

Minutes



EMERGENCY MEETING of the MARINE FISHERIES COMMISSION
Lenoir County Courthouse
130 S. Queen St., Kinston
County Commissioners' Meeting Room
Kinston, N.C.
March 13, 2019

On March 10, 2019, Marine Fisheries Commission Chairman Rob Bizzell received separate requests from five commission members (Kornegay, Laughridge, Boltes, Koury and Bizzell) for an emergency meeting, pursuant to **G.S. 113-221.1 (d) Proclamations; emergency review**. Subsequently, Chairman Bizzell called an emergency meeting of the Marine Fisheries Commission for March 13 to review the desirability of directing the Director of the Division of Marine Fisheries to issue a proclamation regarding gill nets, similar if not identical to the one requested at the commission's February 2019 Meeting and listed below:

Motion by Cameron Boltes to ask the director of the DMF to issue a proclamation, effective in conjunction with the supplement, that restricts the use of gill nets that interact with striped bass upstream of the ferry lines and requires attendance of gill nets that interact with striped bass upstream of the tie-down lines. Second by Pete Kornegay. Motion carries 5-4.

The emergency meeting was held on March 13, 2019 at 10 a.m. at the Lenoir County Courthouse in Kinston, N.C. There was no public comment period and the meeting was not live-streamed.

Materials for this meeting, motions and the meeting audio can be found at <http://portal.ncdenr.org/web/mf/031319-emergency-meeting>.

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

BUSINESS MEETING - MOTIONS AND ACTIONS

Chairman Rob Bizzell convened an emergency meeting at 10 a.m. and reminded commissioners of their conflict of interest and ethics requirements.

The following commission members were in attendance: Rob Bizzell-Chairman, Mike Blanton, Cameron Boltes, Doug Cross, Tom Hendrickson, Pete Kornegay, Brad Koury, Chuck Laughridge and Sam Romano.

Motion by Cameron Boltes to approve the agenda. Second by Chuck Laughridge.
Motion carries unanimously.

Purpose of the Emergency Meeting

Chairman Bizzell explained the purpose of the emergency meeting was to discuss directing the Director of the Division of Marine Fisheries to issue a proclamation regarding gill nets, similar if not identical to the one requested at the commission's February Meeting.

As reference, Division of Marine Fisheries Director Steve Murphey had declined to voluntarily implement a motion passed at the commission's February meeting requesting he restrict the use of gill nets that interact with striped bass upstream of the ferry lines in the rivers and require attendance of gill nets that interact with striped bass upstream of the tie-down lines in the Central Southern Management Area (CSMA).

The February motion was made following the adoption of Supplement A to Amendment 1 to the N. C. Estuarine Striped Bass Fishery Management Plan, which provided for a year-round season closure for striped bass in internal waters in the CSMA – that area runs from just south of Oregon Inlet to the South Carolina state line.

In a [March 4 letter to the commission](#), Murphey wrote that he carefully considered the issue but concluded that scientific data does not support the requested management measure. The letter stated that gill nets are not the primary or even the most significant source of discard mortality in the CSMA striped bass fishery.

Chairman Bizzell advised the commission will also discuss requesting the Wildlife Resources Commission adopt concurrent regulations regarding recreational harvest of striped bass in the joint waters of the state to mirror regulations the commission passed in February for coastal fishing waters.

Overview of N.C.G.S. 113-221.1 (d) Proclamations; emergency review

The commission's counsel, Shawn Maier, Assistant Attorney General with the N.C. Department of Justice, reviewed the provisions of North Carolina General Statute 113-221.1(d), which authorizes the commission to review the desirability of directing the fisheries director to issue a proclamation.

The emergency meeting was called pursuant to this statute. Maier advised that if the commission votes under this provision to direct issuance of a proclamation, the fisheries director has no discretion to choose another management option and is bound by law to follow the commission decision. In these cases, under existing law, the decision of the commission to direct the director to issue a proclamation is final and can only be overruled by the courts.

Discussion on Directing the Division of Marine Fisheries Director to Issue a Proclamation

To start the discussion, Chairman Bizzell called on Commissioner Kornegay, as the scientist on the board, and because Kornegay had concerns about some of the science the division cited in declining to issue the original proclamation from the February meeting.

Commissioner Kornegay said we have determined by looking at a lot of different information is we've got two to three year classes of striped bass, plus stocked fish, that will soon be the size that will stick in nets. The original February motion asked the division director to take action on those gill nets, which he declined to do, which is why we are here today.

Several of us believe there are other restrictions that need to be done, he said. In researching the issue, Commissioner Kornegay found that gill nets are the greatest source of striped bass mortality in the CSMA. From 1972-2002, 59 percent of all striped bass were caught using gill nets (84 percent floating gill nets, 15 percent sink gillnets and 1 percent runaround gill nets). After reviewing recent data from the division, it is obvious that the low level of gill net observer

coverage results in a lack of information that would be called reliable, so we are not sure what the actual striped bass removals are, other than harvest. Consequently, gill net mortality of striped bass in the CSMA may be much higher than portrayed by division data. Prohibition of drift nets, floating nets and other large mesh nets would remove the primary source of discard mortality. Because there exists no observer coverage in the shad drift net fisheries, the magnitude of those discards is totally unknown.

Next, we looked at impacts to other fisheries, he said. The CSMA estuarine gill net fishery is a year-round, multi-species fishery where netting used, and species targeted, varies by area and season. Species commonly caught in the gill net fishery are shad, croaker, flounder, red drum, spot, spotted seatrout, striped bass, striped mullet and weakfish. Prohibition of shad drift gill nets, which would affect about 33 people, would eliminate shad landings. The small mesh gill net fishery for white perch, which is very minor in magnitude, would also be reduced or eliminated. A major benefit to further restrictions on gill nets would be the reduction or possible elimination of interactions with endangered species, such as Atlantic sturgeon, shortnose sturgeon and sea turtles.

Striped bass discards occur year-round in all gill net fisheries and is the primary source of total discards. The hook and line fishery for striped bass is open from Oct. 1 – April 30, with a two fish per day creel limit. Hook and release fishing for striped bass occurs year-round and is considered by the division to be a significant source of discard mortality. The Wildlife Resources Commission has enacted a 26-inch minimum size limit on striped bass taken by hook and line in designated Inland Waters. This length regulation has effectively limited striped bass harvest in Inland Waters such that harvest is at or near zero. Consideration is being given to measures to reduce hook and release mortality, such as requiring the use of non-offset circle hooks or single, barbless hooks.

We looked at a gill net ban versus an attendance requirement and concluded that since gill net sets can extend up to 2,000 yards, given the time required to fish these net sets, requiring net attendance is ineffective in releasing non-targeted fish alive. In addition, shad drift nets only have to be fished once every 24 hours. Any reductions in striped bass gill net discards from net attendance is likely to occur only with very short sets that can be quickly and frequently fished and during cold weather when fish survival rates would be higher. Therefore, removal of all forms of gill nets from the CSMA, or portions thereof, is the only effective method available to eliminate or significantly reduce striped bass discard mortality. That ended Commissioner Kornegay's report.

Chairman Bizzell said he was going to open the floor to questions and comments, but first wanted to make sure that everybody understood what is going on with this issue and that everyone is fully informed on why the meeting was being held.

Commissioner Hendrickson had two questions:

- 1) Who is the "we" that Commissioner Kornegay referred to in his remarks; and
- 2) Can the commission get a copy of the study.

Commissioner Kornegay handed out copies of the study and Commissioner Hendrickson indicated it would have been good to have the study when the other meeting information was

provided. Commissioner Kornegay responded he got the last of the data from the division at 8:53 the previous night and that is why the commission did not get the study sooner.

Commissioner Hendrickson asked again who “we” was and Commissioner Kornegay responded that “we” was primarily the commission’s counsel, Shawn Maier, and himself going back and forth on research that Commissioner Kornegay had dug up himself.

There was a discussion between Commissioner Romano and Commissioner Kornegay regarding the species listed in Kornegay’s report as commonly caught in gill nets – American shad, Atlantic croaker, southern flounder, red drum, spot, spotted seatrout, striped bass, striped mullet and weakfish, and whether it was more appropriate for a gill net ban for these fisheries to be discussed by the pertinent advisory committee when fishery management plans (FMP) for those fisheries are being amended.

Commissioner Romano pointed out that the 1997 Fisheries Reform Act tasked the commission to manage our fisheries through FMPs and asked if it wouldn’t be better to follow that process.

Chairman Bizzell checked to make sure everyone had the chance to review Commissioner Kornegay’s report.

Commissioner Hendrickson asked to hear from the Division Director on the report.

Division of Marine Fisheries Director Steve Murphey responded this was the first time he had seen the report and what stood out to him is the paper cites the leading cause of striped bass mortality as gill nets and the data used is from 1972 – 2002. Director Murphey said it is now 2019 and measures put in place in 2007, as part of the initial Estuarine Striped Bass FMP that was developed jointly with the Wildlife Resources Commission, to reduce discard mortality, including tie down and distance from shore provisions, and those provisions have proven successful.

In referencing Commissioner Kornegay’s concerns about the level of observer coverage, Director Murphey said the Percent Standard Errors (PSEs) were high in data from the Observer Program, but the division does not see significant discard mortality in the tie-down fishery, which is primarily the large mesh flounder fishery. The measures just implemented in Supplement A require year-round tie-down and distance from shore restrictions to address commercial discard mortality, he said.

Director Murphey referenced a letter he sent the commission dated March 4, where he declined to voluntarily implement a motion from the commission’s February meeting that requested he restrict the use of gillnets that interact with striped bass upstream of the ferry lines in the Pamlico and Neuse river systems and require attendance of gill nets that interact with striped bass upstream of the tie-down lines in the CSMA. He acknowledged in the letter and in Supplement A that there are discards in both the recreational and commercial fisheries and pointed out that gill net restrictions put in place in the initial FMP resulted in reductions in discards in the striped bass commercial fishery. Our data indicates with much higher confidence levels that dead

discards in the recreational fishery have increased significantly and that is one of the pieces of evidence used in identifying the one or two successful year classes the CSMA is currently experiencing, he advised.

Director Murphey reiterated that implementation of gill net restrictions is best served through the continued development of the Estuarine Striped Bass FMP. Supplement A measures will certainly not stop discards and dead discards from occurring in the commercial or recreational fisheries; however, the division's data supports that Supplement A will reduce the overall number of fish being removed from the stock, thereby providing additional conservation protection to the two successful spawning year classes moving through the CSMA. Observer coverage of the gill net fishery will continue, with plans to increase that coverage as much as feasible in 2019. If significant spikes of discards are observed, Director Murphey said he reserves the right to consider additional measures if warranted.

Director Murphey talked about the professionalism of his staff said he supported the data and stood behind the data that the division has presented.

Commissioner Kornegay asked if the director could support the data with such minimal observer coverage in the Neuse and Tar rivers.

Director Murphey explained that the state's Incidental Take Permit requires 7% to 10% observer coverage and that the division gets that in the rivers, but its not all observer coverage, some is from alternative platform coverage. He explained that if you look at the Atlantic Coastal Cooperative Statistics Program, that 2% observer coverage is considered a very high standard for an observed fishery. Commissioner Kornegay said statistically he would argue that point.

Director Murphey said while we would like to have more robustness in the observer data, we do have much more robust data in our CSMA creel survey, he said. It is not an MRIP survey, but a creel survey designed with the Wildlife Resources Commission and N.C. State University and it shows a lot of discards and it is tracking those two year classes. That is what prompted our action to try and limit the discards; however, we know it cannot be eliminated.

Director Murphey then discussed the need for the commission to ask the Wildlife Resources Commission to develop concurrent regulations because striped bass are still being harvested in the Joint Fishing Waters of the state; whereas commercial fishermen are unable to pursue the fish in these waters.

Then Director Murphey advised he had talked to the secretary of the Department of Environmental Quality (DEQ), and the secretary has talked to the Governor's Office, and the secretary does not agree with the approach for this proceeding.

There was a discussion about floating and drift gill nets, with Commissioner Laughridge saying the commission had not heard anything from the division to indicate that the possible largest interaction with striped bass is with floating or drift gill nets and it has been since 1972 and he didn't think that had changed. He did not see evidence or reports on interactions with those fish.

The scientific reason he has gained from folks at N.C. State and the University of Maryland is the tiedown stuff is extremely interesting, but very ineffective for striped bass because at the time of year those fish are in spawning aggregations and in the same area as shad are and that is the reason for the large catch of striped bass in float and drift gill nets. Commissioner Laughridge questioned if the division observed float and drift gill nets

It was clarified that the division observes float gill nets, but does not observe drift gill nets. Charlton Godwin, the division's senior staff lead for striped bass, said the drift gill net fishery in the Neuse and Tar rivers was minimal as evidenced in the data the division ran for Commissioner Kornegay. Godwin also explained that a float gill net is different from a drift gill net, and that the Neuse and Tar rivers do not have enough area to use a drift gill net.

Commissioner Laughridge said a former division employee had asked a law enforcement officer if the terms drift gill net and floating gill net were interchangeable and was told yes, they were now used interchangeably. Godwin said that was incorrect, that one was anchored and one drifts and that they are different gears.

Commissioner Laughridge asked the maximum length for these nets. Godwin answered a float or runaround gill net is 800 yards and the drift gill net can be 1,000 yards, but that is not the amount used in these river systems. Godwin clarified that float gill nets are observed year-round in the Tar/Pamlico and Neuse rivers, but not drift gill nets.

Next Commissioners Laughridge and Boltes questioned the effectiveness of the tie-down and distance from shore provisions. Charlton Godwin reviewed results of a 2011/2012 study that showed a 75% reduction in discard mortality with the tie-down and distance from shore provisions. Commissioner Boltes pointed out that the discard estimates from 2004 forward are relatively static and Godwin explained the division had to hind cast the data from 2004 – 2008, so that is why the numbers are lower than the original FMP. This was followed by questions regarding the number of samples used in the 2011/2012 study, where Commissioner Boltes felt the sample size of 19 sets for small mesh gill net and 22 sets for large mesh gill net was inadequate and Godwin countered it was a fairly good sample size.

Chairman Bizzell again wanted to ensure that the commissioners had the opportunity to read the data in front of them and that everyone was comfortable with it.

John Batherson, with the Office of General Counsel at DEQ, wanted to make sure the meeting record was complete and entered into the record the materials contained in the March 12, 2019 email to the commission containing meeting and background information. In addition to materials listed in the email, Batherson requested audio recordings for the commission's February 2019, November 2018 and August 2018 meetings be entered into the meeting record. He pointed out the commission's counsel had advised the first step in this process is the review of the desirability to direct the division director to issue a proclamation and Batherson wanted to make sure each and every commission member had the opportunity to review these materials before a direction is given to the director.

Commissioner Cross and Commissioner Boltes talked about the desire to protect these year classes of striped bass in a fair and equitable manner and a discussion ensued about possibly banning treble hooks and the effectiveness of barbless hooks or circle hooks for the recreational fishery.

Commissioner Boltes expressed that a moratorium alone is an incomplete management measure to protect these wild classes of fish and that effort needed to also be reduced. He felt the division dramatically underestimated commercial effort in the CSMA striped bass fishery. He questioned the jurisdictional waters the division used to make its calculations, gill net impacts and mortality that occur outside of observer coverage, accounting for personal consumption in commercial harvest and discard mortality reductions from tie down and distance from shore restrictions. Commissioner Boltes said the most reasonable compromise between the resource and user groups would be to remove gill nets and reduce commercial effort inside the ferry lines and allow recreational effort with a no-possession limit. He hopes in two years the impacts of these management efforts, if implemented, will be dramatically evident in a healthy fishery.

Commissioner Blanton said he was disturbed by the way the meeting came about and that he was given data on which to base a decision when he got to the meeting. He said these restrictions would be impactful to a large number of people and it was based on commercial industry discards of less than 1,000 fish per year. He said the commission was working with assumptions, not a stock assessment. He talked about the impacts of Hurricane Florence and the hurricane relief funds the N.C. General Assembly had provided and now the commission was ending commercial fishing by taking away the tools fishermen use and that commercial fishermen want to avoid dead discards.

Chairman Bizzell explained the emergency meeting was called because of concerns of float and drift gill nets impacting the fishery.

Commissioner Laughridge referenced a striped bass spill that took place in the Atlantic Ocean off of Dare County in 2011, saying those were terrible times.

Commissioner Hendrickson asked, to avoid being arbitrary and capricious, if the commission had looked at the unintended consequences and economic impact of the proposed actions.

Commissioner Romano said it was depressing that the commission had already had so many 5-4 votes and that he felt the commission was over questioning the division.

Commissioner Hendrickson referenced the February 2019 meeting and said he felt Commissioner Cross' motion at to approve Supplement A was good. Then the following motion by Commissioner Boltes that passed undermined the previous motion. He cautioned the commission that they were trying to take action with incomplete data and vote to undermine the division director. Commissioner Boltes said things are not working when the commission sends the director a motion and he refuses to implement it. Commissioner Hendrickson said he was

not comfortable with the data and Commissioner Cross said we are not marine biologists and the division is there to do the job.

Chairman Bizzell said this is not a gill net ban, it is a prohibition for two years.

Director Murphey said if the commission voted for the motion he would be required to issue a proclamation and so that the motion needs to be very specific.

Commissioner Boltes moved to direct the Director of the Division of Marine Fisheries to issue a proclamation effective in conjunction with the supplement that prohibits the use of gill nets and trammel nets that interact with striped bass upstream of the ferry lines and requires attendance of gill nets that interact with striped bass upstream of the tie-down lines.

Director Murphey requested that the rivers and lines be specified, along with the 2-year time period that had been referenced.

There was then discussion about requiring recreational anglers to use single, barbless hooks upstream of the ferry lines, but commission counsel advised that issue could not be addressed at this meeting because it was not noticed to the public.

Commissioner Cross said he wanted it on the record that this motion passed it would be arbitrary and capricious towards one user group and the commission is headed towards another lawsuit.

Commissioner Blanton said he echoed Commissioner Cross' concerns and while Commission Boltes tried to include recreational provisions, the commission could not come to a conservation equivalency because it was not properly noticed. He said this could be viewed as arbitrary.

Chairman Bizzell asked for a suggestion and Commission Blanton said the motion could be tabled to discuss at a later meeting. Chairman Bizzell said the meeting was called so quickly because the shad fishery was ongoing right now. There was discussion about the recreational sector in Joint Waters not taking a reduction this year and that restrictions should be fair and equitable, followed by remarks that the Wildlife Resources Commission was prepared to act to implement concurrent harvest restrictions in joint waters.

Commissioner Cross asked if commissioners would be held personally liable if the action was deemed arbitrary and capricious.

Commissioners Laughridge and Blanton discussed mesh sizes of gill nets above the ferry lines.

Commissioner Hendrickson cautioned that the commission was only looking at impacts to the striped bass fishery with the gill net ban above the ferry lines and not at other impacts and that is information the commission should know before making a decision. He said this was a bad move for the commission to create dissonance with the division and that they do a great job. Chairman Bizzell said this was not about staff not doing a great job, but there are differences of opinion.

After deliberation, the commission passed a motion directing Division of Marine Fisheries Director Steve Murphey to implement the year-round closure by proclamation upstream of the

Bayview/Aurora Ferry in the Pamlico River system and upstream of the Minnesott Beach/Cherry Branch Ferry in the Neuse River system.

Motion by Cameron Boltes to direct the director of the Division of Marine Fisheries to issue a proclamation, effective in conjunction with the Supplement, that prohibits the use of gill nets upstream of the ferry lines, dock to dock from the Bayview to Aurora Ferry on the Pamlico River and dock to dock from the Minnesott Beach to Cherry Branch Ferry on the Neuse River, within the Central Southern Management Area. Second by Pete Kornegay. Motion carries 5-4.

The division indicated a proclamation will be issued within the next few days implement the motion and that the closure is expected to continue for about two years until Amendment 2 to the N. C. Estuarine Striped Bass Fishery Management Plan is adopted. Amendment 2 could continue the provision or recommend other management actions.

Discussion on Requesting Concurrent Rules from the Wildlife Resources Commission

The commission discussed the need to ask the Wildlife Resources Commission to adopt a year-round closed season for striped bass for recreational harvest in joint fishing waters to mirror actions the commission took at its February 2019 meeting when it adopted Supplement A to Amendment 1 of the N.C. Estuarine Stiped Bass Fishery Management Plan.

Research has shown that striped bass in the Central Southern Management Area are not a self-sustaining population and that fishermen are mainly catching hatchery-raised fish; however, data suggest there have been two recent naturally-spawned year classes. The no-possession management measure in Supplement A will offer additional protection for those non-hatchery fish and protect larger females which could increase natural spawning stock biomass.

Motion by Chuck Laughridge to ask the N.C. Wildlife Resources Commission to adopt concurrent regulations for recreational harvest in Supplement A in joint coastal waters. Second by Pete Kornegay. Motion carries with no opposition.

At the end of the meeting, Commissioner Cross commented about the timing of the chairman's receipt of the five letters calling for the emergency meeting and why the meeting room had been reserved on Friday, March 8, 2019, several days prior to the letters being sent. Chairman Bizzell said he reserved the meeting venue in anticipation that he would need to call an emergency meeting.

The meeting adjourned.

