do things and North Carolina pushed them out because of the

commercial fisheries and the fines that would be behind that. He stated that he felt this was wrong but there was a lot of you know back and forth. He said he gets it like there's a commercial, there's a recreational fight, no matter what way you want to look at it everybody's going to hate everybody in this fight. And he said there's never going to be a right or wrong behind the situation and he'll sit here and listen to commercial folks plead like wash coming down everything you know, he gets it. It's wrong either way. You have recreational guys, you've got commercial guys both sides doing wrong, both sides doing right but who's doing right from wrong. There needs to be a fine line, that's where you guys come into play, right. That's you guys' fight on that. He said this is just his two cents figuring it and he has a whole research paper written out and he has sent it to both sides of Marine Federal Recreation all the way up to congress, senate, everybody doing things when he had to do a final research paper. It is what it is, but something needs to be done.

[37 speakers]

End 7:41 p.m.

Nov. 17

Chairman Rob Bizzell convened the Marine Fisheries Commission business meeting at 9 a.m. on Nov. 17 with the Public comment Period. The Public comment session was held beginning at 9:00 a.m. until 9:53 a.m. and the following comments were received:

Public Comment Period

Glenn Skinner, executive director of North Carolina Fisheries Association and commercial fisherman, spoke about the Wednesday night public comment and what he took away from the comment. That somehow these other states to the South have figured out fisheries management. They've got it right, they took the gill nets out the water, everything's great. Can't catch a fish anywhere in North Carolina, fisheries going to [heck] in a handbag except up the Neuse River where they took the gill nets out. Mr. Skinner said he's not much for computers, but he went home last night, got on the computer stayed on there a couple hours. He found picture after picture of folks hugging 40-50 pound red drum all up and down the coast here. Holding up spotted seatrout. Forums where they're bragging about catching 100 striped bass up the Roanoke on the spawning grounds, hundreds of spotted seatrout, striped bass, everything. They're catching fish everywhere. He said, he did a little more looking, found article after article from South Carolina to Texas. Overfished, southern flounder, South Carolina. Overfished, red drum, South Carolina. Flounder rules in Florida, overfished. Red drum in Florida new rules. Spotted seatrout, Florida, new rules. Alabama, southern flounder, overfished. Spotted seatrout overfished. Louisiana red drum, southern flounder, and spotted seatrout. Texas spotted seatrout, southern flounder. The things we hear here are not accurate. The fact is everybody's struggling with fisheries up and down the coast. He said these states that he just showed, they banned gill nets decades ago. He asked, you think a gill net ban in the upper part of the Neuse River and Pamlico River is going to create abundant fisheries overnight? He said, he doesn't think any one of you are that foolish. He said he hopes you're not. It's ridiculous. If you want to keep a gill net ban in place keep it in place. If you think that it's important for managing that stock, do it, but do it for that reason only. He said he heard anglers last night say that the striped bass stock up in the Central Management Area cannot sustain any level of

fishing mortality and then brag about going up there and all the striped bass they were catching. Contributing to recreational discard mortality. If that stock cannot sustain any level of fishing mortality take the hooks out of the water above the ferry lines too. Close it but manage fairly. He said he sent some of y'all an email a couple of days ago. You heard a lot about your duties as Commissioners. The primary duty of this commission is to manage our fisheries fairly. The Fisheries Reform Act, our statutes, put no more emphasis on comfort, conservation, or recreation than they do food production.

Thomas Newman, full-time commercial fisherman who works part-time for NCFCA, said he is here to talk to you about striped bass and striped mullet. This has gone on long enough. This is just an allocation on these rivers. We reallocated these rivers to strictly recreational fishing and this stuff was put here falsely in 2019 through bad old data. We need to reopen these rivers, we need to let commercial fishing come back in and have access to these areas that they were denied access from in 2019. But we also need to re-look at this striped mullet. They've said it has been overfished for 18 years, yet the last three years our landings continue to get higher and higher. Something's not adding up here. A commercial fisherman needs his fisheries. We need to be represented equally and it's time for you guys to start voting and figure out what we're going to do to make access equal for both user groups, thank you.

Harvey Pye, head of a 100 member women and men's fishing club, the Fairfield Harbor fishing club, and concerned resident who lives along the Neuse River upstream from the Minnesott Cherry Point Branch ferry, expressed his concerns about a decision that Commissioners may make allowing gill nets back into the Neuse and Pamlico Rivers upstream from the ferry lines. He quoted some facts to be considered related to the gill net vote. He explained that he was not using facts from the commercial fishing industry or from the recreational fishing industry, but facts from two other sources that he thinks you'll find credible. First one is noaafisheries.gov and he quoted "fish are caught by their gills in the mesh and as the fish struggles it becomes more entangled and dies. If this fish is not a legal keeper, it's bycatch. Unintentional bycatch, but killed nonetheless. Preventing bycatch entirely may be impossible, but it can be mitigated through Innovative approaches". And if you go to that NOAA site you can read about those innovative approaches that have been used in other parts of the country to prevent and lower the bycatch. "However, the safest most effective way is not to have gill nets. In rivers like the Neuse and the Pamlico the gill net bycatch is devastating to the fishing industry, to the sustainability of the fish. Fish are netted going upstream to spawn and downstream to re-enter the ocean. It's a no-win situation." He said his second set of facts are from your own document. The draft of the North Carolina Estuarine Striped Bass Fishery Management Plan Amendment 2 that you are considering. 142 Pages which he has read, he said he doesn't envy you for having to read it. It's a lot of stuff, a lot of data. He quoted the goals and objectives from page three of this document. Your goal of this Amendment 2 is to manage the estuarine striped bass fishery to achieve self-sustaining populations that provide harvest based on science. Science-based decisions. It goes on to say that your objectives are to restore, enhance, protect the critical habitat and environmental quality in a manner consistent with the Coastal Habitat Protection Plan. To maintain and increase the growth of the fishing. His question is, is restoring gill nets going to do this or not? Ask yourself that question. Fishery protection can only be done by you making a decision in favor of not putting gill nets back in the water. Thank you.

Art Thinguldstad asked you guys to consider, gals and guys, people to consider not letting the nets back up in the river, either river. He said he can't see how doing that would do anything to help out with your fish management plans. Striped bass is you know no tolerance for capture and all of that stuff. It just doesn't make any sense to put more nets around when they're likely to be tangled up in them. He said that's all he has.

Eric Thinguldstad said he's been fishing with his brother down here for 20-25 years, it's been a while. He said he now lives down here. The fishing has gotten better in the last several years a lot, not a little, a lot, and he doesn't want to see that reversed so he'd appreciate it if you'd actually protect the spawn even more by moving it past Minnesott because the spawn counts. It's important. Yes we're catching big red drum, yes we're catching other fish, but the regular fish have come back so well in the last few years. He said no, he doesn't have scientific, this is him going out his backyard fishing and he can see it. Thank you.

Jess Hawkins, trained fisheries biologist, previous MFC liaison for 15 years, former MFC member, and instructor of Fisheries Conservation at both Duke and N.C. State's marine labs, said he is the owner of a small ecotourism business and an avid recreational angler and regular seafood consumer. He asked the MFC to not include the gill net exclusion zones in the upper Pamlico River and Neuse River as part of the N.C. Estuarine Striped Bass FMP. He had commented on the subject at your last meeting and asks you consider those comments when you deliberate the issue today. He re-emphasized that these measures were not based on science and were not recommended by the state scientific experts on coastal fisheries. They were not necessary, as the DMF had implemented adaptive management measures to minimize striped bass bycatch in the gill net fisheries. In fact, science shows that the gill nets are not the primary source of striped bass bycatch mortality in these areas. He stated that when he served on the MFC, he first considered the science as the cornerstone of his decision making and when he served as the MFC liaison for 15 years, he recommended that commissioners look at the science for guidance. He said, he would hope also that the commission would consider whether these measures are necessary. The absence of this recommendation in the FMP, the admonishment of the past MFC from the leader of the DEQ when these measures were enacted in 2019 by the emergency meeting, and the refusal of the director of DMF to initially implement them by proclamation seems to lend guidance to this commission as to whether these measures are necessary. He said, he would also hope the commission would consider are these measures fair to exclude one group of users that use this area and its seafood resources to provide food for consumers but allow another group to continue to use these areas' resources for fun does not seem fair. The prior actions could be considered unreasonable in light of all the restrictions that were in place on striped bass and the gears that utilize them plus the lack of science. Your regional advisors took note of that, did not recommend that this closure be continued. Also, a joint legislative committee took the extraordinary action to express concerns about these measures based on their fairness. Thank you.

Ed Kearney, member of the Carolina Colors Fishing Club and resident of New Bern for about 10 years said that he didn't start fishing the Neuse until about 2015, four years before the nets were banned in March of 2019. He said that prior to the removal of the nets, a half-day fishing trip on the Neuse River would result in a dozen or so undersized trout, puppy drum, and striped bass. Occasionally we catch a couple of flounder or bluefish and sometimes a freshwater bass. Seldom would we bring home a fish worth filleting because we were returning 95% of our catch due to the

ban on a particular fish or the size of our fish. We had no problem ending the day with little or nothing to show for our efforts. Our hope was that all the 12" trout, striped bass, and puppy drum we released was a sign of good days to come. Well that didn't happen for another four years before we finally experienced the positive effects of removing the gill nets from the ferry line up. Since the fall of 2020 we have seen a remarkable increase in the quality and quantity of our fish stocks. Our average trip now results in numerous striped bass in the 20-26" range. It's not unusual for us to limit out on 18-20" trout and the slot red drum we now net and bring aboard outnumber the puppy drum we release. We have also observed a significant increase in the quantity of bait fish in the river over the last couple of years. Our fishing club numbers have continued to grow with each successful fishing tournament. He said there is no question in his mind that the ban on the gill nets above the ferry line has had a significant impact on the resurgence of recreational fishing in the Neuse. He strongly recommended to the Marine Fisheries Commission that we continue to ban the use of gill nets in our rivers. The outcome that this issue will affect our economy and reputation as a great place to enjoy our magnificent resource, the Neuse River. Thank you.

Thomas Coltrain, conservative recreational fisherman, asked why is it so important to put the gill nets back above the ferry lines before a study has been completed to the effects of removing the nets. The last thing some people in this room want to hear is the fishery is recovering after the nets were removed. Look at the history of every state that has removed gill nets and how their fisheries have recovered. An overwhelming majority of striped mullets were caught how? Gill nets, haul seines. Is it the striped mullet they're wanting or the mullet roe? Killing the female striped mullets for roe and now they're being overfished how and by whom? Einstein was credited with saying doing the same thing over and over and over and expecting different results is called insanity. Why does the marine fisheries have to apply for an incidental take permit for turtles and sturgeons? Why do the majority of the North Carolina marine fisheries meetings have to be held east of Highway 17? It was said that the shrimp bycatch was the lowest and cleanest ever seen by shrimpers. That should not surprise anyone when all the fish stocks are being depleted, overfished, and what few are left are being pulled up in shrimp trawls, auto trawls, and killed. He said he was not surprised to hear that spotted seatrout were overfished. When all the other fish have a closed season or very limited season what else is there to gill net for and fish for except trout. Every year, many tackle stores most weekends trout tournaments are being put on to catch the biggest trout for money. The big females are the ones we need to protect, they are the future. They have survived gill nets, hooks, cold stuns, and everything man and nature have put on them. We need to protect them like we protect the big old red drum. He said several years ago, he realized if he wanted his grandson and others to enjoy fishing in North Carolina like his dad and him, something had to be done and he would do his part to help. He said he started a little program he named after his grandson, called it CPR, Thank You Levi. They had some decals printed up and mailed them to fishermen that caught, photographed, and released spotted seatrout over 24 inches. It did and does make some people realize that it was the correct thing to do, and he has started releasing every trout over 20 inches in hopes that they will prevent them from going the way of striped bass, flounder, and the list goes on and on in North Carolina. Thank you.

Michael Brady, citizen of North Carolina, native, retired now, said he has seen the stocks personally from his viewpoint go down and he has not seen improved fishing from a recreational standpoint. He said a couple years ago he saw increased netter activity in his local fishing areas and our local fish stocks went down. Okay that's non-scientific that's a personal observation. Mr. Brady

said he has seen speckled trout fishing steady, good; and then as soon as net season starts, you can't find a spotted seatrout and if you do it's undersized. We all know about the destructive mechanism of gill nets. Whether the fish is caught in the mesh size or it manages to escape it's damaged at some extent. Whether it survives that damage or not nobody really knows. Okay we're seeing increased target species and non-target species viability in these gill net areas. Why in the world will we even consider putting gill nets back in that area. All right we've got a few commercial people, we got a thousand or so more recreational fishermen. This is a public resource we need to find a way to sustain it for the public interest. If there is a way to work the commercial guys in there, do it, but what I'm hearing is directly from the commercial guys and from their numbers, which by the way we need to distinguish between catch and harvest numbers, is that recreational fishing is more effective than commercial fishing because we're the culprit that's causing the overfishing. So if our techniques result in effective fishing, should they not adopt our techniques and do away with gill netting? We decrease mortality, we provide selective harvesting of slot sized fish. We reduce the cost of a fishery going downhill to all the subsidiary businesses like hotels and restaurants, guides, so there's a lot of people involved here besides people in this room. He said he supports this ban and he would like to see it extended to all state waters inshore. That's my point, thank you.

Buddy Garrett, North Carolina native, said he grew up with his dad teaching him how to dig clams, run crab pots, fish spots where it was too darn cold to be out there. But you could walk boat to boat across 58 where the bridge is. He said he really enjoyed it, some of the best memories of his life coming back, cleaning crabs, sitting around picking crabs, having a good time. Mr. Garrett said he knows this is about the gill nets, but what he's trying to get a point across is that he wants to teach his children the plentiful of the fish and he has. He said he also wants them to teach their children and their children and he doesn't want this to go the way of the dodo bird. The, what is it? Carrier pigeon, passenger pigeon? Whichever one it was, he said he can't remember now. The last one died in 1914, it's extinct. He said he doesn't dig clams anymore, he doesn't run crab pots anymore. He tries to support our local commercial fishermen because they have a family to support. He said he buys his clams now, buys his crabs, he catches and releases fish, he doesn't keep any fish anymore. Maybe once in a great moon, but very seldom and if we have to ban gill nets to protect our fisheries and that's not fair well he thinks we should be fair. Well let's ban hook and line then above the area. Let's make it fair. Just no fishing for a year, two years, whatever it takes to get a good accurate count on what's really happening in our area. Now this is not just a North Carolina problem. This is a problem worldwide. The Chinese, he said he heard on the news, ram or tried to ram a Coast Guard ship protecting another's country's fishing stock. He said he believed it was squid. Mr. Garrett said but the whole world is bad so basically his point is let's work together, let's unite. United we stand, divided we fall. And let's try to do what's good for the fish that's fair and improve the water quality. He said he thinks water quality has a whole lot to do with the spawning and grass beds and things like that that we need to keep and that's his point. Let's work together, not apart. Let's try to do what's right for the environment and not for our pocketbook, thank you.

Woody Joyner, full-time resident of Hatteras Village and representing the board of directors and the members of the North Carolina Watermen United, said this is his first opportunity to address the Commission in person although he has attended each of the meetings and offered written comments virtually for the past two years. He thanked the commission and welcomed new commissioners. He said after hearing all the public comments last night, he threw out his original notes and hastily jotted down some thoughts this morning over breakfast. He feels an obligation to

speak on behalf of our hard-working commercial watermen. He said he isn't going to offer a laundry list of science data or species population surveys but will make an effort to appeal to the commission to take a hard look at the real data and not anecdotal musings. Without our commercial fishermen, the people of North Carolina that cannot come to the coast to fish, which is an overwhelming majority, do not have access to local seafood. Mr. Joyner said that when he visits the docks in Hatteras Village early in the mornings he sees an effort by our commercial fishermen to make sure they are selecting their proper net size for proposed fishing areas. He wants to remind that these watermen are dedicated to the conservation and sustainability of all species. Why would they purposely overfish a species with no regard for future seasons. The visitors that we have each year on Hatteras Island and up and down our beautiful coast arrive wanting to eat local. He finds it sad that so many are actually being served imported products that come from countries with little if any regulatory restrictions. He implored the commission to allow our commercial fishermen to continue to harbor this public trust and to put fresh seafood on the tables but also for their families. The socio-economic hardships on our local coastal communities when we continue to handcuff these watermen is immeasurable. This historically rich invaluable resource that we have, we have to fight to maintain. Mr. Joyner said he would like to close by reading the mission statement from the North Carolina Watermen. The North Carolina Watermen United represents the needs of our coastal communities by protecting the livelihood of the people who fish for a living and provides a voice for fair regulations. Now this reflects commercial, our charter headboat operators, and yes recreational. He thanked the commission for offering this public forum and said he hopes that they will see the need to keep our commercial watermen working and on the water. He said thank you all very much and again thank you for your hard work.

Bert Owens, from Beaufort, North Carolina, stated that he recently retired here in the last month or so, so you're going to have to revise your recreational FMPs he's pretty sure. He said he's got a little time now. So there's been mention of science this morning. He said that he doesn't know of any science that says by putting the nets back in above the ferry lines that's going to help the striped mullet or southern flounder overfished situation. No way that'll happen. In 2019 when you made the bold and wise move to save a couple of year classes of native spawn striped bass in the central area, it's paid off, because in three short years you've seen the numbers and size of striped bass increase. Striped bass in this area are getting larger. You know that the larger fish are the ones that really do the serious spawning. They've got to have time to do it but now with the change in the commission's make up those who were against the move then have seen an opening to reverse this trend and end any potential rebuilding of the stock even though data from the division plainly shows that none of the adverse impact predicted on the commercial fishing has happened. Their catches of speckled trout, striped mullet, etc. have not gone down. They're still making the same money if not more so let's let these larger striped bass continue to spawn and give the stock a chance to really rebuild. Putting the nets back in those waters will kill these fish in pursuit of other already overfished species. Anyone who's lived long and met with any degree of success knows that failure is at the point at which you quit. So let's don't quit on these fish, let's don't fail on them. So very quickly, southern flounder measures were taken by the MFC in 2015 to end overfishing. The NCFA sued to stop overfishing measures in 2015. Now the recreational anglers have a month and one fish because they sued in 2015. They're the ones that should pay that back. Anglers need to be given access to ocellated flounder as well.

David Sneed, executive director for the Coastal Conservation Association in North Carolina, welcomed new commissioners and especially welcomed Captain Sarah Gardner to her first meeting. He stated that a friend recently sent him a copy of a two-day series printed in the Raleigh News and Observer and he is going to read some excerpts from that article and let you guess when it was published. The series was entitled "Fishing for Trouble: Can North Carolina Save a Dying Resource". The first article was subtitled "Falling Catches Warn of a Crisis at Sea". Overfishing, pollution, and weak regulations are slowly but surely exhausting what was once taken for granted. We are at a critical time right now. What we do in the next three or four years could determine if we have a viable fishery in the 21st century. Pollution has hurt some species. Others have fallen victim to fishing practices that have the side effect of wasting tons of immature and unmarketable fish, but the single biggest factor is overfishing. Fishermen armed with bigger nets and faster boats are catching fish faster than they can reproduce. The state's Marine Fisheries Commission, made up mostly of people from the fishing industry, have not acted on the persistent warnings of its own biologists. Some fear the state's fishing industry will go the way of New England and Canada's overfishing of cod and haddock. What happened in New England was you had guys with big boats and big payments to make and they kept driving that fishery, and driving it, and driving it. If you do that then the resource is never going to recover, it's just going to collapse." Sounds like a story that could have been published yesterday right? But it was published in 1994. And 28 years later we are still dealing with the two big issues they mentioned. Bycatch waste and overfishing. For 28 years we have been kicking the can down the road. He wanted to bring this to the commission's attention only as a reminder that those who ignore the lessons of the past are doomed to repeat them. Every new commission comes in with a fresh opportunity to reverse the declines in our coastal fisheries and leave a healthy and sustainable fishery for future generations to enjoy. You can argue all you want about gill nets, or striped mullet, or pollution and we know you will. But nothing is going to change until we stop repeating the mistakes of the past by managing for maximum exploitation. Instead, we have to start making conservation the commission's goal for coastal fisheries management in North Carolina. Please listen to the hundreds of members of the fishing public that have taken the time to come here and speak and send in written comments in support of our resource, thank you very much.

Rich Claire, new resident living on Clubfoot Creek in Harlow, said he has been here for five years. He stated that what he has noticed in those five years, when he got here, he moved here because he wanted to fish in his backyard, which he does and he loves it. But in those five years he has noticed increasingly more people coming in and netting in there and the fishing in our creek has decreased accordingly during that same time. This year, probably because of the restrictions from the ferry up on the river, there's more and more boats than we've ever seen netting. They come right in within feet of our dock and they weave their nets in between our docks and also fishing at night their lights shine in all through the night into our bedroom windows and disturb sleep. He said there is very little concern for the landowners and that's just one aspect, the other aspect that he'd like to address is what the netting does to our fish population. The nets are indiscriminate. They don't care whether they catch undersized fish, restricted species, or anything and the devastation is complete. Most of the fish end up dead and we can notice a big difference in our fishing because of the boats we had as many as seven netting boats out in front of our house at various times this year, this fall. And you know the estuaries are God's plan for replenishing the species. We have to protect that or we have no species left. And so he thinks the regulations should stand as they are and never be

decreased from this point but they should also be expanded to encompass the entire river system of the Neuse River and Pamlico Sound. Protect the nurseries. He said that's all he has, thank you.

Lisa McCracken stated that she is not a recreational or commercial fisherman, but a mom and a grandmother concerned for the future of our amazing estuary. She said she lives on Clubfoot Creek thus she has the advantage of witnessing everything that takes place on the creek. The creek is not a vast body of water with infinite resources, but a tributary of the Neuse River. That being said, she has witnessed more gill netters in the creek this fall than ever before. She said that it's common on a one-hour kayak ride for her to encounter six net boats. The boats will fish the creek until the fish are gone for the season. She questions how is this sustainable. They are removing female mullet that are ripe with roe along with trout, red drum, and several other species. According to the Department of Natural Resources, Japanese demand for mullet roe has increased causing American stocks of mullet to decline sharply. Ms. McCracken said that what she is witnessing in Clubfoot Creek is not sustainable. Last night during the comment session of this meeting she heard speakers talk about the concern for water quality. Striped mullet play an important role in water quality. Mullet consume detritus, diatoms, algae, and even top layer of sediments. Mullet are an ecologically important link in the energy flow within the estuary. Striped mullet are a keystone species and their presence or absence can have a profound impact on the overall health of the creek. Without them the ecosystem is at risk of collapse. Since the data show that the striped mullet is overfished, please keep the current net ban in place and extend the closure to the tie down line so that all creeks have a chance to recover before it's too late. The estuary will be left devoid of life if action isn't taken to prevent overfishing. Our fish stocks need protection for present and future generations. Thank you.

John Hanrahan said he doesn't represent any group although he is a member of a fish club in Morehead that has a hundred members and we all share the same concerns. He said he is also a Clubfoot Creek resident and we're just below the line so we see kind of a different scenario than the people that are above the line of the Cherry Point Ferry. Mr. Hanrahan said as he hears everything this morning, we're talking about doing what's right and fair and he agrees with that. He doesn't think anybody is out trying to decimate the fish population. Nobody wants to do that. East Carolina is the fastest growing area of the Carolinas, it's one of the fastest growing areas in population in the country. So fishing is just, netting or sport fishing, they're just one of the influences impacting the fishing. The estuaries are probably the most important area. On Clubfoot, you've heard my neighbors speak, we've had six, seven, eight boats at a single time in the creek. He stated that when they leave he'll go out on the dock, the creek is full of sea grass that's been torn up just floating, the root stems, and it's taken out. A lot of what we've been working to protect in the area, is the hatchery, the fishery. He said he has thrown a cast net in Clubfoot to get mud minnows or menhaden and he has come up with baby red drum you know loads in the net and quickly released them. He said that tells him we're a nursery, we're an important nursery for these fish and if we destroy it, we're going to take it out. He stated that if we're looking at being fair, he thinks it's not about him as a sport fisherman or someone else as a netter, it's what's fair to our grandchildren. What are we going to leave for them. And we've seen the east coast up and down, and the west coast as well, the fisheries are declining. So you know if we don't protect them, we don't make a stand, it's just going to continue so let it stay. Thanks.

Matthew Wallin, avid angler from New Bern North Carolina, thanked the commission for taking on the responsibility of managing our coastal resources. That being said, he stated your job is to

manage, protect, preserve, and enhance the marine and estuarine resources under your jurisdiction. He said that when he looked up the antonym for protect, preserve, and enhance he found the words neglect, destroy, and diminish. Well, when it comes to the state of our coastal fisheries those latter words ring true. DMF data show us that river herring are overfished, totally collapsed; striped bass, overfished; southern flounder, overfished; striped mullet, overfished; American shad, depleted coastwide; spotted seatrout are now experiencing overfishing. Based on current DMF stock assessments it would be totally irresponsible of this commission to remove the net ban already in place above the ferry lines on the Neuse and Pamlico rivers. Mr. Wallin said that in fact, to end overfishing status of the above species within your two-year statutory requirement, he recommends to the commission to continue the net ban. And if you really want to enhance, not diminish, our fisheries, he recommends extending the ban to the tie-down lines. Gill nets are an unsustainable harvest method. 60% of commercial gill net licenses do not report their landings each year. Leading to undocumented mortality of our already overfished stocks. He suggested that the commission also look into license reform, creating mandatory reporting that is necessary to understand the full impact in our fish stocks. The net ban is working to rebuild our fishery as a whole. Coincidentally the commercial harvest for trout, red drum, and striped mullet have all doubled since 2019, the year the net ban took place. Common sense would suggest that with the net ban in place you're allowing the estuarine portions of these rivers to act as the nursery area that they are. Creating a sanctuary for bait fish and game fish alike to feed, grow, and spawn in the spring and summer months; while the net free zones provide trout, striped bass, and red drum a safe place to overwinter when it gets cold. This in return improves escapement numbers needed to rebuild these stocks for the future. We are finally starting to catch a good class of 25-30" striped bass on the Neuse River. That is the initial goal of this net closure was to rebuild a larger, more fecund, female population of striped bass in these systems. Well, it's working, why stop now. Once reversed, we will be forced to manage it as a put, grow, take fishery with nothing but small juvenile fish. He urged the commission to manage based upon what is best for our fisheries as a whole. He said that he can promise you that if you manage to protect, preserve, and enhance our fisheries they will take care of all of us. This is your chance to continue to restore our fisheries. Thank you.

Chris Elkins, member of the fishing public, stated that he knows the commissioners don't have an easy job. He said he has sat on the other side of the table, but he does want to thank you for your service. He stated that over the last two decades he has probably made 10 public comments on striped bass. Each comment urged the commission to stave off the decline that was evident then and which continues today. The one single action, removing gill nets above the ferry line, has been the only action that has reversed the striped bass decline without negatively impacting other harvests. And that's DMF data. Bringing the nets back makes no sense given the declines of shad, striped mullet, flounder, speckled trout, and other species they would kill. Moreover, given the success of that net removal on striped bass, the removal of nets to at least the tie-down line is a no-brainer. Mr. Elkins said that he knows you may not be able to address that at this go around but it should be on the table in future FMPs. He said that as he has said repeatedly in the past, if you want to expand the striped bass stock to its previous geographic range, you must remove gill nets from that same geographic range. Commercial fishermen should use hook and line like in other states such as Massachusetts where they have a huge quota that they get successfully. Second note, a critical item has been lacking at these meetings from the commission and the division. They must articulate to fishermen of both sectors that when stocks recover, we cannot go back to the over generous fishing rules of the past that cause widespread declines. The commission and the division

have been enablers to fishermen of both sectors for decades. For example, look at what North Carolina did in the Albemarle Sound Management Area after striped bass recovered in the 1990s. North Carolina implemented total allowable landings of more than half a million pounds, killing that fishery again. And now it needs a moratorium to recover. Another example of North Carolina failing to send a message about the future of fishing is the debacle in the flounder fishery. Why is North Carolina granting additional pound net applications. It's throwing gas on the fire. Just this week someone applied for a mile and a half of pound nets. Are you all really going to rubber stamp another flounder pound net application? Again, thanks for your service.

Jim Blackerby stated that he supports the ban on the gill nets. He supports a natural, sustainable fishery and fisheries up and down the coast. He said he thinks that's good for everybody, commercial and recreational. And he thinks we need to let the testing time run its course to see how things pan out. Thank you sir.

Bob Bruggeworth, resident of Fairfield Harbor for 30 years, said he moved down here from Jersey and has seen what nets did on the Delaware River. He stated that because he lived right on the Delaware River and he knows what they did with the shad coming up the river and how much shad was taken by not just the small nets that they do in shad season up around Trenton, but below that. And all the other fisheries that were affected by that. He said that he is here because he's seen what's happened here for striped bass and we keep talking about striped bass but one thing you have to know about striped bass is they need fresh water to spawn. So they have to get up past the bridge and we're just trapping all those spawning females, with roe, that are ready to do their thing. And that is very important to the fishery so if you think of anything else please remember what's happened to the striped bass and that's why we have this moratorium zone. And they also affect blue crab. He stated that he has been on the Blue Crab Advisory Committee for a while and he knows what the nets can do for that fishery also. So please, please do not put nets or allow nets above the ferry line. Thank you for your attention and your support.

[20 speakers]

End 9:53 a.m.

Preliminary Matters

Following the public comment period the Chairman called the meeting to order. He began the meeting with a moment of silence followed by the pledge of allegiance. The Chairman introduced Sarah Gardner, to her first business meeting. He also reminded commissioners of their conflict of interest and ethics requirements.

The following commission members were in attendance: Rob Bizzell-Chairman, Mike Blanton, Sarah Gardner, Doug Cross, Donald Huggins, Robert McNeill, Dr. Doug Rader, Tom Roller, and Ana Shellem.

Motion by Tom Roller to approve the agenda.

Second by Doug Rader.

Motion passes unanimously.

Motion by Tom Roller to approve the minutes of the August 17-18, 2022 meetings.

Second by Ana Shellem.

Motion passes unanimously.

Chairman's Report

Chairman Bizzell then introduced the Delineation of Inland and Coastal Fishing Water Boundaries issue. He provided an overview of the issue, including the joint rules that are shared by the Marine Fisheries Commission (MFC) and the Wildlife Resources Commission (WRC). Chairman Bizzell relayed his discussions with Wildlife Resources Commission Chairman Monty Crump. He then introduced Lara Klibansky, the MFC Liaison, who gave a presentation reviewing the timeline of events and the proposed maps and a memorandum of agreement (MOA) that was drafted by assigned MFC and WRC staff. Following Ms. Klibansky's presentation, Chairman Bizzell gave his comments providing his concerns that have arisen since the MOA was originally discussed. The Chairman then opened the floor for discussion of the issue. During the discussion, commissioners expressed a number of concerns about the maps that are proposed along with the MOA. They requested the Division work with WRC staff to determine a problem statement and to work towards developing a plan for how to resolve the issue. The DMF Director, Kathy Rawls, agreed to take the request from the Commission to reach out to WRC staff to discuss how to move forward on this issue.

To view the presentation, go to:

<https://deq.nc.gov/marine-fisheries/marine-fisheries-commission/november-2022/delineation-presentation/open>

Motion by Doug Rader to ask the staff to come up with a process whereby the MFC and WRC can co-manage the resource with each commission focusing on their areas of expertise. Second by Mike Blanton. Motion withdrawn.

Nominees for MAFMC Obligatory Seat

Mike Blanton recused himself.

Chris Batsavage presented information on the four nominees that were recommended to the full Commission for approval by the MFC Nominating Committee at their Oct. meeting.

Motion by Tom Roller to approve the following slate of names for the Governor's consideration to nominate for the Mid-Atlantic Fishery Management Council Obligatory Seat:

- **Mike Blanton, a commercial fisherman from Elizabeth City**
- **Jess Hawkins, a retired fisheries manager, educator, and ecotour operator from Morehead City**
- **Thomas Newman, a commercial fisherman from Williamston**
- **Robert Ruhle, a commercial fisherman from Wanchese**

Second by Ana Shellem

Motion passes with no dissent.

Director's Report

Director Kathy Rawls gave a verbal update on recent Division of Marine Fisheries activities. Director Rawls provided an update on the 200th Anniversary events that will begin December 1st, 2022. Director Rawls also reviewed her intention to focus on Division outreach to the public and highlighted recent events and activities staff have participated in. Director Rawls provided a brief update on the Southern flounder season. Director Rawls also gave an update on striped bass stock assessment update and possible adaptive management under Amendment 2.

Chris Batsavage gave verbal updates on the Atlantic States Marine Fisheries Commission and MidAtlantic Fishery Management Council.

Trish Murphey gave a verbal update on South Atlantic Fishery Management Council.

Owen Mulvey-McFerron provided an update on the Shellfish Lease Program.

Jacob Boyd provided an update on the Coastal Habitat Protection Plan, specifically regarding implementation of the recently approved plan.

Col. Carter Witten provided an update on Marine Patrol activities since the last meeting.

Brandi Salmon provided an update on the License and Statistics Annual Report (aka The Big Book).

Fisheries Management Plans

The Division's Fishery Management Plan Coordinator presented the status of ongoing plans.

Spotted Seatrout Fishery Overview

Spotted seatrout lead biologists, Lucas Pensinger and David Behringer, gave an overview of the data that was input into the stock assessment.

To view the presentation, go to:

<https://deq.nc.gov/marine-fisheries/marine-fisheries-commission/november-2022/data-exploration-spotted-seatROUT/open>

Spotted SeatROUT Stock Assessment Update

The lead stock assessment scientist provided an update on the outcome of the stock assessment.

To view the presentation, go to:

<https://deq.nc.gov/marine-fisheries/marine-fisheries-commission/november-2022/spotted-seatROUT-stock-assessment-presentation/open>

Amendment 2 to the Estuarine Striped Bass FMP

This agenda item was tabled during the Aug. 2022 business meeting. Staff briefly reviewed the MFC Preferred Management Measures.

To view the presentation, go to:

<https://deq.nc.gov/marine-fisheries/marine-fisheries-commission/november-2022/striped-bass-fmp-amendment-2-presentation/open>

Motion by Tom Roller to approve Estuarine Striped Bass Fishery Management Plan Amendment 2. Second by McNeil

Substitute motion by Doug Cross to approve Estuarine Striped Bass Fishery Management Plan Amendment 2 without Option 2 in Appendix 3.

Second by Mike Blanton

Motion failed 4-4 with one abstention

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	X			
Blanton	X			
Gardner	X			
Huggins	X			
McNeill		X		
Rader			X	
Roller		X		
Shellem		X		
Bizzell		X		

Substitute motion by Doug Rader to approve Amendment as presented, except to maintain the gill net prohibition through 2024 to allow for assessment of its performance.

**Second by Ana Shellem
Motion carries 5-4**

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross		X		
Blanton		X		
Gardner		X		
Huggins		X		
McNeill	X			
Rader	X			
Roller	X			
Shellem	X			
Bizzell	X			

Meeting recessed until 9:00 a.m. on Nov. 18.

Nov. 18

Chairman reconvened the meeting at 9:00 a.m.

Review Ethics Evaluations of New Commissioner

The MFC Liaison, Lara Klibansky, read the evaluation statement of economic interest determination for Sarah M. Gardner.

“Ms. Gardner fills the role of a an at-large member on the Commission. She owns Fly Girl Charters, LLC and her spouse owns Flat Out Charters, LLC. Therefore, she has the potential for a conflict of interest and should exercise appropriate caution in the performance of her public duties should issues involving these entities come before the Commission for official action.”

Ethics Training and Statement of Economic Interest Reminder

The MFC Liaison, Lara Klibansky, provided an update on Commissioner compliance with state ethics training and SEI reminders. She reported that everyone is up to date or is actively working on it.

Supplement A to Amendment 1 of the Striped Mullet FMP

Staff presented draft Supplement A to the commission along with the Division’s recommendation of Option 1 or 2 to address overfishing in the striped mullet fishery.

To view the presentation, go to:

<https://deq.nc.gov/marine-fisheries/marine-fisheries-commission/november-2022/striped-mullet-supplement-presentation/open>

Motion by Doug Cross to delay consideration of Supplement A to Amendment 1 of the Striped Mullet Fishery Management Plan until the May 2023 meeting.

Second by Mike Blanton

Motion fails 5-4

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	X			
Blanton	X			
Gardner		X		
Huggins		X		
McNeill		X		
Rader		X		
Roller		X		
Shellem	X			
Bizzell		X		

Motion by Tom Roller to approve Supplement A to Amendment 1 of the Striped Mullet Fishery Management Plan with option 1, and with the caveat that allows recreational possession in the whole year.

Motion fails for lack of second.

Motion by Doug Cross to approve Supplement A to Amendment 1 of the Striped Mullet Fishery Management Plan with Option 2.

Second by Donald Huggins

Substitute motion by Tom Roller to approve Supplement A to Amendment 1 of the Striped Mullet Fishery Management Plan with Option 1.

Second by Robert McNeil

Motion fails 1-8

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross		X		
Blanton		X		
Gardner		X		
Huggins		X		
McNeill		X		
Rader		X		
Roller	x			
Shellem		X		
Bizzell		X		

Motion passes unanimously

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	X			
Blanton	X			
Gardner	X			
Huggins	X			
McNeill	X			
Rader	X			
Roller	X			
Shellem	X			
Bizzell	x			

Amendment 2 to the Striped Mullet FMP

Staff provided an overview of the scoping period for striped mullet, including feedback from the MFC Advisory Committees. The draft Goal and Objectives were then reviewed, and feedback requested from the MFC on management options for consideration during draft Amendment 2 development.

To view the presentation, go to:

<https://deq.nc.gov/marine-fisheries/marine-fisheries-commission/november-2022/striped-mullet-goals-and-objectives/open>

Motion by Tom Roller to accept the goals and objectives for the Striped Mullet Fishery Management Plan Amendment 2

Second by Doug Rader

Motion passes unanimously.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	X			
Blanton	X			
Gardner	X			
Huggins	X			
McNeill	X			
Rader	X			
Roller	X			
Shellem	X			
Bizzell	X			

Rule Suspensions

Fisheries Management Section Chief, Steve Poland, presented necessary rule suspensions which the commission approved.

Motion by Tom Roller to suspend subitems (c), (i), and (j) of item 1 of NCAC 15A 03R 0117 Oyster Sanctuaries indefinitely.

Second by Doug Rader

Motion passes unanimously.

Rulemaking Cycle Updates

The Division's Rulemaking Coordinator, Catherine Blum, provided updates on three rulemaking cycles, including an update of ongoing rulemaking for the 2021-2022 and 2022 – 2023 rulemaking cycles. She also provided a preview on upcoming items for the 2023-2024 rulemaking cycle.

Issues from Commissioners

Commissioner Cross requested that the Division review information about the impact of directed tournaments on fish that are overfished or where overfishing is occurring.

Commissioner Cross requested that the Chairs of the Advisory Committees be available at the business meetings for discussions.

Commissioner Rader recognized Dr. Stan Riggs who was recently awarded the North Carolina Award, the state's highest civilian honor. received the North Carolina Award.

Review of MFC Workplan, Meeting Assignments and Preview of Agenda Items for Next Meeting

Lara Klibansky reviewed meeting assignments and provided an overview of the November meeting items.

Having no further business to conduct, the meeting adjourned at 11:26 a.m.

Chairman's Report

February 2023 Business Meeting

01 Letters

03 State Ethics Education Reminder

04 2023 Annual Meeting Calendar

05 2022 Committee Assignments



◊ North Carolina Wildlife Resources Commission ◊

Monty R. Crump, Chairman

December 14, 2022

Chairman Rob Bizzell
N.C. Marine Fisheries Commission
3441 Arendell Street
Morehead City, NC 28557

Sent via email only: r.bizzell.mfc@ncdenr.gov

Dear Chairman Bizzell:

The Wildlife Resources Commission (WRC) reviewed the Marine Fisheries Commission's (MFC) November 17, 2022, adoption of Amendment 2 to the North Carolina Estuarine Striped Bass Management Plan (Plan) at our Committee of the Whole meeting on December 7, 2022. The Plan has long been touted, by both Commissions, as a joint plan, and, in fact, the WRC did have staff that participate in Plan development. The WRC also reviewed the Plan and voted on our preferred management options on April 14, 2022, and I sent you a letter on April 29, 2022, stating:

“It is my understanding that the Plan is expected to be jointly adopted by both the WRC and MFC. Therefore, I request the WRC's preferred management options be listed in the same manner in the draft Plan as the MFC's preferred management options are listed. If there are differences in the preferred management options between the WRC and MFC, I look forward to the opportunity to formally discuss and hopefully resolve them prior to the Plan's final adoption scheduled for August.”

In the final draft Plan presented on November 17th, the MFC's selected management options were prominently listed in the Executive Summary and under the Striped Bass Amendments 2 Management Strategy section, while the WRC's preferred management options were listed in a table in appendix 6 alongside those of the Division of Marine Fisheries and the Southern, Finfish, and Northern Advisory Committees. At no time, between April 29th and the MFC's final vote on November 17th, did the MFC reach out to formally discuss our concerns and preferred management options. It certainly appears that our options were never considered.

Therefore, on December 7, 2022, in an official meeting of the Committee of the whole, the WRC took formal action to not approve Amendment 2 to the Estuarine Striped Bass Management Plan. The WRC understands that this is essentially a symbolic gesture, as the statutory requirement to adopt Fishery Management Plans is solely the responsibility of the MFC. The WRC does not consider this a joint Plan; not because our preferred management options were not adopted but because we were not even given

the chance to discuss and potentially resolve our differences prior to adoption, as requested. The WRC will continue to manage Striped Bass in our jurisdiction as we deem in the best interest of conservation of the species and within the framework of the laws and rules we have promulgated.

Best regards,



Monty R. Crump
Chairman, NC Wildlife Resources Commission

ec: Members of the NC Wildlife Resources Commission
Cameron N. Ingram, Executive Director, NC Wildlife Resources Commission
Kathy Rawls, Director, Division of Marine Fisheries



EDUCATION REQUIREMENTS FOR PUBLIC SERVANTS

Public Servants must complete the Ethics and Lobbying Education program provided by the N.C. State Ethics Commission within **six months** of their election, appointment, or employment. We recommend that this be completed as soon as possible, but the training must be repeated every two years after the initial session.

Since Adobe Flash was terminated on December 31, 2020, our online program is not available. A new and shorter online program will be available in the near future. The new program will be compatible with portable devices such as phones and tablets.

Live webinar presentations are being offered monthly and registration information for the live presentations can be found [here](#). These presentations are about 90 minutes long and give you the opportunity to ask questions of the speaker.

For questions or additional information concerning the Ethics Education requirements, please contact Dottie Benz at (919) 389-1383.

Marine Fisheries Commission 2023 Annual Calendar

Dates are subject to change.

January						
Su	Mo	Tu	We	Th	Fr	Sa
1		3	4	5	6	7
8	9	10	11	12	13	14
15		17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February						
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26	27	28				

March						
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26	27	28	29	30	31	

April						
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30						

May						
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28		30	31			

June						
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25	26	27	28	29	30	

July						
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23	24	25	26	27	28	29
30	31					

August						
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September						
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24	25	26	27	28	29	30

October						
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22	23	24	25	26	27	28
29	30	31				

November						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
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12	13	14	15	16	17	18
19	20	21	22			25
26	27	28	29	30		

December						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24				28	29	30
31						

2023 MFC Meeting Dates

MFC Business Meetings

February 22-24
May 24-26
August 23-25
November 15-17

Northern Regional AC

January 10
April 11
July 11
October 10

Southern Regional AC

January 11
April 12
July 12
October 11

Finfish Standing AC

January 12
April 13
July 13
October 12

Shellfish/Crustacean Standing AC

January 17
April 18
July 18
October 17

Habitat and Water Quality Standing AC

January 18
April 19
July 19
October 18

Calendar Key

	MFC		Northern Regional AC
	ASMFC		Southern Regional AC
	SAFMC		Finfish Standing AC
	MAFMC		Habitat and Water Quality Standing AC
	State Holiday		Shellfish/Crustacean Standing AC

2022 Committee Assignments for Marine Fisheries Commissioners

09/1/2022

FINFISH ADVISORY COMMITTEE

Statutorily required standing committee comprised of commissioners and advisers that considers matters related to finfish.

Commissioners: Tom Roller – co-chair, Sarah Gardner – co-chair, Mike Blanton – vice chair

DMF Staff Lead: Lee Paramore - lee.paramore@ncdenr.gov

Meeting Frequency: Can meet quarterly, depending on assignments from MFC

HABITAT AND WATER QUALITY ADVISORY COMMITTEE & COASTAL HABITAT PROTECTION PLAN STEERING COMMITTEE

Statutorily required standing committee comprised of commissioners and advisers that considers matters concerning habitat and water quality that may affect coastal fisheries resources.

Commissioners: Doug Rader – chair, Ana Shellem– vice chair

DMF Staff Lead: Anne Deaton - anne.deaton@ncdenr.gov

Meeting Frequency: Committee can meet quarterly, depending on assignments from MFC. CHPP Steering Committee can meet a couple of times a year.

SHELLFISH/CRUSTACEAN ADVISORY COMMITTEE

Statutorily required standing committee comprised of commissioners and advisers that considers matters concerning oysters, clams, scallops and other molluscan shellfish, shrimp and crabs.

Commissioners: Ana Shellem – co-chair, Mike Blanton – co-chair, Doug Cross – vice chair

DMF Staff Lead: Tina Moore - tina.moore@ncdenr.gov

Meeting Frequency: Can meet quarterly, depending on assignments from MFC

CONSERVATION FUND COMMITTEE

Committee comprised of commissioners that makes recommendations to the MFC for administering funds to be used for marine and estuarine resources management, including education about the importance of conservation.

Commissioners: Doug Rader - chair, and Robert McNeill

DMF Staff Lead: Steve Poland – steve.poland@ncdenr.gov

Meeting Frequency: Meets as needed

LAW ENFORCEMENT AND CIVIL PENALTY COMMITTEE

Statutorily required committee comprised of commissioners that makes final agency decisions on civil penalty remission requests.

Commissioners: Rob Bizzell - chair, Doug Cross

DMF Staff Lead: Col. Carter Witten – carter.witten@ncdenr.gov

Meeting Frequency: Meets as needed

COASTAL RECREATIONAL FISHING LICENSE TRUST COMMITTEE

Committee consisting of the three recreational seats and the science seat to provide the DMF advice on the projects and grants issued using Coastal Recreational Fishing License trust funds.

Commissioners: Robert McNeill– chair, Rob Bizzell, Tom Roller, and Doug Rader

DMF Staff Lead: Jamie Botinovch - jamie.botinovch@ncdenr.gov

Meeting Frequency: Meets as needed

NOMINATING COMMITTEE

Committee comprised of commissioners that makes recommendations to the MFC on at-large and obligatory nominees for the Mid- and South Atlantic Fishery Management Councils.

Commissioners: Robert McNeill – chair, Ana Shellem, Tom Roller and Mike Blanton

DMF Staff Lead: Chris Batsavage - chris.batsavage@ncdenr.gov

Meeting Frequency: Typically meets once a year

STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

Statutorily required three-person board consisting of DEQ, DMF and MFC designees who apply eligibility criteria to determine whether an applicant is eligible for a SCFL.

Commission Designee: Mike Blanton

DMF Staff Lead: Marine Patrol Capt. Garland Yopp – garland.yopp@ncdenr.gov

Meeting Frequency: Meets two to three times a year, could need to meet more often depending on volume of applications

N.C. COMMERCIAL FISHING RESOURCE FUND COMMITTEE

Committee comprised of commissioners that the commission has given authority to make funding decisions on projects to develop and support sustainable commercial fishing in the state.

Commissioners: Doug Cross – chair, Mike Blanton, Ana Shellem

DMF Staff Lead: William Brantley – william.brantley@ncdenr.gov

Meeting Frequency: Meets two to three times a year

WRC/MFC JOINT COMMITTEE ON DELINEATION OF FISHING WATERS

Committee formed to help integrate the work of the two commissions as they fulfill their statutory responsibilities to jointly determine the boundaries that define North Carolina's Inland, Coastal and Joint Fishing Waters as the agencies go through a statutorily defined periodic review of existing rules.

MFC Commissioners: Rob Bizzell, Donald Huggins, Sarah Gardner

DMF Staff Lead: Anne Deaton - anne.deaton@ncdenr.gov

Meeting Frequency: Meets as needed

SHELLFISH CULTIVATION LEASE REVIEW COMMITTEE

Three-member committee formed to hear appeals of decisions of the Secretary regarding shellfish cultivation leases issued under G.S. 113-202.

MFC Commissioners: Rob Bizzell

DMF Staff Lead: Jacob Boyd – jacob.boyd@ncdenr.gov

Meeting Frequency: Meets as needed

COASTAL HABITAT PROTECTION PLAN STEERING COMMITTEE

The CHPP Steering Committee, which consists of two commissioners from the Marine Fisheries, Coastal Management and Environmental Management commissions reviews and approves the plan, recommendations, and implementation actions.

MFC Commissioners: Doug Rader, Donald Huggins

DMF Staff Lead: Anne Deaton – anne.deaton@ncdenr.gov

Meeting Frequency: Meets as needed

Committee Reports

February 2023 Business Meeting

01 Northern Regional
Advisory Committee

19 Habitat and Water Quality
Standing Advisory Committee

05 Southern Regional
Advisory Committee

27 Commercial Fishing
Resource Fund Committee

10 Finfish Standing
Advisory Committee

13 Shellfish/Crustacean
Standing Advisory
Committee



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Feb. 3, 2023

MEMORANDUM

TO: Marine Fisheries Commission
Northern Region Advisory Committee

FROM: David Behringer, Fisheries Biologist
Lee Paramore, Northern District Manager
Fisheries Management Section

SUBJECT: Meeting of the Marine Fisheries Commission's Northern Region Advisory Committee, Jan. 10, 2023 for orientation of new members and updates.

The Marine Fisheries Commission's (MFC) Northern Region Advisory Committee (AC) held a meeting on Jan. 10, 2023, via WebEx and also had a listening station at the Division of Marine Fisheries Central District Office, Morehead City, North Carolina. Advisory Committee members could attend in either setting and communicate with other committee members. Public comment was available to online attendees if they signed up in advance and was available to the public attending at the listening station.

The following Advisory Committee members were in attendance: Roger Rulifson, Everett Blake, Sara Winslow, Jamie Lane, Carl Hacker, Jon Worthington, Thomas Newman, Dale Martin (Absent: Keith Bruno, Melissa Clark, Herman Dunbar)

Division of Marine Fisheries (DMF) Staff: Lara Klibansky, Hope Wade, Paula Farnell, David Behringer, Lee Paramore, CJ Schlick, Corrin Flora, Dan Zapf, Jeff Dobbs, Laura Lee, Willow Patten

Public: Online via WebEx: No members of the public attended via WebEx or the listening station. Eight viewers watched on YouTube.

The Northern Region AC had seven members present and a quorum was met. An eighth member joined later during the meeting after the roll call was taken.

Northern Region AC Chair Sara Winslow called the meeting to order at 6:09 p.m.

APPROVAL OF THE AGENDA AND APPROVAL OF THE MINUTES

A motion was made to approve the agenda by Roger Rulifson. Second by Everett Blake. The motion passed 6-0-1.

A motion was made to approve the minutes from the Northern Region AC meeting held on October 18, 2022. Motion by Jamie Lane to approve the minutes. Second by Carl Hacker. The motion passed unanimously.

2023 ANNUAL ADVISORY COMMITTEE'S ORIENTATION PRESENTATION

Lara Klibansky thanked all members for volunteering their service on the committee. She then provided a presentation that focused on the duties of the AC. She started with a brief history on the Division of Marine Fisheries, celebrating its 200-year anniversary this year. The first fisheries specific legislation was passed in 1822 for oysters. Fisheries management has been ongoing in NC for a long time and expanded from legislation from a single fishery to many fisheries with both commercial and recreational interests. The Fisheries Reform Act (FRA) adopted in 1997 ushered in new ways to manage fisheries in the state. The FRA is comprehensive legislation that provides for cooperation between stakeholders, restructured the MFC, mandated the creation of state managed Fishery Management Plans (FMPs) as well as the Coastal Habitat Protection Plan (CHPP), and a new licensing system. General Statute 143B-289.57 establishes the MFC ACs and provides the objectives of the committees to assist the MFC in the performance of its duties.

Klibansky described the FMP process, showing the steps of development and where the MFC ACs are formally brought into the FMPs for their review and input. She noted there are other informal opportunities to provide feedback as well. This AC meeting is an example of an informal opportunity to provide feedback. There are 13 FMPs formally reviewed approximately every five years. Scheduling the reviews can fill up meetings quickly and DMF staff provide the MFC a Workplan as a tracking tool to monitor varying work steps in a plan during development. It is recommended that the AC members review the Workplan at least once a year to see when a plan will come to the AC for review and input. Many other tools are available on the website – meeting recordings, annual FMP reviews, and the statistics report otherwise known as the “Big Book”. A lot of resources are available to you. Klibansky noted the three DMF staff in the MFC Office. Herself as the Liaison between DMF and the MFC. She introduced Paula Farnell as the new Program Assistant and identified Catherine Blum as the DMF Rule Coordinator. We also have an attorney with the Department of Justice. Klibansky and Farnell are the two main points of contact in the MFC office for the MFC ACs and MFC Commissioners. Farnell then went over some of the material provided to the AC and noted members can reach out to her by cell phone. After the January AC meeting the office will be sending the AC an overview of the year ahead and links to documents on the website.

After the presentation there were no questions from the AC. It was noted by a member of the AC that the FRA charges that the MFC shall consider all findings and recommendations of the ACs and that in recent history many AC members have not felt like this was the case and as a result we have lost some good AC members.

Discussion of Stock Assessment 101 Presentation

A Stock Assessment 101 video was sent to the AC to view prior to the meeting. The AC chair noted that the presentation was very good, and the floor was opened for questions. CJ Schlick, Stock Assessment Scientist was present during the meeting to address any questions on stock assessments. There were no questions during the meeting. Staff noted DMF stock assessment staff contact information is available online and can be provided upon request and that staff are always willing to talk and answer any questions.

MARINE FISHERIES COMMISSION UPDATE

Before the update, the AC asked if the MFC office will be sending out any regular updates to the AC through email. Staff noted that this would be the case moving forward and there are plans to send updates to the ACs at least quarterly and hopefully monthly. The Division also recently obtained the ability to communicate through social media and will be providing links to AC members in the future so they can

follow the Division social media pages. Klibansky then gave the MFC update. She recognized newly appointed MFC commissioner, Sarah Gardner, noting that she was sworn in before the Northern Region AC meeting in October and participated at the MFC meeting in November. At their meeting in October, the MFC discussed joint fishing waters delineation rules shared by the MFC and the NC Wildlife Resources Commission (WRC). The MFC tasked DMF to work with WRC to make progress on a plan moving forward. The MFC approved nominees for Mid-Atlantic Council Appointments. Nominees included: Mike Blanton, Thomas Newman, Robert Ruhle, and Jess Hawkins. The Striped Bass FMP Amendment 2 was adopted by the MFC, which includes management continuing the closure of gill nets above the Ferry Line on the Tar/Pamlico and Neuse rivers. The MFC approved the goal and objectives for Amendment 2 to the Striped Mullet FMP. The MFC also approved Supplement A to Amendment 1 to allow management measures to be in place sooner than what can be developed through Amendment 2. The supplement will consider a 22 percent reduction with a season closure from Nov. 7 – Dec. 31. Public comments are being received on the supplement before final approval is considered by the MFC at its February business meeting.

The upcoming MFC meeting is Feb 22 – 24, 2023 at the Doubletree Hotel in New Bern. Items on the agenda include an information paper on false albacore, overviews of the spotted seatrout and striped mullet fisheries, and the revision to the latest Blue Crab FMP amendment to update the list of approved diamondback terrapin excluder devices. The blue crab revision will also be provided next week at the Shellfish/Crustacean AC for their consultation. The MFC will also vote on final approval of the striped mullet supplement and final approval of three rules, one of which is the mutilated finfish rule which if approved will not be effective until 2024.

Striped Mullet FMP Supplement Update

Klibansky gave a quick update on the striped mullet supplement and noted that the public comment period was still open. She then introduced the striped mullet staff leads, Dan Zapf and Jeff Dobbs, to take any questions. An AC member noted that the proposed supplement would shut down the commercial fishery during most of November and December and wanted to know if there had been any consideration for requiring a closure to recreational harvest. Staff confirmed that there will be a closure for the recreational harvest of mullet (i.e. via cast net) that aligns with the dates (Nov. 7 – Dec. 31) of the commercial closure. An AC member discussed that the recreational fishery is not monitored with trip tickets like the commercial fishery and that there can be waste in the recreational fishery from fish that are captured and not used and that this is not captured in data to the same level of detail compared to the commercial fishery. Staff stated that the stock assessment used recreational data provided by MRIP and noted some of the shortcomings of this type of data. Staff also noted that some similar comments had been received from the public and that further options for both the recreational and commercial fishery will be considered during the development of Amendment 2. Staff noted that there was a good deal of uncertainty with harvest estimates in the recreational fishery. Further information was provided on the different recreational fisheries that commonly used finger mullet and cut bait. It was noted that this will be impactful to the recreational fishery although the magnitude of impact is not fully understood. The AC had discussion about how bait shops and recreational anglers will be affected during this closure and whether they will be able to sell frozen mullet during the closure. Staff commented that in order to be in possession of mullet during any closure, anglers would likely need to retain a receipt showing purchase but this would be an enforcement question. Discussion continued on how possession of bait by recreational fishermen would be handled from the law enforcement side and how the Division planned to make anglers aware of any closure. Staff noted that public outreach would be a priority if this moves forward. The AC noted that many anglers throw cast nets to catch bait but they are just targeting bait and not necessarily striped mullet so this may be an issue if they are not be aware of regulations. Another member noted that this closure would be a hard hit for the commercial industry and noted that many in industry feel this closure is unjustified given the recent rebound in the number of striped mullet the last

couple of years. It was commented that identification of mullet in the recreational fishery could be an issue. Staff noted that any closure would apply to both striped and white mullet to avoid this issue. There was discussion on the ratio of white to striped mullet in the recreational cast net fishery, noting that most harvest is of white mullet. Staff provided some clarifications for the AC related to questions on how commercial landings data impact the stock assessment results. Staff noted how the various data sources inform the model including not just landings and total removals but also biological life history and fishery independent survey data. There were no further questions from the AC.

PUBLIC COMMENT

No public comment occurred.

PLAN AGENDA ITEMS FOR THE NEXT MEETING

The next meeting in April will be held in-person. Currently there is no new information to bring to the committees except the striped mullet amendment in October. The AC discussed the location of future in-person meetings. Staff mentioned the Dare County building as a potential option. Members of the AC expressed support for holding meetings in Washington, NC. There was discussion about alternating meetings between Manteo and Washington. Staff confirmed that AC members will be able to attend virtually if they cannot make it in person. AC members also asked about having a joint AC meeting with the other ACs once a year. Staff is looking into this possibility.

The meeting adjourned at 7:15 p.m.



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Jan. 13, 2023

MEMORANDUM

TO: Marine Fisheries Commission
Southern Regional Advisory Committee

FROM: Chris Stewart, Biologist Supervisor
Tina Moore, Southern District Manager
Fisheries Management Section

SUBJECT: Meeting of the Marine Fisheries Commission's Southern Regional Advisory Committee, Jan. 11, 2023 for orientation of new members and updates.

The Marine Fisheries Commission's (MFC) Southern Regional Advisory Committee (AC) held a meeting on Jan. 11, 2023, via webinar and a listening station at the Division of Marine Fisheries Central District Office, Morehead City, North Carolina. Advisory Committee members could attend in either setting and communicate with other committee members. Public comment could occur online if the public signed up in advance and also if public attended at the listening station.

The following Advisory Committee members were in attendance: Fred Scharf, Samuel Boyce (came online at 6:16 pm), Jason Fowler, Tom Smith, Pam Morris, Jerry James, Scott (Jeff) Harrell, Truby Proctor (came online at 6:15 pm), Kenneth Siegler, Michael Yates (Absent – Tim Wilson).

Division of Marine Fisheries (DMF) Staff: Lara Klibansky, Hope Wade, Debbie Manley, Corrin Flora, Tina Moore, Chris Stewart, Garland Yopp, Jeff Dobbs, Dan Zapf, Paula Farnell, Laura Lee, Steve Poland, Willow Patten,

Public: Online via Webex: Rob Eberle and Drew Smedley. No public were in attendance at the listening station. Twenty viewers watched on YouTube.

The Southern Regional AC had eight members present at the start of the meeting and a quorum was met.

Southern Regional AC Chair Fred Scharf called the meeting to order at 6:05 p.m. The Chair opened the floor for new members to provide introductions to the committee and welcomed the reappointments of Pam Morris, Tom Smith, and Tim Wilson. New members included: Truby Proctor, Kenneth Siegler, Michael Yates.

APPROVAL OF THE AGENDA AND APPROVAL OF THE MINUTES

A motion was made to approve the agenda by Jason Fowler. Second by Kenneth Siegler. The motion passed without objection.

Siegler asked if the AC was providing the MFC a recommendation for the supplement to the Striped Mullet FMP Amendment 1 tonight. Lara Klibansky indicated the ACs are not providing recommendations on the supplement. The purpose of this meeting is to give the AC an update on the supplement and allow the committee members a chance to ask the species leads questions.

A motion was made to approve the minutes from the Southern Regional AC meeting held on October 19, 2022. Motion by Tom Smith to approve the minutes. Second by Jason Fowler. The motion passed without objection.

2023 ANNUAL ADVISORY COMMITTEE'S ORIENTATION PRESENTATION

Lara Klibansky thanked all members for volunteering their service on the committee. This presentation focused on the duties of the AC. She started with a brief history on the Division of Marine Fisheries, celebrating its 200-year anniversary this year. The first fisheries specific legislation was passed in 1822 for oysters. Fisheries management has been ongoing in NC for a long time and expanded from legislation from a single fishery to many fisheries with both commercial and recreational interests. The Fisheries Reform Act (FRA) adopted in 1997 ushered in new ways to manage fisheries in the state. The FRA is comprehensive legislation forming cooperation between stakeholders, restructured the MFC, mandated the creation of state managed Fishery Management Plans (FMPs) as well as the Coastal Habitat Protection Plan (CHPP), and a new licensing system. General Statute 143B-289.57 establishes the MFC ACs and provides the objectives of the committees to assist the MFC in the performance of its duties.

Klibansky described FMP process, showed the steps of development, and where the MFC ACs are formally brought the FMPs for their review and input. She noted there are other informal opportunities to provide feedback as well. This meeting is an example of an informal opportunity to provide feedback. There are 13 FMPs reviewed approximately every five years. Scheduling the reviews can fill up meetings quickly and DMF staff provides the MFC a Workplan as a tracking tool to monitor varying work steps in a plan in development. It is recommended the AC members review the Workplan at least once a year to see when a plan comes to the AC for your review and input. Many other tools are available on the website – meeting recordings, annual FMP reviews, and the statistics report otherwise known as the “Big Book”. A lot of resources are available to you. Klibansky noted the three DMF staff in the MFC Office. Herself as the Liaison between DMF and the MFC. She introduced Paula Farnell the new Program Assistant and identified Catherine Blum the DMF Rule Coordinator. We also have an attorney with the Department of Justice. Klibansky and Farnell are the two main points of contacts in the MFC office for the MFC advisory Committees and MFC Commissioners. Farnell went over some of the material provided to the AC and noted members can reach out to her by cell phone. After the January AC meetings the office will be sending the committees an overview of the year ahead and links to documents on the website.

Scharf noted other states do not have the same approach with a mandated FMP process having clear steps for public input as the FMPs are developed and adopted. There are a lot of steps in the development of an FMP to follow. So if any members have question anytime please reach out to staff. Scharf said Klibansky as well as staff leads of this committee, Chris Stewart and Tina Moore attend all the meetings so talk to them or call them with your questions.

Discussion of Stock Assessment 101 Presentation

A video was sent to the AC to review prior to the meeting to provide resources available to you online. Laura Lee, Stock Assessment Scientist was also available online to address any questions on stock assessments. No questions were asked. Scharf noted Lee leads a team of scientists who work on stock assessments at both the State and Federal level and if you have questions reach out to her as needed.

MARINE FISHERIES COMMISSION UPDATE

Klibansky gave an update on the newly appointed MFC commissioner, Sarah Gardner. Sworn in before the Finfish Standing AC in October and she participated at the MFC meeting in November. At their meeting in November the MFC discussed joint fishing waters delineation on the rules shared by MFC and NC Wildlife Resource Commission (WRC). The MFC tasked DMF to work with WRC to make progress on a plan moving forward. The MFC approved nominees for Mid-Atlantic Council Appointments. Nominees included: Mike Blanton, Thomas Newman, Robert Ruhle, and Jess Hawkins. The Striped Bass FMP Amendment 2 was adopted, which includes continuing the closure of gill nets above the Ferry Line on the Tar/Pamlico and Neuse rivers. The division is currently developing Amendment 2 to the Striped Mullet FMP as well as a supplement to Amendment 1 to allow management measures to be in place sooner than what can be developed through Amendment 2. The Supplement looking at about a 22 percent reduction with a season closure from Nov. 7 – Dec. 31.

The upcoming MFC meeting is Feb 22 – 24, 2023 at the Doubletree Hotel in New Bern. Items on the agenda include an information paper on False albacore, overviews of the spotted seatrout and striped mullet fisheries, the revision to the latest Blue Crab FMP amendment to look at diamondback terrapin excluder devices. The blue crab revision will also be provided next week at the Shellfish/Crustacean AC for their consultation. In February, the MFC will vote on final approval of the striped mullet supplement and final approval on three rules, one of most interest on mutilated finfish.

Striped Mullet FMP Supplement Update

Dan Zapf, Striped Mullet FMP co-lead, started talking about issues being explored in the latest amendment. The plan was taken out for scoping to gain input from the public. Feedback received from the public to achieve sustainable harvest of the stock included: quotas, season closures, area closures, the desire to maintain the closures to gill nets on the Tar/Pamlico and Neuse rivers above the Ferry Lines, and day of the week closures. We heard we need to protect larger and smaller fish, so minimum and maximum sizes of fish will be explored and measures to extend the season. We will also look further into the small mesh gill net fishery as directed by the MFC in species-specific plans. The division will look at primary gears used to harvest striped mullet, regulations in place to support sustainable harvest, and consider ways to reduce regulatory complexity and user conflicts. An information paper will be developed to look specifically in more detail on the recreational fishery. Recreational statistics are limited because striped mullet are mostly used for live bait and are released or rarely brought back to the dock. A DMF cast study found that 29% of recreationally caught mullet are striped mullet and the rest are white mullet. We want to identify the uncertainty in the data and any holes that can be fixed moving forward. Staff are also delving into the stop net fishery; historical it was a high volume and major component of the removals but not so much now since it is restricted to an area along Bogue Banks. The division will also explore migration corridors, this topic has come up across several plans and could be applied to striped mullet. The division would appreciate additional ideas from the AC.

Scharf noted the seasonal closure in the supplement is a short-term approach to achieve sustainable harvest and Amendment 2 will introduce a long-term solution. Siegler identified his concern the Nov. 7 – Dec. 31 closure will solely impact the striped mullet fishery south of Bogue Sound. Another concern is the landings data. The 2021 landings are the highest in ten years and 2021 is the tenth highest since 1972. Siegler noted that under Amendment 1 these landings do not meet the triggers; therefore, a supplement is not needed. In regard to the spawning period for mullet, Siegler discussed regional differences in the spawning periods and how it impacts the fishery. In the southern part of the state the striped mullet are coming in later in the year (Mid-Nov.) with roe of enough size to sell. The supplement would close the fishery when the fish are row up. The southern region sees spawned out striped mullet (snakes) in

December coming back to aggregate with the ones that didn't leave the sounds. They go back up to Beaufort Inlet and Morehead City area, you know they are spawned out because we see mud in their guts or entrails. When they are full of mud they are not spawning; they stop eating when they are spawning. They'll go back up the river, but they won't spawn, they will just reabsorb the roe; therefore, we should be allowed to harvest these fish.

Zapf thanked Mr. Siegler for the striped mullet behavior prior and post spawning run. The supplement does not account for area management because it is meant to implement simple measures to end overfishing immediately. As part of Amendment 2, the division will look at the area component and regional differences in the fishery. During the scoping period the public and members of the MFC specifically asked that we incorporate regional differences in the plan. Also, I want to be clear the trigger for management is the stock assessment and not the landings, the assessment found that the stock is overfished and overfishing is occurring. The DEQ secretary directed DMF to complete the supplement to end overfishing immediately and the MFC recommended moving forward with the supplement. The previous trigger you are describing is for landings above and below levels established in Amendment 1. Once these triggers are hit, the data is reviewed to determine why the triggers got hit. Under Amendment 1, the only time since its adoption that landings fell below the trigger was in 2016 and we completed a stock assessment update which determined the stock was not overfished and overfishing was not occurring.

Siegler said we are still under Amendment 1 triggers and not the supplement. That is not the way it is supposed to work. The supplement should not be used to shut down the fishery. The stock has no issues, there are no reductions needed. What are you protecting by eliminating harvest of the large fish? Zapf said we are not eliminating the harvest of large fish. The intent of the seasonal closures is to protect spawners. An end of year closure allows fish to move out to the ocean and spawn regardless their size. Once in the ocean, harvest is minimal, so there is an added layer of protection. Siegler added that the vast majority of fish or "snakes" coming back into the estuary break up into small groups and do not spawn. The fish have already gone through the spawning process when they start to show back up in the catch.

Klibansky clarified that the amendment is where the management is housed; however, the larger process dictates the steps moving forward when a stock assessment is completed with new information. Scharf added the supplement is a stop gap measure to address overfishing while staff and the PDT work on Amendment 2. Siegler again questioned what triggers a supplement. Scharf clarified, the triggers get the division to look at the data and the stock assessment results dictated the need for a supplement. The 2022 assessment determined that harvest was too high and spawning stock biomass is too low; therefore, the DEQ secretary recommended moving forward with a supplement while staff develop Amendment 2. Siegler said the assessment is changing history because it raised the trigger point by five percent four years ago. There is no problem with the stock and there is a problem with the model being used in the assessment. Zapf noted a correction, in that the threshold to determine overfishing has been the same since original 2002 assessment at 25%. The target was moved from 30% to 35% in the 2016 update.

Tom Smith asked when the reductions are calculated do you also estimate the probability of it meeting its goal? Zapf noted that we do not look at the chance of success for ending overfishing but do for long-term rebuilding. DMF recommend managing to target to increase chances the ending the overfished status. Klibansky noted that supplement has not had final approval yet. Scharf asked about the timing of Amendment 2 and asked when it will be brought back to the AC for recommendations. Scharf further noted that it would be nice to have some lead time for AC members to reach out to stakeholders prior to the next meeting. Klibansky indicated that she will send out a workplan of when the FMPs will come to the AC and that workplans are always subject to change. Currently, the amendment is expected for MFC ACs review in October with final adoption by the MFC in February 2024. Scharf said the AC could set aside some time for more discussion about Amendment 2 in April. Siegler again expressed his concerned

with the supplement and the proposed seasonal closures that will shut down half the state. Zapf said the division plans to have the amendment adopted in February 2024 and unless items in the supplement are adopted under Amendment 2, they will go away.

Siegler asked why management measures are focused on the most valuable part of the fishery (spawners/roe mullet) rather than on the recruitment side (finger mullet) of the fishery? We're still targeting the spawning stock for southern flounder now and they have a similar age structure and migration pattern. How does closing to spawning mullet have a better effect? Zapf explained, the majority of striped mullet commercial landings occur from Oct. 15 – Nov. 15. It's a pulse fishery that occurs over a short period of time. It's very consistent over time; however, the 2022 landings extended further into end of year. The suggested closure period allows fish to move out of estuaries into the ocean to spawn. If the closure occurred earlier in year, say January through July, we would not achieve the needed reductions. Landings from those months combined do not account for much and any the landings could be recouped later in the year. What's good for the fishery is not always what is good for the spawning stock. Siegler noted that he thinks you would get more bang for the buck putting in measures to improve recruitment. Zapf indicated that the supplement should allow for greater recruitment because you are putting more eggs in the system. Siegler had questions on the age structure of the harvested fish. Zapf said the division typically sees fish between 13 and 15-inches at the fish houses; most of these fish are two years of age. Their weight is variable depending on the time of year. Siegler indicated that the two-pound fish make up most of the spawning stock and he would like to see more information on market grades. Zapf indicated that the division plan on exploring this data further in Amendment 2.

PUBLIC COMMENT

No public signed up in advance to speak.

PLAN AGENDA ITEMS FOR THE NEXT MEETING

The next meeting in April will be held in-person. Currently there is no new information to bring to the committees except the striped mullet amendment in October. The committee determined the next meeting will be held in Morehead City and will offer the online option for members who wish to be virtual. Scharf requested agenda topics be sent to the Chair and Vice-Chair for future discussion since this is our committee and our chance to get together and talk about issues for a southern region perspective.

Tom Smith motioned to adjourn; it was seconded by Ken Siegler. The meeting adjourned at 7:38 p.m.



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Jan. 23, 2023

MEMORANDUM

TO: Marine Fisheries Commission
Finfish Advisory Committee

FROM: Jason Rock, Biologist Supervisor
Lee Paramore, Northern District Manager
Fisheries Management Section

SUBJECT: Meeting of the Marine Fisheries Commission's Finfish Advisory Committee, Jan. 12, 2023 for orientation of new members and updates.

The Marine Fisheries Commission's (MFC) Finfish Advisory Committee (AC) held a meeting on Jan. 12, 2023, via webinar and a listening station at the Division of Marine Fisheries Central District Office, Morehead City, North Carolina. Advisory Committee members could attend in either setting and communicate with other committee members. Public comment could occur online if the public signed up in advance and was available to public attending at the listening station.

The following Advisory Committee members were in attendance: Tom Roller, Sarah Gardner, Mike Blanton, Bill Tarplee, Allyn Powell, Lewis Dunn, Larry Lord, David Mense, Brent Fulcher, and Thomas Brewer (Absent: Jeff Buckel, Scott Whitley, Randy Proctor, and Chris Hickman).

Division of Marine Fisheries (DMF) Staff: Lara Klibansky, Hope Wade, Jason Rock, Lee Paramore, Corrin Flora, Justin Lott, Jeff Dobbs, Dan Zapf, Paula Farnell, Steve Poland, Willow Patten, CJ Schlick

Public: Online via Webex: Al Adam and David Sneed. No public were in attendance at the listening station. Seventeen viewers watched on YouTube.

The Finfish AC had ten members present and a quorum was met.

Finfish AC Co-Chair Tom Roller called the meeting to order at 6:06 p.m.

APPROVAL OF THE AGENDA AND APPROVAL OF THE MINUTES

A motion was made to approve the agenda by Mike Blanton. Second by Sarah Gardner. The motion passed unanimously.

A motion was made to approve the minutes from the Finfish AC meeting held on October 20, 2022. Motion by Sarah Gardner to approve the minutes. Second by David Mense. The motion passed unanimously.

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Klibansky described the FMP process, showing the steps of development, and where the MFC ACs are formally brought into the FMPs for their review and input. She noted there are other informal opportunities to provide feedback as well. This AC meeting is an example of an informal opportunity to provide feedback. There are 13 FMPs formally reviewed approximately every five years. Scheduling the reviews can fill up meetings quickly and DMF staff provide the MFC a Workplan as a tracking tool to monitor varying work steps in a plan during development. It is recommended that the AC members review the Workplan at least once a year to see when a plan will come to the AC for your review and input. Many other tools are available on the website – meeting recordings, annual FMP reviews, and the statistics report otherwise known as the “Big Book”. A lot of resources are available to you. Klibansky noted the three DMF staff in the MFC Office. Herself as the Liaison between DMF and the MFC. She introduced Paula Farnell as the new Program Assistant and identified Catherine Blum as the DMF Rule Coordinator. We also have an attorney with the Department of Justice. Klibansky and Farnell are the two main points of contact in the MFC office for the MFC Advisory Committees and MFC Commissioners. Farnell then went over some of the material provided to the AC and noted members can reach out to her by cell phone. After the January AC meetings the office will be sending the committees an overview of the year ahead and links to documents on the website.

Discussion of Stock Assessment 101 Presentation

A Stock Assessment 101 video was sent to the AC to view prior to the meeting. CJ Schlick, Stock Assessment Scientist was also present during the meeting to address any questions on stock assessments. One member noted there is an external peer review for the stock assessment and asked if there is a similar review for the data used in stock assessments. Lee Paramore discussed the internal workshops to evaluate data sources and that one of the Terms of Reference (TOR) for the external peer review is to evaluate the appropriateness of the data used in the stock assessment. CJ Schlick added that the internal Plan Development Team may also include external members if needed to evaluate data sources.

MARINE FISHERIES COMMISSION UPDATE

Klibansky gave an MFC update. She recognized newly appointed MFC commissioner, Sarah Gardner noting that she was sworn in before the Finfish AC meeting in October and participated at the MFC meeting in November. At their meeting in November the MFC discussed joint fishing waters delineation on the rules shared by MFC and NC Wildlife Resource Commission (WRC). The MFC tasked DMF to work with WRC to make progress on a plan moving forward. The MFC approved nominees for Mid-Atlantic Council Appointments. Nominees included: Mike Blanton, Thomas Newman, Robert Ruhle, and Jess Hawkins. The Striped Bass FMP Amendment 2 was adopted by the MFC, which includes management continuing the closure of gill nets above the Ferry Line on the Tar/Pamlico and Neuse rivers. The MFC approved the goal and objectives for Amendment 2 to the Striped Mullet FMP. The MFC also

approved Supplement A to Amendment 1 to allow management measures to be in place sooner than what can be developed through Amendment 2. The Supplement will consider a 22 percent reduction with a season closure from Nov. 7 – Dec. 31. Public comments are being received on the supplement before final approval is considered by the MFC at its February business meeting.

The upcoming MFC meeting is Feb 22 – 24, 2023 at the Doubletree Hotel in New Bern. Items on the agenda include an information paper on false albacore, overviews of the spotted seatrout and striped mullet fisheries, the revision to the latest Blue Crab FMP amendment to update the list of approved diamondback terrapin excluder devices. The blue crab revision will also be provided next week at the Shellfish/Crustacean AC for their consultation. The MFC will also vote on final approval of the striped mullet supplement and final approval of three rules, the one of most interest to the Finfish AC is the mutilated finfish rule which if approved will not be effective until 2024.

Striped Mullet FMP Supplement Update

AC members asked about the public comment opportunities for the striped mullet supplement and staff informed the AC that public comment will be allowed via email prior to the upcoming MFC meeting in February or in person during the public comment period. One AC member noted that landings were up in 2022 and that fishermen in the southern portion of the state will be cut out of the fishery by the supplement. This member felt the closure period is unfair to some parts of the state. Members also suggested commercial landings data be used to manage the stock because it is more reliable than numbers estimated from a stock assessment. Staff discussed the increase in landings the last couple of years and noted they are aware this uptick is not in the current stock assessment. Staff also mentioned that it is difficult to say if the recent increase in landings is due to an increase in the population or more effort in the fishery. The division has seen an increase in our fishery-independent indices the past couple of years as well as some older fish in the fishery although most harvest is still age-2 fish. Another AC member said they have some questions about the 2018 and 2022 stock assessments and would like to discuss them further with staff at a later date. Staff indicated they are willing to meet to discuss the assessments further.

PUBLIC COMMENT

One member of the public signed up to speak at the meeting. Al Adam, of the NC Beach Buggy Association, asked about enforcement during the mullet closure period and if fishermen will be able to use mullet for bait. Klibansky said she would follow up with him after the meeting with the relevant information.

PLAN AGENDA ITEMS FOR THE NEXT MEETING

The next meeting in April will be held in-person. Currently there is no new information to bring to the committees except the striped mullet amendment in October. The committee discussed the location of future in-person meetings. There was discussion about having meetings in Morehead City, Washington, and alternating between locations. Klibansky indicated she would consult further with the committee chairs after the meeting and said there will still be a virtual option for AC members to participate if needed for in-person meetings.

The meeting adjourned at 7:09 p.m.



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Jan. 18. 2023

MEMORANDUM

TO: Marine Fisheries Commission
Shellfish/Crustacean Advisory Committee

FROM: Anne Deaton, Habitat Program Manager, Habitat and Enhancement Section
Tina Moore, Southern District Manager, Fisheries Management Section

SUBJECT: Meeting of the Marine Fisheries Commission's Shellfish Crustacean Advisory Committee, Jan. 17, 2023 for orientation of new members and updates.

The Marine Fisheries Commission's Shellfish/Crustacean advisory committee (AC) held a meeting on Jan. 17, 2023, via webinar and a listening station at the Division of Marine Fisheries, Central District Office, Morehead City, NC. Advisory Committee members could attend in either setting and communicate with other committee members. Public comment could occur online if the public signed up in advance and also if public attended at the listening station.

The following AC members were in attendance: Mike Blanton, Ana Shellem, Mary Sue Hamann, Doug Cross, Mike Marshall, Brian Shepard (came online at 6:15 p.m.), Ted Wilgis, Lauren Burch, Jim Hardin, (Absent: Bruce Morris, Tim Willis, Adam Tyler)

Division of Marine Fisheries (DMF) Staff: Lara Klibansky, Paula Farnell, Hope Wade, Debbie Manley, Corrin Flora, Tina Moore, Anne Deaton, Steve Poland, Carter Witten, Jason Rock, Jeff Dobbs, Lee Paramore, Dan Zapf, Casey Knight, Joe Facendola, Brett Wilson (UNCW), Amanda Williard (UNCW), McLean Seward, Robert Corbett, Laura Lee

Public: None in attendance, 20 viewers watched on YouTube.

Shellfish/Crustacean Chair Mike Blanton called the meeting to order at 6:05 p.m.

Chair Blanton provided some general guidance for order of the meeting. Lara Klibansky went over the ethics statement for the MFC members. No conflict was noted among MFC members to serve on the AC

A call for attendance was performed. The Shellfish/Crustacean AC met quorum.

APPROVAL OF AGENDA AND APPROVAL OF THE MINUTES

A motion was made to approve the agenda by Doug Cross. Second by Jim Hardin. The motion passed without objection.

A motion was made by Ana Shellem to approve the minutes from the Shellfish/Crustacean AC meeting held on October 25, 2022. Second by Doug Cross. Motion passed without objection.

2023 ANNUAL ADVISORY COMMITTEE'S ORIENTATION PRESENTATION

Lara Klibansky thanked all members for volunteering their service on the committee. This presentation focused on the duties of the AC. She started with a brief history on the Division of Marine Fisheries, celebrating its 200-year anniversary this year. The first fisheries specific legislation was passed in 1822 for oysters. To put this long timeline in perspective; in 1822, James Munroe was the fifth President and there were 24 states that comprised the United States.

Fisheries management has been ongoing in NC for a long time and expanded from legislation from a single fishery to many fisheries with both commercial and recreational interests. The Fisheries Reform Act (FRA) adopted in 1997 ushered in new ways to manage fisheries in the state. The FRA is comprehensive legislation forming cooperation between stakeholders, restructured the MFC, mandated the creation of state managed Fishery Management Plans (FMPs) as well as the Coastal Habitat Protection Plan (CHPP), and a new licensing system. General Statute 143B-289.57 establishes the MFC ACs and provides the objectives of the committees to assist the MFC in the performance of its duties.

Klibansky described FMP process, showed the steps of development, and where the MFC ACs are formally brought the FMPs for their review and input. She noted there are other informal opportunities to provide feedback as well. This AC meeting is an example of an informal opportunity to provide feedback. There are 13 FMPs reviewed approximately every five years. Scheduling the reviews can fill up meetings quickly and DMF staff provides the MFC a workplan as a tracking tool to monitor varying work steps in a plan in development. It is recommended the AC members review the workplan at least once a year to see when a plan comes to the AC for review and input. Many other tools are available on the website – meeting recordings, annual FMP reviews, and the statistics report otherwise known as the “Big Book”. A lot of resources are available to the AC. Klibansky noted the three DMF staff in the MFC office, with herself as the Liaison between DMF and the MFC. Paula Farnell is the new Program Assistant and Catherine Blum is the DMF Rule Coordinator. We also have an attorney with the Department of Justice. Klibansky and Farnell are the two main points of contacts in the MFC office for the MFC Advisory Committees and MFC Commissioners. Farnell went over some of the material provided to the AC and noted members can reach out to her by cell phone. After the January AC meeting the office will be sending the committees an overview of the year ahead and links to documents on the website.

Discussion of Stock Assessment 101 Presentation

A video was sent to the AC to review prior to the meeting. Laura Lee was also available online to address any questions on stock assessments. No questions were asked. Mary Sue Hamann thanked staff for preparing the information and noted it was helpful.

MARINE FISHERIES COMMISSION UPDATE

Klibansky followed up on an item this AC requested at their last meeting on the CCA lawsuit. In discussion with the DEQ attorney we can only provide a brief statement. The state did not appeal and the case is continuing in Superior Court. The State's response is due today, Jan. 17, 2023 and we are finishing up the response. No further background can be provided.

Klibansky gave an update on the newly appointed MFC commissioner, Sarah Gardner. Sworn in before the Finfish Standing AC in October and she participated at the MFC meeting in November. At their meeting in October the MFC discussed joint fishing waters delineation on the rules shared by MFC and

NC Wildlife Resource Commission (WRC). The MFC tasked DMF to work with WRC to make progress on a plan moving forward.

The MFC approved nominees for Mid-Atlantic Council obligatory seat. Nominees included: Mike Blanton, Thomas Newman, Robert Ruhle, and Jess Hawkins. The Striped Bass FMP Amendment 2 was adopted, which includes continuing the closure of gill nets above the Ferry Line on the Tar/Pamlico and Neuse rivers. The division is currently developing Amendment 2 to the Striped Mullet FMP as well as a supplement to Amendment 1 to allow management measures to be in place sooner than what can be developed through Amendment 2. The Supplement is looking at about a 22% reduction with a season closure from Nov. 7 – Dec. 31.

The upcoming MFC meeting is Feb. 22 – 24, 2023 at the Doubletree Hotel in New Bern. Items on the agenda include an information paper on False Albacore, overviews on the spotted seatrout and striped mullet fisheries, and the revision to the latest Blue Crab FMP amendment to look at diamondback terrapin excluder devices that is in consultation with this AC tonight. In February, the MFC will be provided the public comments received on the supplement for striped mullet and will vote on its final approval.

Striped Mullet FMP Supplement Update

Klibansky noted DMF staff are working on Amendment 2 while the supplement is open to public comment. The MFC selected their preferred recommendation Option 2 – end of season closure from Nov. 7 – Dec. 31 at its Nov. 2022 business meeting. The closure would apply to both recreational and commercial harvest and is estimated to achieve a 22% reduction. The floor was open for striped mullet leads, Jeff Dobbs or Dan Zapf, to address any questions. No questions were provided from the AC.

BLUE CRAB AMENDMENT 3 REVISION: CONSULTATION FOR DIAMONDBACK TERRAPIN EXCLUDER DEVICE CHANGES

Joe Facendola provided background from the Blue Crab FMP Amendment 3 on Diamondback Terrapin Management Areas (DTMAs) and the devices required to exclude diamondback terrapins (DBT) from crab pots Mar. 1 through Oct. 31 in these designated areas. The issue of diamondback terrapins in crab pots have been discussed in all blue crab FMPs since the later 1990s. Diamondback terrapins have low reproductive output and are vulnerable to impacts from humans, including fishing gears and habitat loss. Independent researchers along the Atlantic and Gulf states of the U.S. have determined crab pots pose a serious threat to their populations as well as coastal development. Amendment 2 passed an MFC Rule in 2014 to allow the DMF Director proclamation authority to impose gear modifications in pots to reduce impacts on DBT. The framework for the criteria behind DTMA's and approved excluder devices for use was adopted in Amendment 3 in 2020. The first DTMA's in Masonboro Sound (Masonboro Island) and the Lower Cape Fear (Bald Head Island) were initiated through a revision in 2020 to Amendment 3 of the Blue Crab FMP and implemented in 2021. The goal is to provide a highly targeted approach to minimize crab loss and maximize DBT survival. His approach considered the seasonality of DBT activity, water depth and distance from shore, DBT presence, consider use of existing designated conservations areas, and stakeholder input. The two areas where DTMA's now exist, off Masonboro and Bald Head islands, had documented DBT presence and there was no development on the islands, so it's not likely many other factors are impacting DBT in these areas except crab pots. Facendola went over the excluders approved for use under the plan and criteria needed to approve new excluder devices. To approve new devices, they are to be built in consultation with industry and evaluated in field studies. The new device should consider cost to crabbers, blue crab loss in catch, while reducing impacts to DBT. There is also a required consultation with the Shellfish/Crustacean Standing AC as part of the criteria in the framework.

University of North Carolina – Wilmington (UNCW) researcher Brett Wilson, graduate student working with Dr. Amanda Southwood-Williard, provided an overview of their work on the use of different funnel designs as DBT excluders. They had two local crabbers working with them to evaluate the crabber proposed modifications to the pot funnels. The sampling used 3 designs: 1) Standard pot as a control with 12 hex meshes at the funnel - Control, 2) A reinforced design with 10-gauge wire and 12 hexagon mesh shrunk to size – RFD, and 3) Narrow funnel design with 9 hexagon mesh at the entrance – NFD. The NFD was designed by crabbers and was successful in the trials; it also gained the most interest from fishermen. Three sites were selected for the study where DBT and blue crabs overlapped. The field trials did triplicate sets of each design, so one set equaled three pots – Control/RFD/NFD. Five to ten sets were completed at each site and fished every 24 hours.

Over 200 DBT were caught over two seasons with the majority being caught in the standard Control pots. The NFD pots had a 74% reductions in DBT and the RFD pots had a 49% reduction in DBT. Further analysis determined that significantly lower numbers of DBT were caught in the RFD and NFD pots when compared to the Control pots. DBT are sexually dimorphic, meaning females tend to grow larger than males, and the NFD pots excluded females more. NFD pots were successful at reducing capture of DBT and modelling on crab loss determined no significant difference between pot types on legal-sized blue crabs caught. The largest crabs were captured in NFD pots.

Comparisons were also conducted in a commercial setting and added to routine fishing operations with observers onboard to capture data on a per pot basis. Sixteen onboard trips were observed with 24 DBT caught in total, 23 from the standard crab pot and one DBT in a RFD pot. No DBT were caught in NFD designs in the observed commercial trips. Comparison of blue crab CPUE showed no significant difference in crab catch between pot types and crab catch was slightly higher in NFD than in the other two pot designs. Soak times were typically 24 hours in duration. The NFD worked well at excluding DBT and retaining crab catch. Wilson noted that he understood that requiring crabbers to modify their pots comes with a cost and also time. The NFD is a less expensive way to modify the gear and can be included in the initial manufacturing of new pots. They are also looking at ways to use hog rings to shrink the funnel entrance by two meshes on each side. They tested these modifications for a few weeks at the end of this summer with similar results. Twelve DBTs were captured all in the standard pots and no difference in the size and CPUE of crabs in the catch. Future work will continue testing on the NFD and expanding to other regions in the state. There was also a separate study conducted in tandem with this one looking at DBT genetics to determine their dispersal and site fidelity. The Baldhead Island DBT seem to be genetically distinct from the DBT in Masonboro Sound.

Hamman asked whether it was worth expanding the sampling of these excluders to areas where DBT are less abundant and how will compliance be handled? Wilson noted it would be worth it in that it shows no reduction in crab catch, in fact the fishermen felt the crab retention rates were better in the NFD pots because the crabs have a harder time escaping the pots once they move in. There are plans to host workshops with crabbers to show them how the design is effective and minimizes crab loss. The definition of the funnel has to be clear in its measurement and mesh requirements so that Marine Patrol can assess and enforce.

Hamman also asked if this would impact the peeler crab fishery? Wilson said they have not looked specifically at the peeler crab fishery. Lauren Burch asked questions on the number of data points collected in the study and whether it is enough to use for these changes. Wilson went into details on the data collected at each site and it was noted the study was robust, considered a gold standard in the sample size compared to other DBT research in the pot fishery. The study also was conducted in a real-world commercial situation and strongly endorsed by the fishermen who worked on the research. Further discussion entailed on costs and time needed to modify the pots. Many crabbers have over 1,000 pots they would have to convert. Ideally there would be a phase-in period for the modifications. When asked if the

requirement would be expanded to other areas less than ten feet deep or 800 feet from shore, Facendola said this was a starting point because of known terrapin occurrences. At the workshop for crabbers, the researchers would like to ask what the life expectancy of a pot is in their area to determine a realistic phase-in period. It was noted that pot durability varies with salinity, lasting a shorter time in higher salinity waters (1-2 years).

Ted Wilgis asked whether there are concerns for the funnels staying rigid and keeping to the same size and is there confidence in maintaining the season in DTMA's from Mar. 1 – Oct. 31 to require excluders to protect the DBT? Wilson noted minimal warping in the funnels throughout the testing and it is really keeping the funnel to the meshes. The research was not conducted much outside the time window, but it is fair to say these months are when DBT are most active. Telemetry work in Masonboro Sound is a little shorter but within the window from Mar. through Oct.

Cross praised the crabber and UNCW for this study and mentioned that once they convert to using the NFD they may not switch back because of the good retention of crabs. It should also be noted the Commercial Fishing Resource Funding committee endorsed and provided the money for this grant. This funding was initially provided to assist in getting NC's classification on the Seafood Watch by Monterey Bay upgraded from red. Dialogue needs to be pushed with Monterey Bay to end red-listing NC crabs. Cross said this needs further discussion at the MFC and need to get both DMF and the MFC to send letters to Monterey Bay. Cross thinks this NFD is beneficial to all potters and suggested giving crabbers a year to switch their gear over.

Shellem noted that stone crab catches are also of importance in Masonboro Sound. She builds her own traps and catches them by hand. Stone crabs are abundant and may want to take into consideration if catches of stone crabs decline when using NFD. Facendola said the study did not take into consideration impacts to stone crabs while using NFD. The next step in the study is to look at bycatch in the samples. Very few stone crab landings occur in the DTMA's.

Blanton brought the discussion back to the rigidity of the NFD, because his concern was that any mesh regardless of size can be manipulated or change in shape due to weakening. He asked if this be addressed with the 10-gauge wire instead or lose the term rigid? Facendola said Marine Patrol had similar concerns with defining the term "rigid" and using 10-gauge wire will lose the ability for the pot to have the NFD manufactured. Requiring the excluders to be rigid also diminishes the appeal and adds an extra step for the crabbers to modify their pots. Blanton added that higher salinity areas degrade the pots quicker and he is unsure how often crabbers in different regions have to replace their pots. Cross noted the easiest way to enforce the NFD is to include a percentage not to exceed the size of the opening. Blanton said easiest way would be for Marine Patrol to have something to use as a measure. Sam Romano really stuck to this work endorsing through the funding groups and working on the water to get the results. This research has been tremendous for the industry and glad to see the positive results as it will likely be needed in more areas.

Cross asked if this committee needs to provide recommendations to take to the MFC. Chair Blanton said he would entertain any motions from the committee. Klibansky said tonight the committee does not need to put forward a motion since the AC is just being consulted about this adaptive management. The committee can put forward a motion though if it wants. Blanton said a supporting motion would be important to be on the record, but not necessary for the MFC to see.

Doug Cross made the motion to support the approval of the NFD for use in DTMA's and support all items including to remove the "rigid" language as provided by DMF. Ana Shellem seconded the motion.

Discussion revolved around the rigid language and whether the tunnel can maintain a certain size. Burch requested a clarification on whether the NFD would take the place of the need for a DBT excluder. Blanton noted that the allowed excluders would be in the revision and include the NFD as one. More discussion ensued on the funnel maintaining its shape and dimensions. Cross suggested a pattern be provided as well to aid crabbers to make adjustment to the pots. Blanton said an expected shape must be kept for it to work as intended.

A friendly amendment was accepted to the original motion. The motion now reads:

Doug Cross made the motion to support the approval of the narrow funnels for use in DTMA's and to remove the option to use a 4 x 16 cm plastic or 10-gauge wire, and "made rigid" language. Also, recommend the Division consider developing a pattern to ensure compliance and enforcement. The motion was seconded by Ana Shellem.

The motion passed with one abstention.

PUBLIC COMMENT

Chris Matteo said he had no planned comments but had a suggestion. Simple solution to maintain the rigidity to the funnel. Shellfish leaseholders with cages use Aquamesh. That may work to maintain a more rigid mesh for the excluder.

PLAN AGENDA ITEMS FOR THE NEXT MEETING

Klibansky said the next meeting in April is scheduled in-person and so far, the only agenda item is the February MFC update. The only other item in the long-term planning for the AC is the Striped Mullet FMP Amendment 2 in Oct.

A meeting location in April will be determined after further discussion amongst staff and the co-chairs. Ana Shellem will chair the next meeting. Blanton noted in discussion with staff leads, the co-chairs had provided a list of items for the upcoming meetings. They would like for the committee to have the opportunity to discuss so the committee members can prepare in advance and be more informed when the FMPs come to them for recommendations. The list of topics include:

- Monterey Bay Seafood Watch red list for blue crabs.
 - The history behind the listing and process to be upgraded to yellow/green on this list.
- Background information on Blue Crab FMP Amendment 3.
 - Review last assessment, timeline for development of new assessment, potential management actions if stock status changes.
- Overview of adaptive management across the various FMPs, including blue crab, and how adaptive management is used.
- Update on the NC State oyster research.
- Background information on Oyster FMP Amendment 4 and moving forward with development of Amendment 5 in 2023.
- Update on the Shellfish Lease program.

The meeting adjourned at 8:15 p.m.



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Jan. 26, 2023

MEMORANDUM

TO: Marine Fisheries Commission
Habitat and Water Quality Advisory Committee

FROM: Anne Deaton, Habitat Program Manager, Habitat and Enhancement Section
Jimmy Harrison, Fisheries Resource Specialist, Habitat and Enhancement Section

SUBJECT: Meeting of the Marine Fisheries Commission's Habitat and Water Quality Advisory Committee, Jan. 18, 2023 for orientation of new members and updates.

The Marine Fisheries Commission's (MFC) Habitat and Water Quality Advisory Committee (AC) held a meeting on Jan. 18, 2023, via webinar and a listening station at the Division of Marine Fisheries, Central District Office, Morehead City, NC. Advisory Committee members could attend in either setting and communicate with other committee members. Public comment could occur online if the public signed up in advance and also if public attended at the listening station.

The following AC members were in attendance: Ana Shellem, Doug Rader, Jack Durham, David Glenn, Joel Fodrie, Nathan Hall, Scott Leahy, Markham Parrish, Lisa Rider, Mark Sonder (Absent: James Hall)

Division of Marine Fisheries (DMF) Staff: Lara Klibansky, Paula Farnell, Hope Wade, Debbie Manley, Corrin Flora, Anne Deaton, Jimmy Harrison, Steve Poland, Jason Parker, Jeff Dobbs, Dan Zapf, Laura Lee

Public: None in attendance, 7 viewers watched on You Tube.

Habitat and Water Quality Chair Ana Shellem called the meeting to order at 6:05 p.m.

Lara Klibansky went over the ethics statement for the MFC members. No conflict was noted among MFC members that serve on the AC.

A call for attendance was performed and a quorum was met.

APPROVAL OF AGENDA AND APPROVAL OF THE MINUTES

A motion was made to approve the agenda by Nathan Hall. Second by Scott Leahy. The motion passed without objection.

A motion was made by Doug Rader to approve the minutes from the Habitat and Water Quality AC meeting held on October 26, 2022. Second by Nathan Hall. Motion passed with one abstention (Mark Sonder).

2023 ANNUAL ADVISORY COMMITTEE'S ORIENTATION PRESENTATION

Klibansky provided a presentation on the MFC orientation, duties of the MFC advisory committees, and the meeting cycle. Lara encouraged AC members to reach out to Lara or other staff if there are any follow-up questions. The presentation focused on the duties of the AC. She started with a brief history on the Division of Marine Fisheries, celebrating its 200-year anniversary this year. The first fisheries specific legislation was passed in 1822 for oysters. To put this long timeline in perspective; in 1822, James Munroe was the fifth President and there were 24 states that comprised the United States.

Fisheries management has been ongoing in NC for a long time and expanded from legislation for a single fishery to many fisheries with both commercial and recreational interests. The Fisheries Reform Act (FRA) adopted in 1997 ushered in new ways to manage fisheries in the state. The FRA is comprehensive legislation forming cooperation between stakeholders, restructured the MFC, mandated the creation of state managed Fishery Management Plans (FMPs) as well as the Coastal Habitat Protection Plan (CHPP), and a new licensing system. General Statute 143B-289.57 establishes the MFC ACs and provides the objectives of the committees to assist the MFC in the performance of its duties.

Klibansky described the FMP process, showed the steps of development, and where the MFC ACs are formally brought the FMPs for their review and input. The quarterly AC meetings will also include staff updates on various issues to keep members updated of MFC business, and to provide opportunity to ask questions and provide feedback, such as tonight's informal chance to discuss striped mullet with biologists. There are 13 FMPs reviewed approximately every five years. Scheduling the reviews can fill up meetings quickly and DMF staff provides the MFC a workplan as a tracking tool to monitor varying work steps in development of a FMP. It is recommended the AC members review the workplan at least once a year to see when a plan comes to the AC for your review and input. Many other tools are available on the website – meeting recordings, annual FMP reviews, and the statistics report otherwise known as the “Big Book”. A lot of resources are available to you. Klibansky noted the three DMF staff in the MFC office, with herself as the Liaison between DMF and the MFC, Paula Farnell is the new Program Assistant, and Catherine Blum is the DMF Rule Coordinator. There is also an attorney with the Department of Justice. Klibansky and Farnell are the two main points of contacts in the MFC office for the MFC Advisory Committees and MFC Commissioners. Farnell went over some of the material provided to the AC and noted members can reach out to her by cell phone. After the January AC meeting the office will be sending the committees an overview of the year ahead and links to documents on the website.

At the conclusion of the presentation, Mark Sonder asked how AC members could provide recommendations to the MFC. Klibansky responded that discussion from AC meetings, issues the committee wants to put forward to the MFC, or any motions made would be included in the minutes. All meeting documents are provided to the MFC at their business meetings. At the last MFC meeting, the Vice Chairman requested that committee chairs be available for questions at MFC meetings. Sonder also asked how to provide suggested topics for future AC meetings. Klibansky responded that at the end of the meetings, there's time to propose items for upcoming meetings. Sonder then asked if AC members could submit questions in the days after meetings. Lara Klibansky responded that they could and that these would then be discussed with staff leads and committee chairs when working on the next meeting agenda.

Doug Rader noted that it's his view that the job of the AC is to consider a wide array of issues that the AC may entertain, then come to a consensus on which to move forward to the MFC. Those could be related to FMPs under development, or not. Because habitat and water quality effects managed species, both habitat and FMP needs should be intertwined, perhaps beyond what a stock assessment-driven model by itself might bring. Rader noted that while the MFC regulatory purview extends primarily to the direct

regulation of fisheries, input through the CHPP Steering Committee (SC) allows integrated management for fisheries since the CHPP SC includes CRC and EMC members that do have regulatory authority over habitat and water quality issues. While the AC can request agenda items, members should recognize that staff will need adequate time to plan and address agenda items. Rader also said the AC needs time to hammer out priority topics, develop a formal action, and then work with staff to present that for response from the commission.

Discussion of Stock Assessment 101 Presentation

A video was sent to the AC to review prior to the meeting. Laura Lee was available to address any questions on stock assessments. Rader asked Lee about the extent that habitat and water quality issues are incorporated into the stock assessments and whether/how the AC can provide useful information for stock assessments. Lee responded that they're still trying to understand correlation between habitat/water quality and population dynamics. It is important to encourage research in those areas so we can improve our understanding and model those relationships. Habitat and water quality variables are used in development/computing of indices in stock assessment models. Shellem indicated that at a previous striped mullet meeting, commercial fishermen discussed their concerns with water quality impacting the stock assessments more than anything, including nets. Shellem asked what kind of information or data can be gathered to bring back to the AC to aid in discussing this controversial issue. Rader said it would be good to get a general understanding of what is known about water quality in relation to striped mullet and then work through the plan thinking about what additional information is needed to improve management outcomes for fishery.

Hall noted that the North Carolina Policy Collaboratory has funded a research project through UNC, and his work in this project involves looking at relationship of water quality to fisheries. He then asked what kind of habitat and water quality conditions are relevant for striped mullet. He can look at the available data and maybe provide answers to these questions through this and other funded projects.

Rader agreed with Hall and suggested framing questions about individual species in terms of broader systems. Start with the species life history – 1) where and when are they at different life stages, and 2) what are the habitat/water quality threats and opportunities in those locations that could be affecting the species. Dan Zapf noted that as part of Amendment 2 of striped mullet FMP, they do a review of the life history and habitat characteristics that are important for striped mullet. It is difficult to pin down specific habitat variables that are important to striped mullet life history because their life history is diverse, and are habitat generalists. Striped mullet spawn in the ocean, then grow and mature in estuaries. Most are observed in mid-salinity upper estuary habitats, but they have been seen very far up the rivers this year due to weather conditions. As Amendment 2 is developed, the team will be putting together life history and habitat and water quality items that are important for striped mullet. Likely won't have anything to provide for next meeting. Klibansky asked if we have this information in annual FMP updates that can be sent to the group, such as the research needs for specific species. Zapf responded that some of it is available in the annual update (<https://deq.nc.gov/about/divisions/marine-fisheries/managing-fisheries/fishery-management-plans>). The 2022 stock assessment has detailed information on research that's been going on regarding habitat and life history characteristics for striped mullet, so this is a really good resource. Deaton added that there's info in 2016 CHPP (source document) and 2021 CHPP Amendment (Habitat Mapping and Monitoring Issue Paper) about water quality trends in different river basins based on DWR water quality monitoring data.

Rader asked Klibansky to remind everyone of upcoming deadlines/forthcoming FMP work. Klibansky responded that this information should be in the MFC workplan and the most recent upcoming FMP updates include striped mullet, spotted seatrout, and oyster/clam. Corrin Flora noted that the blue crab stock assessment update is likely to happen this year. Depending on what the stock assessment update

shows, it may trigger some adaptive management items. This item would go to the regional and shellfish/crustacean ACs, and probably to HWQ AC as well. Rader wanted to ensure that the AC understands that the next couple years will have a broad spectrum of species, habitats, and issues.

Mark Parrish noted that habitat and water quality has been decimated in his area and asked about any studies being done on bay scallops and SAV. Deaton responded that there have been studies on bay scallops but that was from a while ago. Joel Fodrie noted scallops have been so patchy that studies/experiments in real time are difficult. SAV has become more patchy in some areas so they are looking into whether this may be impacting scallop populations. They have also been looking at relationship of bay scallops to water temperatures and predators. Jeff Dobbs noted there's a lot of work in Virginia coming from the hatchery side, but unclear as to the findings of those studies. Some studies in New York have filled in some data gaps. Compiling what is currently known would be helpful. Rader asked Deaton for verification that SAV is a priority habitat under CHPP. Deaton responded yes and noted that the division has a monitoring program to determine if the scallop fishery can open, however they have remained low, restricting harvest in most areas, except for occasional openings. There is local information that scallops in the southern part of the state (Onslow/Pender Counties) were on an uptick, but then declines were observed, possibly due to ray predation. Parrish noted that the decline in SAV in the Sound area has really seemed to correlate to the stock issues with numerous species, but noted that predation is also causing stock declines. Habitat and water quality could be the problem (salinity, acidity, temperature, etc.), as loss of SAV removes protective habitat and food resources for many species. Deaton noted that Bogue Sound has had the highest SAV loss for high salinity water bodies, based on mapping and monitoring. Klibansky suggested bringing this up at our next meeting. Rader indicated that that would be useful, particularly if it's presented from a scallop-SAV perspective.

MARINE FISHERIES COMMISSION UPDATE

Klibansky followed up on an AC request from their last meeting on the CCA lawsuit. In discussion with the DEQ attorney we can only provide a brief statement. The state did not appeal and the case is continuing in Superior Court. The State's response is due today, Jan. 17, 2023 and we are finishing up the response. No further background can be provided.

Klibansky gave an update on the newly appointed MFC commissioner, Sarah Gardner. Sworn in before the Finfish Standing AC in October and she participated at the MFC meeting in November. At their meeting in October the MFC discussed joint fishing waters delineation for the rules shared by MFC and NC Wildlife Resource Commission (WRC). The MFC tasked DMF to work with WRC to make progress on a plan moving forward.

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The upcoming MFC meeting is Feb 22 – 24, 2023 at the Doubletree Hotel in New Bern. Items on the agenda include an information paper on False Albacore, overviews on the spotted seatrout and striped mullet fisheries, the revision to the latest Blue Crab FMP amendment to look at diamondback terrapin excluder devices that was in consultation with the Shellfish/Crustacean AC this week. In February, the MFC will be provided the public comments received on the supplement for striped mullet and will vote on its final approval.

Striped Mullet FMP Supplement Update

Klibansky noted DMF staff are working on Amendment 2 while the supplement is open to public comment. The MFC selected their preferred recommendation Option 2 – end of season closure from Nov. 7 – Dec. 31 at its meeting in Nov. The closure would be to both recreational and commercial harvest estimated to achieve a 22% reduction. The floor was open for striped mullet leads, Jeff Dobbs or Dan Zapf, to address any questions.

Parrish asked what the Option 2 closure was based on. Zapf replied that it was based on the spawning season. The fish are moving into the ocean during that period to spawn and they become more vulnerable to the fishery while they're moving in schools. That is also the period when highest landings occur, specifically from October 15 through November 15. Targeting the season closure during this time was the only realistic way to have a reduction in commercial landings. It was also based on the life history of the species. Parrish responded that he thought the largest factor affecting stripe mullet is the roe fishery - what was once a local delicacy is now international and that is causing rising prices and targeting of striped mullet roe. When you target a species for its roe, it is pushed towards extinction. Fishermen understand this and appreciate that there is still time before closure to have a market for striped mullet, keeping it commercially viable while allowing spawning migrations to maintain the stock. It was also noted that the time of year restriction is not an arbitrary date and is actually aimed at having the greatest benefit on stock.

Sonder said that when it comes to illegal/unmarked gillnets, the contents of these nets should be documented for conservation and science purposes. He asked why the public cannot take photos of the contents or be made aware of the exact contents of illegal gillnets. Zapf responded that we do have an interest in what's being caught/harvested in the gillnet fishery. The DMF gets harvest information from commercial trip tickets. But regulations on certain species result in discards. Through the gill net observer program, data is collected on everything in the nets (including harvest, discards, and any protected species), but only a percentage of all trips are observed. In NC, there is a law that prohibits the public from interfering with commercial fishing gear. Sonder replied that he meant not necessarily interfering/disrupting, just to know what is in them and that he has been told not to touch or photograph nets. Officer Parker said that if you see any illegal net, call Marine Patrol immediately and they can inspect nets and deal with those as necessary. Officer Parker also noted that the public frequently submit photos to show the location of a net and that is fine, but the public is not allowed to pick up gill nets because it's a permitting/licensing issue. Sonder asked if Marine Patrol document what's in the net (species, how many, etc.)? The Marine Patrol officer replied that the information would be included in the incident report but a variety of factors may affect the detail of what is recorded. Marine Patrol do try to include as much detail as possible on net contents.

PUBLIC COMMENT

There was no public comment.

PLAN AGENDA ITEMS FOR THE NEXT MEETING

Klibansky said the next meeting in April is scheduled in-person and so far, the only agenda item is the February MFC update. The only other item in the long-term planning for the AC is the Striped Mullet FMP Amendment 2 in Oct.

Deaton provided habitat and water quality related information requested at the previous meeting. A Water Quality Summit was held by NCCF, Pew, and DEQ to kick off forming a public-private partnership to

engage in actions to improve water quality, which was a recommendation in the CHPP. Objectives of the Summit were to provide outreach on the state of NCs coastal water quality and how that impacts stakeholders (included farming, fishing, and city representation), educate them on the value and success of public private partnerships, and recruit continuing participation CHPP water quality actions. Stakeholders gave presentations that show how their local area is being impacted by water quality. There were breakout groups to brainstorm on specific actions that could be taken. This resulted in forming two sub workgroups – Working Land and Waters Workgroup and Conservation and Coastal Resilience Workgroup. The former has met and is working on drafting a resolution to send to the General Assembly expressing the need for additional state appropriations for Department of Agriculture’s agricultural cost share program This program allows farmers to voluntarily implement BMPs to improve water quality. The current amount is relatively low and there is more demand than funds.

DWR is continuing to develop water clarity standards through a Nutrient Criteria Development Plan. Water clarity standard language has been drafted as well as a white paper written by Scientific Advisory Council (SAC) members. Additional steps are needed before going to the EMC for review later this year. Once there is a standard, exceedances will have to address nutrient and sediment levels. It’s likely that this will primarily require addressing runoff rather than point sources. Other CHPP implementation underway is interagency planning on how to update wetland maps, enhancing shellfish mapping and monitoring, and continuing to work with APNEP SAV Team on SAV mapping and monitoring.

Deaton reviewed a table provided to the AC in their meeting materials. It lists the habitat and water quality actions in the most recent Oyster and Clam FMPs and the status of those actions. She noted that this is an example of what staff is compiling for all of the FMPs as requested by the HWQ AC. They will be finalizing the spreadsheet and can provide it to the AC as a complete file or by species. AC members can review these at a future meeting and provide input on prioritizing what has not been completed.

APNEP Comprehensive Conservation Management Plan (CCMP) is currently being updated. It is expected to be completed this year.

Deaton provided information on where to find data on fish kills & algal blooms. The DWR has an interactive map of reported and investigated algal blooms and fish kills. There are also reports that include details on species and environmental conditions.

<https://ncdenr.maps.arcgis.com/apps/dashboards/7543be4dc8194e6e9c215079d976e716>

There is also information in 2016 and 2021 CHPP amendments.

<https://deq.nc.gov/about/divisions/marine-fisheries/habitat-information/coastal-habitat-protection-plan>

Another source of water quality information is the UNC-CH MODMON website, although it is specific to the Neuse River. This site contains data pertaining to water quality conditions, as well as a list of publications to look up references utilized. They also post updates on the website. This can be used as an indicator of stress in NC estuaries. The AC may be interested in a presentation on this data/project and AC member Nathan Hall is directly involved with it.

<https://paerllab.web.unc.edu/modmon/>

Future informational agenda items include striped mullet habitat and water quality concerns, habitat and water quality recommendations in FMPs, update on South Atlantic Fishery Management Council (SAFMC) work on climate vulnerability assessments, new information on shellfish and water quality trends, and conditions for striped bass spawning migrations (flow, obstructions, etc.)

Rader noted the spreadsheet should be very helpful moving forward and can be used as a framework as FMPs cycle through to help understand the most important issues. Regarding shellfish and water quality trends, there is information available in the 2016 CHPP Amendment and from the Shellfish Sanitation

section. Rader mentioned the climate vulnerability assessment and generalized that for the committee. Rader discussed how changes due to climate change such as the prevalence of intense storms and droughts are changing the system and we need to understand how these system changes impact habitat and water quality, recruitment, habitat suitability for life history stages, development, and FMP outcomes. Deaton suggested that the AC invite a NOAA scientist to give a presentation on the climate vulnerability assessment. A powerpoint on NOAA South Atlantic Fisheries Science Center Climate Vulnerability Assessment can be found here: https://safmc.net/documents/2022/11/fc3_a5b_esr-cva-update_dec2022.pdf/ . Rader added staff should decide on the best way to brief the AC on the topic (coastwide and locally) so the AC is up to date with what to expect.

Rader asked AC members to bring up any other future topics. He mentioned scallop harvest related to relationships between predators, population, and habitat concentrations. He also said there is more to know about SAV bed dynamics among species that use those areas.

Hall noted that he hasn't seen data on changes in inlet dynamics, which is important because most estuaries are behind the Outer Banks with just the few inlets separating them from the ocean. How will a greater exchange with the ocean impact fisheries/habitats/etc? Rader replied that previous studies looked at general info on likelihood of stability in the Outer Banks area. They discussed getting someone to brief the AC on changing inlets and review NOAA's latest SLR models and how this will affect the inlets and subsequently other habitats and species.

Scott Leahy brought up the issue of waterfront development impacts on fish habitat. He recently went through the CAMA process for building a dock. His takeaway from this process was that for a small permit fee, he could encroach on public trust resources with no mitigation required. For example, installing a living shoreline or constructing an oyster reef. Regarding his dock, he was told he could not put oysters under his own dock to voluntarily mitigate impacts (ie. Under Dock Oyster Culture permit) because it's in closed shellfish harvest waters. He suggested looking at mitigation strategies for public development. Rader replied that the CHPP legislation originally had intent to look at system-wide needs and habitat losses and put in place mitigation/avoidance/offset programs. He suggested it could be useful to pick a habitat type at risk and look at a mitigation strategy pilot program (possibly a voluntary mitigation bank).

Sonder asked if MFC has authority to address hog farm impacts to coastal waters. He noted that it's been well documented that hog farm lagoons (upstream of coast) overflow, which end up in the waterways. Can the MFC put something forward regarding these farms, since their impacts on habitat, water quality, and species have been well documented? Deaton replied that there's a moratorium on new hog farms in the flood plains. There was also a buy-out program that bought out some of the farms. They are regulated by the EMC. There are compliance checks and staff investigations of lagoons. MFC does not have direct authority over hog farms, but the issue could be brought to the CHPP SC. The MFC or the CHPP SC could send a letter to the EMC about their concerns. Sonder replied that there have been lots of letters and lawsuits over many years, yet the problem exists. Lisa Rider noted that the Coastal Carolina Riverwatch has lots of information related to animal farming and agricultural impacts on waterways and habitats. (<https://coastalcarolinariverwatch.org/white-oak-new-river-alliance/>). There was a year-long program that included both recreational and commercial fishermen. A survey among NC fishermen found the primary concern among fishermen was industrial agriculture and factory farming. She said that right now, "boots on the ground" advocacy is what is needed. Rider noted that if the AC made a recommendation to the MFC to raise their concerns to others that have authority over this, it would go a long way to addressing the issue. The lobbying power of fishermen could result in significant change. Sonder asked if there were penalties for violations. Rider replied that much like those that develop illegally, they are given time to get into compliance, but runoff issues may still occur from these facilities.

Jack Durham wanted to know how to get everyone's contact info. Klibansky replied that DMF staff are not allowed to share information, but members can contact each other, and give Klibansky permission to share their contact information.

The meeting adjourned at 8:11 p.m.



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

January 26, 2023

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: William Brantley, Grants Program Manager, Administrative and Maintenance Services Section

SUBJECT: December 8, 2022, Commercial Fishing Resource Fund Committee Meeting

Issue

The N.C. Commercial Fishing Resource Funding Committee met jointly with the N.C. Marine Fisheries Commission Commercial Resource Fund Committee at 6:00 p.m. on Thursday, December 8, 2022, through Webex to consider funding for their 2023 funding cycle.

Findings

The joint committees approved funding for a project titled, "Trophic impacts of the invasive blue catfish in the Albemarle Sound ecosystem." Two other proposals were not approved for funding.

Action Needed

For informational purposes only, **no action is needed at this time.**

Attachments

- 1) Draft meeting minutes from the December 8, 2022 joint meeting



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

MEMORANDUM

TO: N.C. Marine Fisheries Commission Commercial Resource Fund Committee and the Funding Committee for the N.C. Commercial Fishing Resource Fund

FROM: William Brantley, Grants Program Manager
Division of Marine Fisheries, NCDEQ

DATE: January 26, 2023

SUBJECT: MFC Commercial Resource Fund Committee and Funding Committee for the N.C. Commercial Fishing Resource Fund Meeting Minutes

The MFC Commercial Resource Fund Committee and the Funding Committee for the N.C. Commercial Fishing Resource Fund met at 6:00 p.m. on Thursday, December 8, 2022, through Webex. The following members attended:

MFC Commercial Resource Fund Committee: Chairman Doug Cross, Mike Blanton, Ana Shellem

Funding Committee for the N.C. Commercial Fishing Resource Fund Members: Chairman Ernest Doshier, Glenn Skinner, Steve Weeks, Britton Shackelford, and Doug Todd.

Absent: Gilbert Baccus

Public Comment: Public comment was received through webpage and US mail

Approval of Agenda and Minutes

Chairman Ernest Doshier and Mike Blanton called the meeting to order for the Funding Committee for the N.C. Commercial Fishing Resource Fund and the MFC Commercial Resource Fund Committee. William Brantley read the conflict-of-interest reminder, and no conflicts were noted by the Chairmen. Brantley conducted a roll call for both committees. One member was absent at the time of roll call for the MFC Commercial Resource Fund Committee. One member was absent from the Funding Committee for the N.C. Commercial Fishing Resource Fund.

The meeting agenda and minutes were reviewed.

Motion by Glenn Skinner to approve the agenda. Second by Doug Todd. Motion passed unanimously through a roll call vote of present members.

Motion by Ana Shellem to approve the agenda. Second by Mike Blanton. Motion passed unanimously through a roll call vote of present members.

Motion by Glenn Skinner to approve the minutes from the September 29, 2022 meeting. Second by Steve Weeks. Motion passed unanimously through a roll call vote of present members.

Motion by Ana Shellem to approve the minutes from the September 29, 2022 meeting. Second by Mike Blanton. Motion passed unanimously through a roll call vote of present members.

William Brantley briefed the committees on the scope of the meeting, which was to review the three RFP applications that were previously tabled. Comments from the prior discussion on the proposals were summarized and sent to the applicants for their response. Each applicant provided a response, and these were attached in the meeting packet for the joint committee review.

Public comment was sent to the members on December 7, 2022; two comments were received.

CFRF REQUEST FOR PROPOSALS (RFP) REVIEW

Motion by Glenn Skinner to bring the following bring the following proposals off the table: *Water quality for fisheries: Addressing marine debris impacts to coastal commercial fisheries NC; Tropic impacts of the invasive blue catfish in the Albemarle sound ecosystem; and Rapid response alerts for consumer education.* Second by Steve Weeks. Motion passed unanimously through a roll call vote of present members.

Chairman Doug Cross joined the meeting.

Motion by Mike Blanton to bring the following bring the following proposals off the table: *Water quality for fisheries: Addressing marine debris impacts to coastal commercial fisheries NC; Tropic impacts of the invasive blue catfish in the Albemarle sound ecosystem; and Rapid response alerts for consumer education.* Second by Ana Shellem. Motion passed unanimously through a roll call vote.

Water quality for fisheries: Addressing marine debris impacts to costal commercial fisheries in NC: Chairman Doshier called for discussion on the proposal. Mike Blanton noted the importance of plastics and marine debris, but also expressed concerns on prioritization of the proposal efforts and industry impacts. Sampling efforts and distinguishing the impacts on species during different milestones of life history was discussed. Ana Shellem noted the clarification of the sampling area would be beneficial. Steve Weeks stated that he would like to

see an opportunity to rectify the plastics problem versus studying it. Chairman Cross called for a motion.

Motion by Mike Blanton to not approve the project titled *Water quality for fisheries: Addressing marine debris impacts to coastal commercial fisheries in NC* as presented. Second by Ana Shellem. Motion passed unanimously through a roll call vote.

Motion by Doug Todd to not approve the project titled *Water quality for fisheries: Addressing marine debris impacts to coastal commercial fisheries in NC* as presented. Second by Glenn Skinner. Motion passed unanimously through a roll call vote of present members.

Trophic impacts of the invasive blue catfish in the Albemarle sound ecosystem: Mike Blanton noted that after reading the response by the applicant, he understood the flexibility on sampling areas and was in support of the proposal. Glenn Skinner stated that he supported it as well, and in the future, the research may lead toward future management.

Motion by Ana Shellem to approve the project titled *Trophic impacts of the invasive blue catfish in the Albemarle sound ecosystem* as presented. Second by Mike Blanton. Motion passed unanimously through a roll call vote.

Motion by Glenn Skinner to approve the project titled *Trophic impacts of the invasive blue catfish in the Albemarle sound ecosystem* as presented. Second by Britton Shackelford. Motion passed unanimously through a roll call vote of present members.

Rapid response alerts for consumer education: Mike Blanton cited concerns on personnel costs in the proposal; however, he expressed support for the content creation portion of the application. This could lead to an obligation of the joint committees for long term funding. Chairman Cross and Chairman Doshier noted there could be some duplicative efforts in the proposal from what was already funded by the committees. Britton Shackelford stated concerns on promoting the fishing industry over other priorities. Glenn Skinner discussed the differences between the Always NC Fresh campaign and the NC Catch proposal; with emphasis on there was no obligation for long term funding. Skinner inquired about partial funding of the proposal, one year at a time instead of a full term. Chairman Cross agreed to consider discussion on funding the proposal in one-year increments. Blanton reiterated that this was still somewhat duplicative, and would have preferred to have seen a proposal with a definitive start and end milestone. Skinner noted that this proposal would support sustainable commercial fishing in the state. Steve Weeks supported funding the proposal for one year, stating the proposal had differences between what was already funded, and could provide engagement opportunities for the consumers. Chairman Cross noted the importance of the consumer in the management process.

Motion by Doug Cross to fund the project titled *Rapid response alerts for consumer education* for one year at \$150,000 with the stipulation that there is collaboration with the committees. Motion fails for lack of a second.

Motion by Mike Blanton to not approve the project titled *Rapid response alerts for consumer education* as presented. Second by Ana Shellem. Motion passed with Blanton and Shellem voting ‘aye’ and Cross abstained.

Motion by Glenn Skinner to not approve the project titled *Rapid response alerts for consumer education* as presented. Second by Britton Shackelford. Motion passed with a roll call of present members, with Shackelford, Skinner, Todd, and Doshier voting ‘aye’ and Weeks abstained.

Issues from Committee Members

Chairman Cross asked for members to go ahead and begin considering projects for the next RFP. He would like the Committees to consider the issues with Seafood Watch program and their nominal listing of the blue crab industry in North Carolina.

Blanton stated he appreciated each of the members and the quality of discussion that is offered for each proposal these committees receive. He also noted that he would like to discuss how to take the Always NC Fresh campaign to a new level in the future.

ADJOURNMENT

Motion by Mike Blanton to adjourn. Second by Ana Shellem. Motion passed unanimously through a roll call vote.

Motion by Glen Skinner to adjourn. Second by Britton Shackelford. Motion passed unanimously through roll call vote of present members.

Meeting adjourned.

WB

NC Marine Fisheries Commission

Collaborative Coastal Habitat Initiative Resolution

February 2023 Business Meeting

01 Collaborative Coastal Habitat Initiative Resolution

**RESOLUTION ADVOCATING INCREASED FUNDING FOR
VOLUNTARY COST-SHARE PROGRAMS THAT WILL HELP
LANDOWNERS IMPROVE THEIR PROPERTY AND SIGNIFICANTLY
REDUCE NUTRIENT LOADING IN NORTH CAROLINA’S COASTAL
WATERS**

We the undersigned endorse and approve immediate implementation of the non-regulatory actions described below. We strongly advocate that this Resolution immediately be shared with key State and Federal agencies and decision-makers that have the authority to significantly increase funding for landowner cost-share programs already proven to greatly reduce harmful nutrient loading in the State’s coastal waters.

Resolved:

WHEREAS, Article XIV, Section 5 of our Constitution, entitled “Conservation of Natural Resources,” expressly provides: “It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty.”

WHEREAS, much of the coastal economy in North Carolina depends on clean water to thrive and grow;

WHEREAS, excessive amounts of nitrogen and phosphorus currently entering the State’s coastal waters are well-documented as significantly contributing to one of North Carolina’s most widespread, costly, and continuing water quality problems;

WHEREAS, while nitrogen and phosphorus are nutrients that are natural parts of our aquatic systems and important for the growing of crops, when too much nitrogen and phosphorous enter the State’s waters they cause a wide range of pollution issues that have negative effects on our streams, rivers, lakes, bays, sounds, and other coastal waters, and are causing serious environmental and human health issues that adversely affect our fisheries, wetlands, estuaries, beaches, parks, recreational areas, open lands, places of beauty, and the ability of our citizens to safely use and enjoy these important public resources – all to the detriment of property owners, fishermen, recreational businesses, tourism, real estate, local communities and our entire State economy;

WHEREAS, these excessive nutrients cause algal blooms that result in large fish kills, significant loss of submerged aquatic vegetation, and otherwise endanger public health;

WHEREAS, the Coastal Habitat Protection Plan Amendment approved by the Environmental Management Commission, Marine Fisheries Commission and Coastal Resources Commission in 2021 calls for adoption of voluntary measures to help landowners reduce the amount of these nutrients entering the State’s waters;

WHEREAS, there are a wide range of proven best management practices and cost share programs already available to landowners that are proven non-regulatory ways to significantly reduce the amount of excess nutrients that reach the State’s waters;

WHEREAS, these proven non-regulatory programs currently are underfunded and in need of data-driven strategic efforts to focus them where the needs are greatest;

WHEREAS, these same best management practices frequently provide concurrent benefits that can help our citizens to increase the productivity of their lands, reduce flooding, and make land uses more resilient to extreme weather;

WHEREAS, the current funding levels for these landowner assistance programs have not kept pace with population growth or price increases in our economy;

WHEREAS, these programs are needed by landowners in both rural and urban areas, and especially in watersheds that are near the State's coastal waters and the rivers, streams, creeks and tributaries that flow into these coastal waters;

WHEREAS, the 2021 CHPP Amendment recommends forming a public-private partnership of stakeholders to advance voluntary water quality protection to safeguard coastal habitats such as SAV, wetlands, and oyster reefs through a variety of strategies; and

WHEREAS, a public-private stakeholder group was organized by North Carolina Department of Environmental Quality, and that group requests that interested parties endorse this resolution to help expand voluntary cost-share programs to improve coastal water quality.

NOW IT IS RESOLVED THAT:

The undersigned fully support a significant increase in one-time, but more importantly in reoccurring funding for cost-share programs that will assist landowners in managing and reducing the amount of nutrient runoff into the State's waters. We call upon our State's decision-makers to expeditiously address and evaluate how to most effectively expand these already proven and effective cost-share programs with sufficient annual planning, staffing, and funding. We further call upon our State's decision-makers to use their best efforts to further increase the effectiveness of these proven programs by communicating and coordinating with appropriate Federal agency partners.

We the undersigned pledge to work together with each other and our state's decision-makers and leaders to expeditiously increase funding and staff support for these proven cost-share programs, thereby significantly reducing unhealthy nutrient loading in our State's waterways and thereby greatly enhancing our State's economic health.

Director's Report

February 2023 Business Meeting

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Atlantic States Marine Fisheries Commission

2023 Winter Meeting Summary

Sustainable and Cooperative Management of Atlantic Coastal Fisheries

2023 Winter Meeting
January 31 – February 2, 2023

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

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ATLANTIC HERRING MANAGEMENT BOARD (JANUARY 31, 2023)

Meeting Summary

The Atlantic Herring Management Board met to consider setting specifications for the 2023-2025 fishing years for Atlantic herring.

In September 2022, the New England Fishery Management Council (NEFMC) voted on a 2023-2025 specifications package which was later submitted to NOAA Fisheries for review and approval. NEFMC's recommended specifications are based on the 2022 Atlantic herring stock assessment and recommendations from the NEFMC Scientific and Statistical Committee, which are consistent with the Atlantic herring biomass-based control rule and with the Atlantic herring rebuilding plan. NOAA Fisheries is planning to publish an interim final rule in February 2023 to implement the 2023-2025 specifications package. The Board adopted the 2023-2025 specifications package as recommended by NEFMC, contingent on the final rule being published by NOAA Fisheries.

For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at EFranke@asmfc.org.

Motions

Move to adopt the following specifications for the 2023-2025 fishing years for Atlantic herring as recommended by the New England Fishery Management Council, contingent on the final rule being published by NOAA Fisheries:

For 2023

- Annual Catch Limit (ACL) = 12,429 mt
- Domestic Annual Harvest = 12,429 mt
- Area 1A Sub-ACL = 3,592 mt
- Area 1B Sub-ACL = 534 mt
- Area 2 Sub-ACL = 3,455 mt
- Area 3 Sub-ACL = 4,847 mt

For 2024

- Annual Catch Limit (ACL) = 19,189 mt
- Domestic Annual Harvest = 19,189 mt
- Area 1A Sub-ACL = 5,546 mt
- Area 1B Sub-ACL = 825 mt
- Area 2 Sub-ACL = 5,335 mt
- Area 3 Sub-ACL = 7,484 mt

For 2025

- Annual Catch Limit (ACL) = 23,961 mt
- Domestic Annual Harvest = 23,961 mt
- Area 1A Sub-ACL = 6,925 mt for 2025
- Area 1B Sub-ACL = 1,030 mt for 2025
- Area 2 Sub-ACL = 6,661 mt for 2025
- Area 3 Sub-ACL = 9,345 mt for 2025

For all three years:

- Border Transfer = 0 mt each year
- Fixed Gear Set-Aside = 30 mt each year
- Research Set-Aside as % of Sub-ACLs = 0% each year

Motion made by Ms. Griffin and seconded by Mr. Reid. Motion passes by unanimous consent.

AMERICAN LOBSTER MANAGEMENT BOARD (JANUARY 31, 2023)

Press Release

**American Lobster Draft Addendum XXVII Approved for Public Comment
*Addendum Considers Measures to Increase Protection
of Spawning Stock Biomass of the Gulf of Maine/Georges Bank Stock***

Arlington, VA – The Commission’s American Lobster Management Board approved Draft Addendum XXVII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster for public comment. The Draft Addendum considers implementing management measures – specifically gauge and escape vent sizes – to provide additional protection to the spawning stock biomass (SSB) in the Gulf of Maine/Georges Bank (GOM/GBK) stock. The Draft Addendum also considers immediate action upon final approval to standardize some management measures within and across the Lobster Conservation Management Areas (LCMAs) that include the GOM/GBK stock.

The Board initiated the Addendum as a proactive measure to improve the resiliency of the GOM/GBK stock. Since the early 2000s, landings in the GOM/GBK stock have exponentially increased. In Maine alone, landings have increased from 57 million pounds in 2000 to a record high of 132.6 million pounds in 2016. Maine landings have declined slightly but were still high at 97.9 million and 108.9 million in 2020 and 2021, respectively. However, since 2012, lobster settlement surveys throughout the GOM have generally been below the time series averages in all areas. These surveys, which measure trends in the abundance of juvenile lobsters, can be used to track populations and potentially forecast future landings. Persistent lower densities of settlement could foreshadow decline in recruitment and landings. In the most recent years of the time series, declines in other recruitment indices have also been observed.

Given the economic importance of the lobster fishery to many coastal communities in New England, especially in Maine, potential reductions in landings could have vast socioeconomic impacts. In addition, the 2015 Stock Assessment combined the GOM and GBK stocks into a single biological unit due to evidence of migration between the two regions. As a result, there are now varying management measures within a single biological stock. In response to these two issues, Draft Addendum XXVII considers the standardization of management measures across LCMAs. The purpose of considering more consistency in measures is to resolve discrepancies between the regulations for state and federal permit-holders, to provide a consistent conservation strategy, and simplify enforcement across management areas and interstate commerce.

Draft Addendum XXVII considers two approaches for implementing changes to gauge and escape vent sizes to enhance protection of the GOM/GBK spawning stock. One approach would establish a trigger mechanism whereby pre-determined management changes would be implemented upon reaching a

defined trigger level based on observed changes in recruitment abundance indices. The second approach would establish a schedule for implementing changes to the gauge and escape vent sizes. The proposed measures include an increase to the minimum gauge size and escape vent sizes in LCMA 1 (Gulf of Maine) and decreases to the maximum gauge size in LCMA 3 (offshore federal waters) and Outer Cape Cod. The proposed gauge and escape vent sizes are expected to increase the proportion of

the population that is able to reproduce before being harvested by the fishery, and to enhance stock resiliency by protecting larger lobsters of both sexes.

The Draft Addendum will be posted to the website next week at <http://www.asmfc.org/about-us/public-input>. A subsequent press release will provide the details on the public hearing schedule and how to submit written comments. The Board will meet to review submitted comment and consider final action on the addendum in May 2023 at the Commission's Spring Meeting in Arlington, VA. For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org or 703.842.0740.

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PR23-02

Meeting Summary

In addition to approving Draft Addendum XXVII on increasing protection of spawning stock biomass of the Gulf of Maine/Georges Bank (GOM/GBK) stock for public comment, the American Lobster Management Board (Board) also considered a report from NOAA Fisheries on the Atlantic Large Whale Take Reduction Team (ALWTRT) and progress on Atlantic Large Whale Take Reduction Plan, and an update on the implementation of American Lobster Addendum XXIX and Jonah Crab Addendum IV.

NOAA Fisheries staff presented the results of the ALWTRT meeting in late 2022. The ALWTRT's goal was to recommend measures in the pot/trap and gillnet fisheries along the Atlantic coast to reduce mortality and serious injury of right whales in US commercial fisheries to below the Potential Biological Removal level required by the Marine Mammal Protection Act. NOAA staff reviewed the types of measures considered and stakeholder input provided by the ALWTRT, noting that a consensus recommendation was not produced. NOAA staff also updated the Board on recent North Atlantic right whale entanglement incidents.

Staff provided an update on the implementation of American Lobster Addendum XXIX and Jonah Crab Addendum IV, which establish electronic tracking requirements for federally-permitted vessels in both fisheries. The Work Group that was formed to solicit and review quotes from vessel tracking device manufacturers received five applications for type approval. Four devices met all of the criteria specified in the Addenda, and have been approved for use in the fishery. Over the next several months, ASMFC staff will work with the states to provide information on the approved tracking devices to harvesters and establish administrative programs to implement the addendum requirements.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org or 703.842.0740.

Motions

Move to modify Option E by including a 1/4" maximum gauge reduction in LCMA 3 with each annual adjustment, and set a maximum gauge size in the OCC management area of 6 1/2" and include a 1/4" maximum gauge reduction in OCC with each annual adjustment. In the final year of adjustments, the maximum gauge size in LCMA 3 and OCC would be 6" at a minimum. The vent size in LCMA 1, LCMA 3 and OCC would be adjusted once, at the same time the final gauge size is implemented. The Board, during final action will specify the years of the schedule, with the first step occurring no later than 2026, and the second step occurring 2 years later.

Motion made by Mr. Keliher and seconded by Mr. Hasbrouck. Motion approved by consensus.

Move to approve Addendum XXVII for public comment, as amended today.

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

WINTER FLOUNDER MANAGEMENT BOARD (JANUARY 31, 2023)

Press Release

Management Track Assessments Find Winter Flounder Stocks for the Gulf of Maine and Southern New England/Mid-Atlantic Not Experiencing Overfishing

Arlington, VA – The Commission’s Winter Flounder Management Board reviewed the results of the Northeast Fisheries Science Center’s (NEFSC) management track stock assessments* for the Gulf of Maine (GOM) and Southern New England/Mid-Atlantic (SNE/MA) winter flounder stocks. These assessments found GOM winter flounder is not experiencing overfishing while the SNE/MA winter flounder stock is not overfished nor experiencing overfishing. The overfished status for the GOM stock remains unknown. The management track assessments for both stocks include data through 2021.

SNE/MA winter flounder experienced a change in stock status from overfished to not overfished due to a change in the years of recruitment estimates used to estimate biological reference points. Instead of drawing upon the entire time series of recruitment estimates, the projections now only use recruitment estimates from the past 20 years (2002-2021). The SNE/MA winter flounder stock is most likely not capable of achieving the high levels of recruitment that were observed prior to 2000 due to changes in environmental conditions; therefore, using a truncated recruitment time series of only the past 20 years better reflects current stock condition. However, despite a change in stock status; trends in survey indices and model estimates all continue to indicate the SNE/MA stock is in poor condition.

The GOM stock uses a modeling method that incorporates survey indices of abundance to obtain area-swept biomass and exploitation estimates. There have been time series lows in fishery removals (harvest and discards) for GOM winter flounder in recent years. Overall, the indices of abundance have not responded positively to the large declines in commercial and recreational removals since the 1980s. However, there were increases in the fall 2021 and spring 2021 and 2022 area-swept biomass estimates, which, if they continue, could be the beginning of a response to continued low fishery removals. It should be noted, however, that no survey data is available for 2020 due to the COVID pandemic, which is a source of uncertainty in this area-swept assessment that relies on survey data.

Given this information, [specifications recommended by New England Fishery Management Council](#), and recommendations from the Technical Committee and Advisory Panel, the Board maintained 2023 recreational and commercial measures for the GOM and SNE/MA winter flounder stocks for the 2024-2025 fishing years (see Table 1).

* Management track assessments are similar to the Commission’s stock assessment updates, where the model from the most recent benchmark assessment is updated to include recent data. However, with the NEFSC’s process, some changes are allowed to be made to the model, such as a change to the recruitment time series used to estimate biological reference points that occurred for SNE/MA winter flounder.

Table 1. 2024-2025 Winter Flounder Commercial and Recreational Measures for Gulf of Maine and Southern New England/Mid-Atlantic Stocks.

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"	Open all year	
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"	Maintain closures	

The next management track assessments for both stocks are scheduled for 2024, and the next research track assessment, the equivalent of the Commission’s benchmark stock assessments, are scheduled for both stocks in 2026. As part of this analysis, the NEFSC will attempt to incorporate climate data into the SNE/MA winter flounder stock assessment. The management track assessment reports for GOM and SNE/MA winter flounder are available on the Commission’s website at <http://www.asmfc.org/species/winter-flounder> under Stock Assessment Reports. An overview of the assessment is available at http://www.asmfc.org/uploads/file/63d6c34bWinterFlounderStockAssessmentOverview_Feb2022.pdf. It was developed to aid media and interested stakeholders in better understanding the assessment results.

For more information, please contact Tracey Bauer, Fishery Management Plan Coordinator, at tbauer@asmfc.org.

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PR23-01

Meeting Summary

The Winter Flounder Management Board approved state compliance and Fishery Management Plan (FMP) Reviews for the 2021 fishing year for winter flounder. All states’ regulations were found to be consistent with the FMP, and the Board approved all *de minimis* status for New Jersey’s commercial fishery. The Board also considered and approved the nomination of Allan Butler of Massachusetts to the Winter Flounder Advisory Panel.

For more information, please contact Tracey Bauer, Fishery Management Plan Coordinator, at TBauer@asmfc.org.

Motions

Move to approve status quo commercial and recreational Southern New England/Mid-Atlantic and Gulf of Maine winter flounder measures for the 2024-2025 fishing years.

Motion made by Mr. McManus and seconded by Dr. Davis. Motion approved by unanimous consent.

Move to approve the Winter Flounder FMP Review for the 2021 fishing year, state compliance reports, and *de minimis* status for New Jersey commercial fisheries.

Motion made by Mr. Hasbrouck and seconded by Mr. Reid. Motion approved by unanimous consent.

Move to approve Allan Butler of MA to the Winter Flounder Advisory Panel.

Motion made by Mr. McKiernan and seconded by Dr. Davis. Motion approved by unanimous consent.

ATLANTIC STRIPED BASS MANAGEMENT BOARD (JANUARY 31, 2023)

Meeting Summary

The Atlantic Striped Bass Management Board met to consider selecting management measures and final approval of Addendum I to Amendment 7 to the Interstate Fishery Management Plan (FMP) for Atlantic Striped Bass.

The Board initiated Draft Addendum I in August 2021 after deciding that changes to the striped bass commercial quota system would not be considered during the ongoing development of Amendment 7. The Draft Addendum considers voluntary quota transfers which could provide some relief to states seeking additional quota. In November 2022, the Board approved Draft Addendum I for public comment with proposed options to consider permitting voluntary transfers of commercial quota, including options based on stock status and options allowing the Board to set criteria for transfers on a regular basis.

The Board received a summary of the 1,979 written public comments and 186 public hearing comments submitted for Draft Addendum I, as well as a report and recommendations from the Atlantic Striped Bass Advisory Panel. After initial discussion on the proposed management options, the Board voted to postpone action on Addendum I until May 2023 when analysis from the Striped Bass Technical Committee (TC) will be available. The Board tasked the TC with conducting stock projections to determine how specific quota utilization scenarios would impact the stock and rebuilding timeline. The first scenario assumes the entire ocean commercial quota is harvested and the second scenario assumes the entire ocean quota is harvested except for New Jersey's quota, since New Jersey's quota is reallocated to the recreational fishery and therefore unavailable for commercial quota transfers. These scenarios would be compared to the baseline scenario which assumes commercial quota utilization does not change. The TC projections will incorporate preliminary 2022 MRIP data in response to the Board's interest in reviewing 2022 removals data as soon as possible (other 2022 removal data will be considered if available).

The Board's rationale for this TC task is to address concerns raised by a majority of public comments that commercial quota transfers would negatively impact stock rebuilding. Board

members asked questions regarding how much commercial quota transfers would increase the fishing mortality rate, and what the resulting impact on the probability of 2029 rebuilding would be. The TC projections for May 2023 discussion are intended to address these questions.

2022 removals will be incorporated into the Fishery Management Plan Review of the 2022 Fishing Year. For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at EFranke@asmfc.org.

Motions

Main Motion

Move to approve Option D (Board discretion commercial quota transfer provision (with overfished conservation tax)).

Motion made by Mr. Clark and seconded by Mr. Train. Motion substituted.

Motion to Substitute

Move to substitute to postpone action on Addendum I and task the Technical Committee (TC) with running two population projections:

- **One which assumes harvest of the entire ocean commercial quota from all states**
- **One which assumes harvest of the ocean commercial quota from all states except New Jersey (since their quota is reallocated out of the commercial fishery)**

The TC may use their expert judgement on other needed assumptions for the projections (i.e. selectivity) to produce the most realistic output for consideration by the board.

Motion made by Dr. McNamee and seconded by Dr. Davis. Motion passes (13 in favor, 3 opposed).

Main Motion as Substituted

Move to postpone action on Addendum I and task the TC with running two population projections:

- **One which assumes harvest of the entire ocean commercial quota from all states**
- **One which assumes harvest of the ocean commercial quota from all states except New Jersey (since their quota is reallocated out of the commercial fishery)**

The TC may use their expert judgement on other needed assumptions for the projections (i.e. selectivity) to produce the most realistic output for consideration by the board.

Motion passes (15 in favor, 1 opposed).

EXECUTIVE COMMITTEE (FEBRUARY 1, 2023)

Meeting Summary

The Executive Committee (Committee) met to discuss several issues, including Consolidated Appropriations Act (CCA) Update; potential stipend for Legislative and Governor Appointee (LGA) Commissioners; collection of sharks for scientific and educational purposes; distribution of Fishery Disaster Funding in FY23 Omnibus Spending Bill; and Northeast biological sampling. The following action items resulted from the Committee's discussions:

- Staff provided an update on the balance in the CAA cooperative agreement. There is projected to be roughly \$8.6 million remaining that will be reallocated to states who indicated additional need

after the November Executive Committee meeting. Eight states indicated a need and a proposed reallocation was approved at the Executive Committee meeting.

- A discussion was held regarding providing a stipend to the LGA Commissioners for their service to ASMFC. The discussion focused on providing stipends for participation in meetings beyond the four quarterly meeting weeks and joint meetings with the Mid-Atlantic Fishery Management Council, noting this work is beyond the traditional scope of Commissioner responsibilities. The Committee asked staff to research potential tax advantages for Commissioners for volunteering their time to the Commission. This issue will be discussed at the next Committee meeting.
- The coordination of the collection of sharks for scientific and educational purpose was discussed. Currently, the states have different procedures for approving and issuing permits for collecting sharks. The states agreed that improved coordination would help ensure that the collection of sharks is not having a negative impact on the populations of sharks. If additional coordination between the states and NOAA Fisheries is necessary, the issue will be referred to the Coastal Shark Management Board.
- The Committee discussed the distribution of \$300 Million in Fishery Disaster Funding provided in the FY23 Omnibus Spending Bill. Staff was directed to send a letter to NOAA Fisheries requesting that the available funding be partially applied to fishery disasters on the Atlantic coast. The letter will also request that NOAA work with Congress to streamline the process for fishery disaster declaration, funding, and spend plan approval.
- Biological sampling in the Northeast has been significantly reduced in the past few years. The reduction erodes the assessment and management of multiple species in the northeast. The states agreed to explore opportunities to assist NOAA Fisheries in collecting fish length and otolith samples. A meeting between the states and NOAA Fisheries will be scheduled to determine where there are opportunities for collaboration.
- Chair Woodward noted that the Commission received a letter from The Southeastern Massachusetts Pine Barrens Alliance expressing concerns about the management of horseshoe crabs.

For more information, please contact Laura Leach, Director of Finance & Administration, at lleach@asmfc.org or 703.842.0740.

Motions

No motions were made.

AMERICAN EEL MANAGEMENT BOARD (FEBRUARY 1, 2023)

Meeting Summary

The American Eel Management Board met to consider the 2022 Benchmark Stock Assessment and Peer Review Reports and the Fishery Management Plan Review (FMP) and state compliance reports for the 2021 fishing year.

The American eel stock is at or near historically low levels due to a combination of historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, toxins and contaminants, and disease. The stock assessment presentation outlined the continued challenges for assessing the species, models and analyses used in the assessment, an index-based method for setting catch limits, and stock status. For this assessment, a delay-difference model was explored and associated reference points were developed, but the Stock Assessment Subcommittee (SAS) did not recommend it for management use. Instead, the SAS used an index-based method called I_{TARGET} to determine stock status and to develop catch advice.

The Peer Review Panel found that the stock assessment sufficiently addressed all terms of reference, but recommended additional work to test the robustness of the I_{TARGET} method for setting catch limits using a simulation approach within a management strategy evaluation (MSE) framework before it is used for management. The SAS indicated that additional simulation work is possible to address several of the peer review comments and would be more informative than an MSE. Additionally, the SAS and Peer Review Panel provided differing advice on stock status. Consistent with the Commission's Technical Support Group Guidance and Benchmark Stock Assessment Process, the Board tasked the SAS with providing justification for deviating from the advice from the Peer Review Panel the peer review advice. The SAS will provide a report and additional analyses to the Board at a future meeting.

The Board also approved the American Eel FMP Review and state compliance reports for the 2021 fishing year. Commercial yellow eel landings increased in 2021 compared to 2020, but are still low relative to prior years. The Board also approved *de minimis* requests from New Hampshire, Massachusetts, Pennsylvania, District of Columbia, Georgia, and Florida for their yellow eel fisheries. Florida did not meet the *de minimis* criteria because their landings for the last two years slightly exceeded 1% of the coastwide landings. However, the Board agreed to grant Florida continued *de minimis* status because the state's contribution to the coastwide landings of yellow eel has increased as a result of the decrease in total landings.

For more information on the stock assessment, please contact Dr. Kristen Anstead, Stock Assessment Scientist, at kanstead@asmfc.org; and for more information on management, please contact Caitlin Starks, Senior FMP Coordinator, at cstarks@asmfc.org.

Motions

Main Motion

Move to approve the American Eel FMP Review and state compliance reports for the 2021 Fishing year, and *de minimis* requests from New Hampshire, Massachusetts, Pennsylvania, District of Columbia, and Georgia for their yellow eel fisheries.

Motion made by Mr. Clark and seconded by Mr. Grout. Motion amended.

Motion to Amend

Move to amend to add Florida to the *de minimis* request.

Motion made by Ms. Burgess and seconded by Mr. Maniscalco. Motion passes (14 in favor, 3 opposed, 1 abstention, 1 null).

Main Motion as Amended

Move to approve the American Eel FMP Review and state compliance reports for the 2021 Fishing year, and de minimis requests from New Hampshire, Massachusetts, Pennsylvania, District of Columbia, Florida, and Georgia for their yellow eel fisheries.

Motion passes (18 in favor, 1 opposed).

Move to elect Kris Kuhn as Vice Chair of the American Eel Management Board.

Motion made by Ms. Madsen and seconded by Mr. Clark. Motion passes by consent.

ATLANTIC MENHADEN MANAGEMENT BOARD (FEBRUARY 1, 2023)

Meeting Summary

The Atlantic Menhaden Management Board met to review the Plan Review Team (PRT) report on state implementation plans for Addendum I and to consider Technical Addendum I to Addendum I for approval.

The PRT determined that each state satisfied the requirements of Addendum I to Amendment 3 by the May 1, 2023 deadline established by the Board and gave a few recommendations for states to consider. The Board approved the state implementation plans, as presented.

The Board also approved Technical Addendum I to Addendum I, which corrects a paragraph in Addendum I to redistribute relinquished quota based on landings from 2018, 2019, 2021. This change is consistent with the timeframe approved by the Board in Addendum I to allocate commercial quota. The Technical Addendum will become effective for the 2023 fishing year, and the 1,000,000 pounds relinquished by the state of Delaware will be redistributed according to the new timeframe.

For more information, please contact James Boyle, Fishery Management Plan Coordinator at jboyle@asmfc.org.

Motions

Move to approve the state implementation plans for Addendum I to Amendment 3.

Motion made by Ms. Fegley and seconded by Mr. Gary. Motion carries without opposition.

Move to approve Technical Addendum I to Addendum I and have the measures become effective for the 2023 fishing year.

Motion made by Mr. Kuhn and seconded by Ms. Meserve. Motion carries without objection.

SPINY DOGFISH MANAGEMENT BOARD (FEBRUARY 1, 2023)

Press Release

ASMFC Spiny Dogfish Board Sets Quota for 2023/2024 Fishing Season

Arlington, VA – The Commission’s Spiny Dogfish Management Board approved a coastwide commercial quota for the 2023/2024 fishing season (May 1-April 30) of 12 million pounds (state-specific allocations are provided in table below). The quota is consistent with the measures recommended to NOAA

Fisheries by the Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC). The Board also maintained the commercial trip limit in state waters of 7,500 pounds for the northern region states of Maine through Connecticut. The states of New York through North Carolina have the ability to set state-specific trip limits based on the needs of their fisheries. The Commission’s actions are final and apply to state waters (0-3 miles from shore). The MAFMC and NEFMC will forward their recommendations for federal waters (3 –200 miles from shore) to NOAA Fisheries Greater Atlantic Regional Fisheries Administrator for final approval.

Spiny Dogfish State Allocations (in pounds) for the 2023-2024 Fishing Season

	Northern Region (ME-CT)	NY	NJ	DE	MD	VA	NC
Possession Limit	7,500	To be specified by the individual southern region states					
Allocation	58%	2.71%	7.64%	0.90%	5.92%	10.80%	14.04%
<i>2022-2023</i>	<i>17,144,556</i>	<i>800,413</i>	<i>2,259,728</i>	<i>264,866</i>	<i>1,749,935</i>	<i>3,191,020</i>	<i>4,149,062</i>
2023-2024	6,960,000	324,935	917,359	107,525	710,403	1,295,426	1,684,352

* Any overages in the above quota allocations will be deducted from that region’s or state’s quota allocation in the subsequent year. Similarly, any eligible rollovers from one season can be applied to that region’s or state’s quota allocation the following year.

The 2023/2024 coastwide quota represents a 59.4% reduction from the current fishing season’s coastwide quota of 29,559,580 pounds. The decreased quota is based on declining trends in several indicators including survey abundance, catch per unit of effort, pup production, and dogfish growth. A research track stock assessment was completed in late 2022, and management advice will be provided through the Northeast Fisheries Science Center’s management track assessment that is scheduled for June.

For more information, please contact Caitlin Starks, Senior FMP Coordinator, at cstarks@asmfc.org or 703.842.0740.

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PR23-03

Motions

Move to adopt a 12-million-pound commercial quota for the 2023/2024 fishing year (May 1-April 30) for spiny dogfish, with a 7,500-pound trip limit for the Northern Region, consistent with the actions of the Mid Atlantic Fishery Management Council and New England Fishery Management Council.

Motion made by Mr. Maniscalco and seconded by Mr. Kane. Motion approved by unanimous consent.

Move to nominate Pat Geer as Vice-Chair of the Spiny Dogfish Board.

Motion made by Mr. Batsavage and seconded by Mr. Cimino. Motion passes with no objection.

SHAD & RIVER HERRING MANAGEMENT BOARD (FEBRUARY 2, 2023)

Meeting Summary

The Shad and River Herring Management Board met to consider an update to the North Carolina American shad Sustainable Fishery Management Plan (SFMP); receive a progress update on the River Herring Benchmark Stock Assessment; consider the Fishery Management Plan (FMP) Review for the 2021 fishing year; consider approval of Advisory Panel (AP) nominations; and elect a Vice-Chair.

The Board considered an update to the North Carolina SFMP for American shad, which is required for all states and jurisdictions that have a commercial fishery for American shad under Amendment 3 to the Shad and River Herring FMP. Plans are updated and reviewed by the Technical Committee every five years. As a plan update, the general framework of the plan remains relatively the same with some changes to a few of the sustainability parameters to better reflect the data currently being collected and how that data analysis is applied. Commercial fisheries season dates have been changed from fixed season dates to potential time frames in which the fishery can occur to improve management flexibility. For the recreational fishery, the statewide bag limit was changed from a 10 fish shad aggregate to a 10 fish shad aggregate with only one of those fish permitted to be an American shad, resulting in a potential reduction in American shad harvest. The Board approved the presented SFMP.

The Board received an update on the river herring benchmark stock assessment, which outlined the ongoing work of the Life History and Index Working Groups of the Stock Assessment Subcommittee, and gave the schedule for the Methods Workshop. The assessment is scheduled to be presented to the Board at the Annual Meeting in October 2023.

The Board also reviewed the FMP Review and state compliance reports for the 2021 fishing year. In 2021, river herring landings were approximately 2.11 million pounds, which was a 12% increase from 2020, including a 99.7% decrease in bycatch landings. However, it was noted that the dramatic decrease in bycatch could be attributable to the elimination of the Massachusetts portside sampling program and potential differences in NOAA's Northeast Fishery Observer Program data. Non-confidential American shad landings totaled 195,642 pounds, a 39% decrease from 2020. Bycatch landings increased by 96% to represent 17% of the total commercial landings. Hickory shad landings amounted to 99,419 pounds, an 8% increase from 2020, although bycatch landings decreased by 89% to represent 2% of commercial landings. The Plan Review Team (PRT) noted that a number of states could not complete the required monitoring under Amendments 2 and 3 due to the COVID-19 pandemic and persistent staffing issues, among some other minor issues with the new compliance format. However, the PRT did not consider any of the inconsistencies with the FMP significant. Therefore, the Board approved the 2021 FMP Review, state compliance reports, all *de minimis* requests, and the PRT recommendation to slightly alter the format of the compliance reports to improve the consistency of bycatch reporting data.

The Board considered and approved the nominations of Stephen Gephard and William Lucey of Connecticut to the Shad and River Herring Advisory Panel. Additionally, the Board elected Phil Edwards of Rhode Island to the role of Vice-Chair of the Management Board. Finally, the Board tasked staff to arrange an update from the U.S. Geological Survey on the alosine genetic stock identification and tissue repository and for the Technical Committee to provide recommendations regarding future sample collections.

For more information contact James Boyle, Fishery Management Plan Coordinator, at jboyle@asmfc.org.

Motions

Move to approve the updated Shad Sustainable Fishery Management Plan from North Carolina as presented today.

Motion made by Dr. Rhodes and seconded by Mr. Dize. Motion approved by unanimous consent.

Move to approve the Fishery Management Plan Review, state compliance reports, and de minimis requests for ME, NH, MA, and FL for American shad and NH, GA, and FL for river herring for the 2021 fishing year.

Motion made by Mr. Maniscalco and seconded by Ms. Burgess. Motion passes by consent.

Move to approve Stephen Gephard and William Lucey of CT to the Shad & River Herring Advisory Panel.

Motion made by Dr. Davis and seconded by Mr. Miller. Motion passes by consent.

Move to nominate Phill Edwards as Vice-Chair of the Shad & River Herring Board.

Motion made by Mr. Keliher and seconded by Mr. Reid. Motion passes by consent.

INTERSTATE FISHERIES MANAGEMENT PROGRAM POLICY BOARD (FEBRUARY 2, 2023)

Meeting Summary

The Interstate Fisheries Management Program (ISFMP) Policy Board met to receive an update from Executive Committee; review the 2022 Commissioner survey results; discuss Atlantic bonito harvest in state waters, and consider terms of reference (TORs) for the red drum, spot and Atlantic croaker benchmark stock assessments.

The Commission Chair, Spud Woodard, presented the Executive Committee Report to the Board (see Executive Committee meeting summary earlier in this document).

Staff presented the results of the 2022 Commissioner survey results. Overall, the results indicated Commissioners felt the Commission was making progress towards many of the survey questions. It was noted some obstacles to the Commission's success in rebuilding stocks are concerns that have been brought up in the past, such as building state and regional buy-in to make hard management decisions, but climate change and shifting stocks were by far the biggest. Some of the issues Commissioners would like to focus more on include big picture issues such as climate change, ecosystem-based management and shifting stocks. Staff will provide the Executive Committee with a list of major concerns identified in the survey.

A Policy Board member raised concerns regarding increased recreational catch of small Atlantic bonito in their state waters and raised the question, should states put a minimum size limit in place as a cautionary measure for the species? Other states have also seen some increased catch. There is currently no federal or Commission FMP for Atlantic bonito. Some states raised concerns that without a Commission or state FMP their state would not be able to put measures in place. It was

noted, similar discussions were held at the South Atlantic Fishery Management Council for false albacore. Staff will provide an options paper for developing different levels of management for both Atlantic bonito and false albacore at the next meeting. The paper will include state process limitations.

Staff presented the Policy Board with TORs for the upcoming Red Drum, Spot and Atlantic Croaker Benchmark Stock Assessments since the Sciaenids Board did not meet this week. The Board approved the TORs noting they would like the Stock Assessment Committee to look at changes in natural mortality rates over time, with a specific focus on predation potential, for spot and Atlantic croaker. For red drum it was suggested the Stock Assessment Committee reach out to NOAA's Ecosystem Dynamics Assessment Branch for potential participation in the Committee's work. Lastly, there was a request that a bag and size limit analysis be conducted regardless of stock status for Atlantic croaker and spot. Staff confirmed that the analysis could be conducted shortly after the assessment is complete.

Under other business, Emerson Hasbrouck invited the Board and members of the public to complete a [survey on monkfish](#). The Fisheries Department of Cornell Cooperative is working with industry and food exports to increase consumption and demand of local seafood throughout the Northeast region, specifically monkfish via a Saltonstall-Kennedy Grant Program. Lastly, NOAA Fisheries commented on recent questions regarding the NOAA representatives voting on allocation issues during species management boards. It was stated NOAA's interest in allocation issues is focused on the creation of more dynamic allocation systems that set up the Commission and Regional Councils to be more responsive to climate-induced impacts on fisheries.

Motions

Move to approve the Terms of Reference for the 2024 Red Drum Benchmark Stock Assessment as presented today.

Motion made by Mr. Bell and seconded by Mr. Geer. Motion carries by unanimous consent.

Move to approve the Terms of Reference for the 2024 Atlantic Croaker and Spot Benchmark Stock Assessments as presented today.

Motion made by Ms. Fegley and seconded by Mr. Bell. Motion carries by unanimous consent.



December 2022 Council Meeting Summary

The Mid-Atlantic Fishery Management Council met December 12-15, 2022, in Annapolis, Maryland. This was a hybrid meeting, with virtual and in-person participation options. Presentations, briefing materials, motions, and webinar recordings are available at <http://www.mafmc.org/briefing/december-2022>.

HIGHLIGHTS

During this meeting, the Council:

- Postponed final action on the Surfclam and Ocean Quahog Species Separation Amendment to allow for development of additional alternatives in 2023
- Set 2023 recreational management measures for summer flounder, scup, and black sea bass (joint with ASMFC)
- Discussed priorities and next steps for several Recreational Reform Initiative topics (joint with ASMFC)
- Reviewed scenarios developed as part of the East Coast Climate Change Scenario Planning Initiative and discussed challenges and opportunities that east coast fisheries governance and management might face over the next 20 years
- Delayed final action on 2023-2025 monkfish specifications pending New England's request for its Scientific and Statistical Committee (SSC) to reconsider their reduced monkfish acceptable biological catch (ABC) recommendations
- Approved the 2023 Implementation Plan, with several revisions identified during the meeting
- Received updates on habitat activities of interest in the region
- Discussed the proposed Hudson Canyon National Marine Sanctuary and recommended that additional fishing regulations are not necessary to implement the proposed sanctuary designation
- Discussed follow up and next steps for the disapproved *Illex* Permit Amendment
- Received updates on several offshore wind energy projects, plans to define additional lease areas, and updates on the development of guidelines to mitigate impacts to fisheries
- Received updates on several protected resources issues

Surfclam and Ocean Quahog Species Separation Amendment

The Council reviewed public input and considered final action on a draft amendment which considered modifications to the regulations to allow for mixed catches onboard vessels fishing for surfclam or ocean quahog. After considering Committee and staff recommendations, the Council decided to delay final action and to remand the amendment back to the Committee and Fishery Management Action Team (FMAT) to continue to develop additional alternatives for a possible 2023 Council meeting. This delay will allow additional time to develop other types of alternatives to address the mixed catch issue through ongoing discussions with the fishing industry, law enforcement, and other ITQ and catch data monitoring experts. Updates will be posted on the [amendment page](#).

Summer Flounder, Scup, and Black Sea Bass 2023 Recreational Management Measures

The Council met jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) to set recreational bag, size, and season limits (i.e., management measures) for all three species for 2023. This was the first time setting recreational management measures using the new "Percent Change Approach," which was approved by the Council and Commission in June 2022. Under the new process, measures for the upcoming year(s) will aim to achieve a specified percent change in harvest compared

to expected harvest under the current measures. Although this process intends for recreational measures to be set for two-year cycles, 2023 will be set for a single year to align with the timing of management track stock assessments.

During their deliberations for each species, the Council and Board reviewed the results of two statistical models: the Recreational Demand Model and the Recreational Fleet Dynamics Model. These models predict the impacts of bag, size, and season limits on recreational harvest and discards of summer flounder, scup, and black sea bass. Prior to the Council meeting, the Monitoring Committee reviewed both models and recommended using the Recreational Demand Model for summer flounder and the Recreational Fleet Dynamics Model for scup and black sea bass. However, on December 8, 2022, the Council received a letter from the Greater Atlantic Regional Fisheries Office (GARFO) indicating they believe the Recreational Demand Model to be the best scientific information available for estimating coastwide harvest and determining the appropriate percent change in harvest for all three species for 2023. The letter indicated that GARFO would not approve measures set based on the Recreational Fleet Dynamics Model. Although Council and Board members expressed serious concern about the timing and rationale for this determination from GARFO, they ultimately concluded that they had no choice but to use the Recreational Demand Model for all three species.

Scup

The Percent Change Approach requires a 10% reduction in recreational harvest of scup in 2023. The Council and Board agreed to reduce the federal possession limit to 40 fish and shorten the season to May 1 – December 31 but decided to maintain the current 10 inch minimum size in federal waters. These measures do not achieve the full 10% reduction in harvest required; therefore, the Council and Board also agreed that the states would further modify state measures through the Commission process to achieve the full 10% coastwide harvest reduction. State waters measures will be determined through the Commission process in early 2023.

Black Sea Bass

The Percent Change Approach also requires a 10% reduction in recreational black sea bass harvest in 2023, which will be achieved through the conservation equivalency process. The Council and Board adopted non-preferred coastwide measures, including a 15-inch minimum size limit, a 5 fish possession limit, and an open season of May 15 – September 8. These measures are intended to achieve a 10% reduction if implemented in all states and federal waters. If approved through the federal rulemaking process, these measures would be written into the federal regulations but waived in favor of state waters measures. The Council and Board also adopted precautionary default measures of a 16-inch minimum size limit, a 2 fish possession limit, and an open season of June 1 – August 31. These measures are intended to be implemented in any state or region that does not put forward a proposal that can be approved by the Board through the conservation equivalency process. State waters measures will be determined through the Commission process in early 2023. The Board also approved a proposal to open the recreational black sea bass fishery in Virginia state waters during February 2023 following the same process Virginia has used in prior years to monitor February harvest and modify the length of the open season later in the year as necessary to account for February harvest.

Summer Flounder

There was extensive discussion regarding the percent change in recreational harvest of summer flounder needed for 2023. Although the model results that were originally provided to the Council indicated that a 10% liberalization of recreational summer flounder harvest would be appropriate for 2023, Council staff received an updated harvest estimate the week before the meeting which indicated that a 10% reduction was needed instead. The model revisions were based on a different range of years of catch per trip data and were not reviewed by the Monitoring Committee or other technical advisory group prior to the meeting. Given varying opinions on the appropriate configurations of the model inputs and the conflicting Percent Change Approach outcomes under the two model configurations, the Council and Board determined that status quo regional measures would be appropriate for 2023 and agreed to continue the use of regional conservation equivalency in 2023. Although the

Council and Board’s intent was for regional measures to remain status quo in 2023, they agreed that the non-preferred coastwide measures should be modified given that the non-preferred coastwide measures should be modified given that the current non-preferred coastwide measures are too constraining under both configurations of the model. The revised non-preferred coastwide measures include an 18-inch minimum size, 3 fish possession limit, and open season from May 15-September 22. Precautionary default measures will remain unchanged, including a 20-inch minimum size, 2 fish possession limit, and open season from July 1-August 31.

Recreational Reform Actions and Priorities

The Council met jointly with the ASMFC’s Interstate Fishery Management Program Policy Board (Policy Board) to discuss priorities and next steps for several Recreational Reform Initiative topics. These actions would address all four jointly managed recreational species (i.e., summer flounder, scup, black sea bass, and bluefish).

Percent Change Approach Replacement Action: The Percent Change Approach approved through the Recreational Harvest Control Rule Framework/Addendum will sunset at the end of 2025, and a separate action will need to be developed to consider the appropriate replacement. The Council and Policy Board agreed that this action is a higher priority than the other recreational reform actions described below.

Recreational Sector Separation and Catch Accounting Amendment: The Council and Policy Board agreed to move forward with scoping for an amendment to consider options for managing for-hire recreational fisheries separately from other recreational fishing modes (referred to as sector separation) and options related to recreational catch accounting, such as private angler reporting and enhanced vessel trip report requirements. They agreed that the development of sector separation through separate recreational management measures would be a higher priority to consider than separate recreational for-hire and private/shore allocations.

Recreational Reform Technical Guidance Document: The Council and Policy Board previously agreed to develop a technical guidance document to address several recreational reform topics, including best practices for identifying and smoothing Marine Recreational Information Program (MRIP) outlier estimates, use of preliminary current year MRIP data, and guidelines for maintaining status quo recreational measures. However, the Council and Policy Board noted that many of the topics proposed to be considered through the technical guidance document have already been at least partially addressed and agreed that the technical guidance document is no longer a priority.

Commercial/Recreational Sector Transfer Framework/Addendum: The Council and Policy Board also discussed whether the Recreational Sector Separation Amendment should include consideration of options to allow transfer of quota between the commercial and recreational sectors. They agreed that this issue would be more appropriately addressed through a separate framework/addendum if desired. During a subsequent discussion the next day, the Council agreed to add a framework action to consider commercial/recreational quota transfers for summer flounder, scup, and black sea bass to the list of “Possible Additions” in the Council’s 2023 Implementation Plan.

Climate Change Scenario Planning

The Council participated in a workshop led by the facilitator of the East Coast Climate Change Scenario Planning Initiative, Jonathan Star. This was the last in a series of workshops held for each of the three East Coast Fishery Management Councils as well as the Atlantic States Marine Fisheries Commission in November and December 2022. The purpose of this discussion was to review the scenarios developed this past summer and use them as a tool for discussion of the challenges and opportunities that east coast fisheries governance and management might face over the next 20 years. These workshops built on a series of small group “manager brainstorming sessions” held in September/October 2022. Council members discussed how well current governance and management arrangements would be able to handle different possible future conditions, as well as what may need to change now to ensure effective future governance and management. Feedback and ideas suggested at

this meeting will feed into an East Coast Climate Change Scenario Planning Summit meeting, to be held in Arlington, VA on February 15-16, 2023. Additional information will be made available on the [Climate Change Scenario Planning page](#).

Monkfish Framework 13: 2023-2025 Specifications and Management Measures

The Council reviewed the monkfish backup approach (“ismooth”) for setting upcoming years’ acceptable biological catches (ABCs). ABCs would be based on 2019-2021 catches, adjusted down by recent downward NMFS survey trends - as approved via an expedited peer review in the management track assessment process. Due to concerns about the resulting ABCs identified by the New England Fishery Management Council (NEFMC), the Council supported the NEFMC’s remand request for its Scientific and Statistical Committee (SSC) to reconsider their 2023-2025 ABCs. This will delay final action, but the fishery should be able to operate when the new fishing year starts (May 1) as long as the regulatory process has begun by then (any days-at-sea used will count against final days-at-sea allocations). Like the NEFMC, the Council also adopted increasing the minimum gillnet mesh to 12 inches beginning May 1, 2026. Most gillnet participants use at least 12-inch mesh already and implementing this requirement in 2026 allows affected vessels to change gear via typical net replacements.

2023 Implementation Plan

The Council reviewed and approved its 2023 Implementation Plan. An implementation plan is developed each year as a tool for planning and prioritizing activities for the upcoming year within the broader context of the Council’s longer-term goals and objectives. The 2023 Implementation Plan identifies the specific activities the Council expects to initiate, continue, or complete during the year. The approved plan can be found here: <https://www.mafmc.org/strategic-plan>.

Proposed Hudson Canyon National Marine Sanctuary

The Council received a presentation from LeAnn Hogan and Matt Brookhart, both from the NOAA Office of National Marine Sanctuaries (ONMS), on the Proposed Hudson Canyon National Marine Sanctuary. The Council discussed the sanctuary consultation process and its role under National Marine Sanctuaries Act section 304(a)(5) and recommended that additional fishing regulations are not necessary to implement the proposed sanctuary designation. These recommendations will be conveyed to ONMS in a letter.

MSB Committee Report – *Illex* Permit Amendment Follow-Up

The Council reviewed input from the Mackerel, Squid, and Butterfish (MSB) Committee and Advisory Panel regarding follow-up to the disapproved Amendment to mitigate overcapitalization in the *Illex* squid fishery. The Council will send a letter to NMFS requesting a more detailed explanation of the Amendment decision relative to the 10 National Standards of the Magnuson-Stevens Act, as well as why MSB Amendment 20 (similar longfin squid issues) was approved while the *Illex* permit Amendment was not approved. The Council will also request input on what NMFS recommends for future additional consideration of historic participants with limited flexibility to pursue other fisheries and on the potential development of fish hold upgrade restrictions provisions (similar to the Atlantic mackerel fishery).

Habitat Update

The Council received a presentation from Doug Christel, Karen Greene, and Kevin Madley from the Greater Atlantic Regional Fisheries Office Habitat and Ecosystem Services Division. Their presentation highlighted aquaculture projects, offshore wind activities including some of port development projects associated with offshore wind, as well as some of the US Army Corps of Engineers Coastal Storm Risk Management Studies underway in the Greater Atlantic Region.

Offshore Wind Updates

Staff from the Bureau of Ocean Energy Management (BOEM) presented updates on several offshore wind energy projects, plans to define additional lease areas, and updates on the development of guidelines to mitigate impacts to fisheries. A Council member also provided an update on an effort by nine Atlantic coast states to establish a regional fisheries compensatory mitigation fund administrator.

Protected Resources Updates

The Council received an update on issues discussed at the November 14, 2022 Protected Resources Committee meeting and recent Atlantic Large Whale Take Reduction Team (team) meetings on November 14-18 and December 1-2. They reviewed the management measures developed by the team that are intended to mitigate risk to right whales in the Mid-Atlantic region. A more thorough update on team meeting outcomes is anticipated at the February 2023 Council meeting. The Council also reviewed the final Sturgeon Bycatch Action Plan recommendations and discussed the potential for a joint action with the New England Fishery Management Council to reduce sturgeon bycatch in large mesh gillnet fisheries, including jointly managed dogfish and monkfish

Next Meeting

The next Council meeting will be held **February 7-9, 2023 in Washington, DC**. A complete list of upcoming meetings can be found at <https://www.mafmc.org/council-events>.



South Atlantic Fishery Management Council

News Release

FOR IMMEDIATE RELEASE
December 12, 2022

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Council Approves Management Measures for Snowy Grouper, Tilefish

Public hearings scheduled in January for measures proposed for Red Snapper, Gag, and Black Grouper

After considering recommendations from its advisory panels, Scientific and Statistical Committee, and public input, the South Atlantic Fishery Management Council approved three amendments for Secretarial review during its December meeting at Wrightsville Beach, North Carolina. If approved by the Secretary of Commerce, measures proposed in the amendments would likely be implemented in 2023.

The Council approved Amendment 51 to the Snapper Grouper Fishery Management Plan to address Snowy Grouper management. The stock remains overfished and is experiencing overfishing, and a harvest reduction of approximately 43% is needed to achieve sustainable harvest levels and rebuild the stock. The amendment would adjust catch levels for both the commercial and recreational sectors, modify allocations, and implement management measures that include shortening the current recreational season (May 1 through August 31) to end June 30th. The current 1 fish per vessel per day possession limit would remain the same. Recreational accountability measures would also be modified.

Because the Golden Tilefish stock is not overfished nor undergoing overfishing, the Council has been working to allow a catch increase for the fishery. Snapper Grouper Amendment 52 will adjust catch levels for Golden Tilefish and also modify recreational measures for Blueline Tilefish. Recreational landings for Blueline Tilefish have exceeded the annual catch limit in recent years. The amendment would reduce the current bag limit from 3 fish to 2 fish per person per day, prohibit bag limit retention of Blueline Tilefish by captain and crew on federally permitted for-hire vessels, and modify the current accountability measures.

The Council also approved the Comprehensive Acceptable Biological Catch (ABC) Control Rule Amendment, outlining the method used to determine how much buffer (or reduction from the Overfishing Limit) is necessary to provide an acceptable risk of overfishing. The ABC control rule addresses uncertainty and risk in the management process. Risk specification is the responsibility of the Council and is based on the Council's tolerance for overfishing occurring. Evaluating risk involves considering characteristics of the species, the stock, and the fishery. Per the Magnuson-Stevens Act, the risk of overfishing can not exceed 50%.

Other Actions:

Red Snapper and Snapper Grouper Regulatory Amendment 35

The Council continued work on Snapper Grouper Regulatory Amendment 35 and approved the amendment for public hearings. The draft amendment contains options to reduce the Annual Catch Limit (ACL) for Red Snapper as required to address overfishing.

The Council's preferred alternative would set the total ACL equal to the Acceptable Biological Catch, which needs to be reduced from 42,510 fish to 28,000 fish following the last stock assessment. This alternative allows for some harvest as the stock continues to rebuild. The ABC was recommended by the Council's Scientific and Statistical Committee following the 2021 stock assessment and may not be exceeded by the Council.

The amendment also includes an action to reduce release mortality for all snapper grouper species by restricting the recreational sector to the use of single hook rigs when targeting [snapper grouper species](#). As the Red Snapper stock continues to rebuild, so do the number of released fish that die, driven primarily by the recreational sector targeting co-occurring snapper grouper species. Amendment 35 includes a comprehensive plan to expand outreach for best fishing practices, including continued promotion of descending devices. "This is not simply a Red Snapper issue, but a management challenge for the entire snapper grouper fishery," explained Council Chair Dr. Carolyn Belcher. "The Council recognizes the frustration of anglers as Red Snapper harvest remains constricted, but we must get a handle on the release mortality occurring within the recreational fishery and are working through several avenues to do so."

In addition to the regulatory actions in Regulatory Amendment 35, the Council is pursuing several courses of action to address release mortality in the snapper grouper fishery and end overfishing of red snapper. The Council is developing a Management Strategy Evaluation (MSE) to provide a more holistic approach to evaluating snapper grouper fishery management options. An amendment to require recreational permits for the snapper grouper fishery is also in development. In addition, ongoing research to estimate the number of Red Snapper in the South Atlantic from North Carolina to south Florida may improve the information available to the Council for managing Red Snapper.

Public hearings for Snapper Grouper Regulatory Amendment 35 are scheduled for January 17-19, 2023 in Pooler, GA, Charleston, SC, and Morehead City, NC. Hearings will be held in Florida January 24-26 with hearings planned in Jacksonville, Cocoa Beach, and Key Largo. An additional hearing via webinar will also be scheduled. Details will be available from the Council's website at: <https://safmc.net/public-hearings-and-scoping/> as they become available.

Amendment 53 – Gag and Black Grouper

The South Atlantic Gag stock is overfished and undergoing overfishing. Amendment 53 to the Snapper Grouper Fishery Management plan will establish a rebuilding plan for Gag, revise catch levels, and implement management measures to end overfishing and rebuild the stock. The amendment includes actions to reduce the commercial trip limit for Gag, establish a recreational vessel limit, and prohibit retention by captain and crew on federally permitted for-hire vessels. Recreational measures would also apply to Black Grouper to reduce misidentification issues.

The Council will hold two public hearings via webinar on January 10 and 11, 2023 for Snapper Grouper Amendment 53 and is scheduled to approve the amendment for Secretarial review during its March meeting.

Information about the December 2022 Council meeting, including final committee reports, public comments, and meeting materials is available from the Council's website at: <https://safmc.net/events/december-2022-council-meeting/>. The next meeting of the Council is scheduled for March 6-10, 2023, in Jekyll Island, GA.

The South Atlantic Fishery Management Council, one of eight regional councils, conserves and manages fish stocks from three to 200 miles offshore of North Carolina, South Carolina, Georgia and east Florida.

South Atlantic Fishery Management Council
Full Council and Committee Reports
SUMMARY MOTIONS
December 5-9, 2022

This is a summary of the motions approved by the Council. Motions addressing actions and alternatives for FMP amendments are followed by text showing the result of the approved motion. Complete details on motions and other committee recommendations are provided in the Committee Reports available on the SAFMC website.

Full Council Session I

MOTION 1: APPOINT THE FOLLOWING INDIVIDUALS TO COUNCIL ADVISORY PANELS AND THE SEDAR POOL

Coral AP

- REAPPOINT DR. SANDRA BROOKE AND DR. STEVE ROSS TO A ONE-YEAR TERM TO THE CORAL AP.
- APPOINT KRISTEN AYERS TO THE CORAL AP.
- REAPPOINT JOHN CRAMER AND DR. NICHOLE FOGERTY TO THE CORAL AP

Mackerel Cobia AP

REAPPOINT STEPHEN DONALSON, CHARLES LOCKE, AND THOMAS NEWMAN TO THE MACKEREL COBIA AP.

Deepwater Shrimp AP

- REAPPOINT MIKE MERRIFIELD AND MARILYN SOLORZANO TO A ONE-YEAR TERM TO THE DW SHRIMP AP.
- REAPPOINT JASON VOGELSONG, LEE VOGELSONG, NANCY JONES, AND DAMIEN SOLORZANO TO THE DW SHRIMP AP.

Shrimp AP

- REAPPOINT GARY EXLEY, JOHN WOODS AND JANIE THOMAS, AND MARILYN SOLORZANO TO THE SHRIMP AP.
- APPOINT BRYAN FLUECH AND JEFFREY MILLIKEN TO THE SHRIMP AP.

Spiny Lobster AP

- REAPPOINT GARY NICHOLS, MIMI STAFFORD, SEAN ESPENSHIP, BRUCE IRWIN, AND JUSTIN SMITH TO THE SPINY LOBSTER AP.
- REAPPOINT MICKEY WHITTINGTON FOR A ONE-YEAR TERM TO THE SPINY LOBSTER AP.
- APPOINT ERICA ROSS TO THE SPINY LOBSTER AP.

SEDAR Pool

APPOINT GREG MERCURIO TO THE SEDAR POOL.

MOTION 2: ACCEPT TIMING AND TASKS:

- Send notification letters to appointees and email notifications to those not selected by December 20, 2022.
- Conduct an orientation of new AP members by the March 2023 SAFMC meeting.

- Staff to provide options for membership of the Golden Crab AP and Wreckfish AP at the Council's March 2023 meeting.
- Advertise for open seats on advisory panels, SSC, and SEP following the March 2023 Council meeting.

MOTION 3: APPROVE THE COMPREHENSIVE ACCEPTABLE BIOLOGICAL CATCH CONTROL RULE AMENDMENT TO THE FISHERY MANAGEMENT PLANS FOR THE SNAPPER GROUPER FISHERY OF THE SOUTH ATLANTIC REGION, DOLPHIN AND WAHOO FISHERY OF THE ATLANTIC, AND GOLDEN CRAB FISHERY OF THE SOUTH ATLANTIC REGION FOR FORMAL SECRETARIAL REVIEW AND DEEM THE CODIFIED TEXT AS NECESSARY AND APPROPRIATE. GIVE STAFF EDITORIAL LICENSE TO MAKE ANY NECESSARY EDITORIAL CHANGES TO THE DOCUMENT/CODIFIED TEXT AND GIVE THE COUNCIL CHAIR AUTHORITY TO APPROVE THE REVISIONS AND RE-DEEM THE CODIFIED TEXT.

Snapper Grouper Committee

Release Mortality Reduction & Red Snapper Catch Levels (Regulatory Amendment 35)

MOTION 4: APPROVE THE EDITS TO THE PURPOSE AND NEED STATEMENTS.

Purpose: The *purpose* of this framework amendment is to revise the acceptable biological catch and annual catch limits for red snapper in the South Atlantic based on the results of the latest stock assessment; and implement management measures to reduce dead discards for the South Atlantic snapper grouper fishery.

Need: The *need* for this framework amendment is to ensure red snapper catch limits are based on the best scientific information available and to address overfishing of the South Atlantic red snapper stock by reducing dead discards of snapper grouper species, while minimizing negative social and economic effects to the extent practicable, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and its National Standards.

MOTION 5: SELECT ALTERNATIVE 2 AS PREFERRED UNDER ACTION 1.

Action 1. Reduce the acceptable biological catch, total annual catch limit, and sector annual catch limits, and establish an annual optimum yield for South Atlantic red snapper

Alternative 2. Reduce the red snapper acceptable biological catch and set it equal to the most recent recommendation from the Scientific and Statistical Committee. Revise the total annual catch limit and establish an annual optimum yield for red snapper and set them **equal to** the recommended acceptable biological catch. Red snapper may only be harvested or possessed in or from the South Atlantic exclusive economic zone during the commercial and recreational fishing seasons. The 2027 total annual catch limit and annual optimum yield would remain in place until modified.

Fishing Year	ABC (numbers of fish)	Annual OY=Total ACL (numbers of fish)	Commercial ACL (lbs ww)	Recreational ACL (numbers of fish)
2023	28,000	28,000	77,016	19,119
2024	31,000	31,000	85,268	22,119
2025	33,000	33,000	90,769	24,119
2026	35,000	35,000	96,270	26,119
2027+	36,000	36,000	99,021	27,119

MOTION 6: MOVE ALTERNATIVES 3 AND 4 UNDER ACTION 1 TO THE CONSIDERED BUT REJECTED APPENDIX.

Alternative 3. Reduce the red snapper acceptable biological catch and set it equal to the most recent recommendation from the Scientific and Statistical Committee. Revise the total annual catch limit and establish an annual optimum yield for red snapper and set them equal to **95%** of the recommended acceptable biological catch. Red snapper may only be harvested or possessed in or from the South Atlantic exclusive economic zone during the commercial and recreational fishing seasons. The 2027 total annual catch limit and annual optimum yield would remain in place until modified.

Alternative 4. Reduce the red snapper acceptable biological catch and set it equal to the most recent recommendation from the Scientific and Statistical Committee. Revise the total annual catch limit and establish an annual optimum yield for red snapper and set them equal to **90%** of the recommended acceptable biological catch. Red snapper may only be harvested or possessed in or from the South Atlantic exclusive economic zone during the commercial and recreational fishing seasons. The 2027 total annual catch limit and annual optimum yield would remain in place until modified.

MOTION 7: MOVE ACTION 2 TO THE CONSIDERED BUT REJECTED APPENDIX.

Action 2. Prohibit the use of electrically or hydraulically-powered reels to fish recreationally for snapper grouper species

MOTION 8: MOVE DRAFT ALTERNATIVE 3 AND DRAFT ALTERNATIVE 4 UNDER ACTION 3 TO THE CONSIDERED BUT REJECTED APPENDIX.

Action 3. Prohibit the use of more than one hook per line for the snapper grouper recreational sector

DRAFT Alternative 3. Prohibit the use of more than one hook per line for the recreational sector to fish for snapper grouper species in the South Atlantic Exclusive Economic Zone off:

Sub-Alternative 3a. North Carolina

Sub-Alternative 3b. South Carolina

Sub-Alternative 3c. Georgia

Sub-Alternative 3d. North Florida (counties include Nassau, Duval, Saint Johns, Flagler, Volusia)

Sub-Alternative 3e. Central Florida (counties include Brevard, Indian River, St Lucie)

Sub-Alternative 3f. South Florida (counties include Martin, Palm Beach, Broward, Miami-Dade, Monroe)

DRAFT Alternative 4. Prohibit the use of more than one hook per line for the recreational sector to fish for snapper grouper species in the South Atlantic Exclusive Economic Zone in an **area associated with depth:**

Sub-Alternative 4a. Less than 100 feet

Sub-Alternative 4b. 100 feet to 200 feet

Sub-Alternative 4c. 200 feet to 300 feet

Sub-Alternative 4d. Greater than 300 feet

ADDITIONAL SUB-ALTERNATIVE DERIVED FROM AP RECOMMENDATION:

Sub-Alternative 4e. Greater than 150 feet

MOTION 9: APPROVE REGULATORY AMENDMENT 35 FOR PUBLIC HEARINGS.

Management Strategy Evaluation

MOTION 10: SCHEDULE THE MANAGEMENT STRATEGY EVALUATION CONTRACTORS TO PRESENT IN-PERSON AT THE MARCH 2023 COUNCIL MEETING.

Private Recreational Permitting and Reporting (Amendment 46)

MOTION 11: APPROVE AMENDMENT 46 AS MODIFIED (PRIVATE RECREATIONAL PERMITTING AND REPORTING) FOR SCOPING.

Gag and Black Grouper (Amendment 53)

MOTION 12: MOVE SUB-ACTION 4B TO THE CONSIDERED BUT REJECTED APPENDIX.

Action 4b. Modify the commercial spawning season closure for gag

MOTION 13: SELECT SUB-ALTERNATIVE 2A AND SUB-ALTERNATIVE 3A AS PREFERRED FOR SUB-ACTION 5A.

Action 5a. Establish a recreational vessel limit for gag

Alternative 2. Establish a private recreational vessel limit for gag of:

Sub-Alternative 2a. 2 fish per vessel per day

Alternative 3. Establish a for-hire recreational vessel limit for gag of:

Sub-Alternative 3a. 2 fish per vessel per trip

MOTION 14: MOVE SUB-ACTION 5B TO THE CONSIDERED BUT REJECTED APPENDIX.

Action 5b. Modify the recreational spawning season closure for gag

MOTION 15: SELECT ALTERNATIVE 2 AS THE PREFERRED ALTERNATIVE FOR SUB-ACTION 5C.

Action 5c. Prohibit the retention of gag by captain and crew

Alternative 2. The gag bag limit for captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit is zero.

MOTION 16: SELECT THE SAME PREFERRED ALTERNATIVES FOR THE BLACK GROUPE SUB-ACTIONS (ACTION 7A-C) AS THE GAG SUB-ACTIONS (SUB-ACTIONS 5A-C).

Action 7a. Establish a recreational vessel limit for black grouper

Alternative 2. Establish a private recreational vessel limit for black grouper of:

Sub-Alternative 2a. 2 fish per vessel per day

Alternative 3. Establish a for-hire recreational vessel limit for black grouper of:

Sub-Alternative 3a. 2 fish per vessel per trip

Action 7b. Modify the recreational spawning season closure for black grouper

Alternative 1 (No Action). During January through April, no person may fish for, harvest, or possess in or from the South Atlantic exclusive economic zone any shallow-water grouper (gag, black grouper, scamp, red grouper, yellowfin grouper, yellowmouth grouper, red hind, rock hind, graysby, or coney).

Note: Action is moved to the Considered but Rejected Appendix

Action 7c. Prohibit the retention of black grouper by captain and crew

Alternative 2. The black grouper bag limit for captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit is zero.

MOTION 17: DIRECT STAFF TO CONDUCT TWO WEBINAR PUBLIC HEARINGS IN JANUARY 2023 FOR AMENDMENT 53.

Snowy Grouper (Amendment 51)

MOTION 18: APPROVE THE MODIFICATIONS TO ACTION 4, ALTERNATIVE 2

Action 4. Modify the snowy grouper recreational accountability measures

Alternative 2. Remove the current recreational in-season accountability measures. For the snowy grouper recreational sector, National Marine Fisheries Service will annually announce the recreational fishing season start and end dates in the Federal Register and by other methods, as deemed appropriate. The fishing season will start on May 1 and end on the date National Marine Fisheries Service projects the recreational annual catch limit will be met.

MOTION 19: APPROVE AMENDMENT 51 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER GROUPE FISHERY OF THE SOUTH ATLANTIC REGION FOR FORMAL SECRETARIAL REVIEW AND DEEM THE CODIFIED TEXT AS NECESSARY AND APPROPRIATE. GIVE STAFF EDITORIAL LICENSE TO MAKE ANY NECESSARY EDITORIAL CHANGES TO THE DOCUMENT/CODIFIED TEXT AND GIVE THE

COUNCIL CHAIR AUTHORITY TO APPROVE THE REVISIONS AND RE-DEEM THE CODIFIED TEXT.

Golden Tilefish and Blueline Tilefish (Amendment 52)

MOTION 20: MOVE ACTION 6 TO THE CONSIDERED BUT REJECTED APPENDIX.

Action 6. Modify blueline tilefish recreational season.

MOTION 21: APPROVE AMENDMENT 52 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER GROUPER FISHERY OF THE SOUTH ATLANTIC REGION FOR FORMAL SECRETARIAL REVIEW AND DEEM THE CODIFIED TEXT AS NECESSARY AND APPROPRIATE. GIVE STAFF EDITORIAL LICENSE TO MAKE ANY NECESSARY EDITORIAL CHANGES TO THE DOCUMENT/CODIFIED TEXT AND GIVE THE COUNCIL CHAIR AUTHORITY TO APPROVE THE REVISIONS AND RE-DEEM THE CODIFIED TEXT.

Timing and Tasks:

MOTION 22: DIRECT STAFF TO DO THE FOLLOWING:

- Continue to develop Regulatory Amendment 35 (Release Mortality Reduction and Red Snapper) and Amendment 53 (Gag and Black Grouper) for the Committee's consideration of approval for formal secretarial review at the March 2023 meeting.
- Conduct public hearings for Regulatory Amendment 35 (Release Mortality Reduction and Red Snapper) and Amendment 53 (Gag and Black Grouper) prior to the March 2023 Council meeting. Conduct public hearings for Amendment 53 via webinar. Conduct in-person and webinar public hearings for Regulatory Amendment 35.
- Prepare Amendment 51 (Snowy Grouper) and Amendment 52 (Golden Tilefish Blueline Tilefish) for submission for secretarial review.
- Conduct two scoping sessions for Amendment 46 via webinar ahead of the March 2023 meeting.
- Continue developing Amendment 46 (Private Recreational Permitting and Reporting) for review at the March 2023 meeting.
- Develop a guidance document for the management strategy evaluation (MSE).
- Request Blue Matter Science provide an overview presentation of the MSE at the March 2023 meeting.

Mackerel Cobia Committee

MOTION 23: DIRECT THE SSC TO PROVIDE CATCH LEVEL RECOMMENDATIONS FOR ATLANTIC SPANISH MACKEREL AT THEIR APRIL 2023 MEETING, EITHER FROM THE UPDATED ASSESSMENT OR USING A DATA-LIMITED APPROACH.

MOTION 24: ADOPT THE FOLLOWING TIMING AND TASKS:

1. Provide updated landings information and conduct a fishery performance report for little tunny once every three years for review.
2. Begin developing a plan for conducting port meetings along with Atlantic coast, seeking input from the Gulf Council and Atlantic States Marine Fisheries Commission.

3. Provide a brief summary of federal regulations as they relate to king and Spanish mackerel fishing tournaments and work with NMFS to gather the weight/number of tournament fish over the last ten years.
4. Work with the SSC and SEFSC to provide the information necessary to develop catch level recommendations at the April 2023 SSC meeting.



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

February 23rd, 2023

MEMORANDUM

TO: N.C. Marine Fisheries Commission
FROM: Col. Carter Witten
SUBJECT: Law Enforcement Report

Issue

Law Enforcement report update.

Action Needed

For informational purposes only, **no action is needed at this time.**

Overview

The Marine Patrol had a busy year in 2022 including receiving two grants, updating our hiring process, additional trainings for current officers, and updating our Notice of Violation process.

The grants which we received included \$188,000 for our Swiftwater Rescue Team and \$444,043 in Port Security funds.

The Swiftwater Rescue Team used grant funds to purchase enclosed trailers for storing and transporting safety gear and other gear needed for swiftwater rescue deployments. The Swiftwater Rescue Team has officially become a “Type II” team meaning they can now be called upon by Emergency Management in times of need. They were deployed to Marion, NC during Hurricane Ian, which was their first mission as a “typed” team. Additional activity in 2022 included training for team member and training which our team provided to 18 other first responders including Marine Patrol officers, Pamlico Fire & Rescue, New Bern Fire & Rescue, and the Pamlico County Sherriff’s Office.

The \$444,043 in Port Security funds included a 25% match and these funds were used to purchase 2 Metal Shark boat packages. Marine Patrol was impressed with the 2 Metal Shark boat packages that they had purchased with a previous grant which led them to purchase the two new packages. Funds were also used to purchase 4 additional side-by-side vehicles which Marine Patrol has found to be very useful in patrolling the beaches.

Marine Patrol leadership worked to update the hiring process to be able to sponsor new hires to attend Basic Law Enforcement Training which increases the number of potential candidates for open positions. Two rounds of hiring in 2022 led to filling 6 new positions who are currently

engaged in training. We have also had 2 officers become field training officers and 1 become a general instructor which makes them great assets to the Marine Patrol team. All officers also participate in 24 hours of in-service training each year.

Marine Patrol's 2022 accomplishments include checking 10,314 Standard Commercial Fishing Licenses, 9,840 Commercial Fishing Vessel Registrations, 1,589 Shellfish Licenses, 63,099 Coastal Recreational Fishing Licenses, 564 Recreational Commercial Gear Licenses, and 23,738 Recreational vessels. These checks break down to a total of 21,743 commercial sector checks and 30,401 recreational sector checks. Marine Patrol also performed 2,065 checks on charter boats, wrote 558 citations, and wrote 1,318 warnings in 2022.

Shellfish Lease and Aquaculture



Shellfish Leases

Background

Shellfish leases have been allowed in North Carolina since 1858 providing job opportunities, economic benefits, and ecological benefits. The NC General Assembly directed the State to promote and grow the shellfish mariculture industry. Shellfish leases must be between 1/2 and 10 acres and may not interfere with natural seagrass or shellfish beds. Additionally, shellfish leases must be compatible with other public trust uses, including navigation, recreation, commercial fishing, and others. To help determine whether a shellfish lease can be approved, DMF uses a rigorous application process that uses GIS mapping, environmental sampling, consultation with other state and federal agencies, public comment, and cumulative impacts. Shellfish lease contracts are approved for 10-years and must meet commercial production requirements to ensure utilization and upkeep.

Lease Program Efficiencies

The Shellfish Lease Program has been working on implementing changes to improve the lease process for applicants and leaseholders. Several of these changes are highlighted below.

- Single annual mailout to leaseholders with rent notices, production reports, rules and regulations updates, and work authorizations.
- Option to receive forms via email for new shellfish lease applicants.
- Shellfish lease renewal packets include the existing management plan and prior renewal forms for reference.
- Made forms available on website.
- Improve transfer process with template forms for leaseholders and recipients.
- Lease staff meets applicants or leaseholders on site to assist with pole placement.
- Added more resources for lease siting, management plan support, and technical support to the website to assist growers.
- Collaborated with NC Sea Grant to develop the [North Carolina Aquaculture Gear Management and Storm Preparedness Resource Guide](#) on the Shellfish Lease website.



Aquaculture Permits

Background

There are nine aquaculture permits that may be required to conduct various upland and in-water aquaculture practices. Starting in 2023, Aquaculture Operation Permits (AOP) are now required for all shellfish leases and franchises. This has increased the number of permits that must be issued and inspected annually.

Aquaculture Program Efficiencies

The Aquaculture Program has been undergoing an overhaul to improve permit turnaround time and filing for applicants. Some of these changes are listed below.

- New AOP Renewal Package with one-page renewal including the previous year's permit information.
- 10 business day turnaround for new AOPs.
- All permit forms as fillable PDFs.
- Applications accepted in mail and all digital forms.
- 48–72-hour turnaround for Intro Permits and Aquaculture Seed Transplant Permits.
- Improved lease and aquaculture program coordination
- AOP inspection tool developed to improve annual inspection process and ensure consistency with inspections.



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

MEMORANDUM

TO: Coastal Resources Commission
Environmental Management Commission
Marine Fisheries Commission
Coastal Habitat Protection Plan Steering Committee

FROM: Jimmy Johnson
Albemarle-Pamlico National Estuary Partnership
Anne Deaton
Division of Marine Fisheries

DATE: January 30, 2023

SUBJECT: Coastal Habitat Protection Plan Steering Committee Meeting

The Coastal Habitat Protection Plan (CHPP) Steering Committee met in person in New Bern and via webinar at 9:30 a.m. Tuesday, December 6, 2022. The following attended in person:

Commissioners: Larry Baldwin, David Anderson, Bob Emory, Pat Harris (Not a committee member)
DMF Staff: Anne Deaton, Casey Knight, Jacob Boyd, Jimmy Harrison, Charlie Deaton
APNEP Staff: Jimmy Johnson
DCM Staff: Daniel Govoni, Mackenzie Todd, Rebecca Ellin
NCCF: Eliza Wilczek

The following attended virtually:

Commissioners: Yvonne Bailey, Doug Rader, Donald Huggins
DWR Staff: Karen Higgins, Tammy Hill, Michelle Raquet, David May, Holley Snider
DEMLR Staff: Samir Dumpor
NCDA&CS: Eric Pare (SWCD)
APNEP Staff: Bill Crowell, Tim Ellis
DMF Staff: Kelly Brannigan, Kim Harding, Brandi Salmon, Dan Zapf, Chris Stewart
Public: Reid Corbett (ECU-CSI), Tom Caggiano (TNC), Kathy Herring (NCDOT)



North Carolina Department of Environmental Quality

217 West Jones Street | 1601 Mail Service Center | Raleigh, North Carolina 27699-1601

919.707.8600

WELCOME AND INTRODUCTIONS

Jimmy Johnson (APNEP) welcomed everyone to the CHPP Steering Committee (CSC) Meeting. He noted that Donald Huggins and Dr. Doug Rader were new members of the CSC representing the MFC. Johnson asked that everyone introduce themselves, those attending in person and those attending virtually. Johnson noted that the CSC no longer has a chairman since Dr. Martin Posey was not reappointed to the MFC. A chair will be selected either in between meetings or at the next meeting of the CSC. The Steering Committee elects its own chairperson.

APPROVE MINUTES FROM OCTOBER 25, 2021 MEETING

Motion by Larry Baldwin to approve the minutes. Seconded by David Anderson. Motion carried unanimously.

ROLES AND RESPONSIBILITIES

Johnson reviewed the roles and responsibilities for the members of the CSC and for the CHPP Team members. A handout was distributed with the responsibilities of the members.

CHPP BACKGROUND

Johnson gave a PowerPoint presentation on the history and purpose of the Coastal Habitat Protection Plan. He noted that the CHPP was part of the Fisheries Reform Act of 1997. The first plan was enacted in late 2004 when all three regulatory commissions voted to adopt the plan. Since 2004 the CHPP was rewritten in 2010 and 2016 and amended in 2022. The legislative goal of the CHPP is: *The long-term enhancement of coastal fisheries associated with coastal habitats.* The CHPP identifies six critical habitats which fish utilize at different stages of their life cycle, and which are critical to protect. The 2022 Amendment focuses on five key issues to better concentrate efforts and hopefully make more significant strides in improving water quality and the habitats mentioned.

CHPP IMPLEMENTATION

Anne Deaton (DMF) reviewed implementation progress of the 2021 CHPP Recommended Actions for the five priority issues.

Submerged Aquatic Vegetation Protection and Restoration

This priority issue has 13 recommended actions. Eight are targeted for 2022. A key action is establishing water quality standards for light penetration. DWR staff is working with a Science Advisory Committee to do this through a Nutrient Criteria Development Plan. Dr. Nathan Hall at UNC's IMS has been collecting water quality data to enhance a bio-optical model needed to determine nutrient and sediment thresholds. Three recommended actions are to begin in 2023 and two are already underway. Larry Baldwin suggested that it may be of benefit to utilize recreational fishing routes to track seagrass expansion and contraction. Bill Crowell, APNEP Director, noted that DWR would be requesting funding for additional ambient monitoring along with additional funding to continue Dr. Hall's work.

Wetland Protection and Enhancement with Nature-based Solutions

This priority issue has 17 recommended actions of which five are due to begin in 2022. Four of the five are underway. The one that is not underway is the recommended action for prohibiting



oyster harvest on living shorelines. DMF and DCM staff determined there is no statutory authority to deal with this issue and it may not be as significant of an issue as first thought. DEQ will be seeking funding to map coastal wetlands in 2023. A workgroup is developing a Greenhouse Gas Inventory for coastal wetlands and SAV, which are currently not included in NC's Greenhouse Gas Inventory. A final report is due in a few months. Rebecca Ellin (NERRS) noted that an America the Beautiful Grant was awarded to DCM to study marsh migration corridors on some NERRS sites.

Environmental Rule Compliance

This issue has five recommended actions, two of which are to begin in 2022. One action was a website that would post the names of all offenders. Samir Dumpor (DEMLR) noted that there may be some legal issues with trying to shame the culprits. DEACS already has a site for compliance information. Dumpor also noted that transfers of stormwater permits are a large challenge for stormwater management education and compliance. There will be some free stormwater workshops coming up in 2023.

Reducing Inflow and Infiltration associated with Wastewater Infrastructure

Deaton noted that there are seven recommended actions for this issue, and none are to begin in 2022. David May (DWR) gave a brief update on the recommended actions about smaller wastewater systems, requiring annual cleaning and having an "Operators in Responsible Charge" available. This may be a good place to utilize some stimulus funding or BIL money.

Habitat Mapping and Monitoring

This key issue has five recommended actions and 2 are slated to start in 2022 and the other three in 2023. One item of note is the recommendation to update standardized procedures for algal bloom investigations, as this may present an opportunity to cross-train other divisions and therefore increase interagency cooperation.

Overarching recommendation 9.1 calls for several things. The one major action is the formation of a Public Private Partnership. That is well underway, and the formation of the PPP will initiate several other actions called for in 9.1.

PUBLIC COMMENT

There was no public comment.

UPDATE ON PUBLIC PRIVATE PARTNERSHIP AND THE WATER QUALITY SUMMIT

Eliza Wilczek, with the NC Coastal Federation, was invited to give the committee a report on the recent Water Quality Summit held in New Bern and how that would be used as a kick-off of the Public Private Partnership. She reported that 111 people participated in the Summit representing 13 stakeholder categories. After a morning of presentations from stakeholders and shareholders, along with DEQ leadership, the gathering broke up into four subgroups – Living Shorelines and Salt Marsh Conservation, Working Lands and Waters, and two subgroups centered around Resiliency Planning. After the meeting, it was decided to merge groups one and three into one Conservation and Resilience Planning. The Working Lands and Waters subgroup was to meet before the Christmas break and begin working on a resolution seeking more funding for the Agriculture Cost Share Program that funds BMPs to improve water quality.



ISSUES FROM COMMISSIONERS

Doug Rader (MFC) would like to look at river flows and the effects on fisheries, primarily striped bass. He noted that we would need the WRC at the table for this discussion. Rader noted that the SAFMC jurisdiction went further inland than the CHPP has historically. He noted that the CHPP is where everything comes together regarding this issue.

Rader also asked that we begin looking at climate change-related weather patterns and planning further into the future to increase coastal resiliency. He asked about the effects that weather has on fish habitat suitability.

Bill Crowell noted that the CSC would benefit on hearing from the South Atlantic Salt Marsh Initiative (SASMI).

Larry Baldwin (CRC) had several issues he would like to see discussed and addressed in future meetings. He would like to see improvements in the hydrology of the coast. Baldwin noted that mitigation credits for coastal improvements were very difficult to obtain. One example of hydrologic restoration was filling mosquito ditches since they increase flooding and reduce water quality. He suggested investigating incentives for restoration, such as allowing mitigation credits for that work and would like to see more public/private mitigation banks. A second example from Baldwin was to restore flow in waterbodies that have been impacted by road crossings and causeways. In coastal counties some of the older roads performed as dikes, which is can be observed by the different vegetation on each side of the roadway. He emphasized that this has a tremendous effect on water quality. He would like to see some work done on the sizing of culverts and make sure they are correctly sized to help with the movement and flow of coastal waters.

Three other issues Baldwin would like to see discussed in the future were marine debris and salvage, basic sanitary facilities at public access points, and minimum building standards for docks and piers.

ADJOURN

The meeting adjourned at 12:10 pm

/jaj





ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

January 27, 2023

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Barbie Byrd, Biologist Supervisor
Protected Resources Program, Fisheries Management Section

SUBJECT: Protected Resources Program Update

Issue

Summary information is provided from the Division's Protected Resources Program to provide updates related to recent Endangered Species Act (ESA) Section 10 Incidental Take Permit (ITP) reports to National Marine Fisheries Service (NMFS), submission of an ITP application to NMFS for September 1, 2023 – August 31, 2033, and development of a fisherman call-in system to arrange observed trips.

Seasonal reports to NMFS are required for the sea turtle ITP and monthly reports, if a take is observed, are required for the Atlantic Sturgeon ITP. The seasonal report for the sea turtle ITP and the September monthly report for the Atlantic Sturgeon ITP can be found in the briefing materials. There were no observed incidental takes of Atlantic Sturgeon during October or November. Note that the seasonal and monthly reports are preliminary and updates can occur in the final reports submitted to NMFS.

The current sea turtle Section 10 ITP expires in August 2023. The Division has been working with NMFS to prepare an application for a new 10-year permit that would combine sea turtles and sturgeon into a single ITP. On December 2, 2022, the Division formally submitted an ITP application for incidental takes of sea turtles and sturgeon in estuarine anchored gill-net fisheries. On December 22, 2022, NMFS published the Notice of Receipt and request for public comments on the application (<https://www.federalregister.gov/documents/2022/12/22/2022-27799/Endangered-species-file-no-27106>) followed by a correction to the notice on January 5, 2023 (<https://www.federalregister.gov/documents/2023/01/05/2022-28553/Endangered-species-file-no-27106-correction>). The 30-day public comment period was set to close on January 23, 2023; however, in response to a request, the NMFS announced on January 20, 2023, that the public comment period would be extended an additional 30 days, closing on February 22, 2023.

Several other steps must occur before NMFS can issue an ITP. Pursuant to the National Environmental Policy Act (NEPA; 40 CFR§ 1508.27), NMFS will develop an Environmental Assessment (EA) to determine if issuance of the ITP would have significant environmental effects. NMFS will publish the draft EA and provide a separate 30-day comment period specific to the draft EA. The draft EA will include any appropriate changes to the ITP application in response to public comments, but depending on the number of comments received, it may or may not include responses to public comments. Separately, NMFS will initiate an ESA Section 7 consultation, which is an interagency process “..designed to assist federal agencies in fulfilling their duty to ensure any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat” (<https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultations-greater-atlantic-region>). If NMFS determines that an ITP can be issued, it will publish the final EA, with associated responses to comments on the application and the draft EA, and Section 7 Biological Opinion upon issuance of the ITP (<https://www.ecfr.gov/current/title-50/chapter-II/subchapter-C/part-222/subpart-C/section-222.307>).

Finally, to improve scheduling of observer trips and in response to industry requests, the Observer Program has been working with the NC Department of Information Technology to contract a vendor to build an automated call-in system. The goal is for fishermen to report upcoming fishing activities planned for a given week and some portion of the fishermen will be randomly selected to take an observer. Ultimately, the call-in system will result in observed trips being distributed more evenly among participants and improve ITP observer coverage success. The Observer Program is compiling background information and plans to schedule public information meetings during spring and summer before rolling out the call-in system requirements during fall.

Action Needed

For informational purposes only; **no action is needed at this time.**

Overview

Sea Turtle Seasonal Report

During fall 2022, onboard and alternative platform methods were used for observed trips. Hereafter, all references to gill nets are for anchored nets only unless stated otherwise. Estimates of observer coverage percentages for open management units were calculated using preliminary observer data and estimates of fishing effort. Management Unit D1 was not opened to large-mesh (≥ 5 inches stretch mesh; ISM) gill nets during fall of 2022. Estimated observer coverage of the large-mesh gill-net fishery exceeded the 7% minimum required threshold in all open management units (279 observed trips; percent coverage range: 12.6–34.7%; Table 1). These percentages may change when Trip Ticket Program data are available in 2023.

Additionally, estimated observer coverage of the small-mesh (< 4 ISM) gill-net fishery met or exceeded the 1% minimum required threshold in all management units except Management Unit C (38 observed trips; percent coverage range: 0–3.4%; Table 2). Observers and Marine Patrol officers logged 252 No-Contact trips, primarily looking for small-mesh effort (Table 3).

There were 30 observed sea turtle interactions from large-mesh gill nets and two from small-mesh gill nets during fall 2022 (Table 4). Of the 30 turtle interactions observed in large-mesh gill nets, nine occurred on the first day the fishery was open (September 15) and 18 occurred on the second day (September 16). As a result, a proclamation was issued on the afternoon of September 16, closing several subunits in Management Unit B to anchored large-mesh gill nets. These gill net closures included subunits Core Sound Gill Net Restricted Area (CGNRA), Shallow Water Gill Net Restricted Areas (SGNRA) 1, and SGNRA 2 (Proclamation M-19-2022). On September 22, the flounder northern and southern management areas were closed to mobile gears, including estuarine anchored large-mesh gill nets, based on reported landings compared to the Southern Flounder quota (Proclamations M-20-2022 and M-21-2022). The cumulative estimated and/or observed sea turtle takes for large-mesh gill nets were calculated daily to ensure authorized takes were not exceeded (Table 5).

The two observed live sea turtle (both green sea turtles) interactions in small-mesh gill nets occurred in Management Unit B during October (Table 4). Observer Program staff began conversations with NCDMF management staff after the second interaction because the authorized number of green sea turtle interactions for small-mesh gill nets in Management Unit B is a count of three observed. The decision was made to close Management Unit B to anchored small-mesh gill nets effective on November 2, 2022 (Proclamation M-24-2022), acknowledging that reopening the management unit would be considered when water temperatures decreased to a level where sea turtle occurrence likely would be decreased also. The cumulative number of observed takes for small-mesh gill nets was calculated daily to ensure authorized takes were not exceeded.

In addition to observed sea turtle interactions, two fishermen reported sea turtle interactions in their gear. One report was of a dead green sea turtle from an anchored large-mesh gill net in Management Unit C during September. The other report was a dead unidentified sea turtle from an anchored small-mesh gill net in Management Unit E during October.

During fall 2022, observers logged 348 contacts or contact attempts. Observers spoke with a fisherman on 123 occasions to try to arrange a trip but only arranged 29 trips in advance (23.6%). Out of 119 times observers left a message (either voicemail or with another person), observers only received 28 returned calls from fishermen (23.5%).

Atlantic Sturgeon Monthly Report

During September 2022, there were 14 observed Atlantic Sturgeon incidental takes (Table 6). There were no observed incidental takes of Atlantic Sturgeon during October or November. All observed takes occurred in large-mesh anchored gill nets in Management Unit A. Cumulative estimated and observed interactions during fall months did not reach or exceed authorized levels (Table 7).

Table 1. For estuarine anchored large-mesh gill nets, estimated percent observer coverage calculated from observer trips (≥ 4 ISM) and estimated fishing trips using Trip Ticket Program data (≥ 5 ISM) by management unit during fall (September–November) 2022 for Incidental Take Permit Year 2023. The large-mesh gill-net fishery opened in all management units except D1 on September 15. Some areas of Management Unit B were closed on September 16; the other Management Units closed on September 22. ISM=Inches Stretch Mesh.

Management Unit	Estimated Fishing Trips	Observed Trips	Percent Observer Coverage
A	720	115	16.0
B	365	46	12.6
C	144	50	34.7
D1	closed	closed	closed
D2	36	5	13.9
E	348	63	18.1
Total	1,613	279	17.3

Table 2. For estuarine anchored small-mesh gill nets, estimated percent observer coverage calculated from observer trips (< 4 ISM) and estimated fishing trips using Trip Ticket Program data (< 5 ISM) by management unit during fall (September–November) 2022 for Incidental Take Permit Year 2023. Management Unit B was closed November 2, 2022, and the first two days of November were not added to the Estimated Fishing Trips. ISM=Inches Stretch Mesh.

Management Unit	Estimated Fishing Trips	Observed Trips	Percent Observer Coverage
A	305	3	1.0
B	733	17	2.3
C	157	0	0
D1	31	1	3.2
D2	141	4	2.8
E	384	13	3.4
Total	1,751	38	2.2

Table 3. Number of "No Contact" trips by management unit completed by Marine Patrol and observers during fall 2022 (September–November) for Incidental Take Permit Year 2023. "No Contact" refers to unsuccessful attempts to find and observe gill-net effort.

Management Unit	Marine Patrol No-Contact Trips	Observer No-Contact Trips	Total No-Contact Trips
A	43	1	44
B	22	3	25
C	45	7	52
D1	12	1	13
D2	1	2	3
E	115	0	115
Overall	238	14	252

Table 4. Summary of observed sea turtle interactions (n=32) in anchored gill nets during fall 2022 (September–November) for ITP Year 2023. Thirty interactions were observed in large-mesh (≥ 4 ISM) gill nets and two interactions were observed in small-mesh (< 4 ISM) gill nets. An asterisk (*) denotes sea turtles that were in poor condition and transferred to veterinary care arranged by NC Wildlife Resources Commission (NCWRC). ISM=Inches Stretch Mesh. CCL=Curved Carapace Length. CCW=Curved Carapace Width. n/r =not recorded. MU= Management Unit

Date	MU	Mesh Category	Latitude (N)	Longitude (W)	Species	Disposition	CCL (mm)	CCW (mm)
9/15/2022	B	Large	35.07028	76.08861	Green	Alive	280	250
9/15/2022	B	Large	35.07139	76.08861	Green	Alive*	279	250
9/15/2022	B	Large	34.91255	76.24804	Green	Alive	360	300
9/15/2022	B	Large	34.86522	76.31285	Green	Alive	292	229
9/15/2022	C	Large	35.06556	76.61701	Green	Alive	300	258
9/15/2022	E	Large	33.91075	77.98346	Green	Dead	n/r	n/r
9/15/2022	B	Large	35.05916	76.08611	Kemp's Ridley	Alive	351	363
9/15/2022	B	Large	34.86522	76.31285	Kemp's Ridley	Alive	267	241
9/15/2022	B	Large	35.07194	76.08639	Loggerhead	Alive	510	495
9/16/2022	B	Large	35.32777	75.59722	Green	Dead	287	221
9/16/2022	B	Large	35.13778	75.95694	Green	Dead	303	255
9/16/2022	B	Large	34.85878	76.32066	Green	Dead	300	204
9/16/2022	B	Large	34.85878	76.32066	Green	Alive	301	270
9/16/2022	B	Large	34.86112	76.31775	Green	Alive	301	280
9/16/2022	B	Large	34.85997	76.31948	Green	Alive	320	260
9/16/2022	B	Large	34.85997	76.31948	Green	Alive	250	208
9/16/2022	B	Large	34.86042	76.31917	Green	Alive	n/r	n/r
9/16/2022	B	Large	34.86180	76.31703	Green	Alive	n/r	n/r
9/16/2022	B	Large	34.86079	76.31371	Green	Alive*	301	260
9/16/2022	C	Large	35.01076	76.70729	Green	Alive	n/r	n/r
9/16/2022	E	Large	34.66558	77.13181	Green	Alive	n/r	n/r
9/16/2022	E	Large	34.67059	77.12879	Green	Alive	n/r	n/r
9/16/2022	E	Large	34.66827	77.13359	Green	Dead	n/r	n/r
9/16/2022	E	Large	34.66802	77.13365	Green	Alive*	n/r	n/r
9/16/2022	E	Large	34.57522	77.36246	Green	Alive	n/r	n/r
9/16/2022	B	Large	34.85878	76.32066	Kemp's Ridley	Alive	380	400
9/16/2022	E	Large	34.66512	77.12916	Kemp's Ridley	Alive	n/r	n/r
9/20/2022	B	Large	35.34660	76.13865	Green	Alive	304	290
9/20/2022	C	Large	35.00194	76.72851	Unidentified	Alive	n/r	n/r
9/22/2022	C	Large	35.01479	76.70437	Green	Alive	255	240
10/06/2022	B	Small	35.44401	76.01347	Green	Alive	279	262
10/26/2022	B	Small	35.43788	76.01713	Green	Alive	298	231

Table 5. Summary of estimated (green and Kemp's ridley sea turtles) and observed (unidentified) sea turtle interactions in anchored large-mesh (≥ 4 ISM) gill nets by management unit during fall 2022 (September–November) for Incidental Take Permit Year 2023. ISM= Inches Stretch Mesh.

Management Unit	Green		Kemp's ridley		Loggerhead		Unidentified	
	Alive	Dead	Alive	Dead	Alive	Dead	Alive	Dead
A	0	0	0	0	0	0	0	0
B	59.2	13.2	15.7	0	1	0	0	0
C	3	0	0	0	0	0	1	0
D1	0	0	0	0	0	0	0	0
D2	0	0	0	0	0	0	0	0
E	8.0	3.8	2.0	0	0	0	0	0
Total	70.2	17.0	17.7	0	1	0	1	0

Table 6. Summary of observed Atlantic Sturgeon (n=14) interactions in estuarine anchored gill nets during September 2022 for ITP Year 2023. Mesh-size categories are large (>5 ISM) and small (<5 ISM). An asterisk (*) denotes sturgeon caught on the same day and trip. ISM= Inches Stretch Mesh.

Date	Condition	Management Unit	Mesh-Size Category	Soak Time (min)	Total Yards Set
9/15/2022	Alive	A	Large	720	800
9/15/2022	Alive	A	Large	720	1230
9/16/2022	Alive	A	Large	720	1500
9/17/2022	Alive	A	Large	720	1000
9/20/2022*	Alive	A	Large	720	1500
9/20/2022*	Alive	A	Large	720	1500
9/20/2022	Alive	A	Large	720	1500
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200

Table 7. Summary of estimated (Management Unit A) or observed (Management Units B–E) Atlantic Sturgeon interactions during fall 2022 (September–November) by management unit and disposition for large- and small-mesh gill nets for ITP Year 2023.

Management Unit	Large Mesh		Small Mesh	
	Alive	Dead	Alive	Dead
A	60.4	0	0	0
B	0	0	0	0
C	0	0	0	0
D	0	0	0	0
E	0	0	0	0
Total	60.4	0	0	0



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Monthly Progress Report
Incidental Take Permit No. 18102
Oct 7, 2022

Celeste Stout
Office of Protected Resources (F/PR)
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Celeste:

This memo serves as a report on observer program activities during September 2022 of the 2023 ITP Year (September 1, 2022 – August 31, 2023) for Permit #18102.

With the new ITP year starting September 1, the closure ([Proclamation M-10-2022](#)) effective April 28, 2022 of Management Unit A to estuarine anchored gill nets of all sizes ended ([Proclamation M-16-2022](#)). During September, the estuarine anchored small-mesh gill-net fishery was open state-wide for the entire month. The estuarine anchored large-mesh gill-net fishery targeting flounder was open with varying dates and locations based on [Amendment 3 of the Southern Flounder Fishery Management Plan](#), which establishes a quota-managed fishery for mobile gears (estuarine anchored large-mesh gill nets and gigs) and stationary gears (pound nets).

The estuarine anchored large-mesh fishery targeting flounder opened in all Management Units except D1 on September 15 (Proclamations [FF-40-2022](#), [M-15-2022](#), and [M-17-2022](#)). For the mobile gear fishery, the quota was split between the northern management area (123,879 pounds from ITP Management Units A, B, and C) and southern management area (62,309 pounds from ITP Management Units D2 and E) ([Proclamation FF-40-2022 Map Package](#)). Estuarine Flounder Dealer Permits were required for any fish dealer to possess, purchase, sell, or offer for sale flounder taken from estuarine waters. As a [condition of the permit](#), dealers were required to report flounder landings from a given day by noon the next day or for landings on Fridays or Saturdays by noon the following Monday.

On September 16, Management Unit B subunits Core Sound Gill Net Restricted Area (CGNRA), Shallow Water Gill Net Restricted Areas (SGNRA) 1, and SGNRA 2 were closed to estuarine anchored large-mesh gill nets due to the number of observed sea turtle interactions that had occurred there ([Proclamation M-19-2022](#); Figure 1). Fishermen could haul in their gear the morning of the 16th that had been set the night before, but they could not set their gear again that evening. On September 22, the northern and southern management areas were closed to mobile gears, including estuarine anchored large-mesh gill nets, based on the reported landings compared to the quota ([Proclamations M-20-2022](#) and [M-21-2022](#)).

During September, there were 251 observed estuarine anchored large-mesh trips and 5 observed estuarine anchored small-mesh trips (Table 1). On these trips, 14 Atlantic Sturgeon interactions were observed, all in large-mesh gill nets (Table 2). Cumulative estimated and observed interactions during September of the 2023 ITP Year are included in Table 3 for anchored large-mesh gill nets. A table for small-mesh gill nets is not provided because there were no takes during September.

In addition to observed trips, 69 unsuccessful attempts to find fishing effort (“No-Contact trips”; Table 1) and 10 observed runaround gill-net trips were occurred during September. Observed runaround gill-net trips occurred in Management Units B (2 trips), C (6 trips) and E (2 trips).

Table 1. Numbers of observed estuarine anchored gill-net trips (n=256) by management unit and mesh-size category during September 2022 for ITP Year 2023. Mesh-size categories are large (≥ 5 inches stretched mesh) and small (< 5 inches stretched mesh). Numbers of No-Contact trips (n=69) by management unit are also provided. No-Contact refers to unsuccessful attempts to find and observe anchored gill-net effort.

Month	Management Unit	Large-mesh observed trips	Small-mesh observed trips	No-Contact trips
September	A	93	0	10
	B	45	0	11
	C	47	0	12
	D1	closed	1	4
	D2	5	0	0
	E	61	4	32
	Overall		251	5	69

Table 2. Summary of observed Atlantic Sturgeon (n=14) interactions in estuarine anchored gill nets during September 2022 for ITP Year 2023. Mesh-size categories are large (≥ 5 inches stretched mesh) and small (< 5 inches stretched mesh). Sturgeon on the same day with an asterisk were caught on the same trip.

Date	Condition	Management Unit	Mesh-Size Category	Soak Time (min)	Total Yards Set
9/15/2022	Alive	A	Large	720	800
9/15/2022	Alive	A	Large	720	1230
9/16/2022	Alive	A	Large	720	1500
9/17/2022	Alive	A	Large	720	1000
9/20/2022*	Alive	A	Large	720	1500
9/20/2022*	Alive	A	Large	720	1500
9/20/2022	Alive	A	Large	720	1500
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200
9/22/2022*	Alive	A	Large	720	1200

Table 3. For anchored large-mesh (≥ 5 inch) gill nets, a comparison of observed (live, n=14; dead, n=0) incidental takes of Atlantic Sturgeon by management unit during September 2022 of the 2023 ITP Year to authorized thresholds expressed as either estimated total takes based on observed takes for Management Unit A or counts of observed takes (i.e., not estimated) for Management Units B–E. Estimated takes in Management Unit A are based on projected fishing effort; therefore, 95% confidence intervals are not provided. Genetic results were not available to determine the Distinct Population Segment (DPS) of observed interactions.

Management Unit	Season	Authorized				Actual	
		Carolina DPS		Other DPS		All DPS	
		Alive	Dead	Alive	Dead	Alive	Dead
A	Annual	1,604	65	535	21	60.4	0
B	Annual	24	6	9	0	0	0
C	Annual	11	5	4	0	0	0
D	Annual	8	2	n/a	n/a	0	0
E	Annual	8	2	n/a	n/a	0	0
Total	Annual	1,655	80	548	21	60.4	0

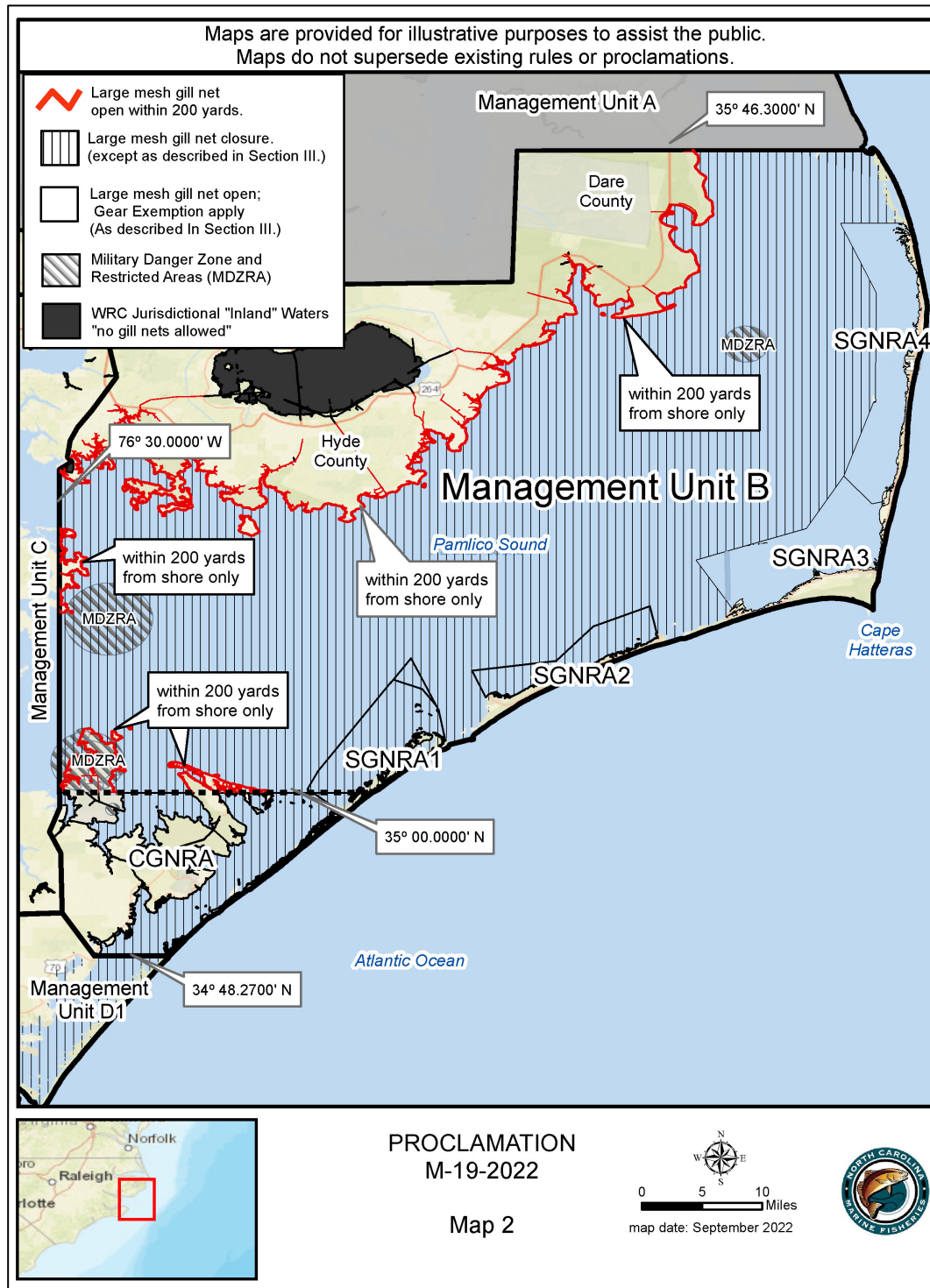


Figure 1. Map from Proclamation M-19-2022 showing the closure of Core Sound Gill Net Restricted Area (CGNRA), Shallow Water Gill Net Restricted Areas (SGNRA) 1, and SGNRA 2 to estuarine anchored large-mesh gill nets, effective September 16, 2022 at 6:15 pm.

Kind regards,

A handwritten signature in cursive script that reads "Barbie L. Byrd". The signature is written in black ink and is positioned above the printed name.

Barbie Byrd
Protected Resources Program, Biological Supervisor

cc: Wendy Piniak and Angela Somma (NMFS); Matthew Doster, Casey Knight, Jonathon McFall, Steve Poland, and Kathy Rawls (NCDMF)

2022 Fall Seasonal Progress Report
for Activities under Endangered Species Act
Section 10 Incidental Take Permit No. 16230
September 1–November 30, 2022
ITP Year 2023



Matthew Doster, Barbie L. Byrd, and Dave Ushakow
North Carolina Department of Environmental Quality
North Carolina Division of Marine Fisheries
Protected Resources Program
3441 Arendell Street
Morehead City, NC 28557

December 2022
(revised January 2023)

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SUMMARY

This report summarizes activities of the North Carolina Division of Marine Fisheries (NCDMF) Observer Program during fall (September–November) 2022 of the Incidental Take Permit (ITP) Year 2023 (September 1, 2022–August 31, 2023) for ITP No. 16230. Throughout this document, all references to gill nets are for estuarine anchored gill nets only, unless stated otherwise. Data used in this seasonal report are preliminary and subject to change for the annual report to be submitted February 2024. See Figure 1 for a map of management units outlined in the ITP Conservation Plan.

With the new ITP year starting September 1, the closure (Proclamation M-10-2022) effective April 28, 2022, of Management Unit A to estuarine anchored small-mesh gill nets ended (Proclamation M-16-2022; Table 1). The estuarine anchored large-mesh gill-net fishery targeting Southern flounder (*Paralichthys lethostigma*) opened statewide on September 15 with the exception of Management Unit D1 and the deep waters of Management Unit B (Proclamations FF-40-2022, M-15-2022, and M-17-2022). In contrast to the fall seasons of 2019–2021, regulations on the large-mesh gill-net fishery targeting flounder during fall 2022 were set in accordance with [Amendment 3](#) to the N.C. Southern Flounder Fishery management Plan, which was adopted by the North Carolina Marine Fisheries Commission (MFC) on May 26, 2022 and superseded Amendment 2. Among other things, Amendment 3 established a quota-managed fishery for mobile gears (estuarine anchored large-mesh gill nets and gigs) and stationary gears (pound nets) with separate sub-allocations by harvest areas. Attendance requirements for anchored small-mesh gill nets were in place statewide (M-9-2022; Table 1). For more information, the NCDMF published an interactive map package online that provides visual references for gill-net attendance regulations that are in rule (<https://deq.nc.gov/about/divisions/marine-fisheries/rules-proclamations-and-size-and-bag-limits/rules/interactive-map-current-rules>).

For the mobile-gear fishery, the allocation was split between the northern management area (123,879 pounds from ITP Management Units A, B, and C) and southern management area (62,309 pounds from ITP Management Units D2 and E) (Proclamation FF-40-2022; Figure 1). Estuarine Flounder Dealer Permits were required for any fish dealer to possess, purchase, sell, or offer for sale flounder taken from estuarine waters. As a condition of the permit, dealers were required to report flounder landings from a given day by noon the next day or for landings on Fridays or Saturdays by noon the following Monday. Gill-net activity was still subject to conditions put forth by federally issued ITPs for sea turtle and sturgeon incidental takes, and areas could be closed by proclamation should allowable take numbers be approached or exceeded. Also, further restrictions per Amendment 3 included a reduction in gill-net yardage ($\leq 1,500$ yards in Management Units A, B, and C and ≤ 750 yards in Management Units D2 and E) and a limit of overnight soak times in Management Units A and C.

Prior to the start of the fall season, the Observer Program projected the number of observed trips by month and management unit that would be needed to meet the coverage levels required in the ITP. For small-mesh gill nets, this was accomplished as in years past by calculating the average number of fishing trips reported to the Trip Ticket Program by management unit from the previous five years (e.g., 2017–2021 for the 2022 fall season). This approach has had to evolve since fall 2019 (ITP year 2020) to estimate effort in the estuarine anchored large-mesh gill-net fishery for

Southern flounder due to drastic reductions in fishing effort when Amendment 2 was first adopted. For the fall of 2020 and 2021, the number of reported fishing trips per month and management unit was divided by the number of days the fishery was open during each of the previous five years. The projected number of observer trips for each month and management unit was based on 10% of that expanded number. However, after reviewing finalized Trip Ticket Program data, estimates of fishing trips were biased low in some cases. To account for this concern and the additional unknown effects of a quota-managed fishery, the approach to estimating fishing effort was modified for fall 2022. Using Trip Ticket Program data from the last three years, the maximum number of fishermen reporting large-mesh gill-net trips for a given week and management unit was calculated. We then assumed that each of the fishermen would fish every day until the quota was filled and the fishery was closed. Using this assumption, we multiplied the maximum number of fishermen for each management unit by the estimated number of days open for that management unit in a given week (e.g., Management Unit B is not open Saturday through Monday). The projected number of observer trips for each management unit per week was based on 10% of the corresponding expanded number. It cannot be known at this time whether this approach would overestimate fishing activity, but it should reduce the likelihood of underestimating activity and not reaching required observer coverage.

Observers, Marine Patrol, and other NCDMF staff combined effort to observe the fall large-mesh gill-net fishery for Southern flounder to ensure observer coverage requirements were met. Observer program staff focused their efforts on getting onboard observations. Prior to the start of the flounder season, the Observer Program held training sessions at the Morehead City, Washington, Manteo, and Elizabeth City offices for staff helping with alternative platform observations. In most cases, at least one of the two staff members on an alternative platform team had observed prior to the current season.

There were 30 observed sea turtle interactions from large-mesh gill nets and two from small-mesh gill nets during fall 2022 (Table 2). Of the 30 turtle interactions observed in large-mesh gill nets, nine occurred on the first day the fishery was opened (September 15) and 18 were observed on the second day (September 16). As a result, a proclamation was issued on the afternoon of September 16, closing Management Unit B subunits Core Sound Gill Net Restricted Area (CGNRA), Shallow Water Gill Net Restricted Areas (SGNRA) 1, and SGNRA 2 to anchored large-mesh gill nets (details below; Proclamation, M-19-2022; Figure 1). On September 22, the northern and southern flounder management areas were closed to mobile gears, including estuarine anchored large-mesh gill nets, based on reported landings compared to the quota (Proclamations M-20-2022 and M-21-2022; Table 1). The cumulative estimated and/or observed takes for large-mesh gill nets were calculated daily to ensure that authorized takes were not exceeded (Table 3).

The two observed live sea turtle (both green sea turtles) interactions in small-mesh gill nets occurred in Management Unit B during October (Tables 2, 4). Observer Program staff began conversations with NCDMF management staff after the second interaction occurred because the authorized number of green sea turtle interactions in small-mesh gill nets in Management Unit B is a count of three observed. The decision was made to close Management Unit B to anchored small-mesh gill nets effective on November 2, 2022 (Proclamation M-24-2022, Table 1). The cumulative number of observed takes for small-mesh gill nets was calculated daily to ensure that authorized takes were not exceeded (Table 4).

Of the overall 32 observed sea turtle interactions, 21 of them occurred in Management Unit B, four were in Management Unit C, and seven were in Management Unit E. Most of the observed interactions were green sea turtles (21 alive, 5 dead; Table 2). Three of the live green sea turtles were in poor condition and were transferred to veterinary care arranged by NC Wildlife Resources Commission. The remaining six observed sea turtles were all alive: four Kemp's ridley sea turtles, one loggerhead sea turtle, and one unidentified sea turtle.

In addition to observed sea turtle interactions, two fishermen reported sea turtle interactions in their gear (Table 5). One report was of a dead green sea turtle from an anchored large-mesh gill net in Management Unit C during September. The other report was a dead unidentified sea turtle from an anchored small-mesh gill net in Management Unit E during October.

Estimated fishing effort for the fall season was adjusted for the actual number of days open for large-mesh and small-mesh gill nets. Even though portions of Management Unit B were closed on September 16, estimated fishing effort was not adjusted. Estimated observer coverage of the large-mesh gill-net fishery exceeded 10% in all open management units (279 observed trips; percent coverage range: 12.6–34.7%; Table 6). Estimated observer coverage of the small-mesh gill-net fishery exceeded 1% in all management units except Management Unit C (38 observed trips; percent coverage range: 0–3.4%) (Table 7). Small-mesh gill-net effort was more difficult to locate than large-mesh effort because it is generally diffuse in time and space. This was particularly true for Management Units A and C. Conversations with Marine Patrol, fishermen, and fish-house samplers indicated that fishermen active in Management Units A and C were using runaround gill nets instead of anchored gill nets due to the net attendance regulations for small-mesh anchored gill nets there. The Observer Program staff have initiated conversations with the Trip Ticket Program to assess if seafood dealers have been mistakenly coding runaround gill-net trips as anchored gill-net trips.

Observers and Marine Patrol officers occasionally observe estuarine runaround (also called a drop/strike) gill nets and floating/drift gill nets. During fall 2022, Marine Patrol officers conducted observations of one floating/drift gill-net trip in Management Unit E and a total of 27 runaround gill-net trips: two trips in Management Unit B, 13 trips in Management Unit C, and 12 trips in Management Unit E. Observers and Marine Patrol officers logged a total of 252 No-Contact trips (Table 8) with 52 of them in Management Unit C looking for anchored small-mesh gill nets to observe.

As part of their regular duties, Marine Patrol officers checked gill nets for compliance. Occasionally, citations and/or Notice of Violations (NOVs) were issued to fishermen when gear or fishing practices were out of compliance. A citation is an enforcement action taken by a Marine Patrol officer for person(s) found to be in violation of general statutes, rules, or proclamations under the authority of the NCMFC and is considered a proceeding for district court. A NOV is the NCDMF's administrative process to suspend a permit and is initiated by an officer or division employee when a permit holder is found to be in violation of general or specific permit conditions. A citation and an NOV may both be initiated by the same permit condition violation; however, they are two separate actions. For this report, NOVs or citations associated with gill-net activities or the Estuarine Gill Net Permit (ENGP; database codes "NETG" and "EGNP") were compiled.

Marine Patrol issued 11 citations and eight NOVs for estuarine anchored gill nets during fall 2022 (Tables 9 and 10).

As per the ITP, the NCDMF established the EGNP in September 2014 to register all fishermen participating in anchored large- and small-mesh gill-net fisheries. Permits are renewed on an annual basis, based on the fiscal year for licenses. Contact information associated with the EGNPs is used by observers to call fishermen to schedule trips. To help arrange trips, the Observer Program worked with the NCDMF License & Statistics Section to distill the list of fishermen with active EGNPs to those that have reported landings with anchored gear (by mesh-size category) during the last three years. Observers also attempted to talk with fishermen in person at boat ramps and on the water when possible. Observers logged contact attempts and returned phone calls from fishermen into a database with categories of the response: 1) Left message with someone else; 2) Not fishing general; 3) Fishing other gear; 4) Not fishing because of weather; 5) Not fishing because of boat issues; 6) Not fishing because of medical issues; 7) Booked trip; 8) Hung up, got angry, trip refused; 9) Call back later time/date; 10) Saw in person; 11) Disconnected; 12) Wrong number; 13) No answer; 14) No answer, left voicemail; 15) Not fishing because of natural disaster (e.g., hurricane) (Figure 2). During fall 2022, observers logged 348 contacts or contact attempts. Observers spoke with a fisherman on 123 occasions to try to arrange a trip, but only arranged 29 trips in advance (23.6%). Out of 119 times observers left a message (either voicemail or with another person), observers received 28 returned calls from fishermen (23.5%). The Observer Program followed up on phone numbers that were disconnected or incorrect; some of them have already been updated.

TABLES

Table 1. Proclamations (Proc.) affecting estuarine anchored large- and small-mesh gill-net fisheries during fall (September – November) 2022 for Incidental Take Permit Year 2023.

Effective Date	Proc. Number	Regulation change
5/01/2022	M-9-2022	This proclamation supersedes proclamation M-6-2022 dated March 11, 2022. In Management Unit A, it implements small mesh gill net attendance requirements. It stipulates that it is unlawful to use fixed or stationary gill nets with a stretched mesh length other than 3 inches through 3 ¾ inches and keeps open a portion of Management Unit A to the use of run-around, strike, drop, and trammel gill nets with a stretched mesh length of 5 ½ inches through 6 ½ inches for harvesting blue catfish.
9/01/2022	M-16-2022	This proclamation supersedes proclamation M-10-2022 dated April 27, 2022. It opens Management Unit A to the use of small mesh anchored gill nets and implements small mesh gill net attendance requirements in accordance with the Division’s Fishery Management Plans for Estuarine Striped Bass and River Herring and the Incidental Take Permits for threatened or endangered sea turtles and endangered Atlantic sturgeon. It keeps open a portion of Management Unit A to the use of run-around, strike, drop, and trammel gill nets with a stretched mesh length of 5 ½ inches through 6 ½ inches for harvesting blue catfish.
9/14/2022	M-17-2022	This proclamation supersedes proclamation M-16-2022 dated August 26, 2022. It opens Management Unit A to the use of gill nets for the purpose of harvesting flounder in accordance with Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and the Incidental Take Permits for threatened or endangered sea turtles and endangered Atlantic sturgeon. It maintains the exempted areas in MUA open to the use of run-around, strike, drop, and trammel gill nets to harvest blue catfish. It also maintains small mesh gill net attendance requirements in the entirety of Management Unit A.
9/14/2022	M-15-2022	This proclamation supersedes proclamation M-8-2022 dated April 12, 2022. This proclamation opens Management Units B (subunits only), C, D2, and E to the use of gill nets with a stretched mesh length of 4 inches through 6 ½ inches (except as described in Section III.) in accordance with Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and the Federal Incidental Take Permits for endangered and threatened Sea Turtles and endangered Atlantic sturgeon.

9/15/2022	FF-40-2022	This proclamation supersedes Proclamation FF-40-2021, dated June 28, 2021. It establishes commercial flounder season dates for Internal Coastal Waters by Flounder Management Area and Gear Category. This action is being taken to comply with the requirements of Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and maintain harvest within the total allowable landings.
9/16/2022	M-19-2022	This proclamation supersedes proclamation M-15-2022 dated August 26, 2022. This proclamation closes Management Unit B subunits SGNRA1, SGNRA2, and CGRNA to the use of gill nets with a stretched mesh length of 4 inches through 6 ½ inches (except as described in Section III.) accordance with Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and the Incidental Take Permits for endangered and threatened Sea Turtles and endangered Atlantic sturgeon. It maintains openings in Management Units C, D2, and portions of Management Unit E (except those portions described in Section II.)
9/22/2022	M-21-2022	This proclamation supersedes proclamation M-17-2022 dated September 6, 2022. It closes Management Unit A to the use of large mesh anchored gill nets with overnight soaks for harvesting flounder. It maintains small mesh gill net attendance requirements and keeps open a portion of Management Unit A to the use of run-around, strike, drop, and trammel gill nets with a stretched mesh length of 5 ½ inches through 6 ½ inches for harvesting blue catfish.
9/22/2022	M-20-2022	This proclamation supersedes proclamation M-19-2022 dated September 16, 2022. This proclamation closes Management Units D2 and E at 12:00 P.M. on September 21, 2022, and Management Units B and C at 10:00 A.M. on September 22, 2022 to the use of gill nets with a stretched mesh length of 4 inches through 6 ½ inches (except as described in Section III.) in accordance with Amendment 3 to the N.C. Southern Flounder Fishery Management Plan.
9/21/22 & 9/22/22	FF-46-2022	This proclamation supersedes Proclamation FF-40-2022, dated July 8, 2022. It closes the commercial flounder season for the Southern Management Area Wednesday, September 21, 2022, and the Mobile Gear Northern Area Thursday, September 22, 2022, and maintains the season, size, and gear restrictions for the Pound Net Northern, Central, and Southern Management Areas. This proclamation also establishes a 1,000-pound daily trip limit for the commercial pound net fishery in the Pound Net Northern Management Area beginning September 22, 2022. If the division determines quota is available for additional harvest days further proclamations will be released. This action is being taken to comply with the requirements of Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and maintain harvest within the total allowable landings (TAL).

10/09/2022	FF-48-2022	This proclamation supersedes Proclamation FF-46-2022, dated September 21, 2022. It reopens the commercial flounder season for the Mobile Gear Northern and Southern Management Areas to gigs and hook and line only with a 50-fish per person per day limit and maintains the closure to all other mobile gears. This proclamation also establishes a 1,000-pound daily trip limit for the commercial pound net fishery in the Pound Net Southern Management Area and maintains a 1,000-pound daily trip limit for the commercial pound net fishery in the Pound Net Northern Management Area, while maintaining the season, size, and gear restrictions for the Pound Net Northern, Central, and Southern Management Areas. This action is being taken to comply with the requirements of Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and maintain harvest within the total allowable landings (TAL).
10/28/2022	FF-55-2022	This proclamation supersedes Proclamation FF-54-2022, dated October 19, 2022. It closes harvest of flounder taken for commercial purposes from Internal Coastal Waters. Quota monitored landings are approaching the Total Allowable Landings (TAL) and harvest will not re-open in 2022. This action is being taken to comply with the requirements of Amendment 3 to the N.C. Southern Flounder Fishery Management Plan and maintain harvest within the TAL.
11/02/2022	M-24-2022	This proclamation supersedes proclamation M-13-2022 dated June 17, 2022. It closes Management Unit B to the use of fixed or stationary gill nets with a stretched mesh length less than 4 inches.
11/04/2022	M-25-2022	This proclamation supersedes proclamation M-24-2022 dated November 2, 2022. It closes Management Unit B to the use of fixed or stationary gill nets with a stretched mesh length less than 4 inches and maintains exemptions for actively fished gill nets.

Table 2. Summary of observed sea turtle interactions (n=32) in anchored gill nets during fall 2022 (September–November) for ITP Year 2023. Thirty interactions were observed in large-mesh (≥ 4 inch) gill nets and two interactions were observed in small-mesh (< 4 inch) gill nets. An asterisk (*) denotes sea turtles that were in poor condition and transferred to veterinary care arranged by NC Wildlife Resources Commission (NCWRC). CCL=Curved Carapace Length. CCW=Curved Carapace Width. n/r =not recorded. MU= Management Unit

Date	MU	Mesh Category	Latitude (N)	Longitude (W)	Species	Disposition	CCL (mm)	CCW (mm)
9/15/2022	B	Large	35.07028	76.08861	Green	Alive	280	250
9/15/2022	B	Large	35.07139	76.08861	Green	Alive*	279	250
9/15/2022	B	Large	34.91255	76.24804	Green	Alive	360	300
9/15/2022	B	Large	34.86522	76.31285	Green	Alive	292	229
9/15/2022	C	Large	35.06556	76.61701	Green	Alive	300	258
9/15/2022	E	Large	33.91075	77.98346	Green	Dead	n/r	n/r
9/15/2022	B	Large	35.05916	76.08611	Kemp's Ridley	Alive	351	363
9/15/2022	B	Large	34.86522	76.31285	Kemp's Ridley	Alive	267	241
9/15/2022	B	Large	35.07194	76.08639	Loggerhead	Alive	510	495
9/16/2022	B	Large	35.32777	75.59722	Green	Dead	287	221
9/16/2022	B	Large	35.13778	75.95694	Green	Dead	303	255
9/16/2022	B	Large	34.85878	76.32066	Green	Dead	300	204
9/16/2022	B	Large	34.85878	76.32066	Green	Alive	301	270
9/16/2022	B	Large	34.86112	76.31775	Green	Alive	301	280
9/16/2022	B	Large	34.85997	76.31948	Green	Alive	320	260
9/16/2022	B	Large	34.85997	76.31948	Green	Alive	250	208
9/16/2022	B	Large	34.86042	76.31917	Green	Alive	n/r	n/r
9/16/2022	B	Large	34.86180	76.31703	Green	Alive	n/r	n/r
9/16/2022	B	Large	34.86079	76.31371	Green	Alive*	301	260
9/16/2022	C	Large	35.01076	76.70729	Green	Alive	n/r	n/r
9/16/2022	E	Large	34.66558	77.13181	Green	Alive	n/r	n/r
9/16/2022	E	Large	34.67059	77.12879	Green	Alive	n/r	n/r
9/16/2022	E	Large	34.66827	77.13359	Green	Dead	n/r	n/r
9/16/2022	E	Large	34.66802	77.13365	Green	Alive*	n/r	n/r
9/16/2022	E	Large	34.57522	77.36246	Green	Alive	n/r	n/r
9/16/2022	B	Large	34.85878	76.32066	Kemp's Ridley	Alive	380	400
9/16/2022	E	Large	34.66512	77.12916	Kemp's Ridley	Alive	n/r	n/r
9/20/2022	B	Large	35.34660	76.13865	Green	Alive	304	290
9/20/2022	C	Large	35.00194	76.72851	Unidentified	Alive	n/r	n/r
9/22/2022	C	Large	35.01479	76.70437	Green	Alive	255	240
10/06/2022	B	Small	35.44401	76.01347	Green	Alive	279	262
10/26/2022	B	Small	35.43788	76.01713	Green	Alive	298	231

Table 3. Summary of estimated (green and Kemp's ridley sea turtles) and observed cumulative (unidentified) sea turtle interactions in anchored large-mesh (≥ 4 inch) gill nets by management unit during fall 2022 (September–November) for Incidental Take Permit Year 2023.

Management Unit	Green		Kemp's ridley		Loggerhead		Unidentified	
	Alive	Dead	Alive	Dead	Alive	Dead	Alive	Dead
A	0	0	0	0	0	0	0	0
B	59.2	13.2	15.7	0	1	0	0	0
C	3	0	0	0	0	0	1	0
D1	0	0	0	0	0	0	0	0
D2	0	0	0	0	0	0	0	0
E	8.0	3.8	2.0	0	0	0	0	0
Total	70.2	17.0	17.7	0	1	0	1	0

Table 4. Summary of estimated (green and Kemp's ridley sea turtles) and observed cumulative (unidentified) sea turtle interactions in anchored small-mesh (< 4 inch) gill nets by management unit during fall 2022 (September–November) for Incidental Take Permit Year 2023.

Management Unit	Green Alive or Dead	Kemp's Ridley Alive or Dead	Loggerhead Alive or Dead
A	0	0	0
B	2	0	0
C	0	0	0
D1	0	0	0
D2	0	0	0
E	0	0	0
Total	2	0	0

Table 5. Summary of sea turtle interactions (n=2) reported by fishermen in anchored gill nets during fall 2022 (September–November) for ITP Year 2023. Large-mesh is defined as ≥ 4 inch; small-mesh is defined as < 4 inch. Measurements were not recorded (n/r) for either sea turtle. MU=Management Unit.

Date	MU	Mesh Category	Latitude (N)	Longitude (W)	Species	Disposition	CCL (mm)	CCW (mm)
9/19/2022	C	Large	35.39397	76.50329	Green	Dead	n/r	n/r
10/29/2022	E	Small	34.67975	77.12285	Green	Dead	n/r	n/r

Table 6. For estuarine anchored large-mesh gill nets, estimated percent observer coverage calculated from observer trips (≥ 4 inch) and estimated fishing trips using Trip Ticket Program data (≥ 5 inch) by management unit during fall (September–November) 2022 for Incidental Take Permit Year 2023. The large-mesh gill-net fishery opened in all management units except D1 on September 15. Some areas of Management Unit B were closed on September 16; the other Management Units closed on September 22.

Management Unit	Estimated Fishing		Percent Observer Coverage
	Trips	Observed Trips	
A	720	115	16.0
B	365	46	12.6
C	144	50	34.7
D1	closed	closed	closed
D2	36	5	13.9
E	348	63	18.1
Total	1,613	279	17.3

Table 7. For estuarine anchored small-mesh gill nets, estimated percent observer coverage calculated from observer trips (< 4 inch) and estimated fishing trips using Trip Ticket Program data (< 5 inch) by management unit during fall (September–November) 2022 for Incidental Take Permit Year 2023. Management Unit B was closed November 2, 2022, and the first two days of November were not added to the Estimated Fishing Trips.

Management Unit	Estimated Fishing		Percent Observer Coverage
	Trips	Observed Trips	
A	305	3	1.0
B*	733	17	2.3
C	157	0	0
D1	31	1	3.2
D2	141	4	2.8
E	384	13	3.4
Total	1,751	38	2.2

Table 8. Number of “No-Contact” trips by management unit completed by Marine Patrol and observers during fall (September–November) 2022 for Incidental Take Permit Year 2023. “No Contact” refers to unsuccessful attempts to find and observe estuarine anchored gill-net effort.

Management Unit	Marine Patrol	Observer	Total
	No-Contact Trips	No-Contact Trips	No-Contact Trips
A	43	1	44
B	22	3	25
C	45	7	52
D1	12	1	13
D2	1	2	3
E	115	0	115
Total	238	14	252

Table 9. Citations written by Marine Patrol officers for estuarine anchored gill nets by date and violation code during fall (September–November) 2022 for Incidental Take Permit Year 2023.

Date	Code	Description
9/04/2022	NETG01	Leave gill net in coastal waters unattended
9/14/2022	NETG45	Set or retrieve large mesh gill nets no sooner than one hour before sunset on Monday through Thursday Proclamation M-8-2010
9/15/2022	NETG44	Use large mesh gill nets w/out leaving a space of at least 25 yards between separate lengths of net Proclamation M-8-2010
9/16/2022	NETG40	Use cork floats or other buoys except those required for ID on large mesh gill nets Proclamation M-8-2010
9/17/2022	NETG02	Using gill net without buoys or identification
10/24/2022	NETG01	Leave gill net in coastal waters unattended
10/24/2022	NETG02	Using gill net without buoys or identification
11/02/2022	NETG27	Gill Net set within 50 yards from shore 3H.0103 M-9-2008
11/02/2022	NETG27	Gill Net set within 50 yards from shore 3H.0103 M-9-2008
11/02/2022	NETG01	Leave gill net in coastal waters unattended
11/08/2022	NETG02	Using gill net without buoys or identification

Table 10. Notice of Violations (NOV) for Estuarine Gill Net Permit (EGNP) holders using estuarine anchored gill nets by date and violation code during fall (September–November) 2022 for Incidental Take Permit Year 2023.

Date	Code	Description
9/04/2022	EGNP99	Failure to comply with statutes(s), rules(s), and/or proclamation(s)
9/14/2022	EGNP09	Failure to set or retrieve nets in accordance with time restrictions.
9/15/2022	EGNP09	Failure to set or retrieve nets in accordance with time restrictions.
9/15/2022	EGNP99	Failure to comply with statutes(s), rules(s), and/or proclamation(s)
9/17/2022	EGNP25	Refuse to allow fisheries observers onboard or collect data
11/2/2022	EGNP99	Failure to comply with statutes(s), rules(s), and/or proclamation(s)
11/2/2022	EGNP99	Failure to comply with statutes(s), rules(s), and/or proclamation(s)
11/2/2022	EGNP99	Failure to comply with statutes(s), rules(s), and/or proclamation(s)

FIGURES

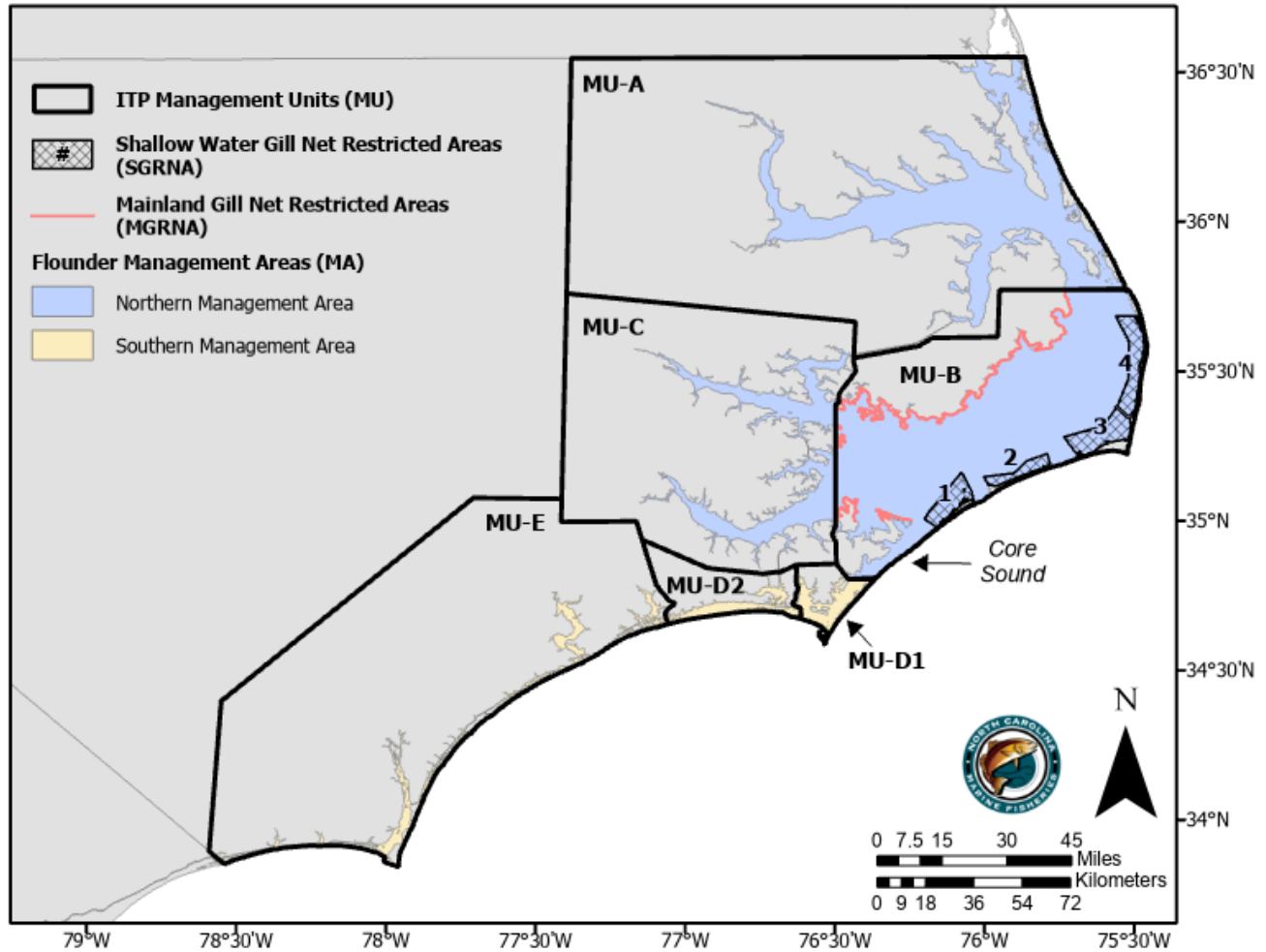


Figure 1. Management Units (MU: A, B, C, D1, D2, and E) as outlined in the Incidental Take Permit (ITP) Conservation Plan overlaying the flounder Management Areas (MA: northern and southern) described in Proclamation FF-40-2022. In the Pamlico Sound portion of B, large-mesh (≥ 4 inch) gill nets were confined to Shallow Water Gillnet Restricted Areas (SGRNA) 1-4 and the Mainland Gillnet Restricted Area (200 yards from shore).

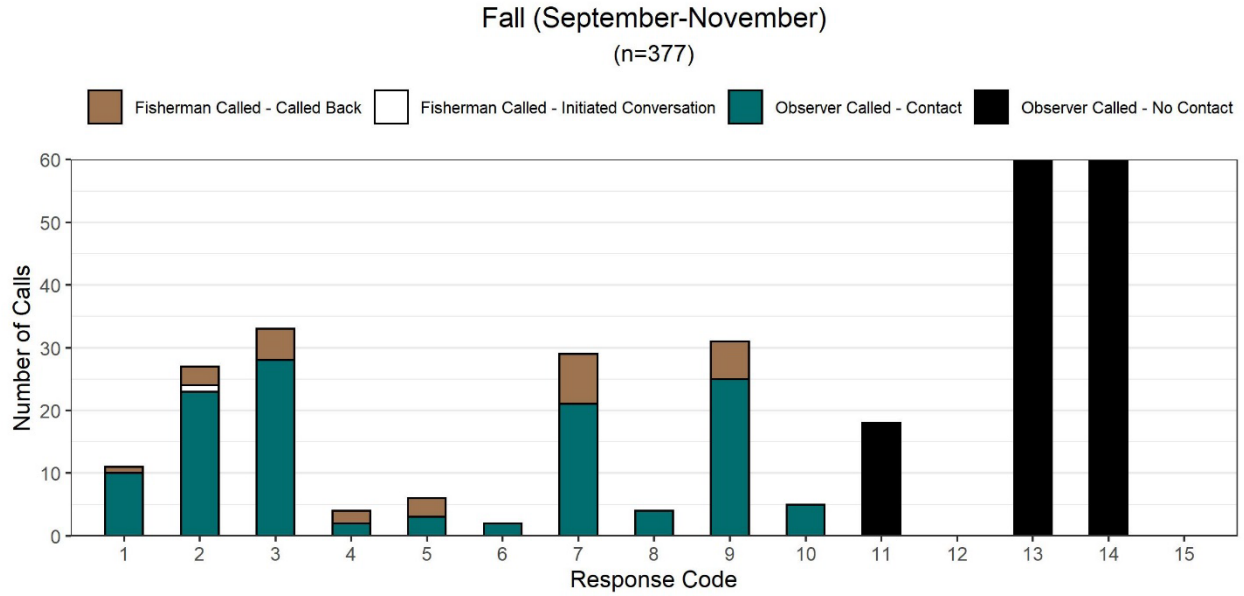


Figure 2. Number of contacts or contact attempts (n=377) during fall (September–November) 2022 to schedule trips. Contact response categories include the following: 1) Left message with someone else; 2) Not fishing general; 3) Fishing other gear; 4) Not fishing because of weather; 5) Not fishing because of boat issues; 6) Not fishing because of medical issues; 7) Booked trip; 8) Hung up, got angry, trip refused; 9) Call back later time/date; 10) Saw in person; 11) Disconnected; 12) Wrong number; 13) No answer; 14) No answer, left voicemail; 15) Not fishing because of natural disaster (e.g., hurricane). Contact responses are shown as those when the observer talked with a fisherman (teal), when the observer did not (black), and when the fisherman returned an observer’s call (bronze) or when a fisherman called and initiated a conversation (white).

Red Drum Landings 2021-2023

Landings are complete through January 23, 2023.

2021 landings are final. 2022 and 2023 landings are preliminary.

Year	Month	Species	Pounds	2009-2011 Average	2013-2015 Average
2021	9	Red Drum	28,365	28,991	35,003
2021	10	Red Drum	52,629	43,644	63,659
2021	11	Red Drum	20,820	14,318	27,646
2021	12	Red Drum	19,514	3,428	2,197
2022	1	Red Drum	12,506	5,885	1,700
2022	2	Red Drum	23,417	3,448	3,996
2022	3	Red Drum	14,598	5,699	3,971
2022	4	Red Drum	413	7,848	6,528
2022	5	Red Drum	10,805	13,730	9,661
2022	6	Red Drum	11,069	12,681	6,985
2022	7	Red Drum	7,474	13,777	15,618
2022	8	Red Drum	14,873	21,252	15,846

FY22 Fishing Year (Sept 1, 2021 - Aug 31, 2022) Landings 201,610

Year	Month	Species	Pounds	2009-2011 Average	2013-2015 Average
2022	9	Red Drum	26,573	28,991	35,003
2022	10	Red Drum	19,308	43,644	63,659
2022	11	Red Drum	18,863	14,318	27,646
2022	12	Red Drum	14,570	3,428	2,197
2023	1	Red Drum		5,885	1,700
2023	2	Red Drum		3,448	3,996
2023	3	Red Drum		5,699	3,971
2023	4	Red Drum		7,848	6,528
2023	5	Red Drum		13,730	9,661

2023	6	Red Drum	12,681	6,985
2023	7	Red Drum	13,777	15,618
2023	8	Red Drum	21,252	15,846

FY23 Fishing Year (Sept 1, 2022 - Aug 31, 2023) Landings 79,314

YEAR	MONTH	SPECIES	POUNDS	DEALERS	TRIPS	AVERAGE
2018	1	SOUTHERN FLOUNDER	610	14	43	7,713
2018	2	SOUTHERN FLOUNDER	1,833	34	154	4,617
2018	3	SOUTHERN FLOUNDER	2,815	43	387	23,512
2018	4	SOUTHERN FLOUNDER	8,142	74	769	68,389
2018	5	SOUTHERN FLOUNDER	18,350	90	952	122,514
2018	6	SOUTHERN FLOUNDER	42,501	105	1,407	154,090
2018	7	SOUTHERN FLOUNDER	57,283	117	1,496	170,387
2018	8	SOUTHERN FLOUNDER	72,496	121	1,917	201,862
2018	9	SOUTHERN FLOUNDER	109,125	114	1,776	396,263
2018	10	SOUTHERN FLOUNDER	363,361	109	3,064	781,717
2018	11	SOUTHERN FLOUNDER	226,856	89	1,355	392,150
2018	12	SOUTHERN FLOUNDER	471	5	5	37,303
2019	1	SOUTHERN FLOUNDER	524	25	74	7,713
2019	2	SOUTHERN FLOUNDER	558	23	69	4,617
2019	3	SOUTHERN FLOUNDER	1,412	44	216	23,512
2019	4	SOUTHERN FLOUNDER	5,966	66	448	68,389
2019	5	SOUTHERN FLOUNDER	36,666	92	1,038	122,514
2019	6	SOUTHERN FLOUNDER	61,199	109	1,438	154,090
2019	7	SOUTHERN FLOUNDER	59,404	109	1,554	170,387
2019	8	SOUTHERN FLOUNDER	95,629	109	1,779	201,862
2019	9	SOUTHERN FLOUNDER	51,734	59	551	396,263
2019	10	SOUTHERN FLOUNDER	327,394	120	2,337	781,717
2019	11	SOUTHERN FLOUNDER	159,595	58	537	392,150
2020	3	SOUTHERN FLOUNDER	***	***	***	23,512
2020	4	SOUTHERN FLOUNDER	***	***	***	68,389
2020	8	SOUTHERN FLOUNDER	***	***	***	201,862
2020	9	SOUTHERN FLOUNDER	86,549	30	788	396,263
2020	10	SOUTHERN FLOUNDER	340,711	138	2,623	781,717
2020	11	SOUTHERN FLOUNDER	52,602	25	68	392,150
2021	3	SOUTHERN FLOUNDER	***	***	***	23,512
2021	4	SOUTHERN FLOUNDER	***	***	***	68,389
2021	5	SOUTHERN FLOUNDER	***	***	***	122,514
2021	6	SOUTHERN FLOUNDER	***	***	***	154,090
2021	7	SOUTHERN FLOUNDER	***	***	***	170,387
2021	8	SOUTHERN FLOUNDER	***	***	***	201,862
2021	9	SOUTHERN FLOUNDER	68,089	28	735	396,263
2021	10	SOUTHERN FLOUNDER	416,893	130	2,384	781,717
2022	5	SOUTHERN FLOUNDER	***	***	***	122,514
2022	7	SOUTHERN FLOUNDER	***	***	***	170,387
2022	9	SOUTHERN FLOUNDER	166,195	117	1,413	396,263
2022	10	SOUTHERN FLOUNDER	194,241	56	477	781,717
2022	11	SOUTHERN FLOUNDER	***	***	***	392,150

NOTE: 2022 data are preliminary. 2018-2021 data are complete.

*****Data are confidential**

YEAR	SPECIES	GEAR	POUNDS	DEALERS	TRIPS
2018	SOUTHERN FLOUNDER	GIGS	92,302	88	2,089
2018	SOUTHERN FLOUNDER	GILLNETS	365,189	122	9,131
2018	SOUTHERN FLOUNDER	OTHER	6,432	79	562
2018	SOUTHERN FLOUNDER	POUND NET	439,919	37	1,545
2019	SOUTHERN FLOUNDER	GIGS	91,330	81	1,836
2019	SOUTHERN FLOUNDER	GILLNETS	324,822	119	6,834
2019	SOUTHERN FLOUNDER	OTHER	4,727	65	354
2019	SOUTHERN FLOUNDER	POUND NET	379,201	34	1,017
2020	SOUTHERN FLOUNDER	GIGS	33,192	49	369
2020	SOUTHERN FLOUNDER	GILLNETS	187,312	105	2,474
2020	SOUTHERN FLOUNDER	OTHER	1,288	21	83
2020	SOUTHERN FLOUNDER	POUND NET	258,089	27	559
2021	SOUTHERN FLOUNDER	GIGS	31,898	46	358
2021	SOUTHERN FLOUNDER	GILLNETS	253,468	101	2,420
2021	SOUTHERN FLOUNDER	OTHER	949	23	72
2021	SOUTHERN FLOUNDER	POUND NET	198,709	23	292
2022	SOUTHERN FLOUNDER	GIGS	52,885	60	540
2022	SOUTHERN FLOUNDER	GILLNETS	113,348	79	1,024
2022	SOUTHERN FLOUNDER	OTHER	1,833	22	38
2022	SOUTHERN FLOUNDER	POUND NET	194,119	21	293

NOTE: 2022 data are preliminary. 2018-2021 data are complete.

*****Data are confidential**



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

January 27th, 2023

MEMORANDUM

TO: N.C. Marine Fisheries Commission
FROM: Steve Poland, Fisheries Management Section Chief
SUBJECT: Temporary Rule Suspensions

Issue

In accordance with the North Carolina Division of Marine Fisheries Resource Management Policy Number 2014-2, Temporary Rule Suspension, the North Carolina Marine Fisheries Commission will vote on any new rule suspensions that have occurred since the last meeting of the commission.

Findings

No new rule suspensions have occurred since the May 2022 business meeting.

Action Needed

For informational purposes only, no new action is needed at this time.

Overview

In accordance with policy, the division will report current rule suspensions previously approved by the commission as non-action items. They include:

NCMFC 15A NCAC 03R .0117 (c), (i), and (j) of section (1) OYSTER SANCTUARIES

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to publish correct coordinates for the Pea Island, Raccoon Island, and Swan Island Oyster Sanctuaries to ensure that the sanctuaries continue to be protected according to the FMP restrictions while the rule is modified to reflect the correct boundary coordinates. This suspension was implemented in Proclamation [SF-6-2022](#).

NCMFC Rule 15A NCAC 03M .0515 (a)(2) Dolphin

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to adjust the recreational vessel limit to complement management of dolphin under the South Atlantic Fishery Management Council's Amendment 10 to the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic. This suspension was implemented in Proclamation [FF-30-2022](#).

NCMFC Rule 15A NCAC 03L .0105 (2) Recreational Shrimp Limits

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to modify the recreational possession limit of shrimp by removing the four quarts heads on and two and a half quarts heads off prohibition from waters closed to shrimping in accordance with Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in Proclamation [SH-4-2022](#).

NCMFC Rule 15A NCAC 03J .0103 (h) Gill Nets, Seines, Identification, Restrictions

Continued suspension a portion of this rule for an indefinite period. Suspension of this rule allows the division to implement year-round small mesh gill net attendance requirements in certain areas of the Tar-Pamlico and Neuse rivers systems. This action was taken as part of a department initiative to review existing small mesh gill net rules to limit yardage and address attendance requirements in certain areas of the state. This suspension continues in Proclamation [M-3-2023](#).

NCMFC Rule 15A NCAC 03R .0110 (4) and (5) Crab Spawning Sanctuaries

Continued suspension portions of this rule is for an indefinite period. Suspension of this rule allows the division to revise the boundaries for the Drum Inlet and Barden Inlet crab spawning sanctuaries in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. This suspension was implemented in Proclamation M-7-2020 and continues in [M-12-2022](#).

NCMFC Rules 15A NCAC 03L .0201 (a) and (b) Crab Harvest Restrictions, 03L .0203 (a) Crab Dredging and 03J .0301 (a)(1), (g), and (h) Pots

Suspension of portions of these rules is for an indefinite period. Suspension of these rules allows the division to implement requirements for the blue crab fishery in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. These suspensions were implemented in Proclamation [M-1-2021](#).

NCMFC Rule 15A NCAC 03L .0103 (a)(1) Prohibited Nets, Mesh Lengths and Areas

Continued suspension of portions of this rule for an indefinite period. This allows the division to adjust trawl net minimum mesh size requirements in accordance with the Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in proclamation SH-3-2019 and continues in [SH-1-2022](#).

NCMFC Rule 15A NCAC 03J .0501 (e)(2) Definitions and Standards for Pound Nets and Pound Net Sets

Continued suspension portions of this rule for an indefinite period. This allows the division to increase the minimum mesh size of escape panels for flounder pound nets in

accordance with Amendment 2 of the North Carolina Southern Flounder Fishery Management Plan. This suspension was implemented in Proclamation [M-34-2015](#).

**NCMFC Rule 15A NCAC 03M .0519 (a) and (b) Shad & 03Q .0107 (4) Special Regulations:
Joint Waters**

Continued suspension portions of these rules for an indefinite period. This allows the division to change the season and creel limit for American shad under the management framework of the North Carolina American Shad Sustainable Fishery Plan. These suspensions were continued in Proclamation [FF-67-2021\(Revised\)](#)



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

January 23, 2023

MEMORANDUM

TO: N.C. Marine Fisheries Commission
FROM: Lucas Pensinger, Spotted Seatrout Lead
SUBJECT: December 2022 Cold Stun Event Summary

Issue

Beginning December 26, 2022, the Division received multiple verified reports of a cold stun in two areas of the North River (Carteret County). Additionally, the Division received one unverified report of a cold stun in this same area January 4, 2023.

Findings

- One reported and verified cold stun event occurred in the state.
- Verified cold stuns occurred in Wards Creek and the North River Narrows, both tributaries of the North River, on December 25, 2022. Staff investigated Wards Creek December 29, 2022 and observed approximately 60 dead fish, predominately spotted seatrout.
- Staff investigated other creeks in the area and other areas across the state where cold stuns have previously occurred between December 26– 31 and observed no cold stunned fish.
- Temperature loggers were downloaded in the weeks after the cold stun event. There were temperatures recorded from shallow water loggers exceeding the exposure trigger of 3° C (37.4° F) for a consecutive 24-hour period, however it is likely these loggers were out of the water. No temperatures were recorded from deep water loggers exceeding the exposure triggers of 5° C (41° F) for eight consecutive days or 3° C (37.4° F) for a consecutive 24-hour period during the event.

Action Needed

For informational purposes only, no recommended action at this time.

Overview

The Division received multiple verified reports of cold stunned fish in Wards Creek and the North River Narrows (Carteret County) between December 26 and December 31, 2022. Due to the timing of initial reports and low water levels in Wards Creek, Fisheries Management staff investigated Wards Creek the afternoon of December 29, 2022. Staff estimated 62 dead fish which were predominately spotted seatrout (n=30) or unidentified fish (n=23) but included red

drum (n=8) and black drum (n=1). Dead spotted seatrout were observed from 11 to 21 inches and were observed both floating and in the marsh. A third report of cold stunned fish in Wards Creek late in the afternoon on January 5 was investigated by 9:00 am January 6; however no dead fish were observed, and water temperatures recorded were between 14.1° C and 14.7° C (57.4° F and 58.5° F).

By January 13th Fisheries Management staff downloaded all shallow (water depth <3m) and deep water temperature loggers which are distributed at strategic locations throughout riverine and estuarine waters of North Carolina, including the North River Narrows logger station. This is the closest temperature logger station to both the Wards Creek and the North River Narrows areas where cold stunned fish were reported. Figures 1 and 2 show the shallow water and deep water temperature profiles, respectively, from December 22 through January 6th. As seen in Figure 1, the North River Narrows shallow water logger, as well as others in the array, recorded temperatures below 3° C – sometimes well below – and exceeded the 3° C 24-hour threshold. However, upon closer examination, it was determined these loggers were likely recording air temperature and not water temperature. A lack of rain and exceptionally low water levels due to lunar phase and wind driven tides likely contributed to multiple shallow loggers being exposed to the air. No deep water logger recorded consecutive temperatures below the cold stun threshold exposure triggers of 5° C (41° F) for eight consecutive days or 3° C (37.4° F) for a consecutive 24-hour period during the event.

The Division had no other reports of cold stun events anywhere else in the state. In fact, multiple reports were received from the public that no cold stunned or dead fish were observed in areas where cold stuns have historically occurred. Additionally, Division staff investigated all major river systems and their tributaries as well as coastal bays at least once between December 26 and January 5. No cold stunned or dead fish were observed outside of Wards Creek and North River Narrows. Along with sites known to be susceptible to cold stuns in the past, staff specifically investigated spots known to hold spotted seatrout prior to the cold weather and did not observe any cold stunned fish. Water temperatures recorded on the North River Narrows deep and shallow temperature loggers (Figures 1 and 2) are typical of shallow and deep logger temperature profiles throughout the state during this timeframe.

Conclusion

It is impossible to quantify the exact magnitude of spotted seatrout impacted by a cold stun event and it is similarly impossible to calculate the effect any spotted seatrout removed from the population due to a cold stun event will have on recruitment and spawning stock biomass the following spawning season. However, given the apparent localized nature of this event, combined with the relatively low numbers of dead fish observed, it is unlikely this cold stun event will have a substantial impact on the North Carolina Spotted seatrout population. Based on these findings, along with the water temperature profiles observed from deep water temperature loggers throughout the state, a fishery closure has not been necessary. However, as there is potential for delayed mortality following a cold stun event – whether due to increased fishing pressure on vulnerable fish or increased natural mortality due to stressors stemming from the cold stun event – the Division will continue to monitor any future reports apparently connected to this event and, as necessary, reconsider this management decision.

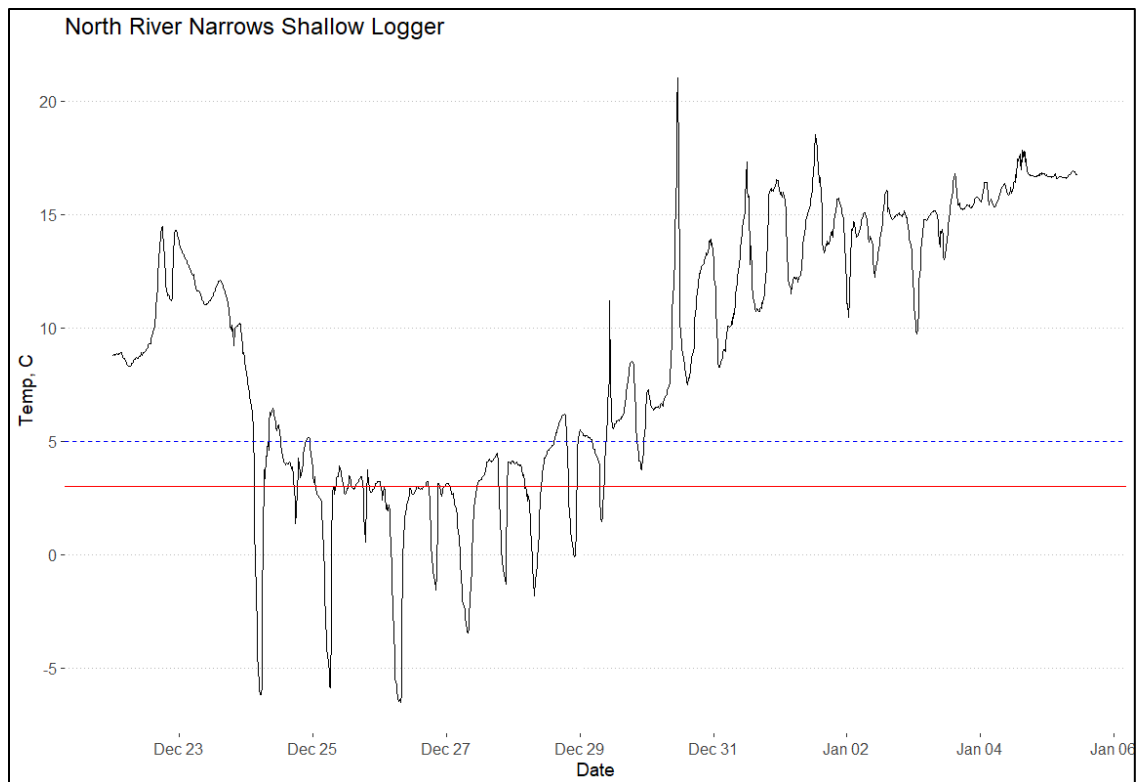


Figure 1. Plot of temperatures recorded from the North River Narrows station shallow logger between December 22, 2022 and January 6, 2023. Loggers record temperature readings every 15 minutes. The dashed blue line at 5° C corresponds with the eight-day temperature threshold while the solid red line at 3° C corresponds with the 24-hour temperature threshold. Beginning December 24th, the daily large drop followed by a smaller drop in temperature is consistent with the daily pattern of a strong low tide and a weaker low tide. The substantial decline in temperatures observed indicates this logger was likely out of the water and recording air temperatures at low tide.

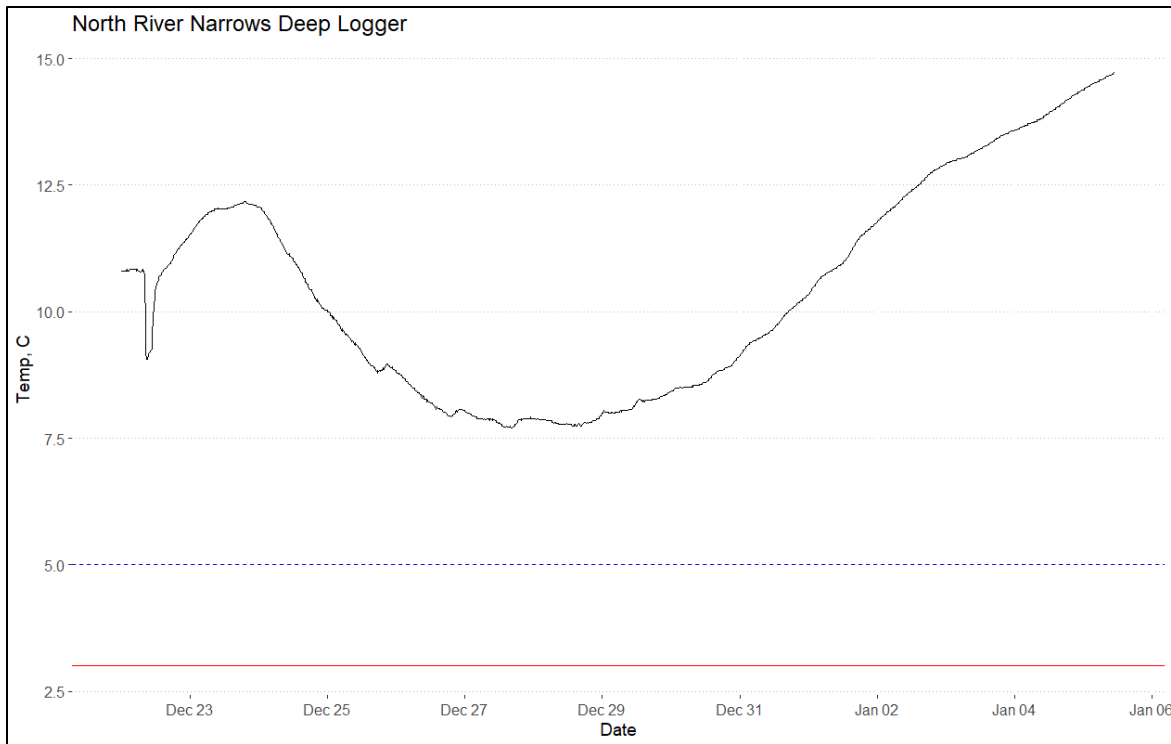


Figure 2. Plot of temperatures recorded from the North River Narrows station deep logger between December 22, 2022 and January 6, 2023. Loggers record temperature readings every 15 minutes. The dashed blue line at 5° C corresponds with the eight-day temperature threshold while the solid red line at 3° C corresponds with the 24-hour temperature threshold. The North River Narrows deep logger recorded a minimum temperature of 7.7° C (45.9°F). The temperature profile of this logger is indicative of other deep loggers throughout the state.

Cold Stun Event Protocol (11/16/2022)

North Carolina is near the northern range limit for spotted seatrout and individuals here are more likely to encounter life-threatening winter conditions. North Carolina's bays and tributaries are shallow, and sudden and severe winter cold fronts can drop the water temperature below what fish can withstand. Spotted seatrout that overwinter in coastal creeks and bays can become trapped in thermal refuges and succumb to cold water temperatures when these areas cool, and the fish are unable to escape to deeper, warmer waters. Experimental data confirms a critical thermal minimum (temperature at which a fish exhibits a total loss of equilibrium) for spotted seatrout to occur at temperatures of 2 – 3°C. Mortalities may occur at higher water temperatures (up to 7°C) if the temperature change is rapid or if the fish undergo chronic exposure to sub-lethal water temperatures (3°C over 24 hrs or 5°C over eight days).

During the winter months, DMF staff should monitor and be vigilant for these conditions in their area and follow the protocol described below if there is an expected or confirmed cold stun event. Cold stun monitoring and sampling takes precedent over all other field activities (only for Fisheries Management staff; other sections are asked to report confirmed observed cold stuns or relay reports to Fisheries Management staff and assist in investigations if time and resources allow).

In the case of reported cold stun events, the lead spotted seatrout biologist will be the core contact person (Lucas Pensinger work 252-808-8159). If anyone has knowledge of a cold stun event, please contact the spotted seatrout biologist immediately. Upon suspicion or confirmation that an event has occurred, the lead will contact the Fisheries Management section chief (Steve Poland) in the Morehead City office to notify them of the situation, provide the most current information available, and request initiation of the cold stun event protocol. Upon approval from the section chief, the lead spotted seatrout biologist will be in contact with each of the District Managers (Tina Moore, Lee Paramore, and Casey Knight), Marine Patrol (Dispatch/Jason Walker), the DWR Estuarine Monitoring Team supervisor (Jill Paxson), and NCDMF drone operators to 1) solicit information, 2) discuss sampling efforts needed and 3) discuss resources and staff availability. Each office has a lead field Biologist/Technician that will be responsible for the investigation in their district and will remain in contact with the lead spotted seatrout biologist to relay timely information. The section chief will be responsible for determining what further resources are available (helicopter, plane, etc.). The lead spotted seatrout biologist will be the conduit between NCDMF Marine Patrol (who will relay any pertinent information from the air), the DWR Estuarine Monitoring Team staff, drone operators, and the field staff to disseminate any information to best direct efforts.

Drone use is being tested for documenting cold stuns to determine if it is a viable sampling method. It is currently limited to the Morehead City area where drones and drone operators are located. Staff and drone operators will be deployed as deemed necessary by the lead spotted seatrout biologist to document potentially significant reported cold stun sites from the air. The lead spotted seatrout biologist will be responsible for timely incident updates and compiling a summary report of the event.

Field Staff Responsibilities:

- Reach out to any knowledgeable contacts you may have for information (fishers, Marine Patrol & WRC officers). If you hear from a member of the public about an observed cold stun, record their contact information, the date and time of the observed cold stun, what fish species they observed, and the specific location where the cold stun was observed. Report this information to the lead spotted seatrout biologist.
- If you happen to be in the vicinity of a cold stun event, collect as much information as possible, on-site, and **document the event with photographs**. On-site investigations take priority over fish house samples. Make sure to check creeks adjacent to the observed cold stun event as well.

- Cold stunned fish collected from fishery dependent samples will be recorded under P460, fishery independent samples will be recorded under P465, and collections for aging will be recorded under P930. All programs (460, 465, and 930) will identify cold stunned fish collections in Variable Field 1.
- When conducting fishery independent or dependent sampling, collect a representative sample of the fish stunned or killed (marketable and unmarketable sized fish).
- When conducting fishery independent sampling (P465), record lat/long, waterbody, air temperature, surface and bottom water temperature, water depth, surface and bottom salinity, surface and bottom dissolved oxygen, current weather, wind direction, and wind speed, all as close to the site of the cold stun as possible. The relative area of the kill, species observed stunned, and estimated (or actual) number of each species observed stunned should be recorded as well.
- If a site you investigate does not have any cold stunned fish, record environmental information in P465. Follow the program documentation and code it as a collection with no fish.
- Sample any fish at the fish house that were landed by dip nets, crab trawls, hand harvest gear, or otherwise suspected to be cold stunned fish, and code in P460. The protocol for fish house sampling cold stun fish is the same as any other fish house sample. Also, either purchase a subsample of the fish for aging purposes or pull otoliths under the gills and enter under P930.
- Download all HOBO temperature loggers in the affected area once independent sampling of the fish has been completed (remember to use field sheet) and continue to download them and all others in the region as instructed by the spotted seatrout biologist.
- Incident Summary Report: The lead spotted seatrout biologist will produce a summary report for each incident that will generally include the areas affected, the environmental conditions, and an estimate of the quantity and type of fish impacted. These incident reports will be stored on the DMF shared drive (N:\P465 Cold Stun Reports). The Incident Summary will be sent to all DMF District Managers, DWQ Estuarine Monitoring Team, and DMF Public Information Officer.

NC Marine Fisheries Commission

False Albacore Information Paper Overview

February 2023 Business Meeting

01 False Albacore Information Paper



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

False Albacore Information Paper Update

February 2, 2023

I. ISSUE

Characterize life history, landings, prior management and regulations of false albacore.

II. ORIGINATION

At its August 2022 business meeting the North Carolina Marine Fisheries Commission (NCMFC) requested staff update an information paper on false albacore to frame potential management options for future consideration.

III. BACKGROUND

False albacore (*Euthynnus alletteratus*), also known as “little tunny”, is one of the most common members of the mackerel/tuna family Scombridae. It is a tuna-shaped fish that is steel blue on top and silver below with wavy stripes along the posterior portion of the dorsal side of the body and scattered dark spots below the pectoral fin. Anglers often confuse false albacore with Atlantic bonito (*Sarda sarda*) due to similarity in size and coloration. False albacore is typically found in tropical to temperate waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea; it is also found in the Mediterranean and Black seas. False albacore is a schooling species that migrate north in the spring and south in the fall and winter (Collette and Nuan 1983). Both sexes are fast-growing, with males attaining larger sizes than females (Kerstetter and Adams 2014). There is variability in the life history of false albacore throughout their range and little work has been done in the western Atlantic. In the Gulf of Mexico, the length at 50 percent maturity (L_{50}) for females and males is 13.6 inches fork length (FL) (Cruz-Castan et al. 2019) and off the Brazilian coast, fish as young as one year old are capable of spawning (Vieira et al. 2021). False albacore spawn April through November in the Atlantic Ocean (Collette and Nuan 1983). Most studies estimate the maximum age of false albacore at five years (Kersetter and Adams 2014; Vieira et al. 2021); however, Kahraman and Oray (2001) estimate maximum age up to nine years in Turkish waters.

False albacore has become a more popular and targeted fishery in recent years, especially for the recreational sector. Participants associated with the fishery have expressed concern over perceived increases in harvest and targeted trips of the species to both the state and federal level managers. Coastwide, there are no known commercial or recreational regulations currently in place to directly manage false albacore fisheries at the state or federal level. The information in this paper provides

background on North Carolina’s fishery relative to the coastwide stock should the NCMFC wish to continue discussions on managing the false albacore fishery in North Carolina.

Description of the Fisheries

Though landings of false albacore have historically been low, over the last decade in North Carolina, and coastwide, false albacore landings have increased (Table 1; Figures 1–3). Trends in the North Carolina recreational and commercial fisheries are discussed below, as well as how North Carolina’s fisheries fit into the bigger coast-wide picture.

Recreational Fishery

Recreational catch of false albacore has been trending upward over the last decade (Table 1; Figures 1–2), as false albacore is a popular targeted species because of its strength and speed. The predominant gear for the recreational fishery is hook-and-line, and the most popular methods are either sight casting or trolling. While most fish are released alive, some recreational anglers use false albacore as bait (strip or live) for other fisheries such as shark, billfish, and wahoo; it is unknown how prevalent this practice is.

False albacore is caught year-round in state and federal (>3 miles) waters of North Carolina by recreational anglers. Most fish are caught in the fall and early winter, with landings and trips peaking in September and October (Figure 4). This trend is the same in both state and federal waters.

Since 1997, recreational catch (landings and releases) has primarily occurred on private vessels, whether anglers are fishing in state or federal waters. Private vessels still contribute to the majority of the total catch (on average 81% the last ten years), though catch from for-hire vessels has been increasing, especially since 2016 (Figure 5). While the catch of false albacore from shore-based modes (i.e., piers) has tended to be low and variable, catch from this mode has increased 462% over the last five years. Catch from the shore-based mode has been equal or surpassed that of the for-hire fleet six of the last ten years.

Trips targeting false albacore in North Carolina have been variable since 1997, with most trips occurring in state waters (Figure 6). After a low in 2012, total targeted trips have steadily increased. Over the last ten years, trips targeting false albacore have ranged from 3,500 in 2012 to 68,736 in 2020. In 2021, trips targeting false albacore declined sharply; while the reason for this is unknown, one possibility is that COVID-19 changed people’s behavior in 2020, and the number of trips is more of an outlier than a reflection of normal behavior.

Catch rates were calculated for North Carolina anglers from 2012 to 2021 (Table 2; Figure 7). Recreational anglers on average landed 0.4 fish per trip in state waters and 0.5 fish per trip in federal ocean waters. Anglers released 0.7 fish per trip state waters, and 0.3 fish per trip in federal ocean waters (Figure 7). Recreational landings per trip ranged from 0 to 12 fish and recreational releases ranged from 0 to 30 fish per trip (Table 2).

Even though targeted trips made in state waters far outweigh those in federal waters, a higher average percent of the recreational catch has historically occurred in federal waters in North Carolina (Figure 8). However, catch within state waters were similar in the early 2000s, and in the last ten years there has been a marked shift of more catch occurring in state waters. This shift has been driven primarily by an increase in recreational releases since 2012 (Table 1; Figure 9).

Recreational landings in North Carolina have been low but variable since 1997, though they have started to trend upwards since 2012 (Table 1; Figure 1). Landings have ranged from 3,098 fish (29,494 pounds) in 2007 to 92,899 fish (594,793 pounds) in 2020. In the last ten years, an average of 36,292 fish (264,229 pounds) have been landed in North Carolina. Landings from state waters have averaged 33% of the total false albacore harvest since 1997 compared to federal waters. Over the last ten years, landings from state waters have ranged from 9% in 2013 to 64% in 2020.

North Carolina's recreational landings of false albacore have accounted for approximately 6% of the coastwide recreational landings annually from 1997 to 2021 (Figure 2), though this percentage has been higher in recent years. From 2012 to 2021, recreational anglers in North Carolina harvested 10% of the coastwide recreational landings (Table 3; Figure 2) and 13% of the recreational landings in the South Atlantic (Figure 10). There have been two notable exceptions in the last ten years; in 2020, North Carolina's landings accounted for approximately 25% of coastwide recreational landings and less than 1% in 2021 (Table 3; Figure 2).

Recreational landings average 87% of the total false albacore coast-wide landings (recreational and commercial). Along the Atlantic coast (Massachusetts through the east coast of Florida), recreational landings of false albacore have increased since 2013, ranging from 1,573,975 pounds in 2008 to 5,513,333 pounds in 2015 (Figure 2). Since 2017, most recreationally harvested false albacore are landed in Florida, New Jersey, and North Carolina (Table 3). From 2012 to 2021, the South Atlantic region has accounted for most of the total coastwide harvest (Figure 11), with Florida accounting for the majority of the harvest in the South Atlantic region (Figure 10).

Since 1997, most of the fish caught by the recreational fishery in North Carolina have been released, ranging from a low of 60% in 1997 to a high of 97% in 2007 (Figure 9). Since 2012, recreational releases have accounted for approximately 76% of the catch in North Carolina. The number of fish released has ranged from 24,662 fish in 2003 to 273,165 fish in 2014. Since 1997, the average number of released false albacore has been approximately equal between state and federal waters, though slightly skewed towards more releases in federal waters. Since 2012, 59% of North Carolina's false albacore catch was released in state waters.

Like North Carolina, most of the coast-wide recreational catch has been live releases (Table 3). Over the last 25 years, North Carolina recreational releases have averaged 7% of the total number of fish released coastwide, though have accounted for up to 17% (Figure 12). While there are no release mortality estimates for false albacore, similar pelagic species have release mortalities ranging from 0 to 39%; but values are dependent on hook type, hooking location, angling/handling time, and water temperature (Bartholomew and Bohnsack 2005; Marcek and Graves 2014).

Lengths from the Marine Recreational Information Program (MRIP) show the observed mean length of false albacore landed has been variable over the last 25 years (Table 4). There is no evidence of size truncation in recent years, the size of fish landed is most likely indicative of what's available to the fishery. In 2021, average FL was 23 inches for the recreational fishery, and lengths ranged from 12–34 inches (Table 4; Figures 13). North Carolina has no data on the age of false albacore landed.

Commercial Fishery

False albacore tend to have low commercial value in the United States; however, it is a commercially important species in many other countries and is sold fresh, dried, canned, smoked, and frozen. Along the Atlantic coast, false albacore is commercially landed with multiple gears, including longlines, gill nets, hook-and-line, and trolling. In North Carolina, false albacore is incidentally caught by commercial fishers pursuing other species and is mainly harvested by gill net and hook-and-line gear. Other gears including pound nets, longlines, seines, and trawls make up a small percentage of the total commercial landings. Much of the commercially caught fish in North Carolina are shipped out of state.

Like the recreational fishery, false albacore is caught year-round in state and federal waters by the North Carolina commercial fishery. However, most fish are caught in the late fall and winter with commercial landings peaking from November through February (Figure 14). This same trend is seen in both state and federal waters, for all gears that harvest false albacore.

Prior to 2015, commercial harvest in North Carolina primarily occurred in federal waters, averaging 55% of the total landings from 1997–2014 (Figure 15). Since 2015, harvest has shifted towards state waters, accounting for 61% of the total landings from 2015–2021 (Figure 15). This shift in landings from federal to state waters can be seen across all gears in North Carolina but is especially noticeable in the gill net and hook-and-line fisheries.

In North Carolina, commercial landings of false albacore averaged 158,303 pounds during 1997–2021, ranging from 77,798 in 2002 to 370,814 pounds in 1997 (Table 1; Figure 15). During 2012–2021, the average landings equaled 196,906 pounds, with several years during this time period over 210,000 pounds. Statewide, landings by gear have varied annually over the last 25 years (Table 5). Landings from gill nets averaged 94,128 pounds, hook-and-line averaged 58,920 pounds, and other gears averaged 4,952 pounds annually from 1997 to 2021. Landings from gill nets and hook-and-line have increased over the past 10 years with gill nets landing on average 110,228 pounds and hook-and-line landing 81,557 pounds of false albacore annually. Average landings from other gears declined to 4,301 pounds annually over this same time period.

Landings per trip of false albacore in North Carolina have been low but variable over the last 25-years, ranging from 55 to 132 pounds per trip. North Carolina commercial fishers averaged 102 pounds of false albacore per trip from 2012–2021, with most trips landing under 200 pounds (Table 6). Over the past 10 years, 60% of all commercial trips (state and federal waters) landing false albacore landed less than 50 pounds per trip. However, other gears (i.e., trawls, seines, longline etc.) can far exceed this trip average at times due to how the gears operate, but these account for less than 1% of trips. Overall, in North Carolina, the price per pound of false albacore has varied from \$0.16 in 1999 to \$1.01 in 2021 (Table 5).

Coastwide, commercial landings of false albacore have ranged from 435,198 pounds in 2021 to 626,361 pounds in 1997. From 2012 to 2021, 89% of commercial landings occurred in the South Atlantic region (North Carolina–east coast of Florida), 7% in the North Atlantic region (Massachusetts–Connecticut), and 4% in the Mid-Atlantic (New York–Virginia) (Figure 16). In the South Atlantic region from 2012 to 2021, Florida and North Carolina accounted for 56% and 43% of the commercial landings, respectively. Landings from South Carolina and Georgia only

make up one percent of the total landings in the South Atlantic (Figure 17). Coastwide, North Carolina has averaged approximately 35% of the total commercial catch over the last 25 years; though, its contribution has ranged from 18% in 2002 to 59% in 1997 (Figures 3 and 17). While there are no estimates of discards currently available for the commercial fishery, in recent years, discards are likely low due to the increase in the market value of this species.

The mean length of false albacore landed by the North Carolina commercial fishery has remained fairly consistent over the last 25 years and is similar to the mean length observed in the recreational fishery, which is further evidence of no size truncation (Table 4). Over this time period, lengths have ranged from 8 to 35 inches FL. In 2021, the average length was 23 inches FL for the commercial fishery and lengths ranged from 18 to 34 inches FL (Table 4; Figure 18). North Carolina has no data on the age of false albacore landed.

Stock Status and Current Management

A 2002 stock assessment of false albacore in the Gulf of Mexico found the stock was not overfished nor undergoing overfishing (Brooks 2002). However, little information exists on the status of the species in the South Atlantic, and as a result their status is considered unknown. Until 2011, false albacore was part of the South Atlantic Fishery Management Council's (SAFMC) Coastal Migratory Pelagics Fishery Management Plan (FMP). Although there were no management measures under the plan, data collection was an important component. Amendment 18 to the plan removed false albacore from the management unit since data would still be collected through current sampling regimes (SAFMC 2011). Based on data available at the time, false albacore did not appear to meet the federal national standard guidance for stocks in need of conservation and management. In North Carolina, false albacore was managed through NCMFC Rule 15A NCAC 03M .0512 (although no limits were put in place); however, authority to manage under this rule ended when the species was removed from SAFMC's Coastal Migratory Pelagics FMP and subsequently the NC Interjurisdictional FMP. At this time, there are no rules for management in place for false albacore in North Carolina. Additionally, the Mid-Atlantic Fishery Management Council (MAFMC) did not include false albacore in their Unmanaged Forage [fish] Amendment in 2016 because of their large size and higher tropic level (MAFMC 2017). At the August 2016 MAFMC meeting, council staff recommended the Council consider developing management actions for the species in the future (including a potential small tuna fishery management plan), due to high public concern for the species, particularly from the recreational sector. Management of false albacore through a small tunas FMP has not been pursued yet by a federal management body.

IV. AUTHORITY

North Carolina General Statutes

G.S. 113-134 RULES

G.S. 113-182 REGULATION OF FISHING AND FISHERIES

G.S. 143B-289.52 MARINE FISHERIES COMMISSION – POWERS AND DUTIES

V. DISCUSSION

Landings from both sectors have increased in state waters over the last 10 years; however, North Carolina accounts for a relatively small proportion of the overall coastwide landings. Additionally,

trends in the number of recreationally harvested and released fish have remained low and stable over this time period. Currently, there is not a targeted commercial fishery for false albacore in North Carolina. Due to the opportunistic nature of the fishery, commercial trips typically land less than 50 pounds per trip, with trips exceeding 500 pounds making up less than 5% of the total number of trips in state and federal waters. Additionally, there is no evidence of size truncation in the commercial and recreational fisheries and the vast majority of fish caught are well above the L_{50} (13.6 inches FL). While these trends do not indicate the need for immediate management, it would be prudent to continue to monitor landings and collect additional biological information for this species.

It may also be beneficial for the NCMFC to wait for guidance from the SAFMC before pursuing any state specific management action, since the majority of landings from the South Atlantic region occur outside North Carolina. In December 2022, a white paper was presented at the SAFMC business meeting that examined if false albacore meets the Magnuson Stevens Fishery Management and Conservation Act (Magnuson Stevens Act) criteria for a stock in need of conservation and management (50 C.F.R §600.305(c)(1)). The Magnuson Stevens Act criteria for a stock in need of conservation and management includes:

1. The stock is an important component of the marine environment.
2. The stock is caught by the fishery.
3. Whether an FMP can improve or maintain the condition of the stock.
4. The stock is a target of a fishery.
5. The stock is important to commercial, recreational, or subsistence users.
6. The fishery is important to the Nation or to the regional economy.
7. The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
8. The economic condition of a fishery and whether an FMP can produce more efficient utilization.
9. The needs of a developing fishery, and whether an FMP can foster orderly growth.
10. The extent to which the fishery is already adequately managed by states, by state/Federal programs, or by Federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

Following the presentation of the white paper, the Mackerel Cobia Committee directed Council staff to have the Mackerel Cobia Advisory Panel develop a fishery performance report for false albacore every three years. The report will include international landings as well as landings along the Atlantic coast in federal vs. state waters, catch per unit effort, and length distribution.

Currently there is no rule for false albacore, therefore implementation of any regulations would be dependent on rulemaking specific to this species, which would not be able to begin until the 2024-2025 rule-making cycle. It may be the most prudent management strategy available to the NCMFC, should they wish to pursue it, is to apply management measures to limit expansion of new and existing fisheries. Such management measures would be best applied to both the recreational and commercial sectors. These measures could potentially include trip, bag, and size limits. Due to the lack of a stock assessment, it is unknown what, if any, affect management may have on the growth

of the stock or on decreasing fishing effort. Since North Carolina is a small component of the overall landings, any savings to the stock may be minor.

As was discussed above, there is a lack of the life history data for this species in the western Atlantic which would be beneficial for informing any management decisions. Age and growth, sex and maturity, and tagging studies would help fill data gaps for false albacore in the western Atlantic. However, lack of funding at the state level makes these studies difficult to pursue. Currently, the American Saltwater Guides Association, in collaboration with Cornell University, the New England Aquarium and NOAA Fisheries, has started several studies with the aim of addressing some of the coast-wide data gaps, including stock structure and migration. It may be more beneficial at this time to focus on to addressing the data needs in North Carolina and coastwide to better inform future management. It may also be beneficial for the NCMFC to write a letter to the ASMFC expressing its concern for the species and request that a coastwide management plan be developed.

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Tables

Table 1. Recreational harvest (number of fish landed and weight in pounds) and releases (number of fish) and commercial harvest (weight in pounds) of false albacore from North Carolina for the period 1997–2021. (Source: Marine Recreational Information Program and North Carolina Trip Ticket Program)

Year	Recreational		Landed	Commercial	Total	
	Numbers					Weight (lb)
	Landed	# Released				Landed
1997	31,787	48,106	222,310	370,814	593,124	
1998	25,206	75,617	200,843	153,797	354,640	
1999	15,895	77,885	90,008	143,359	233,367	
2000	13,931	41,591	85,778	106,777	192,555	
2001	8,702	78,516	53,955	98,352	152,307	
2002	13,717	89,706	61,385	77,798	139,183	
2003	12,294	24,662	79,071	86,568	165,639	
2004	7,955	62,965	95,088	92,319	187,407	
2005	6,937	68,636	69,868	88,741	158,609	
2006	3,318	39,902	29,943	106,617	136,560	
2007	3,098	115,324	29,494	134,666	164,160	
2008	12,377	33,205	76,228	103,743	179,971	
2009	17,018	83,454	139,432	146,088	285,520	
2010	7,374	66,458	49,290	147,337	196,627	
2011	7,807	30,347	55,290	131,549	186,839	
2012	18,393	59,160	140,026	157,849	297,875	
2013	28,669	108,149	218,471	189,746	408,217	
2014	27,469	273,165	189,270	225,797	415,067	
2015	22,854	87,239	207,889	164,853	372,742	
2016	41,077	145,699	337,841	241,208	579,049	
2017	39,214	119,647	334,363	216,557	550,920	
2018	47,891	110,716	315,758	204,177	519,935	
2019	27,359	80,204	185,093	232,879	417,972	
2020	92,899	171,562	594,793	230,685	825,478	
2021	17,095	52,787	118,784	105,306	224,090	
Average	22,013	85,788	159,211	158,303	317,514	

Table 2. Maximum, minimum, and average, recreational landings and release rates (numbers per trip) in North Carolina by area, 2012-2021. (Source: Marine Recreational Information Program)

Year	Area	Landings			Releases		
		Average	Minimum	Maximum	Average	Minimum	Maximum
2012	State	0.1	0.0	1.0	0.7	0.5	6.3
	Federal	0.7	0.0	12.0	0.6	0.0	18.0
2013	State	0.1	0.0	0.5	1.0	0.0	5.0
	Federal	0.4	0.0	3.0	0.4	0.0	11.5
2014	State	0.3	0.0	2.0	0.6	0.0	10.0
	Federal	0.5	0.0	6.0	0.2	0.0	12.5
2015	State	0.6	0.0	4.3	0.6	0.0	15.0
	Federal	0.4	0.0	3.7	0.3	0.0	4.0
2016	State	0.4	0.0	9.0	0.6	0.0	6.0
	Federal	0.4	0.0	4.8	0.1	0.0	7.5
2017	State	0.3	0.0	5.0	0.9	0.0	15.0
	Federal	0.4	0.0	6.0	0.5	0.0	25.0
2018	State	0.5	0.0	4.0	0.7	0.0	8.0
	Federal	0.7	0.0	8.3	0.2	0.0	10.0
2019	State	0.8	0.0	10.5	0.5	0.0	10.0
	Federal	0.5	0.0	5.5	0.3	0.0	13.3
2020	State	0.8	0.0	7.0	0.4	0.0	5.0
	Federal	0.8	0.0	9.0	0.3	0.0	30.0
2021	State	0.5	0.0	6.0	0.8	0.0	12.0
	Federal	0.5	0.0	7.0	0.1	0.0	2.0

Table 3. Coastwide recreational landings and releases (numbers of fish) by state, 2012-2021. (Source: Marine Recreational Information Program)

Landings

State	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Massachusetts	3,124	2,758	13,398	34,207	66,738	0	4,397	38,224	1,318	2,364
Rhode Island	14,361	0	149	19,366	2,520	13,442	8,003	1,383	17,518	9,107
Connecticut	987	0	1,809	0	382	14,078	3,335	968	5	1,090
New York	0	0	1,198	220	1,103	13,046	5,918	25,454	2,346	97
New Jersey	17,447	53,110	15,262	101	12,536	76,576	127,696	9,576	3,110	25,714
Delaware	7	0	0	0	0	0	7	192	36	1,971
Maryland	101	0	352	0	51	1,490	34	678	6,356	1,723
Virginia	18,053	0	0	3,075	558	2,369	1,128	3,014	3,245	1,234
North Carolina	18,393	28,669	27,468	22,854	41,076	39,213	47,891	27,359	92,899	17,096
South Carolina	195	0	0	1,330	0	3,941	2,941	6,083	4,424	10,154
Georgia	16	2,592	18	0	0	2,624	398	22	7	988
Florida	274,300	501,991	445,608	515,654	392,845	338,322	382,789	178,805	239,692	383,010
Grand Total	346,984	589,120	505,262	596,807	517,809	505,101	584,537	291,758	370,956	454,548

Releases

State	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Massachusetts	24,074	26,143	981,784	88,853	733,492	137,285	61,491	89,111	97,230	77,848
Rhode Island	73,202	0	35,561	67,002	32,822	97,836	121,158	43,402	72,320	27,147
Connecticut	104,921	0	16,845	2,709	44,515	49,874	157,862	20,331	12,018	140,874
New York	9,519	147,757	134,427	23,351	61,152	121,670	177,470	230,128	88,742	24,826
New Jersey	221,554	32,630	77,169	32,487	30,453	164,268	390,112	64,988	205,650	169,576
Delaware	7	164	1,933	0	0	0	499	0	0	1,750
Maryland	0	0	821	0	524	0	140	185	14,040	0
Virginia	0	13,593	0	0	16	0	2,544	1,764	1,679	789
North Carolina	59,160	108,149	273,165	87,239	145,700	119,648	110,716	80,205	171,564	52,788
South Carolina	0	0	0	0	25,161	13,557	19,157	3,720	986	1,582
Georgia	3,061	6,084	0	0	0	0	0	3,421	0	0
Florida	905,062	1,036,042	822,970	995,996	719,427	803,117	763,865	441,820	334,635	674,718
Grand Total	1,400,560	1,370,562	2,344,675	1,297,637	1,793,262	1,507,255	1,805,014	979,075	998,864	1,171,898

Table 4. Mean, minimum, and maximum fork length (inches) of fish caught in North Carolina’s recreational and commercial fisheries, 1997-2021. (Source: Marine Recreational Information Program and division fish house sampling data)

Year	Recreational			Commercial		
	Mean Length (inches)	Minimum Length (inches)	Maximum Length (inches)	Mean Length (inches)	Minimum Length (inches)	Maximum Length (inches)
1997	22.4	12.0	35.0	25.1	22.4	29.8
1998	24.1	9.0	29.0	24.5	22.4	26.5
1999	21.6	12.0	29.0	24.8	20.5	31.2
2000	22.9	13.0	29.0	23.8	16.5	28.7
2001	24.0	16.0	30.0	24.2	12.2	31.2
2002	19.9	12.0	29.0	25.0	20.8	28.9
2003	23.5	12.0	29.0	24.0	18.9	29.4
2004	27.3	21.0	30.0	25.3	21.4	29.9
2005	28.0	22.0	33.0	24.3	14.1	30.1
2006	25.0	20.0	32.0	25.1	14.7	30.3
2007	25.7	20.0	31.0	24.5	7.8	30.7
2008	21.3	14.0	32.0	23.4	16.5	32.2
2009	23.3	18.0	33.0	23.6	13.0	33.3
2010	21.8	13.0	35.0	22.7	15.4	31.7
2011	21.8	10.0	34.0	25.1	13.6	34.1
2012	23.2	13.0	33.0	21.6	12.6	31.6
2013	23.4	13.0	32.0	24.2	14.2	32.3
2014	22.2	12.0	36.0	23.9	12.0	32.5
2015	24.3	16.0	34.0	24.1	17.2	32.8
2016	23.7	11.0	33.0	23.2	16.2	34.6
2017	24.0	14.0	33.0	22.8	10.6	33.7
2018	21.8	8.0	34.0	24.2	19.0	32.6
2019	22.3	12.0	34.0	23.7	16.0	34.1
2020	22.4	13.0	35.0	22.8	18.8	34.3
2021	22.9	12.0	34.0	22.5	18.3	34.2

Table 5. North Carolina commercial landings in pounds by gear and value, 1997-2021. (Source: North Carolina Trip Ticket Program)

Year	Gear			Total	Value	Price/Pound
	Gill Nets	Hook & Line	Other*			
1997	338,260	23,981	8,574	370,814	\$80,901	\$0.22
1998	122,849	26,273	4,676	153,797	\$42,981	\$0.28
1999	111,193	30,973	1,193	143,359	\$23,318	\$0.16
2000	81,908	20,415	4,455	106,777	\$18,590	\$0.17
2001	65,787	26,422	6,144	98,352	\$18,154	\$0.18
2002	54,457	18,709	4,632	77,798	\$15,685	\$0.20
2003	50,419	22,372	13,777	86,568	\$16,172	\$0.19
2004	58,294	27,580	6,444	92,319	\$15,496	\$0.17
2005	55,284	29,682	3,775	88,741	\$24,183	\$0.27
2006	60,062	44,887	1,668	106,617	\$35,703	\$0.33
2007	63,996	69,110	1,560	134,666	\$48,745	\$0.36
2008	35,346	66,794	1,603	103,743	\$40,280	\$0.39
2009	56,584	84,496	5,008	146,088	\$61,559	\$0.42
2010	54,129	88,131	5,077	147,337	\$76,491	\$0.52
2011	41,755	77,602	12,193	131,549	\$66,986	\$0.51
2012	85,009	71,003	1,837	157,849	\$89,798	\$0.57
2013	81,426	100,885	7,435	189,746	\$114,416	\$0.60
2014	101,489	123,707	601	225,797	\$107,605	\$0.48
2015	91,795	71,473	1,696	164,964	\$85,493	\$0.52
2016	130,824	76,301	26,376	233,501	\$110,271	\$0.47
2017	124,697	89,529	2,331	216,557	\$112,474	\$0.52
2018	97,303	106,212	662	204,177	\$127,204	\$0.62
2019	153,176	78,848	854	232,879	\$132,982	\$0.57
2020	171,089	58,691	905	230,685	\$193,782	\$0.84
2021	66,075	38,919	312	105,306	\$106,813	\$1.01

*Other gear includes pound nets, longlines, trawls, and seines

Table 6. North Carolina commercial false albacore percent harvest (pounds per trip), based on daily landings and gear, 2012–2021. Note: Longline and other gears not shown due to data confidentiality. (Source: North Carolina Trip Ticket Program)

Pounds per trip	State			Federal			Overall		
	Gill Net	Hook & Line	All Gears	Gill Net	Hook & Line	All Gears	Gill Net	Hook & Line	All Gears
<50	62%	48%	59%	65%	58%	60%	63%	56%	60%
51-100	17%	27%	18%	16%	20%	18%	16%	21%	18%
101-150	7%	9%	7%	6%	9%	8%	7%	9%	8%
151-200	3%	6%	4%	3%	5%	5%	3%	5%	4%
201-300	4%	4%	4%	4%	5%	5%	4%	5%	5%
301-400	1%	2%	2%	2%	2%	2%	1%	2%	2%
400-500	1%	1%	1%	2%	1%	1%	1%	1%	1%
500-1,000	2%	2%	2%	2%	1%	1%	2%	1%	2%
>1,000	1%	1%	1%	1%	0%	1%	1%	0%	1%

Figures

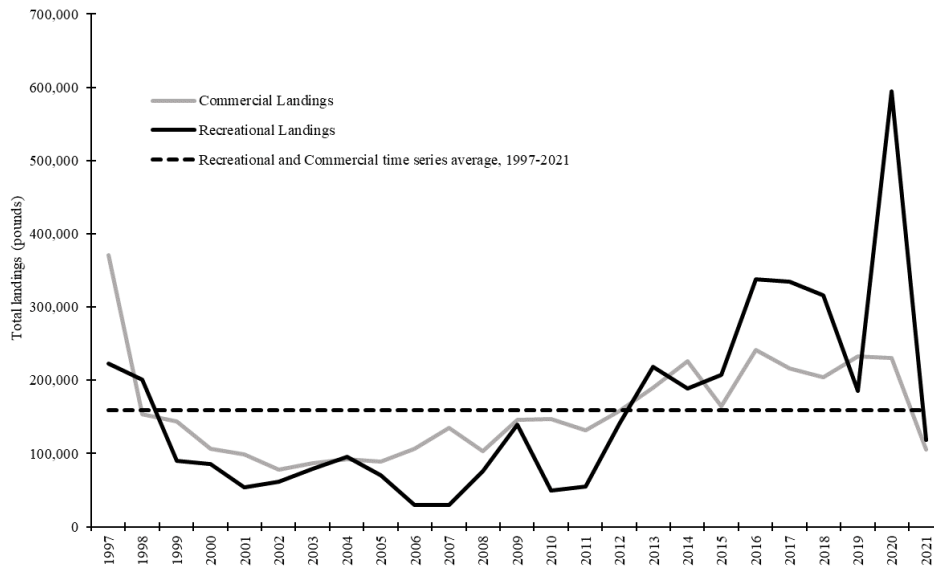


Figure 1. North Carolina commercial and recreational false albacore landings (pounds), 1997-2021. Note: The time series average for both sectors is similar and therefore presented as one line on the figure (Recreational average: 159,211 pounds; Commercial average: 158,303 pounds). (Source: North Carolina Trip Ticket Program and Marine Recreational Information Program)

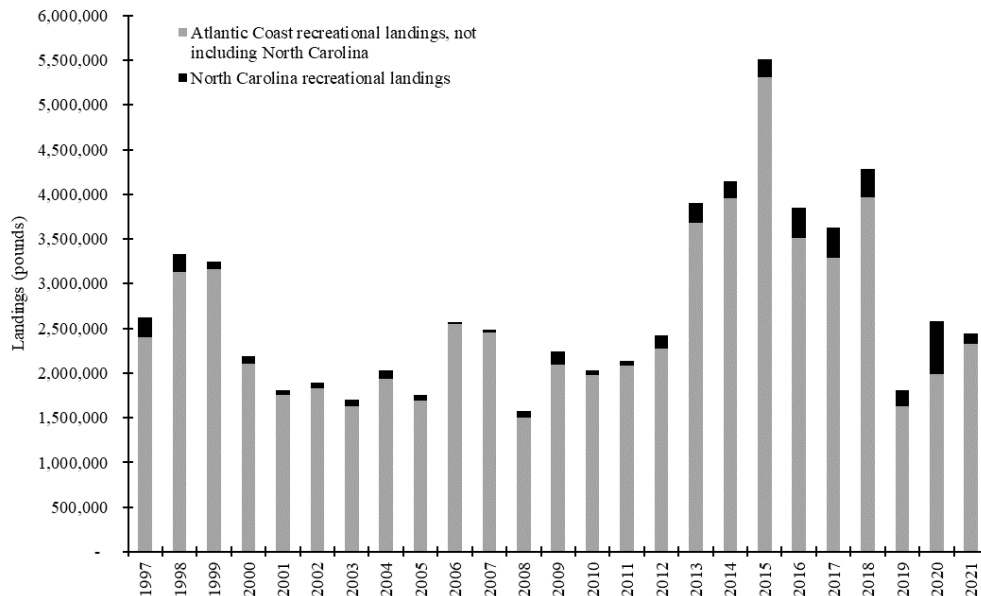


Figure 2. Coastwide and North Carolina recreational false albacore landings (pounds), 1997-2021. (Source: Marine Recreational Information Program)

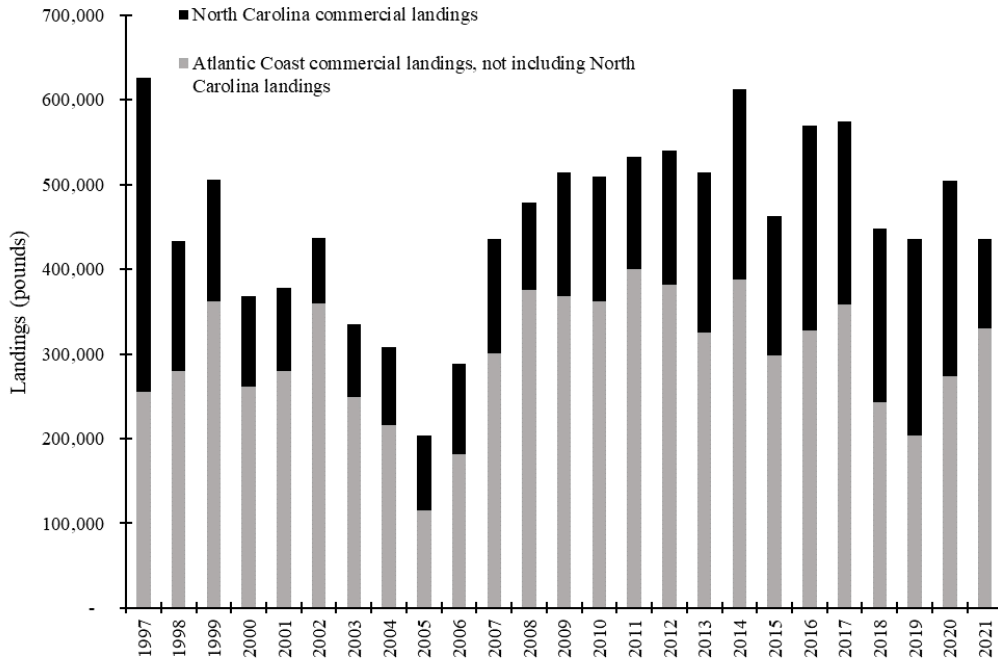


Figure 3. Coastwide and North Carolina commercial false albacore landings (pounds), 1997-2021. (Source: Atlantic Coastal Cooperative Statistics Program and North Carolina Trip Ticket Program)

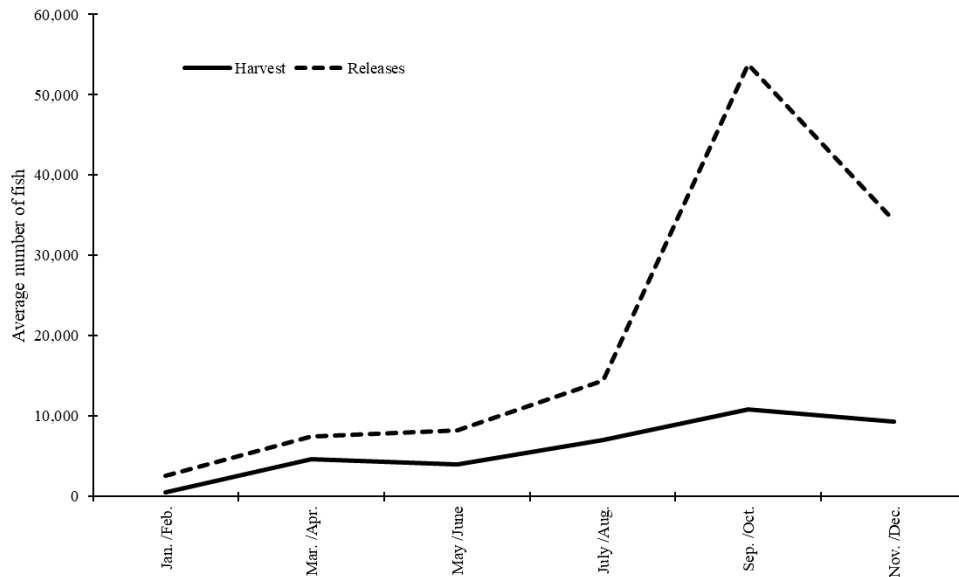


Figure 4. Average North Carolina recreational false albacore landings (numbers) by sampling period (wave), 2012-2021. (Source: Marine Recreational Information Program)

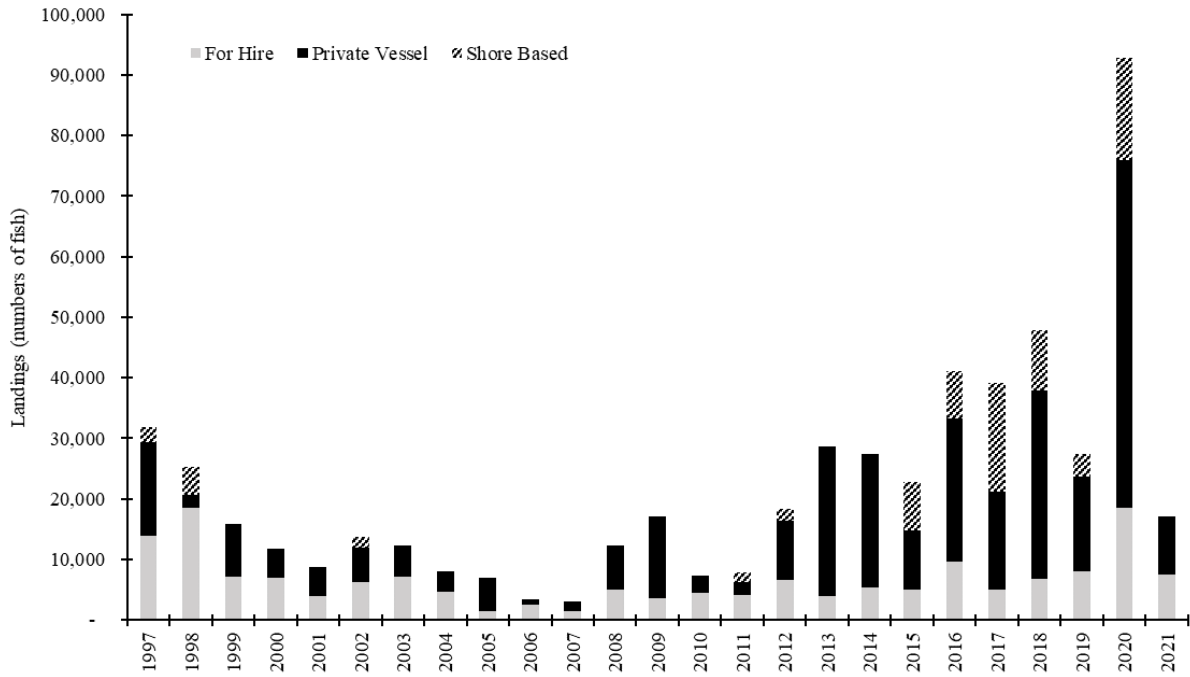


Figure 5. North Carolina recreational harvest (numbers) by fishing mode, 1997-2021. (Source: Marine Recreational Information Program).

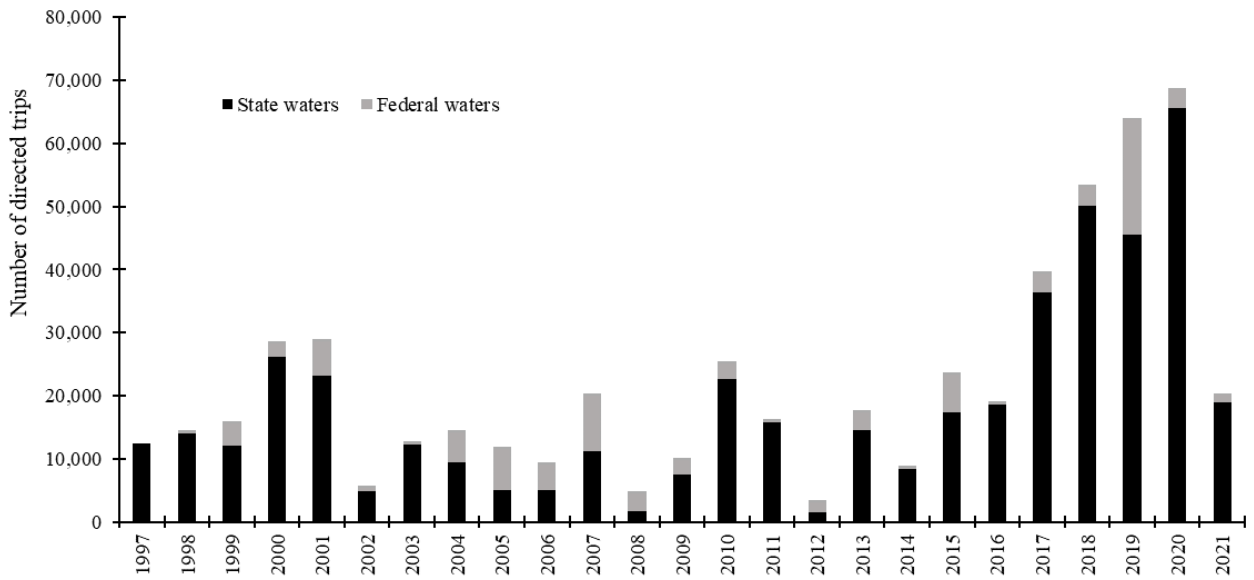


Figure 6. Directed recreational trips in North Carolina in state (0-3 miles) and federal waters (>3 miles), 1997-2021. (Source: Marine Recreational Information Program)

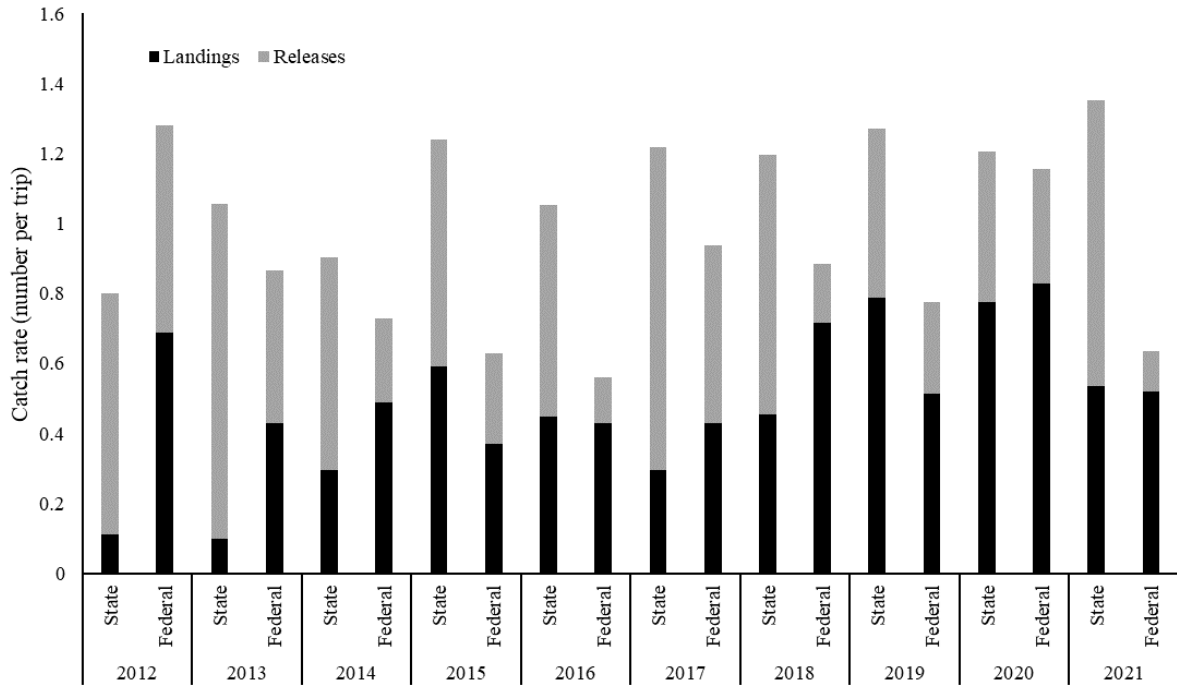
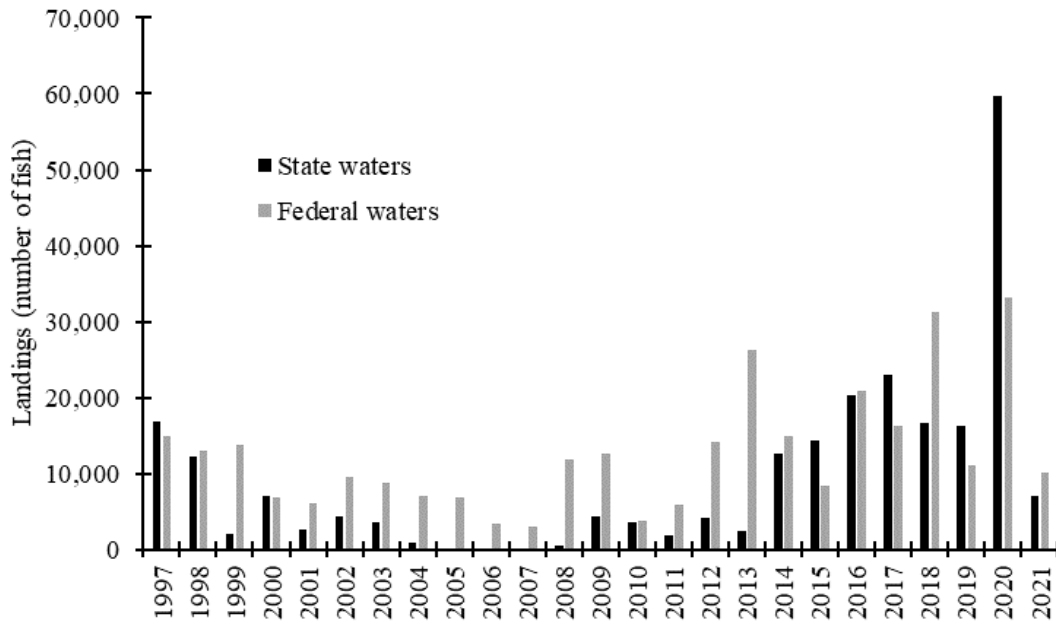
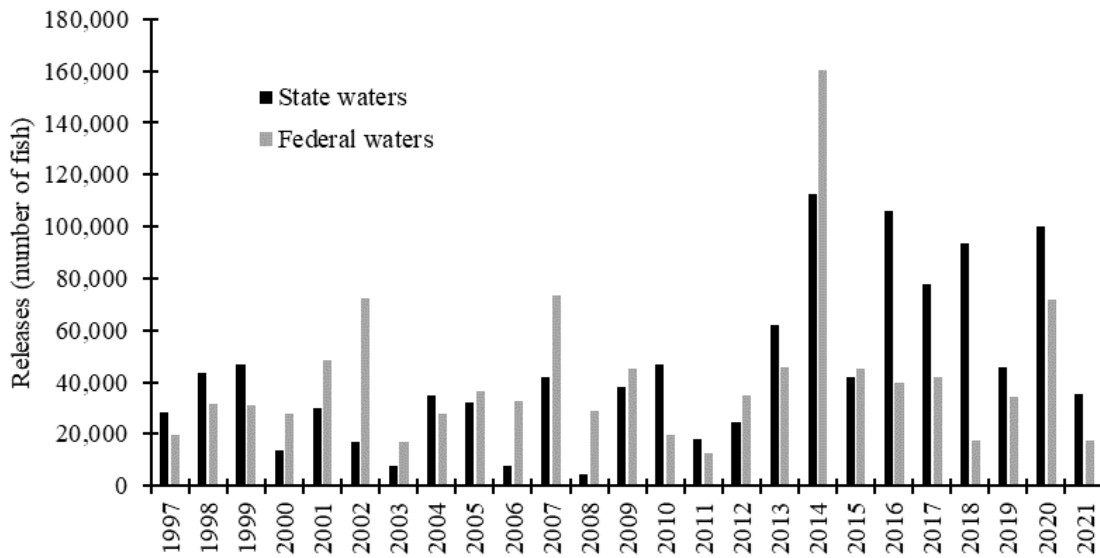


Figure 7. North Carolina recreational catch and release rate (numbers per trip) by area as defined by MRIP, 2012-2021. (Source: Marine Recreational Information Program)



A



B

Figure 8. North Carolina recreational false albacore harvest (A, numbers) and releases (B, numbers) by water classification, 1997-2021. (Source: Marine Recreational Information Program)

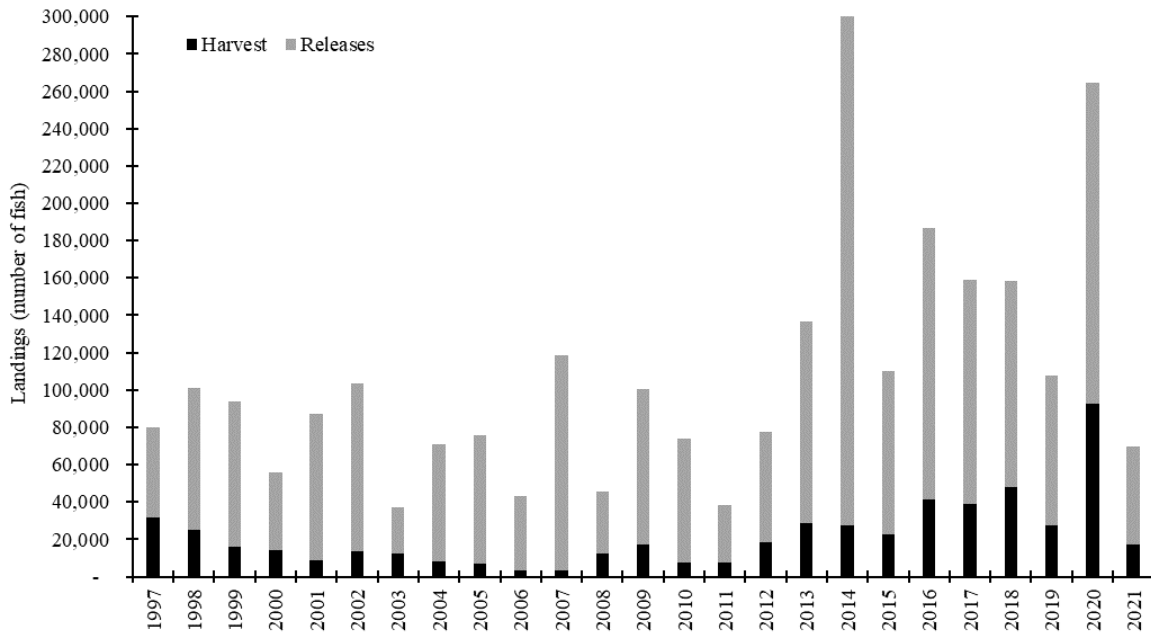


Figure 9. North Carolina recreational false albacore landings (numbers, MRIP), 1997-2021. (Source: Marine Recreational Information Program)

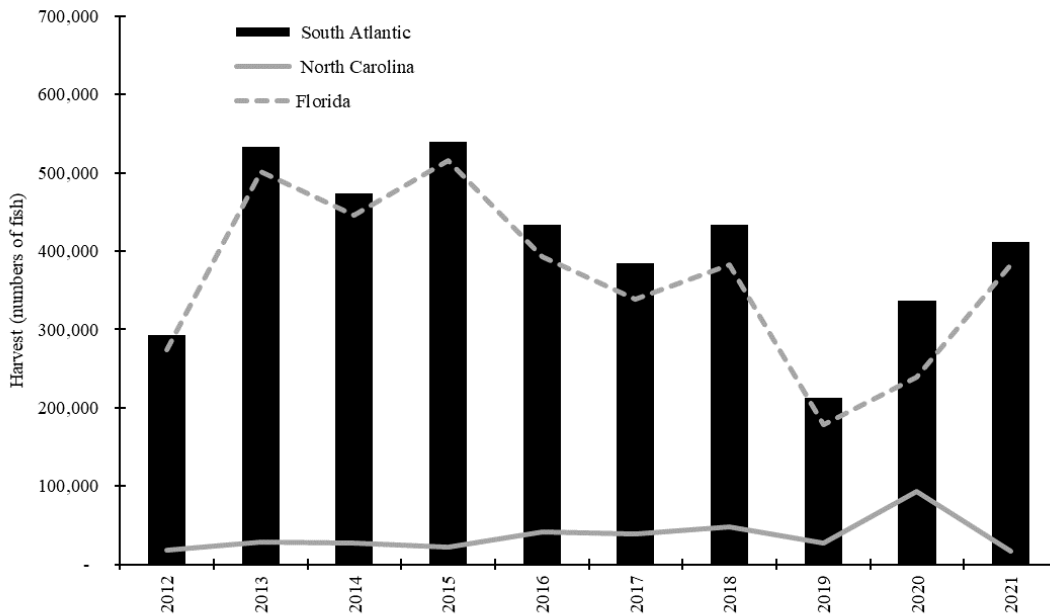


Figure 10. South Atlantic recreational harvest (numbers) by state, 2012-2021. (Source: Marine Recreational Information Program)

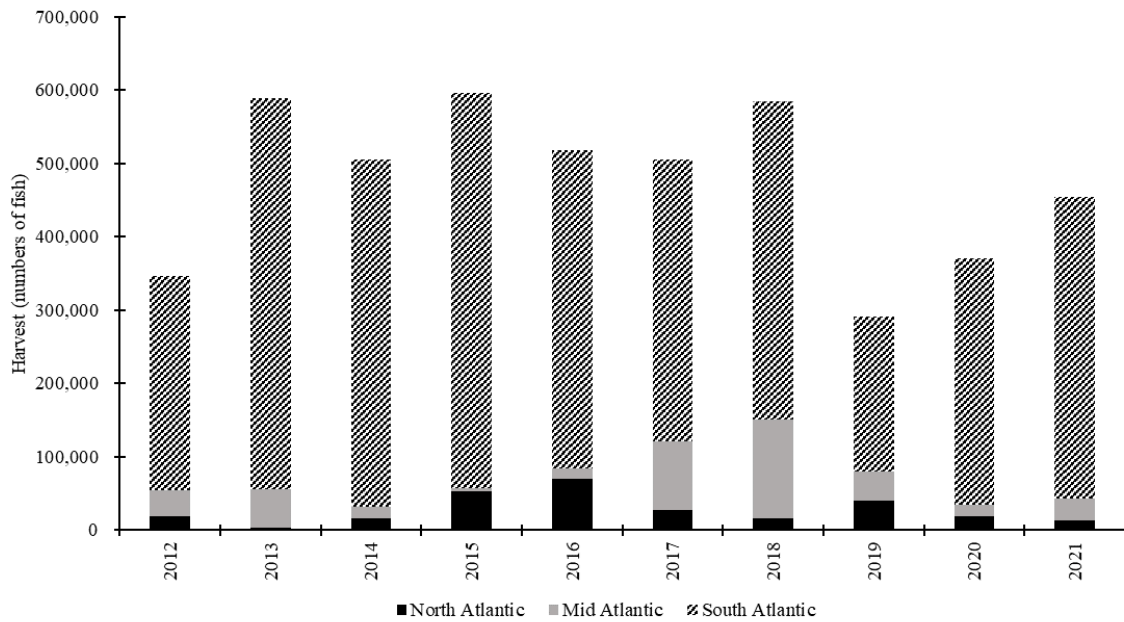


Figure 11. Coastwide recreational harvest (MRIP) numbers by region, 2012-2021. (Source: Marine Recreational Information Program)

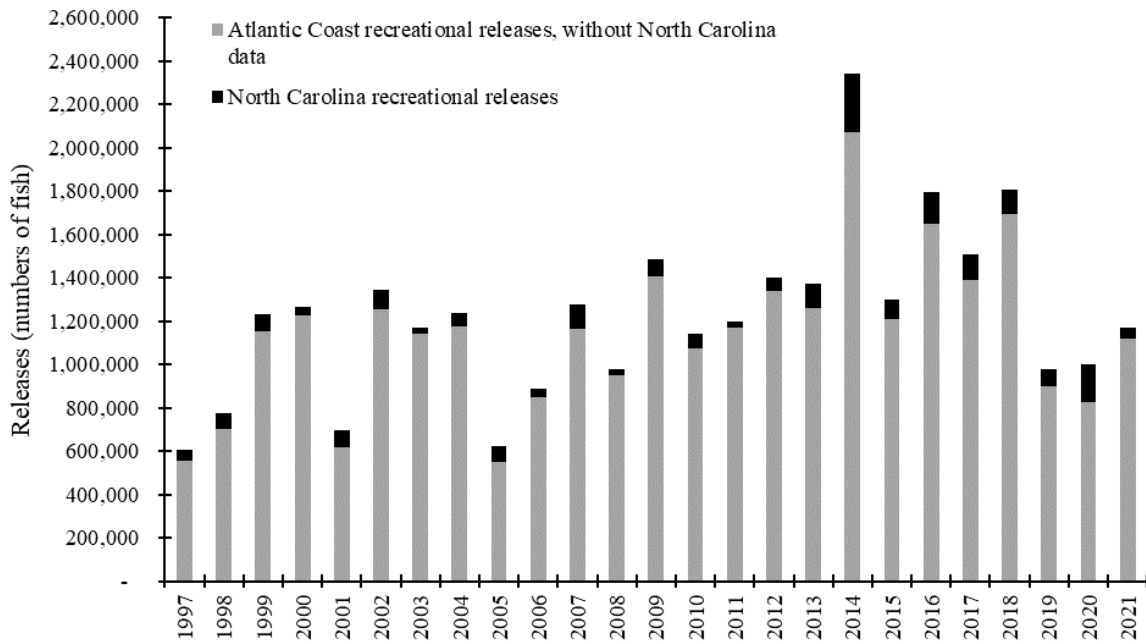


Figure 12. Coastwide and North Carolina recreational false albacore releases (numbers of fish), 1997-2021. (Source: Marine Recreational Information Program)

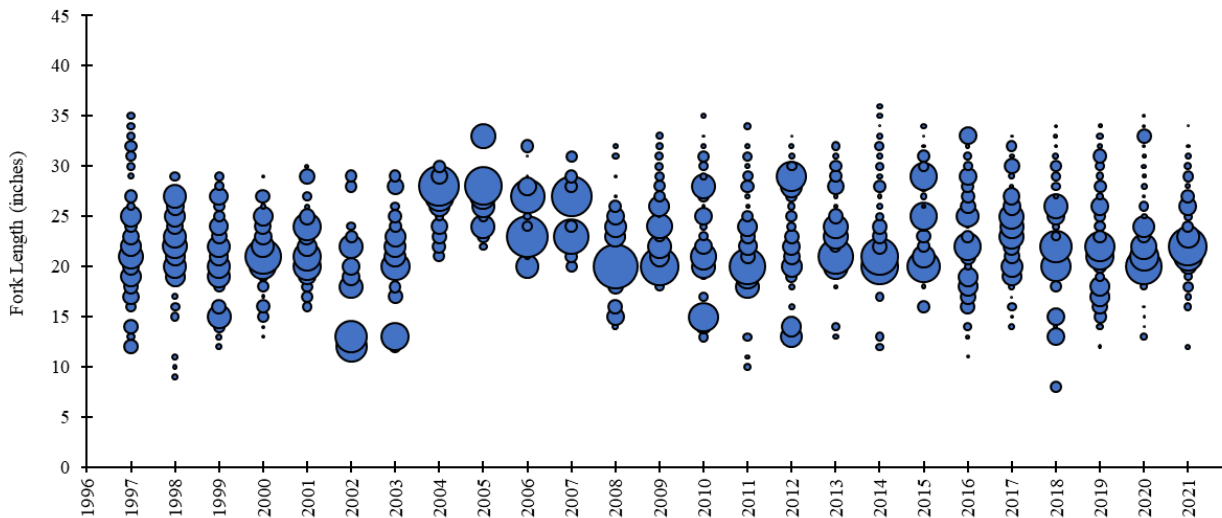


Figure 13. Recreational length frequency (fork length, inches) of harvested false albacore harvested, 1997-2021. Bubbles represent fish harvested at length and the size of the bubble is equal to the proportion of fish at that length.

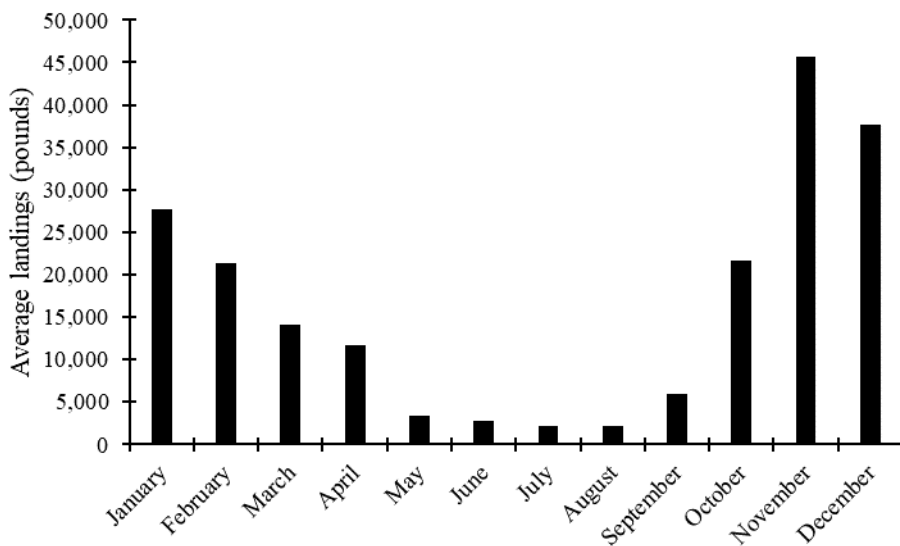


Figure 14. Average North Carolina commercial landings by month, 2012-2021. (Source: North Carolina Trip Ticket Program)

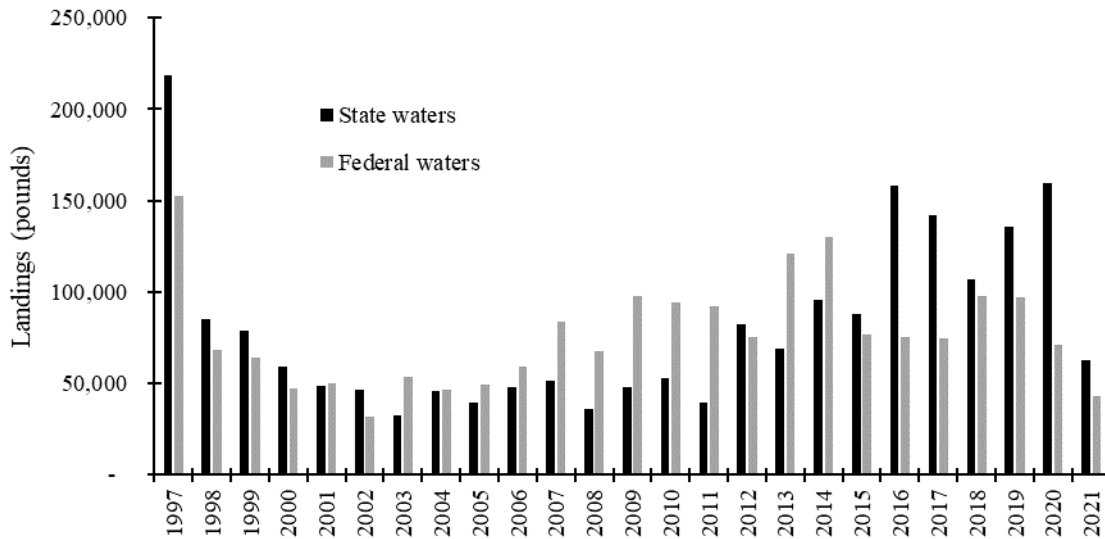


Figure 15. North Carolina commercial false albacore landings (pounds) by state (0-3 miles) and federal waters (>3 miles), 1997-2021. (Source: North Carolina Trip Ticket Program)

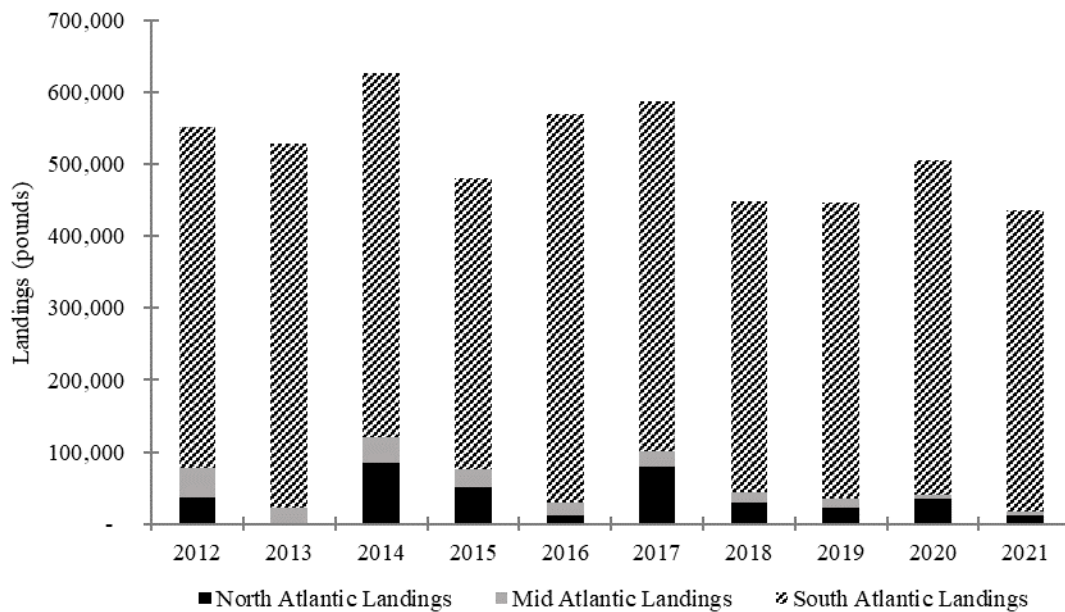


Figure 16. Coastwide commercial landings (pounds) by subregion, 2011-2021. (Source: Atlantic Coastal Cooperative Statistics Program)

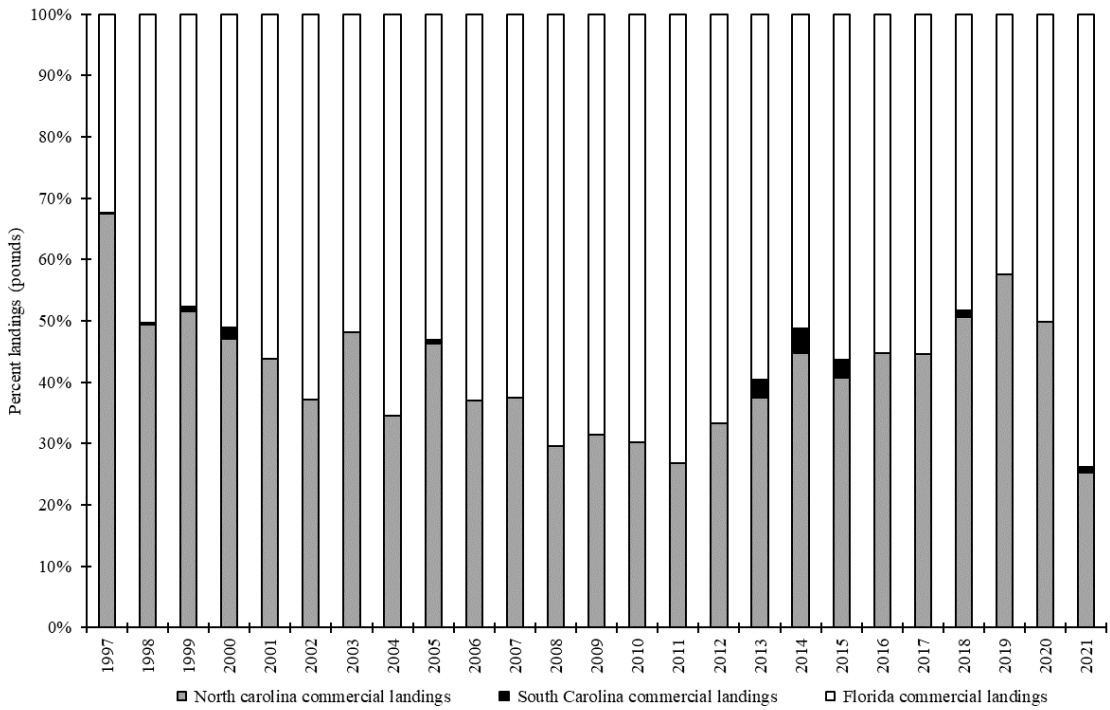


Figure 17. South Atlantic commercial landings (percent of total pounds) by state, 1997-2021. Georgia landings are extremely low and confidential so not included. (Source: Atlantic Coastal Cooperative Statistics Program)

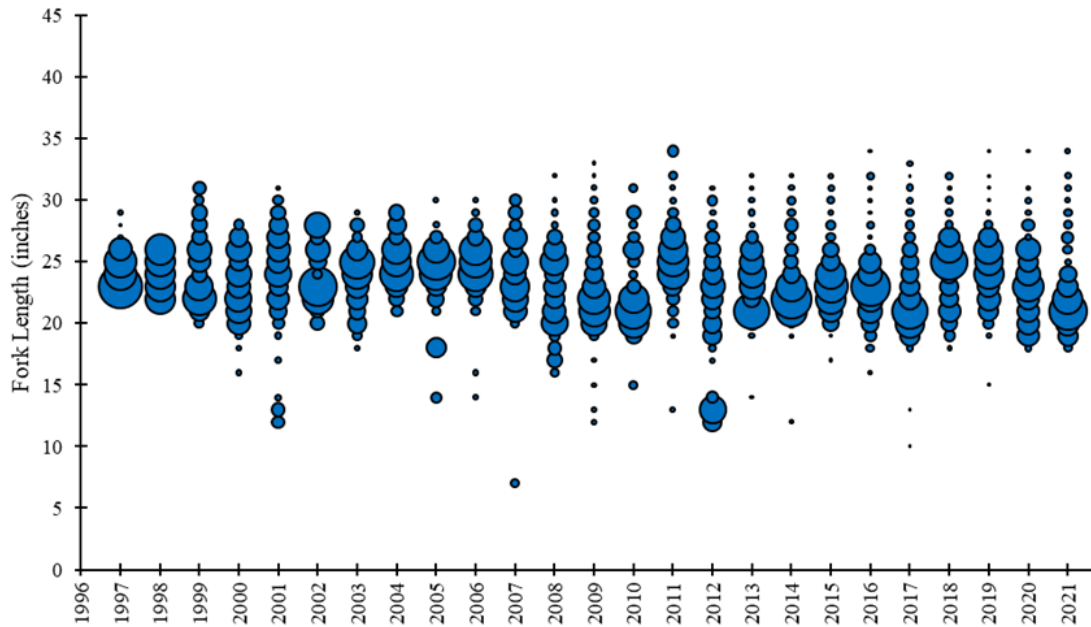


Figure 18. Commercial length frequency (fork length, inches) of harvested false albacore harvested, 1997-2021. Bubbles represent fish harvested at length and the size of the bubble is equal to the proportion of fish at that length.

Fishery Management Plans

February 2023 Business Meeting

01 MFC Workplan

02 Fishery Management Plan
(FMP) Update Memo

04 Striped Mullet FMP
Decision Document

09 Striped Mullet Supplement A
to Amendment 1

Marine Fisheries Commission 2023-2025 WORKPLAN

INCORPORATING ACTIVITY UNDERWAY AND UPCOMING ASSESSMENTS

General Timelines and Abbreviations							
(See "General Timelines" worksheet for details, Colored blocks below indicate MFC Action Point)							
Fishery Management Plans	(SA)	SAR	GO	(PD)	AC/Pub	PMO	A
	Stock Assessment In Progress	Stock Assessment Report Presented to MFC	Vote to Approve Goal and Objectives	Initial Plan Development by DMF/FMP AC	Advisory Committee and Public Review	Select Preferred Management Options	Vote on Final Approval
Non-FMP Rule Development	R	IP	PR	RLO	PRL		
	Request Issue Development	Information Paper	Decision to pursue rulemaking	Issue paper with rule language options	Select Preferred Rule Language		
Rulemaking	FA	NOT	NCR/PH/PC	A			
	Fiscal Analysis	Approve Notice of Text	Publish in NC Register/Hold Public Hearing&Comment Period	MFC Review Public Comment & Vote on Approval			
MFC Committee Activity	APR	JUL					
	Meeting confirmed and scheduled	Meeting anticipated					

Quarterly Business Meeting

Topic	DMF Staff Lead(s)	Feb -23	May -23	Aug -23	Nov -23	Feb -24	May -24	Aug -24	Nov -24	Feb -25
Active Management Plans										
Estuarine Striped Bass Stock Assessment Update	Lee/Schlick		(SA)							
Striped Mullet FMP Amendment 1 Supplement	Zapf/Dobbs	A								
Striped Mullet FMP Amendment 2	Zapf/Dobbs		(PD)		AC/Pub	PMO	A			
Spotted Seatrout FMP Amendment 1	Behringer/Pensingler		G/O		(PD)	AC/Pub	PMO	A		
Hard Clam/Oyster	Dobbs/Facendola				G/O			AC/Pub	PMO	A
Blue Crab FMP Amendment 2 Revision	Facendola/Corbett		Revision Update							
Blue Crab Stock Assessment Update	Lee/Schlick			(SA)	SAR					
Status of Commission Requests										
Delineation of Fishing Waters Issue	Rawls/Klibansky		In progress							
Update False Albacore Informaiton Paper	Seward/Markwith		Present to MFC							
Federal Permits - Review Feasibility of State Requirements	Murphey/Batsavage/Witten/Poland/Klibansky		In progress							
Provide # of Pound Net Sets Over Time	Poland/Markwith/White		Present to MFC							
Rulemaking										
Periodic Review and Expiration of Existing Rules, per G.S. 150B-21.3A										
Subchapter 18A - Shellfish Sanitation (Marinas Rule)	Blum/Walsh	A								
Subchapter 18A - Shellfish Sanitation (about 79 rules)	Blum/Walsh	FA	NOT	NCR/PH/PC	A					
Other MFC Rulemaking										
Mutilated Finfish Rule Amendment	Blum/	A								
MFC Committees Activity Overview										
	(Meeting date(s) in cell)									
CRFL Advisory Committee	Botinovich/Klibansky		March 1 or 2							
Nominating Committee	Batsavage/Farnell				11-Oct					
Advisory Committees Activity Overview										
	(Meeting date(s) in cell)	Virtual	In-Person	Virtual	In-Person	Virtual	In-Person	Virtual		
Northern Regional Advisory	Behringer/Paramore	10-Jan	11-Apr	11-Jul	10-Oct	JAN	APR	JUL		
Southern Regional Advisory	Moore/Stewart	11-Jan	12-Apr	12-Jul	11-Oct	JAN	APR	JUL		
Finfish Standing Advisory	Paramore/Rock	12-Jan	13-Apr	13-Jul	12-Oct	JAN	APR	JUL		
Shellfish/Crustacean Standing Advisory	Moore/Deaton	17-Jan	18-Apr	18-Jul	17-Oct	JAN	APR	JUL		
Habitat and Water Quality Standing Advisory	Deaton/Harrison	18-Jan	19-Apr	19-Jul	18-Oct	JAN	APR	JUL		



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

February 10, 2023

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Corrin Flora, Fishery Management Plan Coordinator
Fisheries Management Section

SUBJECT: Fishery Management Plan Update and Schedule Review

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of North Carolina fishery management plans (FMPs).

Action Needed

For informational purposes only, **no action is needed at this time.**

Overview

This memo provides an overview on the status of four North Carolina FMPs for the February 2023 MFC business meeting.

Striped Mullet FMP

The peer reviewed, benchmark stock assessment for striped mullet indicated the stock was overfished and experiencing overfishing in the terminal year of 2019. Due to overfishing concerns, the Secretary authorized the MFC to develop temporary management through a supplement. At its November 2022 business meeting, the MFC selected preferred management for Supplement A to the Striped Mullet FMP Amendment 1. The MFC will have the opportunity to vote on final approval of Supplement A at its February 2023 business meeting.

Until new management is adopted, Striped Mullet are managed under the Striped Mullet FMP Amendment 1. At the November MFC business meeting, the MFC approved the Striped Mullet FMP Amendment 2 goal and objectives. Staff are currently considering comment heard during the scoping period and drafting the initial plan. Additionally, at its February 2023 business meeting, the MFC will receive a presentation characterizing the striped mullet fishery.

Spotted Seatrout FMP

The peer reviewed, benchmark stock assessment for spotted seatrout indicated the stock is not overfished but is experiencing overfishing. The DMF will hold scoping for the Spotted Seatrout FMP Amendment 1 from March 13–24, 2023. The division asks stakeholders to participate in scoping to inform the draft plan. Online and in-person scoping opportunities will be available.

Amendment 1 will focus on ending overfishing and conservation measures to promote healthy spawning stock biomass. At its February 2023 business meeting, the MFC will receive a spotted seatrout fishery overview presentation.

Eastern Oyster and Hard Clam FMPs

The 2022 FMP Schedule includes review of the Eastern Oyster and Hard Clam FMPs. The Division Plan Development Team is identifying available data sources to assess the needs of the wild fisheries of North Carolina. Scoping will occur later in 2023.

Blue Crab FMP

The Blue Crab FMP Amendment 3 adaptive management framework included an update to the stock assessment at least once between full reviews of the FMP. The 2018 stock assessment indicated the stock was overfished and overfishing was occurring in the terminal year of 2016. Amendment 3 implemented management to address the stock status. A stock assessment update will begin in 2023 and will include data through 2022.

Amendment 3 adaptive management allows the Division, with Shellfish/Crustacean Advisory Committee consultation, to modify the Diamondback Terrapin Management Area allowed devices list. Based on research by the University of North Carolina Wilmington, the DMF is working to amend the approved devices list. The DMF consulted with the Shellfish/Crustacean Advisory Committee at its January 2023 meeting. The committee supported the modification to the device list and provided additional considerations to the DMF for implementation. Based on consultation, the DMF is updating language in the 2023 Revision to the Blue Crab FMP Amendment 3 and completing outreach materials. The DMF will present the 2023 Revision to the MFC at its May 2023 business meeting.

Estuarine Striped Bass FMP

At its November 2022 meeting, the MFC adopted Amendment 2. The Division continues to implement management from Amendment 2.

Based on stock concerns identified during preparation of the 2022 Annual Review, specifically continuing low juvenile abundance, the Division is updating the Albemarle-Roanoke stock assessment with data through 2022. Division and WRC staff consulted with a group of external experts to ensure the assessment continues to be the best available science. The MFC will receive an update on the stock assessment at its May 2023 business meeting.

DECISION DOCUMENT

Striped Mullet Fishery Management Plan

Supplement A to Amendment 1



This document was developed to help the MFC track previous activity and prepare for upcoming actions on the Striped Mullet Supplement A.

February 8, 2023

Summary of Need

The current striped mullet stock assessment, terminal year 2019, determined the stock is overfished and overfishing is occurring. There are no current management measures directly limiting harvest of striped mullet commercially and the recreational harvest is limited by a daily possession limit of 200 mullet (white and striped in aggregate). Management measures to address the stock status through Amendment 2 to the FMP will not be completed until at least 2024. A supplement to Amendment 1 will allow immediate implementation of temporary management measures to end overfishing of the striped mullet stock while the more long-term measures addressing sustainable harvest and stock rebuilding are explored and implemented through Amendment 2. Any supplemental management measures will remain in place until Amendment 2 is adopted unless they are adopted as part of that amendment.

Peak striped mullet commercial landings occur in October and November (approximately 55% of landings), with most landings occurring from approximately October 15-November 15. The increase in landings during this time period coincides with the migration of striped mullet from estuarine waters to offshore spawning areas. A season closure during this time extending through the end of the year would provide the greatest harvest reduction over the shortest period of time. In addition, an end of year season closure would ensure there is no recoupment of catch that year, increasing the probability of the management measure successfully reducing harvest and ending overfishing.

Regarding the development of a Supplement, General Statute 113-182.1 (e1) states:

“If the Secretary determines that it is in the interest of the long-term viability of a fishery, the Secretary may authorize the Commission to develop temporary management measures to supplement an existing Fishery Management Plan pursuant to this subsection. Development of temporary management measures pursuant to this subsection is exempt from subsections (c), (c1), and (e) of this section and the Priority List, Schedule and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52. During the next review period for a Fishery Management Plan supplemented pursuant to this subsection, the Commission shall either incorporate the temporary management measures into the revised Fishery Management Plan or the temporary management measures shall expire on the date the revised Fishery Management Plan is adopted.”

Supplement Timing (Grey indicates the step is complete.)

August 2022	DMF Director requests approval from MFC to request Secretarial approval for a supplement to Striped Mullet FMP Amendment 1
November 2022	Draft Supplement A presented to MFC including management options. MFC Selected Option 2.
December 2022-January 2023	Public Comment Period
February 2023	MFC Review Public Comment and Final Vote on Approval of Supplement A

Decisions Points

Decision to Request a Supplement – August 2022

At the August MFC Business Meeting the DMF Director Kathy Rawls gave an update on Striped Mullet management, and requested the Commission support a request to the DEQ Secretary for approval of supplemental management of striped mullet while Amendment 2 is developed. The Commission discussed the issue. Highlights from that discussion are included below:

- What type of management would be considered?

A seasonal closure is the only practical option that would be considered for supplemental management, however, the Division will consider other options brought by the Commission or members of the public. Additionally, all other options will be considered for Amendment 2 management.

- What is the impact of supplement development on timing of development of Amendment 2?

The Division does not anticipate any impact on the timing of Amendment 2.

- How long is the temporary management expected to remain in place?

Based on the expected timeline of Amendment 2, the Division expects the supplemental management measures will remain in place for one year, but possibly up to two years.

Following the discussion, the Chairman asked if any Commissioner objected to pursuing a supplement. There were no objections. The Chairman indicated the Division had the endorsement of the Commission to request the DEQ Secretary approve development of supplemental management.

Following the meeting a request was sent to the Secretary of DEQ for review and approval. The Secretary approved development of a supplement, after which the Division drafted the supplement document.

Management Options in Supplement A – November 2022

End of year season closures are considered the most effective and efficient management option that can be implemented through the supplement process and be expected to successfully limit striped mullet harvest. An end of year season closure would be implemented as no possession across both commercial and recreational sectors with no additional modification or prohibition of gears. An end of year season closure, if approved by the MFC would be implemented via proclamation.

At the November 2022 MFC business meeting Division staff presented the draft Striped Mullet Supplement A document including three season closure management scenarios that are estimated to end overfishing. These are shown below in Table 6 from the draft Supplement document.

DMF Recommended Management Strategy

The DMF recommended supplemental management measure of either option 1 or 2. To achieve a 20-33% reduction, any end of year season closure must begin no sooner than October 29 and no later than November 7 and continue through December 31. The Division supports a 20-33% reduction to exceed the threshold and either meet or approach the target. This reduction level increases the probability of, at a minimum, ending overfishing even if there is variability in fishing effort, market demand, striped mullet availability to the fishery, or recruitment fluctuations.

Table 6. Management options that satisfy the 9.9% commercial harvest reduction to end overfishing. All reductions are calculated from 2019 commercial harvest levels (terminal year of stock assessment).

Single Management Measures that Satisfy Reduction	Management Measure	Estimated Commercial Harvest Reduction (%)
Season Closures		
1	October 29 – December 31	33.7
2	November 7 – December 31	22.1
3	November 13 - December 31	10.9

Decision to Select Preferred Management Strategy

Following the presentation by staff, the Commission engaged with DMF staff in a lengthy discussion after which a number of motions were made, discussed and voted on. Below are highlights from that discussion:

- What is the estimated recreational harvest reduction?

We cannot calculate an estimate for recreational harvest reduction because the data available for the recreational harvest is not captured with enough precision to accurately calculate daily landings and the recreational mullet harvest, both white and striped, is for bait.

- Why is recreational harvest being closed?

To be equitable across all fisheries and to reduce management complexity to improve enforceability.

- Can the reductions be taken from the rest of the year instead of from the fall row season?

In the context of the biology of the fish and the dominant fishery, the Division does not believe reductions at other times of the year would be successful. The demand and effort is primarily focused during the spawning period, it is likely that even if we closed striped mullet for the rest of the year, we would expect any reductions achieved to be recouped during the fall row mullet fishery.

- Is commercial harvest used to determine abundance? Specifically, the commercial harvest has been up the last couple of years, doesn't that mean we should wait to see if that changes the need for this supplement?

Stock assessments, which use commercial harvest, Division survey data and life history data are used to estimate fishing mortality and stock abundance. Commercial harvest is not equivalent to stock abundance because it is impacted by factors including but not limited to fisherman effort and market demand. However, when compared, commercial landings and abundance trends from Division sampling programs do show a similar pattern over time.

Regarding recent increases in harvest, we cannot tell if fishing mortality is lower or if spawning stock biomass is higher, that can only be determined through a stock assessment update. We can only say that abundance observed in the Division's sampling programs and harvest has increased over the last two years.

- Is the Division confident in the current stock assessment?

Yes, we are confident in the assessment. The Division has observed an increase in landings and abundance over the last two years, however, this does not necessarily translate into a change in the stock status. The only way to determine if the stock status has changed is to update the stock assessment.

Motion

Delay Implementation of the Supplement A to Amendment 1 of the striped Mullet Fishery Management Plan.

Motion Failed

Motion

Approve supplement A to Amendment 1 of the Striped Mullet Fishery Management Plan with option 1, with the caveat that allows recreational possession in the whole year.

Motion fails for lack of second.

Motion

Approve Supplement A to Amendment 1 of the Striped Mullet Fishery Management Plan with Option 2.

Substitute Motion

Approve Supplement A to Amendment 1 of the Striped Mullet Fishery Management Plan with Option 1.

Motion failed.

► Motion Approved Unanimously.

Next Steps

The draft Supplement A to Amendment 1 of the Striped Mullet FMP went out for public comments. The MFC will hear the public comment that was received during the 30-day public comment period and will vote on final approval at their February 2023 business meeting.

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SUPPLEMENT A TO AMENDMENT 1 TO THE N.C. STRIPED MULLET FISHERY MANAGEMENT PLAN

November 2022

ISSUE

Consideration of Supplement A to Amendment 1 to the N.C. Striped Mullet Fishery Management Plan (FMP) to implement temporary management measures to immediately address overfishing of the striped mullet stock while Amendment 2 is developed.

ORIGINATION

The North Carolina Division of Marine Fisheries (DMF).

BACKGROUND

The North Carolina striped mullet stock is overfished and overfishing is occurring in 2019, the terminal year of the stock assessment (NCDMF 2022). As statutorily required, management measures will be developed through Amendment 2 to end overfishing and rebuild spawning stock biomass. Development of Amendment 2 is underway, with final adoption and implementation tentatively scheduled for 2024. Because of the timeline of FMP development, there will be four-years between the terminal year of the stock assessment and implementation of management measures to address the stock status. The supplement allows for implementation of temporary management measures to supplement Amendment 1 until Amendment 2 is adopted.

General Statute 113-182.1 provides a mechanism to supplement management under a Fishery Management Plan (FMP) between scheduled reviews when the Secretary of the Department of Environmental Quality (DEQ) determines it is in the interest of the long-term viability of the fishery. The draft supplement contains analysis of the proposed management change, projected outcomes, and proposed rules or proclamation measures necessary to implement the management change. The North Carolina Marine Fisheries Commission (MFC) may only consider a single management issue for each draft supplement. The supplement allows for implementation of temporary management measures to supplement Amendment 1 until Amendment 2 is adopted. NCMFC Rule 15A NCAC 03M .0502 provides the Director proclamation authority to implement restrictions in the taking of mullet. In accordance with the MFC FMP Guidelines, the MFC will review the draft supplement and reject (end of process), approve, or modify and approve it for public comment.

The North Carolina Striped Mullet FMP was adopted in April 2006 and established minimum and maximum commercial landings triggers of 1.3 and 3.1 million pounds (NCDMF 2006). If annual landings fall below the minimum trigger, the DMF would determine whether the decrease in landings is attributed to stock decline, decreased fishing effort, or both. If annual landings exceed the maximum trigger, DMF would determine whether harvest is sustainable and what factors are driving the increase in harvest. The Striped Mullet FMP established a daily possession limit of 200 mullets (white and striped combined) per person per day in the recreational fishery, through NCMFC Rule 15A NCAC 03M .0502.

The Striped Mullet FMP Amendment 1 was adopted in November 2015. The associated rules from Amendment 1 were implemented in April 2016; to resolve issues with Newport River gill net attendance

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and mitigate known user group conflicts. Amendment 1 also updated the management framework and updated minimum and maximum commercial landings triggers to 1.13 and 2.76 million pounds (NCDMF 2015). Amendment 1 maintains the recreational fishery limit. Other than the recreational daily possession limit there are no management measures directly limiting harvest of striped mullet.

Stock assessments for the North Carolina striped mullet stock were conducted by the DMF in 2006 (NCDMF 2006), 2013 (NCDMF 2015), 2018 (NCDMF 2018), and 2022 (NCDMF 2022). In each assessment, a fishing mortality threshold of $F_{25\%}$ was used to determine if overfishing was occurring. The 2022 assessment also used a spawning stock biomass (SSB) threshold of $SSB_{25\%}$ to determine if the stock was overfished. Stock assessments in 2006, 2013, and 2017 determined overfishing was not occurring but could not determine whether the stock was overfished. While these assessments concluded overfishing was not occurring, each noted concerning trends, data uncertainty, and the potential impact of future poor recruitment events. Given this concern, the commercial landings triggers and adaptive management framework were approved in the Striped Mullet FMP and updated in Amendment 1.

Commercial landings in 2016 were 965,198 pounds, less than the minimum commercial landings trigger. As required under the FMP, the DMF initiated data analysis and ultimately recommended updating the 2013 stock assessment with data through 2017 prior to considering any management action. As an assessment update, there were no changes to model parameters and peer review was not required, as the configuration of the model that previously passed peer review was maintained. The 2018 stock assessment concluded overfishing was not occurring in 2017 but indicated declining spawning stock biomass, declining recruitment, and increasing fishing mortality. A major concern in the 2017 assessment was lack of contrast in commercial landings data and lack of contrast and high variability associated with fishery-independent indices including the Fishery-Independent Gill Net Survey (Program 915), the Striped Mullet Electrofishing Survey (Program 146), and the Striped Bass Independent Gill Net Survey (Program 135). Also of concern were the poor fits to survey data and length compositions.

At its August 2018 business meeting, the DMF presented its recommendation along with recommendations from the Northern, Southern, and Finfish Advisory Committees to the NCMFC that no management action be taken since the stock assessment update indicated overfishing was not occurring. The DMF would, however, continue to monitor trends in the commercial fishery and fishery-independent indices. The recommendation was approved by the MFC.

For the 2022 striped mullet stock assessment, a F threshold of $F_{25\%}$ and a target of $F_{35\%}$ were maintained from the prior assessment since the commercial fishery continues to target mature female fish during the spawning season and the ecological importance of striped mullet. Complementary reference points for stock size were adopted based on female SSB, with a threshold of $SSB_{25\%}$ and a target of $SSB_{35\%}$. The stock assessment model estimated a value of 0.37 for the $F_{25\%}$ threshold and a value of 0.26 for the $F_{35\%}$ target. In 2019, the terminal year of the assessment, F was 0.42, higher than the $F_{25\%}$ threshold, indicating overfishing is occurring (Figure 1). The model estimated a value of 1,364,895 pounds for the $SSB_{25\%}$ threshold and a value of 2,238,075 pounds for the $SSB_{35\%}$ target. Female SSB in 2019 was estimated at 579,915 pounds, smaller than the $SSB_{25\%}$ threshold, indicating the stock is overfished (Figure 2).

An external peer review workshop was held in April 2022. The panel concluded the assessment model and results are suitable for providing management advice for at least the next five years. The panel considers the current model a substantial improvement from the previous assessment, representing the best scientific information available for the stock.

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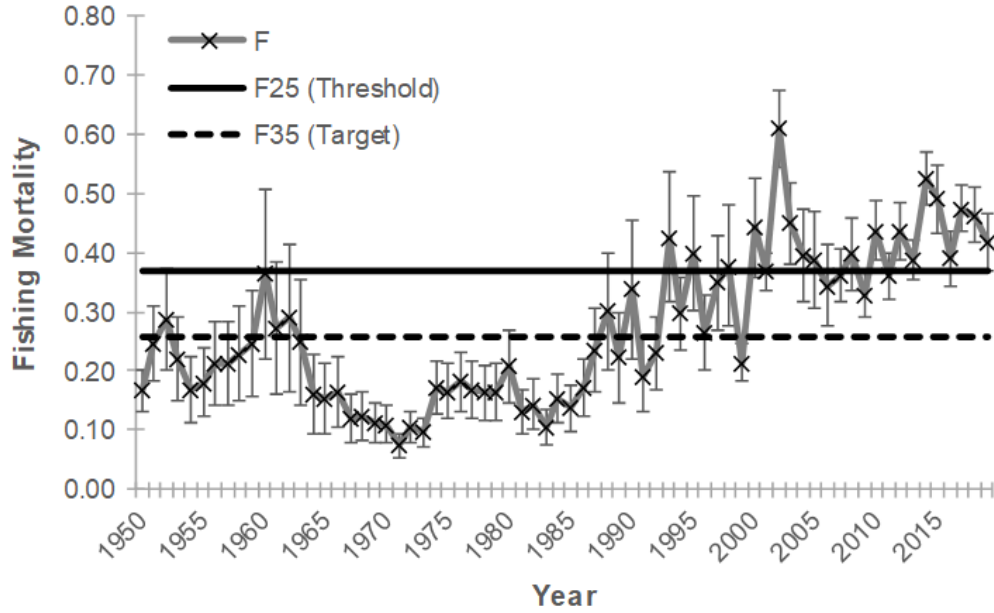


Figure 1. Comparison of annual estimates of fishing mortality (numbers weighted, ages 1-5) to the fishing mortality target (F35%) and threshold (F25%). Error bars represent ± 2 standard deviations.

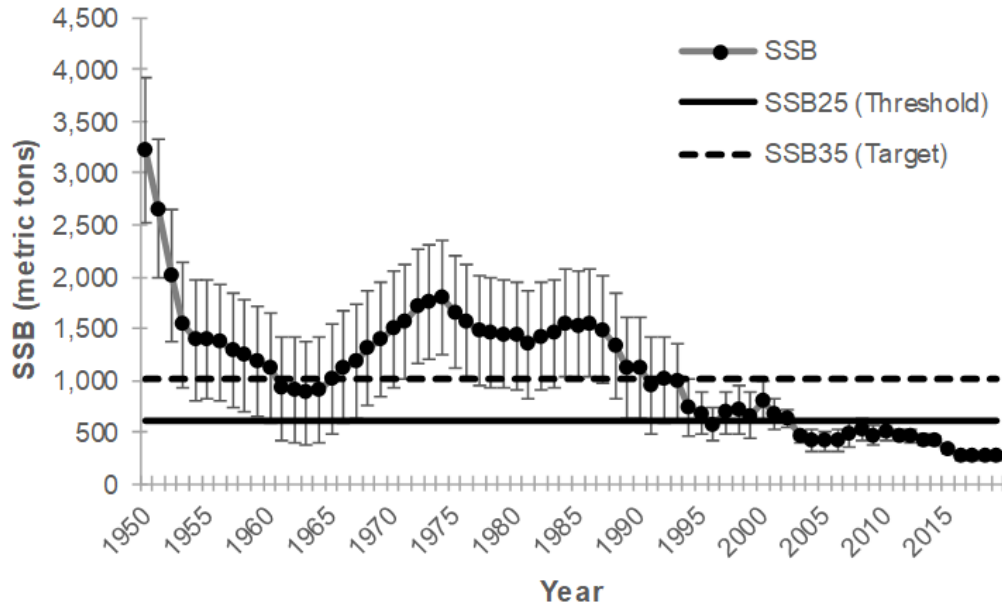


Figure 2. Comparison of annual estimates of female spawning stock biomass (SSB) to the SSB target (SSB35%) and threshold (SSB25%). Error bars represent ± 2 standard deviations.

AUTHORITY

G.S. 113-134 RULES
G.S. 113-182 REGULATION OF FISHING AND FISHERIES
G.S. 113-182.1 FISHERY MANAGEMENT PLANS
G.S. 113-221.1. PROCLAMATIONS; EMERGENCY REVIEW
G.S. 143B-289.52 MARINE FISHERIES COMMISSION-POWERS AND DUTIES
15A NCAC 03M .0502 MULLET
15A NCAC 03H .0103 PROCLAMATIONS, GENERAL

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DISCUSSION

The 2022 stock assessment (NCDMF 2022) indicates recruitment has not only declined but has been below average since 2009 (Figure 3). The decline in recruitment coincides with declining spawning stock biomass while fishing mortality has increased (Figures 1-2).

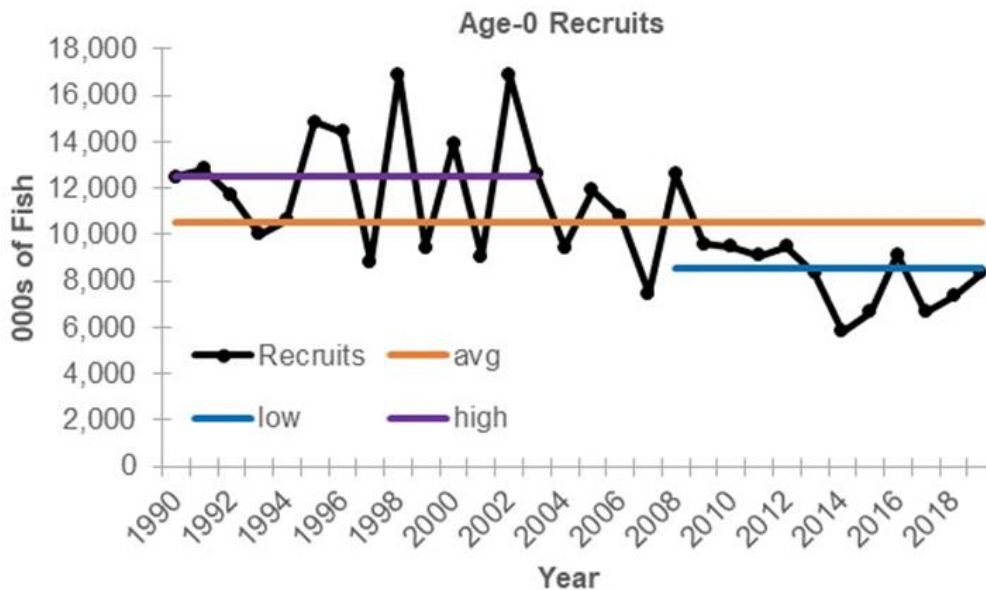


Figure 3. Estimates of striped mullet recruitment from the 2022 striped mullet stock assessment (NCDMF 2022). Average recruitment is the average number of recruits from 1990 to 2019, high recruitment is the average number of recruits from 1990 to 2003, and low recruitment is the average number of recruits from 2008 to 2019.

A 9.3% reduction in total removals relative to landings in 2019 is needed to reduce fishing mortality to the threshold and a 33% reduction is needed to reach the target. Amendment 1 to the Striped Mullet FMP included adaptive management allowing for implementation of management measures if commercial landings exceeded or fell below commercial landings triggers. Because neither the minimum or maximum commercial landings triggers were exceeded in 2022, adaptive management cannot be used to immediately implement management measures. A supplement to Amendment 1 is the only option to immediately implement management measures to end overfishing of the striped mullet stock. Given the stock is overfished and overfishing is occurring, ending overfishing immediately is in the long-term interest of the fishery because it begins rebuilding spawning stock biomass and meets the statutory requirement to end overfishing in two years. Measures addressing sustainable harvest and stock recovery will be explored and implemented through Amendment 2.

Implementation of quotas, seasons, size limits, area closures, gear restrictions, and harvest limits were discussed in Amendment 1 (NCDMF 2015). However, because management measures implemented through a supplement are intended to address a single issue, in this case ending overfishing, size limits, area closures, and gear restrictions are not considered viable options, and are not recommended, because they are unlikely to result in necessary harvest reductions without other measures in being place. A harvest quota would result in necessary harvest reductions and should be considered as a practical long-term option for management of the striped mullet fishery. However, because of the time needed to develop a quota monitoring framework and update infrastructure it is not considered a practical option through the supplement process and is not recommended. Trip limits, in conjunction with other options, could result in necessary reductions but given the high-volume nature of the striped mullet fishery may result in excessive

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dead discards. Trip limits should be explored during Amendment 2 but are not recommended for the supplement.

Given the inherent seasonality of the striped mullet fishery and life history characteristics that make striped mullet more vulnerable to the fishery during certain times of year, season closures are considered the most effective and efficient method to achieve the necessary reductions that can be implemented immediately through a supplement. Striped mullet are highly fecund (upwards of 4 million eggs for a large female; Bichy 2000) and spawn in large groups near inlets and in offshore areas (Collins and Stender 1989). Spawning individuals have been reported from September to March; however, peak spawning activity occurs from October to early December (Bichy 2000). Prior to spawning, striped mullet form large schools in estuaries and can be easily spotted near the surface making them particularly vulnerable to harvest. Closing a portion of the fall season to possession of striped mullet would reduce landings in the targeted striped mullet fishery, where most effort occurs. Targeting a season closure to the period of peak striped mullet harvest minimizes the length of the closure and the numbers of discards that might occur in other fisheries.

Characterization of the Fishery

Recreational Fishery

The federal Marine Recreational Information Program (MRIP) is primarily designed to sample anglers who use rod and reel as the mode of capture. Since most striped mullet are caught with cast nets for bait, striped mullet recreational harvest data are imprecise. In addition, angler misidentification between striped mullet and white mullet is common, and bait mullet are usually released by anglers before visual verification by creel clerks is possible. As such, mullets are not identified to the species level in MRIP data (Catch Type B). Beginning in 2002, MRIP began deferring to mullet genus to classify unobserved type B1 (harvested/unavailable catch) and B2 (released/unavailable catch) catch. As a result, the magnitude of recreational mullet genus harvest far exceeds that of both striped mullet and white mullet. This methodological improvement increased the precision of mullet harvest estimates albeit without species level resolution. As such, estimates of recreational harvest for mullet prior to 2002 are considered unreliable.

The 2022 striped mullet stock assessment used the sum of recreational striped mullet harvest and a proportion of the recreational harvest of mullet genus to estimate removals by the recreational fleet (NCDMF 2022). The proportion of mullet genus assumed to be striped mullet in the recreational harvest was 29%, a value derived from a DMF striped mullet recreational cast net harvest study (NCDMF 2006).

Recreational harvest peaked in 2002 and 2003 at greater than four million fish harvested (Table 1). From 2004 to 2017 recreational harvest remained stable at around one million fish before declining in 2018, 2019 and 2020 to around 500,000 fish. This decline was likely related to decreased abundance of striped mullet and regulations that drastically shortened the recreational fishing season for southern flounder, a fishery where live mullet is a popular bait. Recreational harvest in 2021 was 1,484,850 fish.

Generally, most recreational striped mullet harvest occurs during the late summer and early fall. From 2017 to 2021 most recreational harvest occurred during September/October with some harvest during July/August (Figure 4). Based on MRIP harvest estimates very few, if any, striped mullet are harvested recreationally during the January/February or March/April waves (Table 2).

Striped mullet harvest data from the Recreational Commercial Gear License (RCGL) were collected from 2002 to 2008. The program was discontinued in 2009 due to a lack of funding and the minimal contributions

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from RCGL to overall harvest. From 2002 through 2008, an average of 41,512 pounds of striped mullet were harvested per year using a RCGL (Table 3).

Table 1. Recreational harvest (number of fish landed) of striped mullet and mullet genus estimated from MRIP sampling, 2002-2021. Based on results of a DMF cast net study (NCDMF 2006), 29% of the mullet genus harvested are assumed to be striped mullet.

Year	Striped Mullet		Mullet Genus		Striped Mullet from Mullet Genus (29%)	Striped Mullet + Mullet Genus
	Harvest		Harvest (B1)		Harvest (B1)	Striped Mullet Total Harvest
	(A+B1)	PSE		PSE		
2002	4,668,427	18.0	4,480,197	36.3	1,299,257	5,967,684
2003	3,368,881	29.6	2,487,885	20.4	721,487	4,090,368
2004	5,496	101.7	4,790,382	16.1	1,389,211	1,394,707
2005	10,795	61.5	4,487,719	21.4	1,301,439	1,312,234
2006	15,706	63.5	3,599,098	21.4	1,043,738	1,059,444
2007	301,004	81.3	5,052,995	22.3	1,465,369	1,766,373
2008	3,458	65.0	4,097,156	14.4	1,188,175	1,191,633
2009	83,480	90.6	3,736,571	14.3	1,083,606	1,167,086
2010	126,250	44.7	4,113,171	14.3	1,192,820	1,319,070
2011	80,267	28.6	3,653,514	14.3	1,059,519	1,139,786
2012	351,960	79.5	3,510,395	16.3	1,018,015	1,369,975
2013	150,020	53.9	4,493,166	20.5	1,303,018	1,453,038
2014	50,381	67.0	4,490,722	26.2	1,302,309	1,352,690
2015	142,696	64.5	4,405,800	21.5	1,277,682	1,420,378
2016	29,965	50.6	5,039,891	55.6	1,461,568	1,491,533
2017	37,791	43.9	5,170,318	55.2	1,499,392	1,537,183
2018	35,565	59.3	1,564,676	31.7	453,756	489,321
2019	324,986	52.0	817,596	25.3	237,103	562,089
2020	323,102	43.2	719,908	23.2	208,773	531,875
2021	1,194,213	73.6	1,002,195	31.6	290,637	1,484,850

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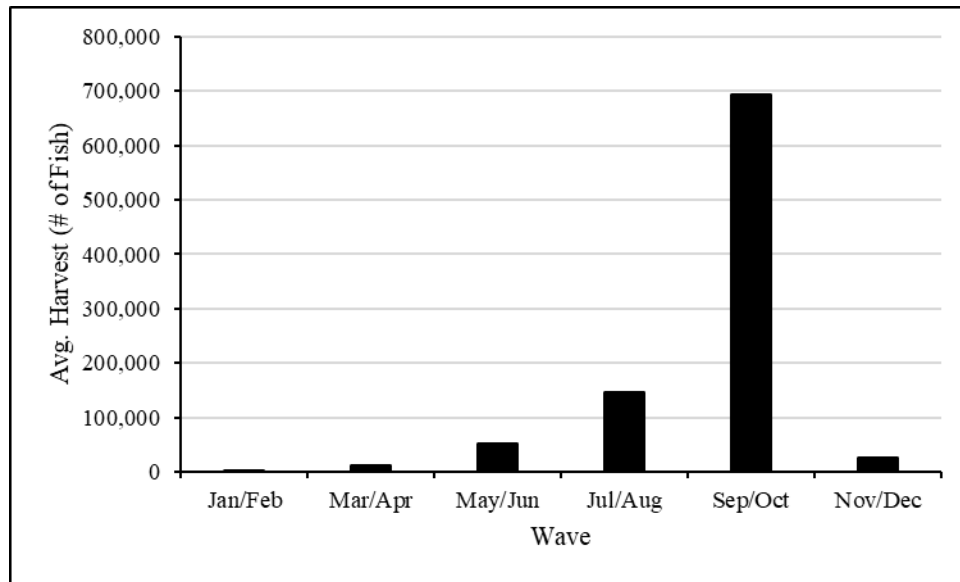


Figure 4. Average number of striped mullet harvested by the recreational fishery by wave based on MRIP estimates, 2017-2021.

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Table 2. Recreational harvest (number of fish landed) of striped mullet and mullet genus by wave estimated from MRIP sampling, 2002-2021. Striped mullet assumed as 29% of mullet genus.

Year	Wave	Striped Mullet	Mullet Genus	Striped Mullet from Mullet Genus (29%)	Striped Mullet + Mullet Genus
		Harvest (A+B1)	Harvest (B1)	Harvest (B1)	Striped Mullet Total Harvest
2017	January/February	.	.	.	.
2017	March/April	.	82,931	24,050	24,050
2017	May/June	27,708	284,430	82,485	110,193
2017	July/August	8,505	354,629	102,842	111,347
2017	September/October	1,579	4,432,737	1,285,494	1,287,073
2017	November/December	.	15,590	4,521	4,521
2018	January/February	.	.	.	.
2018	March/April	.	.	.	.
2018	May/June	2,239	136,595	39,613	41,852
2018	July/August	18,993	750,891	217,758	236,751
2018	September/October	13,505	457,709	132,736	146,241
2018	November/December	828	219,480	63,649	64,477
2019	January/February	.	.	.	.
2019	March/April	.	32,700	9,483	9,483
2019	May/June	11,773	86,637	25,125	36,898
2019	July/August	82,801	280,921	81,467	164,268
2019	September/October	217,317	367,020	106,436	323,753
2019	November/December	13,096	50,318	14,592	27,688
2020	January/February	1,648	1,540	447	2,095
2020	March/April	.	21,050	6,105	6,105
2020	May/June	6,308	78,303	22,708	29,016
2020	July/August	40,470	239,694	69,511	109,981
2020	September/October	274,675	370,617	107,479	382,154
2020	November/December	.	8,704	2,524	2,524
2021	January/February	.	6,340	1,839	1,839
2021	March/April	7,087	.	.	7,087
2021	May/June	1,336	144,319	41,853	43,189
2021	July/August	21,670	292,846	84,925	106,595
2021	September/October	1,164,119	558,690	162,020	1,326,139
2021	November/December

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Table 3. North Carolina Recreational Commercial Gear License (RCGL) survey estimates of the number of striped mullet harvested, pounds harvested, number released, and total number caught. The survey was discontinued in 2009.

Year	Number Harvested	Pounds Harvested	Number Released	Total Number
2002	66,305	64,213	6,549	72,854
2003	28,757	24,774	3,514	32,270
2004	34,736	35,947	2,875	37,611
2005	35,888	36,314	3,492	39,380
2006	38,175	37,385	5,352	43,527
2007	35,472	40,168	7,449	42,921
2008	51,465	51,785	9,207	60,672

Commercial Fishery

Since 1972, striped mullet commercial landings have ranged from a low of 965,198 pounds in 2016 to a high of 3,063,853 pounds in 1993 (Figure 5). From 2003 to 2009, landings were stable between 1,598,617 and 1,728,607 pounds before increasing to 2,082,832 pounds in 2010. Landings fluctuated annually between 1.5 and 2.0 million pounds from 2010 to 2014 before declining in 2015 and again in 2016, dropping below the minimum commercial landings trigger established by Amendment 1. Commercial landings in 2021 increased to 2,135,952 pounds, which is 1,005,952 pounds above the minimum commercial landings trigger.

Historically, beach seines and gill nets were the two primary gear types used in the striped mullet commercial fishery, with most commercial landings prior to 1978 coming from the beach seine fishery. Gill nets (runaround, set, and drift) replaced seines as the dominant commercial gear type in 1979 and since 2017 runaround gill nets have accounted for most (>70%) striped mullet commercial landings (Figure 6).

Because the commercial fishery primarily targets striped mullet for roe, the fishery is seasonal with the highest demand and landings occurring in October and November when large schools form during their spawning migration to the ocean and females are ripe with eggs (Figures 7-8). Striped mullet are primarily targeted commercially using runaround gill nets in the estuarine and ocean waters of North Carolina. The striped mullet beach seine fishery primarily occurs in conjunction with the Bogue Banks stop net fishery. The stop net fishery has operated under fixed seasons and net and area restrictions since 1993. Currently, stop nets are limited in number (four), length (400 yards), and mesh sizes (minimum eight inches outside panels, six inches middle section). Stop nets have typically been permitted along Bogue Banks (Carteret County) in the Atlantic Ocean from October 1 to November 30. However, the stop net season was extended to include December 3 to December 17 in 2015 due to minimal landings of striped mullet (Proclamation M-28-2015). In 2020 and 2021, the stop net fishery was open from October 15 through December 31 (Proclamations M-17-2020 and M-21-2021). Due to the schooling nature of striped mullet, the beach seine fishery has the potential to be, and historically has been, a high-volume fishery with thousands of pounds landed during a single trip. In addition, the use of cast nets in the striped mullet commercial fishery has been increasing since around 2003.

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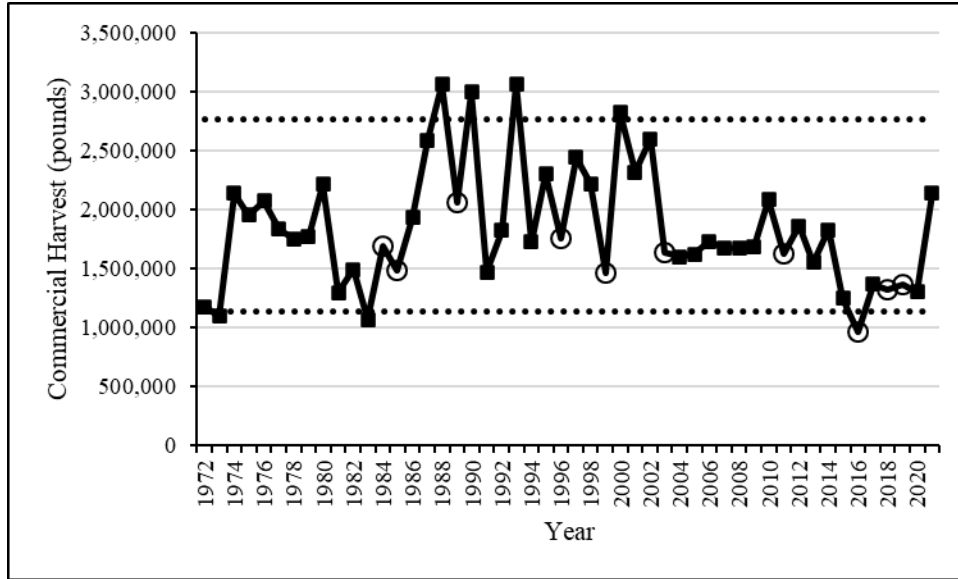


Figure 5. Striped mullet commercial landings (pounds) reported through the North Carolina Trip Ticket Program, 1972–2021 Lower dashed line (1.13 million lb.) and upper dashed line (2.76 million lb.) represent landings limits that trigger closer examination of data. Open circles represent years with significant hurricanes of storms.

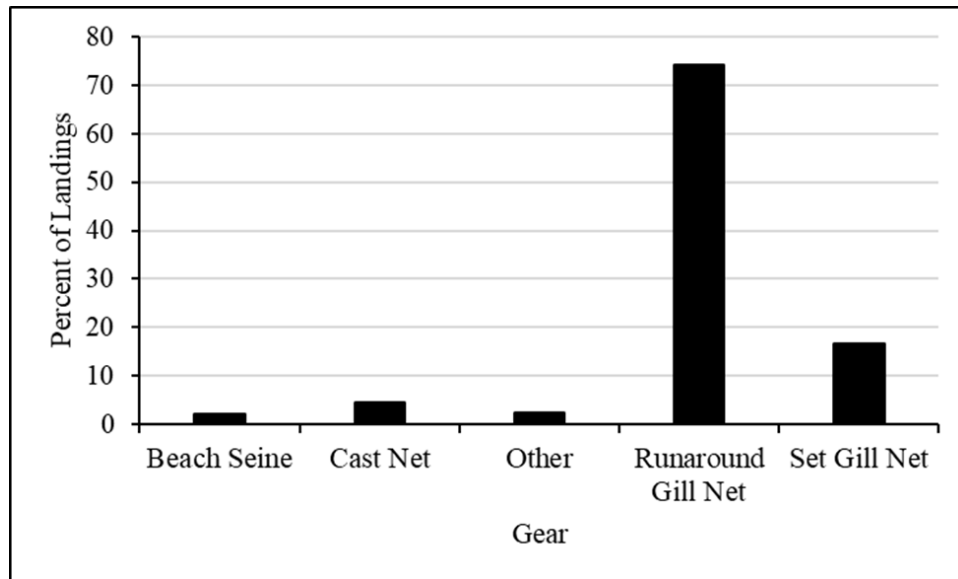


Figure 6. Percent of striped mullet commercial landings reported through the North Carolina Trip Ticket Program by gear, 2017–2021.

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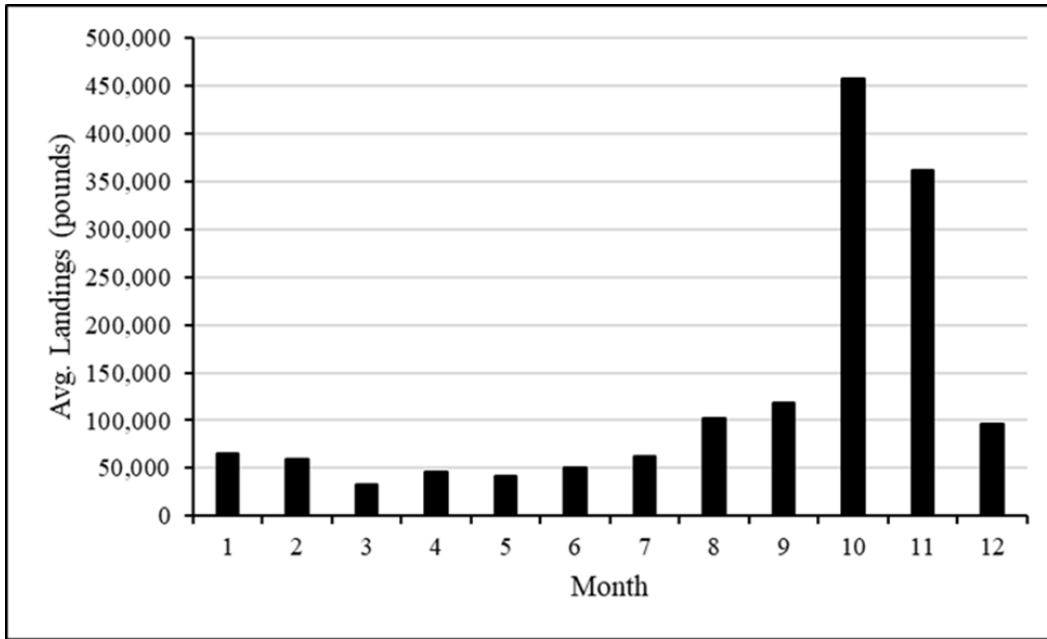


Figure 7. Average commercial landings of striped mullet by month, 2017-2021.

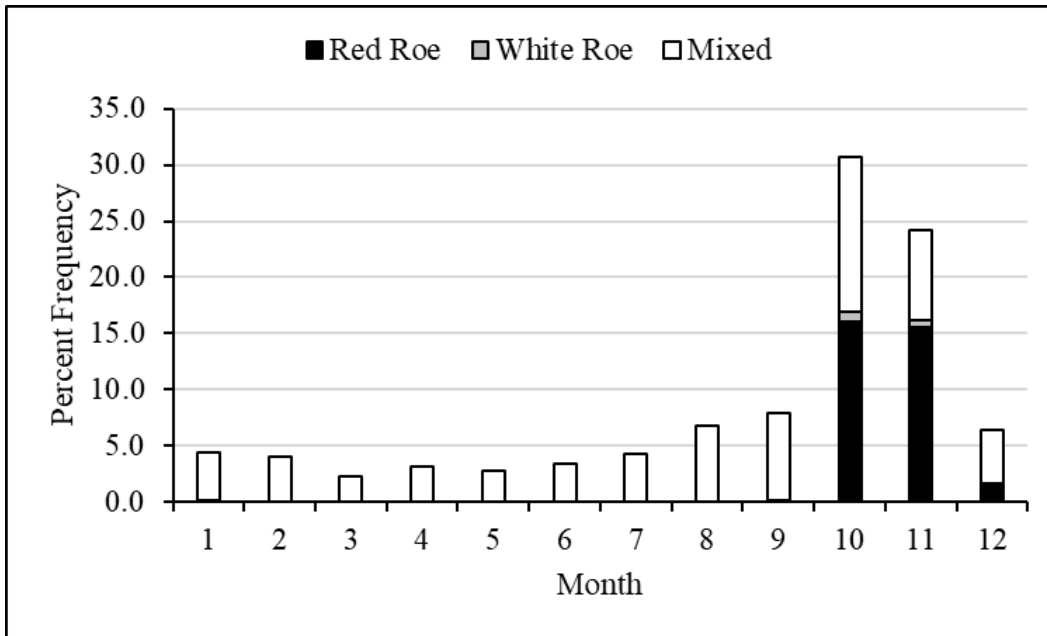


Figure 8. Percent frequency of striped mullet commercial landings by market grade and month, 2017-2021. Red Roe includes striped mullet graded as Red Roe and Roe. White Roe includes striped mullet graded as White Roe. Mixed includes striped mullet graded as Jumbo, Large, Medium, Mixed, Small, and X-Small.

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PROPOSED MANAGEMENT OPTIONS

The goal of this supplement is to reduce fishing mortality and end overfishing with simple quantifiable measures as quickly as possible. A 9.3% reduction in total removals relative to landings in 2019 is needed to reduce fishing mortality to the threshold and a 33% reduction is needed to reach the target. The Division recommends harvest reductions of 20-33% to exceed the F threshold and either reach or approach the F target. This level of reduction increases the probability of, at a minimum, ending overfishing even if there is variability in fishing effort, market demand, striped mullet availability to the fishery, or recruitment.

Non-quantifiable measures such as gear restrictions, area closures, size limits, and recreational specific measures were not considered because they may not quantifiably reduce harvest. A quota system was not considered because the infrastructure is not in place to quickly implement this type of management. Management strategies such as daily trip limits, day of the week closures, and early or mid-season closures were not considered because the risk of recouped catches would likely limit the realized reductions of these management measures. Rather than reduce harvest, measures like early season closures would likely just act to delay harvest.

End of year season closures are considered the most effective and efficient management option that can be implemented through the supplement process and be expected to successfully limit striped mullet harvest. An end of year season closure would be implemented as no possession across both commercial and recreational sectors with no additional modification or prohibition of gears. Despite the closure occurring across all sectors, reductions cannot be quantified for the recreational sector due to data limitations. Therefore, overall reduction calculations are based solely on striped mullet landings from the commercial fishery. A 9.3% overall reduction equates to a 9.9% reduction in commercial harvest, and a 20-33% overall reduction equates to a 21.3-35.4% reduction in commercial harvest. All management options are presented as percent reductions to the commercial harvest relative to commercial landings in 2019 (terminal year of the stock assessment).

End of Year Closures

Historically, peak striped mullet roe landings have occurred in October-November, with most landings occurring from approximately October 15-November 15. An end of year season closure during this time provides the greatest reduction over the shortest period. The closure occurring at the end of the year, does not allow for recoupment of catch that year, increasing the probability of successfully reducing harvest, and ending overfishing. The closure must occur during the peak fall roe harvest season, which impacts the most economically valuable segment of the striped mullet fishery. An end of year closure also creates regulatory discards associated with fisheries that do not target striped mullet during the closed period. However, much of the striped mullet harvest during this time comes from directed trips where runaround gill nets are used to capture visible, schooling striped mullet so discards in other fisheries are unlikely to be excessive. A wrap-around end of year closure extending into January was not considered because of the minimal benefit to striped mullet and to avoid creating striped mullet discards in other fisheries. A closure extending into January would not yield any significant extension to the fall striped mullet season and would likely increase pressure on other fisheries, like spotted seatrout. An end of year closure is most likely to achieve the necessary reductions because recoupment would be less significant than other management options not considered in this supplement.

Summary of Economic Impacts

Modeling software, IMPLAN, is used to estimate the economic impacts of an industry to the state at-large, accounting for revenues and participation. For a detailed explanation of the methodology used to estimate

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the economic impacts please refer to DMF’s License and Statistics Section Annual Report on the Fisheries Statistics page (NCDMF 2021). Due to the management options being considered, this analysis focuses on the commercial industry.

Commercial landings and effort data collected through the DMF Trip Ticket Program are used to estimate the economic impact of the commercial fishing industry. For commercial fishing output, total impacts are estimated by incorporating modifiers from NOAA’s Fisheries Economics of the United States report (NMFS 2022), which account for proportional expenditures and spillover impacts from related industries. By assuming the striped mullet fishery’s contribution to expenditure categories at a proportion equal to its contribution to total commercial ex-vessel values, it is possible to generate an estimate of the total economic impact of striped mullet statewide.

From 2011 to 2021 striped mullet ex-vessel value has been about \$1 million dollars and impacts about 800 jobs annually (Table 4). Annual sales impacts have varied but averaged \$3.6 million from 2011 to 2021. In general, these estimates demonstrate the striped mullet fishery contributes to about 1% of commercial fishing sales impact statewide.

Table 4. Annual commercial estimates of annual economic impact to the state of North Carolina from striped mullet harvest, 2011-2021. Economic impacts are reported in 2020 dollars.

Year	Pounds Landed	Ex-Vessel Value	Job Impacts	Income Impacts	Value-Added Impacts	Sales Impacts
2021	2,135,952	\$ 1,333,475	714	\$ 1,860,564	\$ 3,503,122	\$ 4,004,336
2020	1,299,464	\$ 651,104	658	\$ 1,330,677	\$ 2,257,282	\$ 2,912,396
2019	1,362,212	\$ 929,282	673	\$ 1,502,372	\$ 2,344,706	\$ 3,475,378
2018	1,312,121	\$ 953,667	731	\$ 1,502,185	\$ 2,686,226	\$ 3,303,076
2017	1,366,338	\$ 1,037,526	802	\$ 1,571,518	\$ 2,564,816	\$ 3,559,251
2016	965,337	\$ 669,843	716	\$ 1,006,728	\$ 1,739,854	\$ 2,240,287
2015	1,247,044	\$ 804,675	784	\$ 1,203,068	\$ 2,086,467	\$ 2,663,251
2014	1,828,351	\$ 1,112,465	912	\$ 1,735,047	\$ 3,293,379	\$ 3,936,322
2013	1,549,157	\$ 1,402,914	1,042	\$ 2,318,409	\$ 3,902,777	\$ 5,173,187
2012	1,859,587	\$ 1,041,659	948	\$ 1,957,469	\$ 3,167,843	\$ 4,390,261
2011	1,627,894	\$ 1,015,852	885	\$ 1,890,316	\$ 3,371,858	\$ 4,175,332
Average	1,504,860	\$ 995,678	806	\$ 1,625,305	\$ 2,810,757	\$ 3,621,189

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Table 5. Monthly commercial estimates of annual economic impact to the state of North Carolina from striped mullet harvest over five years, 2017-2021. Economic impacts are reported in 2020 dollars.

Month	Pounds Landed	Ex-Vessel Value	Job Impacts	Income Impacts	Value Added Impacts	Sales Impacts
1	65,170	\$ 36,107.03	130	\$ 53,057.71	\$ 98,355.14	\$ 114,549.45
2	59,618	\$ 33,227.53	129	\$ 49,108.96	\$ 90,877.25	\$ 106,053.22
3	32,731	\$ 18,569.84	122	\$ 28,460.61	\$ 52,101.53	\$ 61,568.49
4	45,885	\$ 25,851.76	141	\$ 39,856.46	\$ 72,837.04	\$ 86,245.48
5	41,826	\$ 23,508.17	121	\$ 35,221.68	\$ 64,912.23	\$ 76,114.04
6	50,157	\$ 28,058.94	131	\$ 43,466.77	\$ 79,323.84	\$ 94,077.95
7	62,675	\$ 36,047.32	139	\$ 54,151.74	\$ 99,720.97	\$ 117,036.20
8	101,967	\$ 60,393.25	179	\$ 91,585.84	\$ 168,184.68	\$ 198,027.77
9	118,860	\$ 69,487.04	210	\$ 103,726.30	\$ 191,374.87	\$ 224,109.33
10	458,246	\$ 328,837.30	361	\$ 485,746.18	\$ 899,026.44	\$ 1,048,966.80
11	362,172	\$ 261,014.19	297	\$ 357,945.86	\$ 688,459.22	\$ 766,383.96
12	95,910	\$ 59,908.44	176	\$ 83,266.89	\$ 157,024.20	\$ 179,263.56

To further understand the dynamics of the striped mullet fishery the monthly economic impacts over the last five years are reported in Table 5. The striped mullet commercial fishery is driven by seasonal changes in population availability. The estimated change in job impacts and sales impacts reflect the availability of striped mullet throughout the year. Most of the harvest and economic impacts are concentrated in October and November of each year.

Management Option Scenarios

Management options for consideration include end of year closures that end December 31 (Table 6). All options provided in Table 6 meet the statutory requirement to end overfishing.

Table 6. Management options that satisfy the 9.9% commercial harvest reduction to end overfishing. All reductions are calculated from 2019 commercial harvest levels (terminal year of stock assessment).

Single Management Measures that Satisfy Reduction	Management Measure	Estimated Commercial Harvest Reduction (%)
Season Closures		
1	October 29 – December 31	33.7
2	November 7 – December 31	22.1
3	November 13 - December 31	10.9

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End of Year Season Closure (options 1 and 2)

(+ potential positive impact of action)

(- potential negative impact of action)

- + No additional resources required to implement
- + No additional reporting burden on fishermen or dealers
- + Reduces effort from current level
- + High likelihood of ending overfishing
- + Increases probability of ending overfishing stock or fishery conditions are variable
- Weather may prevent fishing during open periods
- Effort may increase during the open period reducing the effectiveness of the closure
- Reduction in fishing mortality may not be achieved
- Overfishing may still occur if recruitment is low
- May adversely impact some fisheries and fishermen more than others
- Create regulatory discards in the closed period

End of Year Season Closure (option 3)

(+ potential positive impact of action)

(- potential negative impact of action)

- + No additional resources required to implement
- + No additional reporting burden on fishermen or dealers
- + Reduces effort from current level
- + Could potentially end overfishing
- No buffer to increase probability of ending overfishing if stock or fishery conditions are variable
- Weather may prevent fishing during open periods
- Effort may increase during the open period reducing the effectiveness of the closure
- Reduction in fishing mortality may not be achieved
- Overfishing may still occur if recruitment is low
- May adversely impact some fisheries and fishermen more than others
- Create regulatory discards in the closed period

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RECOMMENDATION

DMF Recommended Management Strategy:

The DMF recommends approval of the supplement to implement either option 1 or 2. To achieve a 20-33% reduction, any end of year season closure must begin no sooner than October 29 and no later than November 7 and continue through December 31. The Division supports a 20-33% reduction to exceed the threshold and either meet or approach the target. This reduction level increases the probability of, at a minimum, ending overfishing even if there is variability in fishing effort, market demand, striped mullet availability to the fishery, or recruitment fluctuations.

MFC Selected Management Strategy:

At its November 2022 business meeting the NCMFC selected Option 2: a season closure from November 7 – December 31 as its preferred management option.

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October 28, 2022

Rulemaking

February 2023 Business Meeting

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and Shellfish Leases and
Franchises" Issue Paper



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Jan. 27, 2023

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A. Request the MFC vote on final approval of two rules in the 2022-2023 Annual Rulemaking Cycle. Request the MFC vote on preferred management options and associated proposed language for rulemaking for three issues in the 2023-2024 Annual Rulemaking Cycle.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. § 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption. For 15A NCAC 03 (Marine Fisheries), the MFC completed the rule readoption process.
 - For 15A NCAC 18A (Sanitation), the MFC has 80 rules remaining for readoption. On Jan. 16, 2020, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2024, for these rules.
 - The MFC must readopt the remaining rules by this deadline or the rules will expire and be removed from the N.C. Administrative Code.
- Regarding final approval of the rules in the 2022-2023 Annual Rulemaking Cycle, four public comments in total were received about the two rules. If approved, one rule has an earliest effective date of May 1, 2023 (marinas) and one rule is automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1 (mutilated finfish).
- Regarding rules in the 2023-2024 Annual Rulemaking Cycle, the MFC's preferred management options and associated proposed language for rulemaking are needed for development of the required fiscal analyses so that the formal rulemaking process can be ready to begin at the MFC's May 2023 business meeting.

Action Needed

In accordance with N.C.G.S. § 150B-21.3A, the MFC is scheduled to vote on final approval of readoption and amendment of two rules in 15A NCAC 03 and 18A as published in the *N.C. Register* Oct. 3, 2022. The MFC is also scheduled to vote on preferred management options and associated proposed language for rulemaking for three issues in the 2023-2024 Annual Rulemaking Cycle.

Recommendations

- 2022-2023 Annual Rulemaking Cycle: The Division of Marine Fisheries (DMF) recommends the MFC vote on final approval of readoption and amendment of two rules in 15A NCAC 03 and 18A in accordance with N.C.G.S. § 150B-21.3A.
- 2023-2024 Annual Rulemaking Cycle:
 - "Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources": the DMF recommends Option 2, amend the rules.
 - "Oyster Sanctuary Rule Changes": the DMF recommends Option 2, amend the rules.
 - "Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises": the DMF recommends supporting the single option presented to amend the rules, consistent with requirements of the N.C. Administrative Procedure Act (APA; N.C.G.S. § 150B).
- For more information, please refer to the rulemaking section of the briefing materials.

2021-2022 Annual Rulemaking Cycle Update

"Package B" (109 rules)

At its August 2021 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 109 rules. The MFC gave final approval of the rules at its February 2022 business meeting. There were 38 rules that were not automatically subject to legislative review that became effective June 1 or July 1, 2022. Most fishermen saw very little change from these rules. A news release and a rulebook supplement were distributed on each of these dates. The remaining 71 rules are automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1, and thus are expected to have a delayed effective date. Three rules, covering highly efficient gears, artificial reefs, and research sanctuaries, became effective Aug. 23, 2022, which was the 31st legislative day of the 2022 short session; a news release and a rulebook supplement were distributed. The remaining 68 rules are available for legislative review during the 2023 long session.

These 68 rules cover the following subjects:

- Shellfish leasing regulations;
- 15A NCAC 03 rules with conforming changes;
- 15A NCAC 03I, 03J, 03K, 03O, and 03R for imported species, recordkeeping, gear, marketing shellfish, and licenses;
- Commercial blue crab harvest and gear regulations;
- Permit and license suspensions and revocations and pound net gears; and
- 15A NCAC 03K and 18A crustacea and shellfish.

"Package C" (9 rules)

At its March 2022 special meeting, the MFC approved Notice of Text for Rulemaking to begin the process for nine joint rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters. The rules were proposed for re-adoption with no changes. The MFC gave final approval of the rules at its June 23, 2022, special meeting, and the Wildlife Resources Commission (WRC) gave its concurrence of the MFC's rules at its June 28, 2022, special meeting. These nine MFC rules and the 11 WRC joint rules (that the WRC approved April 14, 2022, and for which the MFC gave its concurrence May 26, 2022) became effective Sept. 1, 2022, except for one MFC rule (15A NCAC 03Q .0107) that is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and is available for legislative review during the 2023 long session.

2022-2023 Annual Rulemaking Cycle (2 rules)

At its August 2022 business meeting, the MFC approved Notice of Text for Rulemaking to begin the rule amendment and re-adoption process for two rules. A table of the steps in the process is included in the briefing materials and a summary of the proposed rules by subject is provided below. The proposed rules were published in the Oct. 3, 2022, issue of the *N.C. Register*, beginning the public comment process; an excerpt is included in the briefing materials.

The MFC accepted public comments on the proposed rules from Oct. 3 through 5 p.m. Dec. 16, 2022. Four written public comments were submitted about the rules, described with the corresponding subjects below. Additionally, three written public comments were submitted about unrelated topics (Shellfish Enterprise Areas, the southern flounder season, and nets). All seven comments are included in a table in the briefing materials. A public hearing was held at the DMF's Central District Office in Morehead City on Dec. 16 at 1 p.m. No members of the public were in attendance; a summary of the hearing is included in the briefing materials. The hearing was rescheduled due to technical issues that occurred on the date it was initially scheduled (Nov. 1), as described in the Nov. 7 news release that is included in the briefing materials.

The MFC is scheduled to receive the public comments and vote on final approval of the rules at its February 2023 business meeting. The mutilated finfish rule is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and would not be reviewed until the 2024 short session. The earliest effective date of the marinas, docking facilities, and other mooring areas rule is May 1, 2023.

MUTILATED FINFISH (15A NCAC 03M .0101)

Proposed amendments to this rule would provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that only species subject to a possession limit are subject to the requirements unless otherwise specified in a MFC rule or a proclamation issued under the authority of a MFC rule. The original intent of the mutilated finfish rule was to provide added resource protection for finfish species subject to a size or bag limit. Proposed amendments to this rule would provide flexibility to manage current conditions for the use of certain finfish species as cut bait, as well as variable conditions that could occur in the future, all while continuing to protect fisheries resources. Proposed amendments would also clarify requirements, benefitting affected stakeholders and Marine Patrol officers.

Due to current possession limits, use of American eel, spot, Atlantic croaker, and bluefish as cut bait creates conflicts with the current mutilated finfish rule based on communication from stakeholders, feedback from Marine Patrol officers, and implications from stock assessments and fishery management plans. Additionally, changes to the current exception for mullet may be needed based on the outcome of the striped mullet stock assessment and management changes developed through the fishery management plan process. It is likely that species beyond the five outlined could require similar consideration in the future. Therefore, the proposed changes would amend the rule in a way that can resolve current conflicts with species used as cut bait, provide flexibility to manage variable conditions, and allow all requirements for a particular finfish species to be aggregated in a single proclamation (including for bait usage) for more comprehensive management, all while continuing to protect fisheries resources. It is important to note there is no guarantee that species allowed to be cut now would continue or that relief would be granted for the use of species that are prohibited now. The amended rule would only provide the Fisheries Director the authority to use her discretion to determine, in the context of the then-current variable conditions and available data and information, if it would be appropriate to issue a proclamation that would allow a particular species to be cut for use as bait.

Three written public comments were submitted about the proposed mutilated finfish rule, one in support. Of the two who expressed opposition to the proposed rule changes, one commenter stated that the use of certain finfish for bait, like mullet, pin fish, spot, and Atlantic croaker, should not be curtailed. A second commenter stated opposition to removing the exception for the use of mullet as bait. It is important to note that as described above, the amended rule would grant authority to the Fisheries Director to use her discretion about the use of bait in the context of the then-current variable conditions and the available data and information about a particular fishery.

MARINAS, DOCKING FACILITIES, AND OTHER MOORING AREAS (15A NCAC 18A .0911)

This rule is proposed for readoption pursuant to the requirements of N.C.G.S. § 150B-21.3A and proposed for amendment. The marinas rule, as it is currently written, may not be fully in compliance with national program requirements for shellfish harvesting closures and does not use the best available methodology to do so for the protection of public health. Proposed amendments would help ensure that North Carolina remains in full compliance with national requirements, allow the DMF to determine necessary buffer closures based on a more scientific and public health-based rationale, and make implementation and enforceability clearer.

For the harvest classification of shellfish growing waters in and around marinas, the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, and that a dilution analysis be used to determine the size of any harvest closure that may be necessary because of the pollution assessment. The current rule already requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, but it does not require a dilution analysis to determine closure size, and instead prescribes specific closure measurements based on a limited number of marina characteristics. The proposed rule would maintain the pollution assessment requirement and would also require that a dilution analysis be used to determine closure size. Also, the elimination of an exemption clause from the rule would allow for more clarity among

stakeholders and help ensure consistent, clear, and more efficient enforcement across marinas. With the elimination of this portion of the rule, slip owners at these marinas would have additional flexibility with the type and size of boat they are able to dock there. DMF and Division of Coastal Management staffs spend resources repeatedly enforcing marinas' designations over time with changing homeowners' associations. DMF resources could be used in other ways if the exemption is eliminated. Overall, the acreage of water that could potentially change designation is an extremely small amount: approximately 58 acres out of 1.46 million acres that are open to shellfish harvest.

One written public comment was submitted about the proposed rule changes. The commenter stated that the proposed rule changes for detection of fecal contamination near marinas is acceptable, but the rule should also include testing to address chemical contamination by marinas. The proposed rule describes the procedures used to establish prohibited buffer zones around marinas based on the relative risk of wastewater contamination from overboard discharges of sewage. The MFC has other rules that address the risk of chemical contamination, such as 15A NCAC 18A .0907, Prohibited Waters. This rule states "Shellfish growing waters shall be classified as prohibited if: . . . the shellfish growing waters are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render consumption of shellfish from those growing waters hazardous." The risk of contamination from "poisonous or deleterious substances" is assessed during a "shoreline survey", which is defined in 15A NCAC 18A .0901 as "an in-field inspection by the Division to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area." These detailed surveys are completed every three years with updates in the intervening years to reflect any major changes in pollution source impacts that may have occurred.

2023-2024 Annual Rulemaking Cycle (101 rules)

At the MFC's November 2022 business meeting, DMF staff provided a preview of potential rules in the MFC's 2023-2024 annual rulemaking cycle. This cycle is scheduled to begin the rulemaking process at the MFC's May 2023 business meeting; a table of the steps in the process is included in the briefing materials. Additional rules in 15A NCAC 18A proposed for readoption are expected to be part of the rulemaking cycle (83 rules). Please see Figure 1, detailed in the Background Information section below, that shows the MFC's rule readoption schedule. A summary of this group of proposed rules is provided below. Proposed rules would have an earliest effective date of April 1, 2024, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. Rules that are subject would likely be available for review during the 2024 short session.

Additional rules in the 2023-2024 Annual Rulemaking Cycle are anticipated to be included for three other issues. The MFC's preferred management options and associated proposed language for rulemaking are needed for development of the required fiscal analyses so that the formal rulemaking process can be ready to begin in May. A table summarizing these issues is included in the briefing materials, as are the three issue papers; a summary description is also included here.

READOPTON OF SHELLFISH PLANT AND INSPECTION RULES IN 15A NCAC 18A .0300 THROUGH .0800 (83 rules)

Pursuant to N.C.G.S. § 150B-21.3A, this package of 83 rules in 15A NCAC 18A is proposed for the readoption of 56 rules with amendments, repeal through readoption of 23 rules, adoption of three rules, and the repeal of one rule. Proposed changes would help ensure that North Carolina remains in

full compliance with national requirements, provide efficiencies for the DMF in the process of implementing and enforcing the rules, and clarify and update the rules for stakeholders. North Carolina is part of the National Shellfish Sanitation Program (NSSP), which is a federal/state cooperative program designed to “promote and improve the sanitation of shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce” as stated in Section I, page 2 of the NSSP Guide for the Control of Molluscan Shellfish (Guide). DMF staff work together with representatives from other states, the federal government, and industry through the Interstate Shellfish Sanitation Conference to develop guidelines for all state shellfish programs that are summarized in the Guide.

North Carolina must meet the minimum standards included in the Guide for N.C. shellfish to be able to be sold through interstate commerce and protect N.C. shellfish consumers within and outside of the State. The requirements are already being enforced by the DMF consistent with the Guide. Overall, the rules are expected to increase consumer confidence in the safety of N.C. shellfish products, achieve efficiencies in implementing and enforcing the rules, and clarify the requirements for stakeholders.

DATA COLLECTION AND HARASSMENT PREVENTION FOR THE CONSERVATION OF MARINE AND ESTUARINE RESOURCES (5 rules)

Due to the increasing occurrence and severity of harassment during, and decreasing participation in, DMF data collection initiatives, amendments are proposed to five MFC rules. Proposed amendments set requirements to address harassment by any person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing), not just licensees, of DMF employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments more fully characterize the types of data that may be collected.

The amendments would support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees. Data collected from the commercial and recreational fishing sectors are essential in fisheries management for the state and play a vital role in federal fisheries management, as well. The proposed amendments to these rules broaden the scope of enforceability to enhance protections for DMF employees as they collect data. Such protections not only enhance the DMF's data collection efforts, but also improve DMF's ability to provide a workplace that is free from unlawful harassment, which typically leads to higher employee satisfaction, lower turnover, and better recruitment. Overall, the rules are expected to enhance fisheries management and create a safer working environment for DMF employees.

OYSTER SANCTUARY RULE CHANGES (1 rule)

Proposed amendments add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island) where published coordinates were recently found to be inconsistent with permitted and marked reef boundaries. These changes to permanent rule would protect oysters from bottom disturbing gear so they can serve their intended management function as oyster broodstock sanctuaries, as well as safeguard boaters navigating the sanctuaries; the changes are already in place via the Fisheries Director's proclamation authority (SF-6-2022). Additionally, coordinates for three

sanctuaries are proposed to be reorganized to standardize the cardinal directions, for consistency; there are no changes to the overall sanctuaries, nor the coordinate pairs themselves.

CONFORMING RULE CHANGES FOR SHELLFISH RELAY PROGRAM AND SHELLFISH LEASES AND FRANCHISES (12 rules)

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program will end effective May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting. DMF informed the MFC that more information would be provided at its February 2023 business meeting, including corresponding proposed rule amendments. DMF identified 11 rules relating to the Shellfish Relay Program that set specific requirements for relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the APA.

Additional proposed changes for shellfish lease and franchise requirements are proposed to 15A NCAC 03O .0201 to conform to requirements of Session Law 2019-37 (Act to Provide Further Support to the Shellfish Aquaculture Industry in North Carolina). Section 3 of the Act increased production and planting requirements for shellfish leases and franchises. Subsection 3 (d) of the Act requires the MFC to amend 15A NCAC 03O .0201 consistent with Subsection 3 (c) of the Act that sets shellfish production and planting requirements for leases granted July 1, 2019 and after. Changes are proposed to conform this rule to the requirements of this law.

Background Information

Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A

Session Law 2013-413, the Regulatory Reform Act of 2013, implemented requirements known as the "Periodic Review and Expiration of Existing Rules." These requirements are codified in a new section of Article 2A of Chapter 150B of the General Statutes in N.C.G.S. § 150B-21.3A. Under the requirements, each agency is responsible for conducting a review of all its rules at least once every 10 years in accordance with a prescribed process.

The review has two parts. The first is a report phase, which has concluded, followed by the readoption of rules. An evaluation of the rules under the authority of the MFC was undertaken in two lots (see Figure 1.) The MFC has 211 rules in Chapter 03 (Marine Fisheries), of which 172 are subject to readoption, and 164 rules in Chapter 18, Subchapter 18A (Sanitation) that are also subject to readoption. The MFC is the body with the authority for the approval steps prescribed in the process.

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Readopted	116 Rules Readopted	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Readopted	42 Rules Readopted	Rule Readoption (1)	Rule Readoption (79)	6/30/24 deadline

Figure 1. Marine Fisheries Commission rule readoption schedule to comply with N.C.G.S. § 150B-21.3A, Periodic Review and Expiration of Existing Rules.

N.C. Marine Fisheries Commission 2022-2023 Annual Rulemaking Cycle

February 2023

Time of Year	Action
February-July 2022	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 19, 2022	MFC approved Notice of Text for Rulemaking
Oct. 3, 2022	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 3-Dec. 16, 2022	Public comment period held *
Dec. 16, 2022	Public hearing held **
Feb. 22-24, 2023	MFC votes on approval of permanent rules
April 20, 2023	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
May 1, 2023	Proposed effective date of 1 rule not subject to legislative review
May 1, 2023	Rulebook supplement available online
2024 legislative session	Possible effective date of 1 rule subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
June 30, 2024	Readoption deadline for 15A NCAC 18A

*The public comment period for these rules was extended from December 2, 2022, to December 16, 2022, at 5 p.m.

**The Marine Fisheries Commission had technical difficulties with the public hearing on proposed rules 15A NCAC 03M .0101 and 18A .0911 scheduled for November 1, 2022, at 6 p.m. via WebEx with a listening station at the Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557. The public hearing on these rules was rescheduled for December 16, 2022, at 1 p.m. at the same location; no virtual access was provided.

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For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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NORTH CAROLINA REGISTER
Publication Schedule for January 2022 – December 2022

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
36:13	01/03/22	12/08/21	01/18/22	03/04/22	03/21/22	04/21/2022	05/01/22	09/30/22
36:14	01/18/22	12/22/21	02/02/22	03/21/22	04/20/22	05/19/2022	06/01/22	10/15/22
36:15	02/01/22	01/10/22	02/16/22	04/04/22	04/20/22	05/19/2022	06/01/22	10/29/22
36:16	02/15/22	01/25/22	03/02/22	04/18/22	04/20/22	05/19/2022	06/01/22	11/12/22
36:17	03/01/22	02/08/22	03/16/22	05/02/22	05/20/22	06/16/2022	07/01/22	11/26/22
36:18	03/15/22	02/22/22	03/30/22	05/16/22	05/20/22	06/16/2022	07/01/22	12/10/22
36:19	04/01/22	03/11/22	04/16/22	05/31/22	06/20/22	07/21/2022	08/01/22	12/27/22
36:20	04/18/22	03/25/22	05/03/22	06/17/22	06/20/22	07/21/2022	08/01/22	01/13/23
36:21	05/02/22	04/08/22	05/17/22	07/01/22	07/20/22	08/18/2022	09/01/22	01/27/23
36:22	05/16/22	04/25/22	05/31/22	07/15/22	07/20/22	08/18/2022	09/01/22	02/10/23
36:23	06/01/22	05/10/22	06/16/22	08/01/22	08/22/22	09/15/2022	10/01/22	02/26/23
36:24	06/15/22	05/24/22	06/30/22	08/15/22	08/22/22	09/15/2022	10/01/22	03/12/23
37:01	07/01/22	06/10/22	07/16/22	08/30/22	09/20/22	10/20/2022	11/01/22	03/28/23
37:02	07/15/22	06/23/22	07/30/22	09/13/22	09/20/22	10/20/2022	11/01/22	04/11/23
37:03	08/01/22	07/11/22	08/16/22	09/30/22	10/20/22	11/17/2022	12/01/22	04/28/23
37:04	08/15/22	07/25/22	08/30/22	10/14/22	10/20/22	11/17/2022	12/01/22	05/12/23
37:05	09/01/22	08/11/22	09/16/22	10/31/22	11/21/22	12/15/2022	01/01/23	05/29/23
37:06	09/15/22	08/24/22	09/30/22	11/14/22	11/21/22	12/15/2022	01/01/23	06/12/23
37:07	10/03/22	09/12/22	10/18/22	12/02/22	12/20/22	01/19/2023	02/01/23	06/30/23
37:08	10/17/22	09/26/22	11/01/22	12/16/22	12/20/22	01/19/2023	02/01/23	07/14/23
37:09	11/01/22	10/11/22	11/16/22	01/03/23	01/20/23	02/16/2023	03/01/23	07/29/23
37:10	11/15/22	10/24/22	11/30/22	01/17/23	01/20/23	02/16/2023	03/01/23	08/12/23
37:11	12/01/22	11/07/22	12/16/22	01/30/23	02/20/23	03/16/2023	04/01/23	08/28/23
37:12	12/15/22	11/22/22	12/30/22	02/13/23	02/20/23	03/16/2023	04/01/23	09/11/23

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

- (1) Aluminum;
- (2) Antimony;
- (3) Arsenic;
- (4) Barium;
- (5) Beryllium;
- (6) Boron;
- (7) Cadmium;
- (8) Calcium;
- (9) Chromium, Hexavalent (Chromium VI);
- (10) Chromium, Total;
- (11) Chromium, Trivalent (Chromium III);
- (12) Cobalt;
- (13) Copper;
- (14) Hardness, Total (Calcium + Magnesium);
- (15) Iron;
- (16) Lead;
- (17) Lithium;
- (18) Magnesium;
- (19) Manganese;
- (20) Mercury;
- (21) Molybdenum;
- (22) Nickel;
- (23) Potassium;
- (24) Phosphorus;
- (25) Selenium;
- (26) Silica;
- (27) Silver;
- (28) Sodium;
- (29) Strontium;
- (30) Thallium;
- (31) Tin;
- (32) Titanium;
- (33) Vanadium; and
- (34) Zinc.

- ~~(17)~~(18) Organochlorine Pesticides;
- ~~(18)~~(19) Organophosphorus Pesticides;
- (20) Per- and Polyfluoroalkyl Substances (PFAS);
- ~~(19)~~(21) Phenols;
- ~~(20)~~(22) Phthalate Esters;
- ~~(21)~~(23) Polychlorinated Biphenyls;
- ~~(22)~~(24) Polynuclear Aromatic Hydrocarbons;
- ~~(23)~~(25) Purgeable Aromatics;
- ~~(24)~~(26) Purgeable Halocarbons;
- ~~(25)~~(27) Purgeable Organics;
- ~~(26)~~(28) Total Organic Halides;
- ~~(27)~~(29) Total Petroleum Hydrocarbons – Diesel Range Organics;
- ~~(28)~~(30) Total Petroleum Hydrocarbons – Gasoline Range Organics; and
- ~~(29)~~(31) Volatile Petroleum Hydrocarbons.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to amend the rule cited as 15A NCAC 03M .0101 and readopt with substantive changes the rule cited as 15A NCAC 18A .0911.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/mfc-proposed-rules>

Proposed Effective Date:
 15A NCAC 03M .0101- Subject to Legislative Review
 15A NCAC 18A .0911-May 1, 2023

Public Hearing:
Date: November 1, 2022
Time: 6:00 p.m.

Location:
 WebEx Events meeting link:
<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e18e682448138378a2107f624ed6aad80> Event number: 2435 343 7920
 Event password: 1234
 Event phone number: 1-415-655-0003
 Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

Reason for Proposed Action:
Rule 15A NCAC 03M .0101 is proposed for amendment to provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that only species subject to a possession limit are subject to the requirements unless otherwise specified in a Marine Fisheries Commission rule or a proclamation issued under the authority of a Marine Fisheries Commission rule.
Rule 15A NCAC 18A .0911 is proposed for amendment in accordance with G.S. 150B-21.3A to help ensure that North Carolina remains in full compliance with national requirements so that N.C. shellfish can continue to be sold through interstate

(d) Organics: Each of the organic Parameters listed in this Paragraph shall be considered a certifiable Parameter. One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable organic Parameters are as follows:

- (1) 1,2-Dibromoethane (EDB); 1,2-Dibromo-3-chloro-propane (DBCP); 1,2,3-Trichloropropane (TCP);
- (2) Acetonitrile;
- (3) Acrolein, Acrylonitrile;
- (4) Adsorbable Organic Halides;
- (5) Base/Neutral and Acid Organics;
- (6) Benzidines;
- (7) Chlorinated Acid Herbicides;
- (8) Chlorinated Hydrocarbons;
- (9) Chlorinated Phenolics;
- (10) Explosives;
- (11) Extractable Petroleum Hydrocarbons;
- (12) Haloethers;
- (13) N-Methylcarbamates;
- (14) Nitroaromatics and Isophorone;
- (15) Nitrosamines;
- (16) Nonhalogenated Volatile Organics;
- (17) Organic Fluorine;

commerce; allow the Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around marinas based on a more scientific and public health-based rationale; and make implementation and enforceability of requirements clearer.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557 (Written comments may also be submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>)

Comment period ends: December 2, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule is automatically subject to legislative review: S.L. 2019-198: 15A NCAC 03M .0101

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03M - FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0101 MUTILATED FINFISH

It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a ~~size or harvest restriction~~ possession limit, including size limit, recreational bag limit, commercial trip limit, or season, without having head and tail attached, ~~except:~~ unless otherwise specified in a rule of the Marine Fisheries Commission or a proclamation issued pursuant to a rule of the Marine Fisheries Commission.

- (1) mullet when used for bait;
- (2) hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing operation may be cut for bait at any one time; and

- (3) ~~tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0911 ~~MARINAS; MARINAS, DOCKING FACILITIES; FACILITIES, AND OTHER MOORING AREAS~~

~~Classification of shellfish~~ Shellfish growing waters with respect to marinas, docking facilities, and other mooring areas shall be ~~done~~ classified in accordance with the following:

- (1) ~~All all~~ waters within the immediate vicinity of a marina shall be classified as prohibited to the harvesting of shellfish for human consumption. ~~Excluded from this classification are marinas with less than 30 slips, having no boats over 24 feet in length, no boats with heads and no boats with cabins. Marinas permitted prior to the effective date of this Rule may continue to have boats up to 21 feet in length with cabins and not be subject to the mandatory water classification of prohibited in the immediate vicinity of the marina.~~
- (2) Owners of marinas conforming to the exclusion provisions in Item (1) of this Rule shall make quarterly reports to the Division. These reports shall include the following information:
 - (a) number of slips;
 - (b) number and length of boats;
 - (c) number and length of boats with cabins;
 - (d) number of boats with heads; and
 - (e) number of boats with "porta-potties."

~~Reports to the Division shall cover the occupancy of the marina on the fifth day of the first month of each quarter of the calendar year and shall be post marked on or before the fifteenth day of the reporting month.~~

- (3) ~~The minimum requirement for the prohibited area beyond the marina shall be based on the number of slips and the type of marina (open or closed system). The prohibited area shall extend beyond the marina from all boat slips, docks, and docking facilities, according to the following:~~

	Number of Slips in Marina		Size of Prohibited Area (Feet)	
	Open System	Closed System	Open System	Closed System
11-25	100		200	
26-50	150		275	
51-75	175		325	

76-100

200

400

Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over 100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system private or residential marinas with more than 75 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas with more than 50 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater.

(2) the Division of Marine Fisheries shall conduct a dilution analysis to determine the minimum extent of the area adjacent to a marina that shall be classified as prohibited to the harvesting of shellfish for human consumption. The prohibited area shall be sized to dilute the concentration of fecal coliform bacteria to less than 14 MPN, as determined by the dilution analysis. The dilution analysis shall be conducted yearly and shall incorporate the following:

- (a) the findings of the shoreline survey, including the presence of a sewage pumpout system or dump station; and
- (b) the physical factors influencing the dilution and dispersion of human wastes; and

(4)(3) After a marina is put in use water quality impacts of marina facilities may require a change in classification. In determining if a change in classification is necessary, marina design, marina usage, dilution, dispersion, bacteriological, hydrographic, meteorological, and chemical factors will be considered. slip counts and services for marinas, docking facilities, and mooring areas in close proximity to one another shall be combined for the purposes of determining the necessary prohibited area as required in Items (1) and (2) of this Rule. Docking facilities and mooring areas each with three slips or more and marinas shall be considered to be in close proximity to one another if the dilution analysis indicates that the necessary dilution areas meet or overlap.

(5) Areas, other than marinas, where boats are moored or docked may be considered on a case-by-case basis with respect to sanitary significance relative to actual or potential contamination and classification shall be made as necessary.

(6) The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close proximity to each other are expected to adversely affect public trust waters. When these situations occur the Division will recommend closures exceeding those outlined in Item (3) of

this Rule. The following guides will be used in determining close proximity:

- (a) marina entrance canals within 225 feet of each other;
- (b) open system marinas within 450 feet of each other (Mooring areas shall be considered open system marinas);
- (c) where closure areas meet or overlap; and
- (d) open system marinas within 300 feet of a marina entrance canal.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16Q .0103, .0104 and amend the rules cited as 21 NCAC 16Q .0202, .0302, .0405 and .0703.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdentalboard.org

Proposed Effective Date: February 1, 2023

Public Hearing:

Date: November 17, 2022

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16Q .0103 is proposed to address the practice requirements for a permit holder to administer general anesthesia, moderate conscious sedation, and moderate pediatric sedation.

21 NCAC 16Q .0104 is proposed to address requirements for facility inspections and evaluations.

21 NCAC 16Q .0202 is proposed for amendment to set out modified requirements for a general anesthesia permit applicant or holder.

21 NCAC 16Q .0302 is proposed for amendment to set out modified requirements for a moderate conscious sedation permit applicant or holder.

21 NCAC 16Q .0405 is proposed for amendment to set out modified requirements for a moderate pediatric conscious sedation permit applicant or holder.

21 NCAC 16Q .0703 is proposed for amendment to change requirements for adverse occurrence reporting.

Comments may be submitted to: Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

MFC 2022-2023 Proposed Rules Public Comments

	Created	Name	Address: City	Address: State	Are your comments for or against the proposed rulemaking?	Please enter your comments on proposed changes to the rules and cite the rule or rules on which you are commenting.
1	10/5/2022 16:14	William Ready	Newpo	North Carolina	For	I support the opening of Bogue Sound shellfish leases.
2	10/26/2022 20:50	Christopher Elkins	Gloucester	North Carolina	Undecided	<p>Re: Inadequacy of Rulemaking 15A NCAC 18A .0911</p> <p>Background. Rule 15A NCAC 18A .0911 is proposed for amendment to help ensure that North Carolina remains in full compliance with national requirements so that N.C. shellfish can continue to be sold through interstate commerce; allow the Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around marinas based on a more scientific and public health-based rationale; and make implementation and enforceability of requirements clearer.</p> <p>The Division of Marine Fisheries (the Division) has done a very good job in the last decade bringing the shellfish sanitation lab up to speed and updating procedures for detection of the proxies for fecal pathogens. They should be commended for it. The new rule to establish detection of fecal contamination near or around the perimeter of marinas is also just fine but is woefully inadequate to protect the public's health.</p> <p>I say this because the State continues to ignore the plethora of chemicals and endocrine disruptors that have been described by the Division at Habitat Advisory Committee and MFC meetings. To test for all of these toxins would be impossible, but testing a subset of these, originating from marinas (or previously dumped into marinas and contaminating the bottom) is both possible and prudent.</p> <p>I have spoken to this subject this in previous meetings where persons sought to place upwellers for clam seed to grow. When these shellfish are moved to open waters, the coliforms are removed in just a few days, as indicated by the lack coliforms (proxies). However, we never test for toxic chemicals that shellfish were exposed to when in the marina. Toxic chemicals are well documented in marina waters. Moreover, unlike coliform proxies (and the enteric pathogens they represent), these chemicals are not usually rendered harmless by cooking.</p>

2	10/26/2022 20:50	Christopher Elkins	Gloucester	North Carolina	Undecided	<p>(Christopher Elkins, continued)</p> <p>Perhaps the most disturbing is the fact that many of these chemicals are "Forever Chemicals", such as the PFAS family of toxins, and the FDA limits can be very minute.</p> <p>Finally, the geographic boundaries of many marinas are contiguous with shellfish harvesting areas and some Outstanding Resource Waters. For example, Marshallberg Harbor is abutted up against Sleepy Creek, an important source of NC "salty" oysters. Marshallberg Harbor is infamous for its sinking and abandoned boats and subsequent fuel leaks. There are many such harbors bordering shellfish waters in Harkers Island and Downeast NC.</p> <p>If the Division and the State are serious about protection of public health, it is time to start a program to address chemical contamination by marinas of the public trust waters.</p> <p>Thank you for your service, Christopher Elkins PhD</p>
3	11/2/2022 12:34	Richard Reighard Gray	Candler, NC	North Carolina	For	<p>I am a surf fisherman and we need to be able to cut up our bait and salt it in order to preserve it. Please make changes to your current rules as we don't want to break any laws. Where I go fishing there is no electricity or refrigeration and we must keep our bait on ice for weeks at a time, we can't keep the whole carcass.</p>
4	11/3/2022 17:07	David Grant Cash	ROCK HILL	South Carolina	Against	<p>Use of certain fin fish for bait, i.e. mullet, pin fish, spots and croaker should not be curtailed. I use mullet that I buy and salt down in South Carolina weeks prior to my fishing trip.</p>
5	11/4/2022 8:19	Brad Seadore	Bolivia	North Carolina	Undecided	<p>Suggest NC state conform to size of finfish, increasing size limits instead of staggering the time lines to catch fish. Season 2022 flounder was a joke. I know numerous fishermen from Oak Island, Dutchmens Creek, and especially Sunset Harbor that exceeded the daily limits and size limits because of panic over the current limitations and lack of Marine personal visible. Flounder should start at size 18 inches same as Reds. Move trout to 15 inches. Correlation with SC, GA, AI, TX on sizes and timelines</p>
6	11/7/2022 10:19	emilio	ancaya	North Carolina	Against	<p>I am a surf fisherman. I am against removing the mutilated fish exception of mullet when used as bait.</p>
7	11/11/2022 8:50	Gordon B Jones	Kitty Hawk	North Carolina	For	<p>Please keep the nets out and give our state's declining fisheries a chance to recover.</p>

**MARINE FISHERIES COMMISSION
SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES
DIVISION OF MARINE FISHERIES
CENTRAL DISTRICT OFFICE, MOREHEAD CITY, N.C.
DEC. 16, 2022, 1 PM**

Marine Fisheries Commission: None

Division of Marine Fisheries Staff: Catherine Blum, Paula Farnell, Andy Haines, Tina Moore

Public: None

Media: None

Division of Marine Fisheries Rulemaking Coordinator Catherine Blum, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission proposed rules at 1 p.m. No one from the public or media was in attendance. Seeing no one to provide comments on the proposed rules, Mrs. Blum closed the hearing at 1:10 p.m.

/cb

Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

Release: Immediate
Date: Nov. 7, 2022

Contact: [Patricia Smith](#)
Phone: 252-726-7021

Public hearing for two marine fisheries proposed rules rescheduled for Dec. 16

MOREHEAD CITY – The N.C. Marine Fisheries Commission will hold a public hearing on two marine fisheries proposed rules at 1 p.m. Dec. 16 at the Division of Marine Fisheries' Central District Office, 5285 Highway 70 West, Morehead City. The hearing was originally scheduled for a Nov. 1 web conference but was cancelled due to technical difficulties.

Those who wish to speak at the hearing may sign up on location prior to the meeting.

The first proposed rule sets requirements for the harvest classification of shellfish growing waters in and around marinas, docking facilities, and other mooring areas. It is proposed for re-adoption and amendment to help ensure that North Carolina remains in full compliance with national requirements so N.C. shellfish can continue to be sold through interstate commerce. Proposed amendments would allow the N.C. Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around these areas based on a more scientific and public health-based rationale and make implementation and enforceability of requirements clearer.

The second proposed rule makes amendments to mutilated finfish requirements.

The current mutilated finfish rule (15A NCAC 03M .0101) has been on the books since 1991. It requires while fishing or aboard a vessel, the head and tail remain attached to any finfish that is subject to a possession limit, including a size limit, recreational bag limit, commercial trip limit, or season. It makes three exceptions:

1. Mullet used as bait;
2. Hickory shad used as bait; and
3. Tuna in a commercial fishing operation that meets the measurement required in a separate rule.

Currently, there is no provision to add species to the list of exceptions without going through a lengthy permanent rulemaking process. The proposed amended rule would give the Director of the Division of Marine Fisheries authority to add or remove species from the list of exceptions by proclamation to address variable conditions as warranted.

For instance, American eel, spot, Atlantic croaker, and bluefish are now subject to possession limits that did not exist when the rule was adopted. They are all commonly used as cut bait, creating a conflict with the current rule. The proposed amended rule would allow the director to add these species to the list of exceptions or specify terms of use.

Additionally, the exception for mullet may need to be modified based on the recent striped mullet stock assessment and potential management measures developed through the upcoming fishery management plan.

Due to the adjusted hearing schedule, the deadline for written comments has also been extended to 5 p.m. Dec. 16, 2022. Members of the public may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Dec. 16, 2022.

Website: <http://www.ncdenr.gov>

Facebook: <http://www.facebook.com/ncdeq>

Twitter: <http://twitter.com/NCDEQ>

RSS Feed: <http://portal.ncdenr.org/web/opa/news-releases-rss>

1601 Mail Service Center, Raleigh, NC 27699-1601

Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

The online comment form and text of the proposed rules can be found on the N.C. Marine Fisheries Commission's [Proposed Rules Page](#).

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in February 2023 and have an earliest effective date of May 1, 2023.

For questions about the N.C. Marine Fisheries Commission rulemaking process, email [Catherine Blum](#), rulemaking coordinator for the N.C. Division of Marine Fisheries.

WHO: Marine Fisheries Commission
WHAT: Public Hearing for Proposed Rules
WHEN: Dec. 16 at 1 p.m.
WHERE: N.C. Division of Marine Fisheries
Central District Office
5285 Highway 70 West, Morehead City

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N.C. Marine Fisheries Commission 2023-2024 Annual Rulemaking Cycle

February 2023

Time of Year	Action
February-April 2023	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 26, 2023	MFC votes on approval of Notice of Text for Rulemaking
Aug. 1, 2023	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 1-Oct. 2, 2023	Public comment period held
August/September 2023	Public hearing held (details TBD)
Nov. 17, 2023	MFC votes on approval of permanent rules
Jan. 18, 2024	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 1, 2024	Proposed effective date of rules not subject to legislative review
April 1, 2024	Rulebook supplement available online
2024 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
June 30, 2024	Readoption deadline for 15A NCAC 18A

Issue Paper Review for February 2023 Marine Fisheries Commission Meeting

Issue Paper Title	Issue	Origination	Proposed Rules	Division of Marine Fisheries Recommendation
<p>DATA COLLECTION AND HARASSMENT PREVENTION FOR THE CONSERVATION OF MARINE AND ESTUARINE RESOURCES</p>	<p>Amend N.C. Marine Fisheries Commission (MFC) rules to clarify and enhance efforts by the N.C. Division of Marine Fisheries (DMF) to collect biological data, statistics, market information, research data, and other information as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina, the conservation of marine and estuarine resources, and the protection of public health related to the public health programs that fall under the authority of the MFC, consistent with N.C. laws. Broaden and enhance protections for DMF employees from harassment while collecting data and information.</p>	<p>N.C. Division of Marine Fisheries</p>	<ul style="list-style-type: none"> • 15A NCAC 03I .0113 • 15A NCAC 03O .0101 • 15A NCAC 03O .0109 • 15A NCAC 03O .0112 • 15A NCAC 03O .0301 	<p>Option 2, amend the rules.</p>
<p>OYSTER SANCTUARY RULE CHANGES</p>	<p>Amend rules to add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and update boundaries for three other sanctuaries (Pea Island, Raccoon Island, and Swan Island) for which errors were discovered.</p>	<p>N.C. Division of Marine Fisheries</p>	<ul style="list-style-type: none"> • 15A NCAC 03R .0117 	<p>Option 2, amend the rules.</p>
<p>CONFORMING RULE CHANGES FOR SHELLFISH RELAY PROGRAM AND SHELLFISH LEASES AND FRANCHISES</p>	<p>Conform N.C. Marine Fisheries Commission rules to reflect the discontinuation of the Shellfish Relay Program, consistent with rulemaking requirements in the N.C. Administrative Procedure Act (Chapter 150B).</p>	<p>N.C. Division of Marine Fisheries</p>	<ul style="list-style-type: none"> • 15A NCAC 03I .0101 • 15A NCAC 03K .0101 • 15A NCAC 03K .0104 • 15A NCAC 03K .0301 • 15A NCAC 03K .0401 • 15A NCAC 03K .0403 • 15A NCAC 03K .0405 • 15A NCAC 03O .0201 • 15A NCAC 03O .0501 • 15A NCAC 03O .0503 • 15A NCAC 18A .0901 • 15A NCAC 18A .0906 	<p>Support the single option presented to amend the rules, consistent with requirements of the N.C. Administrative Procedure Act (Chapter 150B).</p>

Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources Issue Paper

January 26, 2023

I. ISSUE

Amend N.C. Marine Fisheries Commission (MFC) rules to clarify and enhance efforts by the N.C. Division of Marine Fisheries (DMF) to collect biological data, statistics, market information, research data, and other information as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina, the conservation of marine and estuarine resources, and the protection of public health related to the public health programs that fall under the authority of the MFC, consistent with N.C. laws. Broaden and enhance protections for DMF employees from harassment while collecting data and information.

II. ORIGINATION

DMF

III. BACKGROUND

Responsible fisheries management requires a variety of data inputs collected directly from commercial and recreational activities (dependent sampling) and also from separate sampling programs conducted by researchers (independent sampling). These sampling programs provide information on the health of the targeted and non-targeted fish populations, harvest methods that minimize unintended impacts, demographics of participants in commercial and recreational activities, and the economic contribution of these activities to the people and businesses in the state. Successful collection of data from dependent sampling programs relies on participation of the people involved in these activities and outreach on these programs is a necessary component that can contribute to improvements of willful participation. Many stakeholders and members of the public willingly participate in DMF's data collection initiatives. Nevertheless, there have been instances where individuals refuse to answer survey questions or allow DMF employees to obtain samples, and these instances have escalated in recent years. A portion of these interactions also have been hostile and have bordered on being unsafe. Current rules are not comprehensive in their requirement for participation in data collection programs or in their protection against hostile or offensive interactions with DMF employees for these programs. DMF has a duty to ensure its employees can perform their job functions in an environment that is both physically safe and free from unlawful harassment. In light of this duty, and of recent incidences of harassment of federal and state observers, the DMF is proposing several rule amendments to broaden and enhance protections for its employees, consistent with existing protections for federal employees.

Two recent incidents have highlighted the need to address these rule limitations, both involving samplers with DMF's Marine Recreational Information Program (MRIP). The MRIP is a dependent sampling program designed to collect data about recreational fisheries. MRIP samplers conduct in-person interviews with recreational participants to answer survey questions and collect biological samples from their catch.

In June 2022, there were two incidences in northern North Carolina where individuals associated with for-hire operations harassed MRIP samplers and interfered with data collection. The first incident involved an MRIP sampler intercepting anglers coming off for-hire vessels after their fishing trips. The MRIP sampler witnessed several mates on the for-hire vessels tell the anglers not to answer any of the sampler's questions, and the anglers refused to participate in the survey or provide biological samples. The second incident involved a female MRIP sampler trying to intercept anglers at the same location as the previous incident. When the MRIP sampler attempted to collect biological samples from the fish caught on the trip, the captain made an explicit statement with a sexual connotation while he was video recording her with his phone. The MRIP sampler left the site immediately and was unable to collect any biological samples or survey data. Although these incidents were reported to DMF's Marine Patrol, it was determined that the requirement for participation in biological sampling found in MFC Rule 15A NCAC 03I .0113 could only be enforced with license holders. Because the anglers were allowed to fish under the charter business's Blanket For-Hire Vessel Coastal Recreational Fishing License (CRFL), they did not hold a license and, therefore, could not be held to the requirements of the rule. It was also determined by Marine Patrol that there were no enforceable requirements that would protect DMF employees from harassment or offensive actions.

For-hire data have become increasingly important as for-hire license sales have steadily increased in recent years. As these new participants enter the recreational for-hire fleet, they may not be familiar with standard DMF sampling

events and data collection processes, leading to decreased participation in the MRIP survey. To address this, DMF employees have engaged in additional outreach efforts with the recreational for-hire industry. For example, DMF held two in-person outreach events in October 2022 in the northern area of the state. DMF employees were available to discuss the MRIP and provide an open platform so that for-hire guides and the public could ask questions and learn more about DMF and its data collection initiatives. These meetings served as a way for DMF to connect with its stakeholders on current topics and obtain feedback on how DMF can better collaborate with the for-hire industry in future endeavors. Participants commented that the outreach meetings were beneficial to both parties and should continue to occur.

Isolated incidents of harassment or refusal to participate in data collection efforts also have occurred with participants in commercial fishing operations. DMF employees collect data from commercial participants during fishing activities by fisheries observers and through sampling after fishing activities from landed catch at licensed seafood dealers. Fisheries observers collect a wide range of data for commercial and, to a lesser extent, recreational fisheries either while onboard the fishing vessel or from a DMF-owned (i.e., alternative platform) vessel nearby. Observations of fishing activities using estuarine anchored gill nets are a requirement of DMF's Endangered Species Act Section 10 Incidental Take Permits under the Endangered Species Act, which authorize limited numbers of sea turtle and Atlantic sturgeon interactions in otherwise lawful fishing operations using this gear in N.C. estuarine waters. Participants in the estuarine anchored gill net fishery must obtain an Estuarine Gill Net Permit (EGNP; M-24-2014; <http://portal.ncdenr.org/web/mf/proclamation-m-24-2014>), which facilitates communication from observers to the fishers to schedule observed trips.

Though rare, refusal by participants to provide information and harassment of fisheries observers have occurred. For example, in April 2021, a commercial fisherman was asked for information about his fishing gear by two DMF observers on an alternative platform vessel. The fisherman made an explicit statement with a sexual connotation and refused to provide the information being requested. The observers reported it immediately to the observer coordinator, who relayed the specifics of the event to Marine Patrol. Marine Patrol issued a citation for the incident and the defendant was charged with and found guilty in Dare County District Court of violation of permit conditions by the master of a vessel for harassing the observer in the course of collecting data, and during any other type of communication by an observer. Even though DMF won the case on a simple charge of harassment, the incident highlighted the need to also address concerns about harassment of a sexual nature. To protect observers, a short-term solution was created whereby the special condition form for the EGNP was amended in 2021. The specific permit conditions initially read:

“It is unlawful for an EGNP holder as well as the master and crew members of the boat, to interfere with, or obstruct the observer in the course of collecting data or samples.”

and

“It is unlawful for an EGNP holder as well as the master and crew members of the boat, to harass the observer in the course of setting up trips, collecting data and samples, or during any other type of communication. Harassment includes but is not limited to intimidating, resisting, impeding, threatening, and coercion of observers either verbally or physically.”

In March 2022 following the outcome of the above-described case, this language was strengthened to include harassment of observers by the use of connotations of a sexual nature and read:

“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to interfere with, or obstruct the observer in the course of collecting data or samples, which shall include refusal or failure to provide information on fishing gear parameters or to provide any captured finfish or sea turtle to division staff. 15A NCAC 030.0502(1)”

and

“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to harass the observer in the course of setting up trips, collecting data and samples, or during any other type of communication. Harassment shall be defined consistent with the federal regulations, 50 CFR §600.725(o),

(t), and (u), and may be verbal or physical including, but not limited to, sexual connotations, intimidating, resisting, impeding, threatening, bribing, and coercion of observers.”

In the fall of 2022, the following language was updated and added to the specific permit conditions for all permits, not just the EGNP, to provide additional protection for all DMF employees, not just observers, to provide short-term protections:

“It shall be unlawful for a permittee or, anyone engaged in permitted activity, to refuse to allow the Fisheries Director or their agents to obtain biological data, harvest information, statistical data, or harass these agents in any way. Harassment shall be defined consistent with the federal regulations, 50 CFR §600.725(o), (t), and (u), and may be verbal or physical including, but not limited to, sexual connotations, intimidating, resisting, impeding, threatening, bribing, or coercion.”

The above examples highlight the need for a long-term solution to protect all DMF employees from harassment in all its forms, regardless of the type of fishing activity, not just by holders of a license or permit. Related, is the need for fishers to provide data, information, and samples so that the DMF can properly manage fisheries in compliance with state and federal laws and meet the requirements of Endangered Species Act Section 10 Incidental Take Permits. These data, information, and samples needed are broader than questions about or samples from fish that are in possession of the licensee under the current requirements of 15A NCAC 03I .0113. A long-term solution is to amend this rule to explicitly require licensees, and any person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes, to provide the data, information, and samples upon request, and to explicitly prohibit harassment consistent with federal regulations. Table 1 provides a summary of recent actions and the results of those actions leading to proposed rule changes.

Table 1. Summary of recent actions leading to proposed rule changes.

Time Period	Action	Result
April 2021	Commercial fisherman charged with observer harassment	DMF identified need to protect observers from harassment by EGNP holders and protect data collection
Summer 2021	DMF added harassment and data collection requirements to EGNP specific condition form	DMF observers offered protection from harassment by EGNP holders and data collection protected
March 2022	Commercial fisherman found guilty of observer harassment in Dare County District Court	DMF identified need to protect observers from harassment in all its forms by EGNP holders
March 2022	DMF added comprehensive harassment requirements to EGNP specific condition form	DMF observers offered protection from harassment in all its forms by EGNP holders
June 2022	Two incidences of harassment of and refusal to provide data to MRIP samplers by individuals associated with for-hire operations	DMF identified need to protect all employees from harassment in all its forms for all regulated fishing activity and protect data collection
Fall 2022	DMF added comprehensive harassment and data collection requirements to specific condition form for all DMF-issued permits	All DMF employees offered protection from harassment in all its forms by all permit holders and data collection protected
Fall 2022	DMF identified need to amend rules to address harassment and data collection for all regulated fishing activity	DMF developed rule changes to protect all employees from harassment in all its forms for all regulated fishing activity and protect data collection
Spring 2023	DMF proposed rule changes to protect all DMF employees from harassment in all forms for all regulated fishing activity and protect data collection	To be determined through the rulemaking process

Data collected from the commercial and recreational sectors are essential in fisheries management for the state and play a vital role in federal fisheries management, as well. The proposed amendments to this rule broaden the scope to enhance protections for DMF employees as they collect data. Such protections not only enhance the DMF's data collection efforts, but also improve DMF's ability to provide a workplace that is free from unlawful harassment, consistent with the requirements of Title VII of the Civil Rights Act of 1964. While compliance with Title VII is an important goal in reducing civil liability for the DMF, improvements to workplace protections have numerous additional benefits. A workplace free from unlawful harassment typically leads to higher employee satisfaction, lower turnover, and better recruitment.

The proposed additional requirements are consistent with similar efforts that the federal government has taken to protect its employees during sampling events by including language adapted from the Code of Federal Regulations, 50 CFR § 600.725(o), (t), and (u) (<https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>). The protections in the CFR were based on those included in the Magnuson-Stevens Fishery Conservation and Management Act (MSA), specifically 16 U.S.C. 1857, Section 307, Prohibited Acts, which makes it unlawful for any person "to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act . . ." (<https://www.govinfo.gov/content/pkg/USCODE-2021-title16/html/USCODE-2021-title16-chap38-subchapIV-sec1857.htm>). Rule language in 50 CFR § 600.725, effective July 1, 1996, was based on the reorganization of requirements across nine CFR parts relevant to the MSA. The MSA and referenced USC and CFR help to demonstrate the importance of keeping fishery observers safe from harassment, as explained on the corresponding NOAA Fisheries webpage (<https://www.fisheries.noaa.gov/feature-story/keeping-fishery-observers-safe-harassment>).

Lastly, the MFC also has authority for the sanitation requirements for harvesting, processing, and handling of scallops, shellfish, and crustaceans of in-state origin and those shipped into the state. It is equally important for the DMF to be able to obtain data for the protection of public health related to the public health programs that fall under the authority of the MFC, which are ultimately for the conservation of marine and estuarine resources.

IV. AUTHORITY

50 CFR § 600.725.	General prohibitions.
N.C.G.S. § 113-130.	Definitions relating to activities of public.
N.C.G.S. § 113-134.	Rules.
N.C.G.S. § 113-170.3.	Record-keeping requirements.
N.C.G.S. § 113-174.1.	License required; general provisions governing licenses.
N.C.G.S. § 113-181.	Duties and powers of Department.
N.C.G.S. § 113-182.	Regulation of fishing and fisheries.
N.C.G.S. § 113-221.2.	Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
N.C.G.S. § 143B-289.52.	Marine Fisheries Commission – Powers and Duties.

V. DISCUSSION

Due to the increasing occurrence and severity of harassment and decreasing participation in DMF data collection initiatives, amendments are proposed to several MFC rules. The amendments add requirements to broaden and enhance protections for DMF employees from harassment that could occur in the process of obtaining data about fishing activity. The amendments also broaden the applicability of the requirements beyond fish in the licensee's possession by including anyone engaged in these regulated activities. Proposed amendments also list the types of data that may be collected. A detailed description of the changes proposed to each affected rule follows.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION

Proposed amendments to 15A NCAC 03I .0113 would set requirements to address harassment by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) of DMF employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC.

Additional amendments would provide the types of data that may be collected. The amendments would support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees.

Specifically, language is proposed to define a "responsible person" to expand the applicability of the rule to other persons involved in regulated fishing activity, not just licensees. Adding "responsible person" to the rule would close a loophole that currently allows anglers who fish under a blanket license, such as the Ocean Fishing Pier License or one of the for-hire blanket licenses, to refuse to participate in data collection initiatives, so that they could be subject to prosecution by Marine Patrol for offenses. The changes would also allow Marine Patrol to prosecute mates or other non-licensed employees engaged in a for-hire operation if they interfere with DMF sampling efforts. Amendments to this rule would also broaden the requirements to apply to all participants, commercial and recreational. Doing so would equalize the expectations across sectors; currently, the requirements addressing harassment related to data collection only exist in the special conditions of commercial, DMF-issued permits.

Proposed language to be added to 15A NCAC 03I .0113 to protect DMF employees collecting data is adapted from requirements about harassment to protect federal samplers identified in the CFR (50 CFR § 600.725(o), (t), and (u)). While the CFR applies broadly to "any person," the proposed rule change would apply to licensees, permittees, and those engaged in regulated activity (e.g., fishing). This addition to the rule would provide the ability to prosecute offenders, regardless of whether they hold a license or permit and regardless of sector, and hold them accountable for their harassment and should contribute to reducing the number of harassment cases in the future. This requirement would also provide a sense of security to DMF employees in knowing that MFC rules can potentially deter hostile or offensive interactions while they perform their duties regardless of the setting (e.g., in the office, at a fishing dock, or on the water). The only exception to incorporation of the language from 50 CFR § 600.725(o), (t), and (u) is for "assault", which for Marine Patrol is handled under separate statutory authority.

Regarding data collection, the title of Rule 15A NCAC 03I .0113 is proposed to be changed from "Biological Sampling" to "Data Collection" because DMF collects more than just biological data from stakeholders. For example, data such as residential location, fishing effort, and socioeconomics of participants are just a few data points that are collected by DMF employees that do not explicitly fall under the biological sampling umbrella but fall under the DMF's authority. Changing the title of the rule is consistent with clarifying the authority for and increasing the support to collect more overarching fisheries data to better inform fisheries managers about the fishing activities in N.C. marine and estuarine waters for the conservation of those resources. Changes are also proposed to the body of the rule to list in detail the types of data that may be collected. The list is not intended to be exhaustive, but rather to more accurately characterize the types of data needed for DMF statistics and surveys, Endangered Species Act Section 10 Incidental Take Permit reports, and the protection of public health for programs that fall under the authority of the MFC, which are ultimately for the conservation of marine and estuarine resources.

As discussed, proposed changes to 15A NCAC 03I .0113 include defining "responsible person" to expand the applicability of the rule to other persons involved in regulated fishing activity, not just licensees. In Rule 15A NCAC 03I .0101(5)(k), a "responsible party" is defined as the "person who coordinates, supervises, or otherwise directs operations of a business entity, such as corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules". This definition does not capture all participants within certain fishing activities, particularly in for-hire fishing trips. "Responsible party" is used to identify one specific entity that will be held accountable for any requirements pertaining to a license. "Responsible person" can be used to include multiple entities that partake in regulated fishing activity but are not a license holder or a designated representative of the license. A for-hire deckhand, mate, fish cleaner, and customer would be considered a responsible person but would not be considered a responsible party because none of these individuals are required to be a license holder. "Responsible party" is defined in rule to be used more broadly over a larger set of rules, whereas "responsible person" would only apply to Rule 15A NCAC 03I .0113 and Rule 15A NCAC 03O .0112 (described below). Because of these slight differences between "responsible person" and "responsible party", other related rules were evaluated to determine if additional changes are necessary to incorporate all intended participants.

15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS

Rule 15A NCAC 03O .0112 titled "For-Hire License Requirements" currently includes requirements for participation by the for-hire vessel operator in data collection efforts by DMF. Because the paying customers on the for-hire trip are also the anglers participating in the fishing activity, the customers are the individuals that get interviewed by MRIP samplers. Therefore, the customer should be included in the definition of the "responsible person" and added to the rule in addition to the "for-hire vessel operator". Not only would "responsible person" require for-hire customers to participate in data collection, but it would also include other people, such as mates, fish cleaners, or other employees, that contribute to the for-hire fishing experience.

15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE

15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL GEAR LICENSES

Rules 15A NCAC 03O .0101, .0109, and .0301 set requirements for a holder of a Standard Commercial Fishing License (SCFL) or Retired Standard Commercial Fishing License, an assignee of a SCFL, and a holder of a Recreational Commercial Gear License, respectively. Each of these rules contains proposed changes to link the licensee or assignee to the requirements proposed in 15A NCAC 03I .0113 for harassment and data collection. These changes would ensure that all licensed participants are subject to the same requirements, regardless of license type.

The evaluation of other MFC rules revealed that no changes are needed to 15A NCAC 03O .0102, which sets the procedures and requirements for renewing licenses, or to 15A NCAC 03O .0113, which sets reporting requirements for holders of an Ocean Fishing Pier License. These rules serve administrative functions for the license renewal process or for submitting a monthly headcount of individuals participating in ocean pier fishing. The rules are provided in Appendix I for reference.

CONCLUSION

Changing the rule requirements outlined in this document is the most prudent long-term solution to the issues identified above. DMF is dedicated to investing the time needed to work through the rulemaking process. If the rules become effective, outreach events will be scheduled to educate those who participate in regulated fishing activity and the public on the changes. These outreach events will continue to stress the importance of participation in DMF data collection initiatives and will remind the public that participation is mandatory. Additionally, all DMF employees will be notified of the rule changes so that they are aware of the broadened, enhanced protections to provide a safer working environment regardless of the work setting.

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION), SHOWN HERE WITH GRAY SHADING. ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITHOUT SHADING.

1 **VI. PROPOSED RULE(S)**

2
3 15A NCAC 03I .0113 is readopted as published in 36:07 NCR 462 as follows:

4 15A NCAC 03I .0113 is proposed for amendment as follows:

5
6 **15A NCAC 03I .0113 ~~BIOLOGICAL SAMPLING~~ DATA COLLECTION**

7 (a) For the purpose of this Rule, "responsible person" shall mean any licensee or person engaged in regulated activity
8 under Chapter 113, Subchapter IV, of the General Statutes.

9 (b) It ~~is shall be~~ unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes ~~responsible~~
10 person to refuse to allow the Fisheries Director or ~~his the Fisheries Director's~~ agents to obtain biological data, harvest
11 information, or other ~~statistical~~ data necessary or useful to the conservation and management of marine and estuarine
12 resources ~~from for the taking of fish in the licensee's possession by the responsible person.~~ Such data ~~shall include,~~
13 but is not limited to, may include:

- 14 (1) species ~~identification,~~ identification;
- 15 (2) species ~~length,~~ length;
- 16 (3) species ~~weight,~~ weight;
- 17 (4) species ~~age,~~ age;
- 18 (5) species ~~sex,~~ sex;
- 19 (6) ~~number,~~ number of species;
- 20 (7) quantity of catch;
- 21 (8) area of ~~each,~~ catch;
- 22 (9) harvest ~~method, and of quantity catch,~~ method;
- 23 (10) gear and gear specifications;
- 24 (11) target species;
- 25 (12) number of hours and days the responsible person spent fishing;
- 26 (13) state, county, and zip code of responsible person;
- 27 (14) number of individuals fishing with responsible person; and
- 28 (15) socioeconomics, including fishing expenditures.

29 (c) It shall be unlawful for any responsible person to refuse to allow the Fisheries Director or the Fisheries Director's
30 agents to obtain data for the protection of public health related to the public health programs that fall under the
31 authority of the Marine Fisheries Commission.

32 (d) It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents
33 in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment
34 or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(o),

35 (t), and (u), including to:

- 36 (1) harass;

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- 1 (2) sexually harass, including making sexual connotations;
- 2 (3) oppose;
- 3 (4) impede;
- 4 (5) intimidate;
- 5 (6) interfere;
- 6 (7) prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable
- 7 assistance, the Fisheries Director or the Fisheries Director's agents from conducting his or her duties;
- 8 or
- 9 (8) tamper with or destroy samples or equipment;

10 50 CFR 600.725(o), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including
11 subsequent amendments and editions. A copy of the reference material can be found at
12 <https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>, at no cost.

13 (e) Exceptions to 50 CFR 600.725(t) include "assault".

14
15 *History Note:* *Authority G.S. 113-134; 113-170.3; ~~113-170.4~~; 113-174.1; 113-181; 113-182; 113-221.2; 143B-*
16 *289.52;*
17 *Eff. October 1, 1992;*
18 *Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996;*
19 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*
20 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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15A NCAC 03O .0101 is readopted as published in 36:07 NCR 482-485 as follows:

15A NCAC 03O .0101 is proposed for amendment as follows:

SUBCHAPTER 03O - LICENSES, LEASES, ~~FRANCHISES~~ FRANCHISES, AND PERMITS

SECTION .0100 - LICENSES

15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ~~ENDORSEMENTS~~ ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

~~(a)~~(c) To obtain any Division of Marine Fisheries licenses, endorsements, commercial fishing vessel registrations, and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application: except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party, or person holding a power of attorney:

(1) Full full name, physical address, mailing address, date of birth, and signature of the licensee on the application. ~~licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized;~~ notarized.

(2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.

~~(2)~~(3) Current current and valid picture identification of licensee or responsible party. ~~the licensee. Acceptable forms of picture identification are state driver's license, state identification card, card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof;~~ thereof.

~~(3)~~(4) Certification certification that the applicant does not have four or more marine or estuarine resource violations convictions during the previous three years; ~~years.~~

(4) Valid documentation papers or current motor boat registration, or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;

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- 1 (5) ~~Current-current~~ articles of incorporation and a current list of corporate officers when purchasing a
2 license or ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration in a
3 corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel
4 master ~~of that vessel~~ shall also be specified. The ~~responsible party~~ licensee shall notify the Morehead
5 City Office of the Division of ~~Marine Fisheries~~ within five days of ~~change of the master specified~~
6 ~~for that vessel~~; changing the vessel master.
- 7 (6) a current copy of a written partnership agreement shall be provided when purchasing a license,
8 endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is
9 established.
- 10 (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a
11 Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending,
12 a copy of the pending application and a notarized bill of sale may be submitted.
- 13 ~~(6)~~(8) An affirmation of liability insurance and that the operator is knowledgeable of United States Coast
14 Guard (USCG) safety requirements for the ~~vessel(s)~~ vessels used in the operation in accordance
15 with G.S. 113-168.6 when purchasing a ~~commercial fishing vessel registration~~ Commercial Fishing
16 Vessel Registration with a for-hire endorsement.
- 17 (7) ~~If a partnership is established by a written partnership agreement, a current copy of such agreement~~
18 ~~shall be provided when purchasing a license, endorsement, or commercial fishing vessel registration~~
19 ~~in a partnership name;~~
- 20 (8) For nonresidents, certification of the state of residency;
- 21 (9) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an
22 Ocean Fishing Pier License;
- 23 (10) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of
24 operator(s) when purchasing a Spotter Plane License;
- 25 (11) In addition, for fish dealers licenses, the physical address of the established location where business
26 is conducted and, if different, the address where records are kept;
- 27 (12) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the
28 applicant shall provide valid certification as a North Carolina certified shellfish dealer;
- 29 (13) In addition, for the Blanket For Hire Captain's Coastal Recreational Fishing License (CRFL), the
30 applicant shall provide a valid certification from the USCG that allows carrying six or fewer
31 passengers or a certification from the USCG that allows carrying more than six passengers; and
- 32 (14) In addition, for the Blanket For Hire Vessel CRFL or the Non Blanket For Hire Vessel License,
33 ~~valid documentation papers or current motor boat registration or copies thereof for the vessel~~
34 engaged as for hire. ~~If an application for transfer of documentation is pending, a copy of the pending~~
35 ~~application and a notarized bill of sale may be submitted.~~

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1 (d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be
2 documented by the licensee with certification of the state of residency. Proof of residency for residents of North
3 Carolina shall be documented by the licensee as follows:

4 (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the
5 applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4)
6 and:

7 (A) a notarized certification from the applicant that a North Carolina State Income Tax Return
8 was filed for the previous calendar or tax year as a North Carolina resident;

9 (B) a notarized certification that the applicant was not required to file a North Carolina State
10 Income Tax Return for the previous calendar or tax year; or

11 (C) military identification or military dependent identification, and permanent change of
12 station orders or assignment orders substantiating the military individual's active duty
13 assignment at a military facility in North Carolina.

14 (2) All other types of licenses:

15 (A) North Carolina voter registration card;

16 (B) current North Carolina Driver's License;

17 (C) current North Carolina Certificate of Domicile;

18 (D) current North Carolina Identification Card issued by the North Carolina Division of Motor
19 Vehicles; or

20 (E) military identification or military dependent identification, and permanent change of
21 station orders or assignment orders substantiating the military individual's active duty
22 assignment at a military facility in North Carolina.

23 (e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:

24 (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or
25 fewer passengers or a certification from the USCG that allows carrying more than six passengers.

26 (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:

27 (A) valid documentation papers or current motor boat registration, or copies thereof for the
28 vessel engaged as for-hire; or

29 (B) a copy of the pending application and a notarized bill of sale if an application for transfer
30 of documentation is pending.

31 (3) Fish Dealer License:

32 (A) the physical address of the established location where business is conducted and, if
33 different, the address where records are kept; and

34 (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries
35 Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer
36 License with clam or oyster categories or a consolidated license.

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1 (4) Land or Sell License:

2 (A) valid documentation papers or current motor boat registration, or copy thereof; or

3 (B) a copy of the pending application and a notarized bill of sale if an application for transfer
4 of documentation is pending.

5 The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG
6 documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

7 (5) Ocean Fishing Pier License:

8 (A) the information required in G.S. 113-169.4; and

9 (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the
10 linear length of the pier before the license can be issued.

11 (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.

12 (7) Spotter Plane License:

13 (A) the information required in G.S. 113-171.1;

14 (B) the current aircraft registration; and

15 (C) a list of operators.

16 ~~(b)(f)~~ For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs
17 (c) and (d) of this Rule, the following shall be applicable:

18 (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through
19 June 30 of the following year.

20 ~~(1)(2)~~ To to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:

21 (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each
22 year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license
23 years for which the person had a vessel that was licensed to land in North Carolina; ~~and~~

24 (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-
25 94, or 1994-95 license years; and

26 (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or
27 Sell License.

28 ~~(2)(3)~~ It is lawful it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic
29 Ocean equal to than the number of vessels that he owns the person owns that individually met the
30 eligibility requirements of Parts ~~(b)(1)(A)-(f)(2)(A)~~ and ~~(b)(1)(B)-(f)(2)(B)~~ of this Rule.

31 ~~(3)(4)~~ The the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel
32 specified at the time of license issuance.

33 ~~(4)(5)~~ At at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean
34 shall specify the name of the vessel master of the vessel for each License to Land Flounder from the
35 Atlantic Ocean issued.

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1 ~~(5)~~(6) ~~The~~ the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead
2 City Office of the Division of Marine Fisheries within five days of change as to the vessel master
3 identified on the license.

4 ~~(6)~~(7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license ~~year and expire~~
5 ~~on June 30~~ year.

6 (g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and
7 (d) of this Rule, the following shall be applicable:

8 (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License
9 to Sell Fish to sell fish taken during a recreational fishing tournament.

10 (2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to
11 licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission
12 or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries
13 Commission.

14 (3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and
15 legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from
16 the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the
17 Division within 30 days after the last day of the tournament.

18 (h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify
19 the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

20 (i) If requested by the Division, it shall be unlawful for a licensee to fail to participate in and provide accurate
21 information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by
22 the Division.

23 ~~(e) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the~~
24 ~~Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required~~
25 ~~information:~~

26 ~~(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer,~~
27 ~~name of tournament, and dates of tournament on the license application. If the licensee is not~~
28 ~~appearing before a representative of the Division, the licensee's signature shall be notarized on the~~
29 ~~application.~~

30 ~~(2) Current picture identification of tournament organizer. Acceptable forms of picture identification~~
31 ~~are driver's license, state identification card, military identification card, resident alien card (green~~
32 ~~card), or passport; or if purchased by mail, a copy thereof.~~

33 ~~(d) To obtain a Land or Sell License, the following information is required for a proper application:~~

34 ~~(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or~~
35 ~~master for the vessel on the license application. If the licensee is not appearing before a~~

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1 ~~representative of the Division, the licensee's signature on the application shall be notarized on the~~
2 ~~application;~~

3 ~~(2) Current picture identification of responsible party or master. Acceptable forms of picture~~
4 ~~identification are driver's license, state identification card, military identification card, resident alien~~
5 ~~card (green card), or passport; or if applying by mail, a copy thereof;~~

6 ~~(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a~~
7 ~~commercial fishing vessel registration. If an application for transfer of documentation is pending,~~
8 ~~a copy of the pending application and a notarized bill of sale may be submitted.~~

9 ~~Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State~~
10 ~~in which the vessel is registered, in accordance with G.S. 113-169.5.~~

11 ~~(e) Proof of residency in North Carolina for:~~

12 ~~(1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall~~
13 ~~require a notarized certification from the applicant that the applicant is a resident of the State of~~
14 ~~North Carolina as defined by G.S. 113-130(4); and~~

15 ~~(A) a notarized certification from the applicant that a North Carolina State Income Tax Return~~
16 ~~was filed for the previous calendar or tax year as a North Carolina resident;~~

17 ~~(B) a notarized certification that the applicant was not required to file a North Carolina State~~
18 ~~Income Tax Return for the previous calendar or tax year; or~~

19 ~~(C) military identification, military dependent identification and permanent change of station~~
20 ~~orders or assignment orders substantiating individual's active duty assignment at a military~~
21 ~~facility in North Carolina.~~

22 ~~(2) All other types of licenses:~~

23 ~~(A) North Carolina voter registration card; or~~

24 ~~(B) Current North Carolina Driver's License; or~~

25 ~~(C) Current North Carolina Certificate of Domicile; or~~

26 ~~(D) Current North Carolina Identification Card issued by the North Carolina Division of Motor~~
27 ~~Vehicles; or~~

28 ~~(E) Military identification, military dependent identification and permanent change of station~~
29 ~~orders or assignment orders substantiating individual's active duty assignment at a military~~
30 ~~facility in North Carolina.~~

31 ~~(f) Applications submitted without complete and required information shall not be processed until all required~~
32 ~~information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the~~
33 ~~application so noted.~~

34 ~~(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days~~
35 ~~of a change of name or address, in accordance with G.S. 113-169.2.~~

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1 ~~(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise~~
2 ~~specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have~~
3 ~~been designated as agents of the Department.~~

4 ~~(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except~~
5 ~~Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a~~
6 ~~responsible party, or person holding a power of attorney;~~

7 (1) ~~The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required~~
8 ~~if a change has occurred since the last issuance of license, endorsement, or commercial fishing vessel~~
9 ~~registration.~~

10 (2) ~~Certification that articles of incorporation and list of corporate officers, if incorporated, written~~
11 ~~partnership agreement, if written partnership, or documentation papers or motor boat registration~~
12 ~~previously provided for initial license purchase are still valid and current for renewal.~~

13 (3) ~~Current and valid state driver's license or state identification picture identification numbers and~~
14 ~~expiration dates shall be verified on mail license renewal applications or any other electronic license~~
15 ~~renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a~~
16 ~~Division License Office and present a current and valid picture identification pursuant to~~
17 ~~Subparagraph (a)(2) of this Rule.~~

18 (4) ~~The licensee's or responsible party's signature on the application shall certify all information as true~~
19 ~~and accurate. Notarization of signature on renewal applications shall not be required.~~

20 (5) ~~The Division of Marine Fisheries may require current copies of documentation for licenses,~~
21 ~~endorsements, or commercial fishing vessel registration on renewal when necessary to verify~~
22 ~~inconsistent information or the information cannot be verified by independent sources.~~

23 (6) ~~If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the~~
24 ~~responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's~~
25 ~~signature is required to certify the linear length before the license can be renewed.~~

26 (7) ~~Certification that shellfish dealer certification by North Carolina previously provided for issuance~~
27 ~~of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current~~
28 ~~for renewal.~~

29
30 *History Note:* ~~Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-~~
31 ~~182; 143B-289.52;~~

32 ~~Eff. January 1, 1991;~~

33 ~~Amended Eff. July 1, 1997; March 1, 1994;~~

34 ~~Temporary Amendment Eff. July 1, 1999;~~

35 ~~Amended Eff. August 1, 2000;~~

36 ~~Temporary Amendment Eff. April 1, 2001;~~

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITH YELLOW HIGHLIGHTING.

- 1 *Amended Eff. May 1, 2015; July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002;*
- 2 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*
- 3 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITH YELLOW HIGHLIGHTING.

1 15A NCAC 03O .0109 is readopted with changes as published in 36:07 NCR 487 as follows:

2 15A NCAC 03O .0109 is proposed for amendment as follows:

3

4 **15A NCAC 03O .0109 ASSIGNMENT OF ~~SCFL~~ STANDARD COMMERCIAL FISHING LICENSE**

5 (a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and
6 "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in
7 accordance with the requirements of this Rule.

8 (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a licensee or assignee to fail to participate
9 in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey
10 programs administered by the Division.

11 ~~(a)(b)(c)~~ The Division ~~of Marine Fisheries~~ shall provide assignment forms to the licensee upon ~~issuance of the~~
12 ~~Standard Commercial Fishing License. Request. Assignment must be made on the Only~~ Division assignment forms.
13 ~~Forms shall be used to obtain an assignment. On the assignment form, the Standard Commercial Fishing License~~
14 ~~holder must~~ licensee shall designate what, if any, endorsements are included in the assignment. Endorsements ~~may~~
15 ~~shall~~ not be assigned independent of the Standard Commercial Fishing License. It ~~is~~ shall be unlawful for the ~~Standard~~
16 ~~Commercial Fishing License holder~~ licensee or the assignee to fail to submit within five days the completed
17 assignment form to any office of the Division in person or by mail to the Morehead City ~~Division~~ Office. The
18 Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed
19 assignment form is not received by the Division within five days from the date it was signed, the assignment shall be
20 null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment
21 is in effect from the date specified on the assignment form and when:

- 22 (1) the assignment form is properly completed; complete with all required information;
23 (2) signatures of the current license holder and the assignee are notarized; and
24 (3) the assignee has in ~~their~~ the assignee's possession the current licensee's original actual Standard
25 Commercial Fishing License with License, including applicable endorsements of the current license
26 holder in accordance with G.S. 113-169.2.

27 ~~(c)(d)~~ For an extension of time for assignments, a new assignment form shall be completed in accordance with
28 Subparagraphs (b)(1) through (b)(3) of this Rule.

29 ~~(b)(d)(c)~~ Assignments ~~terminate when;~~ shall terminate:

- 30 (1) when the date specified on the assignment form is reached; ~~or~~
31 (2) if the licensee or assignee are determined ineligible for a license or assignment; ~~or~~
32 (3) if the Division receives a notarized statement from the current license holder stating a revised date
33 for an earlier assignment termination; ~~or~~
34 (4) upon the licensee or assignee's death; or
35 (5) when the Standard Commercial Fishing License expires.

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITH YELLOW HIGHLIGHTING.

1 If the properly completed assignment form is not received by the Division within five days from the date it was
2 signed, the assignment is null and void. For an extension of time for assignments, a new assignment form must be
3 completed in accordance with Subparagraphs (a)(1)–(3) of this Rule.

4 ~~(e)~~(f) It is ~~is~~ shall be unlawful for an individual assigned a Standard Commercial Fishing License to fail to have
5 available ready at hand for inspection all required documents as stated under G.S. 113-168.1. The assignee when
6 involved in a commercial fishing operation ~~must to fail to have~~ the original actual Standard Commercial Fishing
7 License and License, any assigned ~~endorsements~~ endorsements, and a copy of the assignment form in ~~their~~ the
8 individual's possession ready at hand for inspection in accordance with G.S. 113-168.1.

9 ~~(d)~~(g) All landings occurring during the time of the assignment shall be credited to the ~~Standard Commercial~~
10 ~~Fishing License holder, licensee,~~ not the assignee.

11 ~~(e)~~(g)(h) It is ~~is~~ shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one
12 time. It is ~~is~~ shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one
13 time. Assignments ~~may~~ shall only be made by the ~~person issued the Standard Commercial Fishing License~~ licensee
14 and ~~may~~ shall not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses
15 of corporations consisting of an individual fishing vessel ~~may~~ shall not assign such licenses.

16 ~~(f)~~(h)(i) It is ~~is~~ shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which
17 they are ineligible.

18 ~~(g)~~ Assignments submitted without complete and required information shall be deemed not in effect and shall not be
19 considered further until resubmitted with all required information.

20 ~~(h)~~(i)(j) It is ~~is~~ shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment
21 and the Standard Commercial Fishing License with any assigned endorsements to the ~~assignor of that license~~ licensee
22 within five days of notice that the assignment has been terminated or a demand by the ~~assignor~~ licensee to return the
23 license.

24
25 *History Note:* Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187;
26 143B-289.52;

27 *Eff. January 1, 1991;*

28 *Temporary Amendment Eff. October 2, 1999; July 1, 1999;*

29 *Amended Eff. August 1, 2000;*

30 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

31 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0112 is proposed for amendment as follows:

2

3 **15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS**

4 (a) The license requirements for an operator of a vessel engaged in a for-hire operation are set forth in G.S. 113-174.3.
5 Either the vessel owner or the for-hire vessel operator may seek to obtain the applicable for-hire vessel license. Only
6 the vessel owner shall seek to obtain the applicable registration and endorsement required by G.S. 113-168.6. For the
7 purpose of this Rule, "for-hire vessel operator" shall include the holder of a Blanket For-Hire Captain's Coastal
8 Recreational Fishing License, Blanket For-Hire Vessel Coastal Recreational Fishing License, or Non-Blanket For-
9 Hire Vessel License, as set forth in G.S. 113-174.3.

10 (b) It shall be unlawful for a for-hire vessel operator to operate without:

- 11 (1) holding the United States Coast Guard certification required in Rule .0101(a) of this Section;
- 12 (2) having a copy of the for-hire license in possession and ready at hand for inspection; and
- 13 (3) having current picture identification in possession and ready at hand for inspection.

14 (c) If requested by the Division of Marine Fisheries, it shall be unlawful for a for-hire vessel operator or responsible
15 person to fail to participate in and provide accurate information for ~~biological sampling data collection~~ in accordance
16 with 15A NCAC 03I .0113 and for survey programs administered by the Division. For the purpose of this Rule,
17 "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter 113, Subchapter
18 IV. of the General Statutes, including regulated activity related to for-hire fishing.

19 (d) Requirements for display of licenses and registrations for a vessel engaged in for-hire recreational fishing are set
20 forth in Rule .0106 of this Section.

21

22 *History Note: Authority G.S. 113-134; 113-168.6; 113-174.1; 113-174.3; 113-181; 143B-289.52;*

23 *Eff. July 1, 2008;*

24 *Readopted Eff. April 1, 2019;*

25 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). ADDITIONAL PROPOSED CHANGES THAT WILL BE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2024 SHORT SESSION) ARE SHOWN WITH YELLOW HIGHLIGHTING.

1 15A NCAC 03O .0301 is readopted with changes as published in 36:07 NCR 492 as follows:

2 15A NCAC 03O .0301 is proposed for amendment as follows:

3

4

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

5

6 **15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL**
7 **GEAR LICENSES**

8 (a) It is ~~[shall be]~~ unlawful for any individual to hold more than one Recreational Commercial Gear License.

9 (b) (a) Recreational Commercial Gear Licenses shall only be issued to individuals.

10 (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a Recreational Commercial Gear License
11 holder to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I
12 .0113 and for survey programs administered by the Division.

13

14 *History Note:* Filed as a Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent
15 rule becomes effective, whichever is sooner;

16 *Authority G.S. 113-134; ~~113-170.4~~; 113-173; 113-182; ~~113-221~~; 143B-289.52;*

17 *Eff. February 1, 1995;*

18 *Temporary Amendment Eff. July 1, 1999;*

19 *Amended Eff. August 1, 2000;*

20 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

21 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

VII. PROPOSED MANAGEMENT OPTIONS

Option 1: status quo

- + Does not require lengthy rulemaking process.
- Does not support efforts to clarify importance of and enhance compliance with state and federal laws for collection of data and information necessary for conservation of marine and estuarine resources.
- Does not clarify MFC rules by specifying additional types of data collection authorized.
- Does not protect DMF employees from harassment while collecting data and information.

Option 2: amend rules

- + More fully complies with state and federal laws.
- + Helps ensure collection of data and information necessary for conservation of marine and estuarine resources.
- + Clarifies MFC rules by specifying additional types of data collection authorized.
- + Further protects DMF employees from harassment while collecting data and information.
- Requires lengthy rulemaking process.

VIII. RECOMMENDATION

The DMF recommends Option 2.

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Nov. 4, 2022

Revised: Nov. 18, 2022
Dec. 7, 2022
Dec. 15, 2022
Jan. 5, 2023
Jan. 19, 2023
Jan. 26, 2023

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). NO ADDITIONAL CHANGES ARE PROPOSED.

Appendix I. Marine Fisheries Commission rules that do not need additional changes.

15A NCAC 03O .0102 is readopted as published in 36:07 NCR 485-486 as follows:

**15A NCAC 03O .0102 ~~RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH~~
PROCEDURES AND REQUIREMENTS TO RENEW LICENSES,
ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

~~(a) It is unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.~~

~~(b) Fish to be sold under the Recreational Fishing Tournament License to Sell Fish must be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission (MFC) or provisions of proclamations issued by the Fisheries Director as authorized by the MFC.~~

~~(c) It is unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete and file within 30 days after the last day of the tournament a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division.~~

~~(a) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.~~

~~(b) To renew Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, except Recreational Commercial Gear Licenses, a renewal application shall be submitted by the licensee. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the licensee with deficiency in the application so noted. The following is required for the renewal application:~~

- ~~(1) full name, physical address, mailing address, date of birth, and signature of the licensee.~~
- ~~(2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.~~
- ~~(3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.~~
- ~~(4) the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.~~
- ~~(5) the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.~~
- ~~(6) a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.~~

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). NO ADDITIONAL CHANGES ARE PROPOSED.

- (7) certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.

The Division may require current copies of documentation for licenses, endorsements, and Commercial Fishing Vessel Registrations upon renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

*History Note: Authority G.S. 113-134; 113-168; ~~113-168.4~~; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. April 1, 2020; December 1, 2006; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION). NO ADDITIONAL CHANGES ARE PROPOSED.

15A NCAC 03O .0113 is readopted with changes as published in 36:07 NCR 488 as follows:

15A NCAC 03O .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS

It ~~is~~ shall be unlawful for the responsible party of the Ocean Fishing Pier License to fail to provide to the Division of Marine Fisheries by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail to the electronic mail address provided at the time of license ~~application~~ issuance.

*History Note: Authority G.S. 113-134; 113-169.4; **113-170.3**; 113-174.1; 113-182; 143B-289.52;
Eff. April 1, 2011;
Amended Eff. May 1, 2015;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

OYSTER SANCTUARY RULE CHANGES ISSUE PAPER

Jan. 5, 2023

I. ISSUE

Rule amendments are proposed to add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and update boundaries for three other sanctuaries (Pea Island, Raccoon Island, and Swan Island).

II. ORIGINATION

North Carolina Division of Marine Fisheries (DMF) Habitat and Enhancement Section

III. BACKGROUND

Marine protected areas (MPAs) are a management tool for restoration and conservation of marine species and ecosystems. Management strategies applied within MPA boundaries can vary widely, however, in most cases, management in these areas includes some degree of harvest restriction (e.g., gear type, seasonality, or total prohibition). In general, the abundance and size of individuals within MPAs are often significantly greater and larger, respectively, than outside MPAs, which can also lead to a “spill-over effect” of larvae and individuals from inside to outside the MPA (Gell and Roberts 2002, Halpern 2003, Sobel and Dahlgren 2004). In other words, fish are generally larger and more abundant in MPAs. In pursuit of shellfish rehabilitation, DMF has applied the MPA model through its Oyster Sanctuary Program. This program is responsible for creating artificial reef habitat, designed to support healthy and abundant oyster populations throughout Pamlico Sound and its tributaries. Once built, a reef site is protected from harvest to preserve broodstock and is called an “oyster sanctuary.” With healthy and abundant broodstock populations inside sanctuary boundaries, these sites continue to serve their intended function by supplying oyster larvae to other reefs nearby.

It is important to distinguish that while all artificial reef habitat is considered “reef,” not all reefs are considered “sanctuary.” The term “oyster sanctuary” refers only to reefs protected from oyster harvest and some bottom disturbing gears through North Carolina Marine Fisheries Commission (MFC) rule 15A NCAC 03K .0209. It is also important to consider that the created habitat within sanctuary or artificial reef boundaries always exists as a collection of separate reef habitat patches. Therefore, sanctuaries and artificial reefs are sometimes referred to as reef sites. In most cases concerning reef sites managed by the Oyster Sanctuary Program, the entire reef site authorized by state and federal permits is protected from oyster harvest. Therefore, the terms “reef,” “sanctuary,” and “reef site” are often used interchangeably. When describing area, as seen in Tables 1 and 2 (see Section VI.), typically the boundary area is the total sanctuary area (acres) delineated in rule or by proclamation. Habitat footprint area refers to the cumulative total area of reef patches only, not to include unconsolidated soft bottom. For example, in Table 1, the Croatan Sound Oyster Sanctuary site has 3.10 acres of habitat within the overall boundary of 7.73 acres, meaning 4.63 acres of the site do not have habitat material present, but harvest is prohibited within the entire site.

The Blue-Ribbon Advisory Council on Oysters (BRACO) made the first recommendations concerning the establishment of oyster sanctuaries in North Carolina in 1995. The BRACO recommended the state provide selected areas where wild oyster stocks can adapt to present water quality and disease conditions without being subjected to the additional stress of habitat disturbance and oyster harvest. In addition to providing a sanctuary for oysters, these areas would also provide good nursery habitat for other species increasing their abundance for commercial and recreational fishing. The protected oysters would also provide increased water filtration, reducing turbidity and excess nutrients in the estuary. As part of the recommendation, oyster sanctuaries would be closed to the taking of shellfish (oysters, clams, mussels, and scallops) and to bottom disturbing activities such as trawling, long hauling, and dredging for an indefinite period (Frankenberg 1995). DMF initially developed 10 oyster sanctuaries in Pamlico Sound and its tributaries. These sanctuaries were originally designated as shellfish management areas by proclamation, as authorized by Rule 15A NCAC 03K .0103. For these reef sites to serve their intended function as oyster broodstock sanctuaries, harvest protections needed to be applied. As part of the 2008 Oyster Fishery Management Plan Amendment 2, the MFC moved the protection of oyster sanctuaries from proclamation into rules 15A NCAC 03K .0209 and 03R .0117, Oyster Sanctuaries. Since 2008, DMF has expanded the Oyster Sanctuary Program by constructing seven additional sanctuaries, using funding from the North Carolina General Assembly,

The Nature Conservancy, National Oceanic and Atmospheric Administration National Estuarine Counsel, Coastal Recreational Fishing Licenses, and other mitigation sources.

Further, the North Carolina General Assembly recognized the importance of oyster sanctuaries in the 2014 and 2015 legislative sessions. Session Law 2014-120, Section 44 as amended by Session Law 2015-241, Section 14.9 established the Senator Jean Preston Oyster Sanctuary Network (Figure 1). This was done “to enhance shellfish habitats within the Albemarle and Pamlico Sounds and their tributaries to benefit fisheries, water quality, and the economy... achieved through the establishment of a network of oyster sanctuaries, harvestable enhancement sites, and coordinated support for the development of shellfish aquaculture.”

Today DMF maintains and manages 15 oyster sanctuaries in the network, 13 of which are currently in Rule 15A NCAC 03R .0117. The sanctuaries encompass 566.22 acres total, with over 205,643 tons of material deployed for oyster habitat (Table 1). The two newest sanctuaries (Cedar Island and Gull Shoal), not in the oyster sanctuary rules, are described in proclamation SF-6-2022. That proclamation also suspends portions of the current rule to provide technical corrections on published coordinates for three sanctuaries (Pea Island, Raccoon Island, and Swan Island). All 15 oyster sanctuaries, whether protected by Rule or proclamation, are presently marked with corner buoys. Buoy marking is a United States Coast Guard permitting requirement, therefore DMF will continue to maintain buoys in perpetuity regardless of harvest or gear protections.

IV. AUTHORITY

N.C.G.S. § 113-134. Rules.
N.C.G.S. § 113-182. Regulation of fishing and fisheries.
N.C.G.S. § 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
N.C.G.S. § 113-204. Propagation of shellfish.
N.C.G.S. § 143B-289.52. Marine Fisheries Commission – Powers and Duties.

Session Law 2014-120, Section 44, as amended by Session Law 2015-241, Section 14.9.

V. DISCUSSION

Rule amendments are proposed to add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and update boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island).

Addition of Two Recently Developed Oyster Sanctuaries

There are presently 13 developed oyster sanctuaries protected by MFC rules (15A NCAC 03K .0209 and 03R .0117), the last of which were added effective May 1, 2021. Since then, two additional sanctuaries have been developed (Cedar Island and Gull Shoal; Figures 2 and 3). For these reef sites to serve their intended management function as oyster broodstock sanctuaries, harvest protections need to be applied. While these sites are currently protected by proclamation, it is proposed to add these two new sites to the existing Rule 15A NCAC 03R .0117, delineating the sanctuary boundaries in permanent rule.

Technical Corrections of Boundary Coordinates for Three Sites in Rule

Following publication of the rulebook supplement in September 2022, DMF discovered 3 of the 13 sanctuaries (Pea Island, Raccoon Island, and Swan Island) had incorrect coordinates. Technical corrections to the rule text are required in order to match the permitted and marked boundaries of the three sanctuary sites. These changes will delineate all reef site area intended for oyster sanctuary purposes so that protections provided by Rule 15A NCAC 03K .0209 may be accurately applied. In addition, accurately delineated boundaries will help safeguard boaters navigating the area. Coordinates for three sanctuaries are proposed for consistency to standardize the cardinal directions; there are no changes to the overall sanctuary nor the coordinate pairs.

Summary and Implications

Historically, oyster sanctuary site selection leaned heavily on a limited understanding of oyster habitat suitability and was largely dependent upon where historic oyster reefs once existed. New strategies and techniques used for deployment, as well as new technology for physical and biological monitoring have substantially improved oyster reef enhancement success and have reduced errors. A more modern habitat suitability index (HSI) model rates areas based on salinity gradient, bottom type, tidal flow, larval transport, wave action, and prevailing wind data as well as

historic oyster presence data and input from stakeholders and managers. This approach is proven to be a better method to select areas to develop as sanctuaries and accurately delineate their boundaries.

DMF recommends amending Rule 15A NCAC 03R .0117 by adding boundaries for two additional oyster sanctuaries (Cedar Island and Gull Shoal) developed since the rule was last amended. DMF also proposes technical corrections to boundaries of three existing sanctuaries (Pea Island, Raccoon Island, and Swan Island). Corrections to these sanctuary coordinates are necessary to encompass existing reef material and match permitted and marked boundaries. The proposed modifications align the MFC rules with delineated boundaries in permits, which is essential for state and federal regulatory consistency as well as safe maritime navigation.

Rule 15A NCAC 03R .0117 (1)(f) and (1)(l) show proposed changes to incorporate the boundaries of the new sanctuaries, Cedar Island and Gull Shoal. The proposed changes in 15A NCAC 03R .0117 (1)(c), (1)(j), and (1)(k) update the boundaries of Pea Island, Swan Island, and Raccoon Island sanctuaries. Proposed changes result in a net total increase of 256 acres of protected oyster sanctuary area (Table 2). The proposed changes in 15A NCAC 03R .0117 (1)(d), (1)(h), and (2)(a) reorganize coordinates to standardize the cardinal directions and have no impact on the total acres of protected oyster sanctuary area.

VI. TABLES AND FIGURES

Table 1. Oyster sanctuary names, spatial extents (acres), and material deployed (tons).

OS#	Site Name	Boundary Size+ (Acres)	Habitat Footprint* (Acres)	Total Material Deployed* (Tons)
1	Croatan Sound	7.73	3.10	2,093
2	Deep Bay	17.20	4.15	1,749
3	West Bay	6.56	2.27	2,329
5	Crab Hole	30.52	13.26	36,489
7	Middle Bay	4.59	0.27	900
8	Neuse River	11.29	3.55	7,357
9	West Bluff	29.39	2.82	10,162
10	Gibbs Shoal	54.60	8.19	22,447
11	Long Shoal	10.01	1.13	2,173
12	Raccoon Island	9.97	1.61	1,824
13	Pea Island	46.37	2.62	3,420
14	Little Creek	20.59	6.14	5,700
15	Swan Island	80.32	10.93	55,000
16	Cedar Island	75.01	5.10	36,000
17	Gull Shoal	161.91	TBD	36,000
--	Total	566.22	65.14	223,643

- Sanctuaries (1-11, 14) are under authority of rules 15A NCAC 03K .0209 and 03R .0117.
- Sanctuaries (12, 13, 15-17) are under authority of Rule 15A NCAC 03K .0103 via Proclamation SF-6-2022.
- Sanctuaries (4, 6) were removed from Rule 15A NCAC 03R .0117 effective May 1, 2021, as the sites are no longer biologically productive and were not serving their management purpose as oyster sanctuaries.

+ Boundary sizes are calculated on areas bound by delineating coordinates in 15A NCAC 03R .0117.

* Values for Habitat Footprint and Total Material Deployed are subject to increase over time, as reef enhancement and construction are ongoing.

Table 2. Current and proposed boundary acreages for oyster sanctuaries delineated in MFC Rule 15A NCAC 03R .0117.

OS #	Site Name	Current Boundary (Acres)	Proposed Boundary (Acres)	Difference (Acres)
12	Raccoon Island	9.97	9.97	0
13	Pea Island	46.37	46.37	0
15	Swan Island	60.31	80.32	20.01
16	Cedar Island	0	75.01	75.01
17	Gull Shoal	0	161.91	161.91
--	Total	116.90	373.58	256.21

Jean Preston Oyster Sanctuary Network

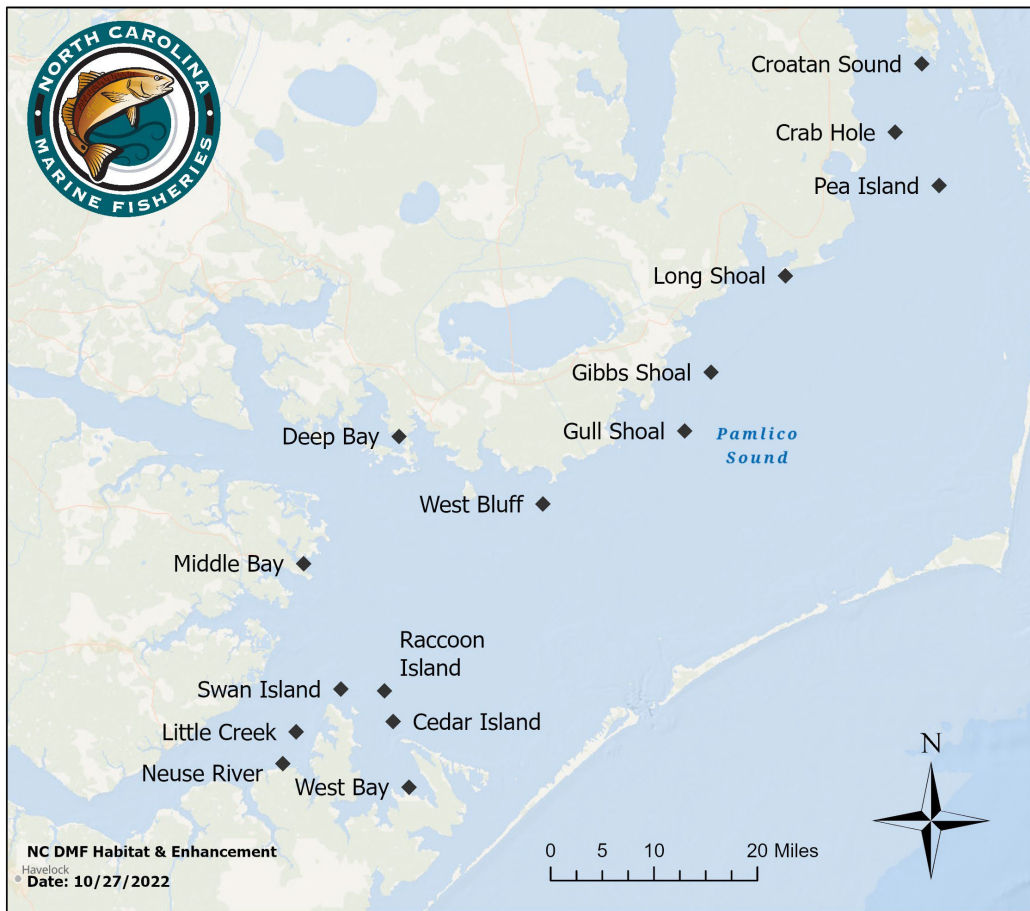


Figure 1. Oyster sanctuary locations.

OS-16 Cedar Island

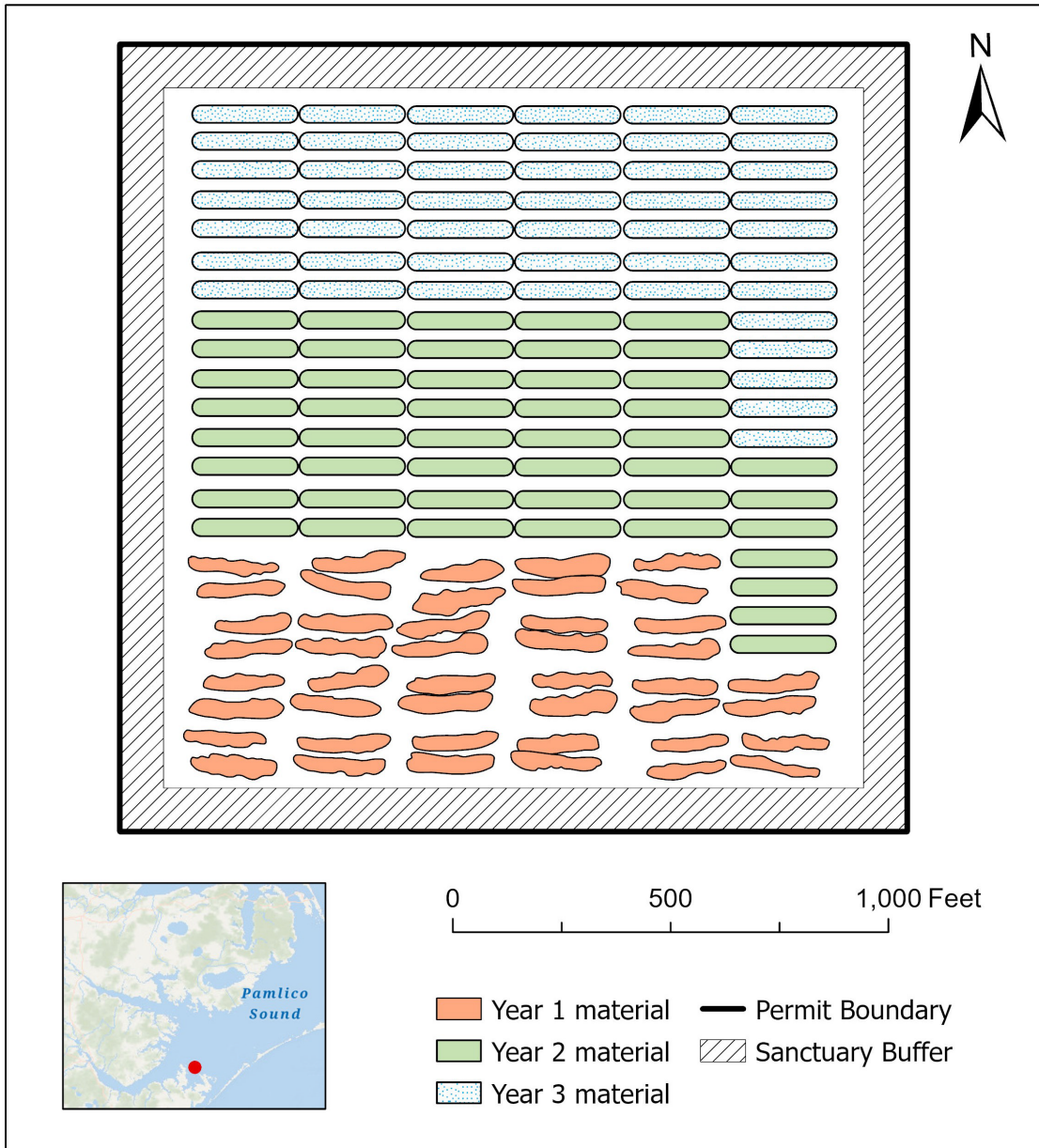


Figure 2. Cedar Island Oyster Sanctuary. With three years planned to fully develop the area, illustrated above is the footprint from the first 18,000 tons of material deployed and approximate distribution for future material (target completion summer 2023).

OS-17 Gull Shoal

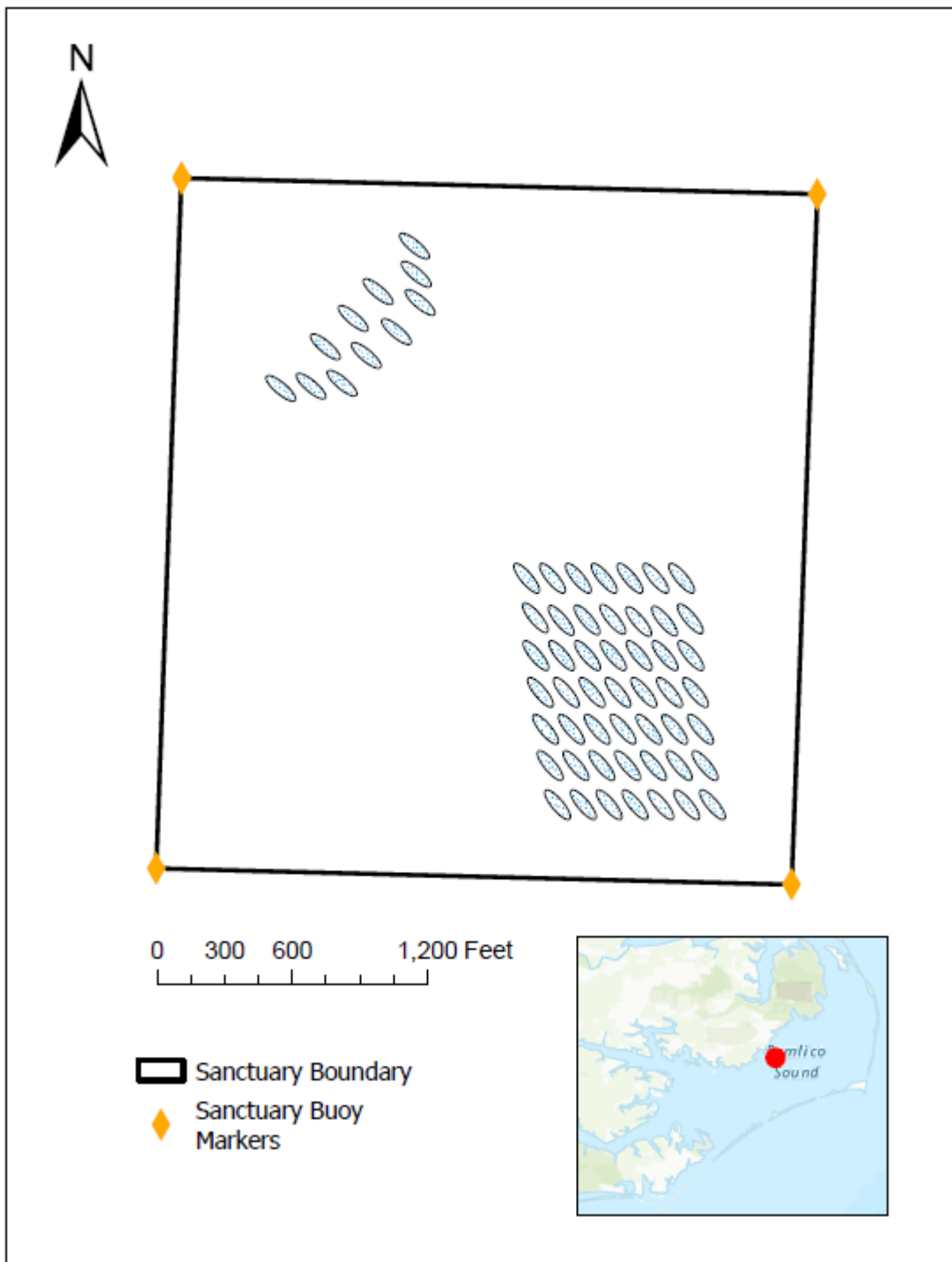


Figure 3. Gull Shoal Oyster Sanctuary. The development of the site is under the purview of the Division of Mitigation Services. Details on material footprint will be known after completion of this 162-acre site.

1 VII. PROPOSED RULE(S)

2
3 15A NCAC 03R .0117 OYSTER SANCTUARIES

4 The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following ~~coastal water~~
5 ~~areas:~~ Coastal Fishing Waters:

6 (1) Pamlico Sound area:

7 (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N -
8 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running
9 westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35°
10 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.

11 (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75°
12 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running
13 westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35°
14 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.

15 (c) Pea Island: within the area described by a line beginning at a point ~~35° 05.4760' N - 76°~~
16 ~~23.5370' W~~ 35° 40.0800' N - 75° 36.7998' W; running southerly to a point ~~35° 05.4760'~~
17 ~~N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 36.7998' W; running westerly to a point ~~35°~~
18 ~~05.3680' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 37.0800' W; running northerly to a
19 point ~~35° 05.3680' N - 76° 23.5370' W~~ 35° 40.0800' N - 75° 37.0800' W; running
20 easterly to the point of beginning.

21 (d) Long Shoal: within the area described by a line beginning at a point ~~35° 33.8600' N - 75°~~
22 ~~49.9000' W~~ 35° 33.8600' N - 75° 49.7670' W; running southerly to a point ~~35° 33.8600'~~
23 ~~N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.7670' W; running westerly to a point ~~35°~~
24 ~~33.7510' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.9000' W; running northerly to a
25 point ~~35° 33.7510' N - 75° 49.9000' W~~ 35° 33.8600' N - 75° 49.9000' W; running easterly
26 to the point of beginning.

27 (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N -
28 75° 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running
29 westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35°
30 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.

31 (f) ~~Gull Shoal: within the area described by a line beginning at a point 35° 23.4520' N - 75°~~
32 ~~58.0533' W; running southerly to a point 35° 22.9481' N - 75° 58.0721' W; running~~
33 ~~westerly to a point 35° 22.9596' N - 75° 58.5359' W; running northerly to a point 35°~~
34 ~~23.4638' N - 75° 58.5173' W; running easterly to the point of beginning.~~

35 (f)(g) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76°
36 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running

1 westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35°
2 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.

3 ~~(g)~~(h) West Bluff: within the area described by a line beginning at a point 35° 18.3160' N - 76°
4 ~~10.2960' W~~ 35° 18.3160' N - 76° 10.0690' W; running southerly to a point 35° 18.3160' N -
5 ~~76° 10.0690' W~~ 35° 18.1290' N - 76° 10.0690' W; running westerly to a point 35°
6 18.1290' N - 76° 10.0690' W 35° 18.1290' N - 76° 10.2960' W; running northerly to a point
7 35° 18.1290' N - 76° 10.2960' W 35° 18.3160' N - 76° 10.2960' W; running easterly to the
8 point of beginning.

9 ~~(h)~~(i) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76°
10 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running
11 westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35°
12 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.

13 ~~(i)~~(j) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N -
14 ~~76° 27.5040' W~~ 35° 05.6414' N - 76° 26.7651' W; running southerly to a point 35°
15 05.6020' N - 76° 26.7650' W 35° 05.4846' N - 76° 26.7638' W; running westerly to a
16 point 35° 05.4850' N - 76° 26.7640' W 35° 05.4992' N - 76° 27.5033' W; running
17 northerly to a point 35° 05.4990' N - 76° 27.5030' W 35° 05.6554' N - 76° 27.5041' W;
18 running easterly to the point of beginning.

19 ~~(j)~~(k) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N -
20 ~~76° 23.5370' W~~ 35° 05.4760' N - 76° 23.4040' W; running southerly to a point 35°
21 05.4760' N - 76° 23.4040' W 35° 05.3680' N - 76° 23.4040' W; running westerly to a
22 point 35° 05.3860' N - 76° 23.4040' W 35° 05.3680' N - 76° 23.5370' W; running
23 northerly to a point 35° 05.3680' N - 76° 23.5370' W 35° 05.4760' N - 76° 23.5370' W;
24 running easterly to the point of beginning.

25 ~~(l)~~ Cedar Island: within the area described by a line beginning at a point 35° 03.4632' N -
26 ~~76° 22.5603' W~~; running southerly to a point 35° 03.1653' N - 76° 22.5699' W; running
27 westerly to a point 35° 03.1731' N - 76° 22.9321' W; running northerly to a point 35°
28 03.4710' N - 76° 22.9226' W; running easterly to the point of beginning.

29 ~~(k)~~(m) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76°
30 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running
31 westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34°
32 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.

33 (2) Neuse River area:

34 (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76°
35 ~~30.9840' W~~ 35° 02.6940' N - 76° 30.7940' W; running southerly to a point 35° 02.6940' N

1 ~~76° 30.7940' W~~ 35° 02.5380' N - 76° 30.7940' W; running westerly to a point ~~35°~~
2 ~~02.5380' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.9840' W; running northerly to a
3 point ~~35° 02.5380' N - 76° 30.9840' W~~ 35° 02.6940' N - 76° 30.9840' W; running easterly
4 to the point of beginning.

5 (b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N -
6 76° 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running
7 westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35°
8 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

9
10 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;*
11 *Eff. October 1, 2008;*
12 *Amended Eff. April 1, 2011;*
13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
14 *2018;*
15 *Amended Eff. May 1, 2021; April 1, 2024.*

VIII. LITERATURE CITED

Frankenberg, D. 1995. North Carolina Blue Ribbon Advisory Council on Oysters. Final Report on Studies and Recommendations. North Carolina Department of Environment, Health, and Natural Resources. Raleigh, NC.

Gell, F. R. and C. M. Roberts 2002. The fishery effects of marine reserves and fishery closures. World Wildlife Fund-US, Washington D.C., USA.

Halpern, B.S. 2003. The impact of marine reserves: Do reserves work and does reserve size matter? *Ecol Appl* 13: S117-S137.

Sobel, J. A. and C. P. Dahlgren. (2004) Marine reserves. A guide to science, design and use. Island Press, Washington, D.C., USA.

IX. PROPOSED MANAGEMENT OPTIONS

(+ Potential positive impact of action)

(- Potential negative impact of action)

1. *Status quo*

- New oyster sanctuaries not fully protected in rule
- Inaccurate boundaries remain in rule for existing oyster sanctuaries
- Navigational hazards to boaters
- Does not comply with principles of rulemaking in G.S. 150-B
- Inconsistent with state and federal permitting
- +/- Expenses for marine patrol and buoy maintenance

2. Amend rule to add two new oyster sanctuaries and update boundaries of three sanctuaries

- + New oyster sanctuaries fully protected in rule
- + Existing oyster sanctuary boundary lines would be updated
- + Safeguards boaters navigating the oyster sanctuaries
- + Complies with principles of rulemaking in G.S. 150-B
- + Net increase of more than 256 acres of high-quality oyster habitat
- +/- Expenses for marine patrol and buoy maintenance

X. RECOMMENDATION

DMF recommends the MFC approve Notice of Text for rulemaking in support of the proposed changes (Option 2).

Prepared by: Jason Peters, Jason.Peters@ncdenr.gov, 252-726-7021
Nov. 15, 2022

Revised: Nov. 29, 2022
Jan. 5, 2023

**Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises
Issue Paper
Feb. 2, 2023**

I. ISSUE

Conform North Carolina Marine Fisheries Commission (MFC) rules to reflect the discontinuation of the Shellfish Relay Program, consistent with rulemaking requirements in the North Carolina Administrative Procedure Act (APA; Chapter 150B).

II. ORIGINATION

North Carolina Division of Marine Fisheries (DMF)

III. BACKGROUND

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program will end effective May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting. DMF informed the MFC that more information would be provided at its February 2023 business meeting, including corresponding proposed rule amendments.

DMF identified 14 rules relating to the Shellfish Relay Program that set specific requirements for relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the APA.

IV. AUTHORITY

North Carolina General Statutes

G.S. § 14-4.1.	Legislative review of regulatory crimes.
G.S. § 113-134.	Rules.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 113-201.	Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
G.S. § 113-202.	New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.
G.S. § 113-203.	Transplanting of oysters and clams.
G.S. § 113-221.2.	Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
G.S. § 143B-289.52	Marine Fisheries Commission – powers and duties.
Chapter 150B	Administrative Procedure Act

Marine Fisheries Commission Rules

15A NCAC 03I .0101	DEFINITIONS
15A NCAC 03K .0101	PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS
15A NCAC 03K .0103	SHELLFISH MANAGEMENT AREAS*
15A NCAC 03K .0104	PERMITS FOR SHELLFISH FROM POLLUTED AREAS**
15A NCAC 03K .0107	DEPURATION OF CLAMS AND OYSTERS**
15A NCAC 03K .0301	SIZE AND HARVEST LIMITS OF CLAMS**
15A NCAC 03K .0401	POLLUTED AREA PERMIT REQUIREMENTS**
15A NCAC 03K .0403	DISPOSITION OF MEATS**
15A NCAC 03K .0405	OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED
15A NCAC 03O .0501	PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS
15A NCAC 03O .0503	PERMIT CONDITIONS; SPECIFIC
15A NCAC 18A .0303	RELAYING PERMITS***
15A NCAC 18A .0901	DEFINITIONS
15A NCAC 18A .0906	RESTRICTED AREAS

* Rule is undergoing readoption, already amended to remove relay language, and anticipated to be effective pending legislative review in the 2023 long session.

** Rule is undergoing readoption and anticipated to be effective pending legislative review in the 2023 long session.

*** Rule is anticipated to be repealed, effective pending legislative review in the 2023 long session.

V. DISCUSSION

According to the APA, specifically G.S. § 150B-19.1(b), the MFC is charged with reviewing its rules annually to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. § 150B-19.1(a). DMF identified 14 rules relating to the Shellfish Relay Program (15A NCAC 03I .0101, 03K .0101, .0103, .0104, .0107, .0301, .0401, .0403, .0405, 03O .0501, .0503, 18A .0303, .0901, and .0906) that set specific requirements for relaying of shellfish from certain polluted areas. Consistent with the APA, these rules or portions of these rules are unnecessary due to the discontinuation of the Shellfish Relay Program.

Shellfish Relay Requirements

Amendments are proposed to these rules that have shellfish relay requirements, including the repeal of **15A NCAC 03K .0104, .0401, .0403, and .0405**. Three rules that have shellfish relay content are currently undergoing readoption and are already proposed for amendment to remove relay language (**15A NCAC 03K .0103, .0107**; see Appendix I) or proposed to be repealed (**15A NCAC 18A .0303**), effective pending legislative review in the 2023 long session.

Rule **15A NCAC 03I .0101** defines terms that apply globally to Chapter 03 (Marine Fisheries) of the N.C. Administrative Code. Specifically, Subitems (2)(i), (2)(j), and (2)(k) of this rule define terms related to shellfish leases and franchises and the associated planting, culture, marketing, transplanting (relay), and harvest of shellfish. These defined terms only appear in 15A NCAC 03O .0200, which sets standards and requirements for shellfish leases and franchises. These terms are proposed to be deleted from 15A NCAC 03I .0101; globally applicable definitions for these terms are not necessary. There are a few differences in statutes and rules for shellfish production as it pertains to shellfish leases and franchises. As a result, definitions are proposed to be added to 15A NCAC 03O .0201 to harmonize these differences, defined for the purpose of this section of rules. These changes are explained in the associated sub-section of the discussion section further below. Additionally, a technical change is proposed to 15A NCAC 03I .0101(5)(k) to remove Elizabeth City from the definition of "Office of the Division" since the license office there is permanently closed; the remaining offices are also proposed to be listed in geographic order from south to north.

Rule **15A NCAC 03K .0101** makes it unlawful to take shellfish from areas that have been designated as polluted. The current rule provides exceptions as set out in four other rules that contain shellfish relay requirements. These rules are either undergoing readoption and include the removal of shellfish relay requirements or are rules described here that are proposed to be amended or repealed to remove shellfish relay requirements. Proposed changes to 15A NCAC 03K .0101 update the exceptions to this otherwise unlawful activity. These exceptions would apply to the holder of any of three permits: Depuration, Aquaculture Seed Transplant, or Shellfish Relocation. Requirements for these permits would ensure shellfish taken from polluted areas would not be for immediate human consumption but would be for restoration purposes or would be subject to transplant to private beds for growout or for depuration prior to human consumption. Currently, an exception for "maintenance dredging operations" is provided in 15A NCAC 03K .0104, proposed for repeal. This exception is proposed to be expanded in 15A NCAC 03K .0101 to include "maintenance dredging, construction, or other development activities" to be more comprehensive.

15A NCAC 03K .0301 is currently undergoing readoption, effective pending legislative review in the 2023 long session. Additional proposed changes would remove shellfish relay requirements by deleting Subparagraph (b)(3).

Proposed changes to **15A NCAC 03O .0501** Paragraphs (d) and (e), **15A NCAC 03O .0503** Subparagraph (a)(3), **15A NCAC 18A .0901** Item (19), and **15A NCAC 18A .0906** Paragraph (b) remove shellfish relay requirements. Additionally, two unrelated technical changes are needed. One change is needed to 15A NCAC 03O .0501(i) to correct a cross-reference to 15A NCAC 03K .0111 (repeal), to reference 15A NCAC 03O .0211 (adoption) instead. A second technical change is needed to 15A NCAC 03O .0503 to correct a cross-reference in Subparagraph (g)(3) to read "Subparagraph (g)(1)" not "Subparagraph (k)(1)".

Shellfish Lease and Franchise Requirements

Regarding additional proposed changes to 15A NCAC 03O .0201 for shellfish lease and franchise requirements, Session Law 2019-37 (Act to Provide Further Support to the Shellfish Aquaculture Industry in North Carolina) increased production and planting requirements for shellfish leases and franchises via Section 3 of the Act. Subsection 3 (d) of the Act requires the MFC to amend 15A NCAC 03O .0201 consistent with Subsection 3 (c) of the Act that sets shellfish production and planting requirements for leases granted July 1, 2019 and after. Changes are proposed to conform this rule to the requirements of this law.

Specifically, definitions for "extensive shellfish culture" and "intensive shellfish culture" set forth in Session Law 2019-37 are proposed to be added for the purpose of 15A NCAC 03O .0200 in Rule 15A NCAC 03O .0201 in Paragraph (a). Upon the effective date of this rule, Section 3 of this law will expire and so the definitions need to be added to MFC rule. Additional definitions for "plant" and "produce" are proposed to clarify the use of the terms for the purpose of this rule. There are a few differences in statutes and rules for shellfish production as it pertains to shellfish leases and franchises, as mentioned in the discussion section regarding 15A NCAC 03I .0101. Session Law 2019-37, G.S. 113-203 (see Appendix II), and other laws contain requirements for and intersect with shellfish relay and shellfish leases and franchises. The proposed definitions harmonize these differences, along with conforming changes throughout the rule to delete references to "marketing" shellfish. The term is antiquated and essentially means "harvest", which is remedied by the proposed definitions. Also, as a result of separate rule changes that became effective June 1, 2022, all shellfish lease holders are required to have an Aquaculture Operation Permit. This makes moot the need to retain the reference to a "marketable size" because requirements are now set through this permit; there are not currently any minimum size requirements and there is not a "marketable size" definition beyond the three-inch minimum size limit for wild harvest. So, in Paragraph (a), the proposed definition for "plant" in (a)(3) covers 15A NCAC 03I .0101(2)(j) for "shellfish planting effort on leases and franchises" and (2)(k) for "shellfish production on leases and franchises", except "sublegal harvest size to a marketable size" from 03I .0101(2)(k)(i) was left out because it does not align with how the industry works today. The proposed definition for "produce" in (a)(4) covers 15A NCAC 03I .0101(2)(i) for "shellfish marketing from leases and franchises".

Subparagraph (b)(4) is proposed for amendment to clarify to what "area" refers. Proposed changes and additions to Paragraphs (c) through (h) incorporate and conform the shellfish production and planting requirements from the law for shellfish leases granted before July 1, 2019 and for shellfish leases granted on or after this date. Shellfish leases are granted for 10-year terms, so these distinctions will need to persist in the rule until the last shellfish lease granted prior to July 1, 2019 has expired at which time the rule can be amended again. Lastly, proposed changes to Paragraph (i) require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas.

1 **VI. PROPOSED RULE(S)**

2
3 15A NCAC 03I .0101 is proposed for amendment as follows:

4
5 **SUBCHAPTER 03I – GENERAL RULES**

6
7 **SECTION .0100 – GENERAL RULES**

8
9 **15A NCAC 03I .0101 DEFINITIONS**

10 All definitions set out in G.S. 113, Subchapter IV and the following additional terms shall apply to this Chapter:

11 (1) enforcement and management terms:

- 12 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial
13 fishing operations.
- 14 (b) "Educational institution" means a college, university, or community college accredited by
15 an accrediting agency recognized by the U.S. Department of Education; an Environmental
16 Education Center certified by the N.C. Department of Environmental Quality Office of
17 Environmental Education and Public Affairs; or a zoo or aquarium certified by the
18 Association of Zoos and Aquariums.
- 19 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except
20 the Atlantic Ocean.
- 21 (d) length of finfish:
- 22 (i) "Curved fork length" means a length determined by measuring along a line tracing
23 the contour of the body from the tip of the upper jaw to the middle of the fork in
24 the caudal (tail) fin.
- 25 (ii) "Fork length" means a length determined by measuring along a straight line the
26 distance from the tip of the snout with the mouth closed to the middle of the fork
27 in the caudal (tail) fin, except that fork length for billfish is measured from the tip
28 of the lower jaw to the middle of the fork of the caudal (tail) fin.
- 29 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal
30 insertion of the pectoral fin to the fork of the tail measured along the contour of
31 the body in a line that runs along the top of the pectoral fin and the top of the
32 caudal keel.
- 33 (iv) "Total length" means a length determined by measuring along a straight line the
34 distance from the tip of the snout with the mouth closed to the tip of the
35 compressed caudal (tail) fin.
- 36 (e) "Nongovernmental conservation organization" means an organization whose primary
37 mission is the conservation of natural resources.

- 1 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
- 2 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous
- 3 or deleterious substances, or marine biotoxins that render the consumption of
- 4 shellfish from those growing waters hazardous;
- 5 (ii) that have been determined through a sanitary survey as defined in 15A NCAC
- 6 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source
- 7 outfall with public health significance;
- 8 (iii) that have been determined through a sanitary survey as defined in 15A NCAC
- 9 18A .0901 to be in or adjacent to a marina;
- 10 (iv) that have been determined through a sanitary survey as defined in 15A NCAC
- 11 18A .0901 to be impacted by other potential sources of pollution that render the
- 12 consumption of shellfish from those growing waters hazardous; or
- 13 (v) where the Division of Marine Fisheries is unable to complete the monitoring
- 14 necessary to determine the presence of contamination or potential pollution
- 15 sources.
- 16 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,
- 17 area, means, and methods where take or possession is for a recreational purpose.
- 18 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational
- 19 purpose.
- 20 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by
- 21 the Fisheries Director through proclamation authority.
- 22 (j) "Scientific institution" means one of the following entities:
- 23 (i) an educational institution as defined in this Item;
- 24 (ii) a state or federal agency charged with the management of marine or estuarine
- 25 resources; or
- 26 (iii) a professional organization or secondary school working under the direction of,
- 27 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
- 28 of this Item.
- 29 (2) fishing activities:
- 30 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
- 31 marine or estuarine resources, or other non-native species that may thrive if introduced into
- 32 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
- 33 rearing on private bottom (with or without the superadjacent water column) or in a
- 34 controlled environment. A controlled environment provides and maintains throughout the
- 35 rearing process one or more of the following:
- 36 (i) food;
- 37 (ii) predator protection;

- 1 (iii) salinity;
- 2 (iv) temperature controls; or
- 3 (v) water circulation, utilizing technology not found in the natural environment.
- 4 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
- 5 to work the gear and be within 100 yards of any gear in use by that person at all times.
- 6 Attended does not include being in a building or structure.
- 7 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
- 8 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
- 9 controlled environment. A controlled environment provides and maintains throughout the
- 10 shedding process one or more of the following:
- 11 (i) food;
- 12 (ii) predator protection;
- 13 (iii) salinity;
- 14 (iv) temperature controls; or
- 15 (v) water circulation, utilizing technology not found in the natural environment. A
- 16 shedding operation does not include transporting pink or red-line peeler crabs to
- 17 a permitted shedding operation.
- 18 (d) "Depuration" means mechanical purification or the removal of adulteration from live
- 19 oysters, clams, or mussels by any artificially controlled means.
- 20 (e) "Long haul operation" means fishing a seine towed between two vessels.
- 21 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
- 22 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 23 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
- 24 not.
- 25 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
- 26 as defined in G.S. 113-168.
- 27 ~~(i) "Shellfish marketing from leases and franchises" means the harvest of oysters, clams,~~
- 28 ~~scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish~~
- 29 ~~to the public at large or to a licensed shellfish dealer.~~
- 30 ~~(j) "Shellfish planting effort on leases and franchises" means the process of obtaining~~
- 31 ~~authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and~~
- 32 ~~the placement of those materials on privately held shellfish bottoms for increased shellfish~~
- 33 ~~production.~~
- 34 ~~(k) "Shellfish production on leases and franchises" means:~~
- 35 ~~(i) the culture of oysters, clams, scallops, or mussels on shellfish leases and~~
- 36 ~~franchises from a sublegal harvest size to a marketable size.~~

1 of the corkline following along the line to the outer most mesh knot at the opposite end of
2 the corkline.

3 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth
4 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

5 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure
6 attached to the bottom, at both ends of the net.

7 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or
8 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one
9 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,
10 through which fish enter the enclosure. The portion of the net designed to hold or trap fish
11 is completely enclosed in mesh or webbing, except for the openings for fish passage into
12 or out of the net (funnel area).

13 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills
14 in its mesh as a result of net design, construction, mesh length, webbing diameter, or
15 method in which it is used.

16 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest
17 to the water surface when in use. Headrope length is measured from the outer most mesh
18 knot at one end of the headrope following along the line to the outer most mesh knot at the
19 opposite end of the headrope.

20 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or
21 frames. The net has one or more internal funnel-shaped openings with tapered ends directed
22 inward from the mouth, through which fish enter the enclosure. The portion of the net
23 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the
24 openings for fish passage into or out of the net (funnel area).

25 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,
26 wire, or similar material set vertically in the water and held in place by stakes or anchors
27 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead
28 along the top or bottom line, whichever is longer, to the opposite end of the lead.

29 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,
30 and other rakes when towed by engine power, patent tongs, kicking with propellers or
31 deflector plates with or without trawls, and any other method that utilizes mechanical
32 means to harvest clams.

33 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other
34 rakes when towed by engine power, and any other method that utilizes mechanical means
35 to harvest oysters.

36 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite
37 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.

- 1 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead
2 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and
3 lead(s) are not conical, nor are they supported by hoops or frames.
- 4 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use
5 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 6 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish
7 by encirclement and confining fish within itself or against another net, the shore or bank
8 as a result of net design, construction, mesh length, webbing diameter, or method in which
9 it is used.
- 10 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations
11 of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this
12 definition, are vital for portions of the entire life cycle, including the early growth and development
13 of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and
14 estuarine survey sampling, include:
- 15 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems
16 utilized by post-larval and later juvenile anadromous fish.
- 17 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of
18 anadromous fish has been documented in Division sampling records through direct
19 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 20 (c) "Coral" means:
- 21 (i) fire corals and hydrocorals (Class Hydrozoa);
- 22 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
- 23 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which
24 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),
25 and sea pansies (*Renilla* sp.).
- 26 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and
27 live oysters of varying density.
- 28 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard
29 substrate, excluding mollusk shells, but including dead coral or rock. Living marine
30 organisms associated with hard bottoms, banks, reefs, and live rock include:
- 31 (i) Coralline algae (Division Rhodophyta);
- 32 (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.),
33 green feather, green grape algae (*Caulerpa* sp.)(Division Chlorophyta);
- 34 (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);
- 35 (iv) sponges (Phylum Porifera);

- 1 (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class
2 Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea
3 (Class Anthozoa);
- 4 (vi) Bryozoans (Phylum Bryozoa);
- 5 (vii) tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and
6 Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
- 7 (viii) mussel banks (Phylum Mollusca: Gastropoda); and
- 8 (ix) acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- 9 (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity,
10 temperature, and other factors, young finfish and crustaceans spend the major portion of
11 their initial growing season. Primary nursery areas are those areas in the estuarine system
12 where initial post-larval development takes place. These are areas where populations are
13 uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system
14 where later juvenile development takes place. Populations are composed of developing
15 sub-adults of similar size that have migrated from an upstream primary nursery area to the
16 secondary nursery area located in the middle portion of the estuarine system.
- 17 (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams,
18 oysters, scallops, mussels, and whelks use to reproduce and survive because of such
19 favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those
20 shellfish producing areas closed to shellfish harvest due to pollution.
- 21 (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats
22 that provide exceptional habitat functions or that are particularly at risk due to imminent
23 threats, vulnerability, or rarity.
- 24 (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:
- 25 (i) are vegetated with one or more species of submerged aquatic vegetation including
26 bushy pondweed or southern naiad (*Najas guadalupensis*), coontail
27 (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed
28 (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton*
29 *perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton*
30 *pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton*
31 *pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche*
32 *heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and
33 wild celery (*Vallisneria americana*). These areas may be identified by the presence
34 of above-ground leaves, below-ground rhizomes, or reproductive structures
35 associated with one or more SAV species and include the sediment within these
36 areas; or

1 (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i)
2 of this Rule within the past 10 annual growing seasons and that meet the average
3 physical requirements of water depth (six feet or less), average light availability
4 (secchi depth of one foot or more), and limited wave exposure that characterize
5 the environment suitable for growth of SAV. The past presence of SAV may be
6 demonstrated by aerial photography, SAV survey, map, or other documentation.
7 An extension of the past 10 annual growing seasons criteria may be considered
8 when average environmental conditions are altered by drought, rainfall, or storm
9 force winds.

10 This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches
11 or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission
12 recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not
13 intend the submerged aquatic vegetation definition, or this Rule or 15A NCAC 03K .0304
14 and .0404, to apply to or conflict with the non-development control activities authorized
15 by that Act.

16 (5) licenses, permits, leases and franchises, and record keeping:

- 17 (a) "Assignment" means temporary transferal to another person of privileges under a license
18 for which assignment is permitted. The person assigning the license delegates the privileges
19 permitted under the license to be exercised by the assignee, but retains the power to revoke
20 the assignment at any time, and is still the responsible party for the license.
- 21 (b) "Designee" means any person who is under the direct control of the permittee or who is
22 employed by or under contract to the permittee for the purposes authorized by the permit.
- 23 (c) "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in State
24 waters or when the vessel originates from or returns to a North Carolina port.
- 25 (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
- 26 (e) "Holder" means a person who has been lawfully issued in the person's name a license,
27 permit, franchise, lease, or assignment.
- 28 (f) "Land" means:
- 29 (i) for commercial fishing operations, when fish reach the shore or a structure
30 connected to the shore.
- 31 (ii) for purposes of trip tickets, when fish reach a licensed seafood dealer, or where
32 the fisherman is the dealer, when fish reach the shore or a structure connected to
33 the shore.
- 34 (iii) for recreational fishing operations, when fish are retained in possession by the
35 fisherman.
- 36 (g) "Licensee" means any person holding a valid license from the Department to take or deal
37 in marine fisheries resources.

- 1 (h) "Logbook" means paper forms provided by the Division and electronic data files generated
 2 from software provided by the Division for the reporting of fisheries statistics by persons
 3 engaged in commercial or recreational fishing or for-hire operators.
- 4 (i) "Master" means captain or operator of a vessel or one who commands and has control,
 5 authority, or power over a vessel.
- 6 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who
 7 did not possess a valid dealer license for the previous license year in that name. For
 8 purposes of license issuance, adding new categories to an existing fish dealers license does
 9 not constitute a new dealer.
- 10 (k) "Office of the Division" means physical locations of the Division conducting license and
 11 permit transactions in Wilmington, ~~Morehead City,~~ Washington, ~~Morehead City,~~ ~~Roanoke~~
 12 ~~Island,~~ and ~~Elizabeth City,~~ and ~~Roanoke Island,~~ North Carolina. Other businesses or
 13 entities designated by the Secretary to issue Recreational Commercial Gear Licenses or
 14 Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- 15 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs
 16 operations of a business entity, such as a corporate officer or executive level supervisor of
 17 business operations, and the person responsible for use of the issued license in compliance
 18 with applicable statutes and rules.
- 19 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise
 20 directs a recreational fishing tournament and is the holder of the Recreational Fishing
 21 Tournament License.
- 22 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,
 23 exchanged, bartered, distributed, or landed.
- 24 (o) "Transfer" means permanent transferal to another person of privileges under a license for
 25 which transfer is permitted. The person transferring the license retains no rights or interest
 26 under the license transferred.
- 27 (p) "Trip ticket" means paper forms provided by the Division and electronic data files
 28 generated from software provided by the Division for the reporting of fisheries statistics
 29 by licensed fish dealers.

30
 31 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*
 32 *Eff. January 1, 1991;*
 33 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*
 34 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*
 35 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*
 36 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*
 37 *Amended Eff. August 1, 2000;*

1 *Temporary Amendment Eff. August 1, 2000;*
2 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*
3 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*
4 *Readopted Eff. June 1, 2022;*
5 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0201).*

1 15A NCAC 03K .0101 is readopted with changes as published in 36:07 NCR 470 as follows:

2 15A NCAC 03K .0101 is proposed for amendment as follows:

3
4 **SUBCHAPTER 03K - OYSTERS, CLAMS, ~~SCALLOPS~~ SCALLOPS, AND MUSSELS**

5
6 **SECTION .0100 – SHELLFISH, GENERAL**

7
8 **15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH**
9 **AREAS/ACTIVITIES AREAS**

10 (a) It ~~is shall be~~ unlawful to possess, sell, or take oysters, ~~clams-clams,~~ or mussels from areas ~~which-that~~ have been
11 designated as ~~prohibited (polluted)-polluted~~ by proclamation by the Fisheries Director except as provided in ~~15A~~
12 ~~NCAC 03K Rules .0103, .0104, .0107, and .0401-.0401~~ of this Subchapter. The Fisheries Director shall issue ~~such~~
13 ~~shellfish polluted area~~ proclamations ~~upon notice by the Division of Environmental Health that duly adopted if~~ criteria
14 for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries
15 Director may reopen any such closed area ~~upon notification from the Division of Environmental Health that duly~~
16 ~~adopted by proclamation if~~ criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900
17 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of
18 Marine Fisheries, 3441 Arendell ~~St.,~~ Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-(252)
19 726-7021.

20
21 [VERSION OF PARAGRAPH (a) AFTER READOPTION CHANGES, PROPOSED FOR FURTHER
22 AMENDMENT:]

23 (a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as
24 polluted by proclamation by the Fisheries Director ~~except as provided in Rules .0103, .0104, .0107, and .0401 of this~~
25 ~~Subchapter. except prior to taking such shellfish, in accordance with:~~

- 26 (1) a Depuration Permit as set forth in Rule .0107 of this Section;
27 (2) an Aquaculture Seed Transplant Permit; or
28 (3) a Shellfish Relocation Permit. The Fisheries Director may, by proclamation, designate sites for
29 relocation where shellfish would otherwise be destroyed due to maintenance dredging, construction,
30 or other development activities.

31 Individuals shall obtain an Aquaculture Seed Transport Permit from the Secretary, or a Depuration Permit or a
32 Shellfish Relocation Permit from the Fisheries Director setting forth the time, area, and method by which such shellfish
33 may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

34 (b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest
35 areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such
36 closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900

1 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of
2 Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-726-7021.

3 _____
4 ~~(b)(c)~~ The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, ~~scallops~~ scallops, and
5 mussels ~~in order~~ to protect the shellfish populations for management purposes or for protection of public health
6 purposes related to the public health programs that fall under the authority of the Marine Fisheries Commission not
7 specified in ~~Paragraph (a)~~ Paragraphs (a) or (b) of this Rule.

8 ~~(c)(d)~~ It ~~is shall be~~ unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North
9 ~~Carolina~~ Carolina, except as provided in 15A NCAC 03I .0104.

10
11 *History Note:* Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221;~~ 113-203; 113-221.1; 113-221.2;
12 143B-289.52;
13 *Eff. January 1, 1991;*
14 *Amended Eff. July 1, 1993;*
15 *Temporary Amendment Eff. July 1, 1999;*
16 *Amended Eff. August 1, 2000;*
17 *Temporary Amendment Eff. October 1, 2001;*
18 *Amended Eff. October 1, 2008; April 1, 2003;*
19 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*
20 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0104 is readopted as published in 36:07 NCR 471 as follows:

2 15A NCAC 03K .0104 is proposed for repeal as follows: [ENTIRE BODY OF READOPTED RULE WILL BE
3 STRUCK THROUGH]

4
5 **15A NCAC 03K .0104 PERMITS FOR ~~PLANTING~~ RELAYING SHELLFISH FROM**
6 **PROHIBITED/POLLUTED/POLLUTED AREAS**

7 (a) It ~~is shall be~~ unlawful to take ~~oysters or clams shellfish~~ from ~~prohibited (polluted) polluted~~ public waters ~~or~~
8 ~~franchises~~ for planting on ~~shellfish~~ leases and franchises except as authorized by G.S. 113-203. ~~Lease Shellfish lease~~
9 and franchise holders shall first obtain a ~~relay~~ permit from the Fisheries Director setting forth the time, area, and
10 method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in
11 15A NCAC 03O .0500.

12 (b) ~~The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to~~
13 ~~the start of relaying activities.~~

14 (c) ~~All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.~~

15 (b)(d) ~~The season for relaying clams shall be between April 1 and May 15 and the season for relaying oysters shellfish~~
16 ~~shall be for may occur within~~ a specified six week period between the date of the statewide closure of oyster season
17 and June 30, as determined by the Fisheries Director based on ~~the following factors:~~

- 18 (1) ~~the status of oyster shellfish resources available for harvest from public bottom and bottom;~~
- 19 (2) ~~surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;~~
- 20 (3) ~~market factors affecting sale of oysters shellfish from public bottom which will assist in determining~~
21 ~~the statewide closure date bottom; and~~
- 22 (4) ~~manpower available availability of Division of Marine Fisheries staff to monitor and observe the~~
23 ~~shellfish relaying activity.~~

24 (e) ~~For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in~~
25 ~~maintenance dredging operations, the season as set out in Paragraph (b) of this Rule shall not apply.~~

26 (d)(c) ~~The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and~~
27 ~~reopen~~ by proclamation any ~~private shellfish beds lease or franchise~~ for which the owner has obtained a permit to
28 relay ~~oysters and clams shellfish~~ from ~~prohibited (polluted) polluted~~ public ~~waters, waters~~ or franchises. The leases
29 and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises
30 to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay
31 ~~season described in Paragraph (d) of this Rule.~~

32
33 *History Note: Authority G.S. 113-134; 113-182; 113-203; ~~113-221; 113-221.1; 143B-289.52;~~*

34 *Eff. January 1, 1991;*

35 *Amended Eff. March 1, 1996; September 1, 1991;*

36 *Temporary Amendment Eff. October 1, 2001;*

37 *Amended Eff. April 1, 2003;*

1
2

Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).

1 15A NCAC 03K .0301 is readopted with changes as published in 36:07 NCR 475 as follows:

2 15A NCAC 03K .0301 is proposed for amendment as follows: [FOLLOWING READOPTION OF RULE,
3 SUBPARAGRAPH (b)(3) IN ITS ENTIRETY WILL BE STRUCK THROUGH. SUBPARAGRAPHS (b)(1) and
4 (b)(2) WILL BE JOINED BY "OR".]

5
6 **SECTION .0300 - HARD CLAMS (MERCENARIA)**
7

8 **15A NCAC 03K .0301 SIZE AND HARVEST ~~LIMIT~~LIMITS OF CLAMS**

9 (a) It ~~is shall be~~ unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing
10 operation from public bottom in internal waters. It ~~is shall be~~ unlawful to take, possess, sell, or purchase any clams
11 (except Rangia or freshwater clams) less than one inch thick except in accordance with ~~15A NCAC 3K .0305(b)~~ Rule
12 .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall
13 be immediately returned to the bottom from which ~~it was~~ they were taken. ~~Agents of the Fisheries Director are in~~
14 determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be
15 and empowered to grade all, or any portion, or any combination of portions of the entire quantity ~~of clams~~ being
16 ~~graded~~ graded, and in cases of violations, may seize and return to public bottom or ~~other disposition~~ otherwise dispose
17 of the clams as authorized by law ~~of~~ the entire quantity being graded or any portion thereof.

18 (b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in
19 ~~15A NCAC 3K .0302~~ Rule .0302 of this Section may or may not ~~apply~~ apply for:

- 20 (1) ~~For harvest limits for~~ temporary openings ~~made upon the recommendation of Division of~~
21 ~~Environmental Health~~, consistent with the requirements of 15A NCAC 18A .0900 and the North
22 Carolina Hard Clam Fishery Management Plan;
23 (2) ~~For~~ maintenance dredging operations, when clams would otherwise be destroyed, upon approval by
24 the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery
25 Management Plan; or
26 (3) ~~For~~ relaying of ~~polluted~~ clams from polluted waters to private shellfish ~~bottoms~~ bottom as permitted
27 by ~~15A NCAC 3K .0104~~ Rule .0104 of this Subchapter.

28
29 *History Note:* Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221; 113-221.2; 143B-289.52;
30 Eff. January 1, 1991;
31 Amended Eff. March 1, 1994;
32 Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
33 Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

1 15A NCAC 03K .0401 is readopted as published in 36:07 NCR 476 as follows:
2 15A NCAC 03K .0401 is proposed for repeal as follows: [ENTIRE BODY OF READOPTED RULE WILL BE
3 STRUCK THROUGH]
4

5 **SECTION .0400 - RANGIA CLAMS**
6

7 **15A NCAC 03K .0401 ~~PROHIBITED~~ ~~(POLLUTED)~~ ~~POLLUTED~~ AREA PERMIT**
8 **~~REQUIREMENT~~ REQUIREMENTS**

9 It ~~is shall be~~ unlawful to take Rangia clams or their shells by any method from ~~prohibited (polluted) polluted~~ waters
10 without first ~~securing obtaining~~ a Permit to Harvest Rangia Clams from ~~Prohibited (Polluted) Polluted~~ Areas from the
11 Fisheries Director. The permit application shall include a list of all designees operating under the permit. ~~Such The~~
12 permit shall designate the area, means and methods, and ~~time(s) times~~ in which Rangia clams may be taken. The
13 permit applicant shall designate the licensed fish dealer where the Rangia clams are to be landed and the method for
14 disposing of Rangia clam meats. The procedures and requirements for obtaining permits are found in 15A NCAC 03O
15 .0500.
16

17 *History Note:* Authority G.S. 113-134; ~~113-182~~; 113-201; 113-202; 143B-289.52;

18 *Eff. January 1, 1991;*

19 *Amended Eff. August 1, 2004;*

20 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

21 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0403 is proposed for repeal as follows:

2

3 **15A NCAC 03K .0403 DISPOSITION OF MEATS**

4 ~~It shall be unlawful to dispose of meats from Rangia clams taken from prohibited (polluted) waters by a method that~~
5 ~~will result in human consumption or create risk of human consumption.~~

6

7 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-298.52;*

8 *Eff. January 1, 1991;*

9 *Amended Eff. August 1, 2004;*

10 *Readopted Eff. April 1, 2019;*

11 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0405 is proposed for repeal as follows:

2

3 **15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED**

4 ~~It shall be unlawful to possess oysters, hard clams, or mussels while taking Rangia clams or their shells from a~~
5 ~~prohibited (polluted) area.~~

6

7 *History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;*

8 *Eff. August 1, 2004;*

9 *Readopted Eff. April 1, 2019;*

10 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0201 is proposed for amendment as follows:

2
3 **SECTION .0200 – SHELLFISH LEASES AND FRANCHISES**

4
5 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND**
6 **FRANCHISES**

7 (a) For the purpose of this Section:

- 8 (1) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages,
9 racks, bags, or floats.
- 10 (2) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using
11 cages, racks, bags, or floats.
- 12 (3) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish seed or
13 authorized cultch materials on a shellfish lease or franchise.
- 14 (4) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish
15 lease or franchise and lawful sale of those shellfish to the public at large or to a licensed shellfish
16 dealer.

17 ~~(a)~~(b) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and
18 requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish
19 aquaculture purposes:

- 20 (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-
21 201.1, or have 10 bushels or more of shellfish per acre;
- 22 (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a
23 water-dependent shore-based structure, except no minimum setback is required when the area to be
24 leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-
25 201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped
26 shoreline. For the ~~purposes~~purpose of this Rule, a water-dependent shore-based structure shall
27 include docks, wharves, boat ramps, bridges, bulkheads, and groins;
- 28 (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
- 29 (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing
30 ~~leases in the area,~~lease areas in the vicinity, shall not interfere with navigation or with existing,
31 traditional uses of the area; and
- 32 (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

33 ~~(b)~~(c) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a
34 shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to
35 franchises ~~recognized pursuant to G.S. 113-206~~ shall meet the standards in G.S. 113-202.2.

1 ~~(e)(d)~~ ~~Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases~~ Shellfish bottom leases and
2 franchises granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in
3 addition to the standards in and as allowed by G.S. 113-202:

- 4 (1) they produce ~~and market~~ 10 bushels of shellfish per acre per year; and
- 5 (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre
6 per year, or a combination of cultch and seed shellfish where the percentage of required cultch
7 planted and the percentage of required seed shellfish planted totals at least 100 percent.

8 ~~(d)(e)~~ Shellfish water column leases granted on or before July 1, 2019 shall be terminated unless they meet the
9 following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:

- 10 (1) they produce ~~and market~~ 40 bushels of shellfish per acre per year; or
- 11 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

12 (f) Shellfish bottom leases and franchises granted after July 1, 2019 shall be terminated unless they meet the following
13 requirements, in addition to the standards in and as allowed by G.S. 113-202:

- 14 (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year
15 period beginning in year five of the shellfish bottom lease or franchise; or
- 16 (2) for intensive culture bottom operations, the holder of the shellfish bottom lease or franchise provides
17 evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive
18 culture bottom operations, the holder of the lease or franchise plants a minimum of 15,000 shellfish
19 seed per acre per year.

20 (g) Shellfish water column leases granted after July 1, 2019 shall be terminated unless they meet the following
21 requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- 22 (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year
23 period beginning in year five of the shellfish water column lease; or
- 24 (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000
25 shellfish seed per acre annually.

26 ~~(e)(h)~~ The following standards shall be applied to determine compliance with Paragraphs ~~(e) and (d)-(d), (e), (f), and~~
27 ~~(g)~~ of this Rule:

- 28 (1) ~~Only~~ only shellfish ~~marketed, planted, planted~~ or produced as defined in ~~15A NCAC 031.0101 as~~
29 ~~the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on~~
30 ~~leases and franchises," or "shellfish production on leases and franchises"~~ Paragraph (a) of this Rule
31 shall be included in the annual shellfish lease and franchise production reports required by Rule
32 .0207 of this Section.
- 33 (2) ~~If~~ if more than one shellfish lease or franchise is used in the production of shellfish, one of the leases
34 or franchises used in the production of the shellfish shall be designated as the producing lease or
35 franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease
36 or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as
37 planting effort on only one lease or franchise.

1 (3) ~~Production and marketing production~~ information and planting effort information shall be compiled
2 and averaged separately to assess compliance with the requirements of this Rule. ~~The shellfish lease~~
3 ~~or franchise~~ Shellfish bottom leases and franchises granted on or before July 1, 2019 shall meet both
4 the production requirement and the planting effort requirement within the dates set forth in G.S.
5 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish bottom leases. The shellfish~~
6 ~~lease or franchise~~ compliance. Shellfish bottom leases and franchises granted after July 1, 2019 and
7 shellfish water column leases shall meet either the production requirement or the planting effort
8 requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in
9 ~~compliance for shellfish water column leases.~~compliance.

10 (4) ~~All~~all bushel measurements shall be in standard U.S. bushels.

11 (5) ~~In~~in determining production and marketing averages and planting effort averages for information
12 not reported in bushel measurements, the following conversion factors shall be used:

13 (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and

14 (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds
15 of fossil stone equal one bushel.

16 (6) ~~Production and marketing production~~ rate averages shall be computed irrespective of transfer of the
17 shellfish lease or franchise. The production ~~and marketing~~ rates shall be averaged for the following
18 situations using the time periods described:

19 (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years
20 remaining on the bottom lease or franchise contract after December 31 following the
21 second anniversary of the initial bottom lease or franchise;

22 (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years
23 beginning January 1 of the final year of the previous bottom lease or franchise term and
24 ending December 31 of the final year of the current bottom lease or franchise contract;

25 (C) for a shellfish water column lease, over the first five-year period for an initial water column
26 lease and over the most recent five-year period thereafter for a renewal water column lease;
27 or

28 (D) for a shellfish bottom lease or franchise issued an extension period under Rule .0208 of
29 this Section, over the most recent five-year period.

30 (7) ~~In~~in the event that a portion of an existing shellfish lease or franchise is obtained by a new lease or
31 franchise holder, the production history for the portion obtained shall be a percentage of the
32 originating lease or franchise production equal to the percentage of the area of lease or franchise site
33 obtained to the area of the originating lease or franchise.

34 ~~(f)(i) Persons~~ To be eligible for additional shellfish lease acreage, persons holding five or more any acres under ~~all a~~
35 ~~shellfish bottom leases and franchises combined~~ lease or franchise shall meet the requirements established ~~in~~
36 ~~Paragraph (e) of this Rule before submitting an application for additional shellfish lease acreage to the Division of~~
37 Marine Fisheries ~~in~~:

1 (1) Paragraphs (d), (e), (f), and (g) of this Rule;

2 (2) Rule .0204 of this Section; and

3 (3) Rule .0503(a) of this Subchapter.

4

5 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206;*
6 *143B-289.52; S.L. 2019-37, s. 3;*

7 *Eff. January 1, 1991;*

8 *Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*

9 *Temporary Amendment Eff. October 1, 2001;*

10 *Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;*

11 *Readopted Eff. August 23, 2022;*

12 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37).*

1 15A NCAC 03O .0501 is proposed for amendment as follows:
2

3 **SECTION .0500 - PERMITS**
4

5 **15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

6 (a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of
7 attorney shall provide the following information:

- 8 (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the
9 application and, if the applicant is not appearing before a license agent or the designated Division
10 of Marine Fisheries contact, the applicant's signature on the application shall be notarized;
- 11 (2) a current picture identification of the applicant, responsible party, or person holding a power of
12 attorney, acceptable forms of which shall include driver's license, North Carolina Identification card
13 issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien
14 card (green card), or passport or, if applying by mail, a copy thereof;
- 15 (3) for permits that require a list of designees, the full names and dates of birth of the designees of the
16 applicant who will be acting pursuant to the requested permit;
- 17 (4) certification that the applicant and his or her designees do not have four or more marine or estuarine
18 resource convictions during the previous three years;
- 19 (5) for permit applications from business entities:
 - 20 (A) the business name;
 - 21 (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC
22 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
 - 23 (C) the name, address, and phone number of responsible party and other identifying
24 information required by this Subchapter or rules related to a specific permit;
 - 25 (D) for a corporation applying for a permit in a corporate name, the current articles of
26 incorporation and a current list of corporate officers;
 - 27 (E) for a partnership that is established by a written partnership agreement, a current copy of
28 such agreement shall be provided when applying for a permit; and
 - 29 (F) for business entities other than corporations, copies of current assumed name statements if
30 filed with the Register of Deeds office for the corresponding county and copies of current
31 business privilege tax certificates, if applicable; and
- 32 (6) additional information as required for specific permits.

33 (b) A permittee shall hold a valid:

- 34 (1) Standard or Retired Standard Commercial Fishing License in order to hold:
 - 35 (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
 - 36 (B) a Permit for Weekend Trawling for Live Shrimp; or
 - 37 (C) a Pound Net Set Permit.

1 The master designated on the single vessel corporation Standard Commercial Fishing License is the
2 individual required to hold the Permit for Weekend Trawling for Live Shrimp.

3 (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries
4 under a quota or allocation for that category.

5 (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall
6 be eligible to hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.

7 (d) If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or
8 Retired Standard Commercial Fishing License with a Shellfish Endorsement in order for a permittee to hold a:

9 (1) Depuration Permit;

10 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~

11 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or~~

12 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish; or~~

13 ~~(5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as~~
14 provided in G.S. 113-169.2.

15 (e) If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or
16 Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a
17 permittee to hold a:

18 (1) Depuration Permit; or

19 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~

20 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or Areas.~~

21 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish.~~

22 (f) Aquaculture Operation Permit and Aquaculture Collection Permit:

23 (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold
24 an Aquaculture Collection Permit.

25 (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for
26 the species harvested and the gear used under the Aquaculture Collection Permit.

27 (g) Atlantic Ocean Striped Bass Commercial Gear Permit:

28 (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the
29 following types of gear for an initial permit and at intervals of three consecutive license years
30 thereafter:

31 (A) a gill net;

32 (B) a trawl net; or

33 (C) a beach seine.

34 For the purpose of this Rule, a "beach seine" shall mean a swipe net constructed of multi-filament
35 or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from
36 the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the
37 permittee for three consecutive license years without regard to subsequent annual permit issuance.

1 (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit
2 regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial
3 Fishing Licenses, or assignments held by that person.

4 (h) Applications submitted without complete and required information shall not be processed until all required
5 information has been submitted. Incomplete applications shall be returned to the applicant with the deficiency in the
6 application noted.

7 (i) A permit shall be issued only after the application is deemed complete and the applicant certifies his or her
8 agreement to abide by the permit general and specific conditions established under 15A NCAC 03J ~~.0501, .0505, 03K~~
9 ~~.0103, .0104, .0107, .0111, .0401, .0501 and .0505, 03K .0103 and .0107, Rule .0211 of this Subchapter, and Rules~~
10 ~~.0502 and .0503 of this Section, as applicable to the requested permit.~~

11 (j) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall evaluate
12 factors such as the following:

- 13 (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries
14 Commission;
- 15 (2) the applicant's demonstration of a valid justification for the permit; and
- 16 (3) whether the applicant has a history of eight or more fisheries violations within 10 years.

17 (k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit
18 request and the reasons therefor. The applicant may submit further information or reasons why the permit should not
19 be denied or modified.

20 (l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise
21 established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of
22 permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration
23 of the activity, compliance with federal or State fishery management plans or implementing rules, conflicts with other
24 fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

25 (m) For permit renewals, the permittee's signature on the application shall certify all information is true and accurate.
26 Notarized signatures on renewal applications shall not be required.

27 (n) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change
28 of name or address, in accordance with G.S. 113-169.2.

29 (o) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee
30 prior to use of the permit by that designee.

31 (p) Permit applications shall be available at all Division of Marine Fisheries offices.

32
33 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*
34 *Temporary Adoption Eff. September 1, 2000; May 1, 2000;*
35 *Eff. April 1, 2001;*
36 *Temporary Amendment Eff. October 1, 2001;*

1 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1,*
2 *2007; September 1, 2005; April 1, 2003; August 1, 2002;*
3 *Readopted Eff. April 1, 2019;*
4 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0503 is proposed for amendment as follows:

2
3 **15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC**

4 (a) Aquaculture Operation Permit and Aquaculture Collection Permit:

5 (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without
6 first securing an Aquaculture Operation Permit from the Fisheries Director.

7 (2) It shall be unlawful:

8 (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture
9 purposes without first obtaining an Aquaculture Collection Permit from the Fisheries
10 Director;

11 (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine
12 resources taken pursuant to an Aquaculture Collection Permit; or

13 (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year
14 on the form provided by the Division of Marine Fisheries, stating the amount and
15 disposition of marine and estuarine resources collected under authority of an Aquaculture
16 Collection Permit.

17 ~~(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 shall
18 be exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection
19 Permit issued by the Fisheries Director.~~

20 ~~(4)~~(3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on
21 a calendar year basis.

22 ~~(5)~~(4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to
23 an Aquaculture Collection Permit at the time of application.

24 (b) Atlantic Ocean Striped Bass Commercial Gear Permit:

25 (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation
26 without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.

27 (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit
28 during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired
29 Standard Commercial Fishing licenses, or assignments.

30 (c) Blue Crab Shedding Permit: It shall be unlawful to possess more than 50 blue crabs in a shedding operation
31 without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

32 (d) Coastal Recreational Fishing License Exemption Permit:

33 (1) It shall be unlawful for the responsible party seeking exemption from recreational fishing license
34 requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal
35 Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.

1 (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational
2 fishing activity conducted solely for the participation and benefit of one of the following groups of
3 eligible individuals:

4 (A) individuals with physical or mental impairment;

5 (B) members of the United States Armed Forces and their dependents, upon presentation of a
6 valid military identification card;

7 (C) individuals receiving instruction on recreational fishing techniques and conservation
8 practices from employees of state or federal marine or estuarine resource management
9 agencies or instructors affiliated with educational institutions; and

10 (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

11 For the purpose of this Paragraph, educational institutions include high schools and other secondary
12 educational institutions.

13 (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and
14 physical location of the organized fishing event for which the exemption is granted and the duration
15 of the permit shall not exceed one year from the date of issuance.

16 (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the
17 following, in addition to the information required in Rule .0501 of this Section, is submitted to the
18 Fisheries Director, in writing, at least 30 days prior to the event:

19 (A) the name, date, time, and physical location of the event;

20 (B) documentation that substantiates local, state, or federal involvement in the organized
21 fishing event, if applicable;

22 (C) the cost or requirements, if any, for an individual to participate in the event; and

23 (D) an estimate of the number of participants.

24 (e) Dealer permits for monitoring fisheries under a quota or allocation:

25 (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer
26 permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a
27 fish dealer issued such permit to fail to:

28 (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine
29 Fisheries, the previous day's landings for the permitted fishery to the Division. Landings
30 for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable
31 to fax or electronically mail the required information, the permittee shall call in the
32 previous day's landings to the Division;

33 (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request
34 or no later than five days after the close of the season for the fishery permitted;

35 (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;

36 (D) contact the Division daily, regardless of whether a transaction for the fishery for which a
37 dealer is permitted occurred; and

- 1 (E) record the permanent dealer identification number on the bill of lading or receipt for each
2 transaction or shipment from the permitted fishery.
- 3 (2) Atlantic Ocean Flounder Dealer Permit:
- 4 (A) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land
5 Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single
6 transaction at their licensed location during the open season without first obtaining an
7 Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the
8 Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- 9 (B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100
10 pounds of flounder from a single transaction from the Atlantic Ocean without first
11 obtaining an Atlantic Ocean Flounder Dealer Permit.
- 12 (3) Black Sea Bass North of Cape Hatteras Dealer Permit: It shall be unlawful for a fish dealer to
13 purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of
14 Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season
15 unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- 16 (4) Spiny Dogfish Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than
17 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny
18 Dogfish Dealer Permit.
- 19 (5) Striped Bass Dealer Permit:
- 20 (A) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken
21 from the following areas without first obtaining a Striped Bass Dealer Permit validated for
22 the applicable harvest area:
- 23 (i) the Atlantic Ocean;
- 24 (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201;
- 25 or
- 26 (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area
27 as designated in 15A NCAC 03R .0201.
- 28 (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest
29 areas opened by proclamation without having a valid Division of Marine Fisheries-issued
30 tag for the applicable area affixed through the mouth and gill cover or, in the case of striped
31 bass imported from other states, a similar tag that is issued for striped bass in the state of
32 origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred.
33 Tags shall be obtained at the Division offices. The Division shall specify the quantity of
34 tags to be issued based on historical striped bass landings. It shall be unlawful for the
35 permittee to fail to surrender unused tags to the Division upon request.
- 36 (f) Horseshoe Crab Biomedical Use Permit:
- 37 (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.

- 1 (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to
2 fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries,
3 due on February 1 of each year. Such reports shall be filed on forms provided by the Division and
4 shall include a monthly account of the number of crabs harvested, a statement of percent mortality
5 up to the point of release, the harvest method, the number or percent of males and females, and the
6 disposition of bled crabs prior to release.
- 7 (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to
8 fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management
9 Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery
10 Management Plan for Horseshoe Crab is incorporated by reference including subsequent
11 amendments and editions. Copies of this plan are available via the Internet from the Atlantic States
12 Marine Fisheries Commission at <http://www.asmfmc.org/fisheries-management/program-overview>
13 and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC
14 28557, at no cost.

15 (g) Permit for Weekend Trawling for Live Shrimp:

- 16 (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday
17 without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- 18 (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls
19 from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
- 20 (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph ~~(k)(1)~~(g)(1)
21 of this Rule to:
- 22 (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with
23 trawls;
- 24 (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in
25 Internal Coastal Waters;
- 26 (C) possess more than one gallon of dead shrimp (heads on) per trip;
- 27 (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait
28 tanks, with aerators or circulating water, with a minimum combined tank capacity of 50
29 gallons; or
- 30 (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or
31 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

32 (h) Pound Net Set Permit: The holder of a Pound Net Set Permit shall follow the Pound Net Set Permit conditions as
33 set forth in 15A NCAC 03J .0505.

34 (i) Scientific or Educational Activity Permit:

- 35 (1) It shall be unlawful for institutions or agencies seeking exemptions from license, rule, proclamation,
36 or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes
37 any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.

- 1 (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and
2 possession allowances approved by the Division of Marine Fisheries.
- 3 (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted
4 by or under the direction of Scientific or Educational institutions as defined in 15A NCAC 03I .0101.
- 5 (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to
6 fail to submit an annual report on collections and, if authorized, sales to the Division, due on
7 December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on
8 forms provided by the Division. Scientific or Educational Activity permits shall be issued on a
9 calendar year basis.
- 10 (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational
11 Activity Permit without:
- 12 (A) the required license for such sale;
- 13 (B) an authorization stated on the permit for such sale; and
- 14 (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish
15 dealer.
- 16 (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific
17 or Educational Activity Permit at the time of application.
- 18 (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries
19 Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of
20 the permit, specifying activities and location.
- 21 (j) Under Dock Oyster Culture Permit:
- 22 (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without
23 first obtaining an Under Dock Oyster Culture Permit.
- 24 (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth
25 in G.S. 113-210(c).
- 26 (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct
27 answers, based on an educational package provided by the Division of Marine Fisheries pursuant to
28 G.S. 113-210(j), demonstrating the applicant's knowledge of:
- 29 (A) the application process;
- 30 (B) permit criteria;
- 31 (C) basic oyster biology and culture techniques;
- 32 (D) shellfish harvest area closures due to pollution;
- 33 (E) safe handling practices;
- 34 (F) permit conditions; and
- 35 (G) permit revocation criteria.
- 36 (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of
37 the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

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History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;
Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;
Eff. April 1, 2001;
Amended Eff. May 1, 2017; May 1, 2015; April 1, 2014; April 1, 2009; July 1, 2008; January 1,
2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002;
Readopted Eff. April 1, 2019;
Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

1 15A NCAC 18A .0901 is proposed for amendment as follows:
2

3 **SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS**
4

5 **15A NCAC 18A .0901 DEFINITIONS**

6 The following definitions shall apply to this Section.

- 7 (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting
8 of shellfish for direct market purposes.
- 9 (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area
10 with restricted tidal flow.
- 11 (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as
12 determined by a plate count.
- 13 (4) "Commercial marina" means a marina that offers one or more of the following services: fuel,
14 transient dockage, haul-out facilities, or repair services.
- 15 (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent
16 pollution but that may be used for harvesting shellfish for direct market purposes when management
17 plan criteria are met.
- 18 (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- 19 (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall
20 be calculated by:
- 21 (a) calculating the arithmetic mean and standard deviation of the sample result logarithms
22 (base 10);
- 23 (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
- 24 (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
- 25 (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the
26 estimated 90th percentile.
- 27 (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a
28 multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C
29 plus or minus 0.2° C in a water bath.
- 30 (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- 31 (10) "Marina" means any water area with a structure (such as a dock, basin, floating dock) that is utilized
32 for docking or otherwise mooring vessels and constructed to provide temporary or permanent
33 docking space for more than 10 boats.
- 34 (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and
35 accumulated by shellstock.
- 36 (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the
37 two middle numbers when the sequence has an even number of numbers.

- 1 (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit
2 volume and is determined from the number of positive results in a series of fermentation tubes.
- 3 (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry
4 program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in
5 accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- 6 (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been
7 impeded by natural or man-made barriers.
- 8 (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- 9 (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct
10 market purposes.
- 11 (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be
12 unsafe for the harvest of shellfish for human consumption.
- 13 (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit
14 and are subjected to a treatment process through ~~relaying or~~ depuration that renders the shellfish
15 safe for human consumption.
- 16 (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish
17 growing area including sources of pollution, the effects of wind, tides, and currents in the
18 distribution and dilution of polluting materials, and the bacteriological quality of water.
- 19 (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops
20 when the final product is the shucked adductor muscle only.
- 21 (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey
22 and that is used to track the location where shellfish are harvested.
- 23 (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish
24 life.
- 25 (24) "Shellstock" means live molluscan shellfish in the shell.
- 26 (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any
27 potential or actual pollution sources or other environmental factors that may impact the sanitary
28 quality of a shellfish growing area.
- 29 (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the
30 bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution
31 and scheduled sufficiently far in advance to support random collection with respect to environmental
32 conditions.

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34 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*
35 *Eff. June 1, 1989;*
36 *Amended Eff. August 1, 1998; February 1, 1997; September 1, 1990;*
37 *Readopted Eff. May 1, 2021;*

1 15A NCAC 18A .0906 is proposed for amendment as follows:

2

3 **15A NCAC 18A .0906 RESTRICTED AREAS**

4 (a) Shellfish growing waters may be classified as restricted if:

- 5 (1) a sanitary survey indicates there are no significant point sources of pollution; and
- 6 (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels
- 7 that shellstock can be made safe for human consumption by either relaying or depuration.

8 ~~(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and~~
9 ~~15A NCAC 18A .0300.~~

10 ~~(e)(b)~~ Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K
11 and 15A NCAC 18A .0300 and .0700.

12 ~~(d)(c)~~ For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the
13 microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality
14 does not exceed the following standards based on results generated using the systematic random sampling strategy:

- 15 (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100
- 16 milliliters;
- 17 (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100
- 18 milliliters;
- 19 (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
- 20 (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-
- 21 Thermotolerant Escherichia coli (mTEC) test.

22

23 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*
24 *Eff. June 1, 1989;*
25 *Readopted Eff. May 1, 2021;*
26 *Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*

VII. PROPOSED MANAGEMENT OPTION

This issue paper presents a single option for consideration, as it is the only option that achieves the objective of the proposed rule changes: to conform MFC rules to reflect the discontinuation of the Shellfish Relay Program May 1, 2024, consistent with rulemaking requirements in the APA.

- + Complies with State law.
- + Clarifies MFC rules by removing out-of-date requirements.
- Requires lengthy rulemaking process.

VIII. RECOMMENDATION

The DMF recommends supporting the single option presented in this paper. A portion of the proposed rules are automatically subject to legislative review pursuant to Session Law 2019-198. The MFC may request a group of related rules to become effective at the same time per N.C.G.S. § 150B-21.3. Under this scenario, the earliest possible effective date of the rule changes would be the 31st legislative day of the 2024 short session, which would occur after May 1, 2024, when the Shellfish Relay Program will have ended.

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Oct. 6, 2022

Revised: Oct. 13, 2022
Nov. 16, 2022
Dec. 5, 2022
Jan. 6, 2023
Jan. 19, 2023
Feb. 2, 2023

1 **Appendix I.**

2
3 15A NCAC 03K .0103 is readopted as published in 36:07 NCR 470-471 as follows:

4
5 **15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS**

6 ~~(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the~~
7 ~~following criteria. The area has:~~

- 8 (1) ~~conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;~~
9 (2) ~~shellfish populations or shellfish enhancement projects that may:~~
10 (A) ~~produce commercial quantities of shellfish at 10 bushels or more per acre;~~
11 (B) ~~produce shellfish suitable for transplanting as seed or for relaying from prohibited~~
12 ~~(polluted) areas; or~~
13 (C) ~~serve as sanctuaries to increase spawning and disease resistance or to prevent predation.~~

14 (a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions
15 suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the
16 propagation of shellfish and has at least one of the following:

- 17 (1) planted cultch;
18 (2) existing shell; or
19 (3) existing live shellfish.

20 (b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on
21 biological impacts or variable spatial distribution, including shifted material.

22 ~~(b)(c) It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed~~
23 ~~Management area. Area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall~~
24 ~~be the same designation as the designated waters to which they connect or into which they flow. No unauthorized~~
25 ~~removal or relocation of any such marker shall have the effect of changing the designation of any such body of water~~
26 ~~or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the~~
27 ~~applicability of any rule pertaining to any such body of water or portion thereof.~~

28 ~~(e)(d) It is shall be unlawful to take shellfish from any Shellfish Management Area which that has been closed and~~
29 ~~posted, in accordance with Paragraph (b) of this Rule, except that the Fisheries Director may, by proclamation, open~~
30 ~~specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method~~
31 ~~or equipment that may be employed. impose any of the following requirements based on biological impacts or user~~
32 conflicts:

- 33 (1) specify time;
34 (2) specify area;
35 (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
36 (4) specify season;
37 (5) specify size;

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION), SHOWN HERE WITH GRAY SHADING. NO ADDITIONAL CHANGES ARE PROPOSED.

1 (6) specify quantity; and

2 (7) specify marking requirements.

3

4 *History Note:* *Authority G.S. 113-134; 113-182; 113-204; ~~113-221~~; 113.221.1; 143B-289.52;*

5 *Eff. January 1, 1991;*

6 *Amended Eff. March 1, 1994;*

7 *Temporary Amendment Eff. October 1, 2001;*

8 *Amended Eff. October 1, 2008; February 1, 2008; April 1, 2003;*

9 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0107 is readopted as published in 36:07 NCR 471-472 as follows:

2
3 **15A NCAC 03K .0107 DEPURATION OF ~~SHELLFISH~~CLAMS AND OYSTERS**

4 (a) It ~~is shall be~~ unlawful to take clams or oysters from ~~the polluted public or private prohibited (polluted)~~ waters or
5 ~~franchises~~ of the ~~state~~State for the purpose of depuration except when the harvest will utilize ~~shellfish clams or oysters~~
6 that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the
7 State of North Carolina related to depuration shall be under the supervision of the Division of Marine ~~Fisheries or the~~
8 ~~Division of Environmental Health Fisheries. For the purpose of this Rule, the term depuration does not include~~
9 ~~relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.~~

10 (b) The Fisheries Director, may, by proclamation, impose any ~~or all~~ of the following restrictions on the harvest of
11 clams or oysters for depuration:

- 12 (1) ~~Specify specify~~ species;
- 13 (2) ~~Specify areas specify areas,~~ except harvest ~~will shall~~ not be allowed from designated buffer zones
14 adjacent to sewage outfall facilities;
- 15 (3) ~~Specify specify~~ harvest days;
- 16 (4) ~~Specify time period; specify time;~~
- 17 (5) ~~Specify specify quantity or size;~~
- 18 (6) ~~specify quantity;~~
- 19 (6)(7) ~~Specify specify~~ harvest methods; and
- 20 (7)(8) ~~Specify specify~~ record keeping requirements.

21 (c) Depuration permits:

- 22 (1) ~~It is it shall be~~ unlawful for individuals to harvest clams or oysters from ~~prohibited (polluted)~~
23 ~~polluted~~ waters for the purpose of depuration unless they have obtained a Depuration Permit or are
24 listed as designees on a Depuration Permit from the Division ~~of Marine Fisheries and Division of~~
25 ~~Environmental Health~~ setting forth the method of harvest to be employed. Permits shall be issued
26 to licensed North Carolina ~~Clam or Oyster Dealers clam or oyster dealers~~ only. Permittees and
27 designees harvesting under Depuration Permits ~~must shall~~ have a current Shellfish License or
28 Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. ~~The~~
29 ~~procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~
- 30 (2) ~~In in~~ addition to information required in 15A NCAC 03O .0501, the permit application shall provide
31 the name, address, ~~location location,~~ and telephone number of the depuration operation where the
32 shellfish will be depurated.
- 33 (3) ~~Clam or Oyster Dealers clam or oyster dealers~~ desiring to obtain ~~prohibited (polluted)~~ clams or
34 oysters ~~from polluted waters~~ for ~~the purpose of~~ depuration shall apply for a depuration permit at
35 least 15 days prior to initiation of operation.

36 (d) Transport of clams or oysters for depuration:

NOTE: RULE IS CURRENTLY UNDER CONSTRUCTION WITH PROPOSED CHANGES THAT ARE PENDING LEGISLATIVE REVIEW PURSUANT TO S.L. 2019-198 (2023 LONG SESSION), SHOWN HERE WITH GRAY SHADING. NO ADDITIONAL CHANGES ARE PROPOSED.

1 (1) ~~Clams-clams~~ or oysters harvested from ~~prohibited (polluted)~~ polluted waters for depuration in a
2 depuration operation located within the State of North Carolina shall be transported under the
3 supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~ Division.

4 (2) ~~Clams-clams~~ or oysters harvested from ~~prohibited (polluted)~~ polluted waters for depuration in a
5 depuration operation outside the State of North Carolina shall not be transported within the State of
6 North Carolina except under the supervision of the ~~Division of Marine Fisheries or the Division of~~
7 Environmental Health Division.

8 (e) It ~~is shall be~~ unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state
9 other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control
10 agency of that state.

11 ~~(f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

12
13 *History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;
14 Eff. January 1, 1991;
15 Temporary Amendment Eff. October 1, 2001;
16 Amended Eff. October 1, 2008; April 1, 2003;
17 Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

Appendix II.

§ 113-203. Transplanting of oysters and clams.

(a) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009 (subdivision (a)(2)), and by Session Laws 2014-120, s. 26, effective September 18, 2014 (remainder of subsection (a)).

(a1) Repealed by Session Laws 2014-120, s. 26, effective September 18, 2014.

(a2) It is unlawful to do any of the following:

- (1) Transplant oysters or clams taken from public grounds to private beds except when lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.
- (2) Transplant oysters or clams taken from permitted aquaculture operations to private beds except from waters in the approved classification.
- (3) Transplant oysters or clams from public grounds or permitted aquaculture operations utilizing waters in the restricted or conditionally approved classification to private beds except when the transplanting is done in accordance with the provisions of this section and implementing rules.

(a3) Unless the Secretary determines that the nursery of shellfish in an area will present a risk to public health, it is lawful to transplant seed oysters or seed clams taken from permitted aquaculture operations that use waters in the prohibited, restricted, or conditionally approved classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the Secretary that sets times during which transplant is permissible and other reasonable restrictions imposed by the Secretary under either of the following circumstances:

- (1) When transplanting seed clams less than 12 millimeters in their largest dimension.
- (2) When transplanting seed oysters less than 25 millimeters in their largest dimension.

(a4) It is unlawful to conduct a seed transplanting operation pursuant to subsection (a3) of this section if the seed transplanting operation is not conducted in compliance with its Aquaculture Seed Transplant Permit.

(b) It is lawful to transplant from public bottoms to private beds oysters or clams taken from waters in the restricted or conditionally approved classifications with a permit from the Secretary setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Secretary for the regulation of transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(c) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009.

(d) It is lawful to transplant to private beds in North Carolina oysters taken from natural or managed public beds designated by the Marine Fisheries Commission as seed oyster management areas. The Secretary shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated seed oyster management areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid the Secretary in the Secretary's duty of regulating such transplanting operations. Persons taking such seed oysters may, in the discretion of the Marine Fisheries Commission, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed oyster management operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Marine Fisheries Commission may implement the provisions of this section by rules governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds.

(f) The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed one hundred dollars (\$100.00) per permit.

(g) Advance Sale of Permits; Permit Revenue. - 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. (1921, c. 132, s. 2; C.S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1967, c. 878; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1987, c. 641, s. 6; c. 827, s. 98; 1989, c. 727, s. 100; 1997-400, s. 5.7; 2007-495, s. 3; 2009-433, s. 6; 2013-360, s. 14.8(s); 2014-120, s. 26; 2019-37, s. 5.)