

NC Marine Fisheries Commission
Rulemaking
February 2024 Business Meeting

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January 26, 2024

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 its preferred management option and associated proposed rulemaking language for two issues under development in the 2024-2025 Rulemaking Cycle.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina N.C.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 a report phase, followed by rule readoption. For 15A NCAC 03 (Marine Fisheries), the MFC completed the initial rule readoption process.
 - For 15A NCAC 18A (Sanitation), the MFC has 79 rules remaining for readoption. On January 16, 2020, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2024, for these rules. The MFC gave final approval of these rules at its November 2023 business meeting and the rules were submitted to the RRC in December 2023, so the process is on track.
 - For the second iteration of the periodic review requirements, the RRC approved the report deadlines effective June 1, 2023. For the MFC rules, the final reports will be due in early 2027. DMF staff will provide further information to the MFC as that time approaches.
- There are two rulemaking issues under development for the 2024-2025 Rulemaking Cycle. At its February 2024 business meeting, the MFC will be asked to vote on its preferred management option for each issue so the required fiscal analyses can be developed, and the formal rulemaking process can be ready to begin at the MFC's August 2024 business meeting.

Action Needed

The MFC will be asked to vote on its preferred management option and associated proposed rulemaking language for the "False Albacore Management Issue Paper" and the "Pot Marking Requirements Issue Paper" so the rulemaking development process can continue for the 2024-2025 Rulemaking Cycle.

Recommendations

- 2024-2025 Annual Rulemaking Cycle:
 - "False Albacore Management Issue Paper": the DMF recommends Option 2, do not adopt a rule at this time but formally monitor false albacore landings and provide a landings summary (including trends in the fishery, length frequency distributions, and any changes in management that may occur at the state and federal level) to the MFC at its annual August business meeting.
 - "Pot Marking Requirements Issue Paper": the DMF recommends Option 2, amend the rule to simplify pot buoy marking requirements by requiring only one of three ways to mark pot buoys, not two ways.
- For more information, please refer to the rulemaking section of the briefing materials.

2023-2024 Rulemaking Cycle Update (103 rules)

At its May 2023 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 103 rules. A summary of the proposed rules by subject is provided below. A table showing the timing of the steps in the process is included in the rulemaking section of the briefing materials. The proposed rules were published in the August 1, 2023, issue of the *N.C. Register*, beginning the public comment process, and a news release was issued.

The MFC accepted public comments on the proposed rules from August 1 through 5 p.m. October 2, 2023. Two written public comments were submitted about the rules that are described with the corresponding subjects below. A public hearing was held via WebEx with a listening station at the DMF's Central District Office in Morehead City on August 16 at 6 p.m. One member of the public provided comments that are described with the corresponding subject below.

The MFC received the public comments at its November 2023 business meeting and voted to give final approval of 83 of the 103 rules that are related to shellfish plants and inspections. The 83 proposed rules 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. The remaining 20 rules will be addressed at the MFC's May or August 2024 business meeting.

READOPTON OF SHELLFISH PLANT AND INSPECTION RULES IN 15A NCAC 18A .0300 THROUGH .0800 (85 rules)

Pursuant to N.C.G.S. § 150B-21.3A, this package of 85 rules in 15A NCAC 03K and 18A is proposed for the readoption of one rule with no changes, readoption of 55 rules with amendments, repeal through readoption of 23 rules, amendment of two 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. No public comments were submitted about these rules.

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 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 provide the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in division data collection and provide a safer working environment for division employees. One written public comment was submitted opposing these rules.

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 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. No public comments were submitted about this rule.

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 identified 11 rules relating to the Shellfish Relay Program that set specific requirements for the 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. There was one commenter at the public hearing that spoke against phasing out the shellfish relay program.

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). Specifically, changes incorporate and conform the shellfish production and planting requirements from Session Law 2019-37 for shellfish leases granted before July 1, 2019, and for shellfish leases granted on or after this date. Additional proposed changes 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. One written public comment was submitted opposing shellfish leases, generally.

2024-2025 Rulemaking Cycle (2 rules)

At the MFC's November 2023 business meeting, DMF staff provided a preview of potential rules in the MFC's 2024-2025 annual rulemaking cycle, including management options for false albacore, and pot marking requirements. This cycle is scheduled to begin the rulemaking process at the MFC's August 2024 business meeting; a table of the steps in the process is included in the briefing materials. The MFC's preferred management option and associated proposed language for rulemaking for each issue are needed for development of the required fiscal analyses so the formal rulemaking process can be ready to begin in August. A table summarizing these issues is included in the briefing materials, as are the two issue papers; a summary description is also included here. Proposed rules would have an earliest effective date of May 1, 2025, 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 2026 short session.

FALSE ALBACORE MANAGEMENT RULE ADOPTION (1 rule)

The proposed adoption of this rule would provide a mechanism to implement management measures to cap harvest when the false albacore fishery landings exceed a threshold of 200% of average landings from both sectors combined from 2018 to 2022. Harvest restrictions would be implemented if the threshold is exceeded as a means to prevent further expansion of the false albacore fisheries beyond the threshold. Currently, there are no rules in place for management of false albacore in North Carolina.

There is no baseline stock assessment for false albacore and thus, no biological basis for reducing harvest. The only mechanism to monitor false albacore is through annual landings in North Carolina, which is not a measure for sustainability of the stock. While there is no need to manage to meet sustainability requirements, the MFC is seeking proactive management of false albacore to limit expansion of new and existing fisheries. Management options would include commercial trip limits, recreational bag limits, and recreational vessel limits.

POT MARKING REQUIREMENTS RULE AMENDMENTS (1 rule)

Proposed amendments would simplify pot marking requirements for commercial fishermen by requiring only one of three ways to mark pot buoys, not two ways: 1) gear owner's current motorboat registration number; or 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. The current rule requires the gear owner's last name and initials be identified on

each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. There have been no problems with pot identification and pot identification would be sufficient via a single identifier. The proposed amendments would simplify the requirements and grant some relief to commercial fishermen that use pots in their commercial fishing operation.

Division staff will provide a preview of other potential rules in the MFC's 2024-2025 annual rulemaking cycle at its February 2024 business meeting. Subjects under development include rules to implement the Interstate Wildlife Violator Compact Act, as required by N.C.G.S. § 113-300.7; proposed changes to permit rules; and phased-in mandatory reporting for recreational harvest of five species and all commercial harvest regardless of sale, as required by Session Law 2023-137, Section 6.

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 were 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 MFC is the agency with the authority for the approval steps prescribed in the process for marine fisheries and crustacea and shellfish sanitation rules.

The review has two parts. The first is a report phase, which has concluded for the first iteration of the periodic review requirements. The second part is 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 had 211 rules in Chapter 03 (Marine Fisheries), of which 172 were subject to readoption, and 164 rules in Chapter 18, Subchapter 18A (Sanitation) that are also subject to readoption.

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	1 Rule Readopted	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.

For 15A NCAC 03 (Marine Fisheries), the MFC completed the initial rule readoption process. For 15A NCAC 18A (Sanitation), the MFC has 79 rules remaining for readoption. For the second iteration of the periodic review requirements, the RRC approved the report deadlines effective June 1, 2023. For the MFC rules, the final reports will be due in early 2027.

N.C. Marine Fisheries Commission 2023-2024 Annual Rulemaking Cycle

February 2024

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 approved 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
Aug. 16, 2023	Public hearing held via WebEx with listening station
Nov. 17, 2023	MFC receives public comments and approves 83 of 103 permanent rules
Jan. 31, 2024	83 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.
May or August 2024	MFC receives reminder of public comments and votes on final approval of remaining 20 of 103 permanent rules, followed by review by Office of Administrative Hearings/Rules Review Commission
June 30, 2024	Readoption deadline for 15A NCAC 18A

N.C. Marine Fisheries Commission 2024-2025 Annual Rulemaking Cycle

February 2024

Time of Year	Action
February-July 2024	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 23, 2024	MFC votes on approval of Notice of Text for Rulemaking
Oct. 1, 2024	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Dec. 2, 2024	Public comment period held
November 2024	Public hearing held (details TBD)
February 2025	MFC votes on approval of permanent rules
April 2025	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
May 1, 2025	Earliest effective date of rules not subject to legislative review
May 1, 2025	Rulebook supplement available online
2026 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.

Issue Paper Title	Issue	Origination	Proposed Rules	Division of Marine Fisheries Recommendation
FALSE ALBACORE MANAGEMENT	Propose a false albacore rule for adoption to be able to cap harvest in the North Carolina false albacore fishery if annual landings increase substantially. This would allow for precautionary management by implementing stopgap management measures for false albacore. The N.C. Marine Fisheries Commission agreed by consensus to use a growth scenario of 200% of status quo, defined as the five-year average of N.C. recreational landings and the five-year average of N.C. commercial landings from 2018-2022, as the basis for developing a proposed rule. The N.C. Division of Marine Fisheries later established, to simplify rulemaking and to avoid allocation issues, the threshold would be based on the recreational and commercial landings combined. Management measures would include commercial trip limits, recreational bag limits, and recreational vessel limits.	N.C. Marine Fisheries Commission	<ul style="list-style-type: none"> • 15A NCAC 03M .0523 	Option 2, do not adopt the rule at this time but formally monitor false albacore landings and provide a landings summary (including trends in the fishery, length frequency distributions, and any changes in management that may occur at the state and federal level) to the N.C. Marine Fisheries Commission at its annual August business meeting.
SIMPLIFY POT MARKING REQUIREMENTS	Proposed amendments would simplify pot marking requirements for commercial fishermen by requiring only one of three ways to mark pot buoys, not two ways: 1) gear owner's current motorboat registration number; or 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. The current rule requires the gear owner's last name and initials be identified on each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. There have been no problems with pot identification and pot identification would be sufficient via a single identifier. The proposed amendments would simplify the requirements and grant some relief to commercial fishermen that use pots in their commercial fishing operation.	N.C. Marine Fisheries Commission	<ul style="list-style-type: none"> • 15A NCAC 03J .0301 	Option 2, amend the rule.

False Albacore Management Issue Paper

February 2, 2024

I. ISSUE

Adopt a rule to cap harvest in the North Carolina false albacore fishery.

II. ORIGINATION

N.C. Marine Fisheries Commission (MFC)

III. BACKGROUND

At its February 2023 business meeting, the MFC passed a motion requesting N.C. Division of Marine Fisheries (DMF) staff develop a proposed rule for false albacore to be able to cap harvest in the North Carolina false albacore fishery if annual landings increase substantially. This would allow for precautionary management by implementing stopgap management measures for false albacore.

N.C. False Albacore Fisheries

False albacore has become a more popular and targeted fishery in recent years in North Carolina, especially for the recreational sector. Participants associated with the fishery have expressed concern to both state and federal level managers about increases in harvest and targeted trips of the species. Coastwide, there are no known commercial or recreational regulations currently in place to directly manage false albacore fisheries at the state or federal level.

Landings from both the commercial and recreational sectors have increased in state waters over the last 10 years (Table 1); however, North Carolina accounts for a relatively small proportion of the overall coastwide landings (Figures 1 & 2). Trends in the number of recreationally harvested and released fish have remained low and stable in the last 10 years (Table 1). 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 approximately 3% of the total number of trips in state and federal waters (Table 2). There is no evidence of size truncation for false albacore in either sector and the majority of fish caught are well above the length where they are at or above 50% mature (13.6 inches fork length) (Cruz-Castán et al. 2019).

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 1997–2022. (Source: Marine Recreational Information Program and North Carolina Trip Ticket Program)

Year	Recreational		Landed	Commercial	Total	
	Numbers					Weight (lb)
	Landed	# Released				Weight (lb)
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	
2022	38,772	127,255	234,923	147,065	381,988	
Average	22,658	87,383	162,123	157,579	319,994	

*Data subject to change due to continued corrections and modifications to sampling methods.

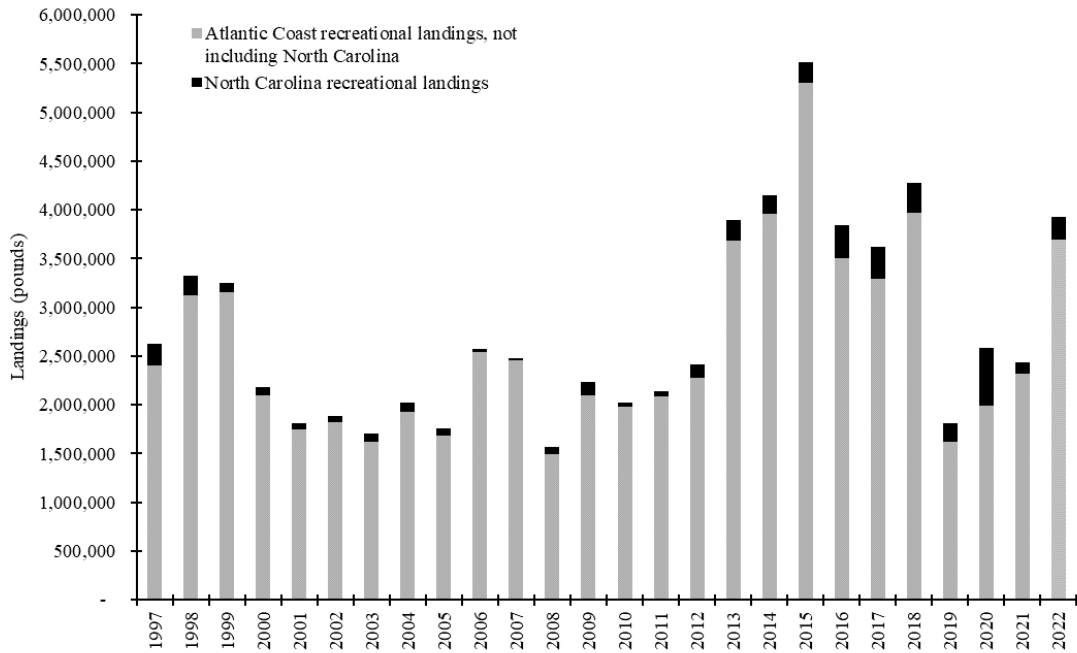


Figure 1. Coastwide and North Carolina recreational false albacore landings (pounds), 1997-2022. (Source: Marine Recreational Information Program)

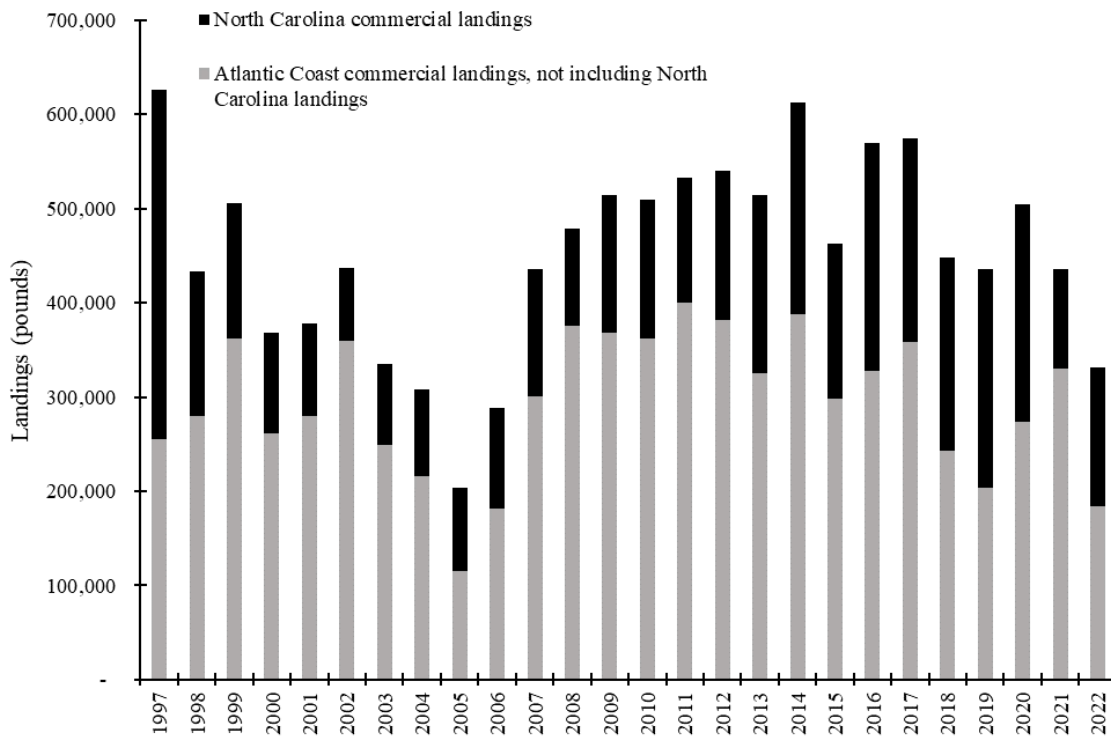


Figure 2. Coastwide and North Carolina commercial false albacore landings (pounds), 1997-2022. (Source: Atlantic Coastal Cooperative Statistics Program and North Carolina Trip Ticket Program)

Table 2. North Carolina commercial false albacore trips percent harvest by gear type (pounds per trip), based on daily landings and gear, 2013–2022. Note: Longline and other gears (trawls, seines, pound nets and spears) not shown individually due to data confidentiality. (Source: North Carolina Trip Ticket Program)

Trip Ranges (Pounds)	Gill Net (Trips)	Gill Net (Percent Trips)	Hook & Line (Trips)	Hook & Line (Percent Trips)	All Gears (Trips)	All Gears (Percent Trips)
≤50	6,692	35%	4,122	22%	10,980	58%
51-100	1,470	8%	1,731	9%	3,225	17%
101-150	666	4%	892	5%	1,581	8%
151-200	377	2%	488	3%	874	5%
201-300	420	2%	506	3%	933	5%
301-400	188	1%	234	1%	428	2%
401-500	143	1%	121	1%	266	1%
501-1,000	275	1%	150	1%	428	2%
>1,000	178	1%	27	0%	214	1%
Total	10,409	55%	8,271	45%	18,929	100%

Interjurisdictional False Albacore Management

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 MFC 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 N.C. FMP for Interjurisdictional Fisheries, which adopts management measures within approved SAFMC, Mid-Atlantic Fishery Management Council (MAFMC), and Atlantic States Marine Fisheries Commission (ASMFC) FMPs by reference as the minimum standard. As of the date of this paper, there are no rules in place for false albacore management in North Carolina. Additionally, the MAFMC did not include false albacore in their Unmanaged Forage [fish] Amendment in 2016 because of their large size and higher trophic level (MAFMC 2017). At the August 2016 MAFMC meeting, Council staff recommended the MAFMC consider developing management actions for the species in the future (including a potential small tunas FMP), 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.

In December 2022, a paper entitled "Little Tunny White Paper" was presented at the SAFMC business meeting that examined if false albacore meets the Magnuson-Stevens Fishery Management and Conservation Act criteria for a stock in need of conservation and management (50 C.F.R. §600.305(c)(1)). [More information on the findings contained in the white paper can be found at the SAFMC webpage for the December 2022 business meeting at which the white paper was presented.](#) 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 versus state waters, catch per unit effort, and length distribution.

The ASMFC Interstate Fisheries Management Policy Board (Policy Board) tasked ASMFC staff in February 2022 to present an options paper on possible paths forward for management of Atlantic bonito and false albacore after concerns were raised regarding increased recreational harvest of juvenile fish in some state waters. Staff presented possible options for developing different paths to management for both Atlantic bonito and false albacore at the May 2023 ASMFC Policy Board meeting. The information also included the states' ability to regulate a species without an ASMFC FMP and timing to implement measures without an ASMFC FMP. It was noted if additional species were added to the ASMFC portfolio, it would increase the workload for ASMFC and state staff, some of which are already

at full capacity. Although some states are interested in management measures for these species, ASMFC's Policy Board decided not to pursue management at the interstate level.

N.C. False Albacore Management

As part of its charge to develop a rule to cap harvest in the North Carolina false albacore fishery, the DMF considered also drafting an "unmanaged species" rule for MFC consideration, for initiating management for false albacore and other species for which there are currently no rules. Some examples of how this issue has been addressed by the federal councils include the MAFMC's Unmanaged Forage Omnibus Amendment (MAFMC 2017), which designated 16 forage species and species groups as ecosystem component species, and the SAFMC's Dolphin Wahoo Amendment 12 (SAFMC 2020), which incorporated bullet and frigate mackerel as ecosystem component species.

The DMF determined there is not a "one size fits all" solution and it will take time and careful consideration to determine the best approach. The DMF will use the next comprehensive review of the N.C. FMP for Interjurisdictional Fisheries, currently scheduled for 2027, to further explore ways to address unmanaged species and emerging fisheries at the state level. However, the N.C. FMP for Interjurisdictional Fisheries would only potentially apply to species managed by the SAFMC, MAFMC, or ASMFC that lack a species-specific MFC rule. Example species could include spiny lobster, longfin squid, and shortfin (*Illex*) squid. A separate rule for species not managed by ASMFC or the federal fishery management councils would also be needed. Example species could include Atlantic cutlassfish, Florida pompano, tripletail, and whelk.

At its August 2022 business meeting the MFC requested staff update information on, and landings of, false albacore to frame potential management options for future consideration. [More information on the findings in the information paper can be found at the MFC webpage for the February 2023 business meeting at which the updated information paper was presented.](#) The information paper goes into detail on the life history, state by state landings, and data limitations for false albacore in North Carolina and the western Atlantic.

When the information paper was presented to the MFC at its February 2023 business meeting, the DMF recommended to not pursue state level management at this time, but to continue to monitor trends and collect additional life history data to inform future management. Since North Carolina accounts for a small proportion of the overall coastwide landings and due to the coastwide nature of false albacore, any N.C. management would penalize N.C. fishermen if no other states implemented regulations. Further, there appears to be no biological concern for the false albacore stock since there is no evidence of size truncation in the commercial and recreational fisheries and the majority are well above the length at maturity. The DMF also continued deliberations at the SAFMC and ASMFC meetings in 2023 to determine if coastwide management was warranted under either management body; both deemed it unnecessary at this time and instead decided to monitor landings for any coastwide harvest shifts needing more in-depth review.

At its February 2023 business meeting, the MFC passed a motion requesting staff provide rulemaking language with management options for false albacore starting with status quo and allowing for growth at various percentage points. DMF staff defined "Status quo" for false albacore as the five-year average landings for both recreational and commercial sectors combined from 2018 to 2022 and then applied percentage points of growth to this five-year average (2018-2022) at 125%, 150%, 175%, and 200% of status quo. These percentage points of growth from the five-year average landings illustrate a threshold to implement management measures to limit expansion of new and existing false albacore fisheries in North Carolina. [The details on the growth scenarios were provided to the MFC at its May 2023 business meeting and the presentation is provided on the corresponding MFC webpage.](#) By consensus at its May 2023 business meeting, the MFC agreed to use a growth scenario of 200% of status quo, defined as the five-year average of North Carolina recreational landings and the five-year average of North Carolina commercial landings from 2018-2022, as the basis for developing a proposed rule. The DMF later established, to simplify rulemaking and to avoid allocation issues, the threshold would be based on the recreational and commercial landings combined (Figure 3).

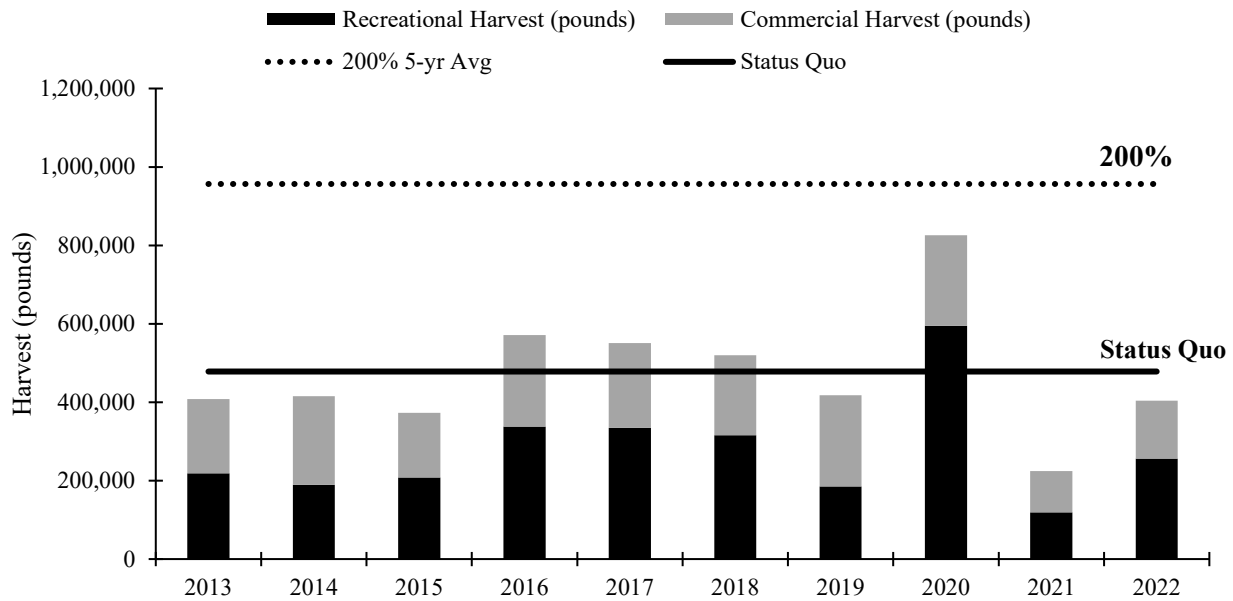


Figure 3. Recreational (black portion of stacked bar) and commercial (gray portion of stacked bar) false albacore harvest (pounds) to the 5-year commercial and recreational combined harvest average (status quo – 2018-2022), with the 200% growth threshold. (Sources: North Carolina Trip Ticket Program and Marine Recreational Information Program)

IV. AUTHORITY

North Carolina General Statutes

- § 113-134. RULES.
- § 113-182. REGULATION OF FISHING AND FISHERIES.
- § 113-221.1. PROCLAMATIONS; EMERGENCY REVIEW.
- § 143B-289.52. MARINE FISHERIES COMMISSION – POWERS AND DUTIES.

V. DISCUSSION

To address the MFC request for precautionary management of false albacore, DMF staff developed a proposed rule to activate management measures to cap harvest when the false albacore fishery landings exceed a threshold of 200% of average landings from both sectors combined from 2018 to 2022. This is shown in the Proposed Rule section of this paper and as Option 3 in the Proposed Management Options section. Harvest reductions would be implemented if the threshold is exceeded as a means to prevent further expansion of the false albacore fisheries beyond the threshold. There is no baseline stock assessment for false albacore and thus, no biological basis for reducing harvest. The only mechanism to monitor false albacore is through annual landings in North Carolina, which is not a measure for sustainability of the stock.

If the proposed rule is not adopted by the MFC, therefore maintaining status quo, annual false albacore landings would still continue to be tracked through the [License and Statistics Annual Report](#), also known as the "Big Book", without the MFC needing to take formal action; but this could result in landings substantially increasing without the MFC and DMF being aware of the trends unless staff monitor landings on a formal basis. This is shown as Option 1 in the Proposed Management Options section of this paper. Also offered is Option 2, which would formally monitor landings on an annual basis without adopting a rule. This could inform the MFC and the DMF if rulemaking authority is necessary. DMF staff would monitor false albacore landings and provide a landings summary (including trends in the fishery, length frequency distributions, and any changes in management that may occur at the state and federal level) to the MFC at its annual August business meeting. This option would result in less workload for DMF staff since there

would be no rule to develop or regulations to enforce. However, there would be no rule in place for the MFC and the DMF to implement management measures if landings substantially increase.

Under the proposed rule (Option 3), the MFC would formally receive an update at its annual August business meeting on false albacore landings through the previous calendar year (Option 2) to monitor whether the 200% threshold of the five-year average has been exceeded. Since there is no biological basis for the threshold and to avoid allocation issues, the combined recreational and commercial landings would determine if the threshold had been exceeded. If landings from the previous calendar year exceed the threshold, a memo would be provided to the MFC containing the DMF justification for false albacore management, including information on whether it is an anomalous annual harvest estimate. Other influencing factors could include expanding markets for bait or food sources, an unusual year for false albacore movement into N.C. waters, or expansion in the number of participants in the fisheries.

Pursuant to the proposed rule, MFC concurrence would be required for the DMF Director to issue a proclamation to implement management measures to reduce harvest of false albacore. The draft proclamation would also be provided to the MFC for their review. The requirement in the proposed rule for MFC concurrence prior to issuance of the proclamation provides a choice to the MFC to implement harvest restrictions or not implement harvest restrictions. This management scenario allows the MFC to consider other factors that may be influencing an increase in landings to the extent that the threshold has been exceeded. A fishery that shows progressive expansion over several years (versus one anomalous spike in landings as occurred with false albacore in 2020) usually has other factors in play to cause the growth of a fishery where a harvest cap would be more useful and appropriate for preventing further expansion of the fishery. If a significant expansion only occurs in one sector, the rule does not allow for implementing regulations for only one sector. Regulations would be implemented for both the commercial and recreational fisheries once the threshold (based on combined landings) is exceeded.

A delayed January 1 start date from the August MFC business meeting would allow over four months to inform the public of the new restrictions. The public would be notified through usual communications by DMF via a news release, broadcast email through the license holder distribution list, and social media posts. MFC meetings are public meetings at which the public can provide input to the MFC, and the MFC also has the option to refer an issue to its standing and regional advisory committees for input. The delayed effective date for implementing a proclamation to be effective on January 1 the year following the year the determination is made would have the added benefit of shortening the time between the effective date of the proclamation (January 1) and the time data from the next calendar year would be available. The previous calendar year's data can be available as early as April 30, with variability from year to year, and would enable DMF staff to determine if the next year's annual landings of false albacore fall below the designated threshold. Expiration of the proclamation would be contingent on when the combined annual landings fall below the threshold and would require MFC concurrence as required by the proposed rule.

A two-way clause for MFC concurrence is built into the proposed rule to account for situations that could occur in the management of the false albacore fishery: concurrence for the proclamation to be issued initially and again for the proclamation to expire. Possible situations are outlined below.

A scenario for MFC concurrence to issue the proclamation is the MFC is informed that the landings exceeded the threshold the previous year. However, it was determined that the landings appear to be an anomalous spike instead of a progressive increase over several years. The MFC chooses not to issue the proclamation to prevent implementing harvest restrictions for what appears to be an anomalous year of landings. The MFC could choose to issue a proclamation in a subsequent year if landings remain above the threshold.

A scenario for MFC concurrence to expire the proclamation is a proclamation is issued to be effective on January 1, 2028, to address the landings exceeding the threshold in 2026. At the August 2028 business meeting, the MFC is informed that landings are below the threshold in 2027. The MFC chooses to not expire the proclamation so that the harvest limits remain in place. In August 2029, the MFC is informed that landings exceeded the threshold again in 2028. The MFC keeping the proclamation in place in 2028 prevents the "yo-yo" pattern of management where harvest limits are implemented and expire on a nearly annual basis.

Another scenario for MFC concurrence is the MFC is given an update at its August business meeting that landings continue to increase while a proclamation is in effect with harvest limits. In this case, if the MFC determines that the increase in landings warrants concern, then the MFC could request the DMF Director issue a proclamation with more

restrictive harvest measures. This proclamation would supersede the previous one and contain management measures deemed appropriate by the DMF to address the MFC concerns. This proclamation would be effective the following January 1. The proposed rule intentionally builds in MFC concurrence since there is no fishery management plan to address adaptive management when landings are variable from year to year.

The proposed rule would use recreational bag limits, recreational vessel limits, and commercial trip limits to restrict harvest if the designated threshold is exceeded. Other management measures to restrict harvest that were considered, but not supported by DMF in the development of the proposed rule, include limits on specific fishing gear, seasons, or size. Restricting specific gear types is not necessary as a first step for management of an unregulated fishery. Fishing seasons are not recommended as a mechanism to constrain harvest due to the incidental nature of the commercial fishery and the catch-and-release nature of the recreational fishery. Additionally, size limits are not recommended since most of the fish harvested are above the size when mature. The DMF considers the use of daily recreational bag and vessel limits, and commercial trip limits as a reasonable first step in managing an unregulated fishery to control harvest.

A daily recreational bag limit could be established to limit the number of fish allowed to be kept by an individual or vessel. A commercial trip limit could also be established to reduce harvest. While bag and trip limits can reduce fishing mortality, it is important to note that restricting trip limits could result in increased discards on days when large catches occur.

Recreational anglers on directed trips landed on average 0.6 fish per trip and daily landings ranged from zero to 18 fish per trip from 2013 to 2022 (Table 3). In 2020, directed recreational trips increased to a 10-year high and the average landings per trip increased to 0.8 fish per person. Implementing recreational bag limits may limit harvest if fishermen begin keeping more than what is kept currently but may increase discards and serve as a target for anglers to retain more fish than normal.

Recreational vessels intercepted by the Marine Recreational Information Program (MRIP) (for-hire and private boat modes combined) had an average of four anglers per vessel; however, the number of anglers ranged from one to 10 from 2013 to 2022. The average number of false albacore harvested from the recreational private and for-hire vessels ranged from 1 to 4 fish, with maximum harvest from 11 to 35 false albacore with usually multiple anglers onboard (Table 4).

Table 3. Recreational mean, minimum and maximum number of fish harvested per person per trip, 2013-2022 (Source: Marine Recreational Information Program).

Year	Average Number per Trip	Minimum Number per Trip	Maximum Number per Trip	Number of Directed Trips
2013	0.3	0	3	17,721
2014	0.5	0	6	10,529
2015	0.5	0	4	38,406
2016	0.4	0	9	25,191
2017	0.4	0	6	37,733
2018	0.6	0	8	26,728
2019	0.6	0	11	64,140
2020	0.8	0	9	68,736
2021	0.5	0	7	20,425
2022	1.1	0	18	28,242

Table 4. Recreational mean, minimum and maximum number of false albacore harvested aboard private and for-hire vessels, 2013-2022. (Source: Marine Recreational Information Program)

Year	Average Number per Vessel	Minimum Number per Vessel	Maximum Number per Vessel
2013	1	0	11
2014	2	0	26
2015	2	0	22
2016	2	0	19
2017	1	0	20
2018	2	0	25
2019	2	0	21
2020	3	0	28
2021	2	0	18
2022	4	0	35

A recreational vessel limit of 30 fish per vessel per day is recommended as an upper boundary in rule in conjunction with a bag limit of 10 fish per person per day. Ten fish per person is a round number that is easy for anglers to remember and is often used when introducing recreational bag limits when regulations are first implemented on a species. For example, this occurred with sheepshead (via proclamation through rule 15A NCAC 03M .0521 since 2015), black drum (via proclamation through rule 15A NCAC 03M .0512 since 2014), and initially for spotted seatrout (via proclamation in 1994 and then in rule 15A NCAC 03M .0504 in 1997), which is currently at a lower 4 fish daily bag limit since 2011. The vessel limit assumes at least three people onboard, with a current maximum average of four people onboard; setting the vessel limit to a 30-fish maximum provides a precautionary approach for the recreational sector, which has shown it can increase annual landings rapidly, as seen in 2020 (Figure 3).

This may seem like a high limit, but it is proposed as an upper boundary not to be exceeded but not necessarily applied in the proclamation. Putting in recreational vessel limits may limit harvest if fishermen begin keeping more than what is kept currently, but may increase discards, and serve as a target for anglers to retain more fish than normal. Vessel limits may also alter angler behavior to avoid more restrictive limits. For example, if a vessel limit were to be more restrictive due to the number of anglers on board, a party of anglers might opt to take two vessels rather than one in order to allow everyone to retain their bag limit. There are instances of vessel limits for certain species differing between recreational private and for-hire vessels (i.e., cobia). This is not an appropriate option for false albacore at this time as it creates confusion and inequities within the recreational sector. Due to the unregulated nature of this fishery, it is not necessary as a first step for management.

The wording in the proposed rule of "per person per day" for the recreational bag limit does not overtly address multi-day recreational trips, but it is consistent with the wording for recreational bag limits in proclamations for king ([FF-51-2022](#)) and Spanish ([FF-38-2023](#)) mackerel and bluefish ([FF-31-2022](#)), which are species that false albacore fishermen often interact with. Since false albacore are often harvested by recreational fishermen pursuing Spanish and king mackerel, the use of "per person per day" would be familiar and easy to remember by fishermen.

Commercially, false albacore is largely an incidental species and landings per trip are generally low. Approximately 58% of overall commercial trips land less than 50 pounds (Table 2); however, there are instances when daily landings exceed 1,000 pounds (Table 2). Daily commercial landings have ranged from one pound to 4,675 pounds from 2013 to 2022. Overall, 97% of commercial trips landed less than 500 pounds from 2013 to 2022. Implementing trip limits may discourage development of a high-volume fishery; however, if the trip limits are set too low, discards may increase. Also, trip limits are not as effective when a gear's discard mortality is high and trip limits may encourage fishermen to retain more fish than normal. A commercial limit of 3,500 pounds per commercial fishing operation per trip is recommended as the upper boundary in rule but, like the recreational daily limits, can be set at a lower amount in the proclamation if the threshold is exceeded in the combined fishery. The highest commercial trip on record is

4,600 pounds, so 3,500 pounds is more precautionary if participation in the commercial fishery was to increase. A precedent is already in place for a 3,500 pound commercial trip limit for Spanish and king mackerel at the opening of their fishing season with reduced daily trip limits from that starting point as the mackerel fisheries reach their annual catch limit (proclamation [FF-15-2023](#)). Since false albacore are often harvested by commercial operations pursuing Spanish and king mackerel, a 3,500-pound trip limit is an amount that would be easy to remember by fishermen.

In the context of the MFC's request for the DMF to develop rulemaking language to manage false albacore, the DMF supports the use of recreational bag limits, recreational vessel limits, and commercial trip limits if the fisheries expand. Annual review of false albacore landings would allow for consideration of other influencing factors that may cause the fisheries to exceed the threshold in a calendar year and be considered an anomaly. Other influencing factors could include expanding markets for bait or food sources, an unusual year for false albacore movement into N.C. waters, or expansion in the number of participants in the fisheries.

The proposed rule offers an opportunity for the MFC to implement stopgap management measures for false albacore if annual landings are substantially higher than the past. This would allow for the precautionary management requested by the MFC and it would also consider the uncertainties in false albacore life history and stock status. Although the DMF does not support false albacore management currently, ongoing research on false albacore could provide more insight on the appropriateness of management in North Carolina and the rest of the U.S. Atlantic coast.

1 **VI. PROPOSED RULE**

2
3 15A NCAC 03M .0523 is proposed for adoption as follows:

4
5 **15A NCAC 03M .0523 FALSE ALBACORE**

6 (a) If the level of landings of false albacore in a calendar year exceeds 200 percent of the five-year average of North
7 Carolina recreational and commercial landings combined from 2018-2022, the Fisheries Director shall issue a
8 proclamation as set forth in Paragraph (b) of this Rule.

9 (b) In accordance with Paragraph (a) of this Rule and after prior consent of the Marine Fisheries Commission, the
10 Fisheries Director shall, by proclamation, impose the following requirements on the taking of false albacore:

- 11 (1) for recreational purposes, specify a bag limit not to exceed 10 fish per person per day, not to exceed
12 30 fish per vessel per day; and
13 (2) for a commercial fishing operation, specify a trip limit not to exceed 3,500 pounds in any one day
14 or trip, whichever is more restrictive.

15 (c) A proclamation issued in accordance with Paragraphs (a) and (b) of this Rule shall become effective January 1 of
16 the year following the year when the determination is made that a proclamation shall be issued. The proclamation
17 shall expire when the level of landings falls below the landings level in Paragraph (a) of this Rule in a subsequent
18 calendar year and after prior consent of the Marine Fisheries Commission.

19
20 *History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;*
21 *Eff. May 1, 2025.*

VII. PROPOSED MANAGEMENT OPTIONS

Management Options

(+ Potential positive impact of action)

(- Potential negative impact of action)

- Option 1: Status quo – Informal monitoring of annual false albacore landings through the License and Statistics Annual Report ("Big Book")
- + No additional workload for DMF staff
 - + No rule development for a coastwide stock with limited data and an unknown stock status
 - Annual landings updates that track landings trends are unavailable
 - No rule in place for implementing management measures if landings substantially increase
- Option 2: Do not adopt rule at this time but formally monitor false albacore landings and provide a landings summary (including trends in the fishery, length frequency distributions, and any changes in management that may occur at the state and federal level) to the MFC at its annual August business meeting.
- + Availability of annual landings updates that track landings trends to inform the MFC if adoption of a rule is necessary
 - + No rule development for a coastwide stock with limited data and an unknown stock status
 - No rule in place for implementing management measures if landings substantially increase
- Option 3: Formally monitor false albacore landings and provide a landings summary (as described in Option 2 above) to the MFC at its annual August business meeting. Adopt rule for precautionary management of false albacore to cap harvest via recreational bag limits, recreational vessel limits, and commercial trip limits when the false albacore fishery landings exceed a threshold of 200% of average landings from both sectors combined from 2018 to 2022. Harvest reductions would be implemented if the threshold is exceeded as a means to prevent further expansion of the false albacore fisheries beyond the threshold, contingent on MFC concurrence.
- + Rule in place for implementing management measures if landings substantially increase
 - + Availability of annual landings updates that track landings trends to inform the MFC the landings trigger was reached and if restrictions need to be implemented
 - + Process in place to sunset management measures if landings fall below the threshold
 - Additional workload for DMF staff
 - Rule development for a coastwide stock with limited data and an unknown stock status
- Recreational Bag Limits
- + May limit harvest if fishers begin keeping more than they currently do
 - May increase discards
 - May serve as a target or goal for anglers to retain more than they normally would
- Recreational Vessel Limits
- + May limit harvest if anglers begin keeping more than they currently do
 - May increase discards
 - May serve as a target or goal for anglers to retain more than they normally would
 - Anglers may alter behavior to circumvent more restrictive limits
- Commercial Trip Limits
- + May limit harvest
 - + May discourage high volume targeted fisheries from developing
 - May create additional discards if the trip limits are set too low
 - Less effective for gears where discard mortality is high
 - May serve as a target or goal for fishers to retain more than they normally would

VIII. RECOMMENDATION

The DMF recommends Option 2.

IX. LITERATURE CITED

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SIMPLIFY POT MARKING REQUIREMENTS ISSUE PAPER

January 5, 2024

I. ISSUE

Simplify marking requirements for pot buoys.

II. ORIGINATION

N.C. Marine Fisheries Commission (MFC)

III. BACKGROUND

At its August 2021 business meeting, the MFC gave approval to begin the rulemaking process for a large package of proposed amendments and readoption of rules under a state-mandated periodic review schedule. One subject in this package covered eight rules related to commercial blue crab harvest and gear regulations. The amendments and readoptions were proposed primarily to conform the rules with existing blue crab management measures previously approved and implemented through Amendment 3 of the Blue Crab Fishery Management Plan. Additional amendments to this group of eight rules updated marking requirements for pot buoys, consistent with proposed amendments to other MFC rules containing gear marking requirements in the larger package of rules.

Requirements for the use of pots are set forth in 15A NCAC 03J .0301, POTS. Originally, the rule required one of three possible forms of identification on each pot buoy: 1) gear owner's current motorboat registration number; 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. This rule is one of nine MFC rules that contain similar marking requirements for different types of gears, including gill nets (15A NCAC 03J .0103), trawl nets (15A NCAC 03J .0104), channel nets (15A NCAC 03J .0106), seines (15A NCAC 03J .0110), fyke nets and hoop nets (15A NCAC 03J .0111), recreational use of pots (15A NCAC 03J .0302), trotlines (15A NCAC 03J .0305), and pound nets (15A NCAC 03J .0501). As part of the readoption process, the MFC proposed amendments to make these requirements consistent across rules. As a result, amendments were proposed to the "pots" rule to require the gear owner's last name and initials be identified on each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. When the proposed changes were developed, N.C. Division of Marine Fisheries Marine Patrol staff estimated many (at least half of) commercial fishermen using pots already met the requirements that were proposed. The proposed changes were promulgated through the rulemaking process set forth in the Administrative Procedure Act and amendments to the "pots" rule became effective March 15, 2023.

At the May 2023 MFC business meeting, a commissioner relayed concerns from commercial fishermen about the new pot marking requirements. Most fishermen that use pots use numerous pots in their commercial fishing operation and use a vessel to deploy and retrieve them. At any point, fishermen may opt to sell their vessel and buy another vessel, which under the new requirements means the buoy for every pot must be changed to reflect the new vessel registration number or vessel name, even if the buoy already has the gear owner's last name and initials. Under the original rule, only one of the three means of identification was required to be marked on the pot buoy (the gear owner's name, vessel number, or vessel name). The changes that became effective March 15, 2023, were not made due to problems with pot identification, rather the changes were made for consistency across gears for marking requirements. The MFC passed a motion at its May 2023 business meeting directing NCDMF staff to restore the "pots" rule to require only one of three possible forms of identification on each pot buoy, not two.

IV. AUTHORITY

N.C.G.S. § 113-134. Rules.
N.C.G.S. § 113-182. Regulation of fishing and fisheries.
N.C.G.S. § 143B-289.52. Marine Fisheries Commission - powers and duties.
N.C.G.S. § 150B-19.1. Requirements for agencies in the rule-making process.

V. DISCUSSION

N.C.G.S. § 150B-19.1, Requirements for agencies in the rule-making process, Subparagraph(a)(2), states an "agency shall seek to reduce the burden upon those persons or entities who must comply with the rule." Since the recent amendments to 15A NCAC 03J .0301 for pot marking requirements were made for consistency across gears and MFC

rules, not due to problems for Marine Patrol or others with the identification of the owner of pots, and since there have been no new problems with pot identification, it is appropriate to grant some relief for marking requirements to commercial fishermen that use pots in their commercial fishing operation by simplifying the requirements.

This relief can be achieved by restoring the original content of 15A NCAC 03J .0301(c) to reflect a choice of three ways for a gear owner to mark their pot: 1) gear owner's current motorboat registration number; or 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. The current rule requires the gear owner's last name and initials be identified on each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. The proposed amendments would essentially change the requirements from "gear owner's name AND gear owner's vessel number OR gear owner's vessel name" to "gear owner's name OR gear owner's vessel number OR gear owner's vessel name", simplifying the requirements for commercial fishermen by requiring only one of three ways to mark pot buoys, not two ways.

The proposed amendments would mean that marking requirements for pots would be different than marking requirements for other gears, and the rulemaking process would have to be undertaken, which takes time. But per Marine Patrol, pot identification would be sufficient with either the gear owner's name, or the gear owner's vessel number, or the gear owner's vessel name, and there would be no impact on enforcement activities. Commercial fishermen that use pots in their commercial fishing operation would be granted some relief with the adoption of the simplified requirements.

1 VI. PROPOSED RULE(S)

2
3 SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES

4
5 15A NCAC 03J .0301 POTS

6 (a) It shall be unlawful to use pots except during time periods and in areas specified herein:

7 (1) in Internal Waters from December 1 through May 31, except that:

8 (A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed
9 from Internal Waters from January 1 through January 31. Fish pots upstream of the U.S.
10 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke,
11 Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from this
12 removal requirement.

13 (B) in the Southern Region designated in 15A NCAC 03R .0118(2) all pots shall be removed
14 from Internal Waters from March 1 through March 15.

15 (2) in Internal Waters from June 1 through November 30 in the Northern Region designated in 15A
16 NCAC 03R .0118(1):

17 (A) in areas described in 15A NCAC 03R .0107(a).

18 (B) to allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director
19 may, by proclamation, specify time periods for and designate the areas described in 15A
20 NCAC 03R .0107(b) or any part thereof, for the use of pots.

21 (3) in Internal Waters from May 1 through November 30 in the Southern Region designated in 15A
22 NCAC 03R .0118(2), the Fisheries Director may, by proclamation, specify time periods and areas
23 for the use of pots.

24 (4) in the Atlantic Ocean from May 1 through November 30 the Fisheries Director may, by
25 proclamation, specify time periods and areas for the use of pots.

26 (b) It shall be unlawful to use pots:

27 (1) in any navigation channel marked by State or Federal agencies; or

28 (2) in any turning basin maintained and marked by the North Carolina Ferry Division.

29 (c) It shall be unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating
30 buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any
31 shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than
32 five inches in diameter and no less than five inches in length. ~~The gear owner's last name and initials~~ One of the
33 following shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the ~~buoy.~~

34 ~~If a vessel is used, the identification shall also include one of the following:~~ buoy:

35 (1) gear owner's current motor boat registration number; ~~or~~

36 (2) gear owner's U.S. vessel documentation ~~name~~ name; or

37 (3) gear owner's last name and initials.

1 (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

2 (e) It shall be unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-
3 eighths-inch bar.

4 (f) It shall be unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half inch.

5 (g) Except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing
6 Waters unless each pot contains no less than three unobstructed escape rings that are at least two and five-sixteenth
7 inches inside diameter and:

8 (1) for pots with a divider:

9 (A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and

10 (B) at least one escape ring shall be located within one full mesh of the corner and one full
11 mesh of the bottom of the divider in the upper chamber of the pot.

12 (2) for pots without a divider:

13 (A) two escape rings shall be located on opposite panels of the pot; and

14 (B) at least one escape ring shall be located within one full mesh of the corner and one full
15 mesh of the bottom of the pot.

16 For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.

17 (h) The Fisheries Director may, by proclamation, impose on a commercial fishing operation and for recreational
18 purposes any of the following restrictions for pots:

19 (1) specify time;

20 (2) specify area;

21 (3) specify means and methods;

22 (4) specify record keeping and reporting requirements;

23 (5) specify season, including a closed season for removal of all pots from Internal Waters;

24 (6) specify species; and

25 (7) specify quantity.

26 (i) It shall be unlawful to use more than 150 crab pots per vessel in Newport River.

27 (j) It shall be unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after
28 sunset and one hour before sunrise.

29 (k) It shall be unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

30 (l) It shall be unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or
31 "leaders" shall mean any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any
32 device with leads or leaders used to capture fish shall not be a pot.

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34 *History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;*

35 *Eff. January 1, 1991;*

36 *Amended Eff. August 1, 1998; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992;*

37 *September 1, 1991;*

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Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. September 1, 2000;
Amended Eff. May 1, 2015; April 1, 2014; September 1, 2005; August 1, 2004; August 1, 2002;
Readopted Eff. March 15, ~~2023~~, 2023;
Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

VII. PROPOSED MANAGEMENT OPTIONS

(+ Potential positive impact of action)

(- Potential negative impact of action)

1. *Status quo* – Maintain requirement for two sources of identification on pot buoys.

- + Gear marking requirements remain consistent across gear types
- + Rulemaking process not required
- Relief for marking requirements not granted to commercial fishermen that use pots in their commercial fishing operation despite a lack of any problems with pot identification via a single identifier

2. Amend rule to simplify pot buoy marking requirements by requiring only one of three ways to mark pot buoys, not two ways.

- + Relief granted for marking requirements to commercial fishermen that use pots in their commercial fishing operation
- Marking requirements for pots different than marking requirements for other gears
- Rulemaking process required
- +/- Pot identification sufficient with either gear owner's name or vessel registration number or vessel name

VIII. RECOMMENDATION

The DMF recommends Option 2.

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