

Preliminary Matters

May 2023 Business Meeting

01 May Meeting Agenda

04 Draft February Meeting Minutes

Marine Fisheries Commission Business Meeting

AGENDA

Beaufort Hotel, Beaufort, NC

May 24-26, 2023

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

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

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

Wednesday, May 24th

6:00 p.m. Public Comment Period

Thursday, May 25th

9:00 a.m. Public Comment Period

9:30 a.m. Preliminary Matters

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

9:40 a.m. Chairman's Report

- Letters and Online Comments
- Ethics Training and Statement of Economic Interest Reminder
- 2023 Meeting Schedule
- Commission Committee Assignments
- Committee Reports

10:00 a.m. Director's Report

Presentation of Life Saving Award to Sergeant Brian Long by Marine Patrol Colonel Carter Witten

Reports and updates on recent Division of Marine Fisheries activities.

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

****Probable Action Items**

Marine Fisheries Commission Business Meeting Agenda - May 2023

- Division of Marine Fisheries Quarterly Update - Kathy Rawls, Director
- Councils and Commission Update – Chris Batsavage
- Marine Patrol Update – Col. Carter Witten
- Shellfish Lease Program Update – Owen Mulvey-McFerron
- CHPP Implementation – Anne Deaton
- Informational Materials:
 - MFC Workplan
 - Protected Resources Update and Reports

11:00 a.m. False Albacore Data Update – McLean Seward, Anne Markwith

12:00 a.m. Salt Marsh Action Plan Presentation – Claire Rapp, NC Coastal Federation

12:30 p.m. Lunch

2:00 p.m. Allocation as a Management Tool in Fisheries – Chris Batsavage

2:40 p.m. Fishery Management Plans

- Status of ongoing plans – Corrin Flora
- Blue Crab FMP Amendment 2 Adaptive Management Revision Update – Joe Facendola, Robert Corbett
- Estuarine Striped Bass Stock Assessment Update Overview– Laura Lee, Nathaniel Hancock
- Spotted Seatrout FMP Amendment 1– Lucas Pensinger, Jason Rock
 - Scoping Period Overview
 - **Review and Vote on Approval of FMP Goal and Objectives****

Friday, May 26th

9:00 a.m. Fishery Management Plans Continued...

- Striped Mullet FMP – Dan Zapf, Jeff Dobbs, Willow Patten
 - Supplement to Amendment 1 of the Striped Mullet FMP
 - **Vote on final approval****

10:00 a.m. Rules

- **Rule Suspensions – Steve Poland****
- Rulemaking Update – Catherine Blum
 - 2021-2022 Annual Rulemaking Cycle Update
 - 2022-2023 Annual Rulemaking Cycle Update
 - 2023-2024 Annual Rulemaking Cycle
 - **Vote on Notice of Text for Rulemaking to readopt per G.S. 150B-21.3A, amend, adopt, and repeal 15A NCAC 03K .0110, 18A .0301, .0302, .0305, .0401-.0424, .0426-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806****
 - **Vote on Notice of Text for Rulemaking to amend 15A NCAC 03I .0113, 03O .0101, .0109, .0112, .0301 for Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources****

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***Probable Action Items*

Marine Fisheries Commission Business Meeting Agenda - May 2023

- **Vote on Notice of Text for Rulemaking to amend 15A NCAC 03R .0117 for Oyster Sanctuary Changes****
- **Vote on Notice of Text for Rulemaking to amend and repeal 15A NCAC 03I .0101, 03K .0101, .0104, .0301, .0401, .0403, .0405, 03O .0201, .0501, .0503, 18A .0901, .0906 for Conforming Changes for Shellfish Relay Program and Shellfish Leases and Franchises****

10:40 a.m. Issues from Commissioners

11:30 a.m. Meeting Assignments and Preview of Agenda Items for Next Meeting – Lara Klibansky

12:00 p.m. Adjourn

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

***Probable Action Items*

Marine Fisheries Commission Business Meeting Minutes
DRAFT
DoubleTree New Bern
New Bern, North Carolina
Feb. 22-24, 2023

The commission held a business meeting Feb.22-24 at the DoubleTree New Bern Riverfront Hotel in New Bern, North Carolina. In addition to the public comment session, members of the public submitted public comment online or via U.S. mail. To view the public comment, go to: <https://deq.nc.gov/media/35002/open>

The briefing materials, presentations, and full audio from this meeting are available at: <https://deq.nc.gov/about/divisions/marine-fisheries/marine-fisheries-commission/marine-fisheries-commission-meetings#QuarterlyBusinessMeeting-February22-242023-11589>

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

BUSINESS MEETING - MOTIONS AND ACTIONS

On Feb. 22, a public comment session was held beginning at 6 p.m. and ended at 6:22 p.m. and the following comments were received:

Public Comment Period

Joyce Ingraham, of Wilmington, said her husband is a commercial fisherman. She said their livelihood is being threatened by the very people they have been trusting to look after their interests. In recent years, more and more restrictions on their fishing activities are being enacted. She said three or four years ago, Spanish mackerel fishing was shut down one week after they began catching them in the southern part of the state; before that it was trout and shad. She said the northern sector of the state filled the quota of Spanish mackerel before the fish even arrived in their area, and all they were allowed was the bycatch allowance. She said last year it was decided to close spot fishing Dec. 10 and croaker fishing Dec. 16, once again before most of the fish had come down to their waters, cutting them out again; she said they make most of their income then. She said they have a major problem with the striped mullet proposal; they have never started fishing for popeye mullet until Oct. 30 and it has always been that way. She said her husband remembers from his childhood that while the kids were trick or treating, his parents were picking out their first run of mullet. She said records have shown a decrease in landings, but it is not because of overfishing but because they weren't being fished for at the time because other species were paying more; you can't leave making three or four thousand dollars to try and catch something you might not catch. She said these regulations are based on flawed data. Virginia and other states north of here are opening up the species and the commission is shutting it down here. She said people fail to take into consideration the number of juvenile mullets being caught by the millions for bait for recreational fishermen; those obviously account for fewer adults available for the fishery, so she asked why not

limit that. She said they pay the same amount for their licenses as all the other fishermen, but she asked why they aren't getting any representation down here. She said they are being left out in the cold. She said her husband is 63 and he has fished since he was 14 years old, even earlier with his father; he has done nothing else and it is too late for him to try to find a new occupation. She asked the commission to please give them some help.

Taylor Barefoot, a commercial fisherman from Wilmington, said he logs about 300 days; the trip tickets and the log requirements the commission is trying to put on commercial fishermen right now is a hard thing to do to be able to plan for the future. He said he plans for the future based on what he is doing now, not what he thinks he can do. He said the commissioners make their house payments with their jobs, but if the commission cuts commercial fishermen out of a job, it is hard to make things like a house payment, and that hurts their families too; most commercial fishermen are family people. He said commercial fishermen and their families depend on the fish that they catch, just like the commissioners' families depend on their jobs; it's hard to swallow the pill of cutting out the fishery. He said he has questions about the flawed data; the fisheries are so limited, like Spanish mackerel that the previous speaker talked about, and spot and croaker that closed this past December 7. He said when North Carolina marine fisheries make bad call like this, they need to be held accountable and be questioned. He said an equal reaction needs to happen when a bad call gets made because when commercial fishermen get put out of business, something needs to happen with the decision makers too. He said he gets three minutes to talk, but the fishery is closed for a lifetime; once the commission closes something it never comes back. He didn't know if any of the commissioners have ever been fired, but when something is taken away that you love to do, like mullet fishing, it is the worse feeling that has ever been. He hoped the commission really thinks about this and about how it really affects the people behind the fishery; it's not just something you sign and then it's done, it's a lifetime.

Stuart Creighton spoke about the development of the Spotted Seatrout FMP amendment. He said the stock remains in relatively good shape, as it's not overfished, but it should be no surprise that spotted seatrout are experiencing overfishing because they are carrying inshore fishing right now with other fisheries under severe harvest restrictions. He said both user groups are increasing the pressure placed on spotted seatrout. He said overfishing can be adequately addressed by first removing gill nets and replacing them with hook and line for commercial fishermen. He said it is a high-capacity fishery with a 75 fish per day limit, so hook and line would be a viable and affordable replacement; included in that must be a cap or freeze on the licenses, to prevent people entering the fishery just to escape recreational limits. Second, he suggested the commission maintain the recreational limit of four fish per person per day, but create a full slot limit across both user groups from 14 to 22 inches to protect larger fish to improve recruitment capacity and efficiency. Next, he said recreational discards are high, and that is a concern, so he suggested the commission require the use of circle hooks when using natural bait, and either inline hooks or compressed barbs on trebles for artificial bait; these adjustments should drastically reduce dead discards from deep hooked fish. Next, he suggested the commission remove the personal consumption loophole on the commercial side. He said this encourages significant, unreported effort and would finally reform the requirements for holding a SCFL to reduce the effort from the 60% of current license holders that never report a single trip ticket. He moved to another topic and said during the commission meeting, the commission will be discussing a well written and comprehensive paper on the false albacore fishery. He said he did not know the action that led to this report, but he reminded the

commission of the importance of the false albacore fishery to the recreational community. He told the commission any future management decisions should be made with abundance in mind. He reminded the commissioners of the email he sent requesting revisions to the current rules regarding pound net sets; he said he was serious about that and expects the commission to follow up on that.

Sam Romano said he is a commercial fisherman, owner of Seaview Crab Company in Wilmington, and a former member of the Marine Fisheries Commission. He said he wanted to communicate some surprising and somewhat unsettling facts. During his time as a commissioner, he saw a haphazard pace and lack of understanding when it comes to the adoption of rules that he found particularly alarming. He said the fishing industry is among the most regulated in the country and shares similar amounts of regulations as pharmaceutical and transportation industries. He said instead of enhancing collaboration for the betterment of fisheries, he spent his term playing defense against overregulation and being the voice of the hard-working men and women of the seafood industry and the underrepresented seafood consumer. He said every time there is a new fishery management plan, there is a new opportunity for rulemaking, and there seemed to be an agenda against commercial fishing in whatever species were discussed. He said it baffled him; as a seafood entrepreneur he came to realize that the North Carolina commercial fishing industry is shrinking; he has to do whatever he can to promote and stabilize our food network and get seafood to the people. He and his fellow commissioners would point out data gaps in logical flaws in many stock assessments and proposed reductions, but for some, taking action meant making rules rather than making new research goals, filling data gaps, and addressing stock and habitat enhancement, water quality, proactivity, and a general curiosity about these valuable stocks. He said many times, stock assessments would run completely contrary to what fishermen of all types were seeing on the water. He said the commission is seeing this in real time with the perception of the stock abundance of mullet most of the time; economic and cultural implications are ignored prior to rulemaking and most are vulnerable and then workers and consumers suffer. He said worse yet, when these drastic reductions are made, seldom does the commission go back and see if the reductions are actually doing what was expected to happen. He said he is a humble, curious, commercial fisherman and he has spent hours of time speaking with the most experienced veteran fishermen he knows and he is convinced there are long term cycles in these fisheries outside of our understanding. He said most times, making rules is ineffective and is a waste of resources, time, and energy. He said during implementation of these rules, Marine Patrol has a ludicrous burden of enforcement on a case by case basis with a huge book of overly complicated rules. He said each rule leads to more bickering among user groups and a total distrust of the system. Commercial fishermen throw out their gear with no compensation; they have to totally rehash their strategy every year to make a profit, which is leading to an unsettling lack of recruitment of young people in these fisheries and destabilization of our local food network at its core. He asked the commission, when it comes time to vote on these new rules, to be humble, curious, and thoughtful about the implications of your actions. He thanked all the commercial fishermen for their continuing commitment to providing seafood for the community.

Tim Hergenrader said he is a recreational fisherman and conservationist from Pamlico County. He spoke about the dismay and disgust he has about the decision to apply for renewal of the Incidental Take Permit; it is a travesty. He said an Incidental Take Permit is not needed and large mesh gill nets are not needed to harvest flounder; flounder can be harvested with much cleaner methods using pound nets and gigs, and even recreational fishing. He said the ITP is not needed

and it is an embarrassment. He sees posts on Facebook by all kinds of groups that help sea turtles that are working up and down the East Coast to help the sea turtles. These groups make efforts to bring them back from near death from frost, cold water, hooks, and nets, and they are working their tails off, and then North Carolina is trying to find new ways to kill the sea turtles. He said he can't believe we do that as grown human beings and we don't need to do that.

Donald Willis said he has been in the tackle industry since 1986 and has seen a lot of fisheries go away in that time. Now, spotted seatrout is going to be addressed later this year. He said this is a very important fish for the tackle industry and the fishing guides; they've got to have them. He said they are down to one drum and four trout, so it is something they really need to keep, especially for these rivers and the people that are making their money that way. As far as trout go, he said pushing barbs down is a great thing to do. He said all of his trout rigs are single hooks with the barbs pressed down on all his mirror lures and everything else he uses. He said he finds it easy to release the fish without even bringing the fish out of the water; he can just put his hand under the fish, shake it, and it's gone. Next, he spoke about false albacore. He said he would like to see the commission be proactive on that because it is a very important recreational fish up and down the coast. He said they need that fish, and he asked the commission to make wise decisions to keep that fish abundant.

Al Hearren, a commercial fisherman, said he doesn't think a lot about knocking off the tail end of the mullet season. He said mullet love to stay up the rivers the whole summer and then make a short run out to sea and that's it. He said he watches the mullet all summer when he is crab potting and there are literally thousands of them, but you can't fish for them up there; that fishery is dead, and the few that he catches scattered here and there don't amount to anything. He said commercial fishermen have that one little run that happens at the tail end of the year; if the commission wants to see the catch ratio drop a lot, if the commission knocks out a few weeks at the end of the year the landings will go down substantially. He also suggested the commission see where the fish really are.

Ken Siegler, a retired commercial fisherman from Hubert, shared his concerns about closing mullet on November 7. He said maybe the commission and the biologists don't realize that there are two different fisheries on mullet: a northern fishery and a southern fishery. He said for the northern fishery, when the mullet get to be 15 cm they can be cut, but south of Bogue Sound is two to three weeks behind that. He said those two or three weeks are when the mullet ripen up and are growing roe before it is beneficial for them to go to market; they don't bother with them before that because the market doesn't want them. He said the commission wants to achieve a 20% reduction, but the entire reduction will come from south of Bogue Sound while the northern fishery operates as normal. He suggested that some of the fishermen from the southern part of the state with boats and equipment will move up to the northern area, and then there will likely be controversy, a problem the commission will have caused. He said shutting down the fishery for the southern part of the state is not efficient; there are much better ways and hopefully those are in the upcoming FMP. He said there are a lot of good things that can come out of it, but in this process the 146 data was eliminated, and for the Beaufort Bridge survey data, the data from the last three years is not included, which is the most current data. He said this stock assessment is not a good one at all; it doesn't effectively address the issues that should be addressed but aren't being addressed and the only thing that it's doing is shutting down the fishery for the southern part of the state. He said this

can't be allowed to happen. At one of the January advisory committee meetings he listened to, he said there was a man on one of the committees that said the commission has to get rid of the nets and that there can't be a roe fishery and expect it to do any good. Mr. Siegler said he wonders how that man feels about flounder, because that's exactly what is being prosecuted on; flounder is a roe fishery that occurs in the fall, so he asked why mullet is the only fish being targeted for closing.

[9 speakers]

End 6:22 p.m.

Feb. 23

Chairman Rob Bizzell convened the Marine Fisheries Commission business meeting at 9 a.m. on Feb. 23 with the Public comment Period. The Public comment session was held beginning at 9:00 a.m. until 9:15 a.m. and the following comments were received:

Public Comment Period

Ron McCoy, of Wilmington, said he grew up surf and pier fishing on the Crystal Coast when he said there were lots of fish. Today, he fishes at Topsail Beach and he said there are not lots of fish. In November, he attended the commission meeting and ended his public comments by advising the commission to learn from other Atlantic and Gulf states. He said the commission spends years and months deciding where to put gill nets; the commission should learn from Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South Carolina and make gill nets illegal in our rivers and sounds. He said the commission spends years and months deciding where to allow trawling; the commission should learn from Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South Carolina and put large ocean shrimp trawlers only in the ocean where they belong. He said the commission spends years and months deciding who should get a commercial license; the commission should learn from Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South Carolina and only sell commercial licenses to true commercial fishermen that report all of their landings on trip tickets. He said out of 5,000 plus commercial licenses sold, less than 50% report their landings on trip tickets. And the recreational fishermen too lazy to bait a hook; the commission should stop letting them get a commercial license. He asked about there being too many recreational fishermen killing too many fish; the commission should learn from Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South Carolina and better define who can own a recreational license at what price and with what gear for how many fish can be caught in a season. He said the commission must think these 7 other states are wrong and the commission is right, but these 7 states made hard decisions in the 1980s and 1990s. That's 30 or more years ago, during which time he and the commission have seen declines of 80%. He said the commission should stop protecting user groups, stop hiding behind fishery management plans, and make hard decisions on gill nets, trawls, commercial licenses, and recreational licenses. Regarding the Incidental Take Permit application, he said gill nets are killing innocent sea turtles and he shamed the commission.

Brent Fulcher, chair of the North Carolina Fisheries Association and business owner, said he received a summary of commercial striped mullet landings from the division, including the estimated 2022 landings that have not yet been verified. He also received a summary for one fish

house, in one location, showing that from September 1 through the end of the year. He said this one fish house had landings of over 512,000 pounds of striped mullet. For 2022, there was more than 2.7 million pounds landed, which is the fifth largest year in history. He said 1993 was the largest year on record at three million pounds. He said the 2022 landings were only 10% below the largest historical landings yet the commission is talking about a supplement to the plan to put a timeframe on that. He said a November cut-off date will penalize every fisherman from Morehead City south; those fishermen won't get the opportunity to catch fish, which is arbitrary and unfair. He said by then everybody North of that will have already harvested and the fish will have moved South. He asked the commission to take a good look at the data and think about the supplement decision; it should be shot down. The amendment is being developed and the stock is not in trouble. He said you can see over the last three years that the stock has been increasing. There have been hurricanes in the past few years, weather is a factor, and there have been huge amounts of shrimp that displaced fishermen into that other fishery, so they did not participate in the striped mullet fishery. He said he hopes the commission makes the right decision.

Lisa McCracken, a concerned citizen from Havelock, said she came to talk about submerged aquatic vegetation or SAV, what it is, and its benefits. SAV consists of aquatic grasses and attached microalgae and it is crucial to our aquatic environment and economy. According to the Albemarle-Pamlico National Estuary Partnership SAV helps maintain the diversity, health, and sustainability of the estuaries. She said one acre of SAV supports 40,000 fish and 50 million small invertebrates. As a nursery habitat, SAV greatly enhances juvenile density, growth, and survival when compared to other nearby habitats comprised of sand bottom. For the environment SAV provides sediment stabilization, coastline preservation, and better water quality. She proceeded to explain why the commission should care. She lives on Clubfoot Creek, which is classified as a Primary Nursery Area and a Secondary Nursery Area; it has water depths of one to five feet. She said gill net fishermen use bottom disturbing gear in the nursery areas to cause fish to move and get entangled in gill nets. She said that in an issue paper published in April 2008, originated by the MFC Chairman, Marine Patrol officers surveyed reported that the most prevalent bottom disturbing device was the use of boat and motors to run alongside and inside the net. She said she has pictures of prop marks in shallow water. She said according to APNEP, major threats to SAV include excessive sediment that blocks sunlight, pollution, and human activities that disturb the bottom. These activities can cause sediment resuspension which results in increased turbidity and the release of toxins and pollutants into the water column. It has been documented that the increased suspended sediment cause clogging of the gill surfaces and mortality. She said juvenile fish are impacted to a higher degree. She said she believes this type of bottom disturbing activity is happening in Clubfoot Creek. She said this should be a concern to commercial and recreational fishermen since the health and nursery habitat is in direct relation to the fishery stock. She said that due to the fact that Clubfoot Creek is shallow, it is more prone to SAV and bottom damage. In the original North Carolina Marine Fisheries 1977 rule that described the scope and proposal of nursery areas the following language was included: "nursery areas are necessary to the early growth and development of virtually all North Carolina's important seafood species. Nurseries need to be maintained as much as possible in their natural state and the populations within them must be permitted to develop in a normal matter with as little interference from man as possible" (time).

Glenn Skinner, Executive Director of the North Carolina Fisheries Association and commercial fisherman, spoke about the striped mullet supplement. He said looking at the data, commercial

landings have been increasing over the last three years with 2022 landings being the fifth highest on record. He said that if you take that and with the division sampling as it is, they are showing an increased abundance of this stock. He said he can't understand how the commission is considering a supplement. He said a supplement is an emergency management measure taken when the long-term viability of the stock is being jeopardized, which is not the case here. He said every sign, from recreational fishermen speaking at commission meetings from the south and north and saying they are seeing an expanded stock. Recreational and commercial fishermen from across the state are all seeing an expanded stock. He said the stock assessment does not include the last three years of data and the division's independent gill net survey is the only abundance data included. He said that the methodology used in the independent gillnet survey is not adequate to assess the overall abundance of spawning stock biomass of striped mullet. He said they don't sample in the areas where the mullets are throughout the year, the gear used is not appropriate, and the way it is deployed is not appropriate. He said this is why striped mullet is overfished with overfishing occurring. He said all other data points to an expanded stock, so this result has to be false. He urged the commission to think hard about this being an emergency measure. He reminded the commission there will be another year of data available before the amendment is completed. He said if you have 4 years of increasing data from the division and increasing harvest data in the commercial sector, you know something is wrong with the stock assessment. He asked the commission to hold off on the supplement and proceed with the amendment. He said he is not aware of any other time in history where there is an overfished stock and then three years of increases from independent and dependent sampling. On another issue, he has heard a lot of comments about the Incidental Take Permit. North Carolina is in direct violation of the Endangered Species Act when it comes to recreational fishing. He said we have over 400 documented hook and line interactions for the last 10 years from 2012 through 2021, there was no ITP, no observers, and absolutely no measures to reduce those interactions, but the commission has penalized the only fishery that has done these things, the commercial fishery. (Time)

David Sneed, Executive Director of the North Carolina Coastal Conservation Association, said he was reading the striped mullet plan decision document and there were several questions that stuck out to him. The first was about the preferred management strategy in relation to the estimated recreational harvest reduction. He said the answer to that question in the document is "we cannot calculate an estimate it for recreational harvest reduction because the data available for recreational harvest is not captured with enough precision to accurately calculate daily landings in recreational mullet harvest, both white and striped mullet for bait". So, he summarized that it is fair to say the estimated harvest reduction is unknown. Another question in the document addresses why the recreational fishery would also close; the answer provided states it is to be equitable across all fisheries and to reduce management complexity to improve enforceability. He said this hardly sounds equitable, it sounds punitive to him. On another note, he congratulated the commission on being proactive by looking at false albacore. He said it is nice to see the commission being proactive for a change to conserve the abundance of a fishery and not waiting for it to be in the toilet to react.

[5 speakers]

End 9:15 a.m.

Preliminary Matters

Following the public comment period the Chairman called the meeting to order. He began the meeting with a moment of silence followed by the pledge of allegiance. He also reminded commissioners of their conflict of interest and ethics requirements.

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

The Chairman asked for a roll call since some commissioners were joining virtually. MFC Liaison Lara Klibansky called roll and all commissioners were present either in-person or via Teams.

The Chairman introduced the agenda and called for a motion to approve the meeting agenda.

Motion by Commissioner Roller to approve the agenda.

Second by Commissioner Cross.

Motion passes unanimously.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Chairman referenced the minutes from the November 2022 MFC Business Meeting and called for a motion to approve the minutes.

Motion by Commissioner Shellem to approve the minute of the November 2022 MFC Business Meeting.

Second by Commissioner Roller.

Motion passes unanimously.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Chairman’s Report

Chairman Bizzell explained that all items are included in the briefing materials. He referenced conversations between the WRC and MFC about striped bass and informed the commissioners that the latest letter from the WRC was included in the materials for their review.

Coastal Habitat Resolution

Chairman Bizzell explained that the MFC has been asked to be part of a resolution relating to coastal habitat protection. He asked who would be introducing the resolution and MFC Liaison Lara Klibansky explained that Commissioner Huggins would be introducing the resolution.

Commissioner Huggins introduced the Collaborative Coastal Habitat Initiative Resolution. He explained that the resolution is focused on seeking additional state level funding for voluntary cost share programs relating to coastal water quality. He explained that this resolution came out of the CHPP and was also being presented to sister agencies including EMC and CRC for their support. Commissioner Huggins also explained that neighboring states have historically allocated much higher amounts of funding than NC. The CHPP Steering Committee is hopeful that support from the three commissions will help motivate state officials to allocate additional funds.

Chairman Bizzell opened the floor for discussion of the resolution. Commissioners discussed the difference between formal and informal support and ultimately decided that a vote would be a way to show formal support.

Motion by Commissioner Roller to formally support the Coastal Habitat Resolution.

Second by Commissioner Shellem.

Motion passes unanimously.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Director's Report

Director Rawls mentioned that the legislative long session began January 11th and explained that staff have been working to provide any information requested. She also gave a brief update regarding the CCA lawsuit mentioning denial of the state's motion to dismiss and that responses from the state were submitted January 17th.

Director Rawls went on to discuss DMF's outreach initiative, specifically focusing on DMF's new social media pages. She explained that having pages separate from DEQ will allow the division to keep people better informed about fisheries management. Director Rawls also stated that she encourages anyone with questions or concerns to reach out to DMF staff to discuss these items. Staff, including herself, are always willing to answer questions so please call and set up an appointment to talk with them.

Director Rawls also mentioned the 200-year jamboree which will take place June 10th at DMF headquarters. She opened the invitation to all commissioners and all attending and listening to the meeting.

Commissioner Roller applauded the division for their social media initiative. He mentioned that it provides a simple and quick way to communicate with the public.

Chris Batsavage gave verbal updates on the Mid-Atlantic Fishery Management Council and Atlantic States Marine Fisheries Commission meetings. He summarized the recent meetings for each council and gave updates regarding upcoming management actions and discussions.

Trish Murphey gave a verbal update on the latest meeting of the South Atlantic Fishery Management Council.

Colonel Carter Witten gave an update regarding 2022 Marine Patrol accomplishments. He mentioned two large grants received by Marine Patrol as well as their 2022 statistics regarding enforcement.

Owen Mulvey-McFerron gave an update regarding the Shellfish Lease and Aquaculture Program. He specifically mentioned changes to improve program efficiency.

Director Rawls took a moment to thank Commissioner Cross for his input and assistance working with staff in the Shellfish Lease and Aquaculture Program to aid in process updates.

Zach Harrison provided a brief presentation as an update on the conclusion of the Shellfish Relay Program.

To view the presentation, go to: <https://deq.nc.gov/media/35056/open>

Anne Deaton provided a verbal update on the Coastal Habitat Protection Plan, specifically regarding actions that have come out of the recent CHPP amendment.

Barbie Byrd provided a presentation on the Protected Resources program, specifically about the ITP application process and development of the new Observer Trip Scheduling System (OTSS).

To view the presentation, go to: <https://deq.nc.gov/media/35053/open>

Jeff Dobbs provided a brief verbal update regarding bay scallop sampling protocols in response to questions and comments from Commissioner Cross.

Anne Markwith gave a presentation about the Southern Flounder fishery, specifically focused on impacts of management measures in amendment 3.

To view the presentation, go to: <https://deq.nc.gov/media/35055/open>

False Albacore Information Paper

McLean Seward gave a presentation about the False Albacore fishery, specifically current fishery status and management related to federal councils.

To view the presentation, go to: <https://deq.nc.gov/media/35051/open>

Following the presentation there was discussion amongst the commissioners regarding potential management actions for False Albacore.

Motion by Commissioner Roller to begin rulemaking on False Albacore. Cap commercial harvest at 350,000 lbs. per year, 1000 lb. trip limit, keep allowable gears at gillnet, hook and line. With a recreational bag limit of 5 per person. In addition make sure that the rule provides adaptive management by proclamation if more data is available that can inform management. The intent of this rule is to maintain the status quo of the fishery.

Second by Commissioner McNeill.

Motion withdrawn.

Second by Commissioner McNeill.

Substitute motion by Commissioner Blanton to further investigate the impacts and management actions that could be considered for False Albacore if the commercial industry lands more than 500,000 lbs. Further, if the recreational industry continues to expand at a rate that is double what landings are currently then further management action could be considered.

Second by Commissioner Cross.

Motion withdrawn.

Second by Commissioner Cross.

Motion by Commissioner Roller to ask staff to come forward with rulemaking language with management options for False Albacore starting with status quo and allowing for growth at various percentage points.

Second by Commissioner Blanton.

Motion passes unanimously.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Fisheries Management Plans

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

To view the presentation, go to: <https://deq.nc.gov/media/35054/open>

Spotted Seatrout Fishery Overview

Spotted seatrout lead biologist, Lucas Pensinger, gave an overview of the fishery including a breakdown of commercial versus recreational fishing efforts.

To view the presentation, go to: <https://deq.nc.gov/media/35052/open>

Commissioner Cross provided a document outlining potential Spotted Seatrout management strategies to DMF staff for review.

Striped Mullet FMP

Striped Mullet lead biologist Jeff Dobbs presented an overview the Striped Mullet fishery. The presentation included results from the most recent stock assessment.

To view the presentation, go to: <https://deq.nc.gov/media/35050/open>

Supplement A to Amendment 1 of the Striped Mullet FMP

Striped Mullet lead biologist Dan Zapf presented information regarding Supplement A to Amendment 1 of the Striped Mullet FMP. The presentation included review of the public comment about the supplement.

To view the presentation, go to: <https://deq.nc.gov/media/35057/open>

Motion by Commissioner Cross to vote down Supplement A to Amendment 1 of the Striped Mullet FMP and continue with the amendment process.

Second by Commissioner Shellem.

Motion fails by lack of supermajority.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Substitute motion my Commissioner McNeill to accept Option 2 of Supplement A to Amendment 1 of the Striped Mullet FMP.

Second my Commissioner Roller.

Motion fails 4-5.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Shellem	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion by Commissioner McNeill to approve option 3 of Supplement A to Amendment 1 of the Striped Mullet FMP.

Second by Commissioner Roller.

Motion fails 4-5.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Meeting recessed until 9:00 a.m. on Feb. 24.

Feb. 24

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

Rulemaking Update

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

Mutilated Finfish Rule, Mooring Areas, and Other Docking Facilities Rule

Motion by Commissioner Roller to give final approval of amendments to the Mutilated Finfish Rule (15A NCAC 03M .0101), and readoption of the Marinas, Mooring Areas, and Other Docking Facilities Rule (15A NCAC 18A .0911) in accordance with N.C.G.S. 150B-21.3A.

Seconded by Commissioner Cross.

Motion passes unanimously.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

“Data Collection and Harassment Prevention for the Conservation and Marine and Estuarine Resources” issue

“Oyster Sanctuary Rule Changes” Issue

“Conforming Rule Changes for the Shellfish Relay Program and Shellfish Leases and Franchises” Issue

Motion by Commissioner Roller to select option 2, amend the rules, as the preferred management option and associated proposed language for rulemaking for the “Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources” issue; to select option 2, amend the rules, as the preferred management option and associated proposed language for rulemaking for the “Oyster Sanctuary Rule Changes” issue; and to support the single option presented to amend the rules, consistent with the requirements of the North Carolina Administrative Procedure Act, as the preferred management option and associated proposed language for rulemaking for the "Conforming Rule Changes for the Shellfish Relay Program and Shellfish Leases and Franchises" issue.

Second by Commissioner McNeill

Motion passes unanimously.

ROLL CALL VOTE				
Member	Aye	Nay	Abstain	Absent
Cross	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blanton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Huggins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McNeill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rader	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bizzell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Issues from Commissioners

Chairman Bizzell referenced a question about pound nets from Commissioner Roller from the November 2022 MFC Business Meeting. Steve Poland and Casey Knight came up to speak on the issue. A printed table was provided to the commissioners with pound net data.

Commissioner Cross commented on the ITP, particularly the portrayal of turtle interactions across the commercial versus recreational sectors. He requested that DMF staff provide incidental take data to include:

- How many turtles are caught and what species for the recreational hook and line fishery
- An opinion on the legality of interacting with sea turtles due to lack of an ITP for the recreational sector
- What recreational gear are known to incidentally take sea turtles
- What has the recreational industry done itself to reduce incidental takes

He referenced data from WRC regarding incidental takes of sea turtles from 2012 – 2021.

Commissioner Roller mentioned that there are other commercial fisheries that do not have ITPs and mentioned past lawsuits about this topic. He asked for updates regarding his request to look at enforcement regarding federal permits in NC, particularly for the for-hire sector since there is no joint enforcement authority which he believes is jeopardizing the potential economic impacts of the industry in the future.

Chairman Bizzell mentioned the fact that the commissioners continually state that they do not believe the data. He stated that the commissioners are not scientists (except for Dr. Rader). He stated that it is the best data that the commission has in their toolbox and they have to trust DMF staff. He requested that questions about the data be addressed before the meetings, directly with staff, etc.

Commissioner Roller referenced the conversation about False Albacore and referenced management of Sheepshead as a comparison. He asked if there could be some sort of template to look at managing unregulated or data poor species, possibly based on Sheepshead.

Commissioner Rader commented on stock assessment models and suggested there may be a systematic answer that the commission and DMF could explore to help answer questions.

Commissioner Blanton spoke about his experience as a commercial fisherman regarding gear and data collection knowledge. He expressed that he feels there is a gap between those collecting data (DMF) and those interpreting data (MFC). He suggested that DMF share how they collect data with the commission to help build confidence in the data. He also suggested that data collection could be contracted out to fishermen to help ensure accuracy and lessen doubt. He explained how important it is to tune gear the right way for what you want to catch and expressed his concerns about improving data collection.

Commissioner Cross mentioned that on the commercial side there is always a question of adaptation and experience. He suggested that DMF could match up experienced fishermen from the recreational or commercial side with biological sampling staff.

Commissioner Rader commented that fishermen count as scientists as well based on their knowledge. He explained that the issue is not so much the data itself as how all the information being collected comes together to create a complete picture and inform management. He explained that data collected by fishermen would be biased due to their knowledge of where the fish are and sampling areas they know will have fish. He explained that there are biases in both fisheries dependent and fisheries independent data. Fisheries independent and dependent data are purposefully combined to try to counteract these biases.

Review of MFC Workplan, Meeting Assignments and Preview of Agenda Items for Next Meeting
Lara Klibansky reviewed meeting assignments and provided an overview of the February meeting items.

Having no further business to conduct, the meeting adjourned at 10:25 a.m.