

Issues/Reports





PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON C. DAVIS
Director

October 21, 2016

MEMORANDUM

Conflict Res 11-16

TO: Marine Fisheries Commission
FROM: Kathy Rawls, Fisheries Management Section Chief
SUBJECT: Currituck Sound – Martins Point Conflict Resolution

On March 14, 2016 the division received a user conflict resolution package from Leigh and Janine Forbes of Kitty Hawk, North Carolina. They live in the Dare County community of Martins Point on the Currituck Sound and were joined by 37 other homeowners in their petition for conflict resolution. The information included in the package described a conflict between the petitioners and Mark Evanoff, a commercial gill net fisherman who also lives in the Martins Point community. The primary complaint is that Mr. Evanoff is setting his gill nets too close to docks and piers and in such a manner that is causing a navigation hazard for homeowners and in many instances preventing them from getting their boats to and from their docks. This conflict has been ongoing since at least 2014. Mr. Forbes has contacted the division on multiple occasions and provided public comment about the ongoing conflict at the commission's November 2015 meeting.

In accordance with North Carolina Marine Fisheries Commission User Conflict Resolution Rule 15A NCAC 03I .0122, the division reviewed the information submitted and determined that user conflict resolution was necessary and that mediation would be the next step. Mr. Forbes readily agreed to mediation. After multiple attempts, the division was able to get a verbal agreement for mediation from Mr. Evanoff, via his attorney. The division contacted the Mediation Center of Eastern Carolina to conduct the mediation. The Mediation Center and the division made multiple attempts to contact Mr. Evanoff (directly and through his attorney) to initiate mediation, none of which were successful. The division contacted Mr. Forbes and informed him that our attempts to initiate mediation for the user conflict resolution were unsuccessful and the division would present a draft proclamation to the Marine Fisheries Commission for approval at its November 2016 meeting.

The petitioners requested gill nets be set a minimum of 200 feet from their piers and docks in order to allow them ample room to navigate their boats to and from their property. The draft proclamation makes it unlawful to use any gill nets in the Currituck Sound – Martins Point Conflict Resolution Area within 200 feet of any dock, bulkhead or shoreline structure. The Currituck Sound – Martins Point Conflict Resolution area encompasses a shoreline area of approximately 2.5 miles in length in southern Currituck Sound Joint Waters beginning at a point 36° 07.6750 N - 75° 44.9550 W at Martins Point; running south along the shoreline to the Wright Memorial Bridge (See draft Proclamation and Map).

The division recommends that the commission approve the draft proclamation for issuance when/if necessary.



PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON C. DAVIS
Director

M-XX-2016

PROCLAMATION

RE: GILL NETS – CURRITUCK SOUND – MARTINS POINT CONFLICT RESOLUTION AREA

This proclamation implements conflict resolution measures for gill nets in the Currituck Sound – Martins Point Conflict Resolution Area.

Braxton C. Davis, Director, Division of Marine Fisheries, hereby announces that effective at TIME/DATE TO BE DETERMINED the following provisions shall apply to the use of gill nets in the following area:


I. AREA DESCRIPTION AND SPECIFIC AREA RESTRICTIONS (Map 1)

Currituck Sound - Martins Point Conflict Resolution Area: encompasses an area in southern Currituck Sound Joint Waters beginning at a point 36° 07.6750 N - 75° 44.9550 W at Martins Point; running south along the shoreline to the Wright Memorial Bridge.

It is unlawful to use ANY gill nets in the Currituck Sound – Martins Point Conflict Resolution Area within 200 feet of any dock, bulkhead or shoreline structure.

II. GENERAL INFORMATION

- A. This proclamation is issued under the authority of N.C.G.S. 113-182; 113-221.1; and N.C. Marine Fisheries Commission Rules 15A NCAC 03I .0122 and 03J .0103.
- B. It is unlawful to violate provisions of any proclamation issued by the Fisheries Director under his delegated authority pursuant to N.C. Marine Fisheries Commission Rule 15A NCAC 03H .0103.
- C. The restrictions in this proclamation apply to gill nets used by Recreational Commercial Gear License holders.
- D. The intent of this proclamation is to implement conflict resolution measures in the Currituck Sound - Martins Point Conflict Resolution Area. **All other existing gill net rules and proclamations remain in effect.**
- E. In accordance with N.C. General Statute 113-221.1(c) all persons who may be affected by proclamations issued by the Fisheries Director are under a duty to keep themselves informed of current proclamations.
- F. Contact N.C. Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557 252-726-7021 or 800-682-2632 for more information or visit the division website at www.ncmarinefisheries.net
- G. **This proclamation implements conflict resolution measures in the Currituck Sound - Martins Point Conflict Resolution Area in accordance with N.C. Marine Fisheries Commission Rule 15A NCAC 03I .0121 User Conflict Resolution. It makes it unlawful to use ANY gill nets within 200 feet of any dock, bulkhead or shoreline structure in the specified area.**

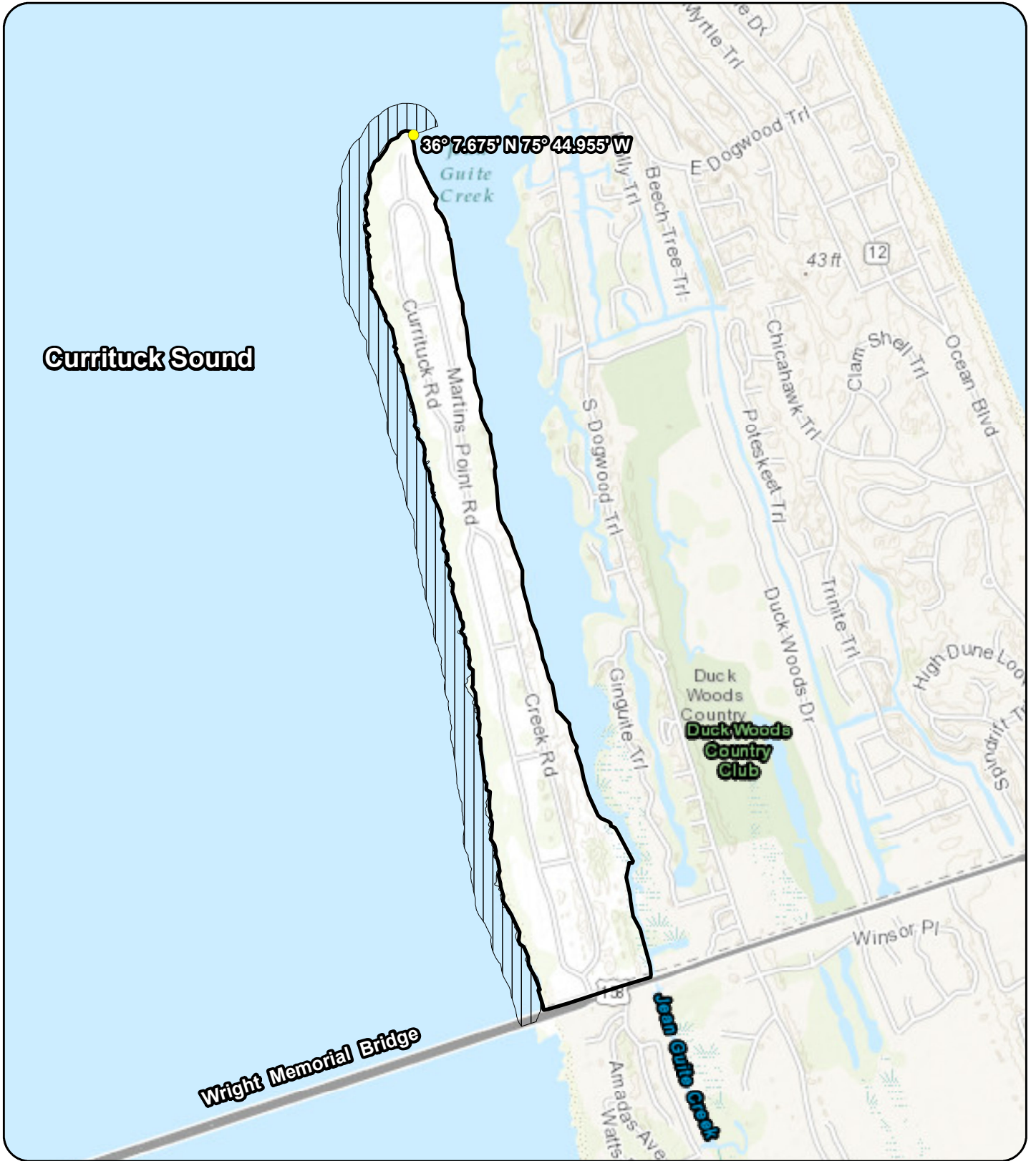
By: 

Braxton C. Davis, Director
DIVISION OF MARINE FISHERIES

October 13, 2016
11:00 A.M.
M-21-2016
/kbr

245 copies of this public document were printed at a cost of 20 cents per copy.

State of North Carolina | Environmental Quality | Marine Fisheries
PO Box 769 | 3441 Arendell Street | Morehead City, NC 28557
252 726 7021 T



Currituck Sound

36° 7.675' N 75° 44.955' W

Wright Memorial Bridge

Jean Guite Creek

Duck Woods Country Club

**PROCLAMATION
M--2016**



Martins Point



Miles

0 0.5 1



Currituck Sound – Martins Point Conflict Resolution Area.
Unlawful to use ANY gill nets within 200 feet
of any dock, bulkhead or shoreline structure



Datum: NAD83
Map Date: October 2016



PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON C. DAVIS
Director

October 21, 2016

MEMORANDUM

FMP 11-16

TO: Marine Fisheries Commission
FROM: Catherine Blum, Fishery Management Plan and Rulemaking Coordinator
SUBJECT: Fishery Management Plan Update

This memo provides an overview about the status of the North Carolina fishery management plans for the November 2016 commission meeting. There is a single handout provided showing where the active plans are in the process; no action is required by the commission.

At the commission's August meeting, the rulemaking process was approved to begin for the implementing rules of the draft Hard Clam Fishery Management Plan Amendment 2 and Oyster Fishery Management Plan Amendment 4. The proposed rules have been published in the *North Carolina Register* and a public comment period is underway. Additional details are provided in the rulemaking update in the briefing materials.

A plan not yet represented by the formal steps in the handout is the review of the Blue Crab Fishery Management Plan. A news release was issued Sept. 29 soliciting commercial and recreational fishermen and scientists to serve on the Blue Crab Fishery Management Plan Advisory Committee; which will assist the division in amending the plan. The deadline to submit an application is Nov. 15. The division's plan development team is reviewing the available data in preparation for the review of the plan.

Also in preparation for the formal steps in the fishery management plan process, work is continuing on the coastwide stock assessment of southern flounder. An in-person data workshop was held Aug. 15-17, 2016 in Raleigh. The stock assessment workgroup is continuing to work remotely and meet by conference call. The stock assessment is expected to be completed in the second half of 2017, after which the next review of the plan will commence.

NORTH CAROLINA FISHERY MANAGEMENT PLANS

November 2016





PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON C. DAVIS
Director

October 21, 2016

MEMORANDUM

ARSBSA 11-16

TO: Marine Fisheries Commission
FROM: Albemarle/Roanoke Striped Bass Stock Assessment Workgroup
SUBJECT: Albemarle/Roanoke Striped Bass Stock Assessment Update

Albemarle/Roanoke striped bass are managed jointly between the Division of Marine Fisheries and the Wildlife Resources Commission. The Albemarle/Roanoke Striped Bass Stock Assessment Workgroup met recently to discuss results of the 2016 Albemarle/Roanoke striped bass stock assessment update. The estimate of fishing mortality (F) in the terminal year of the assessment (2014) was 0.06, below the fishing mortality threshold of 0.41, suggesting the stock is not experiencing overfishing (Figure 1), as outlined in the November 2014 Revision to Amendment 1 to the North Carolina Estuarine Striped Bass Fishery Management Plan. The spawning stock biomass (SSB) in 2014 was estimated at 2,028,837 pounds, above the spawning stock biomass threshold of 772,588 pounds, suggesting the stock is not overfished (Figure 2) – this threshold was also set out in the 2014 revision to the plan. The terminal year estimates of fishing mortality and spawning stock biomass have the most uncertainty associated with them and should be interpreted with caution. As more years of data are added to the time series, the terminal year estimates will change, but to what degree and in what direction cannot be predicted.

The overall trend in spawning stock biomass shows very low biomass through the 1980s and early 1990s when the stock was experiencing chronic spawning failures and low total abundance. Starting in the early 1990s, the stock experienced nearly a decade of above average spawning success and recruitment of age-1 fish to the stock (Figure 2). The stock began increasing in overall biomass, which in turn led to an increase in the number of older and larger fish in the stock. Starting in 2001, the opposite trend was observed. Several years of unsuccessful spawns due to unfavorable environmental conditions during the spring spawning period led to a decline in spawning stock biomass and total abundance from the highs of the mid-2000s (Figures 1 and 2). Fishing mortality was high in the early years of the assessment when biomass was very low. Strict regulations reduced fishing mortality through the early 1990s. As the stock recovered and harvest levels were allowed to increase, fishing mortality increased commensurately. Since the stock was declared recovered in 1997 fishing mortality has remained below the threshold for all years except 2004 and 2005 (Figure 1).

Landings follow a similar trend to stock abundance and age-1 recruitment. Landings increased from the late 1990s through the mid-2000s and have declined since as total abundance has declined. Low landings from both the recreational and commercial sectors in 2013 and 2014 contributed to the low estimates of fishing mortality (F) in those years (Figure 3). The next benchmark assessment is scheduled for 2017, in conjunction with the scheduled full review of the North Carolina Estuarine Striped Bass Fishery Management Plan.

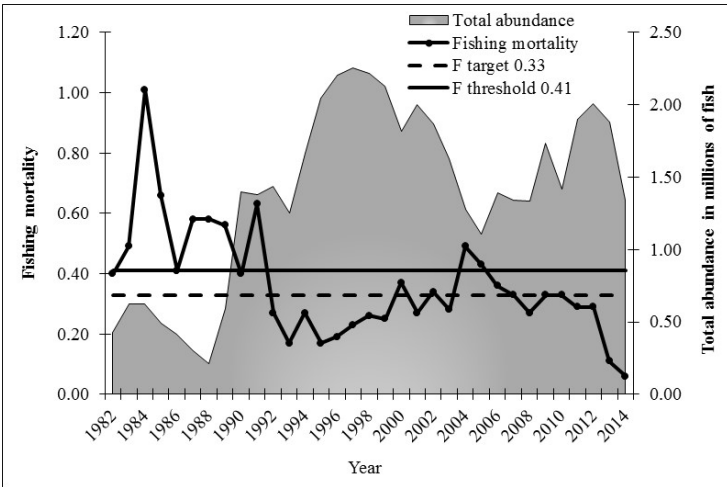


Figure 1. Estimates of fishing mortality (F) and total abundance from the 2016 Albemarle/Roanoke striped bass stock assessment update.

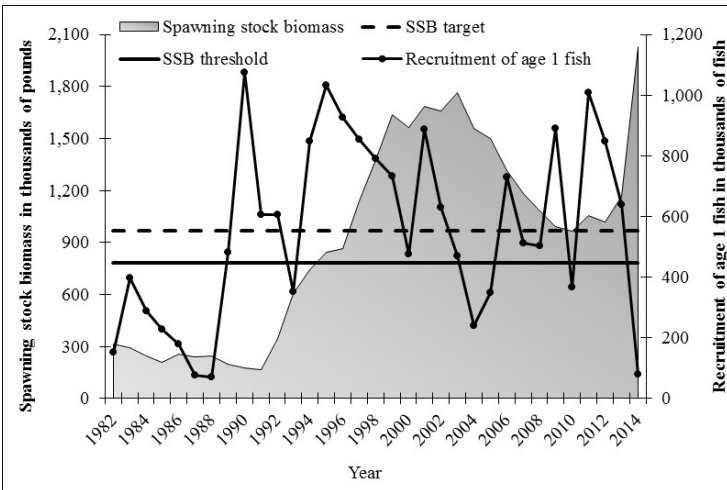


Figure 2. Estimates of spawning stock biomass (SSB) and recruitment of age-1 fish from the 2016 Albemarle/Roanoke striped bass stock assessment update.

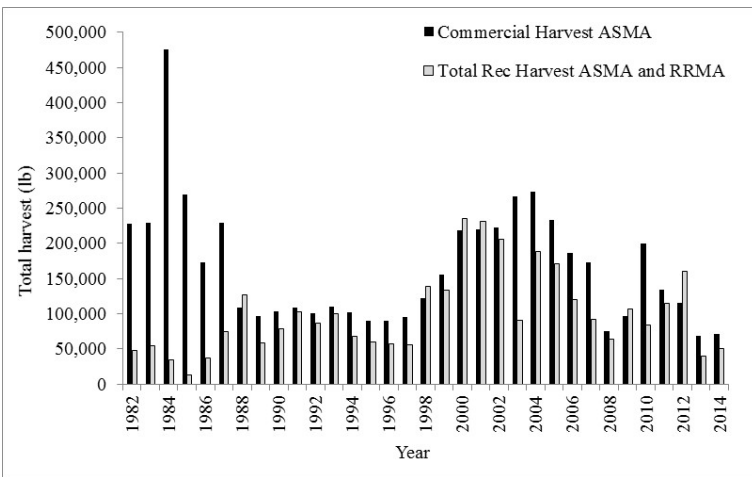


Figure 3. Striped bass landings from the Albemarle Sound Management Area (ASMA) and the Roanoke River Management Area (RRMA), 1982-2014.

INFORMATION
WILL BE
PROVIDED AT
THE MEETING.



PAT McCRORY
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DONALD R. VAN DER VAART
Secretary

BRAXTON C. DAVIS
Director

October 21, 2016

MEMORANDUM

Trawl Study 11-16

TO: Marine Fisheries Commission
FROM: Kevin Brown, Gear Development Biologist
SUBJECT: Collaborative Shrimp Trawl Gear Study

Background

The Marine Fisheries Commission, at its November 2012 meeting, directed the division to amend the Shrimp Fishery Management Plan, but to limit the scope of the amendment to bycatch issues in the commercial and recreational fisheries. An advisory committee was formed with this same charge, and spent a large part of 2013 developing recommendations. In February 2014, the commission selected its preferred management strategies and the plan was sent forward for departmental and legislative review, with rulemaking beginning later in 2014. At its February 2015 meeting, the commission gave final approval of Amendment 1 to the North Carolina Shrimp Fishery Management Plan, and its associated rules. One of the management strategies in the plan was:

Convene a stakeholder group to initiate industry testing of minimum tail bag mesh size, T-90 panels, skylight panels, and reduced bar spacing in Turtle Excluder Devices to reduce bycatch to the extent practicable with a 40 percent target reduction.

- **Upon securing funding, testing in the ocean and internal waters will consist of three years of data using test nets compared to a control net with a Florida fish eye, a federally approved Turtle Excluder Device and a 1.5-inch mesh tailbag.**
- **Results should minimize shrimp loss and maximize reduction of bycatch of finfish. Promising configurations will be brought back to the commission for consideration for mandatory use.**
- **The stakeholder group may be partnered with the division and Sea Grant.**
- **Members should consist of fishermen, net/gear manufacturers and scientific/gear specialists.**

Funding

To accomplish this strategy, the division partnered with North Carolina Sea Grant and National Oceanographic and Atmospheric Administration Harvesting Systems Unit and sought funding for this project. In November 2014, the commission approved funding from its Conservation Fund, with matching support from the commercial industry. The division negotiated the industry's in-kind contribution. This funded the first workgroup meeting and the testing of three gears (later modified to five) in the summer brown shrimp fishery in 2015, with a goal of 60 tows-per-gear. The division also partnered with Dr. Pingguo He (UMass-Dartmouth) on

a Saltonstall-Kennedy grant to test a topless trawl. The workgroup received additional funding from National Oceanographic and Atmospheric Administration's Bycatch Reduction Engineering Program to test three gears in the 2016 summer brown shrimp fishery and from the National Fish and Wildlife Foundation to test three gears in the 2016 fall white shrimp fishery.

Workgroup meetings

An industry workgroup consisting of a geographically diverse segment of fishermen, net makers, industry leaders and researchers was formed. There have been two formal meetings of the group so far and numerous informal meetings of select members. The first meeting occurred in March 2015 and the second in January 2016. Researchers from the North Carolina Division of Marine Fisheries, National Oceanographic and Atmospheric Administration Harvesting Systems Unit, North Carolina Sea Grant, Texas Sea Grant, UMass-Dartmouth, Gulf and South Atlantic Foundation, and the Gulf of Maine Research Institute presented recent advancements in bycatch reduction device technology and provided guidance on the process. The workgroup selected gears to be tested in each fishery and discussed the acceptable shrimp loss as being between 3 percent and 4 percent. Both formal meetings were well attended and productive.

Results

Three commercial shrimp fishing trawl vessels conducted comparative bycatch reduction device testing throughout Pamlico Sound during the summer 2015. Each vessel tested a different bycatch reduction device for three to four weeks. All control nets (turtle excluder devices, tail bags, and fisheyes) were standardized on each vessel.

A total of 44 matched pairs were analyzed, testing the composite panel with a fish "spooker" cone. An average of 1 percent shrimp loss, and 27 percent finfish reduction was calculated with the use of this gear, relative to the control gear (Table 1).

Following an initial week with the use of the 3-inch grid alone as a bycatch reduction device, the test gear was modified to also include a square mesh panel, 1 7/8-inch tailbag and a federal fisheye for the remainder of the study. The 3-inch grid alone reduced finfish by 20 percent, but lost greater than 12 percent of target shrimp on average. The added combinations maintained a finfish reduction of 27 percent, and shrimp losses were less than 3 percent on average, as compared to the control gear (Table 2).

The Ricky Bycatch Reduction Device test was also modified after the first week of testing. Specifically, the Ricky Bycatch Reduction Device was eliminated, and two federal fisheyes were placed in the tailbag (inline) with a 1 7/8-inch tailbag. The Ricky Bycatch Reduction Device alone reduced about 5 percent of finfish on average, and showed an increase (26 percent) in the mean percent of shrimp captured. Greater than a 38 percent mean finfish reduction and a slight gain (2 percent) in the mean shrimp catch was observed with the modified test gear for the remainder of the study, as compared to the control gear (Table 3). Preliminary results from 2016 testing show two of the bycatch reduction devices (double federal fisheye, 1 3/4-inch tailbag, and 3-inch turtle excluder device; Virgil Potter Bycatch Reduction Device with funnel) tested approaching 50 percent finfish reduction, with approximately 7 percent shrimp loss, as compared to the control gear. The division's plan is to test variations of these more promising combinations of bycatch reduction devices on smaller vessels using smaller nets and in the ocean.

Table 1. Percent reductions in shrimp and finfish, inclusive with means and confidence intervals for comparative testing with the composite panel and fish “spooker” cone in Pamlico Sound, NC during 2015.

Bycatch Reduction Device	Species Group	N	Control Net		Experimental Net		Lower 95 percent Confidence Interval	Percent Difference	Upper 95 percent Confidence Interval	p value
			Mean (kg)	Standard Deviation (kg)	Mean (kg)	Standard Deviation (kg)				
Composite Panel with fish spooker cone	Shrimp	44	72.15	45.12	71.16	43.00	- 2.86	1.37	5.60	0.1938
	Finfish	44	180.45	65.88	132.45	56.48	19.91	26.60	33.28	0.0000

Table 2. Percent reductions in shrimp and finfish, inclusive with means and confidence intervals for comparative testing with the 3” grid, and 3” grid, square mesh panel, 1 7/8” tailbag, and federal fisheye combination in Pamlico Sound, NC during 2015.

Bycatch Reduction Device	Species Group	N	Control Net		Experimental Net		Lower 95 percent Confidence	Percent Difference	Lower 95 percent Confidence	p value
			Mean (kg)	Standard Deviation (kg)	Mean (kg)	Standard Deviation (kg)				
3” Grid	Shrimp	19	50.42	28.36	44.35	20.71	- 2.88	12.03	26.95	0.0451
	Finfish	19	109.34	47.83	87.17	41.71	7.23	20.27	33.32	0.0021
3” Grid, Square Mesh Panel, 1 7/8” tailbag and federal fisheye	Shrimp	40	77.10	36.14	75.05	36.21	- 1.25	2.65	6.56	0.0904
	Finfish	40	121.01	76.35	88.16	50.80	15.66	27.15	38.64	0.0000

Table 3. Percent reductions in shrimp and finfish, inclusive with means and confidence intervals for comparative testing with the Ricky Bycatch Reduction Device and then two federal fisheyes and 1 7/8” tailbag combination in Pamlico Sound, NC during 2015.

Bycatch Reduction Device	Species Group	N	Control Net		Experimental Net		Lower 95 percent Confidence	Percent Difference	Upper 95 percent Confidence	p value
			Mean (kg)	Standard Deviation (kg)	Mean (kg)	Standard Deviation (kg)				
Ricky Bycatch Reduction Device	Shrimp	15	56.49	31.62	71.40	64.95	-105.37	- 26.39	52.58	0.1948
	Finfish	15	160.43	84.91	153.16	71.51	- 9.97	4.53	19.03	0.2552
2 federal fisheyes, 1 7/8” tailbag	Shrimp	26	94.36	46.70	95.81	46.50	- 9.00	- 1.54	5.93	0.3366
	Finfish	26	134.96	67.33	83.23	47.21	25.16	38.33	51.49	0.0000



PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON C. DAVIS
Director

October 21, 2016

MEMORANDUM

Rules 11-16

TO: Marine Fisheries Commission
FROM: Catherine Blum, Fishery Management Plan and Rulemaking Coordinator
SUBJECT: Rulemaking Update

This memo describes the rulemaking materials for the November 2016 commission meeting. There are two informational items, the second of which will be accompanied by a brief presentation; no action is required by the commission. Each item is summarized below:

2016/2017 Rulemaking Cycle

This section includes a table that shows the steps of the process for the commission’s 2016/2017 annual rulemaking cycle. The dates in the table are adjusted to accommodate the delay in starting the package due to reconsideration of an issue from the Oyster and Hard Clam Fishery Management Plans. Instead of the usual intended effective date of April 1 of a given year for the rules to be complete, staff will make every effort to find efficiencies at the end of the process so the rules can become effective either May 1 or June 1, 2017.

At its August business meeting, the commission gave approval to begin the rulemaking process for 15 proposed rules. The rules were published in the Oct. 3 issue of the *North Carolina Register*. The public comment period for the proposed rules runs from Oct. 18 through Dec. 2. A public hearing is scheduled on Oct. 26 at 6 p.m. at the division’s Central District Office located at 5285 Highway 70 West in Morehead City. The commission will receive an update on any comments that have been received at its November meeting. Final approval of the rules and the amendments to the Oyster and Hard Clam Fishery Management Plans is scheduled to occur at the commission’s February 2017 business meeting.

Periodic Review and Expiration of Existing Rules

Session Law 2013-413, the Regulatory Reform Act of 2013, implemented requirements known as the “Periodic Review and Expiration of Existing Rules.” These requirements are codified in a new section of Article 2A of Chapter 150B of the General Statutes in G.S. 150B-21.3A. A copy of the statute is provided in the briefing materials. These requirements directly affect the commission as the agency with the authority to set rules for marine and estuarine resources under its jurisdiction. Staff gave a presentation to the commission about the new requirements November 2013 and May 2014.

Under the requirements, each agency is responsible for conducting a review of all its rules at least once every 10 years in accordance with a prescribed process. The review has two parts: a report phase, followed by the re-

adoption of rules. The Office of Administrative Hearings developed a schedule for all agencies with rules to undergo the periodic review, numbering approximately 20,000 rules statewide. The process will begin for the commission at its February 2017 business meeting.

The first step in the process is for each agency to make a determination as to whether each rule is necessary with substantive public interest, necessary without substantive public interest, or unnecessary. The agency posts the results of the initial determination on the division web site for public comment for a minimum of 60 days. It is important to note, for the purposes of these requirements, “public comment” means written comments from the public objecting to the rule. The agency must review the public comments and prepare a brief response addressing the merits of each comment. The agency then submits a report to the Rules Review Commission, which, if approved, is forwarded to the Joint Legislative Administrative Procedure Oversight Committee for final determination.

The second part of the process is the re-adoption of rules. The final report determines the process for re-adoption. Rules determined to be necessary and without substantive public interest and for which no public comment was received remain in effect without further action. Rules determined to be unnecessary and for which no public comment was received expire on the first day of the month following the date the report becomes effective. Rules determined to be necessary with substantive public interest must be readopted as though the rules were new rules. The Rules Review Commission works with each agency to consider the agency’s rulemaking priorities in establishing a deadline for the re-adoption of rules.

An evaluation of the rules under the authority of the Marine Fisheries Commission will be undertaken in two lots. A report on the rules in Title 15A, Environment and Natural Resources, Chapter 03, Marine Fisheries is due to the Rules Review Commission December 2017. A report on the rules in Chapter 18, Environmental Health, for portions of Subchapter A that govern shellfish sanitation and recreational water quality is due January 2019. The Marine Fisheries Commission has approximately 210 rules in Chapter 03 and approximately 165 rules in Chapter 18A. The Marine Fisheries Commission is the body with the authority for the various approval steps prescribed in the process for these rules.

North Carolina Marine Fisheries Commission 2016-2017 Annual Rulemaking Cycle

November 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
October 2016	Public hearing 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

* Wednesday, Oct. 26, 2016, 6 p.m.
 Division of Marine Fisheries
 5285 Highway 70 West
 Morehead City, NC 28557

**MARINE FISHERIES COMMISSION
SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES
DIVISION OF MARINE FISHERIES
MOREHEAD CITY CENTRAL DISTRICT OFFICE
MOREHEAD CITY, NORTH CAROLINA
OCT. 26, 2016, 6 PM**

Marine Fisheries Commission : Sammy Corbett
Division of Marine Fisheries Staff: Catherine Blum, Nancy Fish, Michele Turner
Public: None
Media: None

Commission Chairman Sammy Corbett opened the public hearing for Marine Fisheries Commission proposed rules at 6 p.m. No one from the public or media was in attendance. Seeing no one to provide comments on the proposed rules, Chairman Corbett closed the hearing at 6:15 p.m.

/cb

§ 150B-21.3A. Periodic review and expiration of existing rules.

- (a) Definitions. – For purposes of this section, the following definitions apply:
- (1) Commission. – Means the Rules Review Commission.
 - (2) Committee. – Means the Joint Legislative Administrative Procedure Oversight Committee.
 - (3) Necessary with substantive public interest. – Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if the rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.
 - (4) Necessary without substantive public interest. – Means a rule for which the agency has not received a public comment concerning the rule within the past two years. A "necessary without substantive public interest" rule includes a rule that merely identifies information that is readily available to the public, such as an address or a telephone number.
 - (5) Public comment. – Means written comments objecting to the rule, in whole or in part, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.
 - (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete, redundant, or otherwise not needed.
- (b) Automatic Expiration. – Except as provided in subsection (e) of this section, any rule for which the agency that adopted the rule has not conducted a review in accordance with this section shall expire on the date set in the schedule established by the Commission pursuant to subsection (d) of this section.
- (c) Review Process. – Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:
- (1) Step 1: The agency shall conduct an analysis of each existing rule and make an initial determination as to whether the rule is (i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii) unnecessary. The agency shall then post the results of the initial determination on its Web site and invite the public to comment on the rules and the agency's initial determination. The agency shall also submit the results of the initial determination to the Office of Administrative Hearings for posting on its Web site. The agency shall accept public comment for no less than 60 days following the posting. The agency shall review the public comments and prepare a brief response addressing the merits of each comment. After completing this process, the agency shall submit a report to the Commission. The report shall include the following items:
 - a. The agency's initial determination.
 - b. All public comments received in response to the agency's initial determination.
 - c. The agency's response to the public comments.
 - (2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. If a public comment relates to a rule that the agency determined to be necessary and without substantive public interest or unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as necessary with substantive public interest. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the rule and

relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a). The Commission shall prepare a final determination report and submit the report to the Committee for consultation in accordance with subdivision (3) of this subsection. The report shall include the following items:

- a. The agency's initial determination.
- b. All public comments received in response to the agency's initial determination.
- c. The agency's response to the public comments.
- d. A summary of the Commission's determinations regarding public comments.
- e. A determination that all rules that the agency determined to be necessary and without substantive public interest and for which no public comment was received or for which the Commission determined that the public comment was without merit be allowed to remain in effect without further action.
- f. A determination that all rules that the agency determined to be unnecessary and for which no public comment was received or for which the Commission determined that the public comment was without merit shall expire on the first day of the month following the date the report becomes effective in accordance with this section.
- g. A determination that all rules that the agency determined to be necessary with substantive public interest or that the Commission designated as necessary with public interest as provided in this subdivision shall be readopted as though the rules were new rules in accordance with this Article.

(3) Step 3: The final determination report shall not become effective until the agency has consulted with the Committee. The determinations contained in the report pursuant to sub-subdivisions e., f., and g. of subdivision (2) of this subsection shall become effective on the date the report is reviewed by the Committee. If the Committee does not hold a meeting to hear the consultation required by this subdivision within 60 days of receipt of the final determination report, the consultation requirement is deemed satisfied, and the determinations contained in the report become effective on the 61st day following the date the Committee received the report. If the Committee disagrees with a determination regarding a specific rule contained in the report, the Committee may recommend that the General Assembly direct the agency to conduct a review of the specific rule in accordance with this section in the next year following the consultation.

(d) Timetable. – The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

- (1) With regard to the review process, the Commission shall assign each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section. The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in subsections (e) and (f) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title

which have not been reviewed will expire. The Commission shall report to the Committee any agency that fails to conduct the review. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in accordance with this section no more than 10 years following the last time the rule was amended.

- (2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without substantive change or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.

(e) Rules to Conform to or Implement Federal Law. – Rules adopted to conform to or implement federal law shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.

(e1) Rules to Protect Inchoate or Accrued Rights of Retirement Systems Members. – Rules deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement Systems administered by the State Treasurer shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.

(f) Other Reviews. – Notwithstanding any provision of this section, an agency may subject a rule that it determines to be unnecessary to review under this section at any time by notifying the Commission that it wishes to be placed on the schedule for the current year. The Commission may also subject a rule to review under this section at any time by notifying the agency that the rule has been placed on the schedule for the current year. (2013-413, s. 3(b); 2014-115, s. 17; 2014-120, s. 2; 2015-164, s. 7; 2015-286, s. 1.6(a).)

Periodic Review and Expiration of Existing Rules

STEP 1

[G.S. 150B-21.3A(c)(1)]

Agency Reviews Existing Rules "Step 1(a)"

- Agency's rulemaking coordinator receives the report (an Excel spreadsheet) from RRC Staff by email.
- Rulemaking coordinator has 10 business days to respond regarding any errors or missing rules.

Agency Reviews Existing Rules "Step 1(b)"

- First agency meeting to make determination classifying each rule in the report for public comment.
- Classifications are: (1) unnecessary; (2) necessary without substantive public interest; or (3) necessary with public interest.

Agency Accepts Public Comments for 60 Days "Step 1(c)"

Agency Posts Report on Agency's Website "Step 1(c)"
See 26 NCAC 05 .0206

Agency Provides Report to RRC to be Posted on RRC's Website "Step 1(c)"
See 26 NCAC 05 .0206

Agency Must Notify Interested Persons "Step 1(c)"
See 26 NCAC 05 .0207

Agency Reviews and Responds to Public Comments "Step 1(d)"

- Second agency meeting to review comments received. Responses should be provided by the agency to comments that are objecting to a Rule.
- Agency to make determination classifying each rule in the report after consideration of the public comments.
- Classifications are: (1) unnecessary; (2) necessary without substantive public interest; or (3) necessary with public interest.

Agency Submits Report, Written Comments, and Classifications to RRC "Step 1(e)"

- 26 NCAC 05 .0211 sets the RRC review date. The date contained within the Rule is not the date the Agency files the report with the RRC.
- Agency must file the complete Report with the RRC on the 15th of the month prior to the month and year set forth in 26 NCAC 05 .0211.

No review by agency
Rule expires

STEP 2

[G.S. 150B-21.3A(c)(2)]

RRC reviews report and written comments

RRC submits report to APO

STEP 3

[G.S. 150B-21.3A(c)(3)]

APO consultation

APO does not meet within 60 days

Committee recommends new review
⋮
?

Rule remains in Code

Agency initiates readoption of rule through the permanent rulemaking process

Unnecessary rule expires

RRC determination effective



PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON C. DAVIS
Director

October 21, 2016

MEMORANDUM

RS 11-16

TO: Marine Fisheries Commission
FROM: Kathy Rawls, Fisheries Management Section Chief
SUBJECT: Rule Suspensions

Attached is the temporary rule suspension information for the November 2016 meeting. In accordance with the Division of Marine Fisheries Resource Management Policy Number 2014-2, the Marine Fisheries Commission will vote on any new rule suspensions that have occurred since the last meeting of the commission. No new rule suspensions have occurred since the August 2016 meeting, therefore, no action is necessary at this time. In accordance with the policy the division will provide a verbal reminder of all current rule suspensions at each November meeting of the commission. The current rule suspensions are as follows:

- Continued suspension of North Carolina Marine Fisheries Commission Rule 15A NCAC 03M .0516 Cobia in its entirety for an indefinite period of time. Suspension of this rule allows the division to implement season closures, increase the recreational size limit and decrease the recreational harvest limit for cobia in response to management actions taken by the commission at their May 2016 meeting. This suspension was implemented in Proclamation FF-28-2016.
- Continued suspension of portions of North Carolina Marine Fisheries Commission Rule 15A NCAC 03L .0201 Crab Harvest Restrictions and portions of 03L .203 Crab Dredging for an indefinite period of time. This continued suspension allows the division to implement the blue crab harvest restrictions adopted by the commission in the May 2016 Revision to Amendment 2 of the North Carolina Blue Crab Fishery Management Plan. These suspensions were implemented in Proclamation M-11-2016.
- Continued suspension of portions of North Carolina Marine Fisheries Commission Rule 15A NCAC 03J .0501 Definitions and Standards for Pound Nets and Pound Net Sets for an indefinite period of time. Suspension of portions of this rule allows the division to increase the minimum mesh size of escape panels for flounder pound nets in accordance with Supplement A to Amendment 1 of the North Carolina Southern Flounder Fishery Management Plan. This suspension was implemented in Proclamation M-34-2015
- Continued suspension of portions of North Carolina Marine Fisheries Commission Rule 15A NCAC Shad and 03Q .0107 Special Regulations: Joint Waters for an indefinite period of time. Suspension of portions of these rules allows the division to change the season and creel limit for American shad under the management framework of the North Carolina American Shad Sustainable Fishery Plan. These suspensions were implemented in Proclamation FF-63-2015.

N.C. Marine Fisheries Commission Rule Suspension Update- As of October 28, 2016

(In accordance with Division of Marine Fisheries Resource Management Policy 2014-2: Temporary Rule Suspensions)

New Suspension - No Action Required

No new suspensions have occurred since the commission's August 2016 meeting, therefore, no action is required at this time.

Continuing Suspensions - No Action Required

➤ **N.C. Marine Fisheries Commission Rule 15A NCAC 03M .0516 COBIA is suspended:**

- (a) It is unlawful to possess cobia less than 33 inches fork length
- (b) It is unlawful to possess more than two cobia per person per day.

Suspension of this rule allows the division to implement season closures, increase the recreational size limit and decrease the recreational harvest limit of cobia in response to management actions taken by the commission at their May 2016 meeting. These changes were implemented in Proclamation FF-28-2016.

➤ **The following portion of N.C. Marine Fisheries Commission Rule 15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS is suspended:**

Sections (a) and (b), which read:

- (a) It is unlawful to possess more than 10 percent by number in any container, male and immature female hard blue crabs less than five inches from tip of spike to tip of spike and to fail to return hard blue crabs not meeting this restriction to the waters from which taken, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs. All blue crabs not sorted into containers as specified in Paragraph (b) of this Rule shall be deemed hard blue crabs for the purpose of establishing the 10 percent culling tolerance.
- (b) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike unless individual crabs are sorted to and placed in separate containers for each of the following categories:
 - (1) soft crabs;
 - (2) pink and red-line peeler crabs;
 - (3) white-line peeler crabs; and
 - (4) from March 1 through October 31, male crabs to be used as peeler crab bait.

➤ **The following portion of N.C. Marine Fisheries Commission Rule 15A NCAC 03L .0203 CRAB DREDGING is suspended:**

Section (a), which reads:

- (a) It is unlawful to take crabs with dredges except:
 - (1) from January 1 through March 1 in the area of Pamlico Sound described in 15A NCAC 03R .0109; and
 - (2) incidental to lawful oyster dredging operations in areas not subject to the exception in Subparagraph (a)(1) of this Rule provided the weight of the crabs shall not exceed:
 - (A) 50 percent of the total weight of the combined oyster and crab catch; or
 - (B) 500 pounds, whichever is less.

Suspension of the above rules relative to crab harvest and dredging allows the division to implement the blue crab harvest restrictions adopted by the Marine Fisheries Commission in the May 2016 Revision to Amendment 2 of the N.C. Blue Crab Fishery Management Plan. These restrictions were implemented in proclamation M-11-2016.

➤ **The following portion of N.C. Marine Fisheries Commission Rule 15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS is suspended:**

Section (e)(2), which reads:

(e) Escape Panels:

- (2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.

Suspension of portions of this rule allows the division to increase the minimum mesh size of escape panels for flounder pound nets in accordance with Supplement A to Amendment 1 of the North Carolina Southern Flounder Fishery Management Plan. This suspension was implemented in Proclamation M-34-2015.

➤ **The following portion of N.C. Marine Fisheries Commission Rule 15A NCAC 03M .0519 SHAD is suspended:**

Paragraphs (a) and (b) which read:

- (a) It is unlawful to take American shad and hickory shad by any method except hook-and-line from April 15 through December 31.
(b) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line or for recreational purposes.

➤ **The following portion of N.C. Marine Fisheries Commission Rule 15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS is suspended:**

Paragraph (4) which reads:

- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate per person per day taken by hook-and-line.

Suspension of portions of these rules allows the division to change the season and creel limit of American shad under the management framework of the N.C. American Shad Sustainable Fishery Plan. These suspensions were implemented in Proclamation FF-63-2015.