

Issues/Reports



May 2016 Revision to Amendment 2 to the North Carolina Blue Crab Fishery Management Plan
 Summary of Recommendations

<p>Division of Marine Fisheries</p> <ul style="list-style-type: none"> • Recommend adding two additional cull rings to crab pots, one of which must be located within one full mesh of the corner of the pot and within one full mesh of the bottom of the apron/stairs of the upper chamber of the pot. • Recommend eliminating the harvest of v-apron immature female hard crabs (excluding peeler crabs) and that v-apron immature hard crab females be added to the current 10% culling tolerance (currently only includes sublegal male and immature female hard crabs). • Recommend prohibiting sponge crab harvest (all stages) from April 1 – April 30. • Recommend prohibiting crab harvest with dredges except incidental to lawful oyster dredging as outlined in N.C. Marine Fisheries Commission Rule 15A NCAC 03L .0203(a)(2).
<p>Northern Regional Advisory Committee</p> <ul style="list-style-type: none"> • Recommended no possession of v-apron crabs (consistent with moderate management measure A3) and to keep a 10% cull tolerance across the board. • Recommended the NCMFC investigate re-tooling the data collection system for the blue crab industry and work with the industry to identify a more appropriate sampling approach (e.g. winter dredge survey). • Recommended adding two additional cull rings to crab pots. One cull ring must be within one full mesh of the bottom of the apron/stairs of the upper chamber of the pot, effective January 16, 2017.
<p>Southern Regional Advisory Committee</p> <ul style="list-style-type: none"> • Recommended to reduce the tolerance of sublegal size blue crabs to a minimum of 5% and directed the NCMFC to look at gear modifications to reduce sublegal catch and to eliminate harvest of v-apron immature hard crab females. • Recommended no take of black sponge crabs with a cull tolerance of 5%.
<p>Shellfish and Crustacean Advisory Committee</p> <ul style="list-style-type: none"> • Recommend to NCMFC to adopt the measures of no v-apron hard crabs and no black sponge crab harvest with a 5% tolerance for both (excludes v-apron peelers). • Recommend to NCMFC to use two cull rings (no additional cull rings and current legal size) but to reposition one cull ring within one full mesh of the bottom of the apron/stairs of the upper chamber of the pot, effective January 16, 2017. • Recommend to NCMFC to request the other commissions under the Coastal Habitat Protection Plan Steering Committee look at NCDMF blue crab recruit abundance data, ask what the Environmental Management Commission (EMC) and Coastal Resources Commission (CRC) have done to improve habitat and water quality conditions for blue crab, and determine if they can develop a suite of options that the EMC and CRC could implement to improve water quality and habitat conditions in those areas. • Recommend to NCMFC to request NCDMF observers on commercial crab boats to collect data to assist with the blue crab Traffic Light assessment. • Recommend to NCMFC to request NCDMF staff analyze the 21 years of commercial fishery data, refined by taking into account socio-economic information such as storms, prices, picking house availability, etc. that affects fishing effort, and align it with 21 years of NCDMF fishery-independent data and summarize in a report. In the future, refine the fishery-dependent data set so it can be incorporated. • Recommend to NCMFC to request NCDMF staff look at the effect of predation by striped bass, red drum, cownose rays, and other species on blue crabs. • Recommend to NCMFC to look at dealer requirements and how they are enforced and if changes are needed.

DRAFT – SUBJECT TO CHANGE

May 2016 Revision

to

Amendment 2

to the

North Carolina Blue Crab

Fishery Management Plan

Prepared by the

North Carolina Department of Environmental Quality
Division of Marine Fisheries
3441 Arendell Street
P.O. Box 769
Morehead City, NC 28557



Marine Fisheries
ENVIRONMENTAL QUALITY

DRAFT – SUBJECT TO CHANGE

Executive Summary

Blue crab (*Callinectes sapidus*) is the most economically important species for commercial fisheries in North Carolina. North Carolina typically ranks within the top three blue crab producing states on the east coast both in pounds harvested and in value. In an attempt to better assess and manage the blue crab fishery, in Amendment 2 to the N.C. Blue Crab Fishery Management Plan (FMP) an alternative method, the Traffic Light, was used to evaluate the blue crab stock condition. This method is capable of synthesizing a variety of information to provide a description of the stock condition. The Traffic Light for blue crab consists of three characteristics: adult abundance, recruit abundance, and production. The nature of the Traffic Light method does not allow for a quantitative assessment of sustainable harvest for the North Carolina blue crab stock since overfishing cannot be calculated.

Amendment 2 also established that the blue crab stock is considered overfished when the proportion of red in the production characteristic of the Traffic Light is greater than or equal to the third quartile ($\geq 75\%$ red) for three consecutive years. Based on this definition, the results of the current update indicate the N.C. blue crab stock is not overfished.

Due to the inability of the Traffic Light to estimate sustainable harvest levels, any level of reduction selected may be based on the degree of concern about the state of the blue crab stock as indicated by data trends. Further, the adaptive management framework in Amendment 2 does not identify specific reduction goals for either the moderate or elevated management levels. This is because without biological reference points it cannot be determined what reduction is needed to end overfishing if it is occurring. However, Amendment 2 does require some management action be taken to address the N.C. blue crab stock as indicated by the Traffic Light.

Though the overfished definition is based solely on the production characteristic, the adult abundance and recruit abundance characteristics are monitored for warning signs that the stock may be approaching an unfavorable state. If a series of negative trends is evident in the Traffic Light for the adult abundance or production characteristics for three consecutive years, management measures must be implemented through the adaptive management framework to improve the unfavorable condition of the stock. Only the adult abundance and production characteristics are utilized to trigger management action; the recruit abundance characteristic is used to augment management action, if deemed necessary. The recruit abundance characteristic is not used to trigger management action due to inadequate spatial and temporal survey coverage. A review by the Shellfish/Crustacean Advisory Committee is maintained to consider management options, evaluate their merits, and N.C. Marine Fisheries Commission (NCMFC) approval must be gained before the Director's proclamation authority (expanded under the adaptive management framework) is used to implement any changes to the fishery.

Impacts to the blue crab stock and the fishery were estimated for management options specified in the adaptive management framework. Generally, these options include: 1) increasing the minimum size limit, 2) restricting the harvest of immature female and sponge crabs, 3) modifications to the Crab Spawning Sanctuary system, 4) reducing the cull tolerance of undersize crabs, 5) gear modifications to increase escapement, and 6) closure of the fishery. Each of these options provides for increased escapement of either juvenile, immature female, or sponge stage blue crabs.

The revision, public comment, and advisory committee recommendations will be presented to the NCMFC at its May 18-20, 2016 business meeting. At that time, the NCMFC will select their

DRAFT – SUBJECT TO CHANGE

preferred management option(s). Management measures approved by the NCMFC will be implemented by proclamation and will likely be effective June 1, 2016 unless otherwise specified by the NCMFC. This Information Paper will be incorporated as a Revision 1 to Amendment 2 to the North Carolina Blue Crab FMP, and document the management strategy changes and rationale for such as determined by majority vote of NCMFC. All other management strategies contained in Amendment 2 will remain in force until another Revision, Supplement, or Amendment to the N.C. Blue Crab FMP occurs.

I. ISSUE

Implement adaptive management measures to remain in compliance with the North Carolina Marine Fisheries Commission's (NCFMC) Amendment 2 to the North Carolina Blue Crab Fishery Management Plan (FMP), based on results from the 2015 update to the blue crab Traffic Light.

II. ORIGINATION

North Carolina Division of Marine Fisheries (NCDMF), Fisheries Management staff.

III. BACKGROUND

Amendment 2 to the North Carolina Blue Crab Fishery Management Plan adopted by the Marine Fisheries Commission in November 2013 incorporated the use of the traffic light stock assessment method and adaptive management measures for management of the blue crab stock. Amendment 2 requires annual updates to the blue crab Traffic Light be presented to the Marine Fisheries Commission as part of the Division of Marine Fisheries' annual Stock Status Report. At the Marine Fisheries Commission's August 2015 meeting, the division stated it would update the blue crab Traffic Light early and present the results to the Marine Fisheries Commission in May 2016 due to the high probability management action would need to be taken after the 2015 update to the blue crab Traffic Light.

The Traffic Light method synthesizes a variety of information to provide a description of stock condition. The indicator (survey) value in each year for each data series was assigned a green, yellow, or red 'signal' based on the state of the indicator relative to the base years used in the Traffic Light. Typically, the color green is indicative of a positive stock condition, yellow of a neutral or transitioning stock condition, and red of a negative stock condition. Similar indicators were aggregated into three stock characteristics: adult abundance, recruit abundance, and production. The main assumptions of the Traffic Light method are: 1) the indicators reflect the characteristic to which they are assigned and 2) the characteristics adequately reflect the feature of the stock they represent. The base years used for the blue crab Traffic Light (1987-2009) will remain constant until the next amendment of the FMP unless a new approach to assess the stock is adopted.

The previous management strategy, established in the 2004 Blue Crab FMP Amendment 1, only used a single point estimate for stock status based on September data from the Pamlico Sound Survey (P195) (NCDMF 2004). In addition, compliance with the female seasonal maximum size limit was marginal and largely ineffective at protecting large mature females. Even when crabbers complied with the management measure by releasing large females, these

DRAFT – SUBJECT TO CHANGE

females may have been captured multiple times and injured, or ultimately harvested by another crabber during their migration to the lower estuaries and into the sounds. The Traffic Light method provides a more robust indicator of the overall blue crab stock condition because the data inputs are from multiple statewide surveys encompassing all aspects of the blue crab's life history and distribution rather than a single point index.

Adaptive Management Framework

An adaptive management framework adopted in Amendment 2 includes the blue crab Traffic Light. The blue crab Traffic Light is divided into three separate characteristics: 1) adult abundance, 2) recruit abundance, and 3) production. Each characteristic uses data from several division biological surveys and sampling programs to determine the relative abundance of adult and recruit blue crabs in the population and various production indicators for the stock each year. Under Amendment 2, management measures will be implemented in the blue crab fishery if certain biological triggers are met. Either the adult abundance or production characteristic of the blue crab Traffic Light must be at or above the 50% red threshold for three consecutive years to trigger moderate management action and must be at or above the 75% red threshold for two of three consecutive years to trigger elevated management action as established in Amendment 2. The recruit abundance indicator, while not used to trigger management action, may be used to augment any management action taken if a trigger is activated. The three year time period was chosen to prevent taking management action as a result of annual variability in the blue crab stock and instead base any management response on the observation of a short but continued declining trend in the population.

Amendment 2 established the blue crab stock is considered overfished when the proportion of red in the production characteristic of the Traffic Light method is greater than or equal to 75% red for three consecutive years. Based on this definition, the results of the current update indicate the North Carolina blue crab stock is not overfished.

Once moderate or elevated management actions are implemented, they will remain in place for three years; then a three-year evaluation period will begin with the first year management actions were implemented. The decision-making flowchart for implementing management of the different scenarios and outcomes is presented in Figure 1. If management measures have been in place for the moderate threshold level for three consecutive years and the stock condition in that characteristic continues at the moderate threshold or rises to the elevated threshold, then management measures would increase to the elevated threshold level for another three-year period. If after that time the characteristic shows no further improvement, then it will automatically start the FMP supplement process. If management measures have been in place at the moderate threshold and the stock improved to a healthy condition for three consecutive years, then management measures could be relaxed.

DRAFT – SUBJECT TO CHANGE

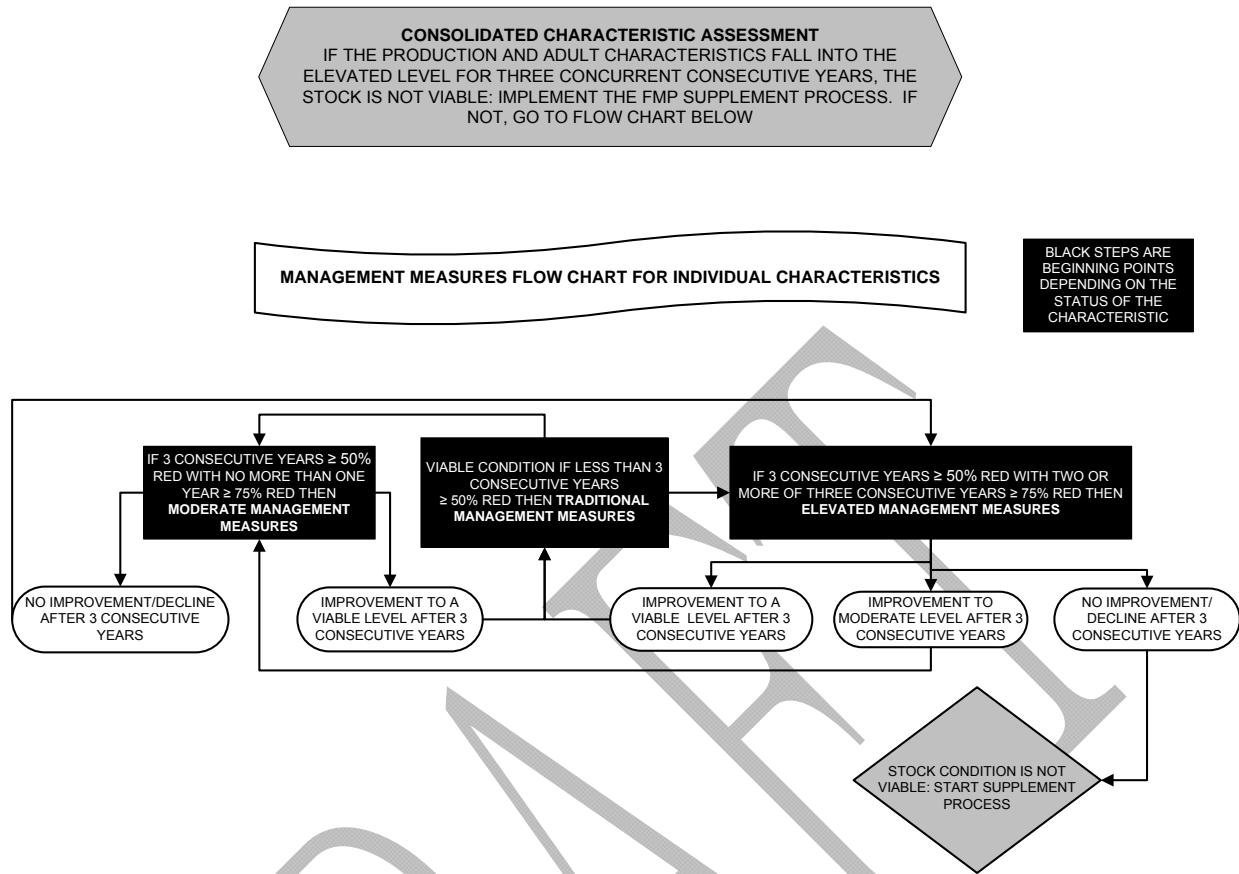


Figure 1. The blue crab adaptive management framework decision-making process for each management level.

Stock Concerns and Status of the Blue Crab Traffic Light

The blue crab Traffic Light has been updated with 2015 data for stock status determination (Figure 5). The production characteristic (2013=52%, 2014=71%, 2015=44% red) has not met the elevated threshold for three consecutive years; as such, the blue crab stock is not overfished (Figure 5). Figure 6 shows the status of the individual indicators used for the production characteristic. However, the adult abundance characteristic has met the moderate management threshold for three consecutive years (2013=72%, 2014=79%, 2015=50% red; Figure 5). As such, under the adaptive management framework adopted by the NCMFC as part of Amendment 2, management action is required to improve the condition of the N.C. blue crab stock using the moderate management measures specified for the adult abundance characteristic (Table 1). Figure 7 shows the status of the individual indicators used for the adult abundance characteristic. The recruit abundance characteristic has met the elevated management threshold (2013=92%, 2014=96%, 2015=75%; Figure 5) allowing both the moderate and elevated management measures specified for the recruit abundance characteristic to be considered. Figure 8 shows the status of the individual indicators used for the recruit abundance characteristic. Details about the sampling programs used to collect the data for the blue crab Traffic Light can be found in Appendix 1. Additional figures showing the survey data used for the blue crab Traffic Light can be found in Appendix 2. Additional information concerning commercial landings trends can be found in Appendix 3.

DRAFT – SUBJECT TO CHANGE

Table 1. Management measures under the adaptive management framework for the blue crab Traffic Light in the North Carolina Blue Crab Fishery Management Plan Amendment 2. **Measures shaded are those under consideration based on the adaptive management framework in Amendment 2 and the 2015 blue crab Traffic Light update results.**

Characteristic	Moderate management level	Elevated management level
Adult abundance	A1. Increase in minimum size limit for male and immature female crabs	A4. Closure of the fishery (season and/or gear)
	A2. Reduction in tolerance of sublegal size blue crabs (to a minimum of 5%) and/or implement gear modifications to reduce sublegal catch	A5. Reduction in tolerance of sublegal size blue crabs (to a minimum of 1%) and/or implement gear modifications to reduce sublegal catch
	A3. Eliminate harvest of v-apron immature hard crab females	A6. Time restrictions
Recruit abundance	R1. Establish a seasonal size limit on peeler crabs	R4. Prohibit harvest of sponge crabs (all) and/or require sponge crab excluders in pots in specific areas
	R2. Restrict trip level harvest of sponge crabs (tolerance, quantity, sponge color)	R5. Expand existing and/or designate new crab spawning sanctuaries
	R3. Close the crab spawning sanctuaries from September 1 to February 28 and may impose further restrictions	R6. Closure of the fishery (season and/or gear) R7. Gear modifications in the crab trawl fishery
Production	P1. Restrict trip level harvest of sponge crabs (tolerance, quantity, sponge color)	P4. Prohibit harvest of sponge crabs (all) and/or require sponge crab excluders in pots for specific areas
	P2. Minimum and/or maximum size limit for mature female crabs	P5. Reduce peeler harvest (no white line peelers and/or peeler size limit)
	P3. Close the crab spawning sanctuaries from September 1 to February 28 and may impose further restrictions	P6. Expand existing and/or designate new crab spawning sanctuaries P7. Closure of the fishery (season and/or gear)

DRAFT – SUBJECT TO CHANGE

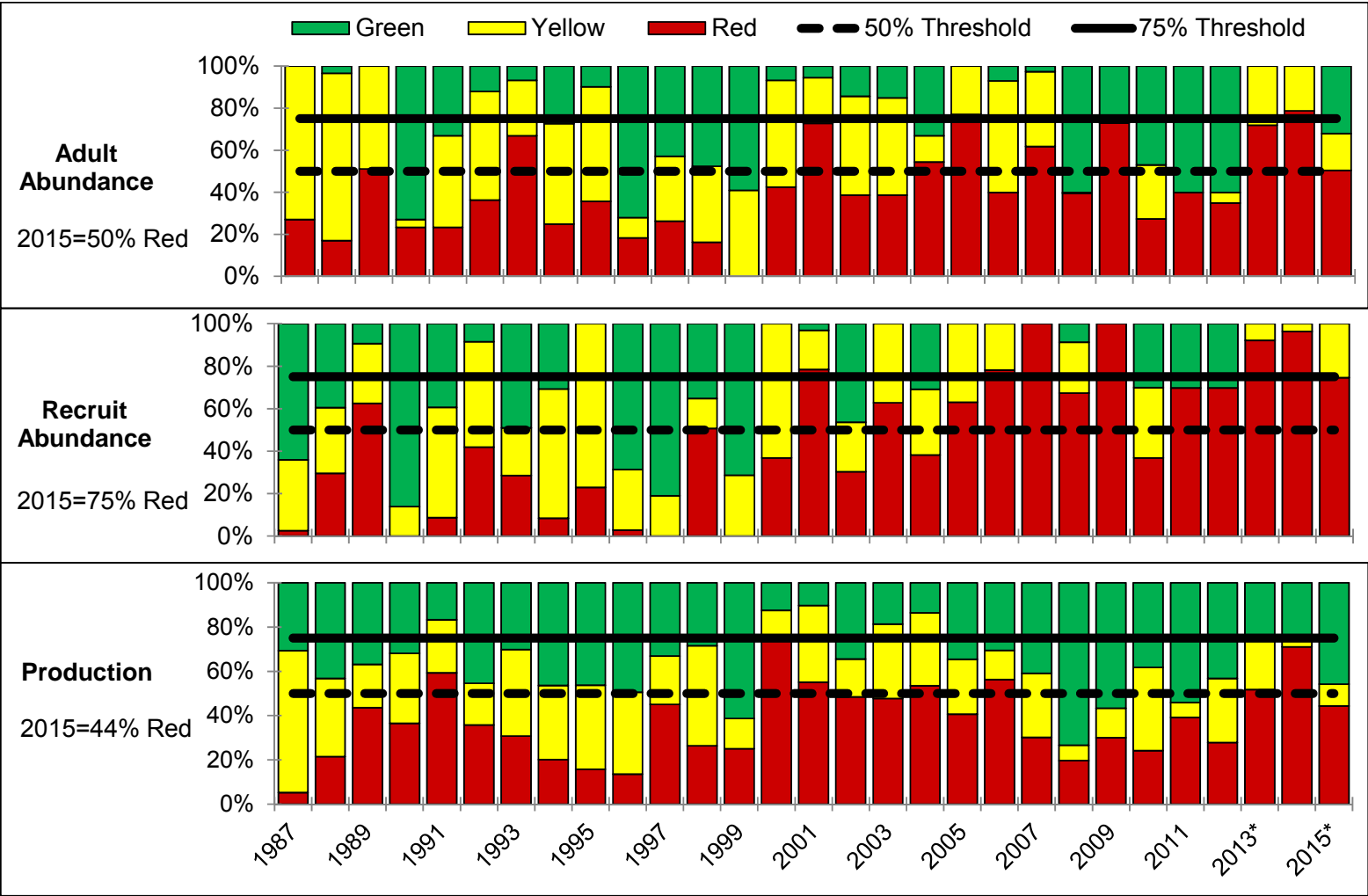


Figure 5. Traffic Light of adult abundance, recruit abundance, and production characteristic for the 2015 blue crab Traffic Light update. *Note: 2013, 2014 and 2015 represent the three years that count toward the three consecutive years needed to activate moderate management for the adult abundance characteristic. The dashed (--) and solid (—) lines represent the 50% and 75% quartiles for the proportion of red. ● = Good stock condition; ● = Neutral or transitioning stock condition; and ● = Bad stock condition.

DRAFT – SUBJECT TO CHANGE

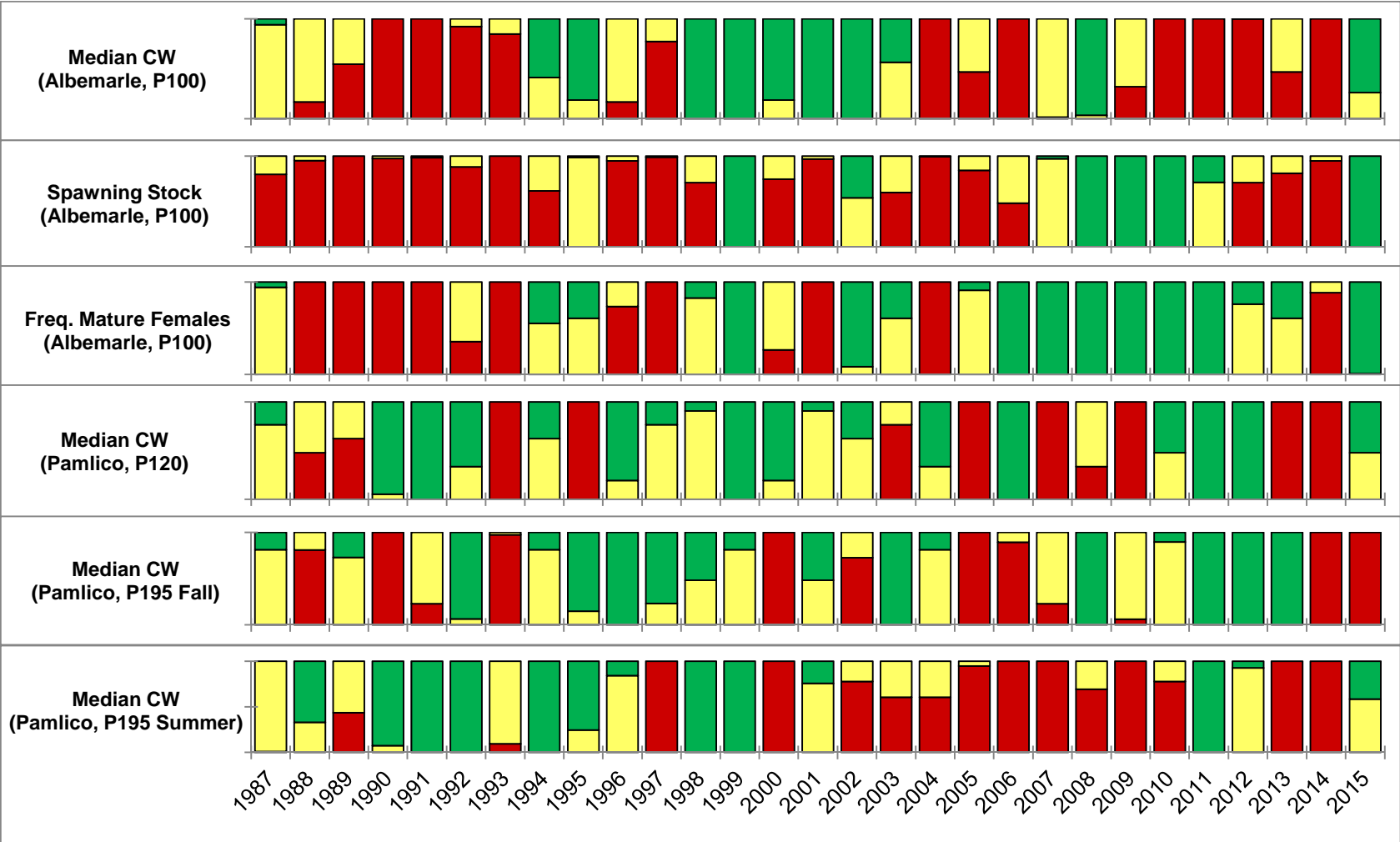


Figure 6. Traffic Light representations of individual production indicators and the integrated summary (bottom figure), 1987 – 2015.

DRAFT – SUBJECT TO CHANGE



Figure 6. cont. Traffic Light representations of individual production indicators and the integrated summary (bottom figure), 1987 – 2015.

DRAFT – SUBJECT TO CHANGE

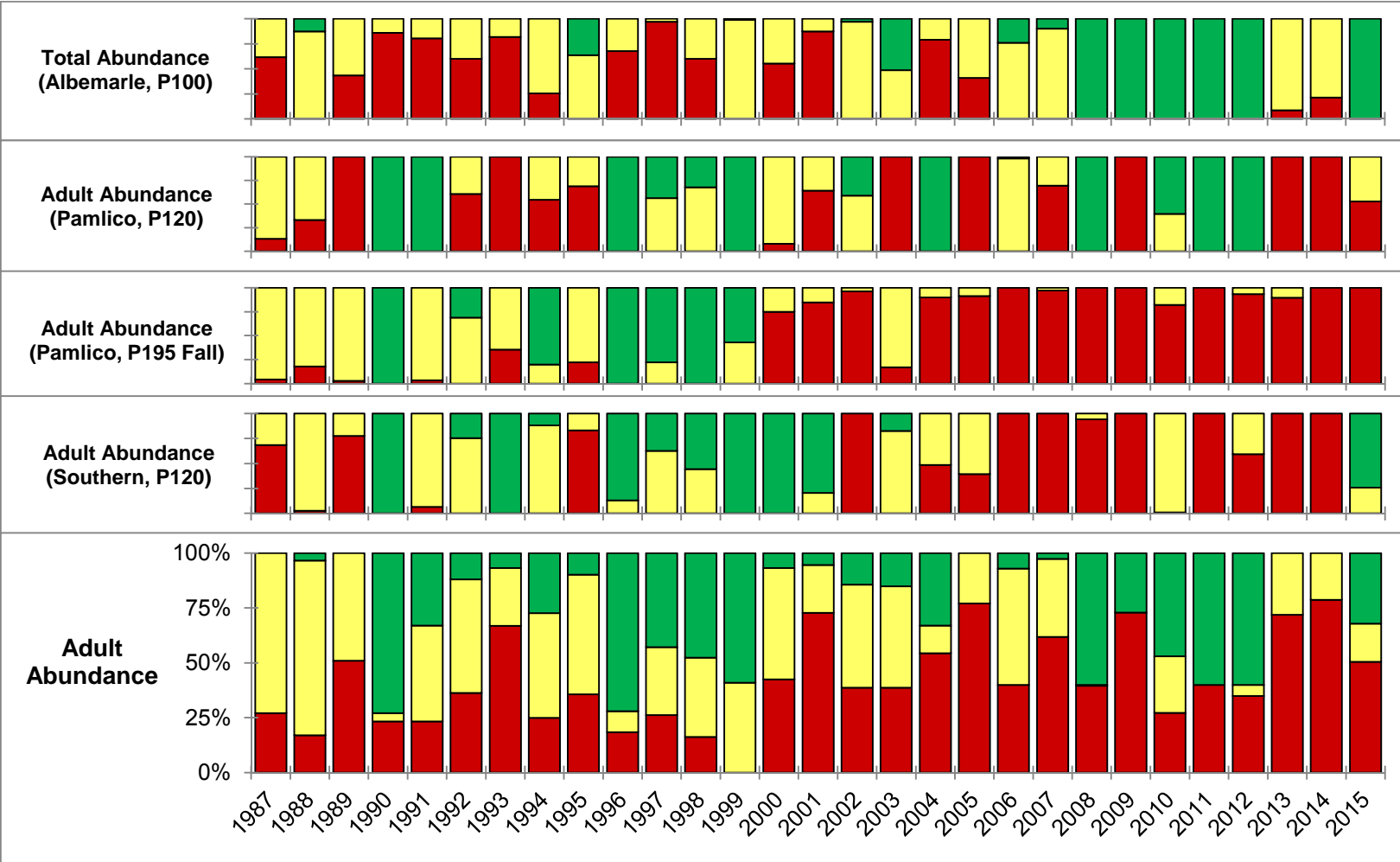


Figure 7. Traffic Light representations of individual adult abundance indicators and the integrated summary (bottom figure), 1987 – 2015.

DRAFT – SUBJECT TO CHANGE

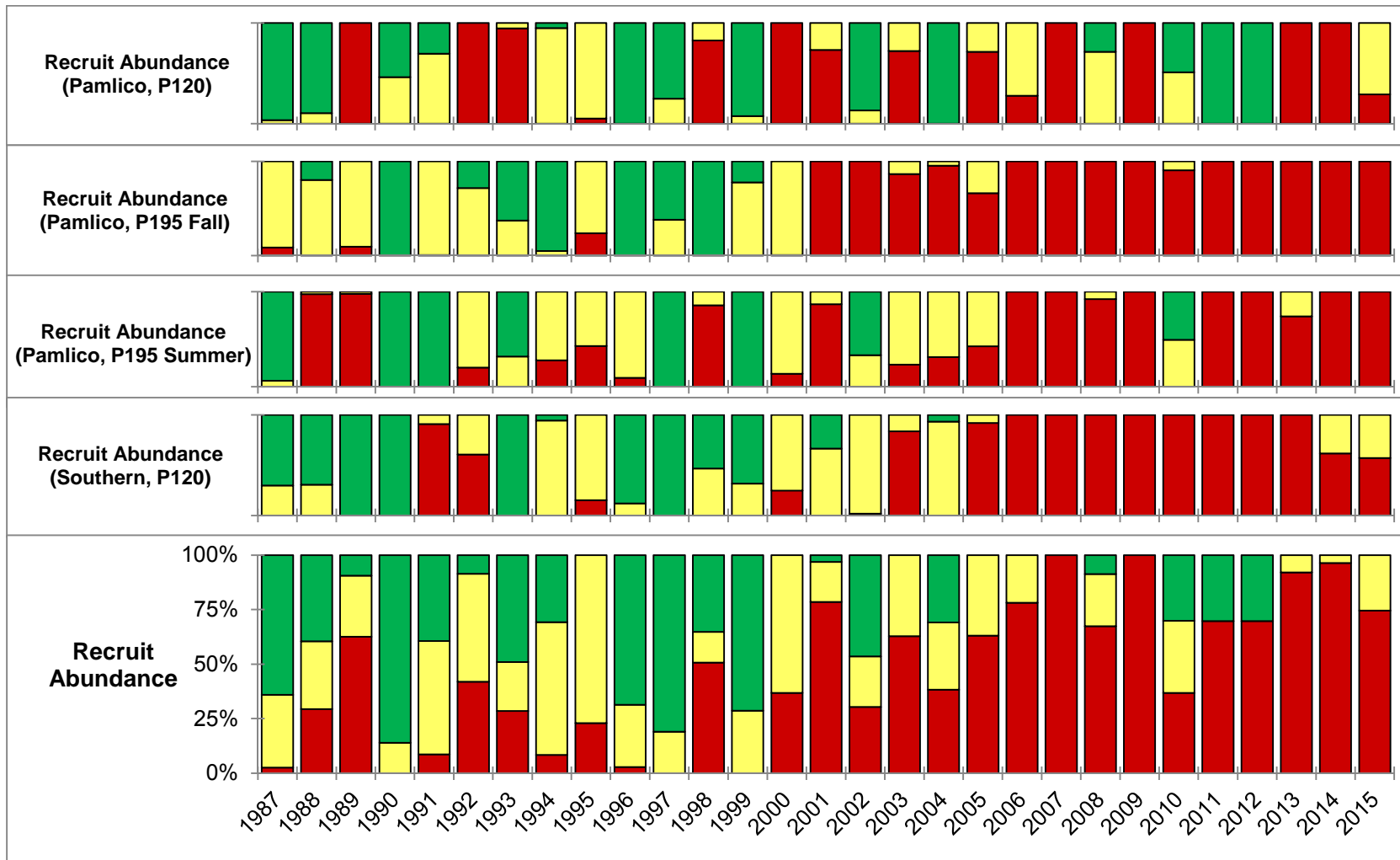


Figure 8. Traffic Light representations of individual recruit abundance indicators and the integrated summary (bottom figure), 1987 – 2015.

DRAFT – SUBJECT TO CHANGE

IV. AUTHORITY

North Carolina General Statutes

113-134 RULES
113-182 REGULATION OF FISHING AND FISHERIES
113-182.1 FISHERY MANAGEMENT PLANS
143B-289.52 MARINE FISHERIES COMMISSION – POWERS AND DUTIES

North Carolina Marine Fisheries Rules

15A NCAC 03J .0301 POTS
15A NCAC 03J .0302 RECREATIONAL USE OF POTS
15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS
15A NCAC 03L .0202 CRAB TRAWLING
15A NCAC 03L .0203 CRAB DREDGING
15A NCAC 03L .0204 CRAB POTS
15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES
15A NCAC 03R .0109 TAKING CRABS WITH DREDGES
15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES

V. DISCUSSION

The discussion below includes specific management measures discussed by the Blue Crab Plan Development Team that fall within the broader management options listed in the adaptive management framework (Table 1). Since specific management options are listed in the adaptive management framework, this Revision is not intended to be a review of all measures that could be used to manage the blue crab fishery. Management measures not listed in the adaptive management framework may only be addressed through the supplement or amendment process.

Within each stock characteristic (adult abundance, recruit abundance and production), specific management measures were determined for each management level through the adaptive management framework. Many management tools are available; some are more restrictive to the fishery than others are and attempts were made to categorize them within the moderate and elevated management levels accordingly. The various management options under consideration are described below. Specific measures discussed for each management option are only examples and may not be all inclusive of what measures may be considered under the adaptive management framework.

Size Limits

Increasing the Minimum Size Limit for Male and Immature Female Crabs

Increasing the minimum size limit is a common management tool used to rebuild the spawning stock. Mature females and peeler/soft crabs are exempt from the 5-inch minimum size limit (NCMFC Rule 15A NCAC 03L .0201). The short-term effects of an increased minimum size limit would be reducing the pool of younger, smaller crabs immediately available for harvest, which in turn would produce a short-term decrease in the overall catch. Decreasing the harvest of smaller crabs may not have an immediate effect on reducing the fishing mortality on older,

DRAFT – SUBJECT TO CHANGE

larger crabs. The benefit to the fishery of an increased minimum size would not be realized until the smaller crabs that survive contribute more to the pool of older individuals. One of the major benefits to increasing the minimum size limit is it would allow a larger number of younger crabs the opportunity to mate and reproduce prior to harvest. Increasing the minimum size limit could have a negative impact on the crab market by creating uncertainty in product availability. From 2011-2015, approximately 14% of male and immature female hard crabs harvested were under the current 5-inch legal size limit (Figure 9).

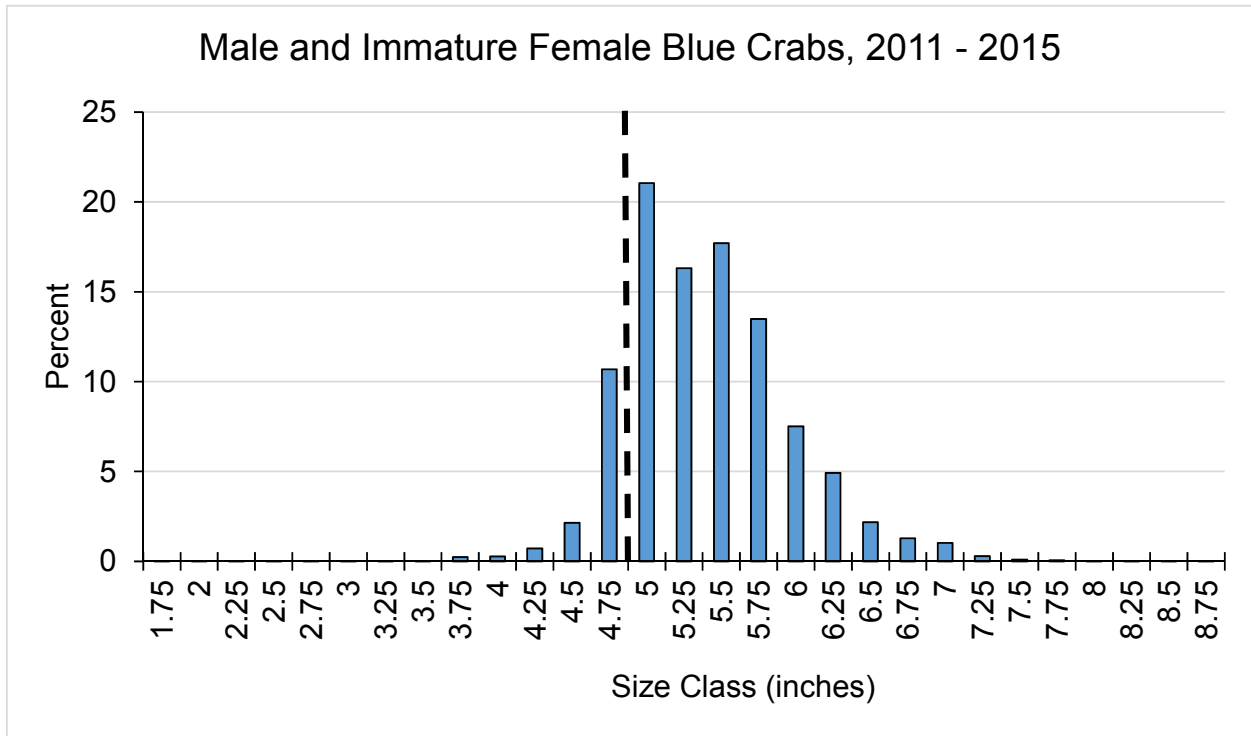


Figure 9. Size distribution of male and immature female hard crabs sampled from the commercial fishery, 2011 – 2015. Dashed line shows male and immature female blue crabs harvested above and below the current 5-inch minimum size limit.

Assuming no cull tolerance for sublegal crabs, several minimum size limit options were examined (Table 2). For example, if a 5 ¼-inch minimum size limit was imposed on male and immature female hard crabs, approximately 35% of male and immature female crab harvest fell into size classes below this minimum size limit. Some measure of recoupment would be likely for both male and immature females. Recoupment for male crabs would likely occur as they grow to the new legal minimum size where recoupment for immature females would likely occur after they undergo their terminal molt and become mature females, which are exempt from the minimum size limit.

DRAFT – SUBJECT TO CHANGE

Table 2. Estimated harvest reductions for various minimum size limits for male and immature female hard crabs.

Minimum Size Limit	Estimated Harvest Reduction
5 1/4-inch	35%
5 1/2-inch	52%
5 3/4-inch	69%
6-inch	82%

Establish a Seasonal Size Limit for Peeler Crabs

Increased effort and harvest in the peeler/soft blue crab fishery and reduced adult harvest has prompted concern about the impacts of peeler/soft crab harvest on the overall health of the fishery. Establishing a minimum size limit for peeler crabs would reduce fishing mortality on the smallest crabs currently allowed for harvest. Effects and benefits would be the same as those described above for minimum size limits. In addition, current peeler fishing practice is to employ live male crabs as an attractant or bait to target immature female peelers. Therefore, the vast majority of the peelers harvested are immature females that are approaching their terminal molt. Reducing fishing mortality on this segment of the population would contribute to efforts to protect the stock. Natural mortality of sublegal crabs (less than five inches) is in the range of 26% to 32% per year in Chesapeake Bay (Casey et al. 1992). Eggleston (1998) estimated an annual mortality rate of 50% for sub-adult and adult blue crabs in North Carolina. Several other states have minimum size limit restrictions for peeler and/or soft crab harvest. A Maryland report noted that raising the peeler size limit would potentially provide an increase in spawning stock biomass by allowing more females to enter the spawning population (Uphoff et al. 1993). Raising the size limit should also increase yield to the fishery. Peeler size limits could possibly improve recruit abundance by allowing some immature female crabs to mature and spawn prior to being subject to harvest.

As the time between sheds increases with increasing size, the probability of capture of larger crabs at the peeler stage decreases. The time interval between sheds of 3.0 or 3.5-inch crabs will generally be one to three months (Rothschild et al. 1992). The increased yield from a peeler size limit would not be totally lost to natural mortality. The overall value of the peeler/soft crab fishery might be enhanced by a minimum size limit as larger soft crabs generally bring a higher price. A potential adverse impact on the soft crab fishery would be a decrease in market flexibility, particularly during the early spring when product availability is low and small peeler/soft crabs are in demand, bringing very high prices to fishermen. A peeler size limit might increase handling mortality and waste in the fishery. A peeler/soft crab size limit could allow more effective and efficient enforcement of size limits, both in state and out of state as crabs are shipped to states with existing size limits. Therefore, adopting a peeler minimum size limit of 3 inches would address regulatory consistency among the Atlantic Coast states and potentially foster interstate trade.

Currently, there is no minimum size limit in place for peeler crabs. NCDMF collects size, sex and maturity (female) information on peeler crabs harvested for commercial shedding operations. Sample sizes decline considerably when summarized at a waterbody level and thus, only regional and statewide estimates are provided.

Assuming no cull tolerance for sublegal peeler crabs, several minimum size limit options were examined in 1/4-inch increments of peeler crabs sampled from 2011 to 2015 (Table 3). For

DRAFT – SUBJECT TO CHANGE

example, if a 3 ¼-inch minimum size limit was imposed on peeler crab harvest, 4.8% of peeler crabs statewide fell into the size classes below this minimum size. The Pamlico region would be the most impacted by the minimum 3 ¼-inch size limit at 7.3%, followed by the Albemarle region at 3.2% and the Southern region at 2.1%.

Table 3. Estimated harvest reduction percentages (pounds) for various minimum size limits for peeler crabs.

Minimum Size Limit	Peeler Size Limit Reduction Percent			
	Albemarle	Pamlico	Southern	Statewide
3-inch	1.1%	2.8%	0%	1.8%
3 1/4-inch	3.2%	7.3%	2.1%	4.8%
3 1/2-inch	6.9%	15.3%	4.1%	10.2%
3 3/4-inch	13.4%	28.2%	10.3%	19.2%

Reducing the Cull Tolerance of Sublegal Crabs

Reducing the cull tolerance of sublegal male and immature female hard crabs would allow individuals a greater chance to mature and spawn prior to being harvested. Specific reductions from reducing the sublegal cull tolerance could not be calculated; instead, the number of sampled commercial trips is presented to get an idea of the impact to the fishery. For example, if the sublegal cull tolerance was reduced to 5%, approximately 26% of commercial trips sampled were above this limit. Some measure of recoupment would be likely for both male and immature females. Recoupment for male crabs would likely occur as they grow to the legal minimum size where recoupment for immature females would likely occur after they undergo their terminal molt and become mature females, which are exempt from the minimum size limit.

Table 4. Percent of sampled commercial crab pot trips at various cull tolerance levels for male and immature female hard crabs.

Cull Tolerance	Percent of Sampled Trips Above Cull Tolerance
10% (current cull tolerance)	12%
5%	26%
3%	37%
0%	63%

Gear Modifications to Reduce Sublegal Catch

Modifications to harvest gear can be used to reduce catch and mortality of the sublegal bycatch of target or non-target species. Increasing size limits often go in hand with gear modifications to eliminate sublegal bycatch. Cull (escape) rings are one such device used in crab pots to reduce bycatch. Current restrictions require two cull rings per pot of 2 5/16-inch minimum inside diameter.

DRAFT – SUBJECT TO CHANGE

Cull Ring Size

Several studies have examined the effects of increasing the cull ring size in crab pots. Rudershausen and Turano (2009) tested three different size cull rings: 2 5/16 inches, 2 3/8 inches, and 2 7/16 inches. They found the catch rates of sublegal males was reduced by increasing cull ring size. They also found the catch rates of legal males and mature females were generally maintained with larger cull rings and estimate the body length of minimally legal male crabs was not less than the current minimum cull ring diameter (2 5/16 inches). Rudershausen and Hightower (2016) tested three different size cull rings: 2 5/16 inches, 2 3/8 inches, and 2 7/16 inches. They found the mean number of legal male crabs was not significantly different among cull ring sizes but the mean number of sublegal male crabs was significantly less in pots using the two largest cull ring sizes.

Specific reductions from increasing the size of cull rings could not be calculated; instead, the number of sampled commercial trips is presented to get an idea of the impact to the fishery (Table 5). For example, if the minimum cull ring size was increased to 2 3/8 inches, approximately 33% of commercial trips sampled were at or above this limit. The cost and effort to change the cull ring size must also be considered.

Table 5. Percent of sampled commercial crab pot trips with various cull ring sizes.

Cull Ring Size	Percent of Sampled Trips By Cull Ring Size
2 5/16-inch (minimum legal size)	67%
2 3/8-inch	13%
2 7/16-inch	18%
2 1/2-inch	1%
>2 1/2-inch	1%

Number of Cull Rings

Some research has been done regarding the number of cull rings in crab pots and the associated reduction in sublegal crabs. Rudershausen and Turano (2009) determined that increasing the number of cull rings did not significantly reduce the catch of sublegal males.

Specific reductions from increasing the number of cull rings could not be calculated; instead, the number of sampled commercial trips is presented to get an idea of the impact to the fishery (Table 6). For example, if the number of required cull rings was increased to four, approximately 9% of commercial trips sampled were at or above this limit. The cost and effort to change the number of cull rings must also be considered.

Table 6. Percent of sampled commercial crab pot trips with varying sizes of cull rings.

Number of Cull Rings	Percent of Sampled Trips
2	80%
3	11%
4	5%
5	3%
>5	1%

DRAFT – SUBJECT TO CHANGE

Placement of Cull Rings

Some research has been done regarding the placement of cull rings in crab pots related to reductions in sublegal catch. Havens et al. (2009) tested pots with modified cull ring placement (Figure 10). Modified pots had cull rings placed in the corner of the pot and flush with the floor of the upper chamber. Approximately 60% of sublegal crabs escaped modified pots within one hour compared to 4% in unmodified pots. The odds of escapement of sublegal crabs in modified pots in a 24-hour period was eighteen times greater than in unmodified pots. Specific reductions from modifying the placement of cull rings in crab pots could not be calculated.

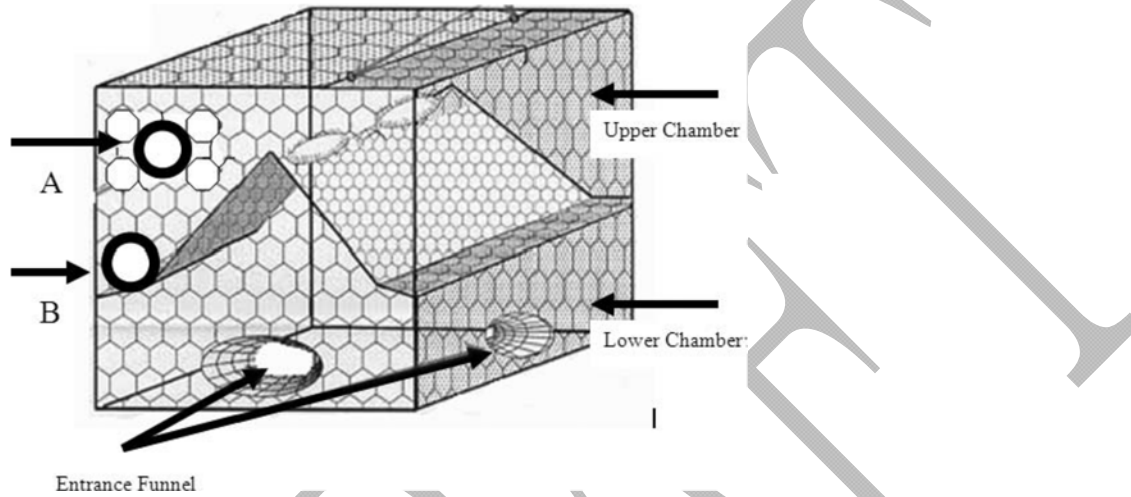


Figure 10. Placement of cull rings in crab pots: (A) unmodified pots had the cull ring placed on the outer wall of the upper chamber, 15 cm above the chamber floor; and (B) modified pots had the cull ring placed in the corner and flush with the upper chamber floor. Diagram is from Havens et al. 2009.

Removing Cull Ring Exemptions

Mature female crabs are exempt from the five-inch minimum size limit (NCMFC Rule 15A NCAC 03L .0201 (a)). Some females mature prior to reaching five inches in size and would be unavailable for harvest because once they mature they will not grow any larger. Particularly in high salinity areas, such as those with the current escape ring exemption, a significant portion of the available mature females may be of such a small size they may leave the pot through the 2 5/16 inch escape rings (minimum legal size). Therefore, during the development of Amendment 2, the long standing proclamation allowing pots to be set without escape rings or with closed escape rings to prevent the loss of small mature female blue crabs in Pamlico Sound and the Newport River were put into rule (Figure 11). However, the exemption area in Pamlico Sound was reduced by moving the boundary line from six miles from shore to the existing no trawl line behind the Outer Banks.

Based on NCDMF crab fishery sampling at the time, the escape ring exemption does not appear to be widely utilized by crabbers who fish the Outer Banks/Pamlico Sound area. Perhaps in the past when the southern Outer Banks fishery was robust with more crabs and crabbers, the practice of closing escape rings was more prevalent. NCDMF sampling, in recent years, has documented that some crabbers in this area do not close escape rings, while some

DRAFT – SUBJECT TO CHANGE

close one of the two required escape rings, and others close all the escape rings. During development of Amendment 2, NCDMF staff contacted and discussed the Outer Banks escape ring exemption and potential options to modify the boundary with area crabbers. Overall opinions were mixed; but several crabbers indicated they would like to maintain the flexibility to set pots with closed escape rings.

Assuming no cull tolerance for sublegal crabs and a 5-inch minimum size limit, the harvest reduction for eastern Pamlico Sound is approximately 13.1%. There was not enough commercial crab sampling data specific to the Newport River to estimate harvest reductions for this area. Some measure of recoupment would be likely for both male and immature females. Recoupment for male crabs would likely occur as they grow to the new legal minimum size where recoupment for immature females would likely occur after they undergo their terminal molt and become mature females, which are exempt from the minimum size limit. The recoupment of small mature female crabs would likely be low as some would be able to escape through the existing cull rings.

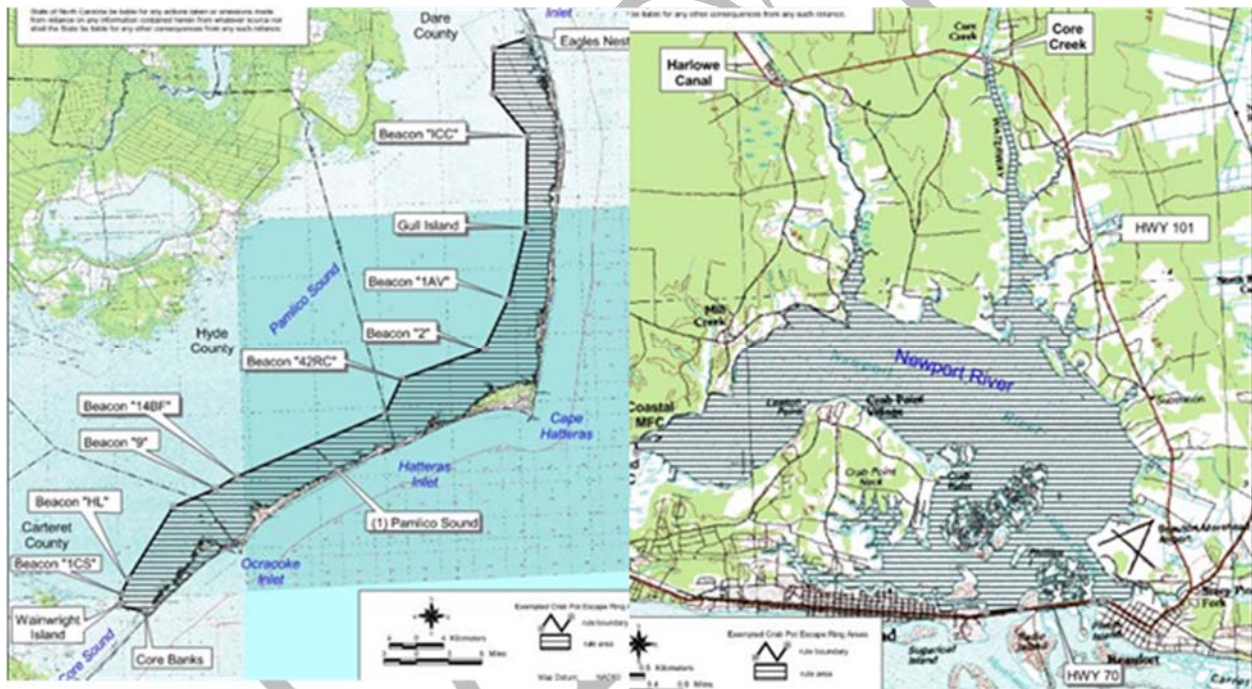


Figure 11. Escape ring exempted areas in Pamlico Sound, NC (left) and Newport River, NC (right).

Eliminate Harvest of V-apron Immature Female Hard Crabs

Immature (v-apron) females are encountered in the commercial crab sampling program across six market categories (Straight, Jimmies (No. 1), No. 2, No. 3, Culls, and Mixed). To provide an estimate of the impacts of prohibiting v-apron immature female hard crab harvest, the number of v-apron immature female hard crabs sampled was divided by the total number of crabs sampled by market category in the commercial crab sampling program to estimate the percentage by number. To apply the estimate to trip ticket information, the numbers were converted to weight in pounds using a conversion of three crabs per pound. Once the percentage by weight was calculated, weight estimates were applied to the trip ticket landings by market grade to

DRAFT – SUBJECT TO CHANGE

determine the statewide percent reduction for the elimination of v-apron immature female hard crabs in the harvest. The average annual reduction for immature females from 2001-2015 in the total harvest was estimated at 0.8% or 231,345 pounds (Table 7). Even with a culling tolerance, prohibiting the harvest of immature female hard crabs of 5 inches and larger would allow some to become spawning adults prior to being eligible for harvest.

DRAFT

DRAFT – SUBJECT TO CHANGE

Table 7. Estimated reductions (percent by weight) by region and statewide for eliminating v-apron immature female hard crab harvest, 2001 – 2015.

Year	Albemarle	Pamlico	Southern	Statewide	Statewide Pounds
2001	1.14	0.91	0.26	0.96	270,310
2002	1.02	0.86	0.12	0.91	316,871
2003	1.82	0.41	0.42	1.02	405,511
2004	1.03	0.76	0.58	0.85	266,358
2005	0.86	0.49	0.30	0.61	140,722
2006	0.91	0.33	0.12	0.63	150,232
2007	0.95	0.23	1.33	0.76	154,209
2008	0.41	0.43	0.03	0.40	121,737
2009	0.63	0.72	0.33	0.63	177,017
2010	0.84	1.10	0.27	0.91	266,793
2011	1.18	1.17	0.21	1.12	319,833
2012	0.79	0.59	0.31	0.70	179,100
2013	1.59	0.28	0.07	1.18	250,127
2014	1.03	0.65	0.36	0.91	227,940
2015	0.75	0.77	-	0.72	223,421
Average	1.00	0.65	0.32	0.82	231,345

Restricting or Prohibiting Sponge Crab Harvest

The underlying hypothesis of limiting sponge crab harvest is that by protecting the spawning stock (defined here as egg-bearing females), the fishery would benefit with more recruits to the fishery. Concerns with protecting egg-bearing female blue crabs (sponge crabs) are complex, consisting of economic factors (fewer pounds of meat can be picked from a given weight of sponge crabs than from the same weight of non-sponge crabs) and biological considerations (recruitment, overfishing). Currently, there are a number of states that prohibit the sale or possession of egg-bearing females (Table 8). Without exception, these states experience the same fluctuations in blue crab landings as seen in states that do not protect egg-bearing females. From the early 1920s until 1964, it was unlawful to harvest sponge crabs in North Carolina. In 1964 the sponge crab law was repealed and replaced with Crab Spawning Sanctuaries [NCMFC (2011) rules 15A NCAC 03L .0205 and 03R .0110]. During the period the North Carolina sponge crab law was in effect, reported hard crab landings showed the same fluctuations as were observed after its repeal. However, reducing or prohibiting sponge crab harvest would provide additional protection to crabs that will be spawning in a very short time (i.e., 14 days or less depending on sponge stage/color). Limiting harvest would protect sponge crabs where sanctuaries do not exist. Eggleston (2003) found no significant difference between mature female catches within the sanctuaries versus an area five kilometers outside of the sanctuaries. Depending on the level of concern, catch limits on sponge crab harvest could be seasonal, regional, and/or by sponge stage/color. Limiting sponge crab harvest will have a greater economic impact in some areas during certain periods (e.g., Outer Banks during spring).

Some researchers have documented sponge mutilation (scrubbing) by pot-caught crabs (Rittschof 2004). Even when sponge crabs are returned to the water, egg mass destruction and

DRAFT – SUBJECT TO CHANGE

reduced viability of the eggs may occur during the pot harvesting and handling process. Other research has indicated that sponge crab excluders can be effective in reducing the harvest of egg bearing crabs. Research comparing control crab pots and pots equipped with sponge crab excluders was conducted in the high salinity waters of Core Sound, NC near crab spawning sanctuaries (Rudershausen and Turano 2006). They concluded that in areas where mature females dominate the crab pot catch, the benefit of using excluders to reduce entry of sponge crabs might outweigh a potentially modest decrease in catch of non-sponged females.

Table 8. Summary of blue crab sponge and crab spawning sanctuary regulations (New Jersey to Texas).

State	Prohibit the sale or possession of sponge crabs	Have established crab spawning sanctuaries
New Jersey	Yes	No
Delaware	Yes	No
Maryland	Yes	No
Virginia	Yes ¹	Yes
North Carolina	No	Yes
South Carolina	Yes	No
Georgia	Yes	No
Florida	Yes	No
Alabama	No	No
Mississippi	Yes	No
Louisiana	Yes	No
Texas	Yes	No

¹ Prohibits brown and black sponge crab harvest from March 17 through June 15.

Sponge crab harvest could be restricted by quantity, sponge color, or establishing a cull tolerance. Establishing a cull tolerance similar to the one in place for sublegal crabs would reduce the amount of sponge crabs harvested without completely prohibiting their harvest.

Specific reductions from establishing a cull tolerance for sponge crabs could not be calculated, instead the number of sampled commercial trips is presented to get an idea of the impact to the fishery (Table 9). For example, if the cull tolerance was set at 5%, approximately 13.2% of commercial trips sampled were at or above this limit.

DRAFT – SUBJECT TO CHANGE

Table 9. Percent of sampled commercial crab pot trips with varying cull tolerances for sponge crabs.

Cull Tolerance	Percent of Sampled Trips
10%	11.5%
5%	13.2%
3%	14.1%
1%	15.9%

Assuming no cull tolerance for sponge crabs, the average reduction statewide is approximately 3.8%. The Pamlico region will be impacted more than the Albemarle and Southern regions (Table 10), specifically the eastern side of Pamlico Sound (Table 11). Some measure of recoupment would be likely as sponge crabs could be harvested once they release their eggs. The Pamlico region and statewide commercial sampling has shown the catch of sponge crabs has declined in recent years, which may also be a result of fishing behavior shifting away from these less valuable sponge crabs. Therefore, eliminating sponge harvest may only have minimal impacts to the overall harvest.

DRAFT – SUBJECT TO CHANGE

Table 10. Total harvest, sponge crab harvest, and percent reduction if sponge crab harvest was prohibited by region, 2001 – 2015.

Year	Albemarle			Pamlico			Southern			Statewide		
	Total Pounds	Sponge Crab Pounds	Percent Reduction	Total Pounds	Sponge Crab Pounds	Percent Reduction	Total Pounds	Sponge Crab Pounds	Percent Reduction	Total Pounds	Sponge Crab Pounds	Percent Reduction
2001	11,820,264	-	-	14,359,628	1,373,754	9.57	1,993,997	11,473	0.58	28,173,889	1,385,228	4.92
2002	20,223,218	-	-	12,678,456	2,005,454	15.82	1,791,769	3,374	0.19	34,693,443	2,008,828	5.79
2003	17,257,582	-	-	20,289,934	2,850,359	14.05	2,087,805	7,654	0.37	39,635,322	2,858,013	7.21
2004	11,787,020	-	-	17,619,156	2,018,331	11.46	1,825,486	17,566	0.96	31,231,661	2,035,897	6.52
2005	8,713,645	1,017	0.01	12,273,290	2,147,818	17.50	1,940,115	8,473	0.44	22,927,050	2,157,308	9.41
2006	12,917,308	-	-	9,371,392	431,200	4.60	1,696,271	14,531	0.86	23,984,971	445,731	1.86
2007	12,881,819	349	0.00	5,972,830	1,623,618	27.18	1,408,726	68,447	4.86	20,263,375	1,692,414	8.35
2008	21,186,947	-	-	7,785,011	166,608	2.14	1,551,971	50,142	3.23	30,523,929	216,750	0.71
2009	19,674,596	-	-	6,689,881	498,300	7.45	1,563,678	33,904	2.17	27,928,155	532,204	1.91
2010	16,748,758	-	-	11,066,830	204,807	1.85	1,468,209	85,826	5.85	29,283,796	290,632	0.99
2011	15,150,132	-	-	11,807,797	779,301	6.60	1,623,932	8,223	0.51	28,581,861	787,524	2.76
2012	16,251,070	-	-	7,571,283	1,083,365	14.31	1,873,160	37,953	2.03	25,695,513	1,121,318	4.36
2013	14,867,463	-	-	4,705,404	313,317	6.66	1,575,686	47,937	3.04	21,148,554	361,254	1.71
2014	18,246,664	-	-	5,340,747	97,564	1.83	1,439,056	53,461	3.71	25,026,467	151,025	0.60
2015	19,466,259	-	-	9,992,495	1,516	0.02	1,510,795	-	-	30,969,550	1,516	0.005

Table 11. Pounds of sponge crabs sampled from commercial crab sampling program in eastern Pamlico Sound compared to the Pamlico region, 2001 – 2015.

Sponge Crab Pounds Sampled	Year														
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Eastern Pamlico Sound	2,695	3,362	1,762	2,376	1,647	691	1,858	451	-	199	1,881	5,889	885	608	-
Total Pamlico Region	2,695	3,886	1,818	2,963	2,007	691	1,877	467	792	385	1,881	6,351	886	611	11
Percent Eastern Pamlico Sound	100	86.5	96.9	80.2	82.1	100	99.0	96.6	0	51.5	100	92.7	99.8	99.5	0

DRAFT – SUBJECT TO CHANGE

Spawning Sanctuaries

Close the Crab Spawning Sanctuaries from September 1 through February 28 and May Impose Further Restrictions

Currently it is unlawful to set or use trawls, pots, and mechanical methods for oysters or clams or take crabs with the use of commercial fishing equipment from March 1 through August 31 in Crab Spawning Sanctuaries. This option would result in a year-round closure of the Crab Spawning Sanctuaries.

Expand Existing Spawning Sanctuaries

North Carolina has five locations designated as crab spawning sanctuaries north of Cape Lookout (Table 12, Figure 12). The spawning sanctuaries are already closed in Rule 03L .0205 from March 1 through August 31. Existing proclamation authority in Rule 03L .0205 also provides that these Crab Spawning Sanctuaries can be closed or restricted further outside of the closed period to protect spawning females.

The purpose of these sanctuaries is to protect mature females inhabiting these areas prior to and during the spawning season and sponge stage. Recent tagging data suggest this is not the case in all areas. In Core Sound, most tagged crabs migrate toward the inlets and many will release their first clutch of eggs prior to reaching the spawning grounds (Rittschof 2003). Some female crabs remain within the sounds and some go out the inlet and move with currents up and down the coast. In Pamlico Sound, sponge crabs are present on the spawning grounds from spring to fall, and mature females are present year round (Ballance and Ballance 2002; NCDMF 2008). Tag return data suggest females tagged on the sanctuaries in Pamlico Sound are consistently caught in areas up to four kilometers surrounding the sanctuaries (Ballance and Ballance 2002; NCDMF 2008).

Table 12. Location and approximate size (in acres) of the five current Crab Spawning Sanctuaries.

Location	Acreage
Oregon Inlet	5,787.5
Hatteras Inlet	4,444.0
Ocracoke Inlet	8,745.0
Drum Inlet	5,388.0
Bardens Inlet	4,610.0

DRAFT – SUBJECT TO CHANGE

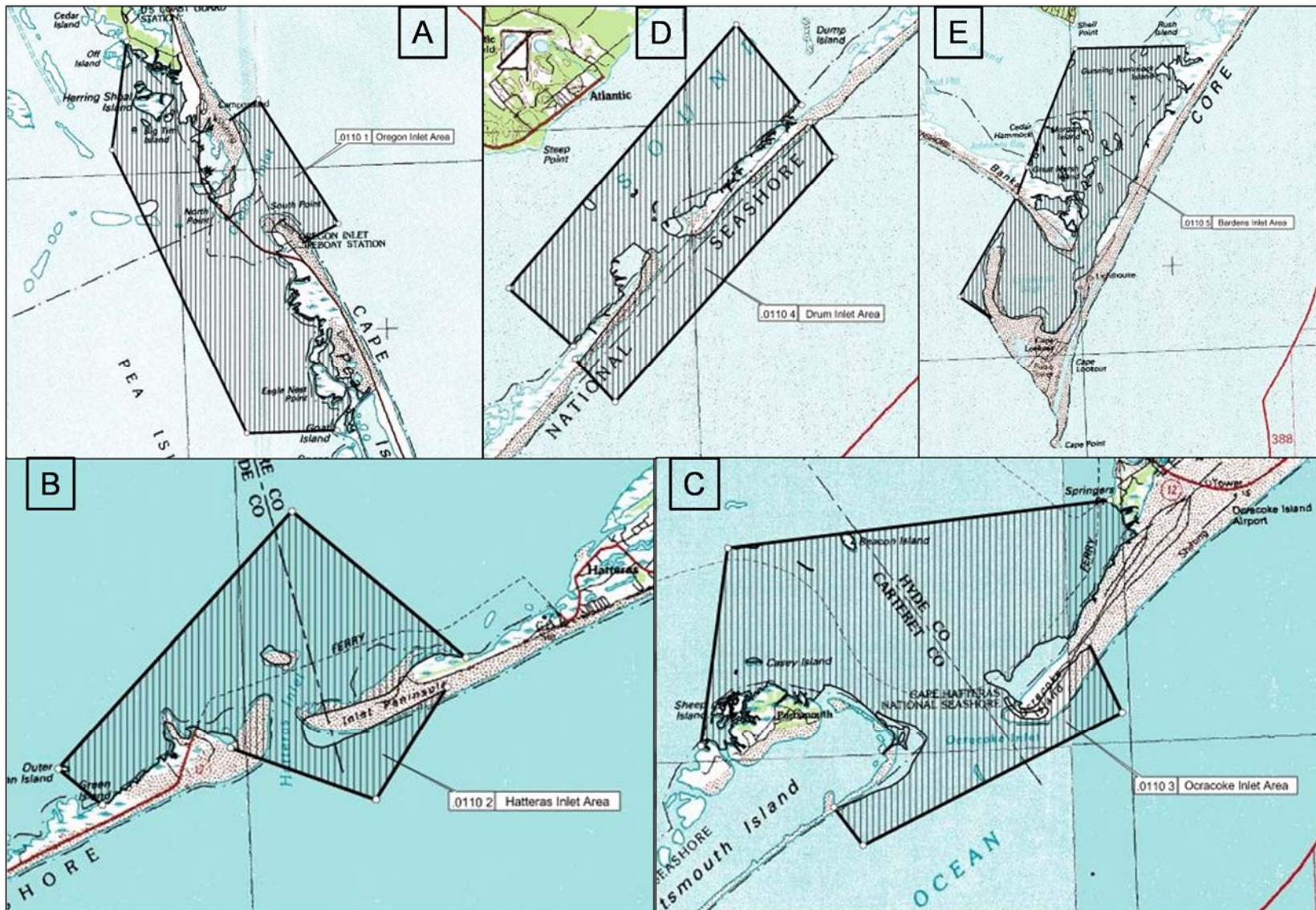


Figure 12. Boundaries of the five current Crab Spawning Sanctuaries. (A) Oregon Inlet, (B) Hatteras Inlet, (C) Ocracoke Inlet, (D) Drum Inlet, and (E) Bardsens Inlet.

DRAFT – SUBJECT TO CHANGE

Designate New Crab Spawning Sanctuaries

Crab spawning sanctuaries have not been designated south of Cape Lookout, N.C. due to the small size of inlets and relatively small estuarine waters near most of the southern coastal inlets. Spawning sanctuaries around the southern inlets would prohibit commercial gears currently in use, forcing commercial harvesters into other areas and thereby increasing conflicts among other user groups. Local crabbers suggest the deep fast flowing waters of the lower Cape Fear River ship channel provide a natural barrier to some crab harvesting practices in that area. Thus, this area serves as an unofficial sanctuary for all blue crabs. Designating additional Crab Spawning Sanctuaries would further protect mature females as they migrate to the spawning grounds. Figures 13 – 15 show examples of potential Crab Spawning Sanctuaries in the southern portion of the state.

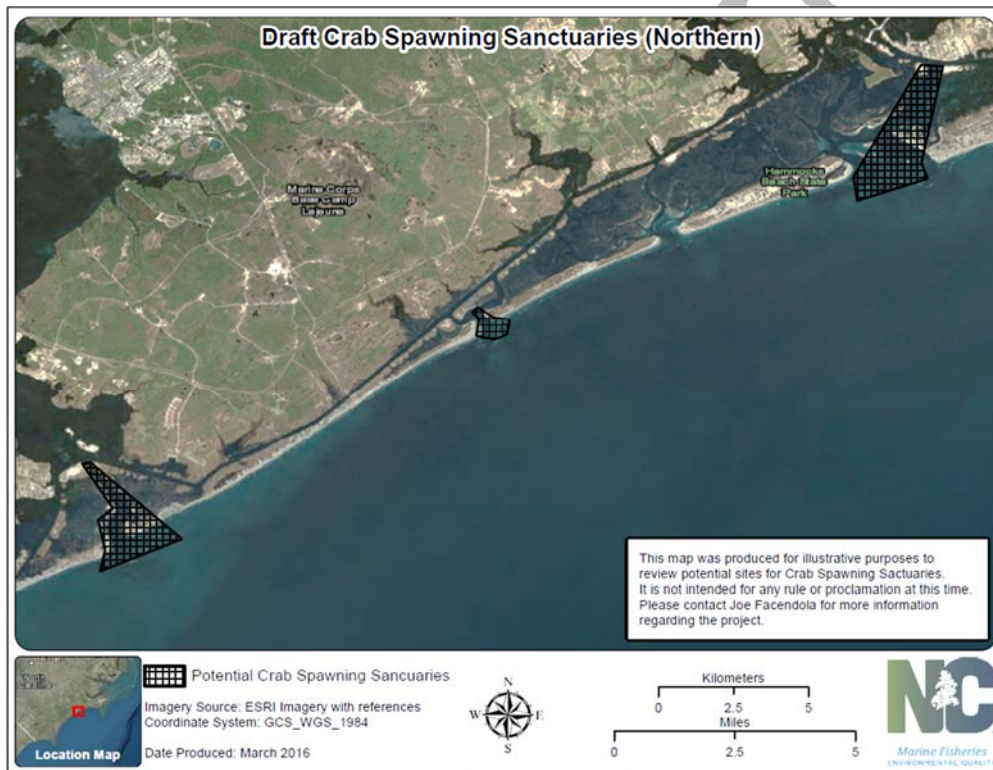


Figure 13. Potential Crab Spawning Sanctuaries for Bogue Inlet, Browns Inlet, and New River Inlet.

DRAFT – SUBJECT TO CHANGE

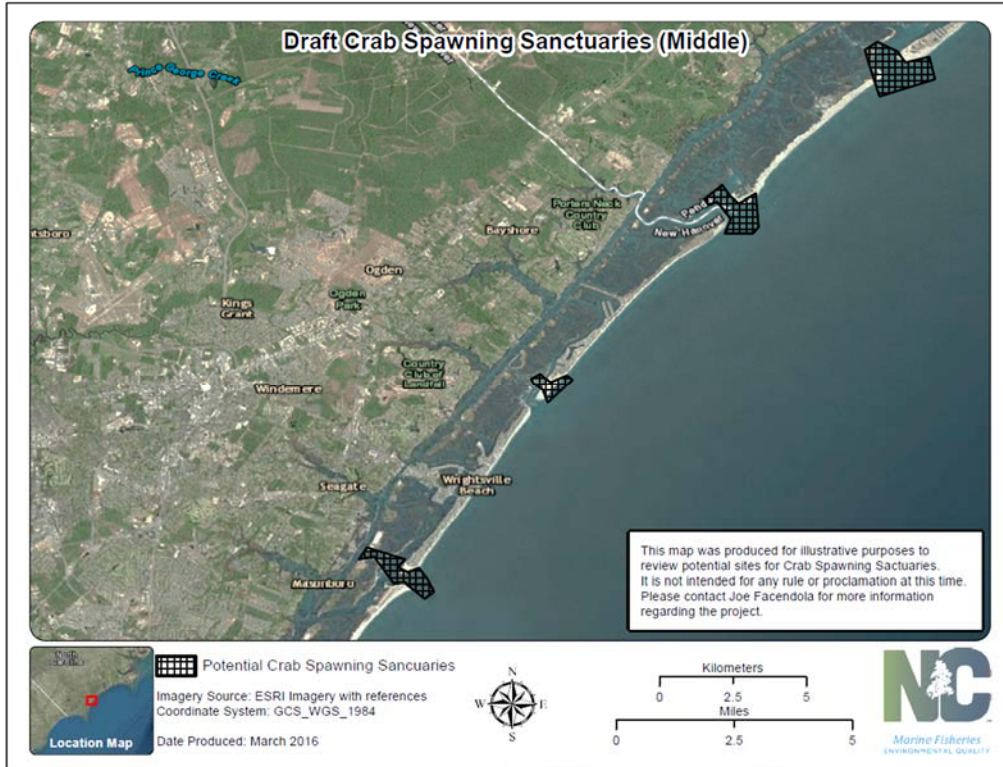


Figure 14. Potential Crab Spawning Sanctuaries for Old Topsail Inlet, Rich Inlet, Mason Inlet, and Masonboro Inlet.

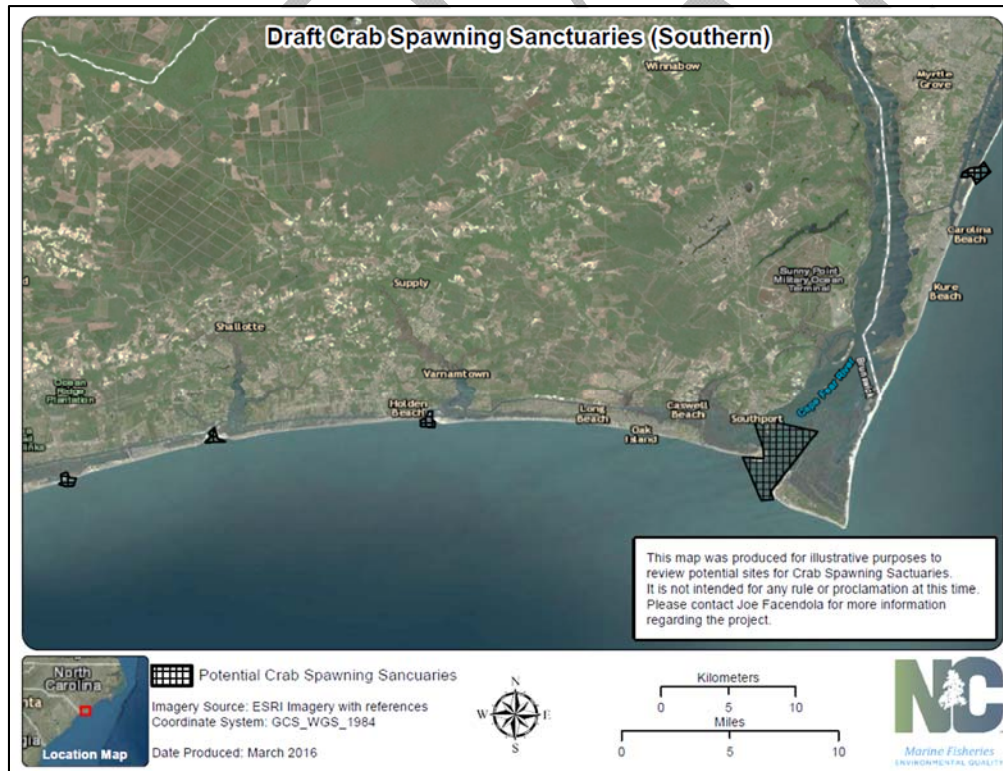


Figure 15. Potential Crab Spawning Sanctuaries for Carolina Inlet, Cape Fear River Inlet, Lockwoods Folly Inlet, Shallotte Inlet, and Tubbs Inlet.

DRAFT – SUBJECT TO CHANGE

Closure of the Fishery

Closures to the blue crab fishery could include season, area, gear, or life history stage. The premise behind this management tool is to restrict harvest, whether by time, location, fishery, or life history stage to provide protection to blue crabs that are vulnerable to harvest in a particular place and time or stage in their life history.

Seasonal Closures

A seasonal closure can be used to restrict harvest during certain times of the year and to reduce removals from the stock. Since effort can be increased during the open periods of the fishery to offset losses during the closed season, it is best to have seasonal closures that are a minimum of two weeks, but preferably longer. The timing of harvest from the different crab fisheries should also be considered.

Season closures during peak harvest periods tend to be more effective than season closures when harvest is minimal because closures at peak harvest leave less opportunity for recoupment by the fisheries. However, a possible result of overall season closures would be an increase in discards, particularly in fisheries that land, but do not target blue crabs.

An example of season closure would be to prohibit the harvest of sponge crabs during periods of peak abundance. Sponge crabs begin to appear in March, peaking in April and May, and persist in lower levels through the summer (Figure 16).

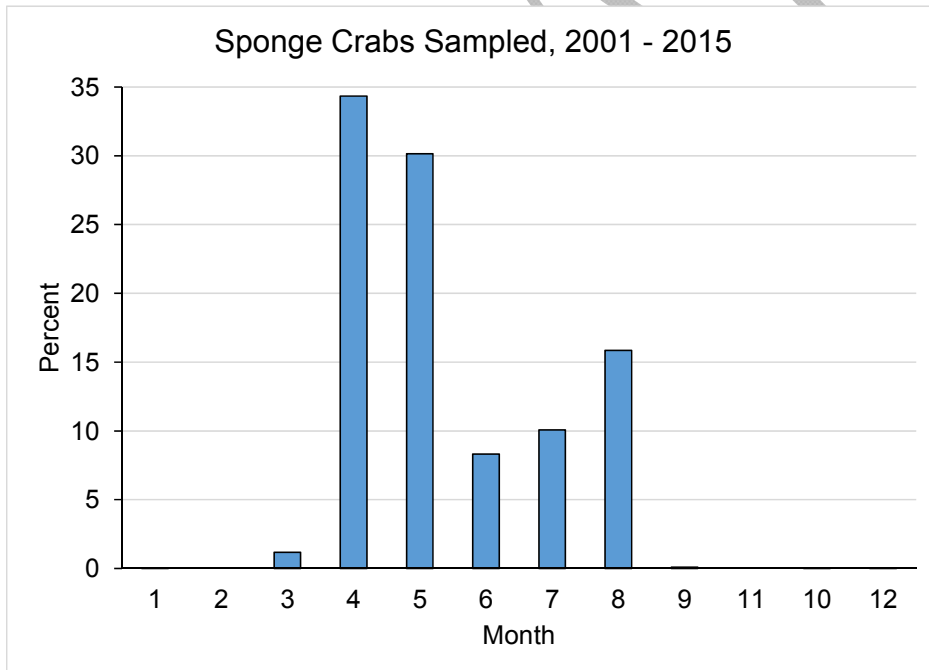


Figure 16. Average monthly sponge crab frequency in commercial crab sampling, 2001 – 2015.

DRAFT – SUBJECT TO CHANGE

Gear Closures

Dredges

One example of gear closure would be to close the targeted crab dredge fishery. This fishery has had minimal landings in recent years (Table 13) with most dredge landings coming from oyster dredges in January and February (Table 14), but when it was more active it primarily targeted overwintering mature female crabs. This fishery is currently only allowed in a small portion of the northern area of Pamlico Sound (Figure 17) during January and February.

Table 13. Annual crab landings (pounds) from crab and oyster dredges, 2011 – 2015.

Year	Crab Dredge	Oyster Dredge	Grand Total
2011	6,843	31,861	38,704
2012	4,051	2,756	6,807
2013	-	1,305	1,305
2014	-	7,372	7,372
2015	1,382	5,203	6,585

Table 14. Average monthly crab landings (pounds) from crab and oyster dredges, 2011 – 2015.

Month	Crab Dredge	Oyster Dredge	Grand Total
January	1,634	1,870	1,786
February	600	2,155	1,589
March	-	615	615
April	-	124	154
November	-	615	615
December	-	508	508

DRAFT – SUBJECT TO CHANGE

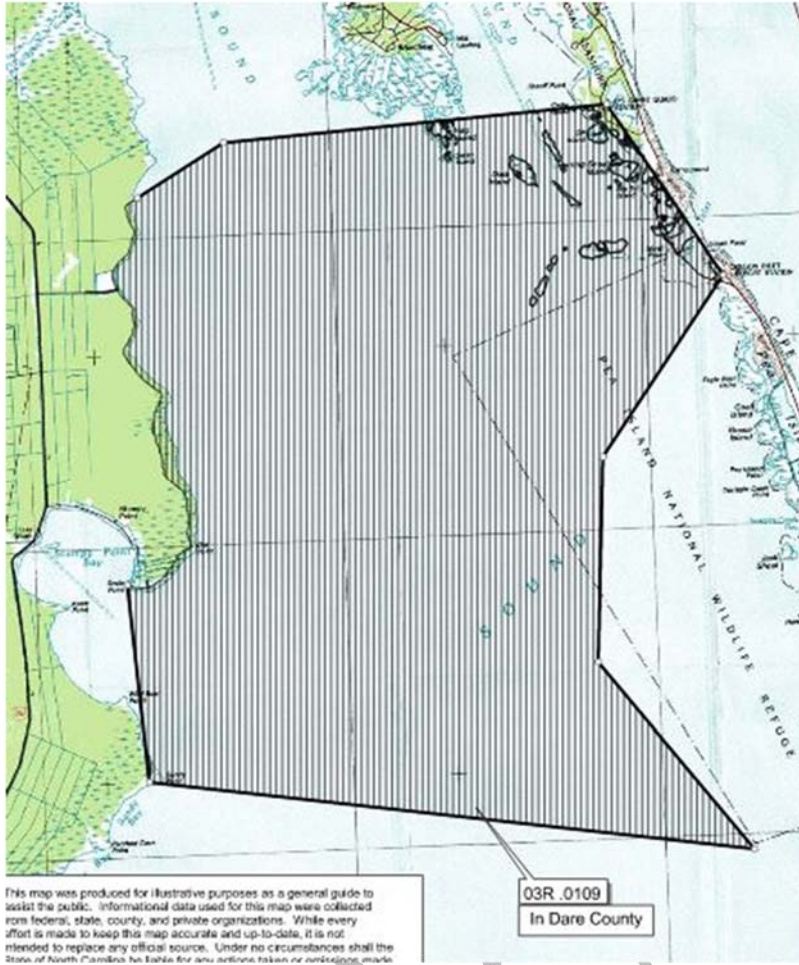


Figure 17. Designated crab dredge area in northern Pamlico Sound.

Crab Trawls

Another example of a potential gear closure would be to limit crab trawling in the Pamlico, Pungo, and Neuse rivers to the current shrimp trawl lines in each river. Currently there are minimal landings of crabs from crab and shrimp trawls in these systems (Table 15). Figures 18 and 19 show the current crab trawl boundary lines and the current shrimp trawl boundary lines for each system.

Table 15. Annual crab landings (pounds) from crab and shrimp trawls in the Pamlico, Pungo, and Neuse rivers, 2011 – 2015.

Year	Crab Trawl			Shrimp Trawl		
	Neuse River	Pamlico River	Pungo River	Neuse River	Pamlico River	Pungo River
2011	-	141	-	48	371	77
2012	450	-	-	-	12	-
2013	-	-	-	904	-	-
2014	220	-	-	2,561	-	-
2015	302	329	320	451	49	-

DRAFT – SUBJECT TO CHANGE

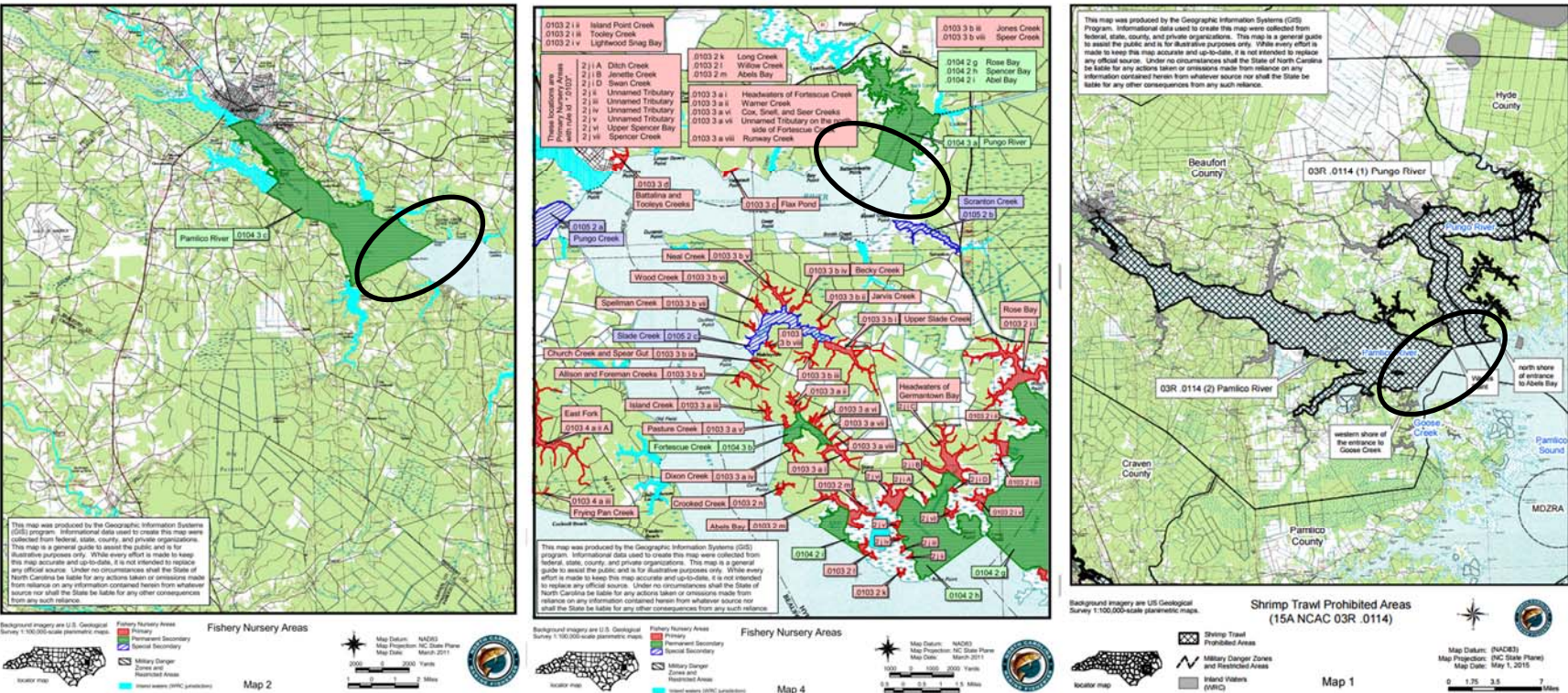


Figure 18. Current crab trawl boundary lines on the Pamlico (left) and Pungo (middle) rivers and the current shrimp trawl boundary lines for each river (right). Boundary lines are located within the circled areas.

DRAFT – SUBJECT TO CHANGE

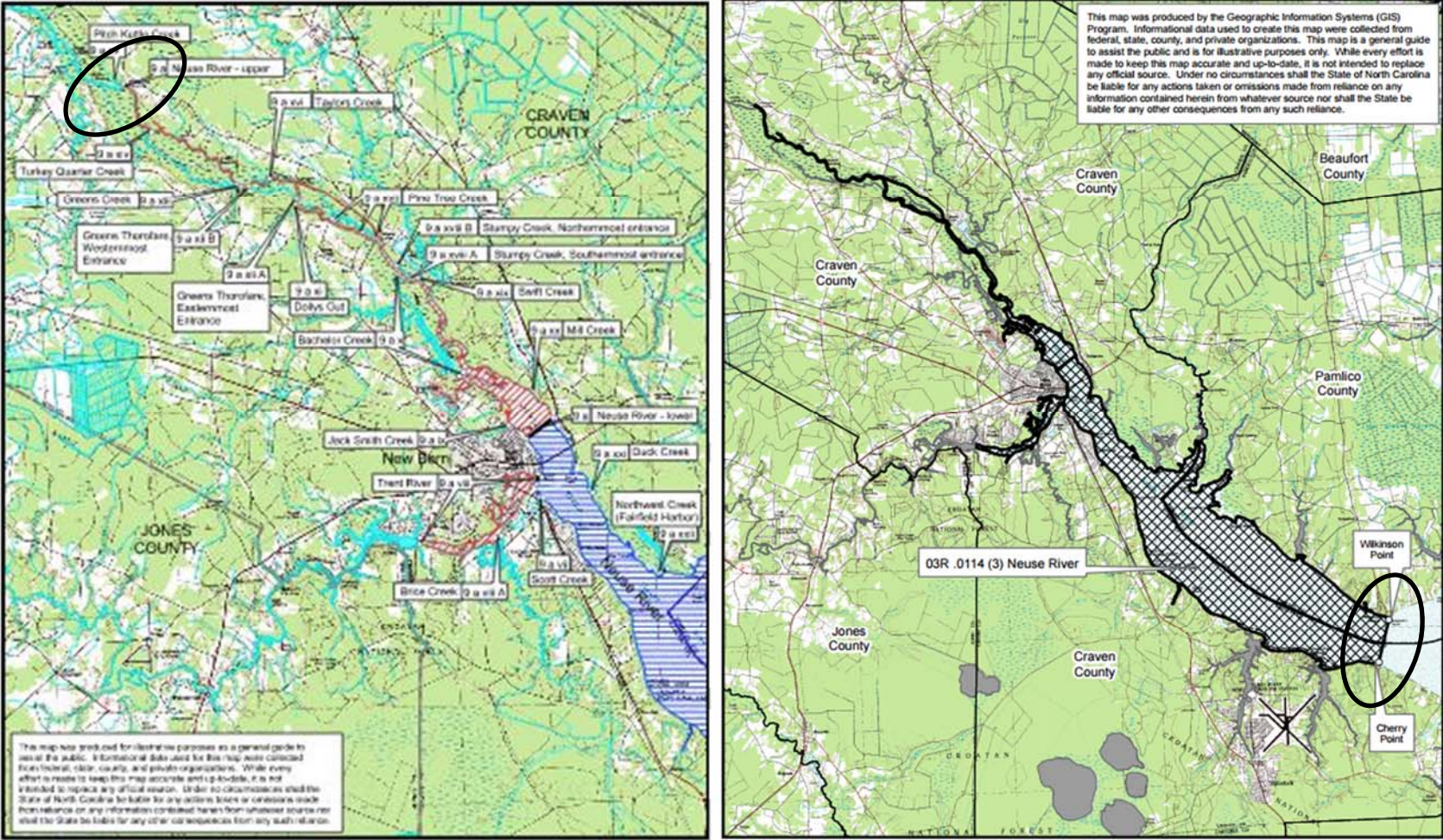


Figure 19. Current crab trawl boundary line on the Neuse River (left) and the current shrimp trawl boundary line on the Neuse River (right). Boundary lines are located within the circled areas.

DRAFT – SUBJECT TO CHANGE

Gear Modifications in the Crab Trawl Fishery

Existing NCMFC rule requires a minimum stretched mesh of 3 inches for crab trawls for taking hard crabs, except that the Director may, by proclamation, increase the minimum mesh length to no more than 4 inches [15A NCAC 03L .0202 (b)]. Increasing the minimum mesh length of crab trawls in areas not currently under proclamation authority would further reduce catch and mortality of sublegal crab bycatch. In 1992, the NCDMF conducted a study to examine the culling ability of larger tail bag sizes in crab trawls, the number of sublegal blue crabs was reduced by 13% in the 4-inch tail bag and the number of legal crabs was reduced by 7%, as compared to catches in a 3-inch tail bag (McKenna and Clark 1993). Overall survival rates were documented for trawl-caught crabs at 64%, while 93% of the crab pot caught crabs survived (McKenna and Camp 1992). During a trip in June, a large number of paper shell and soft crabs were killed in the trawling process. Given the high percentage of sublegal blue crabs currently being captured by the crab trawl fishery, it was recommended that an increase in the minimum tail bag mesh size should be implemented to reduce fishing mortality on this species (McKenna and Clark 1993). A reduction of fishing mortality on sublegal crabs should allow more individuals to be available to spawn at a future date. Figure 20 shows the current boundary for 3-inch and 4-inch crab trawls. Selecting this option would extend the 4-inch minimum mesh size for crab trawls statewide.

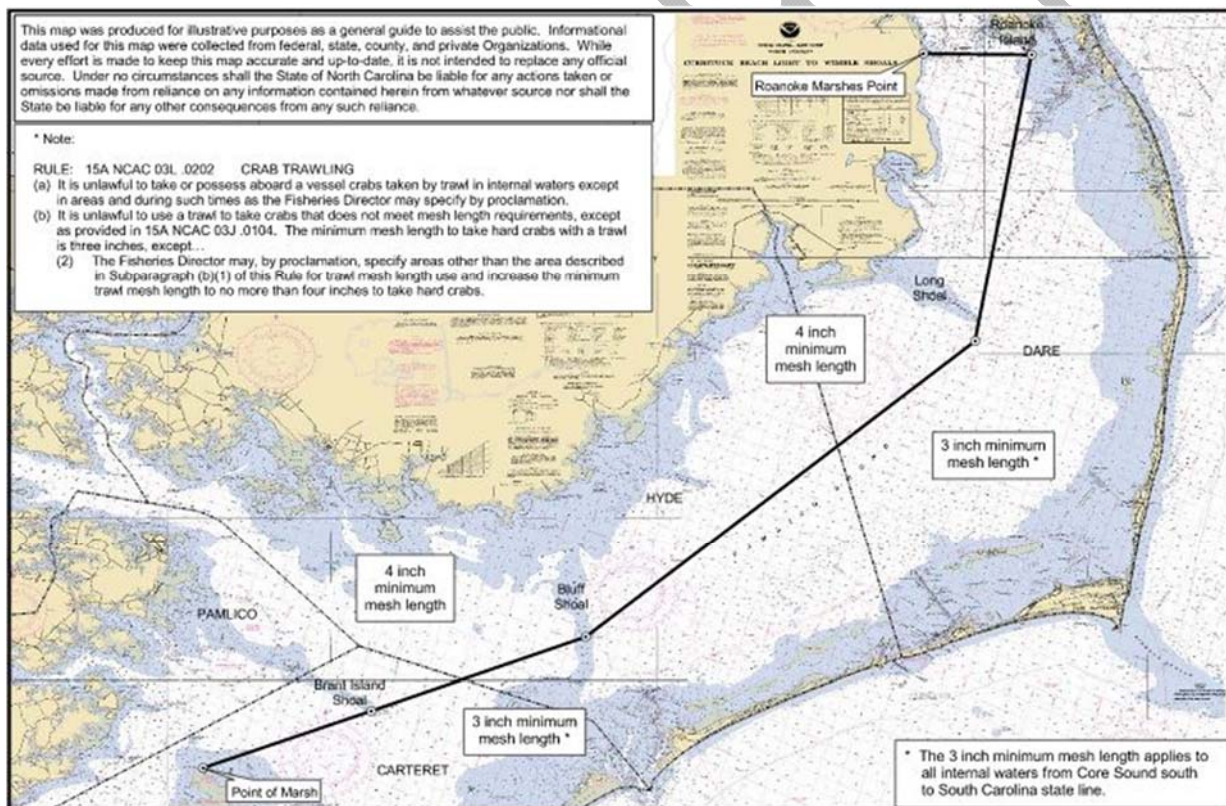


Figure 20. Current 3-4 inch crab trawl minimum mesh size boundary in Pamlico Sound.

The goal of the management options discussed in this revision is to increase the escapement of sublegal males and immature females, mature females, and sponge bearing mature females. Because the adaptive management framework does not identify specific reduction levels for

DRAFT – SUBJECT TO CHANGE

moderate and elevated management measures, the reduction chosen can only be based on the degree of concern with the blue crab stock as indicated by the data trends.

VI. MANAGEMENT REVISION OPTIONS

(+ Potential positive impact of action)

(- Potential negative impact of action)

1. Increase minimum size limit for male and immature female crabs
 - + May increase spawning stock biomass
 - + If cull ring size is also increased, discards will not increase
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - Predicted reduction may be less than actual due to recoupment once crabs reach legal size
2. Reduction in tolerance of sublegal blue crabs (to a minimum of 5%) and/or implement gear modifications to reduce sublegal catch
 - + Increases escapement of undersize crabs
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - Predicted reduction may be less than actual due to recoupment once crabs reach legal size
 - Increased catch processing time for fishermen
 - Additional cost to fishermen to make gear modifications
3. Eliminate harvest of V-apron immature hard crab females
 - + May increase spawning stock biomass
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - Predicted reduction may be less than actual due to recoupment once female crabs mature
 - Increased catch processing time for fishermen
4. Establish a seasonal size limit on peeler crabs
 - + May increase spawning stock biomass
 - + If cull ring size is also increased, discards will not increase
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - Predicted reduction may be less than actual due to recoupment once crabs reach legal size
 - Increased catch processing time for fishermen
5. Restrict trip level harvest of sponge crabs (tolerance, quantity, sponge color)
 - + May increase spawning stock biomass
 - + May increase juvenile recruitment
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others

DRAFT – SUBJECT TO CHANGE

- Increased catch processing time for fishermen
6. Close the crab spawning sanctuaries from September 1 through February 28 and may impose further restrictions
 - + May increase spawning stock biomass
 - + Increases protection of mature female crabs
 - + May increase juvenile recruitment
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - May have impacts to other fisheries
 7. Prohibit harvest of sponge crabs (all) and/or require sponge crab excluders in pots in specific areas
 - + May increase spawning stock biomass
 - + Increases protection of mature female crabs
 - + May increase juvenile recruitment
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - Additional cost to fishermen to make gear modifications
 8. Expand existing and/or designate new crab spawning sanctuaries
 - + May increase spawning stock biomass
 - + Increases protection of mature female crabs
 - + May increase juvenile recruitment
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - May have impacts to other fisheries
 9. Closure of the fishery (season and/or gear)
 - + May increase spawning stock biomass
 - + Increases escapement of mature females
 - + May increase juvenile recruitment
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 10. Gear modifications in the crab trawl fishery
 - + May increase spawning stock biomass
 - + Increases escapement of mature females
 - + May increase juvenile recruitment
 - Decreases harvest with economic loss to the fishery
 - Some regions may be impacted more than others
 - Additional cost to fishermen to make gear modifications

DRAFT – SUBJECT TO CHANGE

VII. RECOMMENDATIONS

NCDMF Recommendation

- Recommend adding two additional cull rings to crab pots, one of which must be located within one full mesh of the corner of the pot and within one full mesh of the bottom of the apron/stairs of the upper chamber of the pot.
- Recommend eliminating the harvest of v-apron immature female hard crabs (excluding peeler crabs) and that v-apron immature hard crab females be added to the current 10% culling tolerance (currently only includes sublegal male and immature female hard crabs).
- Recommend prohibiting sponge crab harvest (all stages) from April 1 – April 30.
- Recommend prohibiting crab harvest with dredges except incidental to lawful oyster dredging as outlined in N.C. Marine Fisheries Commission Rule 15A NCAC 03L .0203(a)(2).

Advisory Committee Recommendations

Northern Advisory Committee

- Recommended no possession of v-apron crabs (consistent with moderate management measure A3) and to keep a 10% cull tolerance across the board.
- Recommended the NCMFC investigate re-tooling the data collection system for the blue crab industry and work with the industry to identify a more appropriate sampling approach (e.g. winter dredge survey).
- Recommended adding two additional cull rings to crab pots. One cull ring must be within one full mesh of the bottom of the apron/stairs of the upper chamber of the pot, effective January 16, 2017.

Southern Advisory Committee

- Recommended to reduce the tolerance of sublegal size blue crabs to a minimum of 5% and directed the NCMFC to look at gear modifications to reduce sublegal catch and to eliminate harvest of v-apron immature hard crab females.
- Recommended no take of black sponge crabs with a cull tolerance of 5%.

Shellfish and Crustacean Advisory Committee

- Recommend to NCMFC to adopt the measures of no v-apron hard crabs and no black sponge crab harvest with a 5% tolerance for both (excludes v-apron peelers).
- Recommend to NCMFC to use two cull rings (no additional cull rings and current legal size) but to reposition one cull ring within one full mesh of the bottom of the apron/stairs of the upper chamber of the pot, effective January 16, 2017.
- Recommend to NCMFC to request the other commissions under the Coastal Habitat Protection Plan Steering Committee look at NCDMF blue crab recruit abundance data, ask what the Environmental Management Commission (EMC) and Coastal Resources Commission (CRC) have done to improve habitat and water quality conditions for blue

DRAFT – SUBJECT TO CHANGE

crab, and determine if they can develop a suite of options that the EMC and CRC could implement to improve water quality and habitat conditions in those areas.

- Recommend to NCMFC to request NCDMF observers on commercial crab boats to collect data to assist with the blue crab Traffic Light assessment.
- Recommend to NCMFC to request NCDMF staff analyze the 21 years of commercial fishery data, refined by taking into account socio-economic information such as storms, prices, picking house availability, etc. that affects fishing effort, and align it with 21 years of NCDMF fishery-independent data and summarize in a report. In the future, refine the fishery-dependent data set so it can be incorporated.
- Recommend to NCMFC to request NCDMF staff look at the effect of predation by striped bass, red drum, cownose rays, and other species on blue crabs.
- Recommend to NCMFC to look at dealer requirements and how they are enforced and if changes are needed.

IX. MANAGEMENT REVISIONS TO AMENDMENT 2 TO THE N.C. BLUE CRAB FMP

Amendment 2 to the N.C. Blue Crab FMP provides the framework for the management changes proposed herein. This Information Paper will be incorporated as a Revision to Amendment 1 to the N.C. Blue Crab FMP and document the rationale of the NCMFC for the following changes in blue crab management to be implemented June 1, 2016, unless otherwise specified.

MFC Selected Management Revisions

DRAFT – SUBJECT TO CHANGE

VIII. LITERATURE CITED

- Ballance, E.S. and E.E. Ballance. 2002. Blue crab sampling in the vicinity of the Ocracoke and Hatteras inlet blue crab sanctuaries using crab pots. NC Blue Crab Research Program (BCRP), Final Report (Oct. 2002) - BCRP # 01-POP-04. North Carolina Sea Grant, Raleigh, NC. 42 p.
- Casey, J.F., B. Daugherty, G. Davis, and J.H. Uphoff. 1992. Stock assessment of the blue crab in Chesapeake Bay, 1 July 1990 - 30 September 1991. Maryland Department of Natural Resources, Annapolis, Maryland.
- Eggleston, D.B. 1998. Population dynamics of the blue crab in North Carolina: statistical analyses of fisheries survey data. Final report for Contract M-6053 to the NC Department of Environment, Health and Natural Resources, Division of Marine Fisheries. 66p.
- Eggleston, D.B. 2003. Field Assessment of Spawning Sanctuaries and Possible Migration Corridors for the Blue Crab Spawning stock in North Carolina. NC Blue Crab Research Program (BCRP), Interim Report (March 2003) - BCRP # 01-POP-08. North Carolina Sea Grant, Raleigh, NC. 29 p.
- Havens, K. J., D. M. Bilkovic, D. Stanhope, and K. Angstadt. 2009. Location, location, location: the importance of cull ring placement in blue crab traps. Transactions of the American Fisheries Society. 138: 720 – 724.
- McKenna, S., and J. T. Camp. 1992. An examination of the blue crab fishery in the Pamlico River estuary. Albemarle-Pamlico Estuarine Study Rep. No. 92-08. 101 p.
- McKenna, S., and A.H. Clark. 1993. An examination of alternative fishing devices for the estuarine shrimp and crab trawl fisheries. Albemarle-Pamlico Estuarine Study Rep. No. 93-11. 34 p.
- NCDMF. 2004. North Carolina Fishery Management Plan Blue Crab. North Carolina Department of Environment and Natural Resources. North Carolina Division of Marine Fisheries. Morehead City, NC. 411 p.
- NCDMF. 2008. Assess the effects of hurricanes on North Carolina's blue crab resource. North Carolina Department of Environment and Natural Resources. North Carolina Division of Marine Fisheries. Morehead City, NC. 176 p.
- Rittschof, D. 2003. Migration and Reproductive Potential of Mature Female. Blue Crabs NC Blue Crab Research Program (BCRP), Final Report (July 2003) - BCRP # 01-BIOL-05. North Carolina Sea Grant, Raleigh, NC. 29 p.
- Rittschof, D. 2004. Spawning biology of the blue crab, *Callinectes sapidus*. N.C. Sea Grant Prog., Raleigh, Final Rep., Proj. 04-BIOL-05. 32 p.
- Rothschild, B.J., J.S. Ault, E.V. Patrick, S.G. Smith, H. Li, T. Maurer, B. Daugherty, G. Davis, C.H. Zhang, and R.N. McGarvey. 1992. Assessment of the Chesapeake Bay blue crab stock. University of Maryland, Chesapeake Biological Laboratory, CB92-003-036, CEES 07-4-30307, Solomons, Maryland.

DRAFT – SUBJECT TO CHANGE

Rudershausen, P.J. and M. J. Turano. 2006. Testing a Device to Exclude Ovigerous Blue Crabs, *Callinectes sapidus*, from Commercial Pots. Marine Fisheries Review 68 (1– 4): 36-42.

Rudershausen P.J. and Marc J. Turano (2009) The Effect of Cull Rings on Catch Rates of Blue Crabs *Callinectes sapidus* in the North Carolina Trap Fishery, North American Journal of Fisheries Management, 29(4): 1152-1164.

Rudershausen P. J. and Joseph E. Hightower (2016) Retention Probability Varies with Cull Ring Size in Traps Fished for Blue Crab, North American Journal of Fisheries Management, 36(1): 122-130.

Uphoff, J., J.F. Casey, B. Daugherty, and G. Davis. 1993. Maryland's blue crab peeler and soft crab fishery: problems, concerns, and solutions. Tidal Fisheries Technical Report Series, No. 9. Maryland Dept. of Natural Resources, Annapolis, Maryland.

Prepared by: Jason Rock and Corrin Flora
Jason.Rock@ncdenr.gov, Corrin.Flora@ncdenr.gov
(252) 948-3874 and (252) 264-3911
April 29, 2016

DRAFT – SUBJECT TO CHANGE

APPENDIX 1

Traffic Light Data Sources

Data from three NCDMF fishery-independent and one fishery-dependent survey are used in the traffic light. Fishery-independent data are collected by scientists independent of commercial or recreational fishing operations and fishery-dependent data are collected directly from the commercial or recreational harvester. Fishery-independent data are collected through resource surveys, such as trawls surveys. These surveys are designed to sample in an objective and consistent manner using the same gear and techniques to provide unbiased and independent indices of abundance. Consequently, sampling is not necessarily done where crabs are most abundant. Instead, the objective is to collect information on the crab population throughout its entire geographic range. These surveys are conducted for many years to track the long-term trends in abundance of the population. Fishery-independent data are also not influenced by external factors (such as management measures or socioeconomics) and provide an unbiased picture of stock health.

Juvenile Anadromous Trawl Survey (Program 100)

The NCDMF Juvenile Anadromous Trawl Survey, also known as Program 100 (P100), was initiated in 1982 and targets juvenile alosines and striped bass in Albemarle Sound (Figure A1.1). Since its inception, the survey has sampled seven stations (Hassler stations) in western Albemarle Sound. In July 1984, twelve sampling stations were added in the central Albemarle Sound area (Central stations) to monitor juvenile striped bass abundance and to determine if a shift in the striped bass nursery area had occurred.

Sampling for the survey is conducted bi-weekly from mid-July through October. The survey uses an 18-foot semi-balloon trawl with a body bar mesh size of $\frac{3}{4}$ -inch and a $\frac{1}{4}$ -inch bar mesh tail bag. Eleven links of $\frac{3}{16}$ -inch chain are attached over nine inches on the footrope. Tow duration is 15 minutes at the Hassler stations and ten minutes at the Central stations. Temperature, pH, conductivity, salinity, and dissolved oxygen are recorded at each station.

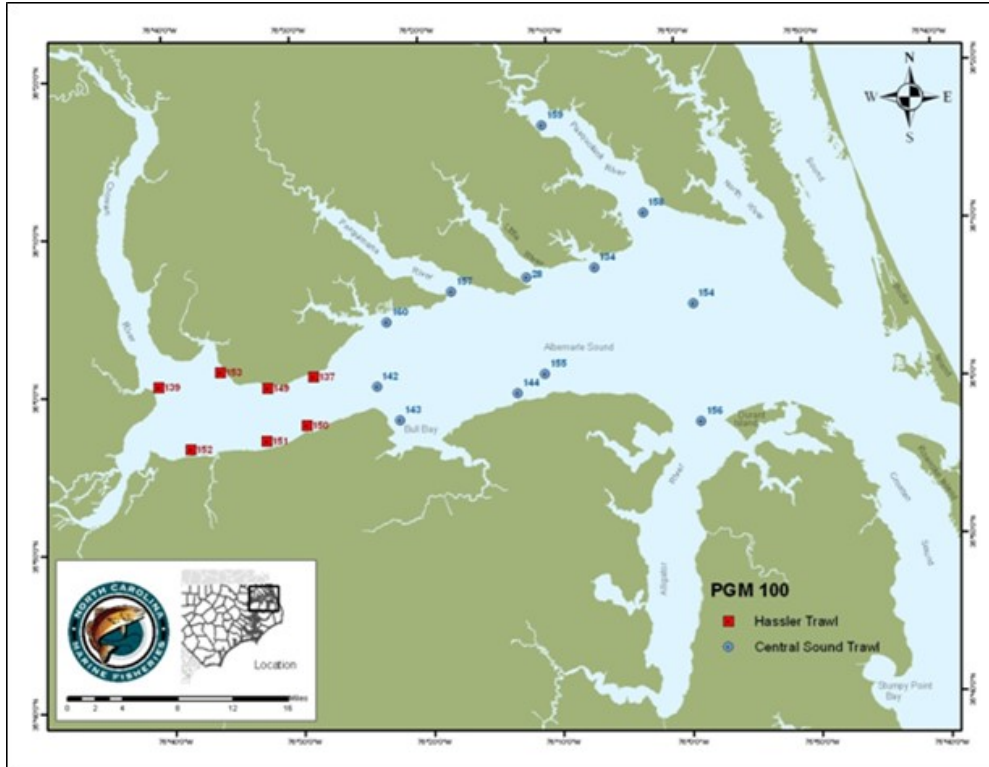


Figure A1.1. Location of sites in Albemarle Sound sampled by the NCDMF Juvenile Anadromous Trawl Survey (Program 100).

Estuarine Trawl Survey (Program 120)

In 1971, the NCDMF initiated a statewide Estuarine Trawl Survey, also known as Program 120 (P120). The initial objectives of the survey were to identify the primary nursery areas and produce annual recruitment indices for economically important species. Other objectives included monitoring species distribution by season and by area and providing data for evaluation of environmental impact projects.

The survey samples shallow-water areas south of the Albemarle Sound system (Figure A1.2). Major gear changes and standardization in sampling occurred in 1978 and 1989. In 1978, tow times were set at one minute during the daylight hours. In 1989, an analysis was conducted to determine a more efficient sampling time frame for developing juvenile abundance indices with acceptable precision levels for the target species. A fixed set of 105 core stations was identified and sampling was to be conducted in May and June only, except for July sampling for weakfish (dropped in 1998, Program 195 deemed adequate), and only the 10.5-ft headrope, 1/4-inch bar mesh trawl would be used.

The current gear is a 3.2-m (10.5 ft.) otter trawl with 6.4-mm (1/4-inch) bar mesh body netting of 210/6 size twine and a tail bag mesh of 3.2-mm (1/8-inch) Delta-style knotless nylon with a 150-mesh circumference and 450-mesh length. Three loops of 3/16-inch diameter chain are attached to each wing. Each loop is comprised of thirteen links hung over a distance of ten links. Two loops are at the corners, where bars and points meet, and one loop is in the center. The trawl is towed for one minute during daylight hours and similar tidal stages covering a distance of 75 yards.

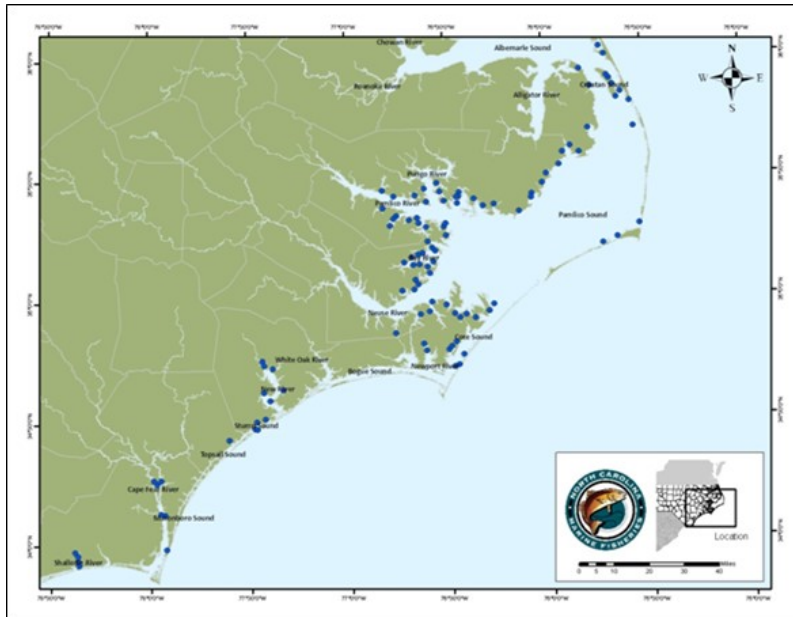


Figure A1.2. Locations of core stations sampled by the NCDMF Estuarine Trawl Survey (Program 120).

Pamlico Sound Survey (Program 195)

The Pamlico Sound Survey, also known as Program 195 (P195), was instituted in March 1987 to provide a long-term, fishery-independent database for the waters of the Pamlico Sound, eastern Albemarle Sound, and the lower Neuse and Pamlico rivers. Data collected from the survey have been used to calculate juvenile abundance indices and estimate population parameters for interstate and statewide stock assessments of recreationally and commercially important fish stocks.

The survey samples 54 randomly selected stations based on a grid system (one-minute by one-minute grid system equivalent to one square nautical mile). Sampling is stratified by depth and geographic area. Shallow water is considered water between 6 to 12 feet in depth and deep water is considered water greater than 12 feet in depth. The seven designated strata are: Neuse River; Pamlico River; Pungo River; Pamlico Sound east of Bluff Shoal, shallow and deep; and Pamlico Sound west of Bluff Shoal, shallow and deep. A minimum of three stations (replicates) are maintained in each strata. A total of 108 stations are sampled each year to ensure maximum areal coverage. Sampling now occurs only in the Pamlico Sound and associated rivers and bays (Figure A1.3).

Sampling is conducted aboard the RV *Carolina Coast*, equipped with double-rigged demersal mungoose trawls. The RV *Carolina Coast* is a 44-ft fiberglass hulled double-rigged trawler. The trawl consists of a body made of #9 twine with 47.6-mm (1 7/8-inch) stretch mesh, a cod end of #30 twine with 38.1-mm (1 1/2-inch) stretch mesh, and a 3.05-m (10 ft) tail bag. A 36.6-m (120 ft) three-lead bridle is attached to each of a pair of wood doors that measure 1.22 m (4 ft) by 0.610 m (2 ft) and a tongue centered on the 9.1-m (30 ft.) headrope. A 4.76-mm thick, 9.26-m tickler chain is connected to the door next to the 10.4-m (34 ft) footrope. Tow duration is 20 minutes at 2.5 knots.

DRAFT – SUBJECT TO CHANGE

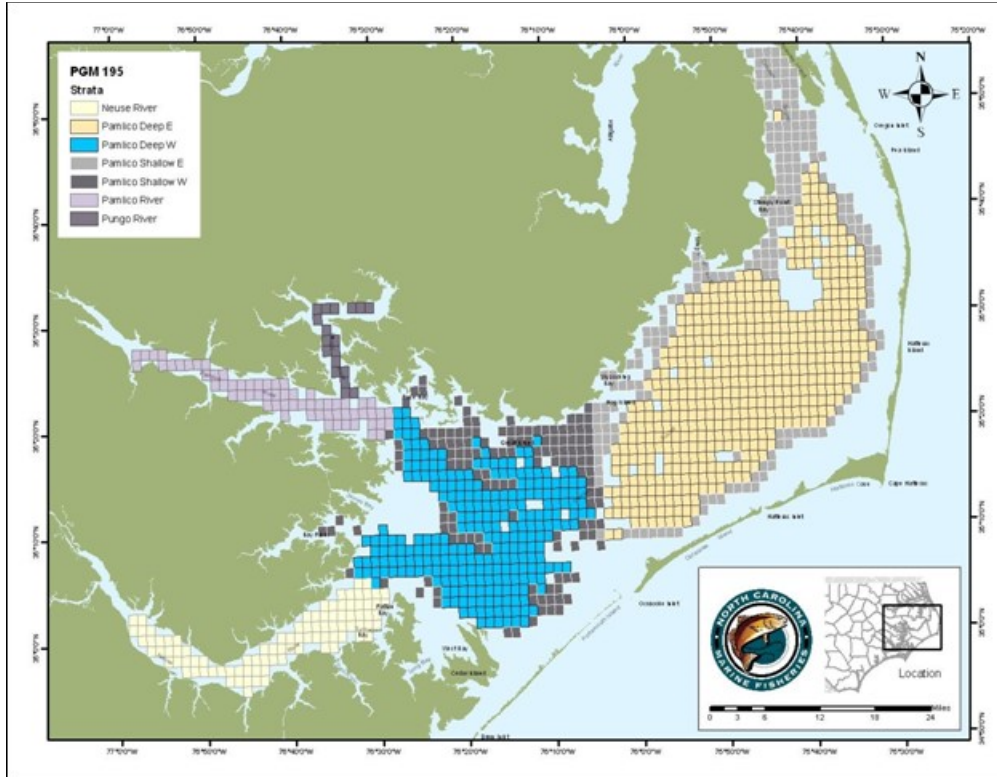


Figure A1.3. Location of sampling grids in Pamlico Sound sampled by the NCDMF Pamlico Sound Survey (Program 195).

Commercial Crab Sampling (Program 436)

Commercial Crab Sampling, also known as Program 436 (P436), was initiated in April 1995 to collect fisheries-dependent data at fish houses from North Carolina's commercial blue crab fishery. Initially, sampling was limited to the northeast and Pamlico Sound regions of North Carolina. Statewide sampling was initiated in 1998. Subsamples of sorted (by market category) and unsorted catches are taken and biological information is recorded. All blue crabs in a subsample are measured and sexed, and maturity of females is recorded. Program 436 only samples voluntarily cooperative fish houses, and sampling distribution may not reflect landing patterns.

DRAFT – SUBJECT TO CHANGE

APPENDIX 2

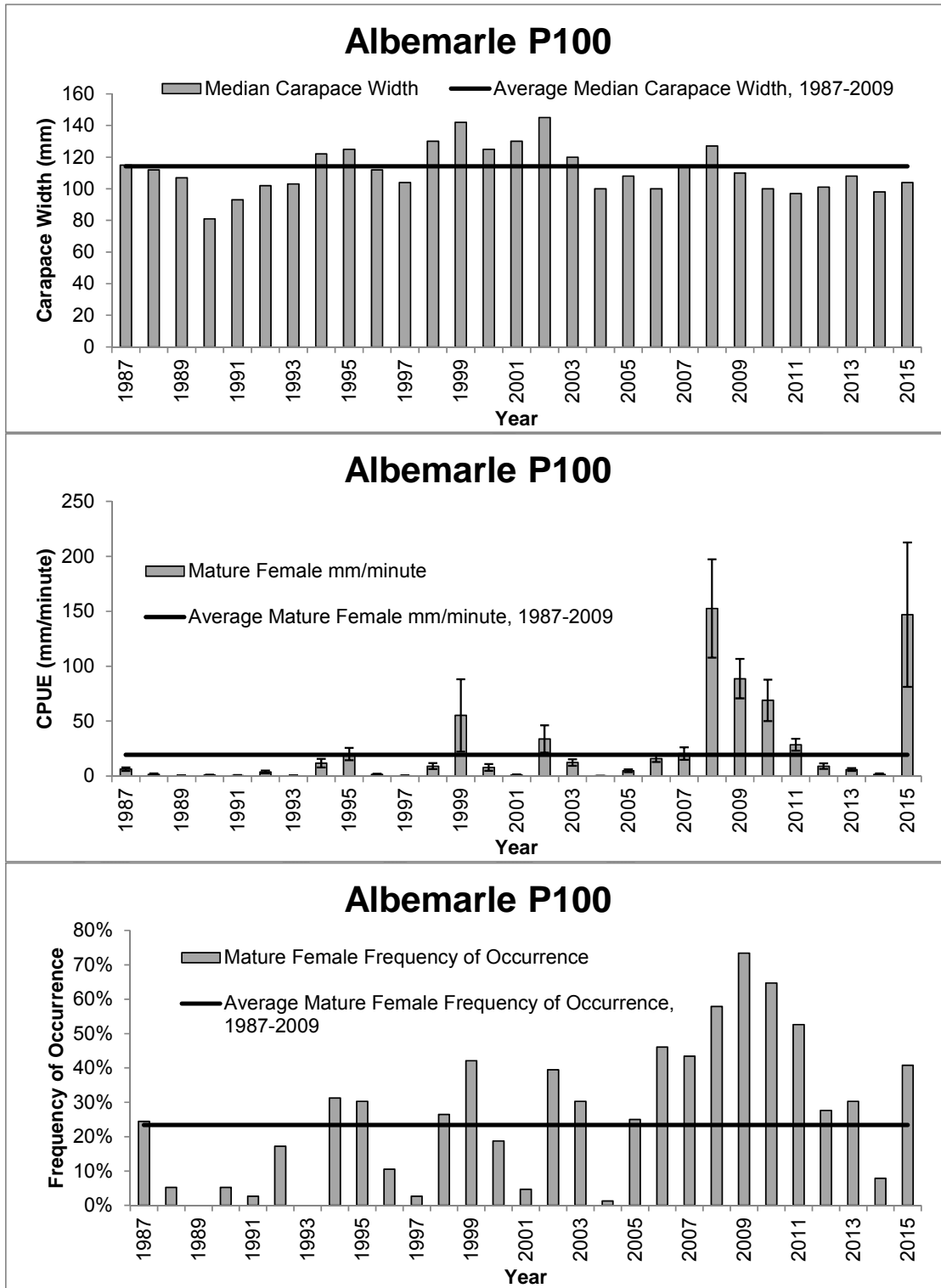


Figure A2.1. Indices from the NCDMF Juvenile Anadromous Trawl Survey (P100) used for the production characteristic of the blue crab Traffic Light, 1987-2015. Error bars represent one standard error of the mean.

DRAFT – SUBJECT TO CHANGE

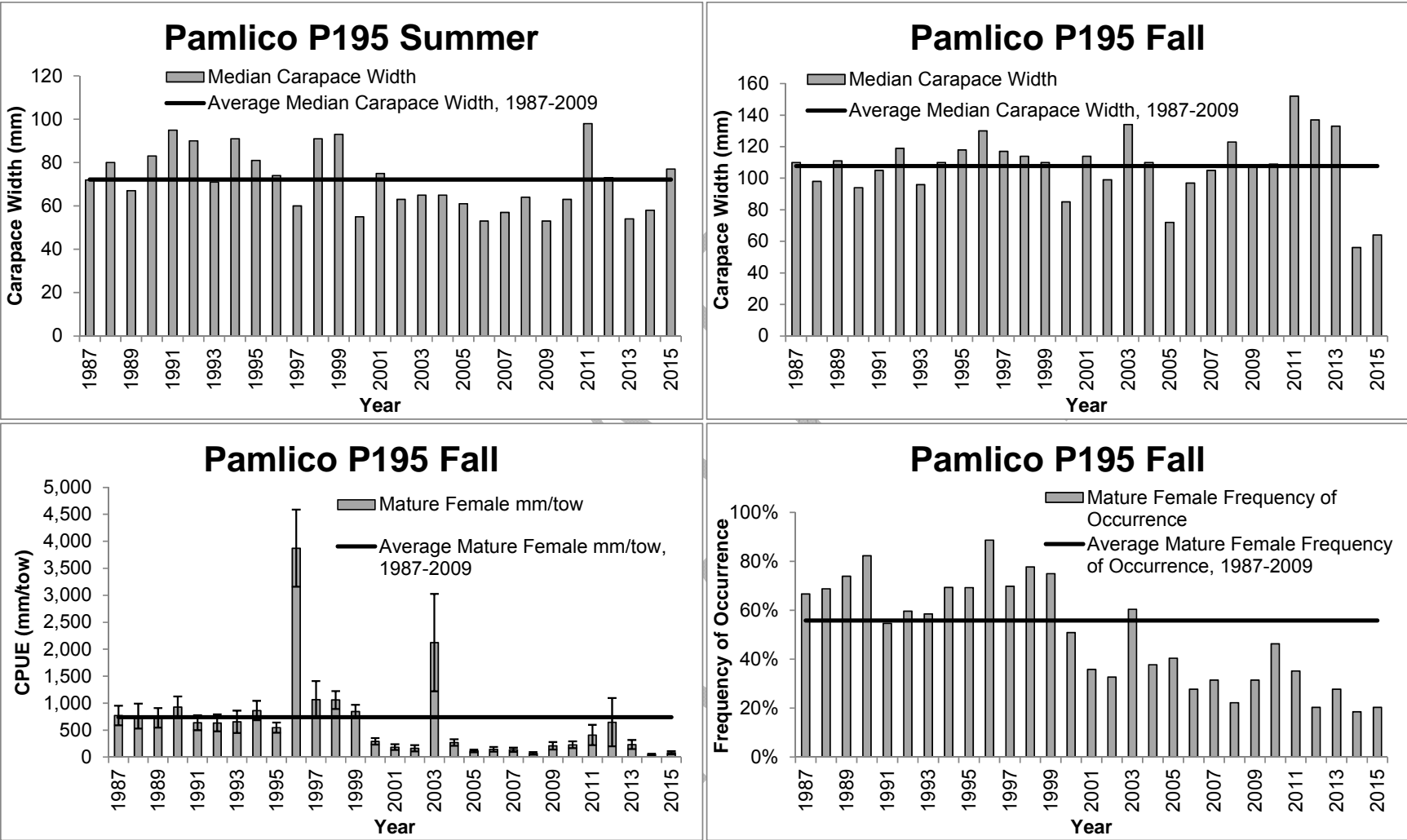


Figure A2.2. Indices from the NCDMF Pamlico Sound Survey (P195) used for the production characteristic of the blue crab Traffic Light, 1987-2015. Error bars represent one standard error of the mean.

DRAFT – SUBJECT TO CHANGE

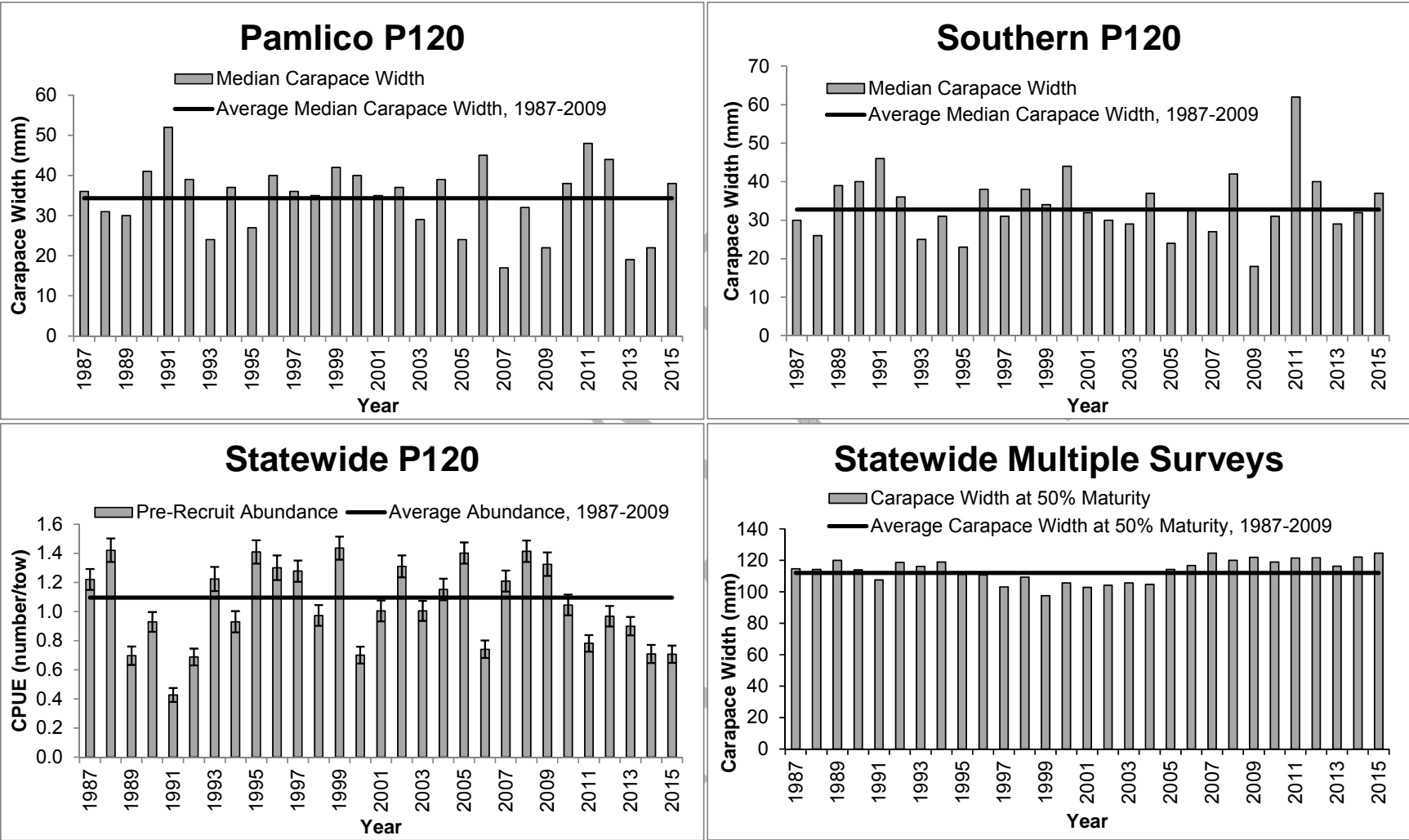


Figure A2.3. Indices from the NCDMF Estuarine Trawl Survey (P120) and the statewide carapace width at 50% maturity for female blue crabs used in the production characteristic of the blue crab Traffic Light, 1987-2015. Data from all fishery-dependent and independent surveys were included in the maturity analysis. Error bars represent one standard error of the mean.

DRAFT – SUBJECT TO CHANGE

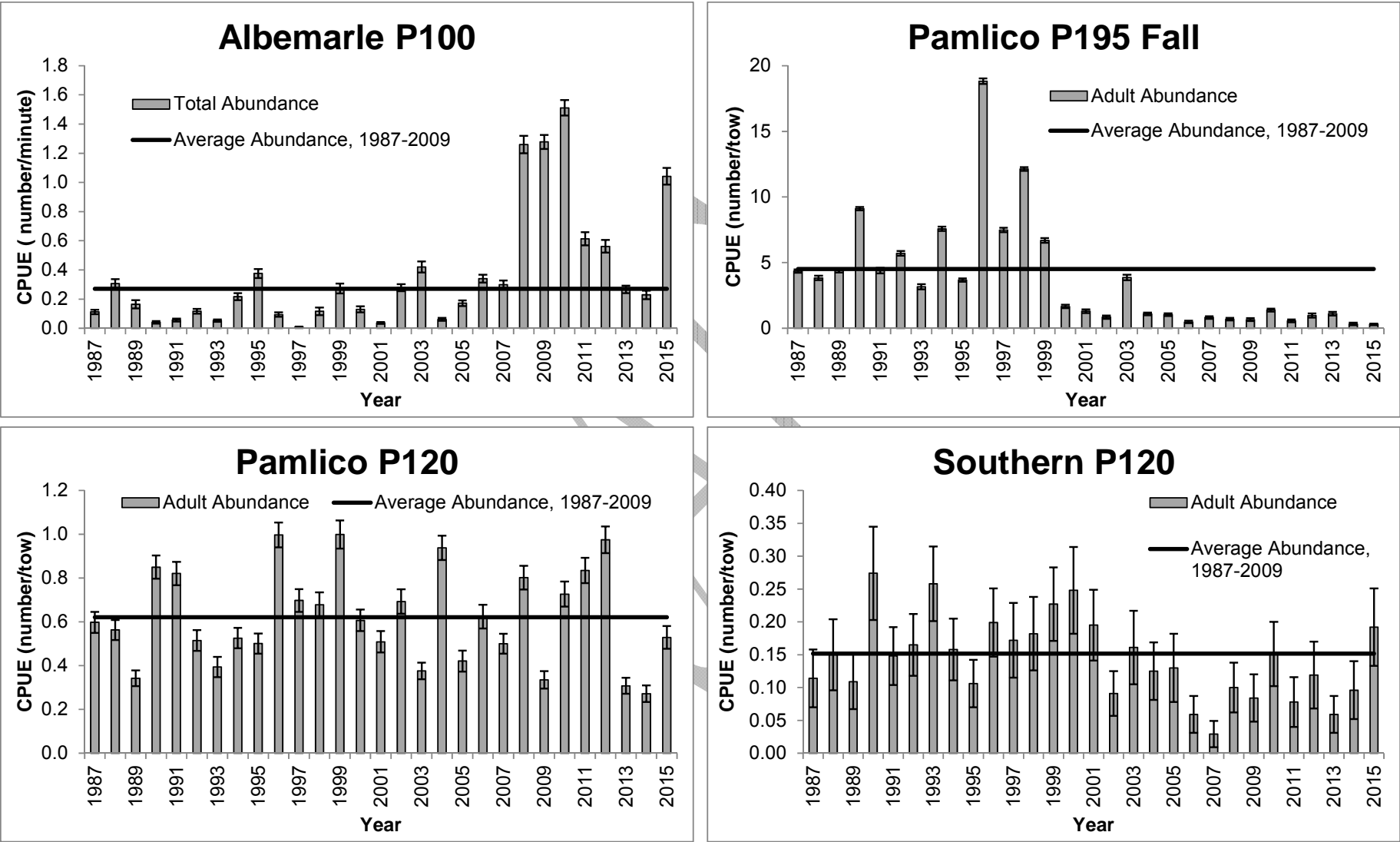


Figure A2.4. Indices from the NCDMF Juvenile Anadromous Trawl Survey (P100), Estuarine Trawl Survey (P120), and Pamlico Sound Survey (P195) used for the adult abundance characteristic of the blue crab Traffic Light, 1987-2015. Error bars represent one standard error of the mean.

DRAFT – SUBJECT TO CHANGE

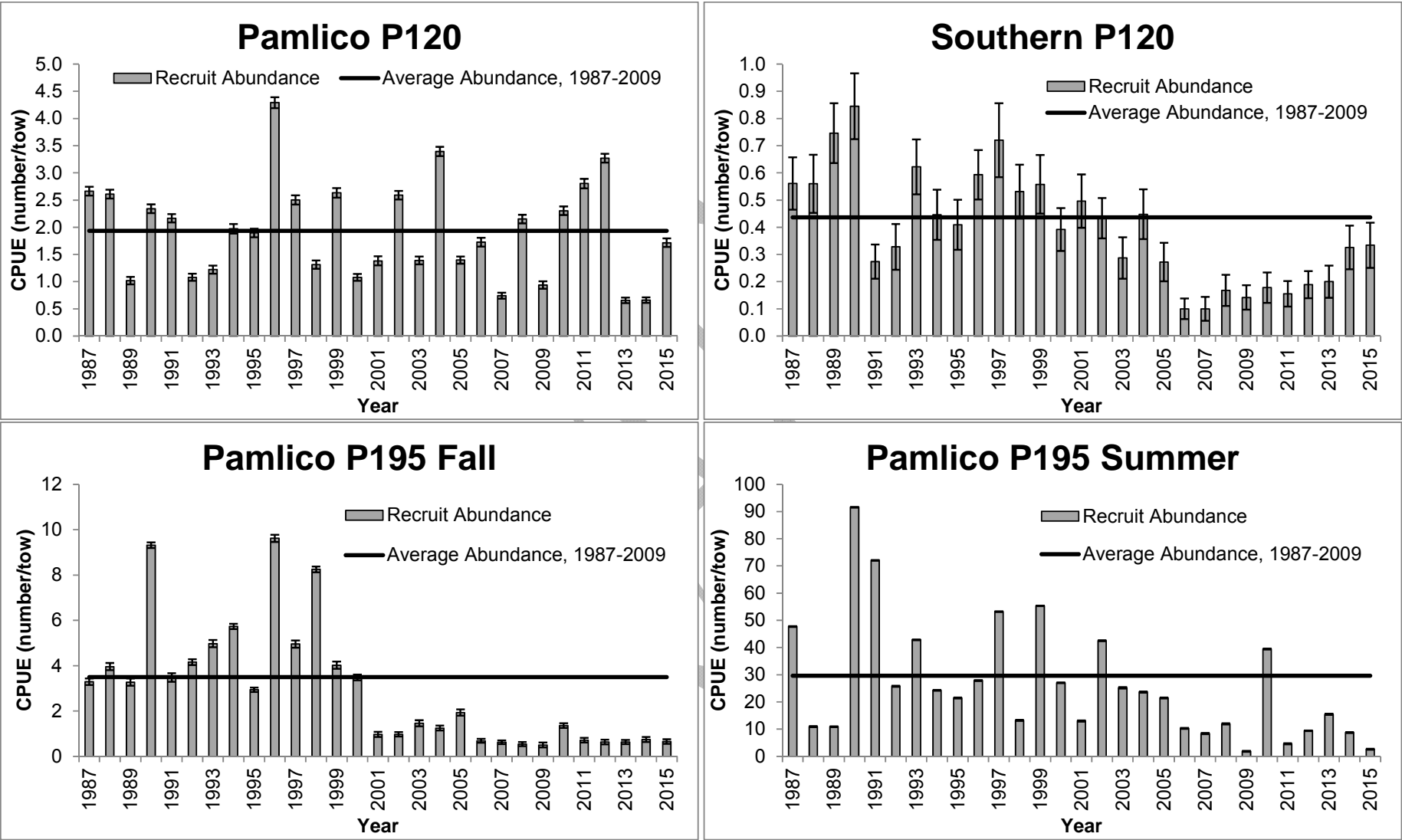


Figure A2.5. Indices from the NCDMF Estuarine Trawl Survey (P120) and Pamlico Sound Survey (P195) used for the recruit abundance characteristic of the blue crab Traffic Light, 1987-2015. Error bars represent one standard error of the mean.

DRAFT – SUBJECT TO CHANGE

APPENDIX 3

The following analyses were originally included as part of Issue Paper 11.1 Adaptive Management Framework for the North Carolina Blue Crab Stock in Amendment 2. They were updated here to see how commercial catch-per-unit-effort (CPUE) and the commercial landings comparison to the Traffic Light have changed since the FMP was adopted.

It should be noted that for both analyses there was no correction for variation in landings that come from differing effort, fishing efficiency, crabber choice, differences in landings data collection methods over the years, or any commonly used standardization techniques for comparison of these data. Also, note that the collection of commercial landings data changed considerably in 1994. Prior to 1994, commercial landings data were provided on a voluntary basis. As of January 1994, dealers have been required to report trip-level commercial fisheries landings using trip tickets. This change in reporting should be considered when comparing commercial landings before and after 1994.

Commercial CPUE Analysis

Commercial CPUE data was calculated for 1994-2015. This updated analysis followed the same procedures for selecting crabbers as before, those fishing more than 10 and less than 1200 pots per year, and trips landing between zero and fifteen pounds per pot from 1997-2015. Generally, the number of pots fished has decreased but has remained relatively stable since 2010 (Figure A3.1). The number of trips has also decreased during this period. The total pounds harvested have generally decreased in the Pamlico and Southern regions, where harvest in the Albemarle region has fluctuated with no trend. The CPUE (pounds per pot) across all regions has remained relatively steady despite the decreased number of trips and pots being fished.

Comparing Commercial Landings to the Traffic Light

While fisheries landings data are not a direct measure of abundance, landings may fluctuate in response to changes in abundance (and numerous other factors). Here, commercial hard crab landings are shown in comparison to the adult abundance characteristic. For this analysis, the percentage of green and yellow were added together and plotted with the percentage of red. This analysis shows that commercial hard crab landings does track fairly well with the adult abundance characteristic (Figure A3.2). In the mid- to late 1990s, when the percentage of green and yellow in the adult abundance characteristic was also at its peak, commercial hard crab landings were also at their peak. When the amount of green and yellow in the adult abundance characteristic declined in the early 2000s, landings declined sharply; neither commercial landings or the amount of green and yellow in the adult abundance characteristic have rebounded to previous levels.

DRAFT – SUBJECT TO CHANGE

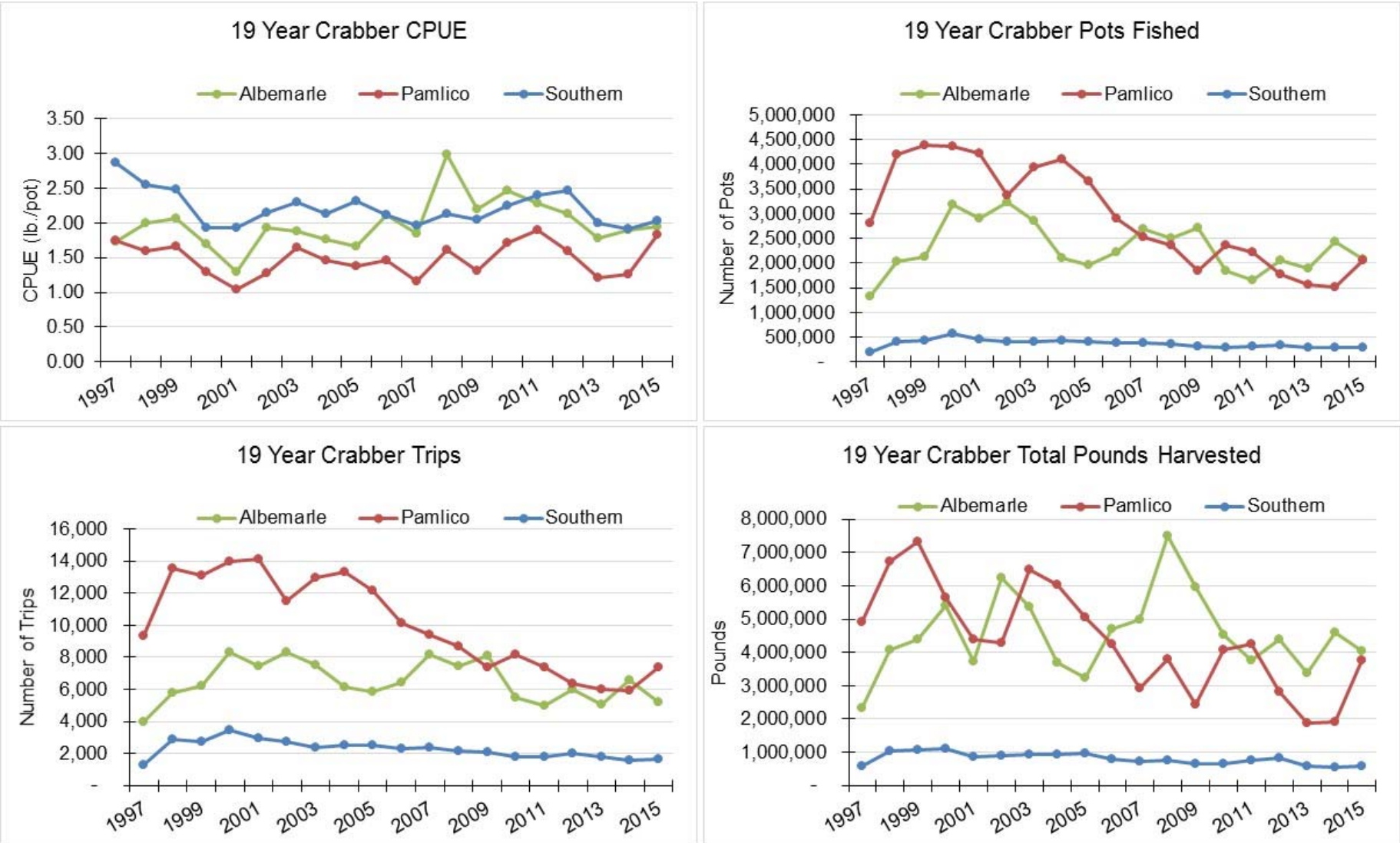


Figure A3.1. Commercial CPUE, trips, pots fished, and total pounds harvested summarized by removing trips by crabbers with less than 19 years' experience and reported landings of either zero or greater than fifteen pounds per pot and fishing no more than 1,200 or less than 10 pots per day.

DRAFT – SUBJECT TO CHANGE

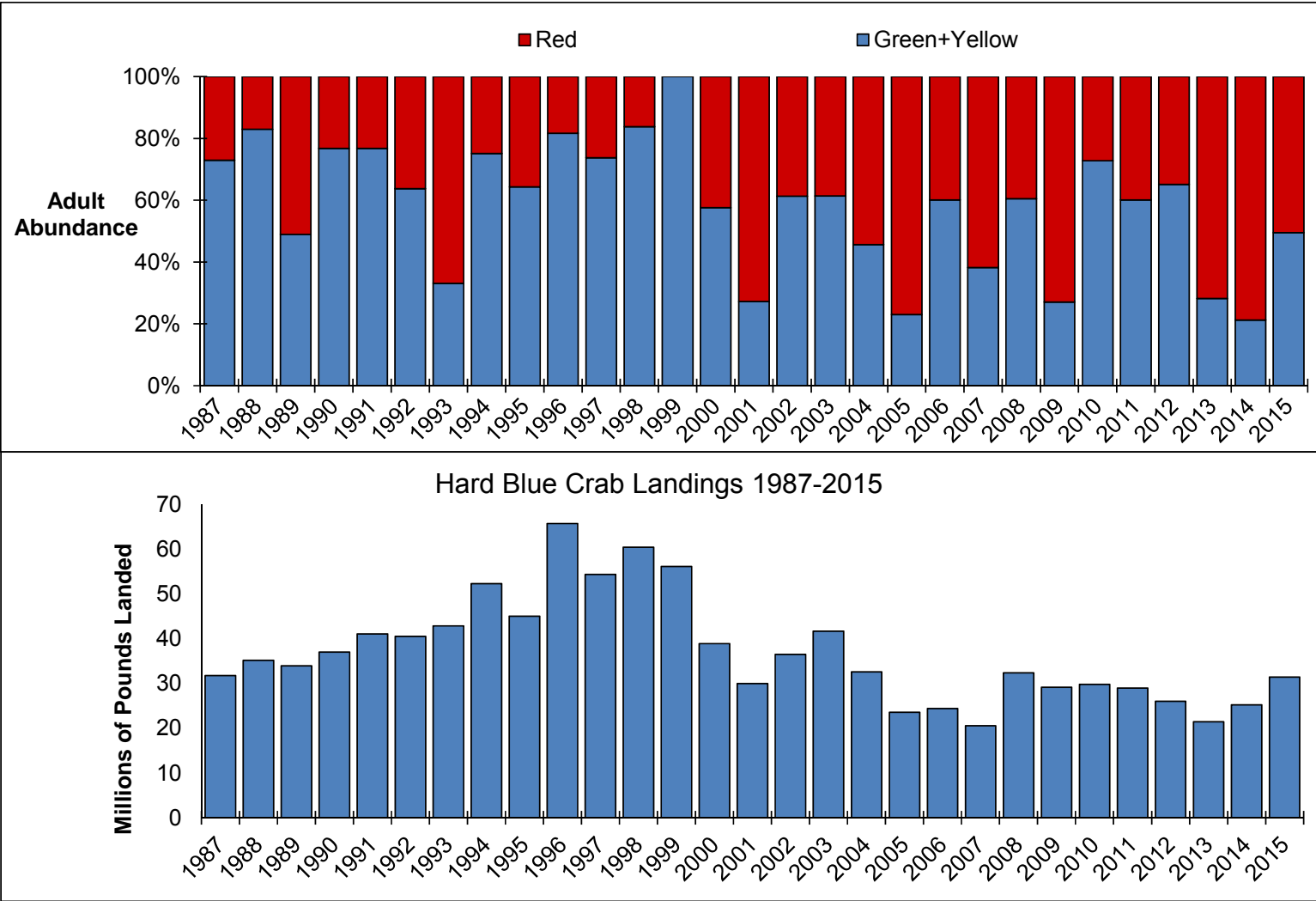


Figure A3.2. A comparison of the inverted adult abundance characteristic results and commercial hard crab landings (millions of pounds), 1987 - 2015. The blue bars for adult abundance are the combined percentages of green and yellow in the Traffic Light.

NORTH CAROLINA FISHERY MANAGEMENT PLANS

May 2016



FISHERY MANAGEMENT PLAN REVIEW SCHEDULE (July 2015 – June 2020)
Revised August 2015

SPECIES (Last FMP)	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
STRIPED MULLET (4/06)					
KINGFISHES (12/07)					
INTERJURISDICTIONAL (6/08)					
HARD CLAM (6/08)					
OYSTER (6/08)					
RED DRUM (11/08)					
SPOTTED SEA TROUT (3/12)					
SOUTHERN FLOUNDER (2/13)					
ESTUARINE STRIPED BASS (5/13)					
BLUE CRAB (11/13)					
BAY SCALLOP (3/15)					
SHRIMP (3/15)					
RIVER HERRING (4/15)					



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

MEMORANDUM

TO: Marine Fisheries Commission

FROM: Division of Marine Fisheries

DATE: April 29, 2016

SUBJECT: Implementation of the Flounder Pound Net Total Allowable Landings as required by Supplement A to Amendment 1 to the North Carolina Southern Flounder Fishery Management Plan.

During the November 2015 Marine Fisheries Commission business meeting, Supplement A to Amendment 1 to the Southern Flounder Fishery Management Plan was finalized and a Marine Fisheries Commission motion passed that implemented further management measures specific to the flounder pound net fishery. The motion requires all “flounder pound nets will be subject to a 5 ¾-inch escape panel and will operate under a total allowable landings of 38 percent reductions based on 2011 through 2015 pound net landings. The total allowable landings will be based on the water body where the pound nets are set, as presented by the division by February 2016 meeting (assumes that the total allowable landings equals the total allowable catch).”

During the February 2016 commission meeting, the division director provided a verbal update to the commission stating that the total allowable landings will be divided into six quota monitoring groups based on locations of individual flounder pound net sets (Table 1, Figures 1-6). The flounder pound net fishery will begin for each quota monitoring group on Jan. 1 each year and continue until that group’s portion of the total allowable landings has been met. Pound net types may be changed, per existing pound net rule criteria, to allow harvest of other species but no flounder may be harvested from any pound net within a specific quota monitoring group once the fishery for that group has closed.

The division will monitor landings of flounder harvested from pound nets by month solely under the trip ticket program from Jan. 1 through Aug. 31. Beginning Sept. 1, an additional quota monitoring program will be implemented that provides daily landings recorded by dealer for each Standard Commercial Fishing License number. This monitoring will be based on a Flounder Pound Net Dealer Permit (in development) that will be required by proclamation for any finfish dealer who purchases flounder harvested by pound net. This permit will require permitted dealers, whether they have purchased any flounder harvested by pound net or not, to report flounder pound net landings by Standard Commercial Fishing License number daily, Sept. 1 through the end of the fishing year. By existing rules, reports shall be submitted via fax, phone, or email. If a dealer

fails to report landings, the Notice of Violation process will begin. This process can result in revocation of the dealer permit if there are recurring violations.

When a quota monitoring group's reported flounder harvest reaches 80 percent of its allocation of the total allowable landings, a proclamation will be issued closing that quota monitoring group's fishery to the harvest of flounder with pound nets within 48 hours. This is due to the pulse nature of the pound net fishery where not all nets are fished every day and a large volume of fish can be landed in a short period of time. During the initial closing, the division will compile and analyze the landings data to account for late reporting and errors. If a quota monitoring group's allocation of the total allowable landings is not met, a proclamation may be issued opening that quota monitoring group's fishery with a daily trip limit to harvest the remaining quota. If a quota monitoring group exceeds its allocation of the total allowable landings, the responsible quota monitoring group will have a reduction the following year equal to the overage that occurred by that quota monitoring group. If a quota monitoring group's allocation of the total allowable landings is not met by the end of the fishing year, the remaining allocation will not be credited to the following year, for the benefit of the resource.

Finally, it will be unlawful to commercially harvest flounder, by the use of gigs, once all of the quota monitoring groups have reached their portion of the total allowable landings and the flounder pound net fishery closes for the last quota monitoring group, as directed by the Supplement A to Amendment 1 to the Southern Flounder Fishery Management Plan.

Table 1. Portion of Total Allowable Landings (pounds) by quota monitoring group for the flounder pound net fishery.

Quota Monitoring Group	Year						Five Year Total	Five Year Average	Group Allocation of TAL	Percent of TAL
	2011	2012	2013	2014	2015					
1 - Currituck	0	13,694	35,136	24,475	31,052	104,357	20,871	12,940	3%	
2 - Albemarle	14,894	131,425	151,797	178,042	105,573	581,730	116,346	72,135	17%	
3 - Hatteras	73,755	121,864	119,494	175,729	95,263	586,105	117,221	72,677	17%	
4 - Ocracoke	68,916	94,673	135,449	116,580	95,032	510,650	102,130	63,321	15%	
5 - North Core	268,817	177,594	392,793	300,901	296,892	1,436,997	287,399	178,188	42%	
6 - South Core	37,311	26,996	61,559	50,204	43,718	219,786	43,957	27,254	6%	
Grand Total	463,693	566,246	896,227	845,930	667,529	3,439,625	687,925	426,513	100%	

*2015 data are preliminary.

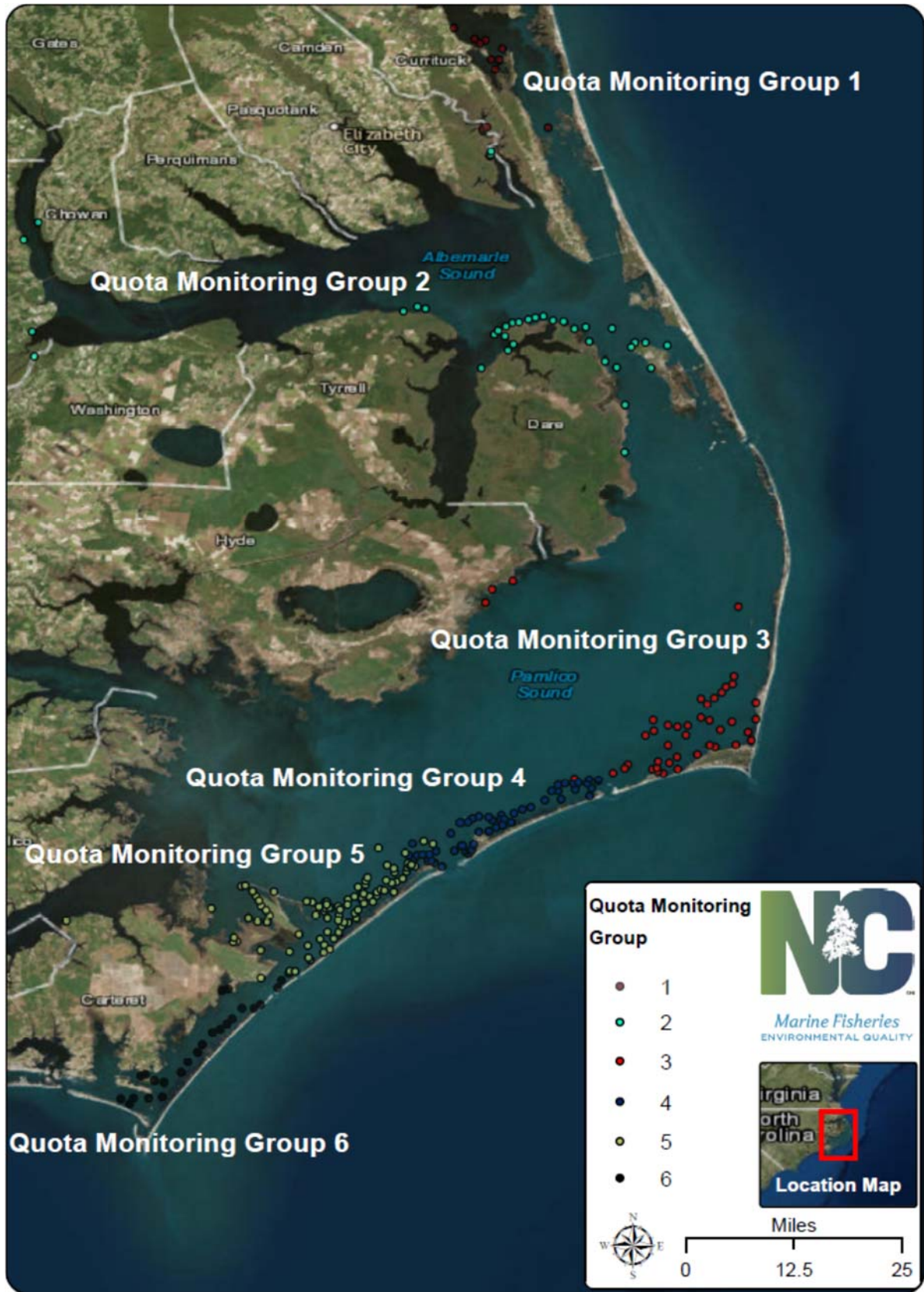


Figure 1. Flounder Pound Net Quota Monitoring Groups



Figure 2. Flounder Pound Net Quota Monitoring Group 1.



Figure 3. Flounder Pound Net Quota Monitoring Group 2.

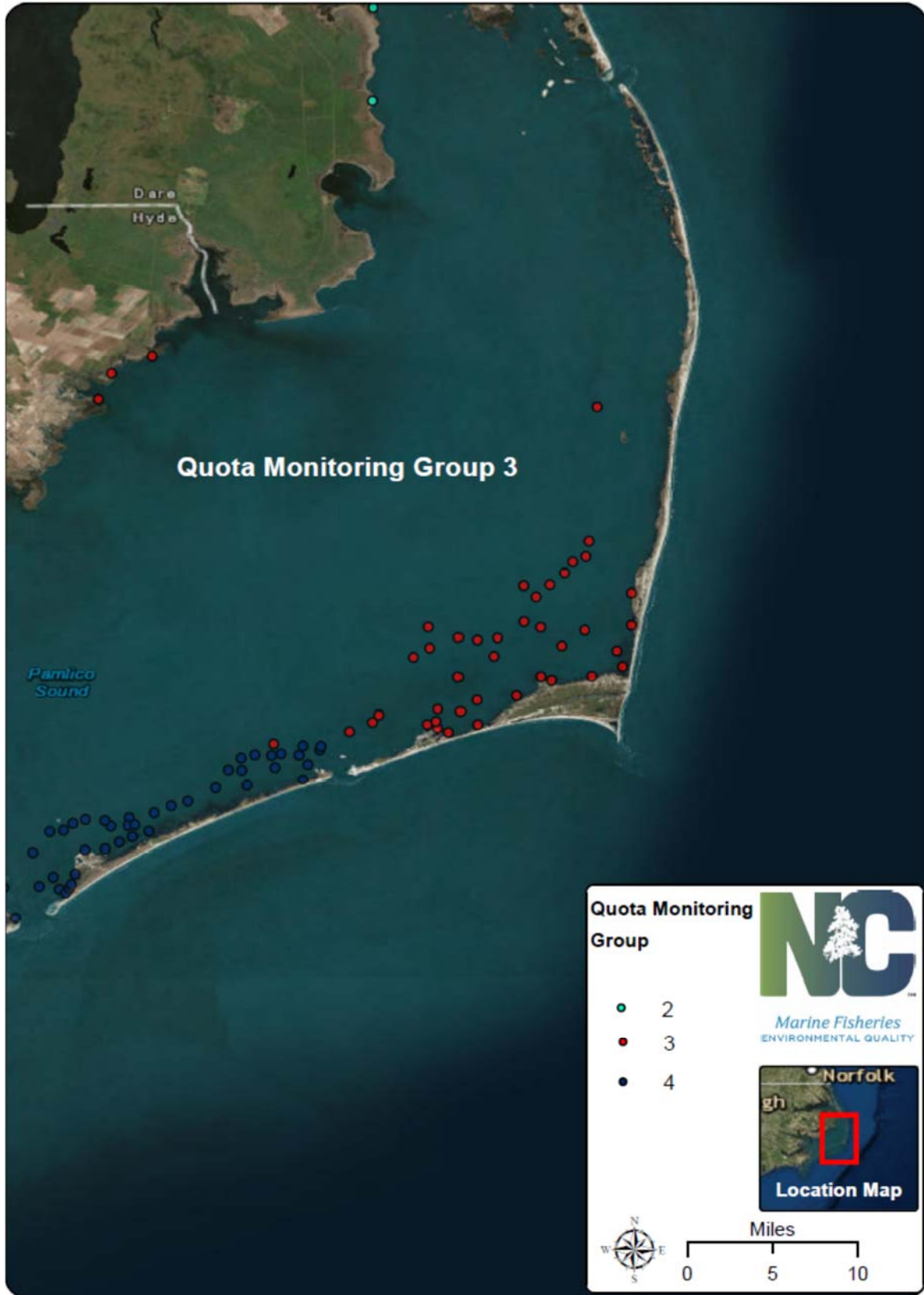


Figure 4. Flounder Pound Net Quota Monitoring Group 3.



Figure 5. Flounder Pound Net Quota Monitoring Group 4.



Figure 6. Flounder Pound Net Quota Monitoring Group 5.

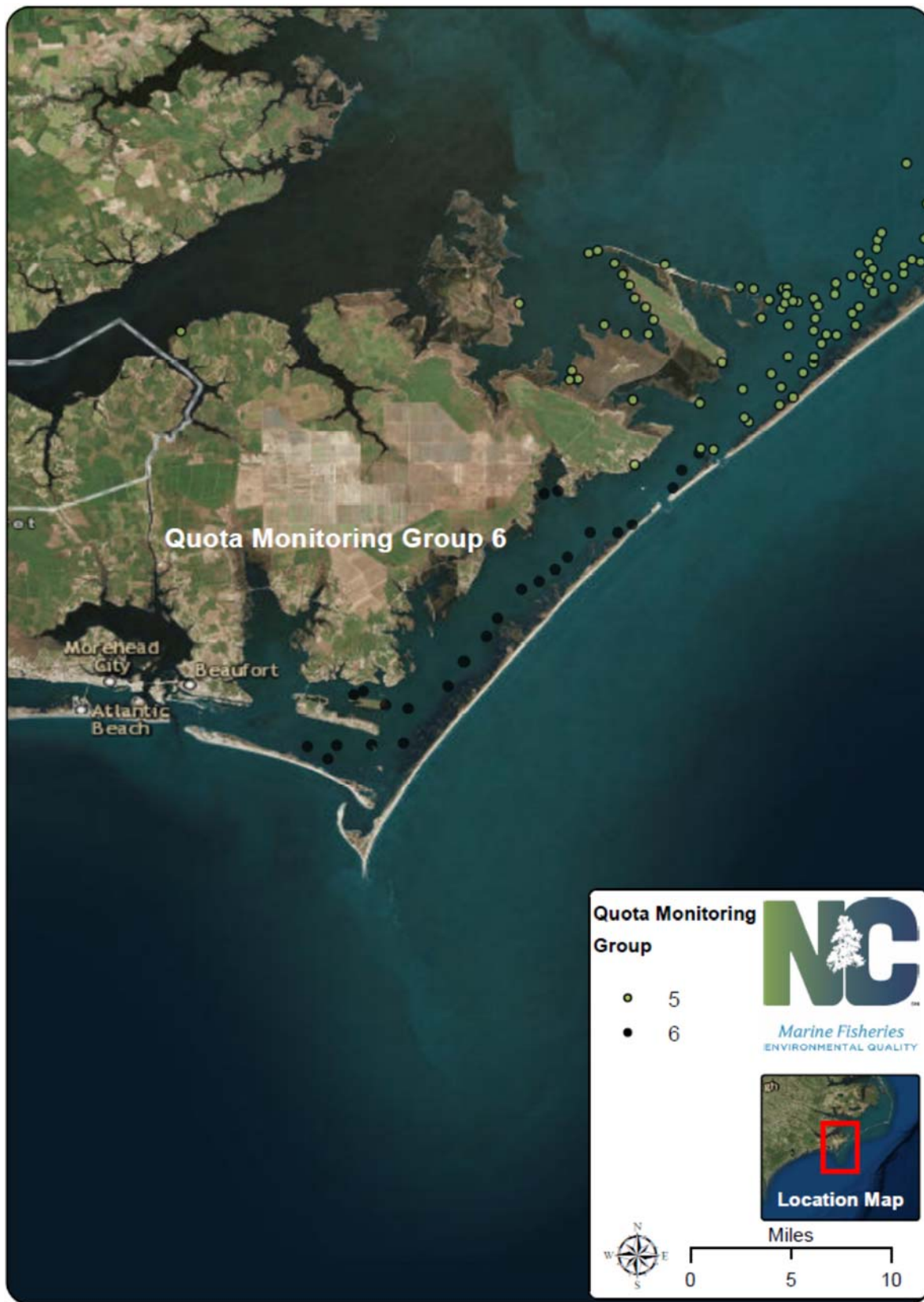


Figure 7. Flounder Pound Net Quota Monitoring Group 6.

**TIMELINE FOR OYSTER FISHERY MANAGEMENT PLAN AMENDMENT 4 AND
HARD CLAM FISHERY MANAGEMENT PLAN AMENDMENT 2 (June 2, 2014; Revised March 30, 2015; Revised April 5, 2016)**

MILESTONES	INTERNAL GUIDELINES	TABLES 1&2 STEP	PROJECTED COMPLETION DATE
1. Orient AC and Discuss Issues, Goal and Objectives	III. B.	9/5	June 2014
2. Present Timeline and Goal and Objectives to MFC; Solicit MFC Input on Issues	III. D.	11/7	August 2014
3. Issue News Release to Solicit Public Input on Issues	III. D.	12-15/8-11	September 2014
4. Draft/Revise and Review Informational Sections and Issue Papers in the FMP and Establish DMF/AC Positions	III. D - F	16-19/12-14	September 2014- September 2015
5. Obtain MFC Approval for Review of FMP	III. F.	20/15	November 2015
6. Public and Committee Review of FMP	III. F.	21-24/16-18	December 2015-January 2016
7. Present Revised FMP to MFC for Selection of Preferred Management Options	IV. A.	25/20	February 2016
8. MFC Advisory Committee Review Substantial Changes by MFC	III.F.	21-24/16-18	April 2016
9. MFC Finalizes Preferred Management Options	IV. A.	25/20	May 2016
8. Review of FMP by DEQ and JLCCGO	IV. A.	26-29/21-24	June-July 2016
9. Procedural Approval of FMP; Approval of Notice of Text for Rules by MFC	IV. A.	30-32/25-27	August 2016
10. Direct Rules through APA Process	IV. B.	33/28	October 2016-January 2017
11. Final FMP and Rule Approval by MFC	IV. C.	34-35/29-30	February 2017
12. Selected Management Measures Effective Date	N/A	N/A	48 Hours if proclamation; May 1, 2017 if rule

Revision approved by DMF Director: _____ Signature:  _____ Date: 4-5-16

Presented to MFC: _____ Date: _____

Revision(s) and reason(s): Substantial changes by the MFC warrant further review by the regional committees to provide input on a preferred management option that was recommended statewide but was initially only addressed for the southern region.

REDUCING SHELLFISH LICENSE OYSTER HARVEST LIMITS STATEWIDE¹

April 26, 2016

I. ISSUE

To determine the impacts to participants and obtain further public comment on the Marine Fisheries Commission's preferred management option of a two bushel daily oyster limit from public bottom for Shellfish License holders statewide.

II. ORIGINATION

North Carolina Marine Fisheries Commission

III. BACKGROUND

At the February 2016 meeting, the Marine Fisheries Commission (MFC) received a presentation on the draft Amendment 4 of the Oyster Fishery Management Plan (FMP) and Amendment 2 of the Hard Clam FMP. These amendments were developed together with the assistance of the Oyster and Hard Clam FMP Advisory Committee. The MFC was asked to select its preferred management option for each issue in the plans and approve the draft plans to be sent forward for departmental and legislative review.

One of the management issues was "Assessing and Mitigating Harvest Effort Impacts on Oyster Resources in the Southern Region" from the draft Amendment 4 of the Oyster Fishery Management Plan. This issue was presented in conjunction with the issue "Consider the Elimination of the Shellfish License and Require all Shellfish Harvesters to Have a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License". These issues were presented together because potential management strategies for each issue are contingent on each other. In response to these issues, the MFC passed two motions.

One motion was to pursue elimination of the standalone Shellfish License for oysters only and require all oyster harvesters to have a Standard Commercial Fishing License (SCFL) or Retired Commercial Fishing License (RSCFL) with shellfish endorsement to harvest oysters commercially. This would require statutory change in order to be implemented. The other motion the MFC passed was to establish a daily limit of two bushels of oysters per person with a maximum of four bushels of oysters per vessel off public bottom with a Shellfish License, statewide. This could be implemented via the existing Fisheries Director's proclamation authority for management of oysters.

The initial issue of "Assessing and Mitigating Harvest Effort Impacts on Oyster Resources in the Southern Region", when presented to the public and advisory committees, confined the options for possible reductions to Shellfish License bushel limits to areas within the southern region (waterbody areas south of the Highway 58 bridge) and did not investigate statewide implications of these management options. As a result of the broader scope of its preferred management option for this issue, the MFC requested additional participation and landings information in the public oyster fishery for Shellfish License holders across the state, and postponed approval of the draft oyster and clam amendments until May 2016. This issue paper will focus on the impact of a reduced daily oyster harvest limit for Shellfish License holders on public bottom

¹ Presented to: PDT on 4/14/16; AC on 4/11/16; MRT on 4/18/16; MFC on 5/19/16.

statewide. Pertinent information from the previous two related issues is also included in this document. In the interim, this issue with additional statewide information would be presented to both the northern and southern regional advisory committees, allowing for additional review and public comment prior to the MFC approval of the entire draft Oyster Fishery Management Plan Amendment 4 to be sent forward for department and legislative review. See Attachment 2 for the two regional advisory committees' input received on April 6 and 7, 2016.

The southern region was originally the focus of these two issues because it has been responsible for 47 percent of the total public oyster landings (including mechanical harvest) made statewide between 1994 and 2013. This region generates significant landings even though the area only encompasses 6 percent of the total coastal water body area of the state, and only 5 percent of the total area which is open to shellfishing. This region has the highest amount of Shellfish License holders, the highest number and regional percentage of Shellfish License holders with trip ticket landings, and increasing annual numbers of Shellfish License holders participating in the public commercial oyster fishery. There are also a large number of Shellfish License holders showing no record of trip ticket landings throughout this time period.

The discussions within the two original issue papers was also made specific to areas in the southern region because of the intertidal nature of the oysters in this area. When compared to the primarily subtidal oysters in other areas of the state, intertidal oysters are more vulnerable to harvest and require minimal investment in gear as they are accessible for collection by walking out on the exposed reefs at low tide. Recreational harvest is also allowed seven days a week, and it is unknown how much is taken with this user group. However, with the ease at which intertidal oysters may be collected, recreational pressure is likely much greater in the southern area than other parts of the state. As participation in the oyster fishery increases in the southern region, harvesters are forced to spend additional time in one area, thoroughly breaking up reefs. With average bushels landed per individual per trip declining in this region, there is growing concern that the resource may not be able to sustain the current level of harvest pressure.

Since the creation of the Shellfish License in 2000, Shellfish License holders have been held to the same commercial daily bushel harvest limits for oysters as both SCFL and RSCFL holders. Through statutory changes in 2013, the Shellfish License is restricted to hand harvest only, and harvest by mechanical methods is prohibited. In North Carolina, there are three different daily oyster commercial hand harvest limits for harvest off public bottom, depending on location. In Pamlico Sound mechanical harvest areas outside the bays, hand harvest is allowed 15 bushels per day per commercial fishing operation, 10 bushels per day per commercial fishing operation in the bays and in the Mechanical Methods Prohibited area along the Outer Banks of Pamlico Sound, and 5 bushels per person, not exceeding 10 bushels per commercial fishing operation from Core Sound south to the North Carolina-South Carolina border. The dissimilarities in commercial hand harvest limits between waterbodies has been a point of contention for some fisherman located near the border of waterbodies with different harvest limits, and has been developed as the issue "Differences in Hand Harvest Limits Statewide" in Amendment 4 of the Oyster Fishery Management Plan.

To examine the potential local and statewide impacts a reduced daily harvest limit for Shellfish License holders may have, license holder, landings, and fishery effort/participant information was grouped and analyzed by broad regions. Two methods were used to pool the data, one for licensing information, and one for landings and effort/participants. Data on total numbers of Shellfish License s (both with and without commercial landings) was grouped into five residence regions, with licensees being assigned a region based on the holder's listed county of

residence. These residence regions are delineated as: Southern (Brunswick, Columbus, New Hanover, Pender, Bladen, Sampson, Duplin, and Onslow counties), Central (Carteret, Jones, Lenoir, and Wayne counties), Pamlico (Pamlico, Beaufort, Pitt, Greene, Craven, Hyde, and Dare counties), Northern (Tyrrell, Washington, Martin, Chowan, Perquimans, Pasquotank, Camden, Currituck, Edgecombe, and Bertie counties), and Western (which includes all of the remaining counties in North Carolina that are west of Interstate 95). This method of grouping accounts for all license holders regardless of trip ticket landings, and eliminates possible duplicate counting of participants who may fish in multiple waterbodies each year.

Oyster landings and fishery effort/participant information are grouped into four hand harvest regions based on waterbody of harvest. The boundaries for these hand harvest areas are defined as: Southern (all waterbodies from Onslow County to the SC state line), Carteret (waterbodies in Carteret County, from Bogue Sound to Core Sound), Pamlico Sound (including all tributaries; Bay, Neuse, Pamlico, and Pungo rivers), and Northern (all waterbodies north of Pamlico Sound) (Figure 1). This method of hand harvest regional grouping uses similar boundaries as the residence regions as discussed above, except it is based on the waterbody origin of oysters landed (no western waterbodies). Landings and participation data grouped into a specific hand harvest region may come from license holders from any residence region, allowing one individual license holder to count as a participant in multiple hand harvest regions.

The North Carolina commercial Shellfish License is not capped at a maximum number of holders, but is restricted to state residents. Since 2000, there have been 29,552 Shellfish Licenses sold, with an average of 1,849 issued per year. When grouped into broad residence regions by county, the distribution of Shellfish License holders across the state is skewed to the southern residence region of the state (Table 1). Since 2000, 84 percent of all Shellfish Licenses sold have been to residents of the southern and central regions combined (counties approximately east of Interstate 95 and south of the Neuse River). The fee for this license has been set as 1/8 the cost of a SCFL at a cost of \$50 and available to all state residents. The relative low cost and wide accessibility of this license has allowed for low-income and part-time fishermen to participate in the commercial fishery and establish a landings history for SCFL eligibility.

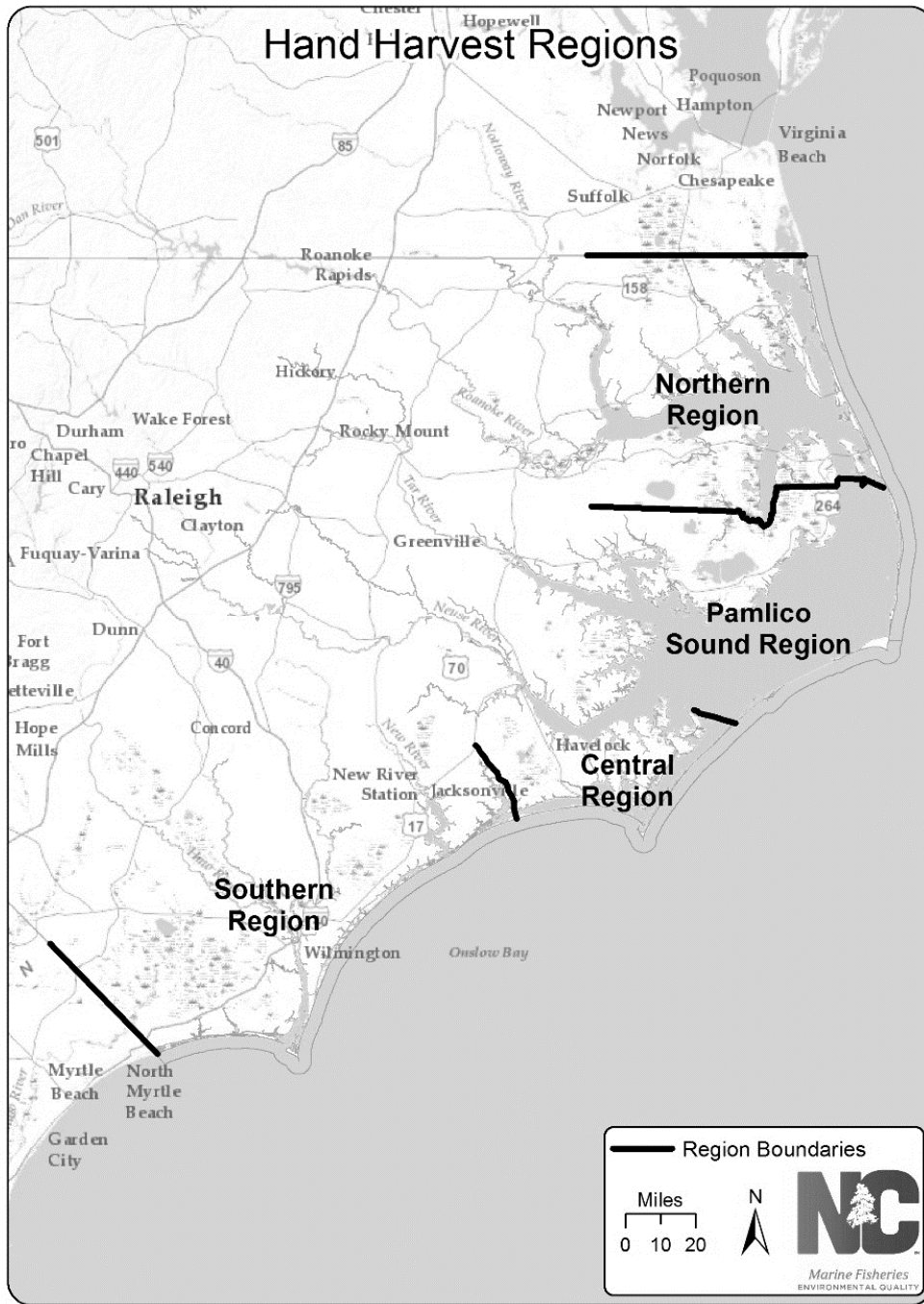


Figure 1. Oyster hand harvest regions in this issue are defined as: Southern (all waterbodies from Onslow County to the SC state line), Carteret (waterbodies in Carteret County, from Bogue Sound to Core Sound), Pamlico Sound (including all tributaries; Bay, Neuse, Pamlico, and Pungo rivers), and Northern (all waterbodies north of Pamlico Sound).

Not all holders of the Shellfish License show commercial trip ticket landings, as only 32 percent of the total Shellfish Licenses issued since 2000 have trip ticket landings for any shellfish species on record. It should be noted that individuals do hold Shellfish Licenses solely for the commercial harvest of clams. Of the Shellfish License holders with commercial landings, only 50 percent show a record of harvesting oysters from public bottom, resulting in a total of 16 percent of all Shellfish Licenses issued since 2000 with landings. The proportion of Shellfish Licenses issued that do have oyster landings from public bottom has generally been increasing annually (Figure 2), however this trend and proportion of license holders with landings does vary by region (Table 2). Individuals may be purchasing this license as a means to legally harvest and possess greater quantities of shellfish than current recreational limits allow for personal consumption and not for sale. Harvest and effort information for individuals who hold a Shellfish License but do not show landings are currently unknown. The potential impact to the oyster resource by these individuals is of concern by both fishery managers and the public, and this issue is addressed in depth in Amendment 4 of the Oyster Fishery Management Plan.

It is the low cost, and accessibility of the Shellfish License and the increase in participation by Shellfish License holders combined with decreasing overall catch rates within the public hand harvest oyster fishery in the southern region that prompted the recommendations made by the Division and the Oyster and Hard Clam FMP Advisory Committee. The number of Shellfish Licenses statewide are decreasing through time. With the largest declines in 2014, right after the Shellfish License was no longer allowed to be used to mechanical harvest shellfish. The decline also increased again in 2015, which followed a license fee increase. It cannot be determined for certain why the number of Shellfish Licenses are decreasing, but it may be attributed to recent price increases to the license fee, natural attrition similar to other commercial licenses, aging out of traditional users, state of economy, or a host of other possible reasons.

Table 1. Number and percent of total Shellfish Licenses sold since 2000, grouped by county of residence of license holder.

Residence Region	Number of Shellfish Licenses Sold	Percent of Total Sold
Southern	15,781	53%
Central	9,289	31%
Pamlico	3,408	12%
Western	892	3%
Northern	182	1%
Statewide	29,552	100%

Table 2. The number of total Shellfish Licenses issued by residence region, with the number of Shellfish Licenses showing public oyster landings (mechanical and hand harvest), 2005-2015. The number in parenthesis is the percentage of total Shellfish Licenses issued in that region with oyster landings from public bottom. Beginning in 2013 statute changes no longer allowed the Shellfish License to be used for mechanical methods for shellfish and therefore include hand harvest methods only from 2014 to 2015.

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 ⁺
Southern											
Total	914	854	890	942	1055	1022	996	928	896	819	768
With Landings	135 (15)	121 (14)	169 (19)	191 (20)	243 (23)	257 (25)	257 (26)	266 (29)	246 (27)	215 (26)	236 (31)
Central											
Total	517	457	504	511	676	507	606	484	514	415	399
With Landings	90 (17)	82 (18)	116 (23)	117 (23)	97 (14)	81 (16)	125 (21)	115 (24)	92 (18)	76 (18)	100 (25)
Pamlico											
Total	138	165	174	193	316	390	466	304	244	148	104
With Landings	7 (5)	10 (6)	13 (7)	13 (7)	22 (7)	57 (15)	72 (15)	24 (8)	29 (12)	13 (9)	7 (7)
Western											
Total	50	48	52	54	73	73	63	45	48	40	44
With Landings	<5* (*)	6 (13)	5 (10)	6 (11)	12 (16)	9 (12)	<5* (*)	5 (11)	5 (10)	8 (20)	8 (18)
Northern											
Total	9	6	10	10	14	17	19	16	16	12	7
With Landings	<5* (*)	0 (0)	<5* (*)	0 (0)	<5* (*)	<5* (*)	<5* (*)	<5* (*)	<5* (*)	0 (0)	0 (0)

+ Landings data from 2015 is preliminary until April 2016 and may be revised.

* Exact data is confidential due to the low amount of participants reporting landings.

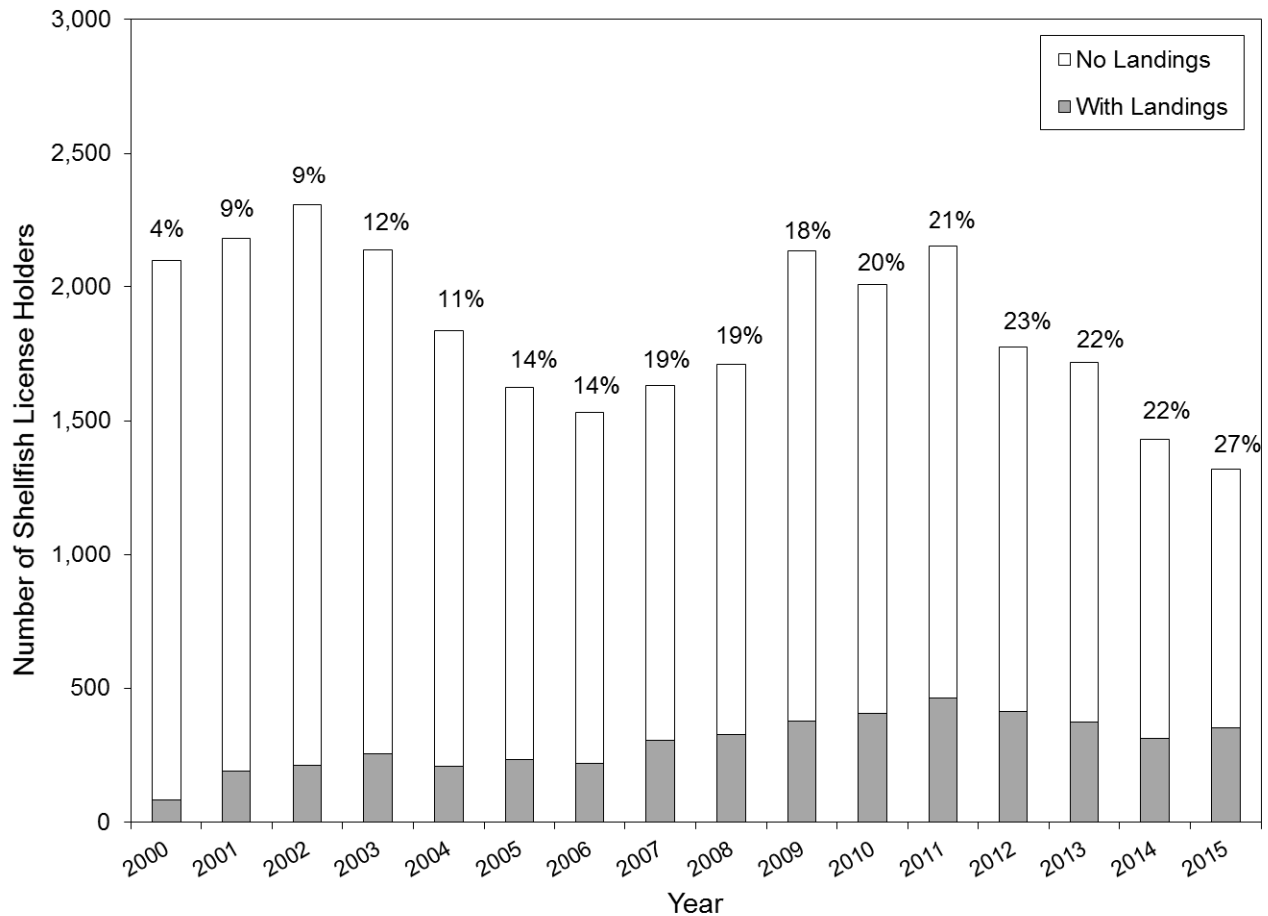


Figure 2. The annual number of Shellfish Licenses issued in North Carolina since 2000, showing the proportion of licenses with trip ticket landings in the public oyster fishery. The numbers above the bars show the percentage of total Shellfish Licenses issued that year with public oyster trip ticket landings on record. Landings data from 2015 is preliminary until April 2016 and may be revised.

Landings from Shellfish License holders have comprised 41 percent of the total hand harvest public oyster fishery since 2000. The total landings and ratio of the landings from Shellfish License holders in the public commercial hand harvest oyster fishery has generally increased statewide since 2000 (Figure 3). The increase in participation of Shellfish License holders in the public hand harvest oyster fishery appears to be driving the overall increase in landings of this fishery. The percentage of total public hand harvest oyster landings contributed by each license type since 2000 varies regionally (Table 3). Landings from the southern region have comprised 74 percent of the total hand harvest public oyster fishery since 2000, with Shellfish License holders in this region contributing 30 percent of the total landings. When combined, landings from the southern and central regions comprise 96 percent of all of the commercial public oyster hand harvest, with the Shellfish License holders contributing 39 percent of the total landings. The average annual number of trips made by Shellfish License holders with landings in the public hand harvest oyster fishery has increased since 2000, and is nearing the amount made by SCFL/RSCFL holders (Table 4).

Table 3. Percentage of total public hand harvest oyster landings since 2000 by license type and region. Includes landings data from 2015, which is preliminary until April 2016 and may be revised.

Region	Total Regional Contribution	SCFL/RSCFL Only	Shellfish Only
Southern	73.8%	43.6%	30.3%
Central	21.6%	12.1%	9.5%
Pamlico	4.5%	3.4%	1.1%
Northern	<0.1%	<0.1%	<0.1%
Statewide	100%	59.1%	40.9%

Table 4. The annual average number of trips by individual participants by license type with trip ticket landings in the public hand harvest oyster fishery

Year	Shellfish License	SCFL/RSCFL
2000	8	16
2001	9	16
2002	9	16
2003	9	16
2004	11	19
2005	12	17
2006	14	19
2007	15	20
2008	14	19
2009	13	17
2010	15	18
2011	14	19
2012	14	17
2013	16	22
2014	17	20
2015 ⁺	15	18

+ . Landings data from 2015 is preliminary until April 2016 and may be revised.

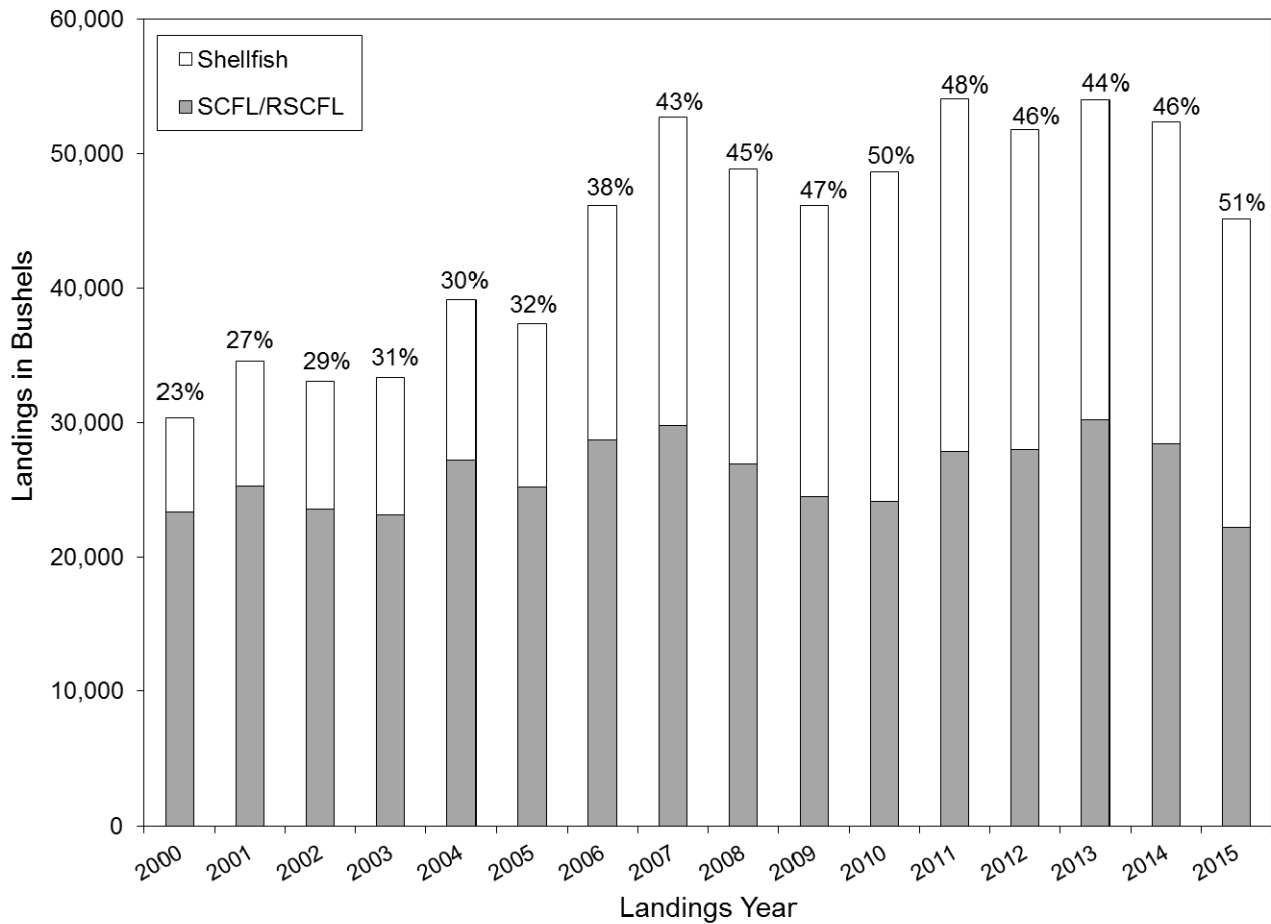


Figure 3. Total annual oyster landings from the public hand harvest oyster fishery, 2000-2015. Dark portions of the bars represent landings from SCFL/RSCFL holders, and light portions of the bars represent landings from Shellfish License holders. The numbers above the bars list the percent of the total annual public hand harvest oyster landing made by Shellfish License holders. Landings data from 2015 is preliminary until April 2016 and may be revised.

Participation in the hand harvest public oyster fishery by Shellfish License holders in the southern region ranged from 142 to 318 individuals, and ranged from 38 percent to 59 percent of the total participants (including SCFL/RSCFL) in this region (Table 5). The number of Shellfish License holder participants has increased in this region while the number of SCFL/RSCFL participants has remained relatively constant over time. Landings have generally increased with the number of participants, while average catch in bushels per individual per trip has decreased (Table 5). Increasing participation by Shellfish License holders and decreasing overall catch rates within the public hand harvest oyster fishery in the southern region was the primary concern for the development of the issue “Assessing and Mitigating Harvest Effort Impacts on Oyster Resources in the Southern Region” in the draft Amendment 4 of the Oyster Fishery Management Plan.

In the Central region, participation in the hand harvest public oyster fishery by Shellfish License holders ranged from 36 to 154 individuals, and ranged from 34 percent to 62 percent of the total participants (including SCFL/RSCFL) in this region. The number of Shellfish License holder participants has increased in this region while the number of SCFL/RSCFL participants has slightly decreased over time. Landings have generally increased and decreased with the number of participants, while average catch in bushels per trip has decreased through time (Table 5).

In the Pamlico Sound region, participation in the hand harvest public oyster fishery by Shellfish License holders ranged from 0 to 39 individuals, and ranged from 0 percent to 41 percent of the total participants (including SCFL/RSCFL) in this region. The number of Shellfish License and SCFL/RSCFL holder participants has increased in this regions with a slight decrease in recent years. Landings have generally increased with the number of participants, while average catch in bushels per trip has fluctuated through time (Table 5). Participation in the hand harvest public oyster fishery by Shellfish License holders in the northern region is low, with less than five participants in 2015. Overall the number of participants harvesting oysters by hand methods from public bottom in the Northern region (including SCFL/RSCFL) are few. Public hand harvest oyster landings in this region have only occurred the last five out of 15 years, and consist of less than 50 bushels total. The bushel per trip information for this region is based on 26 total trips over the five years of limited landings for this region, and caution should be used in interpreting this data (Table 5). Figures depicting trends in participation, landings, and bushels per trip for each hand harvest area from data in Table 5 may be found in Attachment 1.

Table 5. Number of Shellfish License and SCFL/RSCFL participants with landings, oyster landings (bushels), and average bushels of oysters per individual per trip (bushels per trip) for the hand harvest oyster fishery off public bottom by region in North Carolina, 2000-2015.

Year	Southern				Central				Pamlico				Northern			
	No. of shellfish licenses	No. of SCFL/RSCFL	Total landings (Bushels)	Ave. bushels per trip	No. of shellfish licenses	No. of SCFL/RSCFL	Total landings (Bushels)	Ave. bushels per trip	No. of shellfish licenses	No. of SCFL/RSCFL	Total landings (Bushels)	Ave. bushels per trip	No. of shellfish licenses	No. of SCFL/RSCFL	Total landings (Bushels)	Ave. bushels per trip
2000	148	244	25,044	4.49	36	69	5,267	5.13	-	10	97	4.39	-	-	-	-
2001	188	245	27,676	4.52	66	95	6,843	4.46	<5*	4	56	4.67	-	-	-	-
2002	194	218	25,158	4.23	77	110	7,941	4.46	-	12	188	5.38	-	-	-	-
2003	174	203	25,055	4.69	82	104	8,649	4.40	-	5	140	4.00	-	-	-	-
2004	165	211	27,996	4.44	102	113	11,102	3.90	<5*	10	82	3.54	-	-	-	-
2005	142	193	24,681	4.52	104	115	12,292	3.84	4	33	477	4.08	-	-	-	-
2006	176	183	27,352	4.40	130	132	17,034	3.80	5	38	1,865	5.81	-	-	-	-
2007	224	184	34,253	4.30	154	137	16,111	3.82	<5*	44	2,451	4.88	-	-	-	-
2008	256	211	35,865	4.02	125	97	10,674	3.86	6	43	2,406	4.93	-	-	-	-
2009	301	209	34,367	3.82	102	85	6,989	3.62	27	70	4,997	5.95	-	-	-	-
2010	286	206	36,702	3.66	117	93	8,134	3.94	39	67	4,649	6.64	-	-	-	-
2011	318	237	41,633	3.86	128	113	10,865	4.13	23	33	2,063	6.18	-	<5*	<15*	5.50
2012	314	226	37,846	3.78	120	88	8,046	3.73	29	70	5,884	6.55	-	4	35	4.38
2013	262	228	43,566	3.84	101	73	7,525	3.85	19	52	2,965	5.80	-	<5*	<10*	2.00
2014	271	231	42,224	3.82	105	83	8,365	3.79	16	47	1,891	4.36	-	<5*	<10*	4.57
2015	247	200	33,658	3.76	121	72	9,714	3.93	17	46	1,852	5.22	<5*	5	50	3.85
Average	229	214	32,692	4.13	104	99	9,722	4.04	19	37	2,004	5.15	<5*	5	42	4.06

+ Landings data from 2015 is preliminary until April 2016 and may be revised.

* Exact data is confidential due to the low amount of participants reporting landings.

IV. AUTHORITY

N.C. General Statute

- 113 134 Rules.
- 113 182 Regulation of fishing and fisheries.
- 113-182.1 Fishery management plans.
- 113-201 Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
- 113 221.1 Proclamations; emergency review.
- 143B-289.52 Marine Fisheries Commission – powers and duties.

N.C. Marine Fisheries Commission Rules May 1, 2015 (15A NCAC)

- 03K .0201 Open season and possession limit

V. DISCUSSION

The two motions passed by the North Carolina MFC at the February 2016 meeting were in response to concerns regarding implications from an open access, low cost Shellfish License, as well as concerns about declining oyster resources in the southern region (south of the highway 58 bridge). As a long term solution to these issues, the MFC moved to recommend eliminating oysters from the list of species eligible for harvest under the Shellfish License. This action would require a legislative change. Removal of oysters from the Shellfish License would eliminate the incentive for individuals to use it as a low cost means to recreationally harvest commercial quantities of oysters, and potentially reduce impacts to the oyster resource in some regions of the state.

As a more immediate solution to these issues, the MFC moved to establish a daily limit of two bushels of oysters per person with a maximum of four bushels of oysters per vessel off public bottom with a Shellfish License statewide. When the issues were originally taken out for public comment at the MFC, regional, and standing committee meeting, the initial N.C. Division of Marine Fisheries (NCDMF) management recommendation did not include a lower daily harvest limit statewide for Shellfish License holders. The NCDMF position advocated for the removal of oyster as an eligible species for harvest with the open access Shellfish License. The Oyster and Hard Clam FMP Advisory Committee did recommend a lower daily harvest limit for Shellfish License holders in the southern region, and did not support removing oyster from the Shellfish License. When reviewed by the regional advisory committees, recommendations were split between two advisory committees adopting the NCDMF position of no reduced daily bushel harvest limit, and two committees adopting the Oyster and Hard Clam FMP Advisory Committee position for a reduced daily harvest limit in the southern region. One regional committee did specifically define the southern region as the waterbody areas south of the Highway 58 bridge in its motion. After the public comment period, the NCDMF position was modified to include the reduced daily bushel harvest limit for south of the Highway 58 bridge as part of the recommendations that were presented to the MFC in February 2016.

The likely reduction in landings and participation resulting in the MFC's selected management option to reduce the oyster bushel limit statewide for Shellfish License holders would mostly occur in the southern and central regions of the state, where 84 percent of all Shellfish Licenses have been issued and Shellfish Licenses have contributed 40 percent of the commercial hand harvest since 2000. The Northern and Pamlico Sound regions would be minimally impacted,

with Shellfish License holders in both areas combined contributing less than 2 percent of the total commercial hand harvest oyster landings since 2000. In 2015, the Northern and Pamlico Sound regions combined had a total of 18 Shellfish License holders with trip ticket landings. The shallow bays in Pamlico Sound are maintained at a higher (10 bu.) hand harvest limit to promote hand harvest in these areas, and a reduced limit for these areas would be a further disincentive in their use in the hand harvest oyster fishery for Shellfish License holders. However, participation in the public oyster fishery by Shellfish License holders resident to the Pamlico Sound region has declined significantly from a peak participation in 2011 (72) to 7 in 2015, due to mechanical methods being removed from Shellfish License eligible gears.

Conversely, the Central region would be significantly impacted by a reduction in bushel limits to the Shellfish License. Landings from Shellfish License holders from waterbodies in this region have accounted for 9 percent of the statewide public oyster hand harvest since 2000. The ratio of Shellfish License holders to SCFL holders with public oyster landings has been increasing in the Central region also (Table 5), with 121 Shellfish License holders with public oyster hand harvest trip ticket landings and 72 SCFL/RSCFL with landings in 2015. The Central region has not been considered to be as impacted from oyster harvest efforts as the southern region, as this area has overall lower participation and trip ticket landings in the public hand harvest oyster fishery. However, this area still shows a decline in bushels landed per trip, as well as an increase in Shellfish License holder participants in recent years.

The statewide reduction would eliminate regional harvest limits for Shellfish License holders without additional complexity in rules, and would allow a transition period for commercial oyster fishermen to pursue obtaining a SCFL prior to potential legislative action that could remove oyster from the Shellfish License. Expanding the reduction in the daily bushel limit for Shellfish License holders statewide would impact areas that were not originally discussed as having effort impacts to the resource significant enough to warrant a reduction in harvest effort.

The primary area of concern for the resource has been south of the Highway 58 bridge with the public and fishery managers. Using this boundary for a reduced bushel limit would create four regional oyster limits for Shellfish License holders, two bushels south of highway 58, five bushels in the Central region between Highway 58 and Pamlico Sound, 10 bushels in the bays and mechanical prohibited areas of Pamlico Sound, and 15 in the mechanical harvest areas of Pamlico Sound. This boundary would create additional complexity in rules and enforcement, and may create conflict in the area near the highway 58 bridge.

Another item that needs to be considered for a Shellfish License bushel limit reduction, whether implemented statewide or regionally, is that without specific vessel limit language included the proclamation it could create an issue for law enforcement. At this time vessel limits are typically capped at two individual bushel limits (e.g. 5 bushels per person, 10 bushels per vessel) regardless of the number of license holders onboard. With the creation of different per person bushel limits by license type, further discussions are needed to determine what the specific maximum daily vessel harvest limit would be for a vessel with a crew of two or more with differing license types.

The Oyster and Hard Clam Advisory Committee met on 4/11/16 to discuss this issue and review the recommendations and public comments received from the MFC regional committees (Attachment 2). They maintained their original recommendation from Swan Point Marina south to the NC/SC state line, maintain a daily trip limit of two bushels per person maximum four bushels of oysters per vessel off public bottom for holders of the Shellfish License. Maintain a

daily trip limit at five bushels of oysters per person for SCFL and RSCFL holders in the southern region.

VI. PROPOSED RULE(S)

No rule changes are proposed.

VII. PROPOSED MANAGEMENT OPTIONS

(+ potential positive impact of action)

(- potential negative impact of action)

1. Status quo (continue to maintain the same daily oyster bushel limit for all commercial license types).
 - + No additional enforcement boundaries causing public confusion
 - + Maintains current promotion of hand harvest in Pamlico Sound shallow bays for Shellfish License holders
 - No reduction in oyster harvest pressure
 - Continues the incentive to purchase a Shellfish License for recreational use
2. Reduce the Shellfish License oyster bushel limit to a lower specified amount statewide
 - + Equity among Shellfish License holder harvest limits statewide.
 - + Less confusion over commercial regulations
 - + Reduction in statewide oyster harvest pressure.
 - + Decreased incentive to purchase a Shellfish License for recreational use
 - Goes against current management strategy to promote hand harvest in Pamlico Sound bays for Shellfish License holders
 - Impacts oyster harvest in areas that may not need effort reductions
 - Inequity in harvest limits between holders of different commercial license types in the same area
3. Reduce the Shellfish License oyster bushel limit to a specified amount regionally
 - + Reduction in oyster harvest pressure in some areas
 - + Decreased incentive to purchase Shellfish License for recreational use
 - + Limits effort and harvest for a concerned stock to only the most impacted areas
 - Additional enforcement
 - Goes against current management strategy to promote hand harvest in Pamlico Sound bays for Shellfish License holders
 - No equity among Shellfish License harvest limits statewide
 - Inequity in harvest limits between holders of different commercial license types in the same area

VIII. RECOMMENDATION

MFC Preferred Management Strategy

- Maintain the cost of the Shellfish License, establish a daily limit of 2 bushels of oysters per person with a maximum of 4 bushels of oysters per vessel off public bottom with the Shellfish License statewide. Allow Shellfish License holders to be eligible to acquire a Standard Commercial Fishing License after they show a history of sale of shellfish. Continue to allow commercial harvest of all other shellfish as currently allowed.*

NCDMF

- Establish a daily limit of two bushels of oysters per person with a maximum of four bushels of oysters per vessel off public bottom with the Shellfish License statewide*

Advisory Committee

- From Swan Point Marina south to the NC/SC state line, maintain a daily trip limit of 2 bushels per person maximum 4 bushels of oysters per vessel off public bottom for holders of the Shellfish License. Maintain a daily trip limit at 5 bushels of oysters per person for SCFL and RSCFL holders in the southern region.

*MFC Recommendation from the issue paper: “Consider Elimination of the Shellfish License and require all Shellfish Harvesters to have a Standard Commercial Fishing License or a Retired Commercial Fishing License”

•This is the final NCDMF recommendation for draft Amendment 2 of the Oyster Fishery Management Plan. This recommendation is different from the recommendation found in the issue paper “Consider Elimination of the Shellfish License and require all Shellfish Harvesters to have a Standard Commercial Fishing License or a Retired Commercial Fishing License”. This final recommendation occurred after further information was provided on potential statewide impacts for this issue.

Prepared by: Joe Facendola, Joe.Facendola@ncdenr.gov, 910-796-7291
February 23, 2016

Dates revised: February 25, 2016
March 3, 2016
March 4, 2016
March 14, 2016
March 18, 2016
March 21, 2016
April 8, 2016
April 14, 2016
April 22, 2016
April 26, 2016

Attachment 1. Information on participants by license, landings (bushels), and bushels landed per individual by trip for each region as presented to the Advisory Committees.

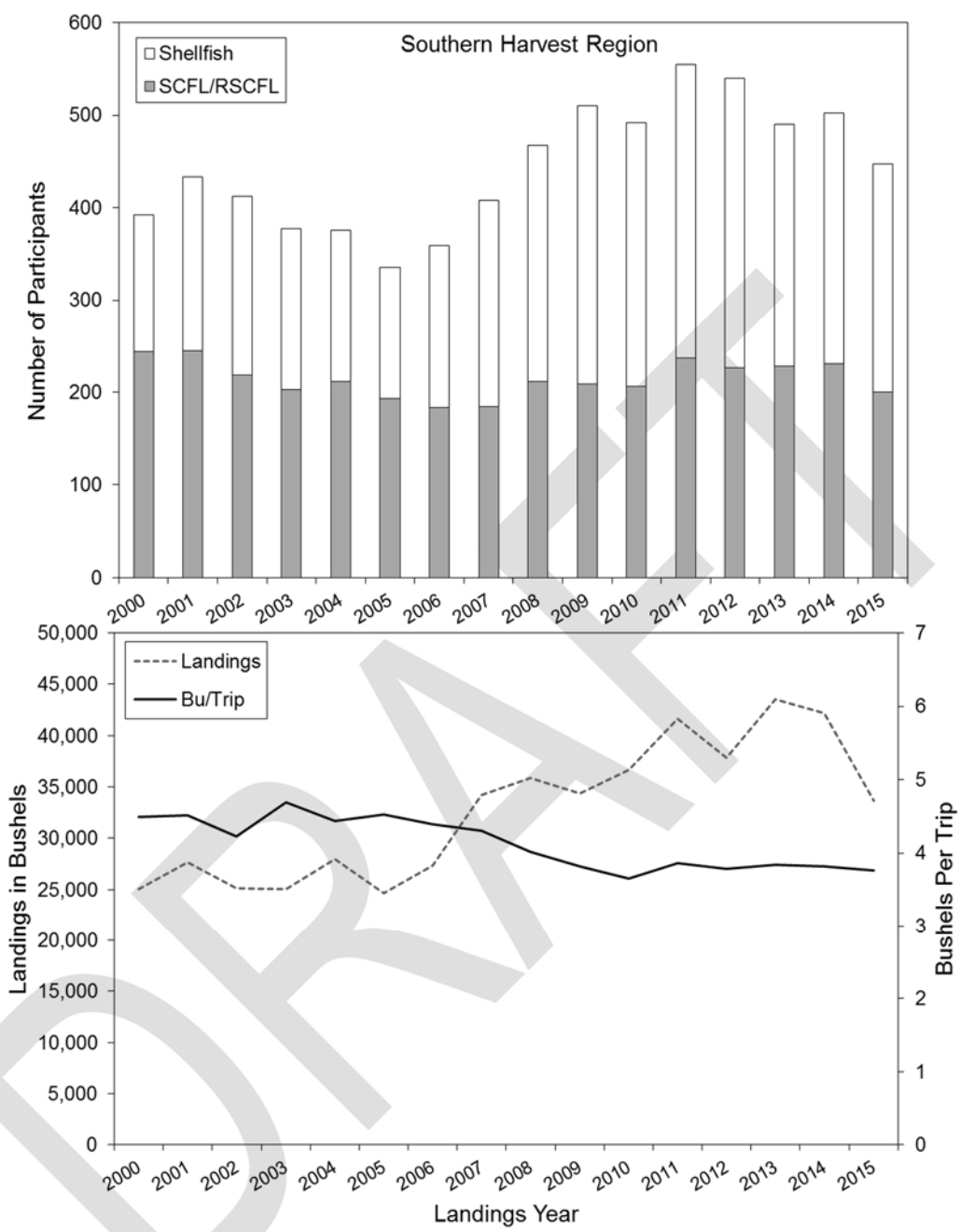


Figure A1. The upper panel shows annual number of participants with trip ticket landings from waterbodies in the southern harvest region of the state (White Oak River to SC state line) in the public bottom hand harvest oyster fishery. The lower panel shows total number of bushels landed as a dotted line on the left axis, and the average annual number of bushels landed per individual for each trip as the solid line on the right axis for public hand harvest of oyster in this region. Landings data from 2015 is preliminary until April 2016, and may be revised.

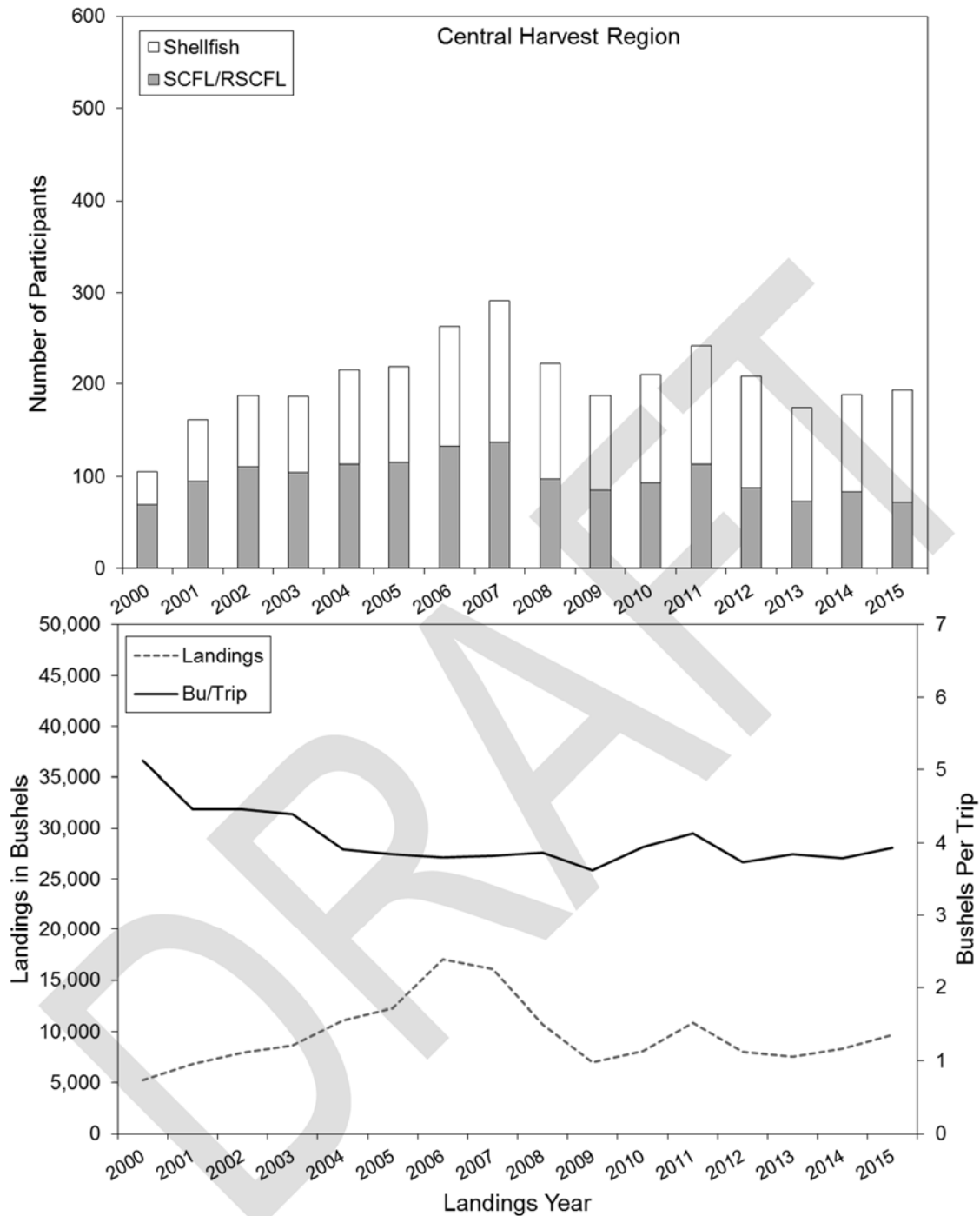


Figure A2. The upper panel shows annual number of participants with trip ticket landings from waterbodies in the central harvest region of the state (Bogue Sound to Core Sound) in the public bottom hand harvest oyster fishery. The lower panel shows total number of bushels landed as a dotted line on the left axis, and the average annual number of bushels landed per individual for each trip as the solid line on the right axis for public hand harvest of oyster in this region. Landings data from 2015 is preliminary until April 2016, and may be revised.

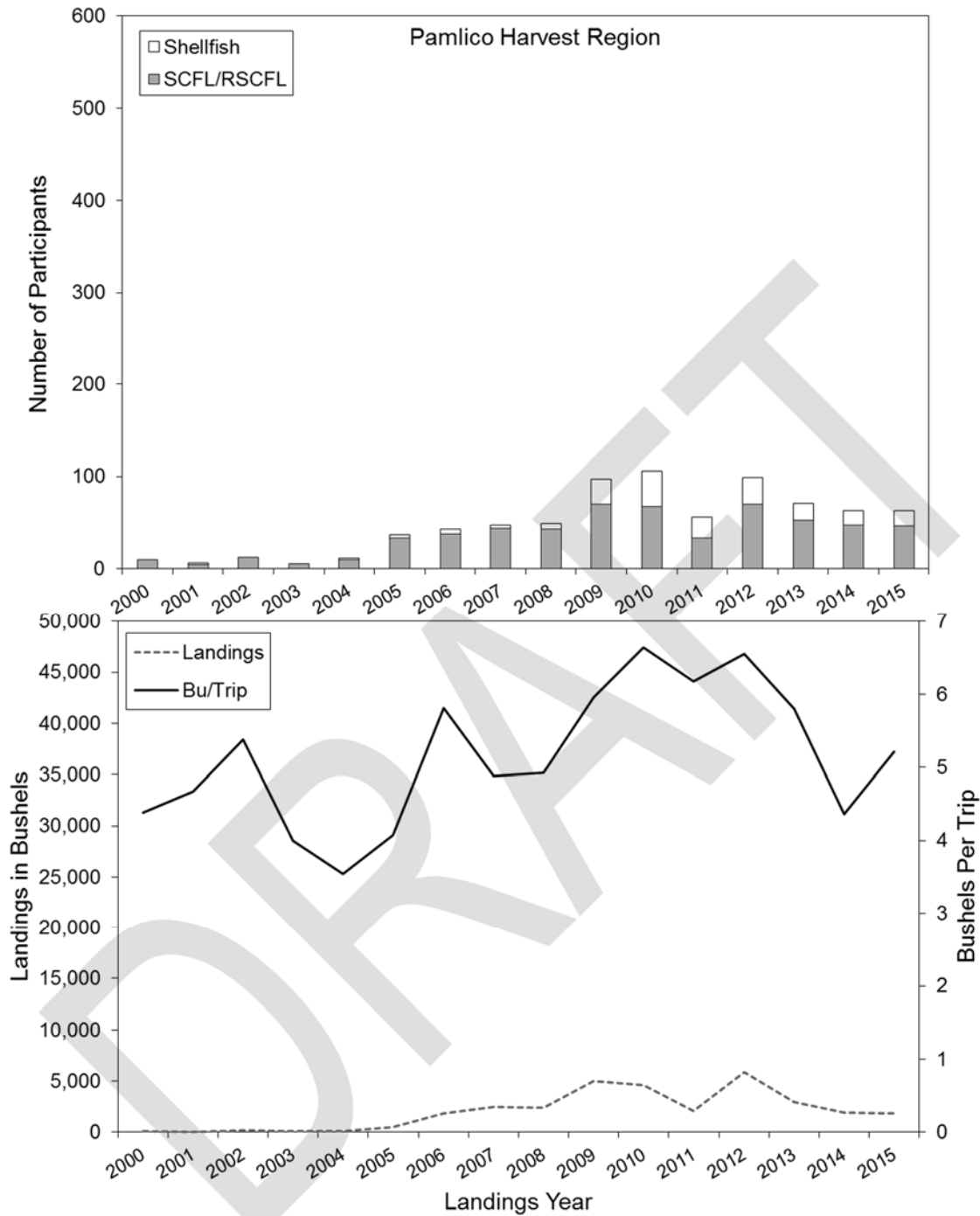


Figure A3. The upper panel shows annual number of participants with trip ticket landings from waterbodies in the Pamlico harvest region of the state (Pamlico Sound and major tributaries) in the public bottom hand harvest oyster fishery. The lower panel shows total number of bushels landed as a dotted line on the left axis, and the average annual number of bushels landed per individual for each trip as the solid line on the right axis for public hand harvest of oyster in this region. Landings data from 2015 is preliminary until April 2016, and may be revised.

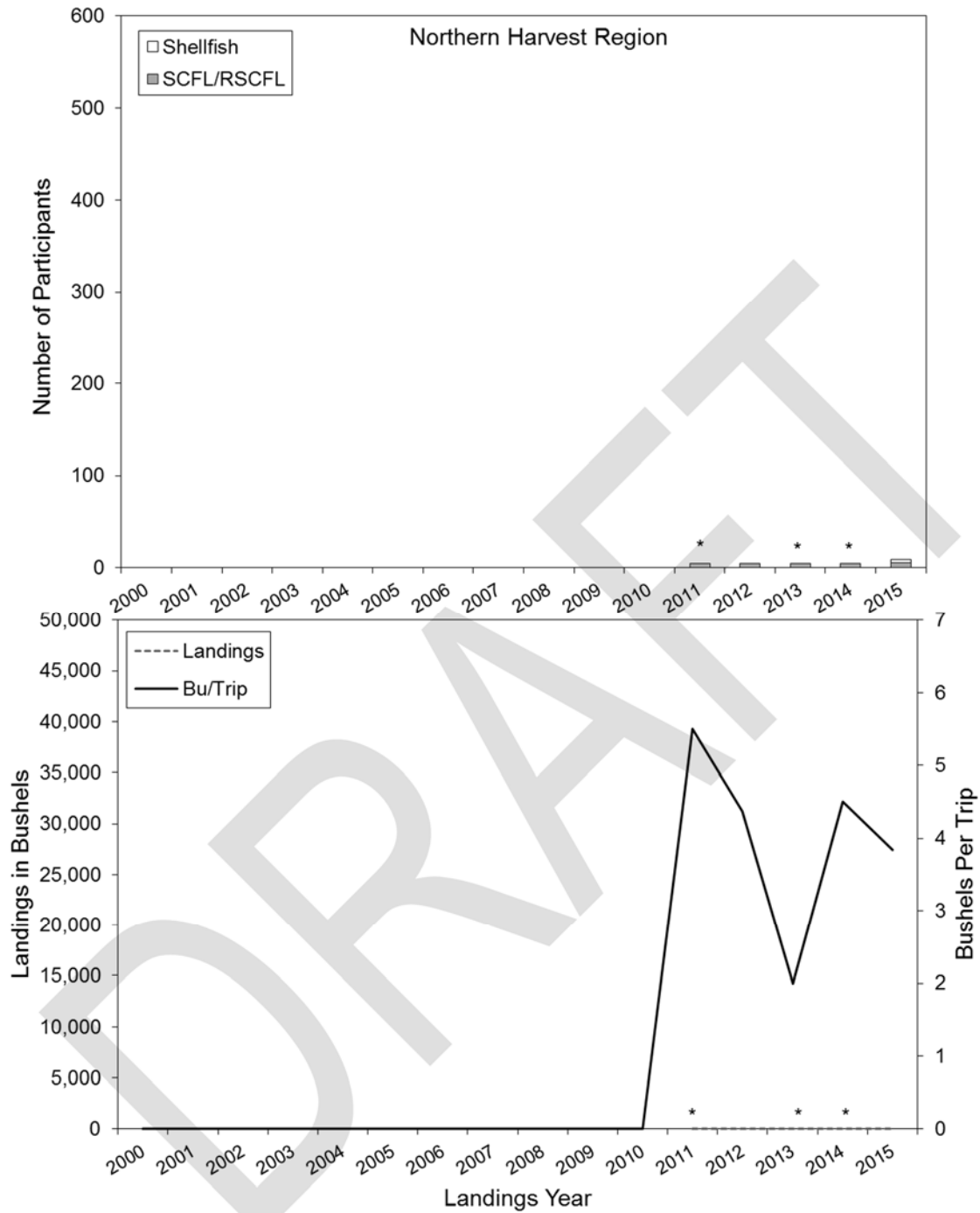


Figure A4. The upper panel shows annual number of participants with trip ticket landings from waterbodies in the northern harvest region of the state (Waterbodies north of Pamlico Sound) in the public bottom hand harvest oyster fishery. The lower panel shows total number of bushels landed as a dotted line on the left axis, and the average annual number of bushels landed per individual for each trip as the solid line on the right axis for public hand harvest of oyster in this region. Landings data from 2015 is preliminary until April 2016, and may be revised. * Exact data is confidential due to the low amount of participants, and is displayed rounded up to the next multiple of 5.

Attachment 2. Recommendations from the MFC regional committees and public comment on the issue reducing shellfish license oyster harvest limits statewide.

Southern Advisory Committee	Northern Advisory Committee	Public Comments
<p>To support option 3 (Reduce the Shellfish License oyster bushel limit to a specified amount regionally) that reduces the southern region defined as south of the Highway 58 Bridge to two bushels per license (four bushels per vessel).</p>	<p>Advise the commission to request that the legislature make commercial oystering equal recreational oystering, in order to track commercial and recreational oyster harvest. Thereby removing oysters from of the shellfish license.</p> <p>Recommend the MFC implement a statewide 2 bushel per person and 4 bushel per vessel oyster possession limit off public bottom (consistent with the MFC motion passed at the February 2016 meeting)</p>	<p>Cannot regulate the numbers you don't have (<i>In reference to no trip ticket landings for some holders of the Shellfish License</i>)</p>

DRAFT

4.2 MARINE FISHERIES COMMISSION PREFERRED MANAGEMENT OPTIONS FOR THE DRAFT AMENDMENT 4 OF THE OYSTER FISHERY MANAGEMENT PLAN

MANAGEMENT STRATEGIES	OBJECTIVES	REQUIRED ACTION
OYSTER MANAGEMENT		
1. Maintain the cost of the Shellfish License, establish a daily limit of two bushels of oysters per person with a maximum of four bushels of oysters per vessel off public bottom with the Shellfish License.	1 and 7	No action required; Proclamation authority
2. Increase efforts to plant and monitor cultch material.	1	
3. Implement a five percent cull tolerance for oysters	7	Rule change
4. Pursue elimination of the Shellfish License for oysters only and require all oyster harvesters to have a Standard or Retired Commercial Fishing License with shellfish endorsement to harvest commercially.	1 and 7	Amend G. S. 113-169.2
5. Allow Shellfish License holders to be eligible to acquire a Standard Commercial Fishing License after they show a history of sale of shellfish. Continue to allow commercial harvest of all other shellfish as currently allowed.	1 and 6	No action required
6. Status quo (Maintain the shallow bays (< 6 feet) as defined in 15A NCAC 03R .0108)		No action required
7. Recommend a six week opening timeframe for deep bays to begin on the Monday of the week prior to Thanksgiving week through the Friday after Thanksgiving. Reopen two weeks before Christmas for the remainder of the six week season.		
8. Status quo (Maintain the 15 bushel hand/mechanical harvest limit in Pamlico Sound mechanical harvest areas outside the bays, 10 bushel hand/mechanical harvest limit in the bays and in the Mechanical Methods Prohibited area along the Outer Banks of Pamlico Sound)		
9. Adopt the provisions of Supplement A – a flexible harvest limit up to 20 bushels, a trigger of 26 percent legal-sized oysters for closing an area to mechanical harvest and set the upper harvest limit of 20 bushels in rule (rule change required).		
10. Attempt to develop and ground-truth a fishery dependent metric of effort to better inform management decisions in the future		
PRIVATE CULTURE		
1. Support modification of G.S. 113-208 and G.S. 113-269 to add minimum fines for violations on shellfish leases and franchises. With minimum fines set at \$500 for the first violation and \$1,000 for the second violation	5 and 6	Amend G.S. 113-208 and G.S. 113-269
2. Support modification of G.S. 113-269 to include protection to all shellfish leases and franchises, not just those with water column amendments	5 and 6	Amend G.S. 113-269

4.2 MARINE FISHERIES COMMISSION PREFERRED MANAGEMENT OPTIONS FOR THE DRAFT AMENDMENT 4 OF THE OYSTER FISHERY MANAGEMENT PLAN (CONTINUED)

MANAGEMENT STRATEGIES	OBJECTIVES	REQUIRED ACTION
PRIVATE CULTURE		
3. Modify Rule 15A NCAC 03O .0114, regardless whether statute changes occur, so that a first conviction under G.S. 113-208 or G.S. 113-269 the Fisheries Director shall revoke all licenses issued to the licensee	5 and 6	Rule change to 15A NCAC 03O .0114
4. Status quo (Adhere to Regional Conditions of USACE NWP48 with no adverse effect to SAV from shellfish leases and following measure identified in the interim)	4 and 5	No action required
5. Continue the moratorium of shellfish leases in Brunswick County	1, 4, 5 and 6	No action required
6. Establish a rule to support extensions for where "Acts of God" prevent lease holder from making production, with a two year extension and only one extension allowed per term	1, 4 and 6	Rule change 15A NCAC 03O .0201
7. Allow leases returned to the state to remain delineated for a period of one year to allow the pre-existing leased bottom to be re-issued to other shellfish growers	1, 4, 5 and 6	Amend G.S. 113-202
8. Improve public notice of proposed lease applications on the physical lease, at fish houses, and/or through electronic notices	7	No action required
9. Allow a maximum of 10 acres in both mechanical methods prohibited areas and mechanical methods allowed areas	1, 4 and 5	Rule change 15A NCAC 03O .0201(a)(3)
ENVIRONMENT AND PUBLIC HEALTH		
1. Implement shading requirements for clams on a vessel, during transport to a dealer, or storage on a dock during June through September. These requirements would be implemented as a public health protection measure under 15A NCAC 03K .0110 by proclamation annually	4	Existing proclamation authority

4.2 MARINE FISHERIES COMMISSION PREFERRED MANAGEMENT OPTIONS FOR THE DRAFT AMENDMENT 2 OF THE HARD CLAM FISHERY MANAGEMENT PLAN

MANAGEMENT STRATEGIES	OBJECTIVES	REQUIRED ACTION
MANAGEMENT OF PUBLIC BOTTOM		
1. Status quo (Continue the daily harvest limit for recreational purposes at 100 clams per person per day not to exceed 200 per clams per vessel per day)	1 and 6	No action required
2. Status quo (Maintain management of the mechanical clam harvest in existing areas from Core Sound south to Topsail Sound, including modifications to the mechanical clam harvest lines to exclude areas where oyster habitat and SAV habitat exist based on all available information)	1, 4 and 6	No action required
3. Remove the Pamlico Sound mechanical clam harvest areas in rule no longer in use	1	Rule change to 15A NCAC 03K .0302
4. Take latitude/longitude coordinates of the poles marking the open mechanical clam harvest area boundary in the New River, still with the flexibility to move a line to avoid critical habitats	4 and 7	Completed in 2015
5. Allow mechanical clam harvesters to have access to the bottom before maintenance dredging occurs	1 and 6	No action required
6. Status quo (Maintain current definitions and enforcement of hand harvest methods)	1	No action required
7. Allow Shellfish License holders to be eligible to acquire a Standard Commercial Fishing License after they show a history of sale of shellfish. Continue to allow commercial harvest of all other shellfish (clams included) as currently allowed	1 and 6	No action required
PRIVATE CULTURE		
1. Support modification of G.S. 113-208 and G.S. 113-269 to add minimum fines for violations on shellfish leases and franchises. With minimum fines set at \$500 for the first violation and \$1,000 for the second violation	5 and 6	Amend G.S. 113-208 and G.S. 113-269
2. Support modification of G.S. 113-269 to include protection to all shellfish leases and franchises, not just those with water column amendments	5 and 6	Amend G.S. 113-269
3. Modify Rule 15A NCAC 03O .0114, regardless whether statute changes occur, so that a first conviction under G.S. 113-208 or G.S. 113-269 the Fisheries Director shall revoke all licenses issued to the licensee	5 and 6	Rule change to 15A NCAC 03O .0114
4. Status quo (Adhere to Regional Conditions of USACE NWP48 with no adverse effect to SAV from shellfish leases and following measure identified in the interim)	4 and 5	No action required
5. Continue the moratorium of shellfish leases in Brunswick County	1, 4, 5 and 6	No action required

4.2 MARINE FISHERIES COMMISSION PREFERRED MANAGEMENT OPTIONS FOR THE DRAFT AMENDMENT 2 OF THE HARD CLAM FISHERY MANAGEMENT PLAN (CONTINUED)2

MANAGEMENT STRATEGIES	OBJECTIVES	REQUIRED ACTION
PRIVATE CULTURE		
6. Establish a rule to support extensions for where "Acts of God" prevent lease holder from making production, with a two year extension and only one extension allowed per term	1, 4 and 6	Rule change 15A NCAC 03O .0201
7. Allow leases returned to the state to remain delineated for a period of one year to allow the pre-existing leased bottom to be re-issued to other shellfish growers	1, 4, 5 and 6	Amend G.S. 113-202
8. Improve public notice of proposed lease applications on the physical lease, at fish houses, and/or through electronic notices	7	No action required
9. Allow a maximum of ten acres in both mechanical methods prohibited areas and mechanical methods allowed areas	1, 4 and 5	Rule change 15A NCAC 03O .0201(a)(3)
ENVIRONMENT AND PUBLIC HEALTH		
1. Implement shading requirements for clams on a vessel, during transport to a dealer, or storage on a dock during June through September. These requirements would be implemented as a public health protection measure under 15A NCAC 03K .0110 by proclamation annually	4	Existing proclamation authority

North Carolina Marine Fisheries Commission 2015-2016 Annual Rulemaking Cycle

May 2016

Time of Year	Action
January 2015	Last opportunity for a new issue to be presented to Division of Marine Fisheries Rules Advisory Team
February 2015	Second review by Division of Marine Fisheries Rules Advisory Team
February-April 2015	Fiscal analysis of rules prepared by Division of Marine Fisheries staff and approved by Office of State Budget and Management
May 2015	Marine Fisheries Commission considers approval of Notice of Text for Rulemaking
August 2015	Publication of proposed rules in the North Carolina Register
September 2015	Public hearing held
November 2015	Marine Fisheries Commission considers approval of permanent rules
January 2016	Rules reviewed by Office of Administrative Hearings Rules Review Commission
(January)	(Last opportunity for a new issue to be presented to Division of Marine Fisheries Rules Advisory Team for next annual cycle)
(February)	(Second review by Division of Marine Fisheries Rules Advisory Team)
Feb. 1, 2016	Earliest possible effective date of rules
February/March 2016	Rulebook supplement prepared
April 1, 2016	Actual effective date of new rules
April 1, 2016	Rulebook supplement available online and for distribution
April 15, 2016	Commercial license sales begin

North Carolina Marine Fisheries Commission 2016-2017 Annual Rulemaking Cycle

May 2016

Time of Year	Action
April 2016	Last opportunity for a new issue to be presented to Division of Marine of Fisheries Rules Advisory Team
May 2016	Second review by Division of Marine Fisheries Rules Advisory Team
May-July 2016	Fiscal analysis of rules prepared by Division of Marine Fisheries staff and approved by Office of State Budget and Management
August 2016	Marine Fisheries Commission considers approval of Notice of Text for Rulemaking
October 2016	Publication of proposed rules in the North Carolina Register
November 2016	Public hearing(s) held
(January 2017)	(Last opportunity for a new issue to be presented to Division of Marine Fisheries Rules Advisory Team for next annual cycle)
(February 2017)	(Second review by Division of Marine Fisheries Rules Advisory Team)
February 2017	Marine Fisheries Commission considers approval of permanent rules
April 2017	Rules reviewed by Office of Administrative Hearings Rules Review Commission
April 15, 2017	Commercial license sales begin
April/May 2017	New rulebook drafted and sent to vendor for publication
May 1, 2017	Earliest possible effective date of rules
May or June 1, 2017	Actual effective date of new rules
May or June 1, 2017	Rulebook available online and for distribution

Issue Paper Review for May 2016 Marine Fisheries Commission Meeting

Issue Paper Title	Issue	Origination	Proposed Rules	Division of Marine Fisheries Recommendation
DEVELOPMENT OF A PERMIT TO ALLOW WEEKEND TRAWLING TO TAKE LIVE SHRIMP	Establish a permit and rules for a commercial live bait shrimp fishery in North Carolina.	N.C. Shrimp Fishery Management Plan Amendment 1	<ul style="list-style-type: none"> • 15A NCAC 03J .0104 • 15A NCAC 03L .0102 • 15A NCAC 03O .0501 • 15A NCAC 03O .0503 	Amend the rules to implement the bait shrimp permit.
SPINY DOGFISH DEALER PERMIT	Move the long-standing permit for quota monitoring of spiny dogfish into permanent rule. The permit has been implemented via proclamation for several years.	N.C. Division of Marine Fisheries	<ul style="list-style-type: none"> • 15A NCAC 03O .0503 	Amend the permit rule to include the Spiny Dogfish Dealer Permit. This is consistent with other dealer permits, as well as the division policy to move long-standing, reoccurring proclamations into rule.
PROPOSED RULE CHANGES FOR CONVICTIONS OF LARCENY RELATED TO FISHING GEAR OR CONVICTIONS OF INJURING/DESTROYING/ STEALING FISHING GEAR	Authorize suspension or revocation of licenses for convictions of fishing gear-related property crimes under G.S. 14-72 or 113-268, in order to serve as a deterrent to theft of and vandalism to fishing gear, and theft of fish from fishing gear.	N.C. Division of Marine Fisheries, as a result of complaints from the fishing public	<ul style="list-style-type: none"> • 15A NCAC 03O .0114 	Amend the rule to make a conviction under G.S. 14-72 or G.S. 113-268 result in license revocation for a minimum of one year. This is a penalty consistent with the Marine Fisheries Commission's preferred management strategy for the protection of shellfish lease and franchise rights under the Oyster Fishery Management Plan Amendment 4 and the Hard Clam Fishery Management Plan Amendment 2.
CORRECTION OF WADE CREEK PRIMARY NURSERY AREA BOUNDARY LINE	Correct a coordinate error for the primary nursery area in Wade Creek, Jarretts Bay (Carteret County) that occurred in 2004 when the format of coordinates was converted.	N.C. Division of Marine Fisheries	<ul style="list-style-type: none"> • 15A NCAC 03R .0103 	Amend the rule to correct the coordinates.
CLARIFICATION OF LICENSE REQUIREMENTS FOR LEASEHOLDER DESIGNEES	Correct discrepancies between G.S. 113-169.2 and rule regarding license requirements for employees of a leaseholder using mechanical gear when the leaseholder holds a commercial license.	Session Law 2013-360 Session Law 2015-241	<ul style="list-style-type: none"> • 15A NCAC 03O .0501 	Amend the rule to address the discrepancies created when the session laws were adopted.

Development of a Permit to Allow Weekend Trawling to Take Live Shrimp Issue Paper

Dec. 4, 2015

I. ISSUE

Establishing a permit and rules for a commercial live bait shrimp fishery in North Carolina

II. ORIGINATION

N.C. Shrimp Fishery Management Plan (FMP) Amendment 1

III. BACKGROUND

Management of the shrimp fishery in North Carolina is based on regional management and shrimp size. Regional management allows flexibility within areas and waterbodies because of geographical differences in size, growth and occurrence of shrimp. As growth increases, shrimp migrate to deeper and saltier waters, and eventually move out to the ocean. There are several criteria that are used to determine opening areas to shrimping and shrimp trawling including habitat, economic and social factors, user conflicts, bycatch issues, and shrimp size. Shrimp grow at different rates depending on water temperature and salinity. Presently, the Division of Marine Fisheries (NCDMF) manages shrimp based on count size, or number of shrimp per pound. For example, thirty-count means that for one pound of shrimp, there are 30 shrimp in that pound. Shrimp count size range from as large as a 10-15 count to as small as an 80+ count shrimp depending on the area and time of year.

Because N.C. shrimp management is based on larger sizes of shrimp, conducive to the food shrimp fishery than the smaller bait size shrimp (60-80 count), waters will close in some areas if sampling indicates that there are small shrimp in the area. This prohibits the harvest of those small shrimp for live bait by recreational and commercial users except for the harvest of four quarts, heads on or two and one-half quarts, heads off per person with a cast net. Expanding the live bait shrimp fishery in North Carolina may provide another economic opportunity for commercial shrimpers and increase the value of smaller shrimp, thus improving the overall value of the fishery.

At the Southern Regional Advisory Committee (AC) meeting held in September 2012, during review and consideration of revising the 2006 Shrimp FMP, the committee recommended to the Marine Fisheries Commission (MFC) to amend the shrimp plan and to consider a bait shrimp license. In addition, the NCDMF, after hearing the concerns from the public on shrimp trawl bycatch, changed its recommendation from revising the plan to beginning the amendment process to further investigate management strategies to address bycatch concerns and to also investigate bait shrimp licensing. The MFC, at its November 2012 meeting directed the NCDMF to amend the shrimp FMP, but limit the scope of the amendment to bycatch issues in the commercial and recreational fisheries. Included in the amendment was the directive to establish a permitted commercial live bait shrimp fishery.

The Shrimp FMP Plan Development Team (PDT) developed an issue paper on the live bait shrimp fishery in NC and other states and presented it to the Shrimp FMP AC. The recommendation from the NCDMF was to remain status quo with the AC recommending establishing a permitted live bait fishery and for the NCDMF to craft guidelines and permit fees after reviewing permitted operations in other states. The preferred management strategy from the MFC that became part of the 2015 Shrimp FMP Amendment 1, was to establish a permitted live bait shrimp fishery and for NCDMF to craft the guidelines and permit fees after reviewing permitted operations in other states. The MFC also directed the NCDMF to allow live bait fishermen with a permit to fish until 12:00 p.m. (noon) on Saturdays.

IV. AUTHORITY

G.S. 113-134. Rules.

G.S. 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

G.S. 113-182. Regulation of fishing and fisheries.

G.S. 143B-289.52. Marine Fisheries Commission – powers and duties.

V. DISCUSSION

Live shrimp are popular bait for recreational fishermen targeting spotted sea trout red drum and other popular recreational finfish. Currently, North Carolina does not manage shrimping for bait and fishermen harvesting shrimp

as live bait must comply with current rules and proclamations that are in place for shrimp harvested for consumption. The number of pounds of live bait is low, ranging from 129 pounds in 1994 to 2,074 pounds in 2008. However, the pounds of live bait has increased over time along with the number of dealers reporting and the number of trips taken (Table 1). The value for this fishery is high compared to food shrimp with value increasing over time (Table 1). On average the value per pound has been between \$10.00 and \$15.00 a pound with an increase in 2011 at \$27.00 a pound. There have been a steady number of fishermen and dealers participating in the fishery since 1994 (Table 1). Over half the landings came from shrimp trawls (65%) followed by cast nets (12%), skimmer trawls (10%), and channel nets (5%). Seventy-two percent of the live bait shrimp landings come from the Cape Fear River, the Intracoastal Waterway, Stump and Topsail sounds. The NCDMF is unable to account for shrimp sold as dead bait because there are no data collected on the disposition of shrimp landings. All other states in the south Atlantic and Gulf of Mexico manage for shrimp bait harvest.

Table 1. Number of pounds of live bait shrimp, dealers, trips, and participants, 1994-2014.

Year	Number of Pounds	Number of Dealers	Number of Trips	Number of Participants	Value
1994	129	5	69	4	\$1,163
1995	204	11	85	8	\$1,834
1996	242	10	118	12	\$3,657
1997	249	8	130	10	\$2,627
1998	175	14	126	16	\$1,908
1999	418	11	60	10	\$1,252
2000	469	12	88	10	\$6,684
2001	266	8	150	11	\$4,338
2002	805	11	222	16	\$12,976
2003	1,027	12	201	17	\$25,758
2004	1,154	10	218	14	\$19,210
2005	921	14	178	15	\$7,843
2006	1,349	13	142	14	\$30,132
2007	909	14	134	14	\$14,009
2008	2,074	11	133	10	\$34,572
2009	1,652	15	249	14	\$22,942
2010	1,710	16	250	14	\$30,994
2011	1,923	17	279	10	\$52,673
2012	2,586	18	335	13	\$52,892
2013	2,735	18	358	13	\$77,601
2014	1,649	14	221	11	\$41,252

The PDT met on April 14, 2015 to begin discussions for developing a commercial live bait shrimp permit, conditions of that permit and a permit fee. The group reviewed other states' regulations which are listed below.

South Carolina

A commercial trawler can sell shrimp for both bait and consumption with a land and sell license. Cast netters are restricted to 48 quarts and are limited to 12 dozen shrimp dead or live from December 16 to April 30. Dead shrimp can only be sold by cast netters if they are caught in legal trawling areas (with all necessary licenses). These regulations were established to prohibit the sale of shrimp caught by shrimp baiting and "deep holing" where fishermen cast net shrimp without bait (Larry DeLancey, personal comment). Bait dealers who harvest live shrimp to be sold as bait must have a bait dealer license and live bait tanks aboard the harvesting vessel with a compatible aeration system. Harvesting vessels are not allowed to have any dead shrimp on board when harvesting live shrimp.

Bait dealers must also be certified as a *bona fide* bait dealer and must have that certification in hand while harvesting live shrimp for bait.

Georgia

Commercial bait shrimping is open year round. Those that harvest shrimp for live bait to be sold and/or engage in the sale of shrimp for live or dead bait must possess a bait dealer license and personal commercial fishing license. Commercial bait fishermen may pull trawl nets with a headrope length of up to 20 feet constructed of mesh sizes between 1 inch and 1 3/8 inch stretch. No bycatch reduction devices or turtle excluder devices are required in bait trawls. Trawling for bait shrimp is allowed from one-half hour before sunrise to one-half hour after sunset. No more than 50 quarts of shrimp may be harvested at any one time with less than 10% dead. Fishing at night is not allowed. The Georgia Department of Natural Resources has established bait zones in areas of rivers and creeks that are open for bait shrimp fishing. Bait-holding facilities must be maintained on the harvesting vessel.

Florida

Bait shrimping is allowed with roller trawls only with the exception of the Northeast Region where one trawl is allowed with 5/8-inch mesh in the body and 1/2-inch mesh in the cod end. Live well requirements mandate that harvesting vessels be equipped with tanks containing a minimum of 16-cubic feet of continuously aerated saline water during harvest and transport. Fishing operations for food shrimp may not harvest live bait and food shrimp on the same trip. However, in the live bait operations are allowed five-gallons of heads on dead shrimp in most areas. Live bait operations in the Northeast Region are further restricted to one-gallon of heads on dead shrimp.

Alabama

Commercial bait shrimpers are allowed one trawl not to exceed a headrope length of 50 feet in open shrimp areas and one trawl not to exceed a headrope length of 16 feet in areas closed to commercial shrimping or in exclusive bait areas. Anyone engaged in taking, catching, transporting, or selling live bait and transporting dead bait must be in possession of a live saltwater bait dealer's license. Exclusive bait areas are special areas that are opened each day from 4:00 a.m. to 10:00 p.m. Seasonal bait areas are those areas open to commercial and recreational taking of live bait when adjacent waters are closed. Harvesting vessels are required to be equipped with live wells with aeration or forced water exchange. There is a maximum tow time of 20 minutes and harvest is limited to two standard shrimp baskets of live or dead shrimp. Harvesting vessels may catch bait shrimp of any size.

Mississippi

Commercial bait shrimping is open year-round. Fishermen are allowed one trawl with no more than a headrope length of 25 feet; however there are some water bodies that have restrictions down to a headrope length of 16 feet. There is a tow time restriction of 25 minutes for bait trawls. Night time trawling is not allowed. Size limits are 100-count shrimp or lower and only daytime fishing is allowed. Fishermen can possess no more than 30 pounds of dead shrimp. Major bays are closed, but live bait may be taken in some bays. Mississippi requires a license for live bait "catcher" boats; these boats must be equipped with shaded holding tanks with aeration and water circulation.

Louisiana

Bait shrimp may be harvested at any time. During the closed shrimp season, bait shrimp can be harvested with cast nets less than 8.5 feet in radius, hand operated dip nets with a diameter not to exceed three feet, bait traps and bait seines less than 30 feet with a maximum mesh size of 1/4-inch bar mesh that are manually operated on foot. Live bait shrimp harvesters are also allowed to use one trawl with no more than a headrope of 25 feet or two skimmer nets with individual nets no more than 16 feet measured horizontally. A special bait dealer's permit is required to take live bait shrimp during the closed season beginning May 1 and between the spring and fall inshore shrimp season.

Texas

Texas requires a bait shrimp boat to be licensed and must operate only under commercial bait shrimp regulations. Bait shrimpers may only fish in places authorized for bait shrimp and sell only to a bait shrimp dealer or sportsman. Bait shrimpers can possess only one trawl net with no more than a 54-foot headrope length and are required to use approved TEDs. Bait shrimping is open year round with a 200-pound limit. From August 15 to March 31 bait shrimp operations are allowed to fish 30 minutes before sunrise to 30 minutes after sunset and 30 minutes before sunrise to 2:00 p.m. from April 1 to August 14. From November to August, 50% of the shrimp must be alive and all heads must be attached August through November.

North Carolina

There were 11 fishermen who sold live bait in 2014 (Table 1). Four of those who fish the southern coastal counties were asked about gear size, live tank specifications, tow-times, and dead shrimp tolerance. Headrope lengths of

otter trawls used by these fishermen ranged from 35 to 40 feet. One fisherman used two 35-foot nets (70 feet total headrope length) on a twin framed skimmer rig. Live tank sizes ranged from 50 to 110 gallon tanks with either circulating water or forced water pumps. Tow-times ranged from eight to 20 minutes with most around 15-minute tows. Preferable dead shrimp tolerance ranged from 20 to 50 pounds.

Based on information gathered from other states and information gathered from live bait shrimp fishermen in North Carolina, the PDT discussed creating an issuable paper permit called "Permit for Weekend Trawling for Live Shrimp" (WTLS) with the following specific permit conditions:

- A WTLS is required for holders of a SCFL or RSCFL who harvest live shrimp as bait with a shrimp trawl from Friday at 9:00 p.m. until Saturday at 12:00 p.m.
- A WTLS-holder will be allowed to live bait shrimp from Friday at 9:00 p.m. until Saturday at 12:00 p.m. only in waters that are opened by proclamation to commercial food shrimp fishing.
- Permits are non-transferable. An individual who is assigned a SCFL or RSCFL shall hold a WTLS in his or her own name. The Master designated on the single vessel corporation SCFL is the individual eligible to receive the WTLS.
- It is unlawful for a WTLS-holder to use a shrimp trawl with a headrope length greater than 40 feet.
- It is unlawful for a WTLS-holder to possess more than one gallon of dead shrimp (heads on) per trip.
- It is unlawful for a WTLS-holder to not have a functioning live bait tank or a combination of multiple functioning live bait tanks with aerator(s) and/or circulating water. Tank(s) must total a minimum of 50 gallons.

The PDT also recommended the permit cost to be \$10.00 during the development of the FMP; however, it is currently the NCDMF operational policy to not charge any fee for its permits at this time. This permit would expire annually on the fiscal license year of June 30.

After completing an evaluation of other states' regulations, developing the permit conditions, and considering a permit fee, the PDT undertook an evaluation of existing N.C. Marine Fisheries Commission (NCMFC) rules to determine how best to implement the WTLS. Rule 15A NCAC 03O .0506 provides authority to the Fisheries Director to issue permits via proclamation for a special management purpose. In isolation, this would be the most efficient mechanism by which to issue a WTLS. However, the PDT identified portions of two other existing rules that pose a problem: 15A NCAC 03J .0104(b)(1) [Trawl Nets] and 03L .0102 [Weekend Shrimping Prohibited]. The first rule makes it unlawful to use trawl nets in Internal Coastal Waters on weekends. The second rule makes it unlawful to take shrimp by any method in Internal Coastal Waters on weekends, except with the use of fixed and channel nets, hand seines, shrimp pots, and cast nets. Each of these rules currently prevents trawling for live bait shrimp on weekends and thereby prevents issuance of a WTLS.

Rule 15A NCAC 03I .0102 authorizes the Fisheries Director to suspend, in whole or in part, any rule of the NCMFC that may be affected by variable conditions. But for instance, suspending NCMFC Rule 15A NCAC 03J .0104 (b)(1) would raise concern that the Director has no proclamation authority to reestablish time restrictions for all trawl nets. For example, if the Director issued a proclamation for shrimp trawls under NCMFC Rule 15A NCAC 03L .0101 and crab trawls under NCMFC Rule 15A NCAC 03L .0201, the Director potentially opened weekend trawling to all other trawling gear. The PDT determined rules 15A NCAC 03J .0104 and 03L .0102 need to be amended prior to being able to issue a WTLS.

Once these two rules have been amended the Division could issue a paper permit through the Director's proclamation authority as provided in NCMFC Rule 15A NCAC 03O .0506. This allows the director to require individuals taking marine and estuarine resources regulated by the NCMFC to obtain a special permit. Using this rule authority would give the Division time to work out any issues with the permit prior to moving the permit into permanent rule.

Another option is for the Division to start the rule making process to amend NCMFC Rules 15A NCAC 03J .0104(b)(1) and 15A NCAC 03L .0102 and to put the WTLS into permanent rule and not issue the permit under NCMFC Rule 15A NCAC 03O .0506. This approach has both positive and negative benefits. The positive is the permit would be established in permanent rule and be easier for stakeholders to find in regulations. The negative benefit of putting the permit directly into permanent rule is once this permit is put into permanent rule if issues arise

concerning the specific permit conditions the NCMFC would have to amend the rule, whereas if the permit is issued by proclamation the Director could address those issues by proclamation.

VI. PROPOSED RULES

15A NCAC 03J .0104 TRAWL NETS

(a) It is unlawful to possess aboard a vessel while using a trawl in ~~internal waters~~ Internal Coastal Waters more than 500 pounds of finfish from December 1 through ~~February 28~~, March 1, and 1,000 pounds of finfish from March ~~4~~2 through November 30.

(b) It is unlawful to use trawl nets:

(1) ~~In internal coastal waters, in~~ Internal Coastal Waters, from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, ~~except that in the areas listed in Subparagraph (b)(5) of this Rule, trawling is prohibited from December 1 through February 28 from one hour after sunset on Friday to one hour before sunrise on Monday; except:~~

(A) from December 1 through March 1 from one hour after sunset on Friday to one hour before sunrise on Monday in the areas listed in Subparagraph (b)(5) of this Rule; and

(B) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503;

(2) ~~For~~ for the taking of oysters;

(3) ~~In~~ in Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south shore of Long Point at a point 36° 02.4910' N - 75° 44.2140' W; running southerly to the north shore on Roanoke Island to a point 35° 56.3302' N - 75° 43.1409' W; running northwesterly to Caroon Point to a point 35° 57.2255' N - 75° 48.3324' W;

(4) ~~In~~ in the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (1) of 15A NCAC 03R .0106 to peeler crab trawling;

(5) ~~From from~~ December 1 through February 28 March 1 from one hour after sunset to one hour before sunrise in the following areas:

(A) In Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N-76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N-76° 34.5135' W;

(B) In Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N – 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N – 76° 35.9333' W;

(C) In Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76° 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;

(D) In Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and

(E) In New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation; and

(6) ~~In~~ in designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8) and (a)(9) within an area bound by the shoreline to the depth of six feet.

(c) Minimum mesh sizes for shrimp and crab trawls are presented in 15A NCAC 03L .0103 and .0202.

(d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.

(e) It is unlawful to use shrimp trawls for recreational purposes unless the trawl is marked by attaching to the codend (tailbag), one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall always be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

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

(2) owner's U.S. vessel documentation name.

(f) It is unlawful to use shrimp trawls for the taking of blue crabs in ~~internal waters~~, Internal Coastal Waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:

- (1) For individuals using shrimp trawls authorized by a Recreational Commercial Gear License, 50 blue crabs, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board.
 - (2) For commercial operations, crabs may be taken incidental to lawful shrimp trawl operations provided that the weight of the crabs shall not exceed the greater of:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds.
- (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;
 Eff. February 1, 1991;
 Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994; February 1, 1992;
 Temporary Amendment Eff. July 1, 1999;
 Amended Eff. May 1, 2017; April 1, 2014; April 1, 2009; September 1, 2005; August 1, 2004; August 1, 2000.

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

It is unlawful to take shrimp by any method from 9:00 ~~P.M.~~p.m. on Friday through 5:00 ~~P.M.~~p.m. on Sunday, except:

- (1) in the Atlantic Ocean; ~~or~~
- (2) with the use of fixed and channel nets, hand seines, shrimp pots and cast ~~nets~~nets; and
- (3) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503.

History Note: Authority G.S. 113-134; 113-182; ~~113-221~~; 143B-289.52;
 Eff. January 1, 1991;
 Amended Eff; May 1, 2017; August 1, 2004; March 1, 1994.

[Note: Rule 15A NCAC 03O .0501 is also under construction in the “Clarification of License Requirements for Leaseholder Designees Issue Paper”. Only proposed changes in support of the Permit for Weekend Trawling for Live Shrimp are shown here.]

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party, or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant’s signature on the application shall be notarized;
- (2) Current picture identification of applicant, responsible party, or person holding a power of attorney. Acceptable forms of picture identification are driver’s license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who will be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address, and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable; and
- (6) Additional information as required for specific permits.

(b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; ~~or~~
 - (3) Atlantic Ocean Striped Bass Commercial Gear ~~Permit~~ Permit; or
 - (4) Permit for Weekend Trawling for Live Shrimp.
 - (A) An individual who is assigned a Standard Commercial Fishing License shall hold a Permit for Weekend Trawling for Live Shrimp.
 - (B) The master designated on the single vessel corporation Standard Commercial Fishing License is the individual required to hold the Permit for Weekend Trawling for Live Shrimp.
- (c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
 - (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
 - (3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises;
 - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
 - (5) Depuration Permit.
- (d) A permittee shall hold a valid:
- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
 - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.
- (e) Aquaculture Operations/Collection Permits:
- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
 - (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (f) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) Upon application for an Atlantic Ocean Striped Bass Commercial Gear Permit, a person shall declare one of the following gears for an initial permit and at intervals of three consecutive license years thereafter:
 - (A) gill net;
 - (B) trawl; or
 - (C) beach seine.

For the purpose of this Rule, a “beach seine” is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place.

Gear declarations shall be binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.
 - (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.
- (g) 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.
- (h) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, 03O .0502, and .0503 as applicable to the requested permit.
- (i) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify, or renew a permit:
- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
 - (2) Applicant’s demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director; and
 - (3) Applicant’s history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (j) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

- (k) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.
- (l) For permit renewals, the permittee's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.
- (m) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.
- (n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.
- (o) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
- (p) Permit applications are available at all Division Offices.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52; Temporary Adoption Eff. September 1, 2000; May 1, 2000; Eff. April 1, 2001; Temporary Amendment Eff. October 1, 2001; Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1, 2007; September 1, 2005; April 1, 2003; August 1, 2002.

[Note: Rule 15A NCAC 03O .0503 is also under construction in the "Spiny Dogfish Dealer Permit Issue Paper". Only proposed changes in support of the Permit for Weekend Trawling for Live Shrimp are shown here.]

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab is incorporated by reference including subsequent amendments and editions. Copies of this plan are available via the Internet from the Atlantic States Marine Fisheries Commission at <http://www.asmfmc.org/fisheries-management/program-overview> and at the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557 at no cost.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish dealers issued such permit to fail to:
 - (A) fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit, but shall maintain a log furnished by the Division;
 - (B) submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
 - (D) contact the dealer contact designated on the permit daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred; and

- (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
 - (A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
 - (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
 - (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell, or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring as defined in 15A NCAC 03R .0202.
- (4) Atlantic Ocean Flounder Dealer Permit:
 - (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Black Sea Bass North of Cape Hatteras Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
 - (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in the area described in Subparagraph (d)(1) of this Rule when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206. This federal rule is incorporated by reference including subsequent amendments and editions. Copies of this rule are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.
- (e) Pound Net Set Permits. Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.

(f) Aquaculture Operations/Collection Permits:

- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It is unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) to sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) to fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
- (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Activity Permit:

- (1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
- (2) The Scientific or Educational Activity Permit shall only be issued for scientific or educational purposes and for collection methods and possession allowances approved by the Division of Marine Fisheries.
- (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I .0101.
- (4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit a report on collections and, if authorized, sales to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
- (5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license(s) for such sale;
 - (B) authorization stated on the permit for such sale; and
 - (C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
- (6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting under a Scientific or Educational Activity Permit at the time of application.
- (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of the permit, specifying activities and location.

(h) Under Dock Oyster Culture Permit:

- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
- (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.

- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.
- (i) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.
- (j) Coastal Recreational Fishing License Exemption Permit:
- (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
 - (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) individuals with physical or mental limitations;
 - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
 - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and
 - (D) disadvantaged youths.

For purposes of this Paragraph, educational institutions include high schools and other secondary educational institutions.
 - (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time, and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
 - (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 030 .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:
 - (A) the name, date(s), time, and physical location of the event;
 - (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
 - (C) the cost or requirements, if any, for an individual to participate in the event; and
 - (D) an estimate of the number of participants.
- (k) Permit for Weekend Trawling for Live Shrimp:
- (1) It is unlawful to take shrimp with trawls from Friday 9:00 p.m. through Saturday 12:00 p.m. (noon) without first obtaining a Permit for Weekend Trawling for Live Shrimp.
 - (2) It is unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls from 12:01 p.m. on Saturday through 5:00 p.m. on Sunday.
 - (3) It is unlawful for a permit holder during the timeframe specified in subparagraph (k)(1) to:
 - (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with trawls;
 - (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in Internal Coastal Waters;
 - (C) possess more than one gallon of dead shrimp (heads on) per trip;
 - (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait tanks with aerator(s) and/or circulating water. Tank(s) capacity must total a minimum of 50 gallons; and
 - (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

History Note: Authority G.S. 113-134; 113-169.1; 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.

VIII. RECOMMENDATION

The PDT recommends beginning the rule making process to implement the bait shrimp permit. This includes developing a Permit for Weekend Trawling for Live Shrimp through rule and to not use NCMFC Rule 15A NCAC 03O .0506.

Prepared by: Trish Murphey, trish.murphey@ncdenr.gov, 252-808-8091
 June 30, 2015
 Revised: July 28, 2015
 Sept. 23, 2015
 Oct. 9, 2015
 Nov. 23, 2015
 Dec. 4, 2015

NOTICE OF TEXT ATTACHMENT

15A NCAC 03J .0104 TRAWL NETS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments provide an exception for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawl nets in Internal Coastal Waters during weekends as specified in 15A NCAC 03O .0503. Additional amendments modify existing dates to account for leap years.

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments provide an exception for a holder of a Permit for Weekend Trawling for Live Shrimp to take shrimp during weekends as specified in 15A NCAC 03O .0503.

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments require a holder of a Permit for Weekend Trawling for Live Shrimp to hold a valid Standard or Retired Standard Commercial Fishing License and clarify the responsible party for an assigned license and also for a corporation.

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments establish the Permit for Weekend Trawling for Live Shrimp and set specific conditions of the permit.

Ancillary Item: Update NOV process for this permit

MFC Rulebook Index Worksheet

Rule	Rulebook Page #	Subject	Index Entry (Bold major headings)	Add/Delete/No Change
03J .0104(a)	17	trawl nets	gear: trawl:restrictions	No change
			gear: trawl, crab:requirements	
			gear: trawl, shrimp:requirements	
			species: shrimp:restrictions:gear	
(b)			species: oyster:restrictions:gear	
			gear: trawl, peeler:restrictions♦	
			gear: trawl:restrictions:areas♦	Add
(b)(1)(B)			permit: Weekend Trawling for Live Shrimp	
(d)			bycatch reduction device (BRD)♦	No change
			gear: trawl:bycatch reduction device (BRD)♦	
(f)			species: crab, blue:restrictions:gear	

			species: crab, blue:shrimp trawl bycatch	
(g)			gear: trawl:restrictions:areas♦	
03L .0102	41	weekend shrimping	species: shrimp:restrictions:weekend gear: net, fixed:restrictions:shrimp gear: net, channel:restrictions:shrimp gear: seine, hand:restrictions, shrimp gear: pot, shrimp:restrictions gear: net, cast:restrictions, shrimp	No change
			permit: Weekend Trawling for Live Shrimp	Add
03O .0501	73	permit requirements	permit: application	No change
(b)			permit: Pound Net Set:application permit: Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean	
			turtle excluder device (TED)	
			permit: Weekend Trawling for Live Shrimp	Add
(c)			relay, permit	No change
			transplanting:shellfish, permit	
			permit: Transplant Prohibited (Polluted) Shellfish	
			permit: Transplant Oysters from Seed Oyster Management Areas	
			permit: Mechanical Methods for Shellfish on Shellfish Leases or Franchises	
			gear: mechanical methods for clamming:permit	
			gear: mechanical methods for oystering:permit	
			permit: Harvest Rangia Clams From Prohibited (Polluted) Areas	
			permit: Depuration	
(d)			permit: Dealer Permit for Quota Monitoring:license, requirement	
(e)			permit: Aquaculture Collection	
			permit: Aquaculture Operation	
(f)			permit: Atlantic Ocean Striped Bass Commercial Gear	
			permit: bass, striped, Atlantic Ocean	
			species: bass, striped:permit, Atlantic Ocean Striped Bass Commerical Gear	
			gear: seine, beach, definition	
03O .0503(a)	75	specific permit conditions	permit: Horseshoe Crab Biomedical Use	No change
			species: crab, horseshoe:permit, Horseshoe Crab Biomedical Use	
(b)			permit: Dealer Permit for Quota Monitoring:reporting	
			permit: reporting requirements	
			permit: Dealer Permit for Quota Monitoring:Striped Bass	
			species: bass, striped:permit, Dealer Permit for Quota Monitoring	
			tag:bass, striped:dealer requirements	

			species: bass, striped:tag	
			permit: Dealer Permit for Quota Monitoring:River Herring	
			species: herring, river:Dealer Permit for Quota Monitoring	
			permit: Dealer Permit for Quota Monitoring:Flounder	
			species: flounder, summer, Dealer Permit for Quota Monitoring	
			permit: Dealer Permit for Quota Monitoring:Black Sea Bass North of Cape Hatteras	
			species: sea bass, black, Dealer Permit for Quota Monitoring	
			quota:dealer permits	
(c)			permit: Blue Crab Shedding	
			species: crab, blue:shedding operation	
			shedding operation, permit	
(d)			permit: Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean	
			turtle excluder device (TED)	
(e)			permit: Pound Net Set:requirements	
(f)			permit: Aquaculture Collection	
			permit: Aquaculture Operation	
(g)			permit: Scientific or Educational Activity	
(h)			permit: Under Dock Oyster Culture	
(i)			permit: Atlantic Ocean Striped Bass Commercial Gear	
			permit: bass, striped, Atlantic Ocean	
			species: bass, striped:permit, Atlantic Ocean Striped Bass Commercial Gear	
(j)			license: Coastal Recreational Fishing:exemptions	
			permit: Coastal Recreational Fishing License Exemption	
(k)			permit: Weekend Trawling for Live Shrimp	Add

Spiny Dogfish Dealer Permit Issue Paper

Sept. 19, 2014

I. ISSUE

The requirement for fish dealers to hold a dealer permit for quota monitoring specific to spiny dogfish has been issued by proclamation since its inception. It is the only dealer permit for quota monitoring purposes currently not in rule.

II. ORIGINATION

N.C. Division of Marine Fisheries (division) Rules Advisory Team

III. BACKGROUND

Certain fish species are managed under federal or state quotas that require frequent monitoring in order to limit harvest of the allocated quota. One basic requirement of any quota monitoring program is to know the population of those required to report so that reporting compliance can be assessed. For this reason, the division has developed rules for dealer permits for three federally managed fish of which North Carolina has a state allocation (summer flounder, black sea bass North of Cape Hatteras, and striped bass) and one state managed species currently under a moratorium (river herring). North Carolina is also allocated quotas of other species, namely menhaden, bluefish and horseshoe crabs, but no dealer monitoring permits are in place for those species for three reasons. First, the National Marine Fisheries Service is responsible for monitoring North Carolina's landings so there is no need for the division to monitor them. Second, it is fairly easy for North Carolina to receive a transfer of quota from other states if we exceed the state allocation. Lastly, there is a large number of dealers reporting bluefish and menhaden landings and thus the resources required to monitor those fisheries under the current quota monitoring program would be too large to undertake it. It has been standard practice within the division to require dealer permits first by proclamation and later move these requirements into rule once the process stabilizes. If the division realizes that more frequent monitoring of any of the above-mentioned fisheries currently not monitored is required, the division will likely begin by first requiring the permit by proclamation.

The division has, by proclamation, also required a dealer permit and daily reporting of landings for spiny dogfish since November 2003 (FF-42-2003.) The division has a policy which recommends moving long-standing proclamations into rule to aid in the clarity of regulations for the public. Members of the Rules Advisory Team discussed this and evaluated moving the spiny dogfish dealer permit requirement into rule.

IV. AUTHORITY

N.C.G.S. 113- 169.1 - Permits for gear, equipment, and other specialized activities authorized.

V. DISCUSSION

Placing the permit requirement in rule has no real impact on holders of the permit as the reporting requirements, application process, and cost of the permit will not change (all division permits, with the exception of one, are issued at zero cost). Dealers holding this permit (31 issued in 2013) are now required to report to the division their purchases of spiny dogfish from fishermen on a daily basis when the harvest season is open. Seasonal openings as well as trip limits will continue to be stipulated in proclamation due to the variable nature of these conditions of the fishery.

VI. PROPOSED RULE(S)

[Note: Rule 15A NCAC 03O .0503 is also under construction in the “Development of a Permit to Allow Weekend Trawling to Take Live Shrimp Issue Paper”. Only proposed changes in support of the Spiny Dogfish Dealer Permit are shown here.]

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission or the Division of Marine Fisheries' Morehead City Headquarters Office, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557-0769.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish dealers issued such permit to fail to:
 - (A) fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
 - (B) submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
 - (D) contact the dealer contact designated on the permit daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred; and
 - (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
 - (A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
 - (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
 - (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass

- landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell, or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring as defined in 15A NCAC 03J .0209.
 - (4) Atlantic Ocean Flounder Dealer Permit:
 - (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
 - (5) Black Sea Bass North of Cape Hatteras Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
 - (6) Spiny Dogfish Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (e) Pound Net Set Permits. Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.
- (f) Aquaculture Operations/Collection Permits:
- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
 - (2) It is unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) to sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) to fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.

- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
 - (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
 - (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees acting under an Aquaculture Collection Permit at the time of application.
- (g) Scientific or Educational Activity Permit:
- (1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect, hold, culture or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
 - (2) The Scientific or Educational Activity Permit shall only be issued for scientific or educational purposes and for collection methods and possession allowances approved by the Division of Marine Fisheries.
 - (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I .0101.
 - (4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit a report on collections and, if authorized, sales to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
 - (5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license(s) for such sale;
 - (B) authorization stated on the permit for such sale; and
 - (C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
 - (6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting under a Scientific or Educational Activity Permit at the time of application.
 - (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of the permit, specifying activities and location.
- (h) Under Dock Oyster Culture Permit:
- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
 - (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
 - (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
 - (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.
- (i) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.
- (j) Coastal Recreational Fishing License Exemption Permit:

- (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) individuals with physical or mental limitations;
 - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
 - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and
 - (D) disadvantaged youths.

For purposes of this Paragraph, educational institutions include high schools and other secondary educational institutions.
- (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:
 - (A) the name, date(s), time and physical location of the event;
 - (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
 - (C) the cost or requirements, if any, for an individual to participate in the event; and
 - (D) an estimate of the number of participants.

(k) For Hire Fishing Permit:

- (1) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel as provided in 15A NCAC 03O .0112 or a Division of Marine Fisheries For Hire Fishing Permit for the vessel.
- (2) It is unlawful for a For Hire vessel operator to operate under the For Hire Fishing Permit without:
 - (A) holding the USCG certification required in 15A NCAC 03O .0501(g)(1);
 - (B) having the For Hire Fishing Permit for the vessel or copy thereof in possession and ready at hand for inspection; and
 - (C) having current picture identification in possession and ready at hand for inspection.
- (3) It is unlawful for the permittee to fail to notify the Division within five days of any changes to information provided on the permit.
- (4) It is unlawful to fail to display a current For Hire Fishing Permit decal mounted on an exterior surface of the vessel so as to be visible when viewed from the port side while engaged in for-hire recreational fishing.
- (5) The For Hire Fishing Permit is valid for one year from the date of issuance.

History Note: Authority G.S. 113-134; 113-169.1; 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; April 1, 2014; April 1, 2009; July 1, 2008; January 1, 2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002.

VII. PROPOSED MANAGEMENT OPTIONS

Option 1

Status Quo: continue to leave the requirement for a Spiny Dogfish Dealer Permit in proclamation.

- + No additional staff resources required to develop rule, draft fiscal analysis, accept public comment on rule and implement rule
- Inconsistent with other dealer permits
- Inconsistent with division policy to place long-term, reoccurring proclamations into rule

Option 2

Amend permit rule to include the Spiny Dogfish Dealer Permit.

- + Consistent with other dealer permits
- + No impact to dealers since requirements do not change
- + Provides more easily found permit requirements to the affected public
- Additional staff resources required to develop rule, draft fiscal analysis, accept public comment on rule and implement rule

VIII. RECOMMENDATION

The division recommends amending the permit rule to include the spiny dogfish dealer permit (Option 2.)

Prepared by: Don Hesselman, don.hesselman@ncdenr.gov, (252) 808-8099
 July 14, 2014
 Updated: July 24, 2014
 Updated: September 19, 2014

NOTICE OF TEXT ATTACHMENT

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

Proposed amendments relocate a 2003 requirement for a permit for dealers transacting in spiny dogfish from proclamation into rule. Spiny dogfish are monitored under a quota and dealers are required to report daily landings during the open season. Placing the permit requirement in rule has no real impact on holders of the permit as the reporting requirements, application process, and cost of the permit will not change. Seasonal openings as well as trip limits will continue to be stipulated in proclamation due to the variable nature of the provisions for the fishery.

MFC Rulebook Index Worksheet

Rule	Rulebook Page #	Subject	Index Entry (Bold major headings)	Add/Delete
03O .0503	73-76	Spiny Dogfish Dealer Permit	permit: Dealer Permit for Quota Monitoring: Spiny Dogfish	Add
			species: dogfish, spiny, Dealer Permit for Quota Monitoring	Add
03O .0506	77	Spiny Dogfish Dealer Permit	permit: Dealer Permit for Quota Monitoring: Spiny Dogfish ♦	Delete
			permit: Special Permits for Management Purposes ♦ :Spiny Dogfish ♦	Delete
			species: dogfish, spiny ♦ :Special Permits for Management Purposes ♦	Delete

**Proposed Rule Changes for Convictions of Larceny Related to Fishing Gear or
Convictions of Injuring/Destroying/Stealing Fishing Gear
Issue Paper**

April 13, 2016

I. ISSUE

There has been an increase in the theft or larceny of commercial fishing gear, especially in the northeastern region of the state. Current N.C. Marine Fisheries Commission rules do not authorize suspensions or revocations of licenses for convictions of property crimes under G.S. 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods) when related to fishing gear.

II. ORIGINATION

This issue originated from complaints received by the N.C. Marine Patrol from the fishing public in District One (northern district) while investigating the larcenies of crab pots.

III. BACKGROUND

For the past several years, the N.C. Marine Patrol has investigated an increasing number of crimes related to the larceny of commercial gear. It is also likely that fishermen are doing a better job of reporting significant larcenies to law enforcement than they have in the past. Most of these crimes pertain to the larceny of crab pots, but in some cases, larcenies of gill nets, hoop nets and fish pots have occurred and been investigated as well. In addition, crimes have been investigated for the stealing of fish from pots, gill nets, pound nets, and other gear. The investigations of these crimes often involve significant time and resources, including execution of search warrants, transport and storage of evidence, arrests and multiple court appearances for the officers. These investigations pull marine patrol officers away from their core mission of protecting marine resources, to a sub-mission of protecting personal property.

There are several reasons why larcenies of gear are occurring beyond the fact that theft is part of our modern society. First, fishing gear is often left unattended in the isolated and remote waters of the state where it is vulnerable to theft. In these areas, there is no one around to see the larceny being committed. Another reason is the depressed economy at the present time. This factor likely contributes in several ways. One, the price of nearly everything involved with commercial fishing has risen. Gear, fuel, motors, bait, etc. have all increased in price and have burdened the fishermen. Pertaining to crab pots, the higher prices of steel and associated supplies with constructing a pot have had an impact on the price of a crab pot. A crab pot is typically constructed of PVC-coated steel wire with a steel rebar square attached to the bottom to act as a stabilizing system for the pot. This rebar square holds the pot upright on the bottom where crabs can easily enter the pot. It also helps keep the pot in one place and decreases its movement from winds, tides and currents. Fifteen years ago, a completely rigged out crab pot cost approximately \$25. In today's economy, that same pot brand new is approximately \$40, almost twice the cost. There is also the possibility that pots are being stolen for the purpose of being sold to metal recycling centers. This is likely happening in small numbers that go undetected. For example, a person may find a strayed pot that he knows belongs to another fisherman. If he removes it from the water and sells it to a recycler, he is guilty of larceny. The second part of the deteriorated economy that contributes to larcenies is the lack of jobs. High unemployment rates have caused some people to turn to commercial fishing to try and make ends meet. This new influx of people to commercial fishing has, to some extent, contributed to larcenies. For a dishonest person looking to make a career in fishing, it is tempting to go out and steal gear to try and get their business running. When gear can be stolen instead of purchased, a dishonest person has now cut a significant portion of their "start up" budget for their new job as a fisherman. Likewise, there have been lifelong fishermen who have made the decision to steal to keep their operating expenses down. In either instance, people are trying to get by and make ends meet in our weakened economy by doing anything and everything they can, including stealing.

Another problem with the larceny of gear is that a lot of larcenies go undetected and unreported to law enforcement. This can also be for several reasons. If fishermen occasionally lose a pot, they often consider this normal and are not alarmed. Pots can become missing due to winds, tides and currents moving pots. Also, boats can hit buoys and cut them off from the line attached to the pot or boats can hit buoy lines and drag the pot away. Tree limbs, logs or other debris can get tangled in buoy lines and pull the buoy underwater. The buoy line can get wrapped around the pot itself and pull the buoy underwater. Most fishermen will agree when they put pots in the water, they expect to lose some. They see it as just a part of doing business as a fisherman. Since fishermen expect to lose some

pots and pots are known to get lost for many reasons, it does not “set off alarms” with the victim fisherman when a person steals a few pots here or there. This practice of someone stealing a pot here or there from a fisherman has been referred to as, “plucking” by the fishing community. “Plucking” is hard to catch and goes unreported in most cases. “Plucking” can catch up with the perpetrator once another fisherman discovers what has been occurring. Word gets out and others begin looking at the suspect’s pots. They begin to find their pots and pots of others and the larcenies of times past begin to reveal themselves.

While investigating these crimes, officers often receive complaints from victims and other fishermen that if a person is convicted of stealing, the N.C. Division of Marine Fisheries (division) will not suspend or revoke the defendant’s license that was issued by the division. They want to see a license revocation occur for these convictions so that the violators are immediately unauthorized to participate in fishing activities. Some request that the division “take” the accused “off the water” immediately. The Marine Patrol Officer must explain that the division does not have the authority to “take anyone off the water.” The division can only suspend a license of the convicted if they were convicted of certain crimes related to fisheries regulations and had a prior violation. The division cannot suspend someone’s license that is only accused of a crime (not convicted) and even for certain convictions, such as for general property crimes (stealing a bicycle or a lawn mower), the division does not have the authority to suspend a fishing-related license.

Unfortunately, the only law currently in force that counts as a conviction under 15A NCAC 030 .0114 (Suspension, revocation and reissuance of licenses) for a license is convictions of G.S. 113-268 (Injuring, destroying, stealing or stealing from nets, seines, buoys, pots, etc.) This conviction will only lead to a suspension or revocation if the defendant has certain prior Marine Fisheries offenses on his/her record. In simple terms, a suspension is when a license is taken away from a license holder for a certain amount of time. At the end of the time frame, the license is returned to the license holder and he/she can continue to use the license. A revocation is when a license is taken away from the license holder forever. However, with a revocation, the license holder may, after a specified time, petition the director of the division to reinstate his/her license. The choice is then solely up to the director as to whether the license will be reinstated. Convictions of G.S. 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods) do not count as convictions under 15A NCAC 030 .0114(Suspension, revocation and reissuance of licenses) for a license. The crime of G.S. 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods) is frequently charged in addition to the crime of G.S. 113-268 (Injuring, destroying, stealing or stealing from nets, seines, buoys, pots, etc.) These are frequently charged together for several reasons. First and foremost, this would be because the crime was committed. Second, this is the nature of the crime of larceny. If someone commits larceny, it is likely the investigation will reveal they committed other crimes such as breaking and entering, safecracking, or possession of stolen property. Another reason is charging multiple involved crimes gives investigators and prosecutors leverage in court proceedings in the event that a plea deal situation arises with the defendant. It could be viewed as an insurance policy of sorts. This leverage helps to insure a meaningful conviction following a plea deal. When marine patrol officers investigate fishing gear larcenies, it is preferable to charge G.S. 113-268 (Injuring, destroying, stealing or stealing from nets, seines, buoys, pots, etc.) in addition to any larceny violation, simply so the defendant will receive a violation against their division-issued license. As stated before, charges of G.S. 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods) do not count as convictions under 15A NCAC 030 .0114 (Suspension, revocation and reissuance of licenses) for a license. It is also not practical to seek a misdemeanor conviction under G.S. 113-268 if the suspect is charged with felony larceny under G.S. 14-72. (Larceny becomes a felony when the value of the property exceeds \$1,000. To put it in perspective, this could be viewed as approximately 25 new, rigged out crab pots.) There are several reasons why it is not practical to seek a misdemeanor conviction over a felony conviction. For one, the felony is a more serious offense. For example, if a defendant stole a push lawn mower valued at \$50 from someone that would be a misdemeanor offense. A week later, if the same defendant stole a tractor valued at \$5,000 from the same person, this would be a felony offense. The investigator now has two separate charges he can pursue. It would be nonsensical for the investigator and/or prosecutor to seek convicting a person for stealing a \$50 push lawn mower and not pursue the stealing of the \$5,000 tractor. One charge is for misdemeanor larceny and one is for felony larceny. A felony conviction is much more substantial and serious than a misdemeanor conviction. The judgments in court after a felony conviction are more serious as well, when compared to misdemeanor convictions. To compare this to how it applies to fishing gear, one could use this example: a defendant “stomped” five crab pots from one victim. He also stole 100 crab pots from the same victim. There are now two law violations that could be applied, G.S. 113-268 (Injuring, destroying, stealing or stealing from nets, seines, buoys, pots, etc.) and G.S. 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods). G.S. 113-268 is a misdemeanor in this and all situations. In this situation described, the larceny of the 100 crab pots will be a felony amount due to

the crab pots being worth more than \$1,000. It simply makes better enforcement and legal sense to pursue the most serious crimes involved. But, should a defendant be convicted of G.S. 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods), and the charge of G.S. 113-268 (Injuring, destroying, stealing or stealing from nets, seines, buoys, pots, etc.) be dismissed, the resulting conviction will not affect any division-issued license held by the defendant. Currently, even if a defendant was convicted of a crime as serious as felony larceny under G.S. 14-72, he/she would receive no violation against any license he/she may hold that is issued by the division. (See Appendix A for N.C. General Statutes 14-72 and 113-268.)

Further compounding the problem of larcenies of commercial fishing gear is how the cases are generally handled by the court system. There seems to be a sentiment in the court system that charges brought to court by the N.C. Marine Patrol are wasting the courts' time because the charges are only a case about fish or crabs. The courts are hearing cases involving murders, rapes, assaults, abuse, drugs, etc. N.C. Marine Patrol cases may be viewed as crimes against a fish and not a person, and therefore, not taken seriously. The courts may not realize that charges may be a felony larceny case where a victim has had \$8,000 of crab pots stolen from them, for example. Cases often come to plea agreements outside of court because court officials are not going to allow the case to be heard. In this instance, a judge may never hear the details of a case and understand that a crime has been committed against a person and that not just fish have been affected. Court officials have a responsibility to make sure the courts' time is used efficiently, but this type of situation leads to plea bargains and convictions that are so minor they do not serve as deterrent to future crimes. In the past, judges would sometimes make it a condition of the judgment that the defendant be forbidden from being on the waters of the state for a year or some other set period of time; this was a meaningful consequence that served as a deterrent. Since the decline of the economy it is less likely that type of condition will be a part of a judgment. Minor sentences are also likely for a defendant who has a relatively "clean" record.

Other concerns with court procedures that can add to the problem some fishermen experience with larcenies of gear is when a defendant has been charged with multiple offenses of laws and has multiple court dates. This situation occurs when a defendant commits several different unrelated crimes on different dates, times, etc. Larceny of gear could end up being heard in court and combined into a plea arrangement with any other pending charge the defendant has at the time in that county. The larceny could end up being grouped in and consolidated for judgment with anything from a speeding ticket, to drug charges, to assault charges, and the list goes on. Defendants who have multiple pending court cases often try to get all of their cases heard on the same day, because they know there is a likelihood that the cases are going to be consolidated for judgment, and they will fare better than if the cases were heard on different days. These problems with how cases are handled in court can also contribute to vigilante justice by victims who view going to court as a waste of time. In the past, there have been instances of vigilante justice where fishermen have tried to solve the problem of stealing themselves. Some of these instances include acts of retribution such as stealing gear or fish, stomping (damaging and vandalizing) pots, cutting of nets, cutting buoys off of pots, shooting other's boats with guns, communicating threats, physical confrontations and fights, and sinking and/or burning of boats.

Another problem associated with the larceny of gear, court procedures and license suspensions, is that often times, the defendant who has been convicted and received a suspension or revocation on their division-issued license remains on the waters of our state and continues to actively fish. They accomplish this by a "loophole" in the laws pertaining to 15A NCAC 030 .0114 (Suspension, revocation and reissuance of licenses.) This rule only applies to the actual division-issued license, not the person. The license belonging to the person can be suspended or revoked by the director, but the person can continue to be a part of another commercial fishing operation as long as there is a license holder on board with all required licenses. For example, if a license holder loses his/her license privileges through suspension or revocation, he/she could find another license holder to accompany him/her on their fishing trips, which would make the operation legal as far as licensing requirements are concerned. If that license holder had a boat or access to a boat with a valid Commercial Fishing Vessel Registration in the name of their spouse, family member or friend, the affected license holder could simply find someone to assign a Standard Commercial Fishing License or even buy a Standard Commercial Fishing License and have it transferred to anyone of their choosing. Often this would be a helper they normally have on the boat, and the license holder will never miss a day of work on the water during the suspension or revocation period.

IV. AUTHORITY

G.S. 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.

G.S. 113-168.1. General provisions governing licenses and endorsements.

G.S. 113-171. Suspension, revocation, and reissuance of licenses.

G.S. 113-268. Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.

15A NCAC 03O .0114. Suspension, revocation and reissuance of licenses.

V. DISCUSSION

There are six proposed management options to address this issue. (See the chart on page 10 for a simplified reference guide to the proposed management options.) The first option is to remain at status quo and make no changes to existing rules. Options two through six would all involve a rule change.

Option two would simply start with making the crimes of G.S. 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods when related to fishing gear) an offense that counts as a conviction for license suspension and revocation purposes under 15A NCAC 03O .0114 (Suspension, revocation and reissuance of licenses). From option two, the penalties against a license increase with each option by way of suspensions, revocations or a combination of both, all the way to option six. Option six would result in a minimum of a two year license revocation for any conviction of the above mentioned crimes. It should be noted that options two through six all involve language that would make the crimes referenced above count as a conviction against a license.

Any option chosen other than status quo, would be a positive step in addressing this issue. Options three through six have the most potential for improving this issue and provide many potential positive impacts from the selected action. Options three through six all include substantial ramifications against a license that could serve as a deterrent, thereby reducing larcenies and improving conflicts between fishermen. These four options could also cut down on time-consuming and costly investigations that pull Marine Patrol Officers away from their core mission of protecting marine resources, while at the same time, improving officer safety. The negative impacts are minimal for options three through six. The modifications to 15A NCAC 03O .0114 listed in options three through six will deter future incidences of theft. Any option chosen from options two through six will be overwhelmingly supported by the fishing community, in particular the commercial fishing community.

VI. PROPOSED RULE(S)

OPTION 5 [Conviction of larceny will count against fishing license; conviction of larceny or injuring/destroying/stealing gear will result in a license revocation. The former licensee shall not be eligible to apply for reinstatement of a revoked license for a period of one year.]

[Note: Rule 15A NCAC 03O .0114 is also under construction in the “Protection of Shellfish Lease and Franchise Rights Issue Paper” included in the draft Oyster Fishery Management Plan Amendment 4 and Hard Clam Fishery Management Plan Amendment 2. Only proposed changes in support of the gear larceny issues are shown here.]

15A NCAC 03O .0114 SUSPENSION, REVOCATION AND REISSUANCE OF LICENSES

(a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 are subject to suspension and revocation.

(b) A conviction resulting from being charged by an inspector under G.S. 14-32, ~~14-33 or~~ 14-33, 14-72 or 14-399 shall be deemed a conviction for license suspension or revocation purposes.

(c) Upon receipt of notice of a licensee’s conviction as specified in G.S. 113-171 or a conviction as specified in Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, a second, a third or a fourth or subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall be treated as a single conviction so far as suspension or revocation of the licenses of a licensee is concerned. For a second conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

- (1) For a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;
- (2) For a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
- (3) For a conviction under G.S. ~~113-209, 14-72,~~ 113-209 or 113-268 the Fisheries Director shall revoke all licenses issued to the licensee; and

- (4) For a conviction under G.S. 14-32 or 14-33, when the offense was committed against a marine fisheries inspector the Fisheries Director shall revoke all licenses issued to the licensee; the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of two years.

(d) After the Fisheries Director determines a conviction requires a suspension or revocation of the licenses of a licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, must state the ground upon which it is based, and takes effect immediately upon service. The agent of the Fisheries Director making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director.

(e) Where a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 during the suspension period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

(f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of one year, except as provided in Paragraph (c)(4) of this Rule. For a request for reinstatement following revocation, the eligible former licensee shall satisfy the Fisheries Director that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules by sending a request for reinstatement in writing to the Fisheries Director, Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557. Upon the application of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(g) A licensee shall not willfully evade the service prescribed in this Rule.

*History Note: Authority G.S. 113-168.1; 113-171; S.L. 2010-145;
Eff. October 1, 2012;
Amended Eff. May 1, 2017.*

VII. PROPOSED MANAGEMENT OPTIONS

- (+ potential positive impact of action)
(- potential negative impact of action)

1. Status quo

- + A conviction of injuring/destroying/stealing gear will remain a conviction for license purposes.
- + No rule change required
- A larceny conviction will not result in a conviction for license purposes.
- A larceny conviction will not result in a license suspension or revocation.
- A single conviction of injuring/destroying/stealing gear will not result in a license suspension or revocation.
- Court-imposed judgments may continue not to serve as a deterrent for larceny or injuring/destroying/stealing gear.
- No additional deterrent put in place for license-holders for convictions of larceny or injuring/destroying/stealing gear
- Fishermen continue to lose gear and fish from thefts.
- Incidents of fishermen seeking retribution against other fishermen will continue.

2. Modify 15A NCAC 03O .0114 to make the crimes of G.S. 14-72 count as a conviction for license suspension or revocation purposes.

- + A larceny conviction will result in a conviction for license purposes.
- + A conviction of injuring/destroying/stealing gear will remain a conviction for license purposes.
- +/- Minor deterrent put in place for license-holders for convictions of larceny

- A single larceny conviction will not result in a license suspension or revocation.
- A single conviction of injuring/destroying/stealing gear will not result in a license suspension or revocation.
- Court-imposed judgments may continue not to serve as a deterrent for larceny or injuring/destroying/stealing gear.
- Fishermen likely to continue to lose gear and fish from thefts.
- Incidents of fishermen seeking retribution against other fishermen will likely continue.
- Rule change required

3. Modify 15A NCAC 03O .0114 to make the crimes of G.S. 14-72 count as a conviction for license suspension or revocation purposes and modify the rule to make the crimes of G.S. 14-72 or G.S. 113-268 result in a one-year license suspension.

- + A single conviction of larceny or a conviction of injuring/destroying/stealing gear will result in a one-year license suspension.
- + Deterrent put in place for license-holders for convictions of larceny and convictions of injuring/destroying/stealing gear
- + A larceny conviction will result in a conviction for license purposes.
- + A conviction of injuring/destroying/stealing gear will remain a conviction for license purposes.
- +/- Potential decrease for fishermen in loss of gear and fish from thefts
- +/- Potential decrease in incidents of fishermen seeking retribution against other fishermen
- +/- Marine Patrol officer safety may or may not be improved by a reduction in having to serve search warrants and make arrests.
- +/- Time-consuming and expensive investigations by Marine Patrol may or may not decrease.
- Rule change required

4. Modify 15A NCAC 03O .0114 to make the crimes of G.S. 14-72 count as a conviction for license suspension or revocation purposes and modify the rule to make the crimes of G.S. 14-72 or G.S. 113-268 result in a one-year license suspension for a first conviction and upon a second or subsequent conviction, result in license revocation for a minimum of one year.

- + A single conviction of larceny or a conviction of injuring/destroying/stealing gear will result in a one-year license suspension.
- + A second or subsequent conviction will result in a license revocation for a minimum of one year.
- + Increased deterrent put in place for license-holders for convictions of larceny and convictions of injuring/destroying/stealing gear
- + Likely decrease for fishermen in loss of gear and fish from thefts
- + Likely decrease in incidents of fishermen seeking retribution against other fishermen
- + Marine Patrol officer safety may be improved by a reduction in having to serve search warrants and make arrests.
- + Time-consuming and expensive investigations by Marine Patrol could decrease.
- + A larceny conviction will result in a conviction for license purposes.
- + A conviction of injuring/destroying/stealing gear will remain a conviction for license purposes.
- Rule change required

5. Modify 15A NCAC 03O .0114 to make the crimes of G.S. 14-72 count as a conviction for license suspension or revocation purposes and modify the rule to make the crimes of G.S. 14-72 or G.S. 113-268 result in license revocation for a minimum of one year.

- + A single conviction of larceny or a conviction of injuring/destroying/stealing gear will result in a license revocation for a minimum of one year.
- + Meaningful deterrent put in place for license-holders for convictions of larceny and convictions of injuring/destroying/stealing gear
- + Anticipated decrease for fishermen in loss of gear and fish from thefts
- + Anticipated decrease in incidents of fishermen seeking retribution against other fishermen
- + Marine Patrol officer safety may be improved by a reduction in having to serve search warrants and make arrests.
- + Time-consuming and expensive investigations by Marine Patrol could decrease.
- + A larceny conviction will result in a conviction for license purposes.

- + A conviction of injuring/destroying/stealing gear will remain a conviction for license purposes.
- Rule change required

6. Modify 15A NCAC 03O .0114 to make the crimes of G.S. 14-72 count as a conviction for license suspension or revocation purposes and modify the rule to make the crimes of G.S. 14-72 or G.S. 113-268 result in license revocation for a minimum of two years.

- + A single conviction of larceny or a conviction of injuring/destroying/stealing gear will result in a license revocation for a minimum of two years.
- + Significant deterrent put in place for license-holders for convictions of larceny and convictions of injuring/destroying/stealing gear
- + Anticipated decrease for fishermen in loss of gear and fish from thefts
- + Anticipated decrease in incidents of fishermen seeking retribution against other fishermen
- + Marine Patrol officer safety may be improved by a reduction in having to serve search warrants and make arrests.
- + Time-consuming and expensive investigations by Marine Patrol could decrease.
- + A larceny conviction will result in a conviction for license purposes.
- + A conviction of injuring/destroying/stealing gear will remain a conviction for license purposes.
- Rule change required

Summary of Management Options for Gear Larceny Convictions

#	Result of option	... and and ...	Comparable to conviction of ...
1.	No change			
2.	Gear larceny conviction counts against fishing license			Injuring/destroying/stealing gear, and all other crimes listed below
3.	Gear larceny conviction counts against fishing license	One-year license suspension		Felony littering
4.	Gear larceny conviction counts against fishing license	First conviction: one-year license suspension	Additional conviction: license revocation for minimum of one year	Taking shellfish from polluted waters
5.	Gear larceny conviction counts against fishing license	License revocation for minimum of one year		Taking shellfish from polluted waters at night or second conviction of taking shellfish from polluted waters within preceding two years
6.	Gear larceny conviction counts against fishing license	License revocation for minimum of two years		Assault on marine patrol officer

VIII. RECOMMENDATION

The division recommends option 5. This is consistent with a parallel issue in the Oyster and Hard Clam fishery management plan draft amendments that also addresses license suspension and revocation.

Prepared by: Sergeant Brian Long, cbrian.long@ncdenr.gov, 252-726-7021
Oct. 16, 2014

Revised: Oct. 22, 2014 Jan. 15, 2015
Nov. 2, 2014 Jan. 28, 2015
Dec. 11, 2014 March 31, 2015
Dec. 17, 2014 April 2, 2015
Dec. 24, 2014 May 11, 2015
Jan. 6, 2015 April 13, 2016

NOTICE OF TEXT ATTACHMENT

15A NCAC 030 .0114 SUSPENSION, REVOCATION AND REISSUANCE OF LICENSES

Proposed amendments provide for an appropriate sanction against a licensee for convictions of G.S. 14-72 Larceny of property; receiving stolen goods or possessing stolen goods when related to fishing gear or G.S. 113-268 Injuring, destroying, stealing or stealing from nets, seines, buoys, pots, etc. to serve as a deterrent to theft of fishing gear, vandalism to fishing gear, and theft of fish from fishing gear. These sanctions would be consistent with sanctions under other similar marine fisheries laws.

MFC Rulebook Index Worksheet

Rule	Rulebook Page #	Subject	Index Entry (Bold major headings)	Add/Delete
030 .0114	60	License suspension and revocation	license:suspension	No Change
			license:revocation	No Change
(c)			enforcement:convictions, number of	No Change
(c)(4)			enforcement:penalties:assault	No Change
(c)(4)			license:revocation:assault	No Change
(d)			enforcement:service of notice	No Change
(e)			license:reissuance	No Change

Appendix A

G.S. 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.

(a) Larceny of goods of the value of more than one thousand dollars (\$1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars (\$1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.

(b) The crime of larceny is a felony, without regard to the value of the property in question, if the larceny is any of the following:

- (1) From the person.
- (2) Committed pursuant to a violation of G.S. 14-51, 14-53, 14-54, 14-54.1, or 14-57.
- (3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.
- (4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.
- (5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and G.S. 121-2(8).
- (6) Committed after the defendant has been convicted in this State or in another jurisdiction for any offense of larceny under this section, or any offense deemed or punishable as larceny under this section, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies, or a combination thereof, at least four times. A conviction shall not be included in the four prior convictions required under this subdivision unless the defendant was represented by counsel or waived counsel at first appearance or otherwise prior to trial or plea. If a person is convicted of more than one offense of misdemeanor larceny in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used as a prior conviction under this subdivision; except that convictions based upon offenses which occurred in separate counties shall each count as a separate prior conviction under this subdivision.

(c) The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question.

(d) Where the larceny or receiving or possession of stolen goods as described in subsection (a) of this section involves the merchandise of any store, a merchant, a merchant's agent, a merchant's employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, when such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, the merchant's agent, the merchant's employee, or the peace officer had, at the time of the detention or arrest, probable cause to believe that the person committed an offense under subsection (a) of this section. If the person being detained by the merchant, the merchant's agent, or the merchant's employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the merchant's employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of

detention. A merchant, a merchant's agent, or a merchant's employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor. (1895, c. 285; Rev., s. 3506; 1913, c. 118, s. 1; C.S., s. 4251; 1941, c. 178, s. 1; 1949, c. 145, s. 2; 1959, c. 1285; 1961, c. 39, s. 1; 1965, c. 621, s. 5; 1969, c. 522, s. 2; 1973, c. 238, ss. 1, 2; 1975, c. 163, s. 2; c. 696, s. 4; 1977, c. 978, ss. 2, 3; 1979, c. 408, s. 1; c. 760, s. 5; 1979, 2nd Sess., c. 1316, ss. 11, 47; 1981, c. 63, s. 1; c. 179, s. 14; 1991, c. 523, s. 2; 1993, c. 539, s. 34; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 185, s. 2; 2006-259, s. 4(a); 2012-154, s. 1.)

G.S. 113-268. Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party. (1987, c. 636, s. 1; 1989, c. 727, s. 112; 1993, c. 539, s. 849; 1994, Ex. Sess., c. 24, s. 14(c); 1998-225, s. 3.9.)

Correction of Wade Creek Primary Nursery Area Boundary Line Issue Paper

Oct. 13, 2015

I. ISSUE

In 2004, an error occurred when the coordinates in rule for the primary nursery area in Wade Creek, Jarretts Bay were converted from one format (degrees/minutes/seconds) to another (decimal minutes). This coordinate error places the primary nursery area boundary line further inland than the original designation. This issue can be rectified by correcting N.C. Marine Fisheries Commission (MFC) rule 15A NCAC 3R.0103 (10)(g)(vii).

II. ORIGINATION

N.C. Division of Marine Fisheries (DMF) staff.

III. BACKGROUND

Nursery areas are an important component of the DMF mission of ensuring sustainable marine and estuarine fisheries and habitats for the benefit and health of the people of North Carolina. Nursery areas are equally important for the MFC's duty to manage, protect, preserve, and enhance the marine and estuarine resources within its jurisdiction (G.S. 143B-289.52.) Per MFC rule 15A NCAC 03I .0101(4)(f), nursery areas are "areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season." As defined in this same rule, primary nursery areas "are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles." Several MFC rules designate and protect these important areas, to include restricting the use of certain fishing gears and activities. In addition, G.S. 113-187 provides the penalty for not abiding by these restrictions in primary nursery areas. These regulations contribute to the overall health of the state's fisheries.

All primary nursery area boundaries are listed in rule and can be found in 15A NCAC 03R .0103. Wade Creek is located off Jarrett Bay, near Core Sound (Carteret County). Wade Creek was designated as a primary nursery area by rule in 1977 as part of the original primary nursery rule designations. Primary nursery areas, in accordance with other supporting rules, means that it is unlawful to use trawl nets, long haul seines, swipe nets, dredges, or mechanical methods for clamming or oystering in Wade Creek. In general, these restrictions help to protect juvenile fish to allow them to mature, migrate, and eventually spawn and contribute to achieving healthy fisheries. Also, nursery areas may be recognized by the Environmental Management Commission for enhanced water quality standards, or by the Coastal Resources Commission for more protective coastal development standards. Primary nursery areas, in particular are considered High Quality Waters for the purpose of water quality standards, and have dredging restrictions by both commissions.

A marine patrol officer noted a discrepancy in the Wade Creek primary nursery area. The coordinates in rule do not align with the placement of the primary nursery area signs or the primary nursery area map provided by N.C. Department of Environmental Quality Geographic Information System (GIS) staff. The source of the discrepancy was not readily apparent and warranted further investigation.

The error in the coordinates most likely occurred during a project DMF staff undertook in the early 2000s of converting to an updated coordinate format for all the subchapter 03R descriptive boundaries. The resulting conversions were then codified and published in the 2004 rulebook. The Wade Creek primary nursery area coordinate error went unnoticed. All information sources seem to reveal the error occurred from the coordinate conversion. No documentation can be found indicating the coordinates were meant to be substantively changed through the rulemaking process. Available historical DMF nursery area maps as well as closed shrimp proclamation maps up to and beyond 2004 demarcate the Wade Creek primary nursery area with the same original boundaries and reveal no changes despite the unintended rule change in 2004.

IV. AUTHORITY

North Carolina General Statutes

113-134. Rules.

113-182. Regulation of fishing and fisheries.

113-187. Penalties for violations of Subchapter and rules.
143B-289.52. Marine Fisheries Commission – powers and duties.

North Carolina Marine Fisheries Commission Rules May 1, 2015
15A NCAC 03R .0103 Primary Nursery Areas

V. DISCUSSION

Research into this issue revealed the error most likely occurred during the coordinate conversions codified in the 2004 rule amendment. All coordinates were originally listed in degrees/minutes/seconds (ddmmss) format and converted to decimal degrees (ddmm.xxxx) with four decimal places. The conversions were part of a project to update boundary lines and physically check boundary lines to ensure accuracy.

GIS staff looked into the issue and stated the boundary did not change, only the coordinate points in the rule changed (see Attachment 1.) There is no documentation indicating the coordinates were intentionally changed during this time nor did the rule maps available on the DMF website reveal any changes to the coordinates. The coordinates prior to the 2004 amendment of the rule place the primary nursery area line in the same location as indicated in previous rulebooks and align with maps dating back to 1986 from Land Resources Information Systems (Attachment 1, purple line.) In speaking with members of the DMF staff, no one can recall any reasoning for the coordinates to have been changed, or know of any rule changes incorporating new coordinates for the Wade Creek primary nursery area.

If the coordinates in rule remain unchanged (Attachment 1, red line), the Wade Creek primary nursery area will not be fully protected. The area will be subjected to the use of commercial gear normally not allowed and lose enhanced water quality measures. The discrepancy will also remain between the information in the primary nursery area boundary listed in rule and the rule map provided by GIS staff. This error simply needs to be resolved to align the rule and the mapping information to provide accurate and uniform information to the public.

With this information in hand, it seems the rule alone is in error and needs to be corrected. The rulemaking process needs to be initiated to correct the rule to align the coordinates for the Wade Creek primary nursery area to their historical placement, only adjusting for improved GIS accuracy (Attachment 1, blue line.) This would ensure the primary nursery area is properly protected in the rule and corresponds with all available resources. Additionally, G.S. 150B-19.1, part of the Administrative Procedure Act, sets forth the principles of rulemaking. These principles include that rules shall be written in a clear and unambiguous manner and that rules shall be based on sound, reasonably available scientific, technical, and other relevant information. Correcting the error in rule will comply with the statutory requirements for rulemaking.

VI. PROPOSED RULE(S)

15A NCAC 03R .0103 PRIMARY NURSERY AREAS

The primary nursery areas referenced in 15A NCAC 03N .0104 are delineated in the following coastal water areas:

- (1) In the Roanoke Sound Area:
 - (a) Shallowbag Bay:
...
- (10) Core Sound Area:
 - (a) Cedar Island Bay - northwest of a line beginning on the northeast shore at a point 34° 59.7770' N - 76° 17.3837' W; running southwesterly to the southwest shore to a point 34° 59.0100' N - 76° 17.9339' W;
 - (b) Lewis Creek - north of a line beginning on the west shore at a point 34° 56.8736' N - 76° 16.8740' W; running easterly to the east shore to a point 34° 56.9455' N - 76° 16.8234' W;
 - (c) Thorofare Bay:
 - (i) Merkle Hammock Creek - southwest of a line beginning on the northwest shore at a point 34° 55.4796' N - 76° 21.4463' W; running southeasterly to the southeast shore to a point 34° 55.3915' N - 76° 21.1682' W; and
 - (ii) Barry Bay - west of a line beginning on the north shore at a point 34° 54.6450' N - 76° 20.6127' W; running southerly to the south shore to a point 34° 54.4386' N - 76° 20.4912' W;
 - (d) Nelson Bay:

- (i) Willis Creek and Fulchers Creek - west of a line beginning on the north shore of Willis Creek at a point 34° 51.1006' N - 76° 24.5996' W; running southerly to the south shore of Fulchers Creek to a point 34° 50.2861' N - 76° 24.8708' W; and
- (ii) Lewis Creek - west of a line beginning on the north shore at a point 34° 51.9362' N - 76° 24.6322' W; running southerly to the south shore to a point 34° 51.7323' N - 76° 24.6487' W;
- (e) Cedar Creek between Sea Level and Atlantic - west of a line beginning on the north shore at a point 34° 52.0126' N - 76° 22.7046' W; running southerly to the south shore to a point 34° 51.9902' N - 76° 22.7190' W;
- (f) Oyster Creek, northwest of the Highway 70 Bridge; and
- (g) Jarretts Bay Area:
 - (i) Smyrna Creek - northwest of the Highway 70 Bridge;
 - (ii) Ditch Cove and adjacent tributary - east of a line beginning on the north shore at a point 34° 48.0167' N - 76° 28.4674' W; running southerly to the south shore to a point 34° 47.6143' N - 76° 28.6473' W;
 - (iii) Broad Creek - northwest of a line beginning on the west shore at a point 34° 47.7820' N - 76° 29.2724' W; running northeasterly to the east shore to a point 34° 47.9766' N - 76° 28.9729' W;
 - (iv) Howland Creek - northwest of a line beginning on the northeast shore at a point 34° 47.5129' N - 76° 29.6217' W; running southwesterly to the southwest shore to a point 34° 47.3372' N - 76° 29.8607' W;
 - (v) Great Creek - southeast of a line beginning on the northeast shore at a point 34° 47.4279' N - 76° 28.9565' W; running southwesterly to the southwest shore to a point 34° 47.1515' N - 76° 29.2077' W;
 - (vi) Williston Creek - northwest of the Highway 70 Bridge;
 - (vii) Wade Creek - west of a line beginning on the north shore at a point ~~34° 46.3022' N - 76° 30.5443' W;~~ 34° 46.3125' N - 76° 30.2676' W; running southerly to the south shore to a point ~~34° 46.2250' N - 76° 30.3864' W;~~ 34° 46.1915' N - 76° 30.3593' W;
 - (viii) Jump Run - north of a line beginning on the west shore at a point 34° 45.5385' N - 76° 30.3974' W; running easterly to the east shore to a point 34° 45.5468' N - 76° 30.3485' W;
 - (ix) Middens Creek - west of a line beginning on the north shore at a point 34° 45.5046' N - 76° 30.9710' W; running southerly to the south shore to a point 34° 45.4093' N - 76° 30.9584' W;
 - (x) Tusk Creek - northwest of a line beginning on the northwest shore at a point 34° 44.8049' N - 76° 30.6248' W; running southerly to the south shore to a point 34° 44.6074' N - 76° 30.7553' W; and
 - (xi) Creek west of Bells Island - west of a line beginning on the north shore at a point 34° 43.9531' N - 76° 30.4144' W; running southerly to the south shore to a point 34° 43.7825' N - 76° 30.3543' W;
- (11) Straits, North River, Newport River Area:

...

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
 Eff. January 1, 1991;
 Amended Eff. March 1, 1996; September 1, 1991;
 Recodified from 15A NCAC 03R .0003 Eff. December 17, 1996;
 Amended Eff. May 1, 2017; April 1, 2011; December 1, 2006; September 1, 2005; August 1, 2004;
 May 1, 1997.

VII. PROPOSED MANAGEMENT OPTIONS

(+ Potential positive impact of action)
 (- Potential negative impact of action)

A. Status quo

- Primary nursery area not fully protected in rule
- An error remains in the rulebook for a primary nursery area boundary line.
- Division primary nursery map remains inconsistent with the rule
- Does not comply with principles of rulemaking in G.S. 150-B

B. Correct the coordinates

- + Primary nursery area fully protected in rule.
- + The primary nursery area boundary line would be corrected and accurate in the rulebook.
- + Division primary nursery area map would be consistent with the rule
- + Complies with principles of rulemaking in G.S. 150-B

VIII. RECOMMENDATION

The Division supports option B to correct the coordinates for the Wade Creek primary nursery area in rule.

Prepared by: Daniel T. Ipock, daniel.ipock@ncdenr.gov
 252-726-7021
 Date: Sept. 24, 2015
 Revised: Oct. 13, 2015

NOTICE OF TEXT ATTACHMENT

#8 – Explain Reason for Proposed Action:

15A NCAC 03R .0103 PRIMARY NURSERY AREAS

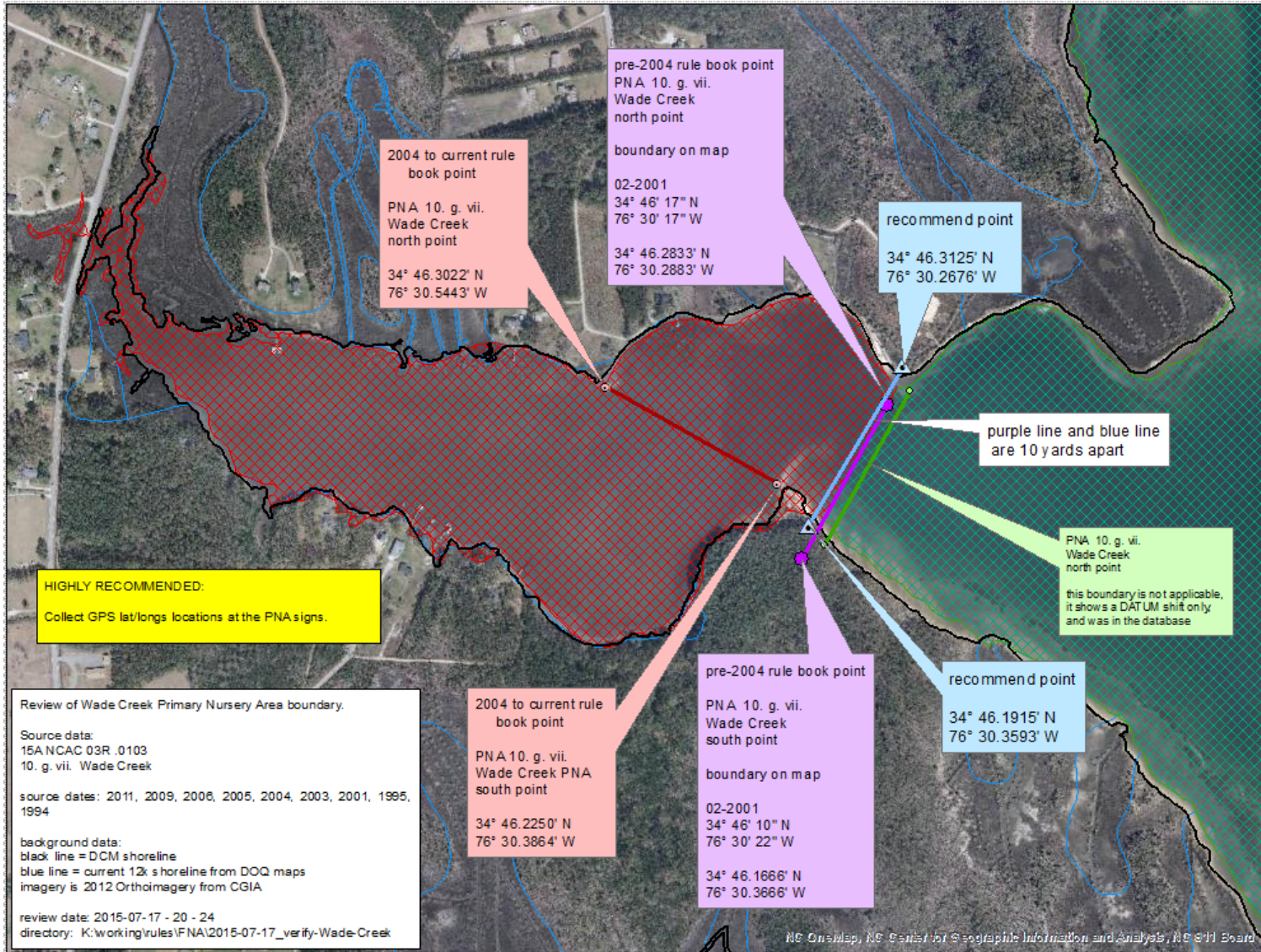
Proposed amendments correct a coordinate error for the Wade Creek primary nursery area made when the coordinate format changed in 2004.

MFC Rulebook Index Worksheet

Rule	Rulebook Page #	Subject	Index Entry (Bold major headings)	Add/Delete
03R .0103	114	primary nursery areas	boundaries:nursery areas:primary	No Change
			nursery area:primary	No Change

Ancillary Item: Collect GPS coordinate locations at the existing Wade Creek primary nursery area signs to identify if the signs need to be relocated upon the effective date of the rule.

Attachment 1



**Clarification of License Requirements for Leaseholder Designees
Issue Paper**

April 13, 2016

I. ISSUE

In 2015, the General Assembly passed legislation that created a provision for employees of a leaseholder with a Standard Commercial Fishing License (SCFL) to harvest shellfish from a lease by mechanical means without a license. This created a discrepancy between G.S. 113-169.2 and N.C. Marine Fisheries Commission (MFC) Rule 15A NCAC 03O .0501 (c)(3). Upon review of this issue, staff discovered that Session Law 2013-360 made a SCFL a requirement to harvest shellfish by mechanical means. Thus, a discrepancy has existed between G.S. 113-169.2 and MFC Rule 15A NCAC 03O .0501 (c)(3) since 2013. Both of these issues can be corrected by amending MFC Rule 15A NCAC 03O .0501.

II. ORIGINATION

Session Law 2013-360
Session Law 2015-241

III. BACKGROUND

According to G.S. 113-201, the General Assembly finds that shellfish cultivation provides increased seafood production, economic and employment opportunities, and increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. Shellfish are defined in G.S. 113-201.1 as oysters, clams, scallops, mussels or any other species of mollusks that the MFC determines suitable for cultivation, harvesting, and marketing from public grounds or private beds. The North Carolina Division of Marine Fisheries (NCDMF) administers the Shellfish Lease and Franchise program to provide for private use of public trust waters for the commercial production of shellfish. Staff works with potential leaseholders and franchise holders to ensure leaseholders and franchise holders and other individuals working on those private shellfish beds are properly licensed and/or permitted to take shellfish.

Shellfish can be harvested from a lease or franchise by either hand methods or mechanical methods. Hand methods include harvesting by hand, hand rake, or hand tongs. Mechanical methods for clamming defined in 15A NCAC 03I .0101(3)(l) include dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propeller or deflector plates with or without trawls and any other method that utilizes mechanical means to harvest clams. Mechanical methods for oystering defined in 15A NCAC 03I .0101(3)(m) include dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.

G.S. 113-169.2 provides the license requirements for harvesting shellfish from public and private grounds. Section 14.8.(g) of Session Law 2013-360 amended this statute and specified different license requirements for hand and mechanical harvest. Prior to this, the license requirements were the same for either method. Individuals taking shellfish from leases or franchises (private grounds) by hand methods are required to hold a Shellfish License or a SCFL with a shellfish endorsement. Prior to Session Law 2015-241, any individual taking shellfish from leases or franchises by mechanical methods was required to obtain a SCFL. Section 14.10B of Session Law 2015-241 further amended G.S. 113-169.2 and provides that the employees of a leaseholder holding a valid SCFL are exempt from mechanical methods licensing requirements.

One additional requirement for the mechanical harvest of shellfish from private grounds is contained in MFC Rule 15A NCAC 03K .0111. This rule states that it is unlawful to harvest shellfish by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases and Franchises. As provided in 15A NCAC 03O .0501 (c)(3), a requirement to hold this permit is that the permittee and his designees shall hold a valid SCFL or Retired SCFL with a shellfish endorsement or a *Shellfish License*. When Session Law 2013-360 was passed it created a discrepancy with this rule since an individual who takes shellfish by mechanical means must obtain a SCFL, thus making a *Shellfish License* insufficient to obtain a

Permit to Use Mechanical Methods for Shellfish on Shellfish Leases and Franchises. Also, as written in 15A NCAC 03O .0501 (c)(3), the permittee and his *designees* shall hold a valid SCFL or Retired SCFL with a shellfish endorsement or a Shellfish License. The term “designee” is defined in 15A NCAC 03I .0101 (5)(b) as any person who is under the direct control of the permittee or who is employed by or under direct contract to the permittee for the purposes authorized by the permit. When Session Law 2015-241 was passed, Section 14.10B created a discrepancy between G.S. 113-169.2 and 15A NCAC 03O .0501 (c)(3) because employees of leaseholders with a SCFL are now exempt from holding a license by statute, yet the license requirement remains in rule.

IV. AUTHORITY

North Carolina Session Law 2013-360, Section 14.8.(g)

North Carolina Session Law 2015-241, Section 14.10B. SCFL exemption for employees of leaseholder

North Carolina General Statutes

113-134. Rules.

113-169.1. Permits for gear, equipment, and other specialized activities authorized.

113-169.2. Shellfish license for North Carolina residents without a SCFL.

113-182. Regulation of fishing and fisheries.

113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.

113-201.1. Definitions.

143B-289.52. Marine Fisheries Commission – powers and duties.

North Carolina Marine Fisheries Commission Rules May 1, 2015

15A NCAC 03K .0111 Permits to use mechanical methods for shellfish on shellfish leases or franchises

15A NCAC 03O .0501 Procedures and requirements to obtain permits

V. DISCUSSION

MFC Rule 15A NCAC 03O .0501 contains procedures and requirements to obtain permits. Paragraph (c)(3) of this Rule requires the holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises and his designees to hold a valid SCFL or Retired SCFL with a shellfish endorsement or a Shellfish License. However, since 2013, G.S. 113-169.2 (a1) required any individual who takes shellfish by mechanical means to obtain a SCFL. G.S. 113-169.2 (i) now provides an exemption from license requirements for the employees of leaseholders holding a valid SCFL. These contradictions could create confusion for the regulated public in trying to determine what, if any, license they are required to hold to harvest shellfish from a lease. These issues also create confusion for Shellfish Lease Program staff for how to advise leaseholders as to license requirements. Issuing a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises to an individual with a Shellfish License as allowed under MFC rule would contradict statutory requirements. Adhering to MFC rule requirements for designees of permittees would result in a more burdensome interpretation of who is required to be issued a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises to mechanically harvest shellfish from leases or franchises. Since license requirements are unclear, it could create problems for Marine Patrol officers, from an enforcement standpoint.

In addition to the discrepancy between statute and rule, the 2015 statute change only provides a license exemption for a portion of potential stakeholders. It is unclear if other similar stakeholders were intentionally not included. NCDMF staff intend to work with the Department of Environmental Quality to pursue additional clarification to G.S. 113-169.2. For example, G.S. 113-169.2 (a1) provides the license exemption when harvesting by mechanical means, but according to G.S. 113-169.2 (a) someone harvesting by hand methods will still require a license. In addition, G.S. 113-169.2 (i) provides for taking shellfish without a license as an *employee* of a permittee who holds a SCFL, but other designees (any person who is under the direct control of the permittee or who is under direct contract to the permittee) are still required to hold their own license. Finally, G.S. 113-169.2 (i) provides the license exemption for employees of *leaseholders*, but does not specify whether the exemption should also apply to the employees of franchise holders.

The recommended course of action is to amend the MFC rule to align with the statute as modified by Session Law 2013-360 and Session Law 2015-241. To align MFC Rule 15A NCAC 03O .0501 with changes to G.S. 113-169.2

(a1) from Session Law 2013-360, the ability of Shellfish License holders to obtain a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises needs to be removed. In order to address the changes to G.S. 113-169.2 (i) from Session Law 2015-241, one option is for MFC Rule 15A NCAC 03O .0501 to be amended to specifically define that the license exemption only applies to employees using mechanical methods to harvest shellfish for a leaseholder with a SCFL. However, further changes to G.S. 113-169.2 that could potentially occur during the 2016 legislative session would make the proposed rule change out of date before it could become effective. Thus, the proposed amendment to 15A NCAC 03O .0501 simply refers to the statute for the specific exemption to license requirements.

VI. PROPOSED RULE(S)

[Note: Rule 15A NCAC 03O .0501 is also under construction in the “Development of a Permit to Allow Weekend Trawling to Take Live Shrimp Issue Paper”. Only proposed changes in support of license requirements for leaseholder designees are shown here.]

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party, or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant’s signature on the application shall be notarized;
- (2) Current picture identification of applicant, responsible party, or person holding a power of attorney. Acceptable forms of picture identification are driver’s license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who will be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address, and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable; and
- (6) Additional information as required for specific permits.

(b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- (1) Pound Net Permit;
- (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; or
- (3) Atlantic Ocean Striped Bass Commercial Gear Permit.

(c) ~~A-When mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:~~

- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
- (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
- (3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or ~~Franchises; Franchises,~~ except as provided in G.S. 113-169.2;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (5) Depuration Permit.

(d) When mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:

- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
- (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
- (3) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (4) Depuration Permit.

~~(d)~~(e) A permittee shall hold a valid:

- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.

~~(e)~~(f) Aquaculture Operations/Collection Permits:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

~~(f)~~(g) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) Upon application for an Atlantic Ocean Striped Bass Commercial Gear Permit, a person shall declare one of the following gears for an initial permit and at intervals of three consecutive license years thereafter:
 - (A) gill net;
 - (B) trawl; or
 - (C) beach seine.

For the purpose of this Rule, a “beach seine” is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place.

Gear declarations shall be binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.

~~(g)~~(h) 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.

~~(h)~~(i) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, 03O .0502, and .0503 as applicable to the requested permit.

~~(i)~~(j) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify, or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant’s demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director; and
- (3) Applicant’s history of habitual fisheries violations evidenced by eight or more violations in 10 years.

~~(j)~~(k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

~~(k)~~(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

~~(l)~~(m) For permit renewals, the permittee’s signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.

~~(n)~~ For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

~~(o)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

~~(p)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

~~(q)~~ Permit applications are available at all Division Offices.

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; May 1, 2000; Eff. April 1, 2001; Temporary Amendment Eff. October 1, 2001; Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1, 2007; September 1, 2005; April 1, 2003; August 1, 2002.

[NOTE: The following excerpt of Session Law 2013-360 is provided for informational purposes only.]

SECTION 14.8.(g) G.S. 113-169.2 reads as rewritten:

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Take or Sell ~~Shellfish~~Shellfish Taken by Hand Methods. – It is unlawful for an individual to take shellfish from the public or private grounds of the State ~~by mechanical means or as part of a commercial fishing operation by any means~~hand methods without holding either a shellfish license or a shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take shellfish by hand methods and sell such shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell shellfish.

(a1) License Necessary to Take or Sell Shellfish Taken by Mechanical Means. – Subject to subsection (i) of this section, an individual who takes shellfish from the public or private grounds of the State by mechanical means must obtain an SCFL under the provisions of G.S. 113-168.2.

(b) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

(c) Fees. – Shellfish licenses issued under this section shall be issued annually upon payment of a fee of ~~twenty-five dollars (\$25.00)~~thirty-one dollars and twenty-five cents (\$31.25) upon proof that the license applicant is a North Carolina resident.

(d) License Available for Inspection. – It is unlawful for any individual to take shellfish as part of a commercial fishing operation from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

(f) Name or Address Change. – In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an

individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. – Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. – Shellfish may be taken without a license for personal use in quantities established by rules of the Marine Fisheries Commission."

[NOTE: The following excerpt of Session Law 2015-241 is provided for informational purposes only.]

SCFL EXEMPTION FOR EMPLOYEES OF LEASEHOLDER

SECTION 14.10B. G.S. 113-169.2 reads as rewritten:

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Take or Sell Shellfish Taken by Hand Methods. – It is unlawful for an individual to take shellfish from the public or private grounds of the State as part of a commercial fishing operation by hand methods without holding either a shellfish license or a shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take shellfish by hand methods and sell such shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell shellfish.

(a1) License Necessary to Take or Sell Shellfish Taken by Mechanical Means. – ~~Subject to~~ Except as provided in subsection (i) of this section, an individual who takes shellfish from the public or private grounds of the State by mechanical means must obtain an SCFL under the provisions of G.S. 113-168.2.

...
(i) Taking Shellfish Without a License for Personal Use. ~~Use or as Employee of Certain License Holders.~~ – Shellfish may be taken without a license ~~for~~ under the following circumstances:

(1) For personal use in quantities established by rules of the Marine Fisheries Commission.

(2) When the taking is from an area leased for the cultivation of shellfish under Article 16 of this Chapter by a person who is an employee of a leaseholder holding a valid SCFL issued under the provisions of G.S. 113-168.2, and the person provides an authorization letter with the leaseholder's SCFL number and signature."

VII. PROPOSED MANAGEMENT OPTIONS

(+ Potential positive impact of action)

(- Potential negative impact of action)

A. Status quo

- MFC rule contradicts statute
- License requirements unclear to regulated public and NCDMF staff
- Does not comply with principles of rulemaking in G.S. 150B

B. Amend the rule

- + MFC rule aligns with statute
- + License requirements clearly defined for regulated public and NCDMF staff
- + Complies with principles of rulemaking in G.S. 150B

VIII. RECOMMENDATION

The Division supports option B so that MFC rule aligns with statute.

Prepared by: Valerie Wunderly, Valerie.Wunderly@ncdenr.gov, 252-808-8061
Date: Jan. 7, 2016
Revised: Feb. 2, 2016
April 7, 2016
April 13, 2016

NOTICE OF TEXT ATTACHMENT

#8 – Explain Reason for Proposed Action:

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

Proposed amendments clarify the requirement to hold a Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement to obtain a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises. Additional proposed amendments provide an exemption from license requirements for certain designees of the holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises in accordance with G.S. 113-169.2. *[Before filing rule package in June 2016 ensure no additional changes to statute occurred in short session which could trigger edits to this statement.]*

MFC Rulebook Index Worksheet

Rule	Rulebook Page #	Subject	Index Entry (Bold major headings)	Add/Delete
03O .0501	73	permit requirements	permit: application	No change
(b)			permit: Pound Net Set:application	
			permit: Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean	
			turtle excluder device (TED)	
(c)			relay, permit	
			transplanting:shellfish, permit	
			permit: Transplant Prohibited (Polluted) Shellfish	
			permit: Transplant Oysters from Seed Oyster Management Areas	
			permit: Mechanical Methods for Shellfish on Shellfish Leases or Franchises	
			gear: mechanical methods for clamming:permit	
			gear: mechanical methods for oystering:permit	
			permit: Harvest Rangia Clams From Prohibited (Polluted) Areas	
			permit: Depuration	
(d)			permit: Dealer Permit for Quota Monitoring:license, requirement	
(e)			permit: Aquaculture Collection	
			permit: Aquaculture Operation	
(f)			permit: Atlantic Ocean Striped Bass Commercial Gear	
			permit: bass, striped, Atlantic Ocean	
			species: bass, striped:permit, Atlantic Ocean Striped Bass Commerical Gear	
			gear: seine, beach, definition	