

SIMPLIFY MANAGEMENT OF INTERJURISDICTIONAL MANAGED SPECIES

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I. ISSUE

Simplify N.C. management of interjurisdictional managed species that fall under the authority of both a State species-specific fishery management plan (FMP) and the N.C. FMP for Interjurisdictional Fisheries to reduce duplication of effort and streamline the management process.

II. ORIGINATION

N.C. Division of Marine Fisheries (NCDMF).

III. BACKGROUND

The Atlantic Coastal Fisheries Conservation and Management Act (ACFCMA) and the 2006 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) confer authority for the management of coastal, interjurisdictional fisheries to the Atlantic States Marine Fisheries Commission (ASMFC) and the federal Councils. These acts provide for the preparation and implementation of FMPs that will achieve and maintain the availability of coastal fishery resources on a long-term basis (sustainable harvest).

Under the ACFCMA, the ASMFC is the agency charged by Congress with establishing and implementing fisheries management for migratory fish stocks along the Atlantic coast. Further, the ACFCMA requires all Atlantic states to implement FMPs adopted by the ASMFC for fisheries occurring out to three nautical miles from shore.

Under the MSA, the jurisdiction of the Councils is for all fish within the federal Exclusive Economic Zone (EEZ; three nautical miles out to 200 nautical miles from shore) and fishery management authority beyond the EEZ over anadromous species and Continental Shelf fishery resources. Due to its geographic position as a transition zone between northern and southern fish populations, North Carolina is a member of both the Mid-Atlantic (MAFMC) and South Atlantic (SAFMC) fishery management councils.

The clear intent of Congress with these acts was to establish federal and state partnerships to ensure the nation's fisheries are adequately protected and managed for optimum yield. Public participation in these processes is emphasized and the mechanisms to ensure public involvement are built into the acts. North Carolina embraces this philosophy and strives to ensure adequate opportunities for public input and comment about the State's fisheries.

N.C. General Statute (N.C.G.S.) §113-182.1 directs the N.C. Department of Environmental Quality (NCDEQ) to prepare FMPs for adoption by the North Carolina Marine Fisheries Commission (NCMFC) for all commercially or recreationally significant species or fisheries that comprise North Carolina's marine or estuarine resources. State FMPs are developed and drafted by the NCDMF on behalf of the NCDEQ. Rather than creating individual species-specific FMPs for species already being managed by the ASMFC and Councils, the NCMFC adopted the N.C. FMP for Interjurisdictional Fisheries to adopt by reference FMPs for finfish species developed by the ASMFC, MAFMC, and SAFMC (NCDMF 2002). This prevents duplicating effort at the State level to create and maintain State FMPs for species where there is little ability to deviate from management measures adopted by the ASMFC and Councils and where the State already provides input on their development. The management unit for the N.C. FMP for Interjurisdictional Fisheries comprises finfish species managed by ASMFC or Council FMPs that are commercially or recreationally significant finfish species for the State, as described in N.C.G.S. §113-182.1, or when there are ASMFC or Council FMP compliance or compatibility requirements the State must adhere to for interjurisdictional managed finfish species present in State waters.

Numerous FMPs have been developed and implemented by the ASMFC and Councils. The goal of these plans established under the ACFCMA (ASMFC) and the MSA (Councils) is similar if not identical to the goal of the N.C. Fisheries Reform Act (FRA) to ensure the long-term viability of these fisheries. Notwithstanding the similar goal but differing legal basis, ASMFC and Council FMPs when adopted by the NCMFC as a State FMP are held to the standards established in N.C.G.S. §113-182.1 and associated policies.

Several N.C. General Statutes clearly acknowledge the overlapping authority of the State with the ASMFC and Councils; they also define the hierarchy within which the NCMFC's authority lies in establishing provisions to comply with the mandates of these management bodies. Namely, management measures established by the NCMFC must be consistent for those resources for which the Councils and ASMFC have primary jurisdiction.

- N.C.G.S. §113-182 clarifies that regulation of fish and fisheries in the Atlantic Ocean out to the limit of the EEZ should be consistent with the MSA.
- Article 19 of Chapter 113 of the General Statutes (N.C.G.S. §§113-251 through 113-258) fully incorporates the ASMFC compact.
- N.C.G.S. 143B-289.51 describes the creation and purpose and N.C.G.S. §143B-289.52 the powers and duties of the NCMFC.

These statutes provide authority for the NCMFC to advise the State (NCDEQ and NCDMF) regarding ocean and marine fisheries within the jurisdiction of the ASMFC and Councils, to manage or regulate fishing in the Atlantic Ocean, and to adopt relevant State rules for compliance with or implementation of ASMFC or Council FMPs.

Federal law requires conservation management actions approved through an ASMFC or Council FMP be implemented by the State of North Carolina. The NCMFC, through the adoption of the N.C. FMP for Interjurisdictional Fisheries, adopts management measures appropriate for North

Carolina as the minimum standards for the management unit species or species group. This includes compliance requirements of ASMFC FMPs that are a product of the initial FMP or subsequent amendments. Most ASMFC FMPs allow for the development of alternative management programs or conservation equivalency measures so management may be tailored to specific fishery conditions within a state if needed. Council FMPs do not offer the same flexibility.

The goal of the N.C. FMP for Interjurisdictional Fisheries is to adopt FMPs, consistent with N.C. law, approved by the ASMFC, MAFMC, or the SAFMC by reference and implement corresponding fishery regulations in North Carolina to provide compliance or compatibility with approved fishery management plans and amendments, now and in the future. The goal of these FMPs, established under the ACFCMA (ASMFC FMPs) and the MSA (federal council FMPs), are similar to the goals of the FRA to “ensure long-term viability” of these fisheries (NCDMF 2015a). The State FMP development process provides N.C. citizens a more in-depth or timely consideration of the stock condition, enhanced public involvement on management issues through the existing regional advisory committees of the NCMFC, and direct authority of the NCMFC to implement resulting management strategies. The intent of the N.C. FMP for Interjurisdictional Fisheries is to adopt the ASMFC and Council management measures as minimum standard(s) for the fishery of interest while not unnecessarily restricting the State of North Carolina or the NCMFC from implementing additional measures deemed appropriate by the best available information and in the best interest of the fisheries resources of North Carolina.

For species managed by both an individual State species-specific FMP and the N.C. FMP for Interjurisdictional Fisheries, measures implemented to maintain compliance with an ASMFC FMP or compatibility with a Council FMP are documented in writing through a revision to the individual State species-specific FMP. Since public comment is received during the development of the ASMFC or Council FMP that contains adaptive management, seeking additional public comment preceding state implementation would be redundant, would potentially delay implementation, and is not required. If additional measures beyond those required by the ASMFC or Council FMP are deemed appropriate for North Carolina, except for development of conservation equivalency or alternative management options, the State FMP development process should be used.

A variety of tools exist within the framework of the N.C. FMP for Interjurisdictional Fisheries to ensure the differential needs of North Carolina’s fisheries are considered during both the development and implementation of Council and ASMFC FMPs. These tools are intended to assist in minimizing duplication of management effort while meeting the requirements of all relevant State and federal regulations.

As of September 2021, there are four State species-specific FMPs for species managed by the ASMFC (i.e., estuarine striped bass, red drum, river herring, and spotted seatrout). There are no State species-specific FMPs for species managed by the MAFMC or SAFMC. To ensure

compliance with interstate FMP requirements, North Carolina already includes these four species as part of the N.C. FMP for Interjurisdictional Fisheries (NCDMF 2015a).

Estuarine Striped Bass

Striped bass (*Morone saxatilis*) in the Atlantic Ocean of North Carolina is managed under the ASMFC's Amendment 6 to the Interstate FMP for Atlantic Striped Bass (ASMFC 2003) and its addenda (ASMFC 2007, 2010, 2012, 2014, 2021). Under Amendment 6, the Albemarle Sound-Roanoke River (AR) stock was exempt from the size and possession limits applied to the coastal migratory stock because a more conservative fishing mortality (*F*) target is used by the state. This allowed the state to implement its own seasons, harvest caps, and size and bag limits so long as the stock remained under the *F* target. Addendum IV to Amendment 6 formally deferred management of the AR stock to the state, under the guidance of the ASMFC, since the stock was deemed to contribute minimally to the coastal migratory population (ASMFC 2014). NCDMF stock assessments for the AR stock must be approved by the ASMFC's Striped Bass Management Board. Striped bass stocks in the Central Southern Management Area (CSMA) do not fall under ASMFC jurisdiction as they do not migrate to the ocean. Estuarine striped bass (AR and CSMA stocks) in North Carolina are collectively managed under Amendment 1 to the N.C. Estuarine Striped Bass FMP (NCDMF 2013), its revisions (NCDMF 2014a, 2020) and Supplement A (NCDMF 2019). It is a joint FMP between the NCMFC and the N.C. Wildlife Resources Commission (NCWRC).

River Herring

River herring [blueback herring (*Alosa aestivalis*) and alewife (*A. pseudoharengus*)] are managed under the ASMFC's Amendment 2 to the Interstate FMP for Shad and River Herring (ASMFC 2009). Amendment 2 requires management measures from the ASMFC be adopted by North Carolina as the minimum standard for the fishery, while the N.C. River Herring FMP can adopt additional measures (ASMFC 2009). Additionally, Amendment 2 requires states and jurisdictions to develop sustainable fishery management plans (SFMPs) in order to harvest river herring in commercial and/or recreational fisheries after January 2012. Since North Carolina does not allow the harvest of river herring, an SFMP is not required at this time. River herring in North Carolina are also managed under Amendment 2 to the N.C. River Herring FMP (NCDMF 2015b). It is a joint FMP between the NCMFC and the NCWRC. Both the commercial and recreational harvest of river herring has been prohibited in North Carolina waters since 2007 (NCDMF 2007). However, up to 7,500 pounds of commercial harvest was allowed until 2015 under a research set-aside program (NCDMF 2015b).

Red Drum

Red drum (*Sciaenops ocellatus*) is managed under the ASMFC's Amendment 2 to the Interstate FMP for Red Drum (ASMFC 2002). Amendment 2 sets a maximum size limit in all fisheries at 27 inches total length. Individual states are allowed to select recreational creel and size limits

provided those limits, along with existing or more restrictive commercial regulations, achieve the *F* (fishing mortality rate) target. Red drum in North Carolina is also managed under Amendment 1 to the N.C. Red Drum FMP (NCDMF 2008).

Spotted Seatrout

Spotted seatrout (*Cynoscion nebulosus*) is managed under the ASMFC's Omnibus Amendment to the Interstate FMPs for Spanish Mackerel, Spot, and Spotted Seatrout (ASMFC 2011). For spotted seatrout the amendment requires a minimum size limit of 12-inches total length and recommends the states manage for a 20% spawning potential ratio. Due to the mostly non-migratory nature of spotted seatrout, states are primarily responsible for assessing and managing their spotted seatrout stocks. Spotted seatrout in North Carolina is also managed under the N.C. Spotted Seatrout FMP (NCDMF 2012) and Supplement A to the 2012 N.C. Spotted Seatrout FMP (NCDMF 2014b).

These four species have varying levels of ASMFC oversight and management requirements in North Carolina. On one end of the spectrum, river herring and red drum in North Carolina are more directly managed by ASMFC whereas management of AR striped bass and spotted seatrout is largely left to the State.

IV. AUTHORITY

N.C. General Statutes

§113.182. Regulation of fishing and fisheries.

§113-182.1. Fishery Management Plans.

§113-221.1. Proclamations; emergency review.

§113-228. Adoption of federal regulations.

Article 19 – Atlantic States Marine Fisheries Compact and Commission (§§113-251 through 258).

§143B-289.51 Marine Fisheries Commission – creation; purposes.

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

N.C. Marine Fisheries Commission Rules

15A NCAC 03H .0103 Proclamations, General

15A NCAC 03I .0102 Temporary Suspension of Rules

15A NCAC 03M .0512 Compliance with Fishery Management Plans

V. DISCUSSION

Consistent with the goal and intent of the N.C. FMP for Interjurisdictional Fisheries, a formal process should be developed as a tool that could be used to simplify the management of an interjurisdictional managed finfish species subject to both a State species-specific FMP and the N.C. FMP for Interjurisdictional Fisheries. The process should include a formal request by the

NCMFC and an impact and need analysis by the NCDMF. This would allow the NCMFC to have a formal process that is open, transparent, and ensures necessary considerations are made prior to implementing changes to the management structure for an interjurisdictional managed species.

State species-specific FMPs for interjurisdictional managed species are required to meet the minimum compliance requirements of a corresponding ASMFC or Council FMP. Reducing the number of FMPs in the management system for an interjurisdictional managed species would simplify the management process and eliminate duplicative staff time and resources spent maintaining the State species-specific FMP. Overall, management of the species itself would not change but the process through which management action is taken would be streamlined and become more efficient regarding the time spent to implement management actions by reducing the number of State FMPs the species is managed under from two to one. The NCMFC would continue to advise the division on the management of the interjurisdictional managed species (pursuant to N.C.G.S. §143B-289.51) and may continue to provide public comment to the ASMFC and the Councils during those comment periods. As previously mentioned, most ASMFC FMPs allow for the development of alternative management programs or conservation equivalency measures to tailor management measures to the specific fishery conditions within a state, if needed.

The process to retire a State species-specific FMP for an interjurisdictional managed species would require two actions by the NCMFC (described below) and result in a revision to the corresponding State species-specific FMP documenting the NCMFC's decision to retire the State species-specific FMP and rely solely on the N.C. FMP for Interjurisdictional Fisheries to manage the species. During the evaluation process to retire a State species-specific FMP, any existing regulations (either in rule or proclamation) implemented through the State species-specific FMP would be evaluated and the NCMFC would have to determine whether they should be kept, modified, or eliminated if the State species-specific FMP is retired. Any rule changes would be folded into the next annual rule cycle for completion. The revision may include a sunset clause where it becomes effective once rule changes are in effect. If the revision is approved by the NCMFC, the State species-specific FMP would be formally retired, meaning the FMP would no longer be reviewed or updated, and the species-specific FMP would be removed from the FMP Review Schedule. The NCMFC would continue to receive updates on the status of the species and the fishery in the annual FMP Review document since it would continue to be part of the N.C. FMP for Interjurisdictional Fisheries and be subject to the requirements of a corresponding ASMFC or Council FMP. The process listed below is proposed for retiring the State species-specific FMP for an interjurisdictional managed species.

Process to retire the State species-specific FMP of an interjurisdictional managed species

1. The NCDMF or NCMFC identifies a State species-specific FMP for an interjurisdictional managed species as a candidate to retire.

- a. The NCMFC passes a motion for the NCDMF to explore the advantages and disadvantages of retiring the State species-specific FMP for the interjurisdictional managed species of interest (**NCMFC Action 1**).
 - b. The NCDMF documents the process to retire the State species-specific FMP through a revision of that FMP.
 - c. The NCDMF requests the NCDEQ Secretary conditionally approve a revised FMP Review Schedule with the candidate species removed, contingent on final adoption by the NCMFC of the revision to the State species-specific FMP to retire the FMP. This step provides advance notice to the NCDEQ Secretary of the potential retirement of a State species-specific FMP and saves time by ensuring the FMP Review Schedule aligns simultaneously with the current inventory of State species-specific FMPs.
2. The NCDMF prepares the revision to the State species-specific FMP containing relevant management history, species status, advantages and disadvantages, ramifications (if any), and rationale for retiring the State species-specific FMP, rule changes needed (if any), and any other pertinent information.
 3. The NCDMF presents the draft revision to the NCMFC.
 - a. NCMFC votes to retire the State species-specific FMP (**NCMFC Action 2**).
 - b. If the vote is successful, the conditionally approved FMP Review Schedule becomes permanent.
 - c. The revision would become final FMP related document to the State species-specific FMP.

VI. PROPOSED MANAGEMENT OPTIONS

- 1) Status quo: do not establish a process to retire a State species-specific FMP for an interjurisdictional managed species.
 - + NCMFC retains the option to adjust management of the species in State waters through the existing State species-specific FMP.
 - Continues the presence of State species-specific FMPs where the NCDMF and NCMFC expend time and effort reviewing them despite alternative management not being possible or being able to achieve management changes through other existing processes.
 - Continues to duplicate effort between State, Council, and ASMFC staffs.
 - Keeps in place an unclear process for the public and NCMFC to retire a State species-specific FMP for interjurisdictional managed species.
- 2) Establish a process to retire a State species-specific FMP for interjurisdictional managed species.
 - + Eliminates the NCDMF and NCMFC expending time and effort reviewing FMPs despite alternative management not being possible or being able to achieve management changes through other existing processes.
 - + Eliminates duplicated effort between State, Council, and ASMFC staffs.

- + Provides a clear process for the public and NCMFC on how to retire a State species-specific FMP for interjurisdictional managed species.
- + Provides a foundation for a similar process to be incorporated into the NCMFC's FMP Guidelines for non-interjurisdictional managed species.
- + Decreases administrative burden and staff workload in the long-term, freeing up time to address other fisheries management priorities.
- Increases administrative burden and staff workload in the short-term.

VII. LITERATURE CITED

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