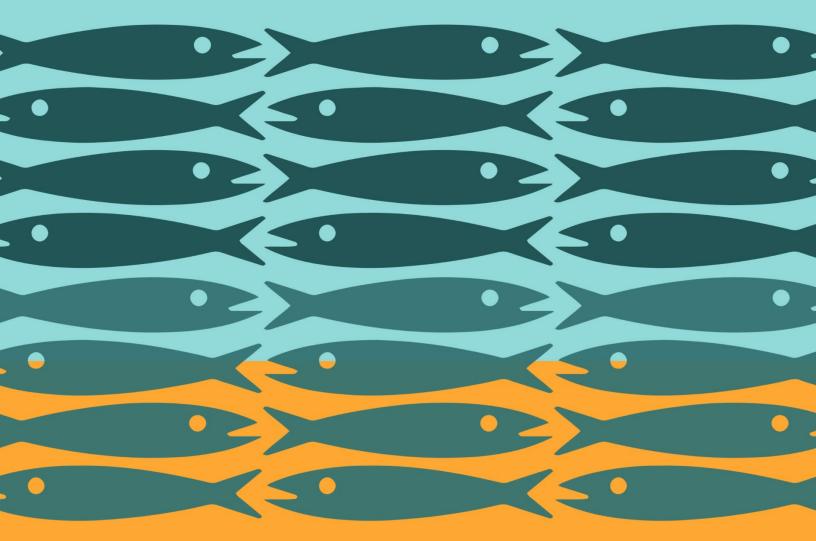
TELECONFERENCE VIA WEBINAR FEBRUARY 25-26, 2021



NORTH CAROLINA MARINE FISHERIES COMMISSION QUARTERLY BUSINESS MEETING

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Marine Fisheries Commission Business Meeting Agenda

Marine Fisheries Commission Business Meeting AGENDA

Teleconference via WebEx February 25-26, 2021

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).

Thursday, February 25th

9:00 a.m. Preliminary Matters

- Commission Call to Order* Rob Bizzell, Chairman
- Conflict of Interest Reminder
- Roll Call
- Approval of Agenda **
- Approval of Meeting Minutes**
- 9:30 a.m. Public Comment Period
- 10:00 a.m. Chairman's Report
 - Letters and Online Comments
 - Ethics Training and Statement of Economic Interest Reminder
 - 2021 Meeting Schedule
 - Commission Committee Assignments
 - Civil Penalties Update John Batherson, Col. Carter Witten
- 10:25 a.m. Committee Reports
 - Joint Meeting of the MFC Commercial Resources Fund Committee and the Funding Committee for the N. C. Commercial Fishing Resource Fund

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

****Probable Action Items**

Thursday, February 25th continued...

- 10:30 a.m. Director's Report John Batherson
 - CARES Act Update Dee Lupton
 - Informational Materials:
 - Atlantic States Marine Fisheries Commission
 - Mid-Atlantic Fishery Management Council Update
 - South Atlantic Fishery Management Council Update
 - Highly Migratory Species
 - Protected Resources Update
 - Observer Program
 - Incidental Take Permit Updates
 - Landings Updates
 - Rule Suspensions
- 11:00 a.m. Break

11:05 a.m. Recreational Hook and Line Modifications Issue Paper – Steve Poland

- Potential vote on preferred management options and associated proposed language for rulemaking**
- 12:30 p.m. Lunch Break
- 1:30 p.m. High Efficiency Gear Restrictions on Artificial Reefs in State Ocean Waters Jason Peters

 Vote on preferred management option and associated proposed language for rulemaking**
- 3:00 p.m. Break
- 3:05 p.m. Shellfish Lease Regulation in High Use Areas Jacob Boyd**
- 4:00 p.m. Coastal Habitat Protection Plan
 - Comments on CHPP Steering Committee Meeting- Commissioner Martin Posey
 - 2021 CHPP Development Update Anne Deaton, Casey Knight

Friday, February 26th

- 9:00 a.m. Discussion on "A Ten-Year Prescription for the Recovery of the Albemarle Sound/Roanoke River Striped Bass Stock" – Commissioner Kornegay
- 9:45 a.m. Fishery Management Plans
 - Status of ongoing plans Corrin Flora
 - Amendment 3 to the Southern Flounder FMP Mike Loeffler, Anne Markwith
 Vote on Commercial and Recreational Sector Harvest Allocations**

* Times indicated are merely for guidance. The commission will proceed through the agenda until completed. **Probable Action Items Marine Fisheries Commission Business Meeting Agenda

Friday, February 26th continued...

- Amendment 2 to the Estuarine Striped Bass FMP Charlton Godwin, Todd Mathes
 Scoping Period Overview
 - Vote to approve goal and objectives for Amendment 2 to the ESTB FMP**
 - Input on management strategies
- Amendment 2 to the Shrimp FMP Update Chris Stewart, Jason Rock, Dan Zapf
- 11:45 a.m. Break
- 11:50 a.m. Rulemaking Update Catherine Blum
 - 2020-2021 Annual Rulemaking Cycle
 - "Package B" Update (41 rules)
 - Classification of Shellfish Growing Waters and Laboratory Procedures (14 rules)
 - 15A NCAC 18A .0431, .0704, .0901-.0910, .0913, .0914 (readoption)
 - Rules with minor changes relating to standards for commercial shellfish sanitation and processing procedures (21 rules)
 15A NCAC
 18A 0140 0143 0146 0150 0154 0155 0159 0160 0163 0167
 - 18A .0140-.0143, .0146, .0150, .0154, .0155, .0159, .0160, .0163, .0167, .0 169-.0172, .0179, .0180, .0188-.0190 (readoption)
 - Shellfish Lease User Conflicts, per S.L. 2019-37 (3 rules) 15A NCAC 03O .0201, .0202, .0204 (readoption)
 - Shrimp FMP Amendment 1 Special Secondary Nursery Areas (2 rules) 15A NCAC 03R .0104 (amendment), .0105 (readoption)
 - Oyster Sanctuaries (1 rule)
 - 15A NCAC 03R .0117 (amendment)
 - Vote on final approval of amendment and readoption of "Package B" **
 - 2021–2022 Annual Rulemaking Cycle Preview
 - o "Package A"
 - o "Package B"
- 12:30 p.m. Issues from Commissioners
- 1:00 p.m. Meeting Assignments and Preview of Agenda Items for Next Meeting Lara Klibansky
- 1:10 p.m. Adjourn

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

^{**}Probable Action Items



NOVEMBER 2020 **MEETING MINUTES**

Marine Fisheries Commission Business Meeting Minutes Virtual Meeting via WebEx November 19-20, 2020

Due to COVID-19, the commission held a two-day business meeting via WebEx webinar on November 19-20. 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://files.nc.gov/ncdeq/Marine-Fisheries/mfc/mfc-meetings/mfc-november-2020/Chairman-s-Report-Package.pdf

The briefing book, presentations and audio from this meeting can be found at: <u>https://files.nc.gov/ncdeq/Marine-Fisheries/mfc/mfc-meetings/mfc-november-2020/November-2020-Briefing-Book.pdf</u>

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

BUSINESS MEETING - MOTIONS AND ACTIONS

On November 19 at 9 a.m. Chairman Rob Bizzell called the meeting to order and reminded commissioners of their conflict of interest and ethics requirements.

The following commission members were in attendance: Rob Bizzell-Chairman, Mike Blanton, Doug Cross, Tom Hendrickson, James Kornegay, Robert McNeill, Dr. Martin Posey Tom Roller and Sam Romano.

Motion by Sam Romano to approve the meeting agenda with the omission of the small mesh gill net issue paper.

Second by Mike Blanton.

Roll Call Vote				
Commissioner	Aye	Nay	Abstain	Absent
Doug Cross	Х			
Mike Blanton	Х			
Tom Hendrickson		Х		
James Kornegay		Х		
Robert McNeill		Х		
Dr. Martin Posey		Х		
Tom Roller		Х		

Sam Romano	Х		
Chairman Rob Bizzell		Х	

Motion fails 3-6

Motion by Sam Romano to approve the agenda with the omission of the vote on small mesh gill net options.

Second by Mike Blanton

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross	X					
Mike Blanton	X					
Tom Hendrickson	X					
James Kornegay		Х				
Robert McNeill		X				
Dr. Martin Posey		X				
Tom Roller		X				
Sam Romano	Х					
Chairman Rob Bizzell		X				

Motion fails 4-5

Motion by Tom Roller to approve the agenda.

Second by Robert McNeill

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross	Х					
Mike Blanton		Х				
Tom Hendrickson	Х					
James Kornegay	Х					
Robert McNeill	Х					
Dr. Martin Posey	Х					
Tom Roller	Х					
Sam Romano		Х				
Chairman Rob Bizzell	X					

Motion carries 7-2

Motion by Pete Kornegay to approve the minutes from the August 20, 2020 meeting minutes.

Second by Martin Posey

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross	Х					
Mike Blanton	Х					
Tom Hendrickson	Х					
James Kornegay	Х					
Robert McNeill	Х					
Dr. Martin Posey	Х					
Tom Roller	Х					
Sam Romano	X					
Chairman Rob Bizzell	X					

Motion carries unanimously

Public Comment Period

A public comment session was held beginning at 9:30 a.m. The following individuals registered to speak during the public comment session:

Bill Gorham: Due to technical difficulties, Mr. Gorham was unable to speak during the public comment session.

David Sneed, Executive Director of the Coastal Conservation Association North Carolina, stated CCA NC was disappointed in that there was no option to remove small mesh statewide. We saw no data about what removal of these nets would mean on the economy and the well-being of striped bass and other species. The Commission should have been presented with the data on what removal of nets completely from our estuarine waters would mean to the recovery of troubled fish species that continue to be overfished and their recovery handicapped by the continued cryptic mortality from our gill net fisheries. There is also no plan for dealing with the impact from latent commercial fishing licenses. How can the Commission properly manage the gill net fisheries when they do not have a complete picture of the impacts due to unreported catch from 60% of SCFL holders? The Division staff concludes their report with, "The DMF's Gill Net Work Group requests that the MFC provide substantive feedback on the identified issues and potential management actions for

further development and refinement. The Work Group acknowledges that the list of issues identified is not exhaustive and that other issues may arise through discussion by the MFC." The Commission should use this opportunity to consider the removal of all nets from our inshore waters to aid in the recovery of our troubled fish stocks. Of the stated goals of this exercise, it would be the most efficient and direct way to address, 1) the streamlining and simplification of the rules that regulate small mesh gill nets, (2) the reduction of bycatch, (3) greater flexibility with managing harvest of quota managed fisheries, and (4) eliminating conflict between gill net users and other stakeholders. Regarding federal council appointments, CCA NC continues to oppose former division employees over representatives of the fishing public.

Chris Elkins, representing CCA, it was disappointing to see the lack of small mesh gill net options from the division that included complete removal of the gear statewide as well as an analysis of the ecologic and biologic impacts of a removal. He recommends DMF do this study before going further down this road. The recovery of striped bass and gill nets are linked. The presence of gill nets is incompatible with the expansion of striped bass to historical numbers and their geographic range. Gill nets should be phased out from the Albemarle Sound except for the blue catfish fishery. Gill nets should be phased out from the CSMA to include the striped bass historic ranges. For the Central Region it would be east of the tie down line to be determined. For the Southern region, the new line would be below the city of Wilmington to be determined. We need better stock assessments. They are only as good as the input data and despite the competent, hardworking, and underpaid biologists and staff at DMF, you cannot make a purse out of a sow's ear. Without a total account of effort by latent licenses, the data are inadequate. Using data from the observer program which does not represent various fisheries, results in unrepresented data. Taken together, stock assessments underestimate harvest, dead discards, and interaction with protected species. Until this is resolved the decline of our public trust resources will continue.

Chairman's Report

Chairman Bizzell stated that the letters and online comments are in the briefing book for review. Commissioners were reminded they are required to take ethics training within six months of their appointment and every two years thereafter. Commissioners were also reminded of the annual requirement to submit a Statement of Economic Interest form by April 15 to the State Board of Elections and Ethics Enforcement.

It was determined the 2021 meeting schedule would be: Feb. 17-19 May 19-21 Aug. 25-27

Nov. 17-19

It is possible the February 2021 meeting may also be conducted via WebEx due to COVID 19.

Chairman Bizzell pointed to the Commission Committee Assignments in the briefing book.

Chairman Bizzell reminded the commission of their ethical duty and when they observe someone in their peer group breaking laws and not following the rules, they have an obligation to report it.

Committee Reports

Chris Batsavage gave a verbal overview of the Nominating Committee meeting that took place on October 16 to consider slates of nominees for the North Carolina seats on the Federal Fisheries Management Councils.

Motion by Martin Posey to approve the following nominees for the South Atlantic Fishery Management Council and the Mid-Atlantic Fishery Management Council at-large seats:

South Atlantic

- Jess Hawkins, retired fisheries manager, educator, and ecotour operator from Morehead City
- Chris Kimrey, charter boat captain from Morehead City
- Bob Lorenz, recreational angler and scuba diver from Wilmington
- Tom Roller, charter boat captain from Beaufort

Mid-Atlantic

- Sara Winslow, retired fisheries biologist and manager from Hertford and the current N.C. at-large member on the Mid-Atlantic Fishery Management Council
- Anna Beckwith, guide service owner from Morehead City
- Bill Gorham, fishing lure manufacturer owner from Southern Shores

Second by Doug Cross

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross	Х					
Mike Blanton	Х					
Tom Hendrickson	Х					
James Kornegay	Х					
Robert McNeill	Х					
Dr. Martin Posey	Х					
Tom Roller			Х			
Sam Romano			Х			
Chairman Rob Bizzell	X					

Motion carries 7-0 with 2 abstentions. Commissioner Roller abstained from the discussion and vote on this issue.

Director's Report

Division of Marine Fisheries Director Steve Murphey provided the commission with an update on division activities occurring since the November 2020 business meeting, including:

- An update on the impacts of COVID-19 on DMF operations and planning.
- An update on the CARES Act Fisheries Economic Relief Program including an update on the number of applications distributed by DMF, the number received so far, and next steps in the process.
- A status report on the Hurricane Florence funding. Currently DMF proposal is under review by NOAA and then the U.S. Office of Management and Budget. Once final approval is received, the plan will be implemented.
- A review of the small mesh gill net issue, including the two pronged approach laid out by the director during the February 2020 meeting, that included the use of proclamation to address yardage of small mesh nets and attendance which was completed in March of 2020, and a longer process to develop an information paper to inform rulemaking by the commission. Made specific requests of the MFC for consideration during the gill net discussions.
- Provided an update on Southern Flounder regulation in other states and the Southern Flounder Satellite Tagging work currently underway and funded by the CFRF.
- An overview of staff accomplishments, appointments, publications and new hires and retirees.

Small Mesh Gill Net Rules Modification Information Paper

Steve Poland, the Division's Executive Assistant for Councils and Kathy Rawls, the Division's Fisheries Management Section Chief, gave a presentation on the small mesh gill net rules modification information paper. He provided an overview of the process and presented each of the four issues along with a list of options developed by DMF. The four issues developed by the DMF are: 1) Implement yardage limits for small mesh gill nets <4 inch inside stretch mesh; 2) Modify attendance requirements south of Albemarle Sound; 3) Specify when nets may be used and where they may be set; and 4) Modify the minimum allowable mesh size of gill nets. In addition to presenting the issues and associated options, he requested specific feedback from the MFC including input on options to further develop or remove, to provide additional options for consideration, and to provide prioritization for rule making.

To view the presentation, go to:

https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/1-Small-Mesh-Gill-Net-Rules-Modification.pdf

Issue: Implement yardage limits for small mesh gill nets <4 inch Inside Stretch Mesh (ISM)

Motion by Doug Cross to not pick a preferred option at this time, and that we ask DMF to address this issue from split geographical areas, that the specific needs in each of these areas so far as gear and gear amounts, including gill nets and hook and line, be looked at, and to look at gear amounts that are species specific regarding to each fishery, and to ask for a recommendation from stakeholder groups that include both commercial and recreational users.

Second by Mike Blanton

Motion amended by Doug Cross to not pick a preferred option at this time, that we ask the DMF to give us data on what gear and the amounts of gear are actually being used at directed species now commercially and a direct correlating data on the recreational fishery from the same areas.

Second by Mike Blanton

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross	Х					
Mike Blanton	X					
Tom Hendrickson	X					
James Kornegay			Х			
Robert McNeill		Х				
Dr. Martin Posey	Х					
Tom Roller		Х				
Sam Romano	X					
Chairman Rob Bizzell		Х				

Motion carries 5-3 with one abstention

Issue: Modify attendance requirements south of Albemarle Sound

Motion by Tom Roller to select options 4, 8, and 9 as the preferred management options.

Second by Robert McNeill

Motion by Martin Posey to amend the previous motion by adding option 2 to the list. Motion accepted as friendly amendment by Tom Roller and Robert McNeill

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross		Х				
Mike Blanton		Х				
Tom Hendrickson		Х				
James Kornegay	Х					
Robert McNeill	Х					
Dr. Martin Posey	Х					
Tom Roller	Х					
Sam Romano		Х				
Chairman Rob Bizzell	Х					

Motion as amended: to select options 2, 4, 8, and 9 as the preferred management options.

Motion carries 5-4

Motion by Mike Blanton to add an option for Dec. 1-April 30 exception to any statewide attendance requirement.

Second by Sam Romano

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross	X					
Mike Blanton	X					
Tom Hendrickson	Х					
James Kornegay		Х				
Robert McNeill		Х				
Dr. Martin Posey	X					
Tom Roller		Х				
Sam Romano	Х					
Chairman Rob Bizzell			X			

Motion carries 5-3 with one abstention.

Issue: Specify when nets may be used and where they may be set

Motion by Tom Roller to consider options 1, 2, 5, 6, and 8 as preferred management. Second by Pete Kornegay

Roll Call Vote						
Commissioner	Aye	Nay	Abstain	Absent		
Doug Cross		Х				
Mike Blanton		X				
Tom Hendrickson		Х				
James Kornegay	Х					
Robert McNeill	Х					
Dr. Martin Posey	Х					
Tom Roller	Х					
Sam Romano		X				
Chairman Rob Bizzell	Х					

Motion carries 5-4

Motion by Doug Cross to consider option 7 as preferred management.

Second by Tom Hendrickson

Motion by Mike Blanton to amend the previous motion to add an option for an exemption to set time requirements from Dec. 1-April 30.

Motion accepted by Doug Cross and Tom Hendrickson.

Amended motion: to consider option 7 as preferred management and to add an option for an exemption to set time requirements from Dec. 1-April 30.

Roll Call Vote				
Commissioner	Aye	Nay	Abstain	Absent
Doug Cross	X			
Mike Blanton	X			
Tom Hendrickson	X			
James Kornegay			X	
Robert McNeill		Х		
Dr. Martin Posey	X			

Tom Roller		Х	
Sam Romano	Х		
Chairman Rob Bizzell	Х		

Motion carries 6-2 with one abstention

Issue: Modify the minimum allowable mesh size of gill nets

Motion by Mike Blanton to keep all four options as preferred management.

Second by Pete Kornegay

Roll Call Vote					
Commissioner	Aye	Nay	Abstain	Absent	
Doug Cross	Х				
Mike Blanton	Х				
Tom Hendrickson	Х				
James Kornegay	Х				
Robert McNeill	Х				
Dr. Martin Posey	Х				
Tom Roller	Х				
Sam Romano		Х			
Chairman Rob Bizzell	Х				

Motion carries 8-1

<u>Issue: Implement vardage limits for small mesh gill nets <4 inch Inside Stretch</u> <u>Mesh (ISM), continued</u>

Motion by Sam Romano to send all the options for all the issues to advisory committees for input, with preferred measures from the MFC indicated.

Second by Doug Cross

Roll Call Vote					
Commissioner Aye Nay Abstain Absent					
Doug Cross	Х				
Mike Blanton	Х				
Tom Hendrickson	X				

James Kornegay	Х		
Robert McNeill	Х		
Dr. Martin Posey	Х		
Tom Roller	Х		
Sam Romano	Х		
Chairman Rob Bizzell	Х		

Motion carries unanimously

Motion by Tom Roller to consider options 8 and 9 for the yardage limits.

Second by Robert McNeill

Roll Call Vote					
Commissioner	Aye	Nay	Abstain	Absent	
Doug Cross		Х			
Mike Blanton	Х				
Tom Hendrickson	Х				
James Kornegay	Х				
Robert McNeill	Х				
Dr. Martin Posey		Х			
Tom Roller	Х				
Sam Romano		Х			
Chairman Rob Bizzell	Х				

Motion carries 6-3

Motion by Mike Blanton to add an option for an exemption to yardage limits up to 2,000 yards that may be addressed by proclamation from Dec. 1-April 30.

Second by Sam Romano

Roll Call Vote				
Commissioner	Aye	Nay	Abstain	Absent
Doug Cross	Х			
Mike Blanton	Х			
Tom Hendrickson	Х			
James Kornegay		Х		
Robert McNeill		Х		
Dr. Martin Posey	X			

Tom Roller		Х	
Sam Romano	Х		
Chairman Rob Bizzell		Х	

Motion carries 5-4

<u>Gear Restrictions as a Management Tool for Artificial Reefs in State Ocean Waters</u> <u>Information Paper (SMZs)</u>

Jason Peters, the Division's Enhancement Program Supervisor, gave a presentation on High Efficiency Gear Restrictions on Artificial Reefs in State Ocean Waters Information Paper (SMZs). He provided an overview of the issue and provided the MFC with two management options for consideration

To view the presentation, go to:

https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/2-Gear-Restrictions-as-a-Management-Tool-for-Artificial-Reefs-in-State-Ocean-Waters.pdf

Motion by Tom Roller to begin the rulemaking process to protect all species from highly efficient gear on state ocean artificial reefs.

Second by Martin Posey

Roll Call Vote					
Commissioner	Aye	Nay	Abstain	Absent	
Doug Cross		X			
Mike Blanton			Х		
Tom Hendrickson		X			
James Kornegay	X				
Robert McNeill	X				
Dr. Martin Posey	Х				
Tom Roller	Х				
Sam Romano		Х			
Chairman Rob Bizzell	X				

Motion carries 5-3 with one abstention

Prohibiting Repacking of Foreign Crab Meat in North Carolina Issue Paper

Shannon Jenkins, the Division's Shellfish Sanitation and Recreational Water Quality Section Chief gave a presentation on the Prohibiting Repacking of Foreign Crab Meat in North Carolina Issue Paper. This included an overview of the issue in general and the management options and associated proposed language for rulemaking.

To view the presentation, go to:

https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/3-Prohibiting-Repacking-of-Foreign-Crab-Meat-in-North-Carolina-Issue-Paper.pdf

Motion by Doug Cross to choose option 2 on the crab meat repacking issue, as listed: Adopt MFC Rule 15A NCAC 03L .0210 that would prohibit the repacking of foreign crab meat. Also amend references to foreign crab meat in MFC Rules 15A NCAC 18A .0136 and .0173.

,				
	Roll Call	Vote	7	
Commissioner	Aye	Nay	Abstain	Absent
Doug Cross	X			
Mike Blanton	Х			
Tom Hendrickson	Х			
James Kornegay	X			
Robert McNeill	X			
Dr. Martin Posey	Х			
Tom Roller	X			
Sam Romano	X			
Chairman Rob Bizzell	X			

Second by Tom Hendrickson

Motion carries unanimously

Coastal Habitat Protection Plan

Commissioner Posey, chair of the CHPP Steering Committee, provided comments from the October 26th CHPP Steering Committee meeting. This is the year that we are revising the CHPP for the five-year plan. Habitats are essential for juveniles and this is the procedure to help coordinate various agencies within DEQ to help protect the habitat and enhance some of these critical early stages. Due to the complex nature of the issue papers being developed requiring increased coordination and review between agencies, the CHPP timeline has been extended for a few additional months which will be discussed during the forthcoming presentation. Review of the amendments will still be completed within the statutory required five-year time frame at the end

of 2021. A wetlands workshop series was held virtually, this included three virtual meetings bringing together the technical community to provide input and guidance focusing on mapping and monitoring, threats conservation, and restoration and living shorelines. Many good ideas came of the workshops. A wetlands protection and restorations issue paper along with reducing inflow infiltration, water quality, and habitat issue papers are in the process of being drafted and reviewed. They will be presented to the CHPP Steering Committee with recommendations in late winter/early spring and will eventually come to the various commissions for comment and later approval. The Submerged Aquatic Vegetation Protection Plan and Restoration Issue Paper recommendations were reviewed and edited by the division directors. Three presentations were given at the last CHPP Steering Committee to provide the commissioners background to several issues.

Casey Knight, the Division's Coastal Habitat Biologist, gave a presentation on the 2021 Coastal Habitat Protection Plan Development.

To view the presentation, go to: <u>https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/5-Coastal-Habitat-Protection-Plan.pdf</u>

2019 Landings Overview

Brandi Salmon, the Division's License and Statistics Section Chief gave a presentation on the 2019 North Carolina Landings and Harvest Trends.

To view the presentation, go to: https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/4-2019-Landings-Overview.pdf

Fishery Management Plans

Corrin Flora, the Division's Fishery Management Plan Coordinator provided a status update of ongoing FMPs which included southern flounder, shrimp, estuarine striped bass, spotted seatrout, and striped mullet.

To view the presentation, go to: <u>https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/6-FMP-Status-Update.pdf</u>

Southern Flounder Fishery Management Plan Amendment 3 Update

Mike Loeffler and Anne Markwith, the Division's Southern Flounder staff leads provided an update on the continued development of Amendment 3. They provided an overview of the recent Southern Flounder FMP AC workshops, and reviewed the potential management strategies and measures, as well as the timeline moving forward.

To view the presentation, go to:

https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/7-Southern-Flounder-Development-of-Amendment-3-Update.pdf

Motion by Robert McNeill to consider commercial/recreational allocations in the Southern Flounder FMP Amendment 3 of 70/30, 65/35, 60/30 with 10% allotment for gigging, 60/40, and 50/50.

Roll Call Vote					
Commissioner	Aye	Nay	Abstain	Absent	
Doug Cross	X				
Mike Blanton	X				
Tom Hendrickson	Х				
James Kornegay			X		
Robert McNeill	X				
Dr. Martin Posey	Х				
Tom Roller	X				
Sam Romano			Х		
Chairman Rob Bizzell	Х				

Second by Tom Roller

Motion carries 7-0 with 2 abstentions

Estuarine Striped Bass Fishery Management Plan Update

Yan Li, the Division's Stock Assessment Scientist, an overview on the evaluation of Central Southern Management Area Striped Bass Stocks in North Carolina. She reviewed the data collection methods, a summary of analyses used to evaluate this stock, and provided research recommendations.

To view the presentation, go to: https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/9-Evaluationof-Central-Southern-Management-Area--CSMA--Striped-Bass-Stocks-in-North-Carolina--2020.pdf Laura Lee, the Division's Senior Stock Assessment Scientist, and Charlton Godwin, the Division's Striped Bass FMP Co-Lead, gave a presentation on the assessment of the Albemarle Sound-Roanoke River Striped Bass in North Carolina. This included the

To view the presentation, go to: <u>https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/9-Evaluation-of-</u> Central-Southern-Management-Area--CSMA--Striped-Bass-Stocks-in-North-Carolina--2020.pdf

Commissioner Kornegay gave a verbal presentation on a 10-year prescription for recovery of the Albemarle Sound/Roanoke River Striped Bass stock.

To listen to the presentation, go to Nov. 20 Meeting Audio 2:26:31 time stamp: <u>https://deq.nc.gov/about/divisions/marine-fisheries/marine-fisheries-commission/marine-fisheries-commission-meetings#quarterly-business-meeting---november-19---20,-2020</u>

Rulemaking Update

Catherine Blum, the Division's Rulemaking Coordinator, presented information and updates on the 2020-2021 rulemaking cycle. She also provided a preview for the upcoming 2021-2022 Rulemaking Cycle.

To view the presentation, go to: <u>https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/10-Rulemaking-Update.pdf</u>

Motion by Tom Hendrickson to approve readoption of 15A NCAC .3401-.3407 as published in the *N.C. Register*, per G.S. 150B-21.3A.

Second by Martin Posey

Roll Call Vote					
Commissioner	Aye	Nay	Abstain	Absent	
Doug Cross	Х				
Mike Blanton	Х				
Tom Hendrickson	Х				
James Kornegay	X				
Robert McNeill	X				
Dr. Martin Posey	X				
Tom Roller	X				
Sam Romano	X				

Chairman Rob Bizzell	Х		

Motion carries unanimously.

Rule Suspensions

Kathy Rawls, the Division's Fisheries Management Section Chief provided a presentation on the NC Marine Fisheries Commission Rule Suspensions.

To view the presentation, go to:

https://files.nc.gov/ncdeq/Marine-Fisheries/11-2020-mfc-meeting/presentations/11-Rule-Suspensions.pdf

Motion by Martin Posey to approve the continued suspension of portions of rule 15A NCAC 03M .0301 (b)(2) and (3)(A)(B) King Mackerel.

Roll Call Vote					
Commissioner	Aye	Nay	Abstain	Absent	
Doug Cross	X				
Mike Blanton	X				
Tom Hendrickson	X				
James Kornegay	X				
Robert McNeill	X				
Dr. Martin Posey	X				
Tom Roller	X				
Sam Romano	X				
Chairman Rob Bizzell	X				

Second by Tom Hendrickson

Motion carries unanimously.

Issues from Commissioners

Commissioner Romano stated that the email he sent the night before the meeting was regarding diamondback terrapins was a result of experiments this summer that were performed with researcher, Amanda Willard featuring two excluder designs. Would like to get some feedback and would like to use the new designs in the upcoming season. Kathy Rawls will have Dan Zapf reach out to Commissioner Romano regarding a meeting.

Commissioner Roller stated that he spoke with staff about crab pot clean up and wanted to reiterate his interest. Regarding the Southern Flounder Amendment, he is curious if there will be any mechanisms to create different licenses or permits because of the misuse of latent licenses. He asked when North Carolina will be implementing the use of circle hooks for striped bass in the Atlantic Ocean.

Meeting Assignments and Preview of Agenda Items for Next Meeting

Lara Klibansky reviewed the meeting assignments and previewed the Feb. MFC business meeting agenda.

The meeting adjourned at 12:48 p.m.

CHAIRMAN'S REPORT

LETTERS & ONLINE COMMENTS

ETHICS TRAINING & SEI REMINDER

2021 PROPOSED MEETING SCHEDULE

COMMISSION COMMITTEE ASSIGNMENTS



LETTERS & ONLINE COMMENTS

GILL NETS

See below...Thanks!

Lara K. J. Klibansky Marine Fisheries Commission Liaison Executive Assistant for Councils and Commissions NC Division of Marine Fisheries Department of Environmental Quality



252 515 6020 mobile (direct) 252 726 7021 main office Lara.Klibansky@ncdenr.gov

P.O. Box 769 3441 Arendell Street Morehead City, NC 28557

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties

From: Bizzell, Rob <r.bizzell.mfc@ncdenr.gov>
Sent: Sunday, January 24, 2021 5:30 PM
To: Klibansky, Lara <Lara.Klibansky@ncdenr.gov>
Subject: Fwd: [External] Fill netting in NC creeks

For the books

Get Outlook for iOS

From: Roger Qualman
Sent: Sunday, January 24, 2021 3:53 PM
To: Bizzell, Rob
Subject: [External] Fill netting in NC creeks

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to Report Spam.<<u>mailto:report.spam@nc.gov</u>>

Hello Rob-What will it take to eliminate gill netting in North Carolina Creeks? This is severely impacting fish populations. Thank You, Roger Qualman

Sent from my iPhone

FYI see below Lara K. J. Klibansky Marine Fisheries Commission Liaison Executive Assistant for Councils and Commissions NC Division of Marine Fisheries Department of Environmental Quality



252 515 6020 mobile (direct) 252 726 7021 main office Lara.Klibansky@ncdenr.gov

P.O. Box 769 3441 Arendell Street Morehead City, NC 28557

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties

From: Bizzell, Rob <r.bizzell.mfc@ncdenr.gov>
Sent: Tuesday, January 19, 2021 10:44 AM
To: Klibansky, Lara <Lara.Klibansky@ncdenr.gov>
Subject: For the books

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to <u>Report Spam.</u>

Hi, found your contact information after I sent this email to NC Wildlife enforcement. I'm not suggesting North Carolina ban gill nets all together, just that we reduce the impact of this practice. We need to take a close look at commercial recreational equipment and locations that allow these techniques. Restricting the use of gill nets inland of the Queens Creek Rd bridge would be a great start. There are places where the creek is no more than 30 feet wide at low tide and any wildlife transiting the waterway is indiscriminately killed or injured. Please contact me if there is any way I can help.

Thanks

From:	Thomas Newman
То:	<u>Gillikin, Dana</u>
Subject:	[External] Fwd: Small mesh gillnet rules modification
Date:	Thursday, November 19, 2020 9:43:54 AM

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to <u>report.spam@nc.gov</u>

I just wanted to forward this to you to maybe be included in with late meeting notes.

Sent from my iPhone

Begin forwarded message:

From: Thomas Newman Date: November 18, 2020 at 17:25:42 EST To: r.bizzell.mfc@ncdenr.gov Subject: Small mesh gillnet rules modification

I apologize for not submitting my comment in time online. I did not realize I also had to sign up early to speak as well.

I feel like this is an issue that was only brought up solely because of conflict issues.

The state and federal government have plenty of data records; federal observer trips, dockside monitoring, fish house trip tickets, vessel trip tickets all in relation to small mesh gillnet. Our data speaks for itself. We have low discards and low endangered species interactions. Small mesh gillnets is one of the cleanest fisheries in our state. It provides most of the less expensive fish lower and middle income families buy.

The limits already imposed on the small mesh gillnet fisheries earlier this year most impacted fishermen who fish small mesh gillnet full time. We had data that showed we used more gear than we were given through proclamation this spring, but we were only given a 1500 float net limit anyway.

There was supposed to be a study group, which was supposed to include myself, about this issue over the summer but due to Covid-19 it was reduced to a 30 minute phone call with Steve Poland. Steve also contacted other fishermen as well but it's not easy for one man working on a task this big with as many different areas and styles we fish in our state. Hopefully we can get a study group together to talk about this before this moves forward.

Please contact me if you want to know more or need any clarification. I am sending this email to all persons on the commission.

Thank you for your time, Thomas Newman

Sent from my iPhone







NORTH CAROLINA MARINE FISHERIES COMMISSION DEPARTMENT OF ENVIRONMENTAL QUALITY

Camden

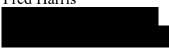
ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

January 21, 2021

Fred Harris



Dear Mr. Harris:

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY

COMMISSIONERS DR. MARTIN POSEY

DR. MARTIN POSE Wilmington ROBERT McNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

I am pleased to welcome you as a member of the Shrimp Fishery Management Plan Advisory Committee, which makes recommendations to the Division of Marine Fisheries.

The committee is comprised of 7 members representing the scientific, recreational, commercial, and conservation communities. Meetings usually last two or three hours, and are scheduled only when the commission refers an issue to the committee. Also, please be aware that advisers are required to attend at least 75 percent of the meetings of their committee.

Please find an orientation package enclosed. If you have any questions concerning your orientation to the advisory committee process, feel free to contact Dana Gillikin at <u>Dana.Gillikin@ncdenr.gov</u> or 252-808-8022.

Speaking for the Marine Fisheries Commission, I want to thank you for your interest in managing our state's resources. I look forward to seeing you at a meeting in the near future.

Sincerely,

2. Rober Byge

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky



NORTH CAROLINA MARINE FISHERIES COMMISSION **DEPARTMENT OF ENVIRONMENTAL QUALITY**

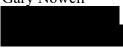
ROY COOPER Governor

MICHAEL S. REGAN Secretary

> **ROB BIZZELL** Chairman

January 21, 2021

Gary Nowell



Dear Mr. Nowell:

COMMISSIONERS

MIKE BLANTON Elizabeth City **DOUG CROSS** Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden

DR. MARTIN POSEY Wilmington **ROBERT McNEILL** Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

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Sincerely,

2. Rober Byge

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

Marine Fisheries Commission cc: Lara Klibansky



NORTH CAROLINA MARINE FISHERIES COMMISSION **DEPARTMENT OF ENVIRONMENTAL QUALITY**

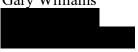
ROY COOPER Governor

MICHAEL S. REGAN Secretary

> **ROB BIZZELL** Chairman

January 21, 2021

Gary Williams



Dear Mr. Williams:

COMMISSIONERS MIKE BLANTON

Elizabeth City **DOUG CROSS** Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden

DR. MARTIN POSEY Wilmington **ROBERT McNEILL** Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

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W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

Marine Fisheries Commission cc: Lara Klibansky



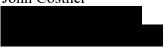
ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

January 21, 2021

John Costner



Dear Mr. Costner:

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon

PETE KORNEGAY

Camden

DR. MARTIN POSEY Wilmington ROBERT MCNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

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Sincerely,

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W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky



Zebulon

Camden

PETE KORNEGAY

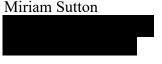
ROY COOPER Governor

MICHAEL S. REGAN Secretary

> **ROB BIZZELL** Chairman

January 21, 2021

Miriam Sutton



Dear Ms. Sutton:

MIKE BLANTON Elizabeth City **DOUG CROSS** Grantsboro TOM HENDRICKSON

COMMISSIONERS

DR. MARTIN POSEY Wilmington **ROBERT McNEILL** Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

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Sincerely,

2. Rober Byge

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

Marine Fisheries Commission cc: Lara Klibansky



Zebulon

Camden

PETE KORNEGAY

ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

January 21, 2021

Rick Sasser

RICK Sassel

Dear Mr. Sasser:

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON

COMMISSIONERS

DR. MARTIN POSEY Wilmington ROBERT MCNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

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Sincerely,

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W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky



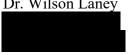
ROY COOPER Governor

MICHAEL S. REGAN Secretary

> **ROB BIZZELL** Chairman

January 21, 2021

Dr. Wilson Laney



Dear Dr. Laney:

NORTH CAROLINA MARINE FISHERIES COMMISSION **DEPARTMENT OF ENVIRONMENTAL QUALITY**

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden

COMMISSIONERS

DR. MARTIN POSEY Wilmington **ROBERT McNEILL** Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

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Speaking for the Marine Fisheries Commission, I want to thank you for your interest in managing our state's resources. I look forward to seeing you at a meeting in the near future.

Sincerely,

2. Paler Byge

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

Marine Fisheries Commission cc: Lara Klibansky



ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

January 22, 2021

Louis Ray Brown, Jr.

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden

COMMISSIONERS

DR. MARTIN POSEY Wilmington ROBERT McNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

Dear Mr. Brown:

Thank you for your application to serve as an adviser on the Shrimp Fishery Management Plan Advisory Committee. Unfortunately, I am unable to appoint you to the committee at this time; however, please do not be discouraged from participating in the process as a member of the public. Your input is invaluable, and I encourage you to attend the committee meetings.

Please visit the Division of Marine Fisheries website at <u>www.ncfisheries.net</u> for meeting schedules, proclamations, fisheries hot topics, and various fishing information. You may also contact Dana Gillikin at 252-808-8022 for meeting information.

Again, thank you for your interest in the conservation of our state's resources.

Sincerely,

2. Rober Bigel

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky



ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

January 21, 2021

Mark Hewett

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden

COMMISSIONERS

DR. MARTIN POSEY Wilmington ROBERT McNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

Dear Mr. Hewett:

Thank you for your application to serve as an adviser on the Shrimp Fishery Management Plan Advisory Committee. Unfortunately, I am unable to appoint you to the committee at this time; however, please do not be discouraged from participating in the process as a member of the public. Your input is invaluable, and I encourage you to attend the committee meetings.

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Again, thank you for your interest in the conservation of our state's resources.

Sincerely,

2. Rober Bigel

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky



ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

January 21, 2021

Byron Phipps



Dear Mr. Phipps:

Thank you for your application to serve as an adviser on the Shrimp Fishery Management Plan Advisory Committee. Unfortunately, I am unable to appoint you to the committee at this time; however, please do not be discouraged from participating in the process as a member of the public. Your input is invaluable, and I encourage you to attend the committee meetings.

Please visit the Division of Marine Fisheries website at <u>www.ncfisheries.net</u> for meeting schedules, proclamations, fisheries hot topics, and various fishing information. You may also contact Dana Gillikin at 252-808-8022 for meeting information.

Again, thank you for your interest in the conservation of our state's resources.

Sincerely,

2. Rober Byge

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky

COMMISSIONERS

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden DR. MARTIN POSEY Wilmington ROBERT MCNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington



ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

January 21, 2021



MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden

COMMISSIONERS

DR. MARTIN POSEY Wilmington ROBERT McNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

Dear Mr. Seigler:

Thank you for your application to serve as an adviser on the Shrimp Fishery Management Plan Advisory Committee. Unfortunately, I am unable to appoint you to the committee at this time; however, please do not be discouraged from participating in the process as a member of the public. Your input is invaluable, and I encourage you to attend the committee meetings.

Please visit the Division of Marine Fisheries website at <u>www.ncfisheries.net</u> for meeting schedules, proclamations, fisheries hot topics, and various fishing information. You may also contact Dana Gillikin at 252-808-8022 for meeting information.

Again, thank you for your interest in the conservation of our state's resources.

Sincerely,

2. Rober Bigel

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky



ROY COOPER Governor

MICHAEL S. REGAN Secretary

> ROB BIZZELL Chairman

December 11, 2020

Thomas Newman

MIKE BLANTON Elizabeth City DOUG CROSS Grantsboro TOM HENDRICKSON Zebulon PETE KORNEGAY Camden

COMMISSIONERS

DR. MARTIN POSEY Wilmington ROBERT McNEILL Wilmington TOM ROLLER Beaufort SAM ROMANO Wilmington

Dear Mr. Newman:

I am pleased to welcome you as a member of the Northern Regional Advisory Committee, which makes recommendations to the N.C. Marine Fisheries Commission on various fisheries issues.

The committee is currently comprised of 10 members representing the scientific, recreational, commercial, and conservation communities. Meetings usually last two or three hours, and are scheduled only when the commission refers an issue to the committee. Also, please be aware that advisers are required to attend at least 75 percent of the meetings of their committee.

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Speaking for the Marine Fisheries Commission, I want to thank you for your interest in managing our state's resources. I look forward to seeing you at a meeting in the near future.

Sincerely,

2. Rober Byge

W. Robert Bizzell, Chairman N.C. Marine Fisheries Commission

WB/dg

cc: Marine Fisheries Commission Lara Klibansky



REPACKAGING FOREIGN CRAB MEAT

From: To: Subject: Date:	Billionito. Lara Gillion, Dana Fuel: [Bearma] Hot: Thumatoly, January, 2,2011.508:23 PM
Please see Ro Get <u>Outlook f</u>	bs email and the attached letter below for inclusion with the Feb business meeting materials. <u>or iOS</u>
From: Bizzell, F	tob <r.bizzell.mfc@ncdenr.gov></r.bizzell.mfc@ncdenr.gov>
Sent: Thursday	, January 7, 2021 12:54:36 PM
To: Klibansky,	.ara <lara.klibansky@ncdenr.gov>; Maier, Shawn <smaier@ncdoj.gov></smaier@ncdoj.gov></lara.klibansky@ncdenr.gov>
Subject: Fwd:	External] Fwd:
Lara, for the b	vooks. Thanks, Rob
Get Outlook	or ios
From: Rob Biz	zell-

ent to

From: bob lizzell -Sent: Thursday, January 7, 2021 12:53 PM To: Bizzell, Rob Subject: [External] Fwd:

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"Take care of business and make things happen"

Begin forwarded message:

From: Rob Bizzell Date: January 7, 2021 at 12:50:09 PM ES1 To: Bizzell Rob <r.bizzell.mfc@ncdenr.gov>

W. Robert Bizzell

Office

Home

January 7, 2021

Honorable United States District Judge James C. Deaver III

Your Honor,

As Chairman of the North Carolina Marine Fisheries Commission, I recently became aware of the harmful and disturbing practice of repackaging and/or knowingly selling repackaged foreign-harvested crab meat to appear as if it was harvested in North Carolina. Those engaged in this practice are placing consumers at risk and causing economic harm to North Carolina's more reputable sea food producers. Intentionally mislabeling crab meat obscures the origin of crab meat and prevents state regulators from being able to guarantee a product's safety or integrity.

This practice is not only potentially dangerous for consumers, but harmful to the reputation and competitiveness of North Carolina's reputable sea food producers. An inferior foreign product mislabeled as being from North Carolina undermines the perceived quality of what should be an outstanding resource. By selling cheaper, foreign crab with a North Carolina label, these unscrupulous actors are also able to undercut their competition. Legitimate producers of North Carolina crab meat simply cannot compete when a lesser-grade, lower-cost product is being sold at a fraction of the cost of legitimate North Carolina crab meat. Unchecked, this deceptive tactic could drive reputable processors out of business, or force them engage in similar practices, with the potential to spill over into other products as well. North Carolina currently permits the repackaging of foreign crab meat so long as it is labeled accordingly. Recent incidents involving deliberate mislabeling have made clear that the danger from those flouting these rules is real and that the harm outweighs the benefits of allowing repacking. Citing these concerns, in November 2020, the North Carolina Marine Fisheries Commission voted unanimously to begin rulemaking to make all repackaging of foreign crab meat in North Carolina illegal. I would urge your Honor to strongly consider giving the maximum punishment allowed by law to those participating in this type of practice. There is an opportunity to send a strong message to anyone that would consider engaging in this illegal and unethical practice, while protecting consumers and helping our seafood processors maintain their reputation, competitiveness, and professional standards.

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Sincerely, 12E 14 0

W. Robert Bizzell, Chairman Vorth Carolina Marine Fisheries Commission

"Take care of business and make things happen"



EDUCATION REQUIREMENTS FOR PUBLIC SERVANTS

Public Servants must complete the Ethics and Lobbying Education program provided by the N.C. State Ethics Commission within **six months** of their election, appointment, or employment. We recommend that this be completed as soon as possible, but the training must be repeated every two years after the initial session.

Since Adobe Flash was terminated on December 31, 2020, our online program is not available. A new and shorter online program will be available in the near future. The new program will be compatible with portable devices such as phones and tablets.

Live webinar presentations are being offered monthly and registration information for the live presentations can be found <u>here</u>. These presentations are about 90 minutes long and give you the opportunity to ask questions of the speaker.

For questions or additional information concerning the Ethics Education requirements, please contact Dottie Benz at (919) 389-1383.

2020 STATEMENT OF ECONOMIC INTEREST REMINDERS:

Completed SEIs must be filed on or before April 15, 2020. If you have already filed a 2020 SEI, do not refile. The forms and instructions can be found at <u>https://ethics.ncsbe.gov/sei/blankForm.aspx</u>.

If you filed a 2019 SEI *and* you have had *no changes* since your 2019 filing, you may file a 2020 SEI No Change Form, located on the website.

You must file a 2020 Long Form if any of the following apply to you:

- a. You filed a 2019 SEI <u>but</u> you have had changes since your 2019 filing;
- b. You did not file a 2019 SEI; or
- c. You are a first-time filer or have been appointed to a new or additional position/board.

This year, the State Board of Elections and Ethics Enforcement will roll out a new electronic process for filing SEIs. That electronic filing option will be available in **early February**.

You are encouraged to file your SEI electronically. However, if you want to file your SEIs before the updated electronic version is available, hard copies are available for filing now at the link above.

New commissioners will need to file a 2020 SEI; however, if you have not had any changes since you last filed, you can use the No Change Form, which is fairly easy to complete.

Please file by April 15th to avoid fines and other penalties.

SEI HELPFUL TIPS

1. PUBLIC RECORDS. The State Board of Elections and Ethics Enforcement (State Board) is required to collect and maintain disclosures from certain persons covered by the State Elections and Ethics Enforcement Act Government Ethics Act (Elections and Ethics Act). By law, the information requested is public record and available to the public upon request. As public records, Statements of Economic Interest (SEI) are available on the Commission's website. Personal contact information, however, is not.

2. CONTACT INFORMATION PAGE. The Contact Information page, which includes your personal contact information, will not be available on the Commission's website, but is a public **record.**

3. CHILDREN'S INITIALS. Only list minor children's INITIALS on the SEI. List each child's full legal name on the Confidential Unemancipated Children's Form. If you are filing electronically, the form will be generated at the end of the SEI from the information that you provided on your electronic SEI. The Confidential Form is not a public record, and the State Board will not make it available to the public.

4. READ EACH QUESTION CAREFULLY. Read each question carefully and pay close attention to the time periods in each question as they do vary.

5. ANSWER EACH QUESTION. It is important to answer each question, including all applicable subparts. Even if your answer is "no" or "not applicable," make certain you answer each question. Many of the questions have "yes" and "no" boxes to check for your convenience. Incomplete SEIs may cause delays and negatively impact your public service on a covered board or as an employee.

6. WHY ARE YOU FILING. You must list the complete name of the state board or state agency employer for which you are filing the SEI. Without this information, your SEI may be delayed and negatively impact your public service on a covered board or as an employee.

7. HOW TO FILE. The State Board strongly recommends electronical on-line filing as it is secure, allows easy information updates, and gives you access to your electronic SEIs previously filed. Filing your SEI on-line is easy, quick, convenient, and reduces the chance of reporting errors. Getting started is easy. Follow the simple steps to create your own account and get access today: https://EFILE.ncsbe.gov/ To file a paper version of the SEI, you must provide the State Board with a signed, original SEI form. Each SEI includes an "affirmation" and is a legally binding document. Faxed or emailed copies of your SEI CANNOT be accepted.

SEI Helpful Tips, continued

8. INCOME. List each source of income as requested on the SEI. The actual dollar amount is not required. Be sure to list your employer as a source of income in Question # 6 of the SEI.

9. READ CAREFULLY. Read each question carefully, as the Elections and Ethics Act requires that you disclose your financial holdings and obligations, personal property, and real property and may also include your knowledge of the holdings of both your immediate family and your extended family. "Immediate family" and "extended family" are defined terms in the Elections and Ethics Act, and those definitions are included with this document.

10. REFLECT. Think carefully about WHY you are filing, and whether it has any relationship to your position. Does your board or commission license or regulate you? For many of the boards, a subject matter expert like a licensee is needed. Answering "yes" does not prohibit your service on the board, and your perspective is valued.

11. MAKE A COPY. Make a copy of the SEI for your own records, and make a note in your calendar when you submit it, whether on-line or by mail or hand delivery. When you successfully submit your SEI electronically on-line, the final screen will provide a confirmation number and will be proof that you have satisfied your filing obligation. Please print the **confirmation screen for your records.**

12. ETHICS LIAISON. Contact your Ethics Liaison to assist you in your obligations under the Elections and Ethics Act. Your Ethics Liaison is good source of information about how to fill out your SEI.

13. ON-LINE HELP. The State Board has on-line resources to answer questions you may have about your SEI. For more information, please visit the State Board website which has education offerings.

14. DEFINITIONS. As noted above, certain terms are defined in the Elections and Ethics Act ("immediate family"). These definitions may be helpful to you in completing your SEI. A complete list of all definitions used in the Elections and Ethics Act is available on the State Board's website, under "Ethics". Some of the more common ones are attached to this document.

15. YOUR INTERNET BROWSER. Consider using Internet Explorer or Chrome to submit your SEI. Some users have had trouble using other browsers. 16. WE ARE HERE TO HELP YOU. In addition to on-line resources and written materials, the State Board has expert staff ready to answer any questions you might have and assist you in completing and filing your SEI. Do not hesitate to contact us at sei@ncsbee.gov (919) 814-3600.

2021 Meeting Planning Calendar

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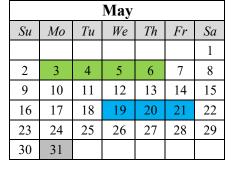
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ASMFC SAFMC MAFMC ASMFC/MAFMC Joint Meeting



Southern Regional AC Northern Regional AC Finfish AC Habitat and Water Quality AC Shellfish/Crustacean AC State Holiday

January 4, 2021

2021 Committee Assignments for Marine Fisheries Commissioners 02/02/2021

FINFISH ADVISORY COMMITTEE

Statutorily required standing committee comprised of commissioners and advisers that considers matters related to finfish.

Commissioners: Tom Roller – chair, Sam Romano – vice chair

DMF Staff Lead: Lee Paramore - lee.paramore@ncdenr.gov

Meeting Frequency: Can meet quarterly, depending on assignments from MFC

HABITAT AND WATER QUALITY ADVISORY COMMITTEE & COASTAL HABITAT PROTECTION PLAN STEERING COMMITTEE

Statutorily required standing committee comprised of commissioners and advisers that considers matters concerning habitat and water quality that may affect coastal fisheries resources.

Commissioners: Pete Kornegay - chair, Dr. Martin Posey - vice chair

DMF Staff Lead: Anne Deaton - anne.deaton@ncdenr.gov

Meeting Frequency: Committee can meet quarterly, depending on assignments from MFC. CHPP Steering Committee can meet a couple of times a year.

SHELLFISH/CRUSTACEAN ADVISORY COMMITTEE

Statutorily required standing committee comprised of commissioners and advisers that considers matters concerning oysters, clams, scallops and other molluscan shellfish, shrimp and crabs. **Commissioners:** Sam Romano – chair, Pete Kornegay – co-vice chair, Dr. Martin Posey – co-vice chair DMF Staff Lead: Tina Moore - tina.moore@ncdenr.gov

Meeting Frequency: Can meet quarterly, depending on assignments from MFC

CONSERVATION FUND COMMITTEE

Committee comprised of commissioners that makes recommendations to the MFC for administering funds to be used for marine and estuarine resources management, including education about the *importance of conservation.*

Commissioners: Sam Romano - chair, Tom Hendrickson and Robert McNeill **DMF Staff Lead:** Randy Gregory - randy.gregory@ncdenr.gov Meeting Frequency: Meets as needed

LAW ENFORCEMENT AND CIVIL PENALTY COMMITTEE

Statutorily required committee comprised of commissioners that makes final agency decisions on civil penalty remission requests.

Commissioners: Rob Bizzell - chair, Doug Cross and Tom Hendrickson

DMF Staff Lead: Col. Carter Witten – carter.witten@ncdenr.gov

Meeting Frequency: Meets as needed

COASTAL RECREATIONAL FISHING LICENSE ADVISORY COMMITTEE

Committee consisting of the three recreational seats and the science seat to provide the DMF advice on the projects and grants issued using Coastal Recreational Fishing License trust funds. Commissioners: Pete Kornegay - chair, Rob Bizzell, Tom Roller, and Robert McNeill DMF Staff Lead: Jamie Botinovch - jamie.botinovch@ncdenr.gov Meeting Frequency: Meets as needed

NOMINATING COMMITTEE

Committee comprised of commissioners that makes recommendations to the MFC on at-large and obligatory nominees for the Mid- and South Atlantic Fishery Management Councils. Commissioners: Robert McNeill – chair, Pete Kornegay, Tom Roller and Mike Blanton DMF Staff Lead: Chris Batsavage - <u>chris.batsavage@ncdenr.gov</u> Meeting Frequency: Typically meets once a year

STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

Statutorily required three-person board consisting of DEQ, DMF and MFC designees who apply eligibility criteria to determine whether an applicant is eligible for a SCFL.

Commission Designee: Mike Blanton

DMF Staff Lead: Marine Patrol Capt. Garland Yopp – <u>garland.yopp@ncdenr.gov</u>

Meeting Frequency: Meets two to three times a year, could need to meet more often depending on volume of applications

N.C. COMMERCIAL FISHING RESOURCE FUND COMMITTEE

Committee comprised of commissioners that the commission has given authority to make funding decisions on projects to develop and support sustainable commercial fishing in the state. Commissioners: Doug Cross – chair, Mike Blanton and Sam Romano DMF Staff Lead: William Brantley – <u>william.brantley@ncdenr.gov</u> Meeting Frequency: Meets two to three times a year

WRC/MFC JOINT COMMITTEE ON DELINEATION OF FISHING WATERS

Committee formed to help integrate the work of the two commissions as they fulfill their statutory responsibilities to jointly determine the boundaries that define North Carolina's Inland, Coastal and Joint Fishing Waters as the agencies go through a statutorily defined periodic review of existing rules. MFC Commissioners: Rob Bizzell, Dr. Martin Posey and Pete Kornegay DMF Staff Lead: Anne Deaton - <u>anne.deaton@ncdenr.gov</u> Meeting Frequency: Meets as needed

SHELLFISH CULTIVATION LEASE REVIEW COMMITTEE

Three-member committee formed to hear appeals of decisions of the Secretary regarding shellfish cultivation leases issued under G.S. 113-202. MFC Commissioners: Rob Bizzell DMF Staff Lead: Jacob Boyd – jacob.boyd@ncdenr.gov Meeting Frequency: Meets as needed

COASTAL HABITAT PROTECTION PLAN STEERING COMMITTEE

The CHPP Steering Committee, which consists of two commissioners from the Marine Fisheries, Coastal Management and Environmental Management commissions reviews and approves the plan, recommendations, and implementation actions.

MFC Commissioners: Dr. Martin Posey, Pete Kornegay DMF Staff Lead: Anne Deaton – <u>anne.deaton@ncdenr.gov</u> Meeting Frequency: Meets as needed



COMMITTEE REPORTS



JOINT MEETING OF THE MFC COMMERCIAL RESOURCES FUND COMMITTEE & THE FUNDING COMMITTEE FOR THE N. C. COMMERCIAL FISHING RESOURCE FUND



ROY COOPER Governor MICHAEL S. REGAN

Secretary JOHN G. BATHERSON

Acting Director

January 28, 2020

MEMORANDUM

- TO: N.C. Marine Fisheries Commission
- FROM: William Brantley, Grants Program Manager, Administrative and Maintenance Services Section

SUBJECT: October 27, 2020 Commercial Fishing Resource Fund Committee Meeting

Issue

The N.C. Commercial Fishing Resource Funding Committee met jointly with the N.C. Marine Fisheries Commission Commercial Fishing Resource Fund Committee at 1:30 p.m. on Tuesday, October 27, 2020 on WebEx to review and vote on funding opportunities from their Comprehensive and Public Relations request for proposals (RFP).

Findings

The joint committees reviewed and approved the following proposals:

- UNC-W [\$112,905] Assessment of the Impact of Gear Modifications on Diamondback Terrapin • and Blue Crab Catch in the NC commercial Crab
- Maureen Donald [\$63,330] The Science Behind Your Local Seafood
- SA Cherokee [\$800,000] NC Commercial Fishing Resource Fund Public Relations Campaign
- **Coastal Carolina Riverwatch (Crystal Coast Waterkeeper)** [134,821.40] Water Quality for Fisheries: Building Stakeholder and Public Support for Improved Water Quality in NC
- NC Coastal Federation [\$115,599] Lost Fishing Gear Recovery Project for NC Waters •
- NC State University [\$340,735] Determine the Cause and Impact of Disease on Sustainable **Oyster Resources**
- UNC-Chapel Hill IMS [\$207,147] Determining Nutrient Controls on Phytoplankton • Production and Harmful Algal Blooms in Albemarle Sound

Full meeting minutes are included in this meeting packet.

Action Needed.

For informational purposes only, no action is needed at this time.



ROY COOPER Governor MICHAEL S. REGAN Secretary

MEMORANDUM

TO:	N.C. Marine Fisheries Commission Commercial Resource Fund Committee and
	the Funding Committee for the N.C. Commercial Fishing Resource Fund
FROM:	William Brantley, Grants Program Manager
	Division of Marine Fisheries, NCDEQ
DATE:	November 27, 2020
SUBJECT:	MFC Commercial Resource Fund Committee and Funding Committee for the N.C. Commercial Fishing Resource Fund Meeting Minutes

The MFC Commercial Resource Fund Committee and the Funding Committee for the N.C. Commercial Fishing Resource Fund met at 1:30 p.m. on Tuesday, October 27, 2020 through Webex. The following attended:

MFC Commercial Resource Fund Committee: Chairman Doug Cross, Sam Romano, Mike Blanton

Funding Committee for the N.C. Commercial Fishing Resource Fund Members: Chairman Ernest Doshier, Glenn Skinner, Steve Weeks, and Doug Todd.

Partial Attendance: Britton Shackleford (present during *Issues from Commissioners* portion of agenda)

Absent: Gilbert Baccus

Public Comment: Public comment was received through webpage and US mail

APPROVAL OF AGENDA AND MINUTES

Chairman Doug Cross called the meeting to order for the MFC Commercial Resource Fund Committee and inquired to any conflicts of interest. None were noted. Chairman Ernest Doshier called the meeting to order for the Funding Committee for the N.C. Commercial Fishing Resource Fund. Chairman Doshier asked Brantley to read the conflict of interest reminder, then inquired to any conflicts of interest. None were noted. Brantley conducted a roll call for both Committees. All members were present from the MFC Commercial Resource Fund Committee. At the time of the roll call for the N.C. Commercial Fishing Resource Fund Committee, all members were present with the exception of Shackleford and Baccus. The meeting agenda was then reviewed. Motion by Romano to approve the agenda. Second by Blanton. Motion passed unanimously through a roll call vote.

Motion by Skinner to approve the agenda. Second by Weeks. Motion passed unanimously through roll call vote of present members.

Minutes from the July 30, 2020 MFC Commercial Resource Fund (CRF) Committee meeting and the Funding Committee for the N.C. Commercial Fishing Resource Fund were reviewed.

Motion by Skinner to approve the July 30, 2020 meeting minutes. Second by Todd. Motion passed unanimously through roll call vote of present members.

Motion by Romano to approve July 30, 2020 meeting minutes. Second by Cross. Motion passed in the "Aye" from Romano and Cross. Blanton had connectivity problems and did not vote.

Brantley briefed the committees on points from Session Law 2020-3 and read into the minute's a history of their Request for Proposals (RFP) process for the 2020/2021 fiscal year. Brantley stated that the committees had met to review and approve funding opportunities from their Comprehensive and Public Relations Request for Proposals (RFP) based on approved objectives from past meetings. Applicant's will receive award letters or letters of regret, depending on how the Committee's vote. Reasons given by the committee's for not funding proposals will be summarized for letters of regret.

Brantley also stated that a final report from a previously funded grant, financial report, public comment, and an email received for the Committee's consideration were included in their meeting packet.

CFRF REQUEST FOR PROPOSALS (RFP) REVIEW

UNC-W: Assessment of the impact of gear modifications on diamondback terrapin and blue crab catch in the North Carolina commercial crab fishery. \$112,905

Chairmen Cross and Doshier asked for members to review a proposal from UNC-W on bycatch reduction of diamondback terrapin. Romano discussed current research that had been on-going with UNC-W regarding terrapin research, and gear modifications which he has assisted with. Cross expressed concerns that the industry would face if it didn't act to invest in addressing the issue. Romano stated that he would abstain from a vote. Blanton discussed field testing of the pot designs. Romano summarized that funding this proposal would provide special interest groups insight that the industry is investing in reduction of terrapin bycatch. Skinner stated that the gear trials may assist in understanding how the gear modifications would affect crab catch rates. Romano stated that he wanted to get the on-going UNC-W research to the DMF Director's office. Blanton and Cross discussed implementing the proposal as-written, and possible implementation of the research.

Motion by Skinner to approve the UNC-Wilmington terrapin bycatch reduction device research. Second by Todd. Motion passed unanimously through roll call vote of present members.

Motion by Blanton to approve the UNC-Wilmington terrapin bycatch reduction device research. Second by Cross. Motion passed in the "Aye" by Blanton and Cross. Romano abstained.

AdFarm: The Greatest Catch: Capturing North Carolina's Public Support. \$794,975

Skinner stated that AdFarm had provided a substantial proposal that was similar in structure to what they were currently funding, but they had provided an extra focus to reach out to a younger demographic which was beneficial. Skinner questioned the agency's current familiarization with the industry. Cross stated that the approach was very similar in nature to what they were currently funding. Blanton stated that the proposal offered appealing aspects and options, especially with the younger demographic. Blanton also expressed concerns that there would be duplicate measures in the budget that had already been funded through the current PR firm, contracted by the Committee's.

Motion by Skinner to not approve the AdFarm proposal. Second by Todd. Motion passed unanimously through roll call vote of present members.

Motion by Blanton to not approve the AdFarm proposal. Second by Romano. Motion passed unanimously through roll call vote.

Donald: The Science Behind Your Local Seafood. \$63,330

Skinner stated Maureen Donald had an intriguing proposal that had a much lower budget and asked for other Committee opinions. Weeks stated that she had familiarization with the industry through past work, and the proposal fits in the message of other industry groups. Blanton agreed with the Funding Committee, but had concerns about the delivery of the proposal. Blanton followed up with noting content delivery is an important aspect to consider with these projects. Cross stated that Donald had established relationships with current industry media sources, but a follow up on the delivery method may need to occur. Blanton questioned the title of the project with how it relates to the work proposed. Romano said he had experience with Donald and her familiarization and ability to network within the industry. Romano was appreciative of the budget conscious proposal.

Motion by Weeks to fund the Maureen Donald proposal. Second by Skinner. Motion passed unanimously through roll call vote of present members.

Further discussion occurred over to the title of the project and plan of deliverables. Members discussed conditional stipulations for funding the contract, such as the messaging strategy and modifications of the title. Skinner asked for clarification on making changes to the proposal. Govoni stated that members could add a condition to the contract, however, DMF's recommendation was that the members should take caution to how they provide the opportunity to permit applicants to change things in their proposal. Weeks stated that the Committee's

should consider the proposal as-is. Skinner reminded the Committees that there was a mechanism to consider if the separate Committee's could not agree on a decision.

Motion by Romano to fund the Maureen Donald proposal. Second by Cross. Motion passed in the "Aye" with Romano and Cross. Blanton voted "No."

French West Vaughan: Campaign for Support of Commercial Fishing in N.C. \$400,000

At the request of Chairman Cross, Skinner opened discussion on the proposal, stating that it was similar to the AdFarm proposal and current contract funded for the PR program, but this proposal had a greater focus on research. Skinner stated one of his concerns for this proposal were that the applicant, in their proposal, had implemented working with DMF experts to research topics. Skinner mentioned that he was unsure if the applicants knew who they would be working with, or if the Committees would be obligating the DMF to work with the firm if they approved it. Skinner referenced that the approach was more focused on DMF versus the Committees.

Motion by Skinner to not approve the French West Vaughan proposal. Second by Todd. Motion passed unanimously through roll call vote of present members.

Cross concurred that it was a good proposal, but had concerns over the approach re-instituting objectives that they have already completed. Blanton said that he was concerned that the Committee's would be paying for items that they have already paid for previously, however, it was a valid proposal.

Motion by Romano to not fund the French West Vaughan proposal. Second by Cross. Motion passed unanimously through roll call vote.

PeRfect Plan: (No title offered). \$285,000

Chairman Doshier opened the discussion with concerns over the budget and scope. Skinner agreed, and noted that the applicant wanted to conduct an economic impact study which was already taking place. Additionally, Skinner noted that the applicant had proposed working directly with DMF staff to develop reporting features, and was not sure that the applicant was clear on who the client was. Brantley asked that if the collective issues with the proposal were based on the scope, the knowledge of available data sources, the project's design and technical approach, and clarity of objects. Skinner agreed, and also noted that this would incur work that has already been funded.

Motion by Skinner to not approve the PeRfect Plan proposal. Second by Weeks. Motion passed unanimously through roll call vote of present members.

Chairman Cross agreed with Skinner, and did not feel comfortable obligating the DMF without consulting with them first.

Motion by Romano to deny funding the PeRfect Plan proposal. Second by Cross. Motion passed unanimously through roll call vote.

<u>S&A Cherokee: North Carolina Commercial Fishing Resource Fund Public Relations</u> <u>Campaign. \$840,000</u>

Skinner opened the conversation, and stated that he was satisfied with the work they had received from this firm on the previous contract. Skinner stated that he receives a lot of requests to utilize the product. Skinner noted he could provide an update on the 6-month extension if anyone was interested. Doshier stated that the incumbent firm had established a product that was working well. Brantley asked if the committees felt comfortable with the approach, budget, and technical approach. Skinner agreed and discussed the budget. Cross asked about the budget and the Year 2 and Year 3 costs broken out. Skinner stated that this proposal would be a two-year proposal for \$420,000 each year. Brantley reminded the Committees that the RFP published had a stipulation that project costs could not exceed \$400,000 annually. Blanton noted the proposal had exceeded the limit and was concerning. Cross asked could the motion be amended to reflect costs to not exceed \$400,000. Todd asked if this was asking the applicant to change their project and resubmit. Govoni clarified that this was not, this could be issued as an award with a condition. Skinner asked that if the applicant does not agree to meet the conditions of the award, that the Committee's were not obligated to fund the proposal. Govoni agreed.

Motion by Skinner to fund the S&A Cherokee proposal for two years with the condition that they do not exceed the \$400,000 per year limit. Second by Todd. Motion passed unanimously through roll call vote of present members.

Cross stated the firm had done an excellent job, and hopes to see further networking by the them. Romano issued concerns over the budget, and would abstain from the vote due to feeling uncomfortable the level of funding requested. Blanton also stated concerns about the funding amounts.

Motion by Blanton to fund the S&A Cherokee proposal for two years with the condition that they do not exceed the \$400,000 per year limit. Second by Cross. Motion passed in the "Aye" by Blanton and Cross. Romano abstained.

WRAL: North Carolina Commercial Fishing Resource Fund Public Relations Campaign. \$390,000

Doshier noted concerns about the objectives in the proposal, and that they referenced working with the DMF instead of the Committees throughout the proposal. Skinner said the merits of the proposal were concerning, and the organization had previously published material that could have had a negative effect on the industry. Weeks also noted concerns about the organization. Brantley asked for further clarification on objective comments related to the proposal. Weeks stated that the applicant targeted the proposal to the Marine Fisheries Commission. Weeks also noted concern over the objectives in the proposal.

Motion by Weeks to not fund the WRAL proposal. Second by Todd. Motion passed unanimously through roll call vote of present members.

Cross agreed with the Funding Committee that the applicant was not clear who the client was, and their objectives in the proposal. Blanton stated that the applicant offered a different approach than the other proposals with their outreach base, however, did not feel they understood who the client was.

Motion by Blanton to not fund the WRAL proposal. Second by Romano. Motion passed unanimously through roll call vote of present members.

<u>Albemarle Resource Conservation and Development Council: Little River Watershed Water</u> <u>Quality Improvement. \$78,100</u>

Blanton opened the conversation by discussing that he felt that the Committee's should consider projects that would achieve a broader impact on water quality. Doshier expressed concern that this proposal would be completed on private land. Cross agreed with Blanton that projects should be for broader areas to improve larger watersheds, or sound-based areas. Cross also concurred with Doshier that he had concerns committing stakeholder funds to private land. Skinner stated that their Committees should look for projects with larger impacts with the resources available to the Committees. Skinner felt the scale was too small, and that the actionable results upon conclusion were concerning.

Motion by Skinner to not approve the Albemarle Resource Conservation and Development Council proposal. Second by Todd. Motion passed in the "Aye" by Doshier, Todd, and Skinner, with Weeks voting "No."

Blanton stated the scope and impact from this proposal were minimal, and the costs were concerning for the funding requested. Blanton agreed that this may have merit, but on a larger scale.

Motion by Romano to not approve the Albemarle Resource Conservation and Development Council proposal. Second by Blanton. Motion passed unanimously through roll call vote.

Bertie County: TGOW – Albemarle Sound Water Quality Enhancement. \$36,000

Doshier opened the conversation, and noted concerns that this project seemed to focus on creating recreational access. Doshier noted that water quality monitoring was a topic, and the State should be conducting these measures. Romano echoed previous concerns over the smaller area impact. Blanton felt this was leisure-area based, and may not address the legislative intent of the Commercial Fishing Resource Fund. Skinner reiterated the impact that this project would have on water quality for the State. Weeks noted this project appears this is more of a recreational project and not necessarily within the scope of the Fund, however stated that water quality would benefit the fisheries.

Motion by Romano to not approve the Bertie County proposal. Second by Blanton. Motion passed unanimously through roll call vote.

Motion by Skinner to not approve the Bertie County proposal. Second by Weeks. Motion passed unanimously through roll call vote of present members.

Coastal Carolina Riverwatch (Crystal Coast Waterkeeper): *Water Quality for Fisheries: Building Stakeholder and Public Support for Improved Water Quality in North Carolina.* \$134,821.40

Doshier opened the conversation with concerns over the budget relative to proposed meeting costs and office space fees. Skinner told the Committees that he had spoken with the applicants,

and liked the aspect of stakeholder input and public education. Weeks liked the objectives and educational components of the proposal, but noted the budget was high. Todd concurred with the aforementioned expenses, but thought the proposal was beneficial.

Motion by Skinner to approve the Crystal Coast Waterkeeper proposal. Second by Weeks. Motion passed unanimously through roll call vote of present members.

Cross expressed issues with the budget of the proposal. Romano addressed the broader scope of this proposal, and questioned the final intent. Skinner stated that in conversations with the applicant, that the intent was to address water quality issues now and in the future. Blanton noted the benefits of the broader scope of this application as compared to other proposals received.

Motion by Blanton to approve the Crystal Coast Waterkeeper proposal. Second by Cross. Motion passed in the "Aye" by Blanton and Cross, with Romano abstaining.

Currituck County: Sampling & Monitoring Impaired Water in Coinjock, NC. \$18,480

Blanton opened the discussion by noting the small scale of the project, and lack of action by the proposal. Cross stated that the NCDEQ had listed the waters as impaired for recreational, and may not address the legislative intent of the Fund.

Motion by Blanton to not approve the Currituck County proposal. Second by Cross. Motion passed unanimously through roll call vote.

Motion by Skinner to not approve the Currituck County proposal. Second by Weeks. Motion passed unanimously through roll call vote of present members.

North Carolina Coastal Federation: Lost Fishing Gear Recovery Project North Carolina Waters. \$115,599

Blanton opened the conversation and noted that the General Assembly formerly funded this project, and the Committees should now look at funding this proposal. Blanton stated this was worthy of funding, and this project would be close to meeting deadlines for implementation. Cross concurred, and stated that the industry bears responsibility for keeping the waterways clean. Romano agreed.

Motion by Blanton to approve the N.C. Coastal Federation proposal. Second by Romano. Motion passed unanimously through roll call vote.

Motion by Skinner to approve the N.C. Coastal Federation proposal. Second by Todd. Motion passed unanimously through roll call vote of present members.

N.C. State University: *Determine the cause and impact of disease on sustainable oyster* resources. \$340,735

Cross stated this proposal had a high budget, but this would assist in identifying what was killing oysters. Cross also noted that this would assist most areas of the state, and mentioned the array of collaborators in the project. Blanton addressed the quantity of oysters that were once

available, and also noted the reviewers notes on the proposal. Skinner discussed the dead zone in the Neuse River, and former discussion with the applicant on potential pathologic concerns in that area, thus research was needed for the industry. Romano praised the proposal for targeting wild-caught oysters, however noted concerns about the proposed results. Weeks stated that this would assist in diagnosing problems in order to correct them. Skinner noted budget concerns as well. Weeks stated he was aware of large die offs of oysters in the past, and research needed to occur to identify what was causing them. Skinner questioned the research timelines in the proposal, and Weeks noted that die offs often occurred during the early summer.

Motion by Romano to approve the N.C. State University proposal. Second by Cross. Motion passed unanimously through roll call vote.

Motion by Skinner to approve the N.C. Coastal Federation proposal. Second by Weeks. Motion passed unanimously through roll call vote of present members.

<u>UNC Chapel Hill Institute of Marine Sciences: Determining nutrient controls on</u> phytoplankton production and <u>harmful algal blooms in Albemarle Sound. \$207,147</u>.

Blanton opened discussion by noting this study deals with the Albemarle Sound area, and it addressed part of the CHPP Committee's objectives. Blanton also noted that this would benefit all coastal stakeholders, and the budget was reasonable for the benefits that could come from the study. Skinner agreed with Blanton, and praised the applicant for his history of water quality issues. Skinner stated this would be a direct benefit to commercial fishermen.

Motion by Blanton to approve funding for the UNC-IMS proposal. Second by Cross. Motion passed unanimously through roll call vote.

Motion by Todd to approve the N.C. Coastal Federation proposal. Second by Skinner. Motion passed unanimously through roll call vote of present members.

ISSUES FROM COMMITTEE MEMBERS

Cross asked about a future meeting, and Brantley stated the Chairmen may want to consider a meeting before the end of the calendar year. Cross asked about the next funding cycle, and Cross further stated that he wanted to look for research on bycatch reduction.

Doshier noted an interest in research on the predatory practices of cormorants, with further conversation by Weeks and Skinner. Skinner stated he had a lot of interest from stakeholders on the issue, and he believed that the NC Wildlife Resources Commission could approve measures to limit the population in NC.

Skinner stated that the Committees should consider proposals to assist the For-Hire industry.

Weeks asked for discussion for the external usage of the PR campaign, and potentially appointing a member(s) to review usage of the material. Skinner added that a process was needed and should be an agenda item at the next meeting, noting an email from NC Catch representatives.

Blanton stated he would like the Committees to revisit problems with blue catfish, and this should be considered during the next RFP. Skinner suggested that the MFC members consider a Fishery Management Plan for blue catfish.

Romano noted oysters and restoration of the fishery, and mentioned research that is looking at alternative substrate to set oyster spat. The Committee's may want to consider funding opportunities for this.

Britton Shackleford joined the meeting.

Doshier and Shackleford elaborated on the cormorant issue. Shackleford stated that the predation issues with cormorants and sharks have become a problem.

Skinner and Doshier thanked DMF staff for administering the meeting. Cross thanked both DMF staff, and the members of the committees.

Motion by Romano to adjourn. Second by Blanton. Motion passed unanimously through roll call vote.

Motion by Skinner to adjourn. Second by Todd. Motion passed unanimously through roll call vote of present members.

Meeting adjourned.

WB

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LANDINGS UPDATE

RULE SUSPENSIONS



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Atlantic States Marine Fisheries Commission

2021 Winter Meeting Webinar Summary

Sustainable and Cooperative Management of Atlantic Coastal Fisheries

2021 Winter Meeting Webinar February 1 – 4, 2021 Toni Kerns, ISFMP, or Tina Berger, Communications For more information, please contact the identified individual at 703.842.0740

Meeting Summaries, Press Releases and Motions

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SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS MANAGEMENT BOARD & MID-ATLANTIC FISHERY MANAGEMENT COUNCIL (FEBRUARY 1, 2021)

Press Release

ASMFC and MAFMC Approve Changes to State Allocations of Commercial Black Sea Bass Quota

The Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) and the Mid-Atlantic Fishery Management Council (Council) jointly approved several changes to the management program for black sea bass commercial fisheries. These changes include modifying the state allocations of the commercial black sea bass quota, adding the state allocations to the Council's Fishery Management Plan (FMP), and modifying the regulations for federal in-season closures. The Board adopted the new allocations through Addendum XXXIII to the Summer Flounder, Scup and Black Sea Bass FMP, while the Council recommended these changes through an amendment to its FMP. These actions address significant changes in the distribution of black sea bass that have occurred since the original allocations were implemented under Amendment 13 in 2003 and also account for the historical dependence of the states on the black sea bass fishery.

Under the approved changes, Connecticut's baseline allocation will increase from 1% to 3% of the coastwide quota to address its disproportionally low allocation compared to the increased availability of black sea bass in state waters. The state allocations will then be calculated by allocating 75% of the coastwide quota according to the new baseline allocations (historical allocations modified to account for Connecticut's increase to 3%) and 25% to three regions based on the most recent regional biomass distribution information from the stock assessment (see Table 1). The three regions are: 1) Maine-New York, 2) New Jersey, and 3) Delaware-North Carolina. The regional allocations will be distributed among states within a region in proportion to their baseline allocations, except Maine and New Hampshire will each receive 1% of the northern region quota. Because the allocations are based in part on the regional biomass distribution from the stock assessment, they will be adjusted if a new assessment indicates a change to the biomass distribution. The Board and Council committed to reevaluating the approved state allocation system within 5 years.

The Council and Board agreed to add the state allocations to the Council's FMP. As a result, future modifications to the allocations will require a joint action of the Board and Council. Additionally, they approved a change to the federal regulations such that the entire black sea bass commercial fishery will close in-season for all federally permitted vessels and dealers once landings are projected to exceed the coastwide quota plus an additional buffer of up to 5%. The buffer aims to minimize negative economic impacts of coastwide closures on states that have not fully harvested their quotas. The Council and Board considered, but did not adopt, changes to the regulations for paybacks of state quota overages; states will only be required to pay back overages of their state quota if the coastwide quota is exceeded.

Addendum XXXIII's measures are final for state waters (0-3 miles from shore) and become effective January 1, 2022. The Council will submit their amendment to NOAA Fisheries for review, approval, and implementation.

Table 1. Revised state allocation percentages of the black sea bass commercial quota based on the most recent regional biomass distribution information.

State	Allocations under Amendment 13	New Allocations Using Most Recent Biomass Distribution*	Difference from Amendment 13 to New Allocations
ME	0.50%	0.40%	-0.10%
NH	0.50%	0.40%	-0.10%
MA	13.00%	15.64%	+2.64%
RI	11.00%	13.23%	+2.23%
СТ	1.00%	3.67%	+2.67%
NY	7.00%	8.57%	+1.57%
NJ	20.00%	20.10%	+0.10%
DE	5.00%	4.11%	-0.89%
MD	11.00%	8.88%	-2.12%
VA	20.00%	16.14%	-3.86%
NC	11.00%	8.88%	-2.12%
Total	100.00%	100.00%	

*These allocations are based on the results of the 2019 Operational Stock Assessment and will be updated if future assessments indicate a change to the biomass distribution.

Addendum XXXIII will be available on the Commission website, <u>www.asmfc.org</u>, on the black sea bass webpage by the end of February. Updates on the Council's amendment will be posted at <u>https://www.mafmc.org/actions/bsb-commercial-allocation</u>.

Contacts

For more information, please contact either:

Julia Beaty, Mid-Atlantic Fishery Management Council, <u>ibeaty@mafmc.org</u>, 302-526-5250 Savannah Lewis, Atlantic States Marine Fisheries Commission, <u>slewis@asmfc.org</u>, 703-842-0715

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PR21-02

Meeting Summary

The Summer Flounder, Scup, and Black Sea Bass Management Board met to consider approval of a New Jersey summer flounder proposal and a Massachusetts black sea bass proposal to adjust 2021 recreational measures, consider a Virginia proposal for its February black sea bass recreational fishery, and take final action on Black Sea Bass Addendum XXXIII (see above press release for additional information).

Staff presented the three recreational proposals and the Technical Committee (TC) report on the technical merit of the proposals. Due to COVID-19 effects on 2020 APAIS sampling, all three proposals rely on Marine Recreational Information Program (MRIP) estimates from 2018-2019. The Commission's Conservation Equivalency Policy allows states to submit proposals for alternative measures in state waters that are projected to achieve the same level of recreational harvest that would have been achieved under the regulations approved by the Board in December 2020.

New Jersey submitted a proposal to modify its recreational summer flounder fishery to open the Friday before Memorial Day, May 28, 2021. To accommodate the delayed opening, New Jersey proposed adding nine days onto the end of its season based on average daily harvest rates across the two years to account for differences in wave 3 and wave 5 landings. Harvest under this proposal is projected to be 0.09% lower than harvest under status quo measures. In addition, Massachusetts put forward a proposal for its black sea bass recreational fishery with two season options for a Saturday opening that the state will take to the public to solicit feedback. The options include: 1) May 15 to September 3; and 2) May 22 to September 14. To account for the shift in opening date, Massachusetts calculated the adjusted season closure date based on average daily harvest rates in wave 3 and wave 5.

Staff presented Virginia's proposal to participate in the February 2021 black sea bass recreational fishery in accordance with the start of the federal waters open season. Virginia will account for its harvest during the February 2021 fishery by adjusting its season later in the year. Landings in pounds will be calculated in February from mandatory angler reporting, and season adjustments to account for February landings will be based on the average daily harvest rate in pounds, by wave, from 2018-2019 MRIP data.

Based on the TC's recommendation, the Board approved both New Jersey and Massachusetts's conservation equivalency proposals as well as Virginia's proposed methodology to account for its February black sea bass season.

For more information on summer flounder, please contact Dustin Colson Leaning, Fishery Management Plan Coordinator, at <u>dleaning@asmfc.org</u> and for more information on black sea bass, please contact Savannah Lewis, Fishery Management Plan Coordinator, at <u>slewis@asmfc.org</u>.

Motions

Board Only Motions

Move to approve the following 2021 recreational conservational equivalency season adjustments: New Jersey summer flounder fishery (May 28 through September 28), and Massachusetts's black sea bass fishery (options A, May 15 – Sept 3, and B, May 22 – Sept 14), and approve Virginia's proposal for adjusting recreational black sea bass measures to account for February harvest. Motion made by Mr. Gilmore and seconded by Mr. Luisi. Motion stands approved.

Board & Council Motions Main Motion Move to approve:

Modified Option B – Increase CT to 3% and NY to 9%, with the change occurring over 2 years

Option C – DARA approach, with the following sub options:

- Sub-option C1-B: allocations based 50% on stock distribution and 50% on the initial allocations at the end of the transition phase
- Sub-option C2-A: 5% change in weights per adjustment
- Sub-option C3-A: annual adjustment to factor weights
- Modified allocation adjustment cap (C4-A): cap the change in regional allocations at a maximum of 5% per adjustment.

Regional configuration option G2 – NJ as separate region

Board: Motion made by Dr. McNamee and seconded by Mr. Hasbrouck. Council: Motion made by Mr. DiLernia and seconded by Ms. Davidson.

Motion to Substitute

Move to substitute to address Black Sea Bass Commercial State Allocations by approving Option B -Increase Connecticut Quota to 3%; Option D - Trigger Approach, with a trigger of 4 M lbs. (a trigger value between Sub Options D1-A and D1-B); Sub-option D2-B - Distribution of surplus quota based on regional biomass from stock assessment; Sub-option D3-B - Proportional distribution of regional surplus quota; Sub-option D4-A - Static base allocations; Option G - Regional Configuration Options; and Sub-option G2 - Establishing three regions with New Jersey as a separate region.

Board: Motion made by Mr. Clark and seconded by Ms. Bolen.

Council: Motion made by Ms. Bolen and seconded by Mr. Cimino.

Motion to Amend Substitute Motion

Move to amend the substitute motion option b: "increase Connecticut's base allocation to 3% and New York's base allocation to 9%."

Board: Motion made by Mr. Borden and seconded by Dr. Davis. Motion fails for lack of a majority (5 in favor, 6 opposed, 1 abstention).

Council: Motion made by Mr. Farnham and seconded by Mr. DiLernia.

Motion to Substitute

Move to substitute to address Black Sea Bass Commercial State Allocations by approving Option B -Increase Connecticut Quota to 3%; Option D - Trigger Approach, with a trigger of 4 M lbs. (a trigger value between Sub Options D1-A and D1-B); Sub-option D2-B - Distribution of surplus quota based on regional biomass from stock assessment; Sub-option D3-B - Proportional distribution of regional surplus quota; Sub-option D4-A - Static base allocations; Option G - Regional Configuration Options; and Sub-option G2 - Establishing three regions with New Jersey as a separate region.

Board: Motion made by Mr. Clark and seconded by Ms. Bolen. Motion fails for lack of a majority (6 in favor, 6 opposed).

Council: Motion made by Ms. Bolen and seconded by Mr. Cimino.

Main Motion

Move to approve:

Modified Option B – Increase CT to 3% and NY to 9%, with the change occurring over 2 years

Option C – DARA approach, with the following sub options:

- Sub-option C1-B: allocations based 50% on stock distribution and 50% on the initial allocations at the end of the transition phase
- Sub-option C2-A: 5% change in weights per adjustment
- Sub-option C3-A: annual adjustment to factor weights
- Modified allocation adjustment cap (C4-A): cap the change in regional allocations at a maximum of 5% per adjustment.

Regional configuration option G2 – NJ as separate region

Board: Motion made by Dr. McNamee and seconded by Mr. Hasbrouck. Motion fails for lack of a majority (6 in favor, 6 opposed).

Council: Motion made by Mr. DiLernia and seconded by Ms. Davidson.

Main Motion

Move to adopt the following options for black sea bass commercial allocations:

- Modified Alternative B: Increase CT's base allocation to 3% and NY's base allocation to 9%.
- Alternative F: Percentage of coastwide quota distributed based on initial allocations:
- Sub-alternative F1-B: 75% of the coastwide quota allocated using the initial allocations.
- Sub-alternative F2-B: Remaining quota (25%) allocated based on regional biomass from the stock assessment.
- Sub-alternative F3-B: Proportional distribution of regional quota.
- Sub-alternative G2: Establish three regions: 1) ME-NY; 2) NJ; and 3) DE-NC.

Board: Motion made by Ms. Meserve and seconded by Dr. Davis.

Council: Motion made by Ms. Davidson and seconded by Mr. Farnham.

Motion to Amend

Move to amend to modify alternative B to remove "and NY's base allocation to 9%" and add at the end of the motion "to review the state by state allocations in not more than 5 years".

Board: Motion made by Mr. Batsavage and seconded by Mr. Clark. Motion carries (6 in favor, 5 opposed, 1 abstention).

Council: Motion made by Mr. Batsavage and seconded by Mr. Cimino. Motion carries (14 in favor, 5 opposed, 1 abstention).

Main Motion as Amended

Move to adopt the following options for black sea bass commercial allocations:

- Modified Alternative B: Increase CT's base allocation to 3%.
- Alternative F: Percentage of coastwide quota distributed based on initial allocations:
- Sub-alternative F1-B: 75% of the coastwide quota allocated using the initial allocations.
- Sub-alternative F2-B: Remaining quota (25%) allocated based on regional biomass from the stock assessment.
- Sub-alternative F3-B: Proportional distribution of regional quota.
- Sub-alternative G2: Establish three regions: 1) ME-NY; 2) NJ; and 3) DE-NC.
- Review the state by state allocations in not more than 5 years.

Board: Motion carries (10 in favor, 2 opposed).

Council: Motion carries (13 in favor, 7 opposed).

Board Only

Move to approve Addendum XXXIII, as modified today, with an implementation date of January 1, 2022.

Motion made by Ms. Meserve and seconded by Dr. Davis. Motion carries without objection with one abstention from NOAA Fisheries (11 in favor, 1 abstention).

Council Only:

Move to submit the Black Sea Bass Commercial State Allocation Amendment, with identification of the preferred alternatives, to NMFS.

Motion made by Mr. Defur and seconded by Mr. Cimino. Motion passes (13 in favor, 2 opposed, 3 abstentions).

AMERICAN LOBSTER MANAGEMENT BOARD (FEBRUARY 2, 2021)

Meeting Summary

The American Lobster Management Board met to consider a number of items: the Proposed Rule and Draft Environmental Impact Statement (DEIS) for proposed modifications to the Atlantic Large Whale Take Reduction Plan for 2021 and Draft Biological Opinion for Atlantic fisheries; management responses to the 2020 American Lobster Benchmark Stock Assessment and Peer Review; the potential for conducting a management strategy evaluation for the lobster fishery; the recent Executive Order on the Northeast Canyons and Seamounts Marine National Monument; a nomination to the Jonah Crab Advisory Panel; and the election of a Board Vice Chair.

NOAA Fisheries staff presented a summary of proposed modifications to federal lobster fishery regulations being considered for 2021 along with a DEIS. The proposed changes to the Plan would (1) modify gear marking to introduce state-specific colors for gear marks and increase the number of gear markings and areas requiring marked lines; (2) modify gear configurations to reduce the number of vertical lines by requiring more traps between buoy lines; (3) introduce weak insertions or weak rope into buoy lines; (4) modify existing seasonal restricted areas to allow ropeless fishing; and (5) add one or two new seasonal restricted areas closed to buoy lines but open to ropeless gear. The Board discussed some concerns with the changes related to the timeline of federal rulemaking and conservation equivalency for state management programs.

Additionally, NOAA Fisheries staff summarized the Draft Batch Fisheries Biological Opinion (Opinion) for several federally-permitted fisheries including lobster. The Opinion analyzed the impacts of the proposed fisheries on protected species, along with a Conservation Framework that intends to reduce mortality and serious injury to North Atlantic Right Whales by 95% over ten years. The Opinion determined that the proposed action is not likely to jeopardize any listed species or destroy or adversely modify any critical habitat. The Board made a recommendation to the Interstate Fisheries Management Program (ISFMP) Policy Board to send letters to NOAA Fisheries including comments on both the proposed rule and the Biological Opinion.

The Board reviewed the results and recommendations from the 2020 American Lobster Benchmark Stock Assessment and Peer Review, which was accepted for management use in October 2020. While the Gulf of Maine/Georges Bank (GOM/GBK) stock is near time-series high abundance and not experiencing overfishing, the Board felt that proactively addressing stock resiliency is essential. As such, the Board directed the Plan Development Team to continue work on Addendum XXVII with a focus on developing a trigger mechanism that would automatically implement management measures to improve the biological resiliency of the GOM/GBK stock if the trigger is reached. For the Southern New England (SNE) stock, the assessment and peer review recommended substantial measures, such as a moratorium, to improve the declining trend in abundance. Even so, improvements are likely to be limited as a result of unfavorable environmental conditions and declining recruitment.

Staff also presented the Board with a prospective work plan to outline potential focal areas, resource needs, and associated workload tradeoffs for a management strategy evaluation (MSE) of the lobster fishery. The Commission's Management and Science Committee identified American lobster as a potential priority species for which an MSE could be developed to inform management decisions. The Board agreed an MSE could allow environmental and economic factors to be more effectively incorporated into management. The Board tasked staff and the Technical Committee to identify

timelines and cost estimates for developing an MSE for both stocks with several potential focal areas, including recommendations from the SNE stock assessment. This information will be presented at the Commission's Spring Meeting.

The Board discussed a recent Executive Order from President Biden, which requires a review of a 2020 proclamation that modified the Northeast Canyons and Seamounts Marine National Monument by returning commercial fishery management authority to the Magnuson-Stevens Act. The Interior Secretary shall report his/her findings to the President by March 21, 2021. The Board forwarded a recommendation to the ISFMP Policy Board to send a letter to the Secretary of the Interior during the review period to restate the Commission's position that management authority over commercial fisheries in the area should remain with the New England Fishery Management Council.

The Board also approved the nomination of Jon Williams, an offshore commercial trap fisherman representing Rhode Island, to the Jonah Crab Advisory Panel. Finally, Dr. Jason McNamee was named Vice Chair of the Lobster Board.

For more information, please contact Caitlin Starks, Fishery Management Plan Coordinator, at <u>cstarks@asmfc.org</u> or 703.842.0740.

Motions

Move to recommend to the ISFMP Policy Board that the Commission send letters to NOAA Fisheries with comments on the proposed rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan and the draft biological opinion. The letter should include the following:

- The rule and bi-op should be completed by the end of May to ensure the court does not intervene.
- Implementation timeline recommendations that address practical start dates
- Supporting trawl equivalency such that 8 traps with 2 endlines = 4 traps with 1 endline
- Support enforcement and coordination with state agencies
- Conservation Equivalencies that would allow for modifications related to trawl lengths
- (specific to the bi-op) A statement that address the burden the US Fishery could bear based on the actions of Canada.

Motion made by Mr. Keliher and seconded by Mr. Borden. Motion carries without objection with one abstention (NOAA Fisheries).

Move to task the TC and staff with the development of a set of prioritized options, timelines and a draft budget to assist the Board in considering if MSE could be of use for management, for the GOM and SNE stocks, in as timely a manner as possible. This information shall be presented to the Board at the spring meeting.

Motion made by Mr. Keliher and seconded by Dr. McNamee. Passed by unanimous consent.

Move to re-initiate PDT and TC work on the Gulf of Maine resiliency addendum. The addendum should focus on a trigger mechanism such that, upon reaching of the trigger, measures would be automatically implemented to improve the biological resiliency of the GOM/GBK stock. Motion made by Mr. Keliher and seconded by Ms. Patterson. Passed by unanimous consent. Move to recommend to the ISFMP Policy Board that the Commission send a letter to the Secretary of the Interior restating the Commission's position on modifying the Northeast Canyons and Seamounts Marine National Monument.

Motion made by Mr. Reid and seconded by Ms. Patterson. Passed by majority with one abstention (NOAA Fisheries).

Move to approve the nomination to the Jonah Crab Advisory Panel for Jon Williams of RI. Motion made by Mr. Reid and seconded by Mr. Hasbrouck. Passes by unanimous consent.

Move to elect Dr. Jason McNamee as Vice Chair of the American Lobster Management Board. Motion made by Mr. Reid and seconded by Ms. Patterson. Passed by unanimous consent.

WINTER FLOUNDER MANAGEMENT BOARD (FEBRUARY 2, 2021)

Meeting Summary

The Winter Flounder Management Board reviewed reports from both the Technical Committee (TC) and the Advisory Panel (AP) and set status quo specifications for the 2021-2023 fishing years. The TC was supportive of status quo commercial and recreational measures for a few reasons (see Table 1). First, the New England Fishery Management Council (Council) set the 2021-2023 state waters sub-component equal to 2017-2019 average catch with the assumption that commercial and recreational measures would be held constant. Second, the TC's 2018 commercial measures analysis indicates the Southern New England and Mid-Atlantic (SNE/MA) region is essentially a bycatch fishery. Any further restriction in measures would likely increase regulatory discards and have a limited impact on fishing mortality.

Stock	Sector	Trip Limit/ Possession Limit	Size Limit	Season	Gear
GOM	Commercial	500 lbs/trip/day	12"	Maintain closures	Minimum 6.5" square or diamond mesh in cod-end
	Recreational	8 fish	12"	Open all year	
SNE/MA	Commercial	50 lbs/38 fish/trip/day	12"	Maintain closures	Minimum 6.5" square or diamond mesh in cod-end; 100-lb mesh trigger
	Recreational	2 fish	12"	March 1 – December 31	

Table 1. 2021-2023 Winter Flounder Commercial and Recreational Measures for the Gulf of Maine and Southern New England/Mid-Atlantic Stocks

The Board also discussed the SNE/MA stock's low likelihood of rebuilding back to the biomass target by 2023 despite sustained low levels of catch. The Board intends to continue to work collaboratively with the Council to determine the best path forward in improving understanding of the biology of the winter flounder stock and determining the right management approach for this depleted stock.

For more information, please contact Dustin Colson Leaning, Fishery Management Plan Coordinator, at <u>dleaning@asmfc.org</u> at 703-842-0714.

Motions

Move to nominate William Hyatt as the Vice Chair to the Winter Flounder Management Board. Motion made by Ms. Ware and seconded by Ms. Patterson. Motion stands approved.

ATLANTIC MENHADEN MANAGEMENT BOARD (FEBRUARY 2, 2021)

Meeting Summary

The Atlantic Management Board met to review landings as required by Amendment 3 and as part of an initial discussion on revisiting commercial allocations. Landings data from 2016-2019 and quota transfers from 2018-2020 were presented to highlight recent trends. Maine's proportion of coastwide landings has increased in recent years and the states of Maine, New Hampshire, and Massachusetts have received the majority of quota transfers over the past three years. The Board discussed further evaluating the current allocations based on additional landings information by category such as from the Episodic Set-Aside Program and incidental catch. Preliminary 2020 landings will be available in the coming months through state compliance reports, due April 1st, and the Board will continue discussions on commercial allocations at the Spring Meeting.

The Board also briefly discussed the management of Atlantic menhaden in the Chesapeake Bay and data needed to expand the stock assessments to include spatial dynamics. The 2020 single-species and ecological reference points (ERP) benchmark stock assessments evaluated Atlantic menhaden coastwide as a single population and described the ecological impacts of its population on key predator and prey species. Currently, the models used to assess Atlantic menhaden do not have spatial or seasonal dynamics although that remains a long-term goal. The Board tasked the Technical Committee and ERP Workgroup with identifying and prioritizing data or data collection programs necessary to develop the ERP models to include spatially explicit information, with particular interest in the Chesapeake Bay, to be considered at their next Meeting.

For more information, please contact Kirby Rootes-Murdy, Senior Fishery Management Plan Coordinator, at <u>krootes-murdy@asmfc.org</u> or 703.842.0740.

Motions

No motions made.

ATLANTIC HERRING MANAGEMENT BOARD (FEBRUARY 2, 2021)

Meeting Summary

The Atlantic Herring Management Board met to set 2021-2023 fishery specifications. The New England Fishery Management Council (Council) approved 2021-2023 fishery specifications back in September 2020 through Framework 8. The framework proposes a lower sub-annual catch limit (ACL) for Area 1A in 2021 (1,391 mt) and 2022/2023 (1,184 mt) based on results of the 2020 Management Track Assessment and following the acceptable biological catch (ABC) control rule outlined in Amendment 8.

The Board reviewed the specifications at the 2020 Annual Meeting, and set seasonal allocations for the 2021 fishing year based on the information, but decided to wait to take action on the 2021-2023 specifications until NOAA Fisheries had released a final rule on the framework. While a final rule had not been published at the time of this meeting, the Board approved the specifications as outlined in

the Council's framework (see table below) contingent on a final rule being published by NOAA Fisheries.

Specification	2021	2022	2023
Annual Catch Limit (ACL)	4,814	4,098	4,098
Domestic Annual Harvest	4,814	4,098	4,098
Border Transfer	0	0	0
Area 1A Sub-ACL	1,391*	1,184*	1,184*
Area 1B Sub-ACL	207	176	176
Area 2 Sub-ACL	1,338	1,139	1,139
Area 3 Sub-ACL	1,877	1,598	1,598
Fixed Gear Set-Aside	30	30	30
Research Set-Aside as % of Sub-ACLs	3%	0%	0%

2021-2023 Atlantic	Herring Specifications	s (in Metric Tons)
	- U - I	

*If the New Brunswick weir fishery catch through October 1 is less than the associated "trigger", then 1,000 mt of the management uncertainty buffer will be added to the Area 1A sub-ACL

The Board also received an update on the Council's Amendment 8. Approved in 2018, the Amendment's purpose is to establish a long-term ABC control rule for Atlantic herring that explicitly account for herring's role in the ecosystem. Additionally, the Amendment addresses the biological and ecological requirements of the species by establishing a restricted area prohibiting fishing with midwater trawl gear to prevent potential localized depletion and user group conflicts. The restricted area is inshore of 12 nautical miles U.S./Canada border to the Rhode Island/Connecticut border and inshore of 20 nautical miles off the east coast of Cape Cod. In considering potential impacts of the new restricted area to state waters fisheries, Maine and New Hampshire currently do not allow midwater trawling in their state waters. Massachusetts and Rhode Island are reviewing potential loop holes that allow state only permitted midwater trawl vessels to fish in the restricted area and addressing them where needed. NOAA Fisheries released a final rule of the Amendment in January 2021 with an effective date of February 10, 2021.

Lastly, the Board received a brief update regarding ongoing discussions between Commission and Council leadership on coordinating state and federal herring management. Following a meeting that occurred between the Executive Directors of the Commission and Council and NOAA attorneys, Commission and Council leadership will reconvene to continue coordination discussions and review the responsibilities of each management body. Further updates on this coordination effort will be provided at the next Board meeting.

For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at <u>EFranke@asmfc.org</u> or 703.842.0740.

Motions

Move to approve the following Atlantic herring specifications for 2021-2023 as recommended by the New England Fishery Management Council contingent on the final rule being published by NOAA Fisheries:

For 2021

- Annual Catch Limit (ACL) = 4,814 mt
- Domestic Annual Harvest = 4,814 mt
- Border Transfer = 0 mt
- Area 1A Sub-ACL = 1,391 mt
- Area 1B Sub-ACL = 207 mt
- Area 2 Sub-ACL = 1,338 mt
- Area 3 Sub-ACL = 1,877 mt
- Fixed Gear Set-Aside= 30 mt
- Research Set-Aside as % of Sub-ACLs= 3%

For 2022 and 2023

- Annual Catch Limit (ACL) = 4,098 mt
- Domestic Annual Harvest = 4,098 mt
- Border Transfer = 0 mt
- Area 1A Sub-ACL = 1,184 mt
- Area 1B Sub-ACL = 176 mt
- Area 2 Sub-ACL = 1,139 mt
- Area 3 Sub-ACL = 1,598 mt
- Fixed Gear Set-Aside= 30 mt
- Research Set-Aside as % of Sub-ACLs= 0%

Motion made by Ms. Ware and seconded by Mr. Abbott. Motion passed by unanimous consent.

EXECUTIVE COMMITTEE (FEBRUARY 3, 2021)

Meeting Summary

The Executive Committee met to discuss several issues, including the second round of CARES fisheries disaster assistance, legislative and appropriations update, annual meetings update and new approach to allocations. The following discussions took place, with no action items:

- Mr. Beal provided a brief overview of the second round of CARES assistance, and introduced Ms. Kelly Denit, Director of NOAA's Office of Sustainable Fisheries, to field questions. The appropriations language provides \$300 million for fisheries, with \$255 million allocated to marine coastal states. One significant change to the language is that there is a 1% minimum allocation to each state, meaning the ASMFC states will get at least \$3 million each (This value may be slightly reduced by administrative fees).
- Mr. Beal gave an update on the legislative and appropriations front. With the change in Administrations in the Presidency and in Congress, Committees will be reorganized with new leadership. The NOAA Assistant Administrator has not been announced yet, and the President has not submitted a FY22 budget yet. The Committee discussed a draft letter to Office of

Management & Budget regarding funding priorities for the Atlantic states; a line will be added to the letter regarding Menhaden research focusing on the Chesapeake Bay.

- Mrs. Leach provided an update on future Annual Meetings, with plans to hold the 80th Annual Meeting in Long Branch, NJ October 17-22, 2021. Future Annual Meetings will be conducted in North Carolina (2022), Maryland (2023), and Delaware (2024). The Committee also discussed the future balance of virtual and in-person meetings following COVID. This discussion will be continued at a future Executive Committee meeting.
- The Committee discussed pursuing a new approach to allocation due to the changing of species distribution. This discussion will continue on the bi-weekly Executive Committee calls.

For more information, please contact Laura Leach, Director of Finance and Administration, at <u>lleach@asmfc.org</u> or 703.842.0740.

Motions

No motions made.

COASTAL SHARKS MANAGEMENT BOARD (FEBRUARY 3, 2021)

Meeting Summary

The Coastal Sharks Management Board received updates on a number federal shark activities. Dr. Cami McCandless, with NOAA Fisheries, updated the Board on the NMFS Cooperative Shark Tagging Program, which has administered a citizen science shark tagging program throughout the Atlantic since the 1960s. The program collects survey data annually and also collects fishery-dependent data from commercial vessels and recreational tournaments. Despite the pitfalls of 2020, tagging has increased by 7% and recapture reporting is up 25% year over year. Data collected by the program has served multiple uses including: updating essential fish habitat designations, research on shifting shark distributions, and as the basis for delineating stocks of blacktip, bonnethead, and sandbar sharks for assessments.

During Board discussion, the issue of how does NOAA Fisheries coordinate its activities with state permitting requirements was raised. South Carolina and Florida require anglers to get a permit to tag sharks. In order to make sure that participants follow state regulations, NOAA Fisheries includes a reminder with its issued tags to check with their respective state about additional restrictions or required permits to use these tags.

Karyl Brewster-Geisz, with NOAA Fisheries Division of Highly Migratory Species (HMS) Management, provided the Board with updates on upcoming shark actions from the Atlantic HMS Division. Draft Amendment 14, which was released for comment in 2020, explored options to reestablish a new framework for shark quotas consistent with new guidelines under Magnuson-Stevens Act National Standard 1. Three of the options being considered include (1) actively managing both commercial and recreational sectors, (2) eliminating the commercial quota linkages between management groups, and (3) allowing the flexibility to determine the overfishing status using a 3-year average of fishing mortality rather than only making determinations concurrent with stock assessments. Any resulting changes in quotas would be implemented in subsequent rules following the release of Final Amendment 14 later this year. NOAA Fisheries is also undertaking a comprehensive review of the shark fishery that will examine the current state of the fishery and how previous management actions have affected the fishery.

Lastly, the Board approved the nomination of Capt. Rick Bellavance to the Coastal Sharks Advisory Panel. Capt. Bellavance has been a charter boat fisherman targeting a variety of fish for over 30 years, is a member of the Rhode Island Charter Boat Association, is a consultant for the New England Fishery Management Council, and previously held a seat on NOAA Fisheries Highly Migratory Species Advisory Panel.

For more information, please contact, Kirby Rootes-Murdy, Senior Fishery Management Plan Coordinator, at <u>krootes-murdy@asmfc.org</u>.

Motions

Move to appoint Rick Bellavance to the Coastal Sharks Advisory Panel.

Motion made by Mr. Reid and seconded by Mr. Miller. Approved by unanimous consent.

ATLANTIC COASTAL COOPERATIVE STATISTICS PROGRAM (ACCSP) COORDINATING COUNCIL (FEBRUARY 3, 2021)

Meeting Summary

The ACCSP Coordinating Council met to review and take action on program funding for FY2021. The Council was provided an update on ACCSP Leadership Team membership and meetings since the October 2020 Annual Meeting. The Council supported the use of ACCSP grant extension for the SAFIS helpdesk, NJ staff support, and the extended timeline for completing the approved the South Atlantic Fishery Management Council/North Carolina citizen science application project. The Council reviewed the revised FY2021 administrative grant. Several factors combined to allow the Leadership Team to support funding all maintenance and new proposals for 2021. These included the final determination of utilizing the 2016-2021 grant funds, the reduced the ACCSP administrative proposal, and a return of unused ACCSP funds from the Florida Headboat sampling project.

For more information, please contact Geoff White, ACCSP Director, at Geoff.white@accsp.org.

Motions

Motion to approve the 2016-2020 Administrative Grant extension tasks as presented, and approve the revised 2021 ACCSP proposal at \$2,122,916.

Motion made by Ms. Patterson and seconded by Mr. Bell. Motion stands approved.

ATLANTIC STRIPED BASS MANAGEMENT BOARD (FEBRUARY 3, 2021)

Press Release

Atlantic Striped Bass Board Approves Draft Amendment 7 PID for Public Comment

The Commission's Atlantic Striped Bass Management Board approved for public comment the Public Information Document (PID) for Draft Amendment 7 to the Interstate Fishery Management Plan (FMP) for Atlantic Striped Bass. As the first step in the amendment process, the PID seeks input from

stakeholders and those interested in striped bass about changes observed in the fishery/resource and potential management measures.

The last time a new plan amendment to the Atlantic Striped Bass FMP was adopted was in 2003 (Amendment 6). Since then, the status and understanding of the striped bass stock and fishery has changed considerably which raises concern that the current management program no longer reflects current fishery needs and priorities. The results of the 2018 Benchmark Stock Assessment in particular led the Board to discuss a number of prominent issues facing striped bass management. Consequently, the Board initiated the development of Amendment 7 in August 2020.

The purpose of the PID is to solicit stakeholder input on prioritizing the importance of each topic for continued development and potential inclusion in the Draft Amendment. The PID considers the following management topics: (1) fishery goals and objectives; (2) biological reference points; (3) management triggers; (4) stock rebuilding targets and schedule; (5) regional management; (6) management program equivalency (conservation equivalency); (7) recreational release mortality; (8) recreational accountability; (9) coastal commercial quota allocation; and (10) other issues raised in public comments.

Stakeholders are encouraged to provide input on the PID either by attending state public hearings or providing written comment. It is anticipated that states from Maine through North Carolina will be conducting public hearings, likely in a virtual format, in March and April 2021. A subsequent press release will provide the details of those hearings. The Atlantic Striped Bass Management Board will meet at the Commission's 2021 Spring Meeting in May to consider public comment and provide direction to staff for items to be included in Draft Amendment 7.

The PID is available at

http://www.asmfc.org/files/PublicInput/StripedBassAm7PID_PublicComment_Feb2021.pdf or via the Commission's website, www.asmfc.org, under Public Input. Public comment will be accepted until **5 PM (EST) on April 9, 2021** and should be forwarded to Emilie Franke, Fishery Management Plan Coordinator, 1050 N. Highland St, Suite 200A-N, Arlington, VA 22201; 703.842.0741 (FAX) or at comments@asmfc.org (Subject line: Striped Bass PID). For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at <u>efranke@asmfc.org</u> or 703.842.0740.

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PR21-03

Meeting Summary

The Atlantic Striped Bass Management Board met to receive a Technical Committee (TC) report on assessment model sensitivity to recreational release mortality assumptions; consider approving for public comment an updated draft of the Public Information Document (PID) for Amendment 7; and consider proposed study collecting information on the tube rig gear and a proposed exemption to the circle hook requirement for this gear.

The Board reviewed a TC report on the sensitivity of the stock assessment model to different scenarios of recreational release mortality. This TC task was the result of Board and public concern about the assumption of a coastwide 9% release mortality used in the assessment. The analysis focused on the sensitivity of the model to that assumption and addressed the question of whether model results or stock status would change if a different release mortality rate was used. The report highlighted that

significant changes to the release mortality rate assumption in the model resulted in significant changes to the scale of the population, but did not affect the final stock status determination. While having a more refined estimate of recreational release mortality may not change the assessment model performance for past years, the TC emphasized that reducing release mortality through management measures and angler education and outreach continues to be important for the recovery of the stock. In response to questions from Board members, the TC noted that it is important to understand and track how changes in recreational management (e.g. circle hook requirements) affect the stock trends in the future. The Board reiterated the importance of hearing from the public on the issue of recreational release mortality which is included in the PID as part of the Amendment 7 development process.

The Board also heard from the TC on the timeline for the next stock assessment update for striped bass, which is currently scheduled for 2021. Due to the impacts of COVID-19 on data collection and considering that 2020 is only the first year of Addendum VI implementation, the TC recommended that the stock assessment update be postponed until 2022. The Board noted that COVID-19 may also impact data collection in 2021 and they may have to consider this issue again next year. The Board agreed by consensus to forward this recommendation to postpone the striped bass stock assessment to 2022 to the ISFMP Policy Board.

The Board then considered a proposed study by Maine and Massachusetts to collect information on the striped bass baited tube rig fishery and an accompanying request for a two-year exemption to the circle hook requirements for the tube rig gear. Addendum VI requires the mandatory use of circle hooks when fishing for striped bass with bait to reduce discard mortality in recreational striped bass fisheries. At their October 2020 meeting, the Board approved Addendum VI state implementation plans for circle hook requirements with the caveat that no exemptions to mandatory circle hook requirements will be permitted. Since then, the Commission and several states have received request to consider exemptions for tube rig gear. The Board heard from Maine and Massachusetts on their proposed study to assess the prevalence of baited tube rigs in the fishery and to assess the incidence of deep hooking (i.e. gut hooking). Some Board members expressed support for this study and the need to re-consider this exemption considering the anecdotally low incidence of gut hooking with this gear. Some Board members reiterated concern that this exemption may lead to requests for other exemptions, making enforceability difficult and potentially undermining the intent of the provision. The Board accepted the Maine/Massachusetts proposal to study the tube rig fishery and approved a delayed implementation of the circle hook requirement for tube rig gear coastwide through 2022. Other states interested in participating in the study should submit a letter of intent to the Commission within two weeks.

The Board also discussed the uncertainty around the definition of bait and the differing interpretations of natural bait among states. The Board approved by consensus the creation of an ad hoc committee to develop a definition of bait that would require the use of circle hooks and method of fishing that would require the use of circle hooks and method of fishing that would require the use of circle hooks as well as how to handle incidental catch. The ad hoc committee will report back to the Striped Bass Board at a special Board meeting to take place early March 2021 or as soon as possible.

Finally, the Board approved the following new members to the Striped Bass Advisory Panel: Andrew Dangelo and Michael Plaia representing Rhode Island; Dennis Fleming representing the Potomac River Fisheries Commission; and Nathaniel Miller representing New York.

For more information, please contact Emilie Franke <u>efranke@asmfc.org</u>, Fishery Management Plan Coordinator, or Toni Kerns <u>tkerns@asmfc.org</u>, ISFMP Director, or at 703.842.0740.

Motions

Move to approve the Public Information Document for Draft Amendment 7 to the Striped Bass Fishery Management Plan for public comment as modified today.

Motion made by Mr. Fote and seconded by Mr. Gary. Motion approved by consensus.

Move to accept the Maine/Massachusetts proposal to study the tube rig fishery and, for the duration of the study, delay implementation of the circle hook requirement for tube rig gear through 2022 for all states in the striped bass management unit. Other states wishing to participate in a study on the tube rig fishery should submit a letter of intent to ASMFC within two weeks to ensure consistency in data collection.

Motion made by Ms. Ware and seconded by Mr. Armstrong. Motion passes (11 in favor, 4 opposed).

Main Motion

Create an ad hoc committee established by the chair to develop a definition of bait that would require the use of circle hooks. This committee will report back to the Striped Bass Board at a special Board meeting to take place early March 2021.

Motion made by Mr. Hasbrouck and seconded by Dr. McNamee

Motion to Amend

Move to amend to add method of fishing that would require the use of circle hooks and how to handle incidental catch.

Motion made by Mr. Cimino and seconded by Dr. Davis. Motion passes (15 in favor).

Main Motion as Amended

Create an ad hoc committee established by the chair to develop a definition of bait that would require the use of circle hooks and method of fishing that would require the use of circle hooks and how to handle incidental catch. This committee will report back to the Striped Bass Board at a special Board meeting to take place early March 2021 or as soon as possible. Motion passes by consent.

Move to approve Andrew Dangelo and Michael Plaia representing Rhode Island, Dennis Fleming representing the Potomac River Fisheries Commission, and Nathaniel Miller representing New York to the Striped Bass Advisory Panel.

Motion made by Mr. Gary and seconded by Mr. Sikorski. Motion adopted by consent.

SHAD AND RIVER HERRING MANAGEMENT BOARD (FEBRUARY 4, 2021)

Meeting Summary

The Shad and River Herring Management Board met to consider several items: (1) Board action in response to the 2020 American Shad Benchmark Stock Assessment and Peer Review, (2) Technical Committee recommendations to improve Amendments 2 and 3 to the Fishery Management Plan

(FMP), (3) approval of updated shad habitat plans, (4) the FMP Review and state compliance for the 2019 fishing year, and (5) two nominations to the Advisory Panel.

The Board reviewed recommendations from the Technical Committee (TC) and comments from the Advisory Panel (AP) regarding paths forward for improving shad stocks in light of the 2020 Assessment results. The assessment found that American shad remain depleted on a coastwide basis, and determined that several systems are depleted, experiencing unsustainable adult mortality, or have an unknown stocks status despite having active fisheries. The TC emphasized that habitat-related issues (such as passage barriers) and bycatch in coastal mixed-stock fisheries are likely limiting recovery for a number of stocks. Therefore, the TC did not recommend management changes at this time, but recommended states focus on restoration efforts and data improvements to improve future assessments. Consistent with the recommendations, the Board tasked the TC to develop methods to evaluate bycatch removals in directed mixed-stock fisheries in state waters in order to understand and reduce impacts to external stocks. Additionally, to address data deficiencies highlighted by the TC, the Board forwarded a recommendation to the Interstate Fishery Management Policy Board to send a letter to NOAA Fisheries requesting increased prioritization of stock composition sampling of American shad in offshore fisheries.

The TC Chair presented recommendations for improvements to Amendments 2 and 3 to the FMP. These Amendments require states or jurisdictions to have an approved Sustainable Fishery Management Plan (SFMP) to allow any harvest of river herring and shad, respectively. The TC recommendations provide additional criteria to guide the development of SFMPs, such as appropriate time series for sustainability metrics, management responses to falling below sustainability thresholds, clarification on the use of SFMPs versus Alternative Management Plans, and interjurisdictional management guidance. The Board agreed with the TC recommendations and tasked them to develop a technical guidance document for use in SFMP development and evaluation.

The Board also reviewed updates to the American Shad Habitat Plans for Maine, New Hampshire, Maryland, North Carolina, South Carolina, and Georgia. The habitat plans are required by Amendment 3 to the FMP and updates to include current information and recent restoration programs were requested on a five year basis. The Board approved the presented shad habitat plans, and will review remaining updates at their next meeting.

As recommended by the Plan Review Team, the Board approved the FMP Review for Shad and River Herring for the 2019 Fishing Year, state compliance reports, and *de minimis* requests. Lastly, the Board approved two nominations to the AP: Dr. Ed Hale of Delaware, and Eric Roach of New Hampshire. For more information, please contact Caitlin Starks, Fishery Management Plan Coordinator, at <u>cstarks@asmfc.org</u> or 703.842.0740.

Motions

Move to task the Technical Committee with developing methods to evaluate bycatch removals in directed mixed-stock fisheries in state waters in order to understand and reduce impacts to stocks outside the area where directed catch occurs.

Motion made by Mr. Cimino and seconded by Dr. Davis. Motion carries unanimously.

Move to task the Technical Committee with developing a technical guidance document to guide SFMP/AMP development and evaluation based on the recommendations presented today.

Motion made by Dr. Davis and seconded by Mr. Haymans. Motion passes (10 in favor, 8 opposed).

Move to approve the updated shad habitat plans submitted by ME, NH, MD, NC, SC, and GA. Motion made by Ms. Patterson and seconded by Mr. Haymans. Motion passes unanimously.

Move to approve the FMP Review for the 2019 fishing year, state compliance reports, and *de minimis* requests from ME, NH, MA, and FL.

Motion made by Mr. Clark and seconded by Ms. Patterson. Motion is approved by consensus.

Move to approve nominations to the Shad and River Herring Advisory Panel for Dr. Ed Hale from Delaware, and Eric Roach from New Hampshire.

Motion made by Dr. Davis and seconded by Mr. Miller. Motion is approved by consensus.

BLUEFISH MANAGEMENT BOARD (FEBRUARY 4, 2021)

Meeting Summary

The Bluefish Management Board met to consider Technical Committee (TC) recommendations to revise the Addendum I age sampling requirements, discuss additional TC recommendations on bluefish recreational release length sampling, and consider a nomination to the Bluefish Advisory Panel.

In accordance with TC recommendations, the Board changed the threshold for required participation in the Addendum I age sampling program from 5% of total coastwide bluefish harvest for the period 1998-2008, to 4% of total coastwide bluefish removals (recreational and commercial landings and dead discards) for the period 2010-2019. This update added Florida to the list of states that are already required to submit age samples under Addendum I. While Virginia does not meet the updated threshold, the state will continue its current sampling regime for bluefish and provide the same minimum 100 samples as other states for the purposes of continuing its valuable collection of biological data used in stock assessments. The Board also changed the 50 fish spring and fall sampling requirements to a target in recognition that bluefish are not present in state waters year round for all states. However, the 100 annual sampling requirement still remains. The sampling program seeks to support bluefish stock assessments by improving the quantity and quality of information used in assessments.

The Board also discussed the need for increased recreational release length sampling to accurately characterize discards for catch accounting and stock assessments. Rhode Island, Connecticut, and New Jersey already have voluntary angler programs that collect these data, but the TC encouraged state members consider expanding upon these programs for broader participation along the Atlantic coast. Lastly, the Board appointed John LaFountain a seafood processor/dealer from Rhode Island to the Bluefish Advisory Panel.

For more information, please contact Dustin Colson Leaning, Fishery Management Plan Coordinator, at <u>dleaning@asmfc.org</u>.

Motions

Move to revise Addendum I to Amendment 1's sampling requirements from 5% of coastwide harvest to 4% of the total coastwide removals, defined as the sum of recreational and commercial landings

and dead discards, for the period 2010-2019; adding Florida to the states required to collect samples; and changing the 50 fish seasonal requirement to a target but the 100 fish annual sampling requirement remains.

Motion made by Mr. Cimino and seconded by Mr. Hasbrouck. Motion is approved by unanimous consent.

Move to approve the nomination to the Bluefish Advisory Panel for John LaFountain of RI.

Motion made by Dr. McNamee and second by Dr. Davis. Motion is approved by unanimous consent.

INTERSTATE FISHERIES MANAGEMENT PROGRAM (ISFMP) POLICY BOARD (FEBRUARY 1 & 4, 2021)

Meeting Summary

The ISFMP Policy Board (Policy Board) met to review a full suite of issues, including:

- Executive Committee update
- State declared interests for Commission managed species
- Pennsylvania's participation on the Atlantic Menhaden Management Board
- Recreational Management Reform Initiative discussion with the Mid-Atlantic Fishery Management Council (Council)
- Process issues for Commission work on Recreational Management Reform Initiative
- Progress update on the draft Risk and Uncertainty Policy
- Review of the 2020 Commissioner Survey results
- Electronic recreational data collection
- Reports from the Atlantic Coastal Fish Habitat Partnership, Habitat Committee, and Artificial Reef Committee

Executive Committee Report

Commission Chair Pat Keliher presented the Executive Committee Report to the Policy Board (see Executive Committee meeting summary earlier in this document).

States Declared Interests on Species Management Boards

Annually, states and agencies review their declared interest to participate on the management boards for each Commission managed species. The following changes were made: the U.S. Fish and Wildlife (USFWS) withdrew its interest in participating on management boards for black sea bass, summer flounder, scup, bluefish, Spanish mackerel, tautog, weakfish, winter flounder, cobia, black drum, red drum, spot, spotted sea trout, Atlantic croaker. The Commonwealth of Massachusetts withdrew from weakfish board due to the significant decline of weakfish in state waters. Several states declared interest in participating on species boards due to an increased presence of those species in state waters in recent years, these include: Delaware-spotted seatrout; New Jersey-spotted seatrout; New York-Spanish mackerel; Rhode Island-Spanish mackerel and cobia; and New Hampshire-black sea bass. The Policy Board approved all of these changes.

Pennsylvania's Participation on the Atlantic Menhaden Board

Articles II, VIII, and XII of the Interstate Compact address participation by certain states eligible for Commission fishery management activities, including Pennsylvania, generally requiring that such participation be limited to anadromous species found in those states' waters. Pennsylvania has been part of the Atlantic Menhaden Management Board since 2016, but because Atlantic menhaden are not anadromous, the question arose whether it is proper for Pennsylvania to participate on the Menhaden Board. The Policy Board agreed to maintain Pennsylvania's participation in the Menhaden Board in light of the ecological linkage between menhaden and striped bass, which is consistent with the Commission's increased focus on ecosystem-based management.

Recreational Management Reform Initiative

Joint Discussion with Council

The Policy Board met jointly with the Council to receive an update on the Recreational Management Reform Initiative and discuss next steps. This initiative considers improvements to the management of recreational fisheries for summer flounder, scup, black sea bass, and bluefish. As part of this initiative, the Council and Commission are developing a joint framework/addendum and a joint amendment, each of which will consider several topics. During the meeting, the Board and Council agreed to focus on the harvest control rule proposal put forward by six recreational organizations as an immediate next step. Council, Commission and NOAA Fisheries staff will work together to consider how this proposal may need to be modified to comply with Magnuson-Stevens Fishery Conservation and Management Act requirements to implement annual catch limits and prevent overfishing.

Policy Board Only Discussion

The Council and the Commission have been working on a Recreational Management Reform Initiative for summer flounder, scup, black seas bass and bluefish. The Policy Board has been meeting with the Council to discuss these issues because it is the overarching Board of the two management boards as well as the initiative could have solutions for other Commission management species, the Board affirmed it will continue to work with the Council vs another Commission management board. In addition, the Board agreed to have Commission leadership bring forward a voting process recommendation to the MAFMC leadership. The Board agreed the two management bodies could have independent motions on an issue rather than identical motions as in the process used for the jointly managed species.

Draft Risk and Uncertainty Policy

Dr. Jason McNamee presented on the Commission's Draft Risk and Uncertainty Policy. Updates included a refined decision tool criteria, a revised process, a sample weighting preference survey, and an updated striped bass example. The Board provided feedback and supported using tautog as a pilot case for the Risk and Uncertainty Policy.

2020 Commissioner Survey

Deke Tompkins presented the results of the 2020 Commissioner Survey Results. Many responses showed similar trends from years past. It was noted some obstacles to the Commission's success in rebuilding stocks include depleted stocks, environmental/climate conditions, balancing individual and collective interests, management response time, inadequate federal resources/support, reallocation, recreational data shortfalls, and cooperation with the Councils. Some of the issues Commissioners would like to focus more on include: include depleted species, modernizing outreach for the next generation, habitat and climate change, socioeconomics, improvements to MRIP, regulatory consistency among states, stakeholder engagement, accountability measures, increased Congressional support, quota allocation, and regional differences and intra-species interaction.

Electronic Recreational Data Collection

In a recent review of biological reporting requirements, the Bluefish Technical Committee noted the

stock assessment recommendation that an accurate characterization of recreational release lengths is integral to the assessment and that improvements to the methodology used to collect these data is recommended. The Technical Committee discussed options for electronic reporting that could be used for collecting recreational angler release data to remove the need for a state to create a new data collection system. The Technical Committee recommended to the Bluefish Board that it advance the importance of broadly collecting reliable recreational release length frequency data for all recreational species through a request to the Policy Board. The specific request was to ask the Policy Board task the Assessment Science Committee to work with the ACCSP to develop a comprehensive program for reporting released fish of all recreationally important species the Commission manages. However, the Bluefish Board had some concerns about the lack of specificity in the recommended task. In light of this concern, Toni Kerns presented an overview of SciFish, an electronic recreational reporting application in development by ACCSP, which could have the potential to collect quantitative data. Staff recommend that Commission staff and the Assessment Science Committee provide feedback for assessment and management concerns to ACCSP as the application is developed.

Reports from Atlantic Coastal Fish Habitat Partnership and ASMFC Habitat and Artificial Reef Committees

Dr. Lisa Havel provided updates on Atlantic Coastal Fish Habitat Partnership (ACFHP), Habitat Committee, and Artificial Reef Committee. The ACFHP Steering Committee met virtually November 9-10, 2020. The Committee discussed the National Fish Habitat Conservation through Partnerships Act passage, received updates on current on-the-ground projects, and reviewed the final version of the Fish Habitat Conservation Mapping Assessment. For the FY2021 National Fish Habitat Action Plan – USFWS funding, ACHFP received 14 applications, and is recommending 11 for funding. These 11 applications cover seven states in the North, Mid-, and South Atlantic, and improve tidal vegetation, riverine bottom, and shellfish beds if funded. The selections are usually announced in late spring. ACFHP also recently endorsed three projects: Big Pink Key Aquatic Habitat Hydrological Restoration in Florida; Evaluating an Approach to Long-Term SAV Monitoring in North Carolina; and Tuckerton Reef in New Jersey.

The Habitat Committee met virtually November 12-13, 2020. It discussed the status and next steps for the documents the Committee is currently working on: Acoustic Impacts to Fisheries, Fish Habitats of Concern, and the *2020 issue of Habitat Hotline Atlantic*. The Committee continued working on designating Fish Habitats of Concern for ASMFC-managed species, and discussed developing a comment letter on the proposed elimination of dredge windows in the U.S. Army Corps of Engineers Wilmington District, which was unanimously approved by the Policy Board.

Dr. Havel also presented a new document from the Artificial Reef Committee, updating the 1988 publication *Profiles of State Artificial Reef Programs and Projects*. The update highlights accomplishments of Atlantic state artificial reef programs over the past 30+ years, and was approved unanimously for publication by the Policy Board.

The Policy Board agreed to send four letters to NOAA Fisheries (see relevant sections of the American Lobster Board and the Shad and River Herring Management Board for details on the letters). The one letter not discussed at the American Lobster Board meeting was a request to NOAA Fisheries for additional time to comment on the draft "batched" Biological Opinion for ten fishery management plans in the Northeast and the implementation of the New England Fishery Management Council's

Omnibus Habitat Amendment 2. The additional time will allow the 15 Atlantic coastal states the opportunity to thoroughly review the Biological Opinion and provide meaningful feedback.

For more information, please contact Toni Kerns, ISFMP Director, at <u>tkerns@asmfc.org</u>.

Motions

Move to approve the changes to the species declared interest.

Motion made by Mr. Fote and seconded by Dr. Rhodes. Motion passes by consensus.

On behalf of the Lobster Board, move the Commission to send letters to NOAA Fisheries with comments on the proposed rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan and the draft biological opinion. The Biological opinion letter should include the following:

- The bi-op should be completed so it will support the proposed rule to avoid a jeopardy.
- A statement that address the burden the US Fishery could bear based on the actions of Canada.
- The Atlantic Large Whale Take Reduction Plan letter should include the following:
- The rule should be completed by the end of May to ensure the court does not intervene.
- Implementation timeline recommendations that address practical start dates
- Supporting trawl conservation equivalency that would allow for modifications related to trawl lengths as well as address the need to fish a single endline in areas. Example 8 traps with 2 endlines = 4 traps with 1 endline
- Support enforcement and coordination with state agencies

Motion made by Mr. McKiernan. Motion passes with 1 abstention (NOAA Fisheries).

On behalf of the Lobster Board, move the Commission send a letter to the Secretary of the Interior restating the Commission's position on modifying the Northeast Canyons and Seamounts Marine National Monument.

Motion made by Mr. McKiernan. Motion passes with 2 abstentions (NOAA Fisheries and USFWS)

Move to request the Commission send a letter to NOAA requesting a short extension of the comment period on the Endangered Species Act Section 7 Consultation-Biological Opinion from February 19 to March 1, 2021.

Motion made by Mr. Borden and seconded by Ms. Patterson. Motion passes with 1 abstention (NOAA Fisheries).

On behalf of the Shad and River Herring Board, move to send a letter to NOAA fisheries to request that shad be made a higher sampling priority, particularly for genetic stock composition sampling, to improve our understanding of the impacts of mixed-stock fisheries on system-specific stocks, as recommended by the 2020 Assessment and Peer Review and the Technical Committee. Motion made by Mr. Armstrong. Motion passes with 2 abstentions (NOAA Fisheries and USFWS).

Motion to adjourn.

Motion made by Mr. Bowman and second by Mr. Haymans. Motion passes.

MAFMC



December 2020 Council Meeting Summary

The following summary highlights actions taken and issues considered at the Mid-Atlantic Fishery Management Council's meeting December 14-17, 2020. This meeting was conducted by webinar due to the ongoing COVID-19 pandemic. Presentations, briefing materials, motions, and webinar recordings are available at http://www.mafmc.org/briefing/december-2020.

During this meeting, the Council:

- Discussed the impact of COVID-19 on recreational data collection and recreational catch estimates for 2021*
- Approved status quo recreational scup and black sea bass management measures in state and federal waters in 2021*
- Approved the use of regional conservation equivalency for the recreational summer flounder fishery in 2021*
- Approved status quo recreational bluefish measures for 2021*
- Approved a public hearing document for the Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment*
- Selected alternatives related to federal management of the black sea bass state allocations but postponed final action on the Black Sea Bass Commercial State Allocation Amendment/Draft Addendum XXXIII until the next joint meeting*
- Received an update on the Recreational Reform Initiative and discussed a proposal to address some recreational reform topics through a technical guidance document*
- Approved a 2021 Implementation Plan
- Review three case study proposals and selected the Research Set-Aside Program proposal for further development by the Scientific and Statistical Committee Economic Work Group
- Received an update on habitat projects and offshore wind activities
- Received an update on right whale issues and, including preliminary 2019 population estimates and the development of ropeless fishing technology
- Received an informational presentation regarding the Council recusal process
- Agreed to send a letter to NMFS requesting clarified guidance on the use of the Ecosystem Component species designation
- Approved a letter to the Secretary of Interior regarding the inclusion of squid fishery products in the U.S. Fish and Wildlife Service inspection and user fee system for monitoring wildlife imports and exports

* Items denoted with an asterisk (*) were undertaken during joint meetings with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Management Board; Bluefish Management Board; or ISFMP Policy Board.

Summer Flounder, Scup, Black Sea Bass, and Bluefish 2021 Recreational Management Measures

The Council met jointly with the Atlantic States Marine Fisheries Commission's (Commission) Summer Flounder, Scup, and Black Sea Bass Management Board (Board) and Bluefish Management Board to develop recreational management measures for summer flounder, scup, black sea bass, and bluefish for 2021.

During the meeting, the Council and Board discussed the impact of COVID-19 on recreational data collection and fisheries management. In a typical year, preliminary data from the Marine Recreational Information Program (MRIP) for waves 1-4 (January through August) are used to project catch and harvest through the rest of the year. These projections are then compared to the recreational harvest limit (RHL) for the upcoming year to evaluate

how harvest may need to be adjusted to prevent RHL overages. However, this year, recreational data collection was severely limited by restrictions related to COVID-19. As a result, projections of 2020 harvest could not be generated for any recreational species.

Scup and Black Sea Bass

The Council and Board agreed to maintain status quo recreational management measures for scup and black sea bass in state and federal waters in 2021. For scup, federal waters measures include a 9-inch total length minimum fish size, a 50 fish possession limit, and an open season of January 1 - December 31. For black sea bass, federal waters measures include a minimum size limit of 12.5 inches, a 15 fish possession limit, and open seasons of Feb 1-28 and May 15-Dec 31. The Council and Board discussed the lack of preliminary 2020 recreational catch and harvest estimates as well as the ongoing challenges with incorporating the new MRIP estimates into management. Some Council and Board members voiced concerns regarding the potential to exceed the RHL for these species; however, they ultimately agreed with the Monitoring Committee recommendation to keep status quo measures given the data uncertainties related to COVID-19. The Council and Board emphasized that, similar to last year, this is a short-term approach to address a unique situation and allow for more time to consider how management should adapt to the revised recreational harvest estimates from MRIP. They agreed that it is essential to continue to make progress on the Commercial/Recreational Allocation Amendment for these species as well as actions associated with the Recreational Reform Initiative to ensure that recreational catch is appropriately constrained to meaningful catch limits.

Summer Flounder

The Council and Board agreed to maintain status quo recreational management measures for summer flounder in 2021 to achieve, but not exceed, the 2021 RHL of 8.32 million pounds. This includes the use of regional conservation equivalency with the same regions used in 2020. Conservation equivalency allows individual states or multi-state regions to develop customized measures that, in combination, will achieve but not exceed the coastwide RHL. Regional measures under conservation equivalency in 2021 will be the same as in 2020, with the exception of possible minor adjustments to season start and end dates in some states. While the RHL increased by 8% between 2020 and 2021, the Council and Board agreed with the Monitoring Committee recommendation to keep status quo measures given uncertainty associated with the lack of 2020 recreational data.

The Council and Board also maintained the status quo non-preferred coastwide measures, which will be waived in favor of state regulations once conservation equivalency is approved by the National Marine Fisheries Service (NMFS). These measures include a 4-fish possession limit, a 19-inch total length minimum size, and an open season of May 15 – September 15. The Council and Board also made no changes to the current precautionary default measures (i.e., a 2-fish possession limit, a 20-inch total length minimum size, and an open season of July 1 – August 31) which would be implemented in any state or region that does not adopt measures consistent with the conservation equivalency guidelines.

Bluefish

The Council and Bluefish Board agreed to maintain status quo recreational management measures for bluefish in state and federal waters in 2021. These measures include a coastwide 3-fish and 5-fish bag limit for the private and for-hire anglers, respectively. The Council and Bluefish Board discussed the lack of preliminary 2020 recreational catch and harvest estimates, the timing of when the current bag limits went into effect (mid-2020), as well as the ongoing issues surrounding incorporating the new MRIP estimates into management. Additionally, the Council and Bluefish Board acknowledged that bluefish is entering a rebuilding plan and is scheduled for a management track assessment in June 2021. Given these uncertainties and future bluefish developments, the Council and Bluefish Board agreed with the Monitoring Committee recommendation to maintain status quo measures for 2021.

Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment

The Council and Board reviewed the Council's public hearing document and the Commission's draft amendment document for the Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment. They approved both documents for public comment with minor modifications. They also discussed the timeline for this amendment relative to other ongoing actions, including the Recreational Reform Initiative. Some Council and Board members preferred prioritizing the Recreational Reform Initiative while others felt that a response to the revised MRIP estimates through this commercial/recreational allocation amendment should be the higher priority. Ultimately, the Council and Board decided to move forward with public hearings for this allocation amendment. Virtual public hearings for this action will be scheduled to begin in late January or early February 2021.

Black Sea Bass Commercial State Allocation Amendment and Draft Addendum XXXIII

The Council and Board reviewed a Council amendment and Commission Draft Addendum XXXIII, both of which consider modifications to the state allocations of the commercial black sea bass quota, as well as whether the state allocations should be included in the Council's Fishery Management Plan (FMP). After considering public comments, input from the Advisory Panel, and draft impacts of the management options, the Council and Board agreed to only select alternatives related to federal management of the black sea bass state allocations at this meeting. They voted to postpone a decision on the state allocation percentages to the next joint meeting hosted by the Commission, likely in February 2021.

The Council and Board voted to include the state allocations of the commercial black sea bass quota in the Council's FMP. As they were previously included only in the Commission's FMP, this change means future changes to the allocations will now be considered through a joint action between the Council and Board. If approved, NMFS will be responsible for monitoring state landings and approving interstate transfers. The two bodies also agreed to modify the regulations for federal in-season closures such that the entire commercial fishery will close in-season for all federally permitted vessels and dealers once landings are projected to exceed the coastwide quota plus an additional buffer of up to 5%. The Council and Board will agree to the appropriate buffer for the upcoming year through the specifications process. The additional buffer helps minimize negative economic impacts of coastwide closures on states that have not fully harvested their allocations.

The Council and Board will consider changes to the state allocation percentages at their next joint meeting, which is expected to take place during the Commission's Winter Meeting in February 2021. Given the complexity of the proposed approaches for modifying the state allocation percentages, as well as additional challenges related to COVID-19, the Council and Board felt additional time was needed for deliberation on how and whether to modify the state allocation percentages.

Recreational Reform Initiative

The Council met jointly with the Commission's Policy Board to receive an update on the Recreational Reform Initiative and discuss next steps. The Recreational Reform Initiative considers improvements to management of the recreational fisheries for summer flounder, scup, black sea bass, and bluefish. At their last meeting in October, the Council and Policy Board initiated two actions associated with recreational reform: (1) a joint amendment to address recreational sector separation and catch accounting, and (2) a joint framework/addendum to address several other recreational management topics. During this meeting, staff presented a recommendation to address three of the topics originally planned for the framework/addendum through a technical guidance document instead. This would allow the Council and Commission to more efficiently address the various recreational issues associated with the Recreational Reform Initiative. They also reviewed draft timelines for development of the technical guidance document, framework/addendum, and amendment. After discussing considerations related to

staff workload, the Council and Policy Board agreed to further discuss the Recreational Reform Initiative during their next joint meeting, likely in February 2021.

2021 Implementation Plan

The Council reviewed and approved its 2021 Implementation Plan. An implementation plan is developed each year as a tool for planning and prioritizing activities for the upcoming year within the broader context of the Council's longer-term goals and objectives. The 2021 Implementation Plan identifies the specific activities, amendments, frameworks, specifications, and other projects the Council expects to initiate, continue, or complete during the year.

After some discussion, the Council voted to add initiation of an action to implement a possession limit for frigate and bullet mackerel in the Mid-Atlantic to the list of 2021 deliverables. The goal of this action would be to prevent expansion of unmanaged fisheries for these species which are important prey for predators such as wahoo, blue marlin, yellowfin tuna, and dolphin. Further consideration regarding the appropriate type of management action and the specific options that will be considered will take place in 2021.

SSC Economic Work Group Report

In August 2020, the Council supported the development of a Scientific and Statistical Committee (SSC) Economic Work Group to provide timely economic direction and information to the Council. Using the Council's draft 2021 Implementation Plan, the Work Group developed three case study proposals for Council consideration, one of which would be further developed over the course of 2021. These case study proposals illustrated the value of focused economic analyses for future actions and identify a process(es) for continued engagement between the Council and the SSC on important economic topics. The three case study proposals included: a review of the river herring/shad catch cap in the Atlantic mackerel fishery, the redevelopment of the Research Set-Aside (RSA) program, and a white paper evaluating the economic implications of modifying the federal spiny dogfish trip limits. After reviewing potential benefits and anticipated outcomes associated with each proposal, the Council selected the RSA redevelopment case study. As identified in the RSA redevelopment proposal, the Work Group will provide input and analysis on selecting candidate fisheries and research projects to be funded, approaches to maximize funding available for research projects, and consideration for enforcement and monitoring of the program. There will be continual engagement between the Work Group and the entire Council, Research Steering Committee, full SSC, and staff throughout 2021 as the case study is developed.

Update on Habitat Activities

Council staff provided updates on several regional habitat activities, including the Northeast Regional Marine Fish Habitat Assessment, the New England Council's development of Habitat Policies/Backgrounders, and the Mid-Atlantic Council's involvement in wind organizations such as Responsible Offshore Science Alliance (ROSA) and Responsible Offshore Development Alliance (RODA). In addition, Karen Green and Peter Burns, from NMFS Habitat and Ecosystem Services Division, provided updates on several regional projects of interest, with a focus on offshore energy and aquaculture.

Update on Right Whale Issues

The Council received an update from Colleen Coogan (GARFO) and Sean Hayes (NEFSC) on North Atlantic right whale issues, including preliminary 2019 population estimates, the status of ongoing Atlantic Large Whale Take Reduction Plan modifications, and the development of ropeless fishing technology for pot/trap gear. A proposed rule containing measures to reduce right whale mortality in the Northeast lobster and Jonah crab fishery is in review and is expected to publish soon. Publication of the rule will be followed by remote informational public meetings and remote public comment meetings on the proposed measures. The Atlantic Large Whale Take Reduction Team is expected to meet in Spring 2021 to address measures for other fixed gear fisheries in the Mid-Atlantic and New England.

Ropeless fishing technology is being field tested and explored for potential use as an alternative to full area closures as right whale entanglements have increased. Multiple exempted fishing permits are currently in place allowing experimentation with ropeless gear in the commercial lobster fishery, although there are several remaining obstacles to widespread adoption of this technology.

Other Business

Council Recusal Process

The Council received a presentation on financial disclosure and recusal requirements from John Almeida (NOAA Office of General Counsel, Northeast).

Letter to NMFS: Ecosystem Component Species Designation

The Council agreed to send a letter to NMFS requesting clarified guidance on the use of the Ecosystem Component species designation, particularly how measures intended to protect the ecosystem roles of such species may be implemented across jurisdictions and fishery management plans.

Letter to Secretary of Interior: USFWS Squid Export Regulations

The Council reviewed and approved a letter to Secretary of Interior David Bernhardt regarding the inclusion of squid fishery products in the U.S. Fish and Wildlife Service (USFWS) inspection and user fee system for monitoring wildlife imports and exports. The letter requests that USFWS revise its definition of *shellfish* and/or *fishery product* to include squid in the exemption from USFWS wildlife import/export regulations. This issue was identified as a priority in the Council's response to Executive Order 13921 earlier this year.

Next Meeting

The next meeting of the full Council will be held via webinar on **February 9-11, 2021**. A complete list of upcoming meetings can be found at https://www.mafmc.org/council-events.

Mid-Atlantic Fishery Management Council

December 14-17, 2020 Webinar Meeting

MOTIONS

Monday, December 13, 2020

2021 Implementation Plan

Move to add to the 2021 workplan initiation of an action to implement a possession limit for frigate and bullet mackerel in the Mid-Atlantic. DiLernia/deFur (12/8/0) Motion carries

Move to approve the 2021 Implementation Plan with the revisions approved today. deFur/Duval (18/2/0) Motion carries

Tuesday, December 15, 2020

SSC Economic Work Group Report

Move to recommend proceeding with the river herring/shad catch cap SSC Economic Work Group project as proposed for development in 2021. deFur/Winslow

Move to substitute to use the RSA Redevelopment Workshop as the case study. Nowalsky/Pentony (15/4/1) Motion to substitute carries

Substitute motion becomes the main motion: Move to recommend proceeding with the RSA Redevelopment Workshop SSC Economic Work Group project as proposed for development in 2021. (19/0/1) Motion carries

Scup 2021 Recreational Specifications

Move to maintain status quo state and federal waters recreational measures for scup in 2021, including a federal waters minimum size limit of 9 inches, a 50 fish federal waters possession limit, and open federal waters season of January 1 through December 31. Board: Fote/Meserve (Motion carries by consent without abstention) Council: Cimino/Risi (19/0/0) Motion carries

Black Sea Bass 2021 Recreational Specifications

Move to maintain status quo state and federal waters recreational measures for black sea bass in 2021, including a federal waters minimum size limit of 12.5 inches, a 15 fish federal waters possession limit, and open federal waters seasons of Feb 1-28 and May 15-Dec 31. Council: Lenox/Bolen (18/0/1) Board: Fote/Clark (10/0/0/1) Motion carries

Summer Flounder 2021 Recreational Specifications

Move to adopt status quo management based on conservation equivalency, utilizing the same regional management structure and measures established for 2020, for 2021 summer flounder recreational management, with non-preferred coastwide measures including a 19-inch minimum size, 4 fish possession limit, and open season from May 15-September 15. In addition, the precautionary default measures would include a 20-inch minimum size, 2 fish possession limit, and open season from July 1-August 31.

Board: Hasbrouck/Borden (Motion carries by consent without abstention)

Council: Davidson/Cimino (20/0/0)

Motion carries

Bluefish 2021 Recreational Specifications

Move to maintain status quo state and federal waters recreational measures for bluefish in 2021, including a 3-fish and 5-fish bag limit for private and for-hire anglers, respectively. This includes conservation equivalency measures for Georgia state waters, which includes a 15 fish bag limit, minimum size of 12 inches, and a closed season of March 1st through April 30th.

Board: Davis/Clark (14/0/0/0) Council: Pentony/Risi (16/2/0) Motion carries

Wednesday, December 16, 2020

Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment

Move to approve the Commercial/Recreational Allocation Amendment public hearing document and Commission draft amendment document for public comment as modified today. Council: DiLernia/Duval (15/5/0) Board: Meserve/Davis (10/2/0/0) Motion carries

Black Sea Bass Commercial State Allocation Amendment and Draft Addendum XXXIII

Move that the Council and Board adopt option B under 3.2.2 as the preferred alternative (coastwide federal in-season closure at quota plus a buffer of up to 5%). Council: Pentony/DiLernia (18/0/0) Board: Borden/Meserve (11/0/0/0) Motion carries

Move to adopt option B under 3.2.1 (allocations in both FMPs) and sub-option B1 (states only pay back overages if coastwide quota is exceeded). Council: Cimino/Hughes Board: Cimino/Batsavage

Move to postpone until the February 2021 Commission meeting. Board: Gilmore/Fote Council: deFur/DiLernia (10/10/0) Motion to postpone fails for lack of Council majority

Move to substitute option A (allocations remain only in Commission FMP) for option B under 3.2.1. Board: Reid/Hasbrouck Council: Farnham/Pentony (5/15/0) Motion to substitute fails for lack of Council majority Return to the main motion: Move to adopt option B under 3.2.1 (allocations in both FMPs) and sub-option B1 (states only pay back overages if coastwide quota is exceeded). Council: (15/5/0) Board: (6/5/0/0) Motion carries

Move to postpone further action until the next joint meeting hosted by the Commission. Council: Bolen/deFur (20/0/0) Board: Davis/Fote (Motion carries by consent without abstention) Motion carries

Thursday, December 17, 2020

Continuing and New Business

I move that the Council send a letter to NOAA Fisheries recommending the agency clarify guidance on the use of the Ecosystem Component species designation, particularly how measures intended to protect the ecosystem roles of such species may be implemented across jurisdictions and fishery management plans.

Duval/DiLernia

Motion carries by consent with abstention by NMFS



SAFMC



South Atlantic Fishery Management Council

News Release

FOR IMMEDIATE RELEASE December 14, 2020

CONTACT: Kim Iverson Public Information Officer Toll Free: 866/SAFMC-10 or 843/571-4366 Kim.Iverson@safmc.net

Management Measures for Dolphin and Wahoo Approved for Public Hearings

Council to consider changes to annual catch limits, accountability measures, bag limits and other actions

Members of the South Atlantic Fishery Management Council met via webinar last week and approved a list of proposed management measures for the Dolphin and Wahoo fisheries for public hearings. The hearings will be scheduled in early 2021. The measures, proposed in Amendment 10 to the Dolphin Wahoo Fishery Management Plan, would revise catch levels and annual catch limits for both Dolphin and Wahoo, modify allocations between recreational and commercial sectors, and modify accountability measures designed to help prevent exceeding annual catch limits. These measures are proposed in response to revised recreational data estimates from the NOAA Fisheries Marine Recreational Information Program (MRIP) and recalibration of numbers used to establish Acceptable Biological Catches for each species.

The amendment also includes management alternatives to reduce recreational bag limits and vessel limits for Dolphin and Wahoo, eliminate a requirement for Operator Cards in the for-hire and commercial fisheries, address retention of Dolphin and Wahoo onboard permitted commercial vessels with specified gear onboard, and allow filleting of Dolphin at sea on board charter or headboat vessels in waters north of the Virginia/North Carolina line.

Both Dolphin and Wahoo are economically important species, often targeted by private recreational anglers and charter captains. The annual catch limit for Dolphin is currently allocated 90% recreational and 10% commercial. The species are managed by the Council in federal waters (greater than 3 nautical miles) along the entire Atlantic coast of the U.S. through the Dolphin Wahoo Fishery Management Plan.

Council members have received comments, primarily from charter captains in the Florida Keys, expressing concerns about the Dolphin fishery in South Florida. Fishermen report catching fewer fish, particularly the larger "bull" Dolphin and have requested the Council consider reductions in recreational bag limits or vessel limits. Concerns have also been expressed about the commercial longline fishery for Dolphin and possible impacts to the stock. The Council agreed to consider an additional amendment to the Dolphin Wahoo Fishery Management Plan in 2021 to address the longline fishery.

Public hearings for Dolphin Wahoo Amendment 10 will be held in early 2021 via webinar. Written public comments will also be accepted. The Council will review the public comments during its March meeting and is currently scheduled to approve Amendment 10 when it meets again in June 2021.

(Continued)

Other Business:

The Council also approved three items for public scoping. Scoping is used to obtain stakeholder input early in the decision-making process and help guide the Council for actions to consider.

• Shrimp Fishery Access Area

Coral Amendment 10 includes options to establish a shrimp fishery access area along the eastern boundary of the Oculina Bank Coral Habitat Area of Particular Concern. Located off the central east coast of Florida, the area is designated to help protect deepwater Oculina coral. The options are being considered at the request of fishermen involved in the commercial rock shrimp fishery. After considering input from its Coral Advisory Panel, Deepwater Shrimp Advisory Panel, and the Habitat and Ecosystem-Based Management Advisory Panel, the Council selected a preferred alternative for the proposed boundary area. Public scoping will occur in conjunction with the Council's March 2021 meeting.

• Wreckfish ITQ Modernization

The Council will continue to solicit input on measures proposed to modernize the current Individual Transferable Quota (ITQ) program used in the commercial fishery for Wreckfish, a deepwater grouper harvested by a limited number of vessels. Wreckfish shareholders and wholesale dealers met in October to provide guidance to the Council on recommended improvements to the program, including electronic reporting. The Council will hold a scoping meeting for proposed measures during its March 2021 meeting.

• Red Porgy

In response to a recent stock assessment for Red Porgy, the Council is developing Amendment 50 to the Snapper Grouper Fishery Management Plan to address overfishing, rebuild the stock and revise allocations. Despite having rebuilding plans in place for decades, the Red Porgy stock has not improved in the region. Under the Magnuson-Stevens Act the Council must implement measures to revise the rebuilding plan and end overfishing within the next two years. Proposed measures include reductions in commercial trip limits, recreational bag limits and seasonal closures. The Council reviewed input from its Snapper Grouper Advisory Panel and acknowledged that declining abundance and poor recruitment may be due to factors other than fishing. Public scoping will take place in early 2021 via webinar.

Additional information about the December Council meeting, including a meeting <u>Story Map</u>, final committee reports, and briefing book materials is available from the Council's website at: <u>https://safmc.net/safmc-meetings/council-meetings/</u>. The next meeting of the South Atlantic Fishery Management Council is scheduled for March 1-5, 2021.

The South Atlantic Fishery Management Council, one of eight regional councils, conserves and manages fish stocks from three to 200 miles offshore of North Carolina, South Carolina, Georgia and east Florida.

South Atlantic Fishery Management Council SUMMARY MOTIONS December 7-10, 2020

This is a summary of the motions approved by the Council. Motions addressing actions and alternatives for FMP amendments are followed by text showing the result of the approved motion. Complete details on motions and other committee recommendations are provided in the Committee Reports available on the SAFMC website.

Snapper Grouper Committee

MOTION 1: APPROVE SNAPPER GROUPER AMENDMENT 48 FOR SCOPING DURING THE MARCH 2021 COUNCIL MEETING.

APPROVED BY COUNCIL

MOTION 2: SELECT ALTERNATIVE 2 UNDER ACTION 2 AS PREFERRED.

Action 2. Revise the Red Porgy total annual catch limit and optimum yield

Alternative 2. Revise the annual catch limit and optimum yield for Red Porgy to equal the updated acceptable biological catch based on the results of the latest stock assessment (SEDAR 60 2020). The 2026 annual catch limit would remain in place until modified.

APPROVED BY COUNCIL

MOTION 3: DIRECT STAFF TO DO THE FOLLOWING:

- Include action to evaluate species for need of conservation and management under the Snapper Grouper FMP in a future unassessed species amendment. Work with SEFSC on possible approach for setting a single ACL with an (assessed) indicator species for data-poor species.
- Prepare the Wreckfish ITQ Modernization Amendment (Amendment 48) for scoping during the March 2021 Council meeting.
- Start an amendment in cooperation with the Gulf Council to set a new ACL for Yellowtail Snapper.
- Refer to guidance under YTS to create workgroup.
- Conduct scoping hearings for the Red Porgy Amendment (Amendment 50) in winter 2021 and bring back comments to the Committee at the March 2021 meeting
- Schedule online public seminar: Red Snapper diet composition using DNA barcoding of fish prey (MARMAP)
- Prepare Greater Amberjack Amendment (Amendment 49) draft scoping document for the Committee to consider during the March 2021 meeting.
- Continue AM 44 for Yellowtail Snapper

APPROVED BY COUNCIL

Mackerel Cobia Committee

MOTION 1: APPROVE COASTAL MIGRATORY PELAGICS FRAMEWORK AMENDMENT 10 FOR SCOPING

APPROVED BY COUNCIL

DIRECTION TO STAFF:

- Provide landings from the Mid-Atlantic region. Include alternatives to consider 5%, 10%, 15%, and 20% buffer between ABC and ACL.
- Review sector allocations in light of the revised MRIP numbers. Include alternatives that would maintain the current poundage for the commercial sector. Feedback from the IPT on other alternative options.
- Consider an increase in bag limit for Florida (3pp), consider modifying the size limit (including removal), consider cut fish regulations for the rec sector including state and le concerns.

MOTION 2: ADOPT THE FOLLOWING TIMING AND TASKS:

- 1. Continue work on CMP Framework Amendment 10 and prepare a draft for discussion and scoping at the March 2021 meeting.
- 2. Continue working with Gulf Council staff to develop CMP Amendment 32 for additional review at the March 2021 meeting.

APPROVED BY COUNCIL

Dolphin Wahoo Committee

MOTION 1: APPROVE THE IPT'S SUGGESTED PURPOSE AND NEED STATEMENTS IN AMENDMENT 10.

The purpose of Dolphin Wahoo Amendment 10 is to revise the catch levels [acceptable biological catch (ABC) and annual catch limits (ACL)], sector allocations, accountability measures, and management measures for dolphin and wahoo. Management measures address authorized gear and the operator card requirement in the dolphin and wahoo fisheries, as well as recreational vessel limits and allowing fillets at sea onboard for-hire vessels in the dolphin fishery.

The need for Dolphin Wahoo Amendment 10 is to base conservation and management measures on the best scientific information available and increase net benefits to the Nation, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and its National Standards.

APPROVED BY COUNCIL

MOTION 2: APPROVE THE IPT'S SUGGESTED EDITS IN ACTION 3.

Action 3. Revise sector allocations and sector annual catch limits for dolphin **Note:** The revised total annual catch limit in Alternatives 1 (No Action) through 4 reflects Preferred Alternative 2 in Action 1 in Amendment 10 to the Fishery Management Plan for Dolphin and Wahoo of the Atlantic. The revised total annual catch limit includes recreational landings from Monroe County, Florida, and incorporates recreational data as per the Marine Recreational Information Program using the Fishery Effort Survey method, as well as updates to commercial and for-hire landings.

Alternative 3. Allocate 93.00% of the revised total annual catch limit for dolphin to the recreational sector. Allocate 7.00% of the revised total annual catch limit for dolphin to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of dolphin available to either sector.

Alternative 4. Allocate 92.00% of the revised total annual catch limit for dolphin to the recreational sector. Allocate 8.00% of the revised total annual catch limit for dolphin to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of dolphin available to either sector.

APPROVED BY COUNCIL

MOTION 3: SELECT ALTERNATIVE 3 AS THE PREFERRED ALTERNATIVE IN ACTION 3.

Action 3. Revise sector allocations and sector annual catch limits for dolphin

Alternative 3. Allocate 93.00% of the revised total annual catch limit for dolphin to the recreational sector. Allocate 7.00% of the revised total annual catch limit for dolphin to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of dolphin available to either sector.

APPROVED BY COUNCIL

MOTION 4: APPROVED THE IPT'S SUGGESTED EDITS IN ACTION 4.

Action 4. Revise sector allocations and sector annual catch limits for wahoo

Note: The revised total annual catch limit in Alternatives 1 (No Action) through 4 reflects Preferred Alternative 2 in Action 2 in Amendment 10 to the Fishery Management Plan for Dolphin and Wahoo of the Atlantic. The revised total annual catch limit includes recreational landings from Monroe County, Florida, and incorporates recreational data as per the Marine Recreational Information Program using the Fishery Effort Survey method, as well as updates to commercial and for-hire landings.

Alternative 4. Allocate 97.00% of the revised total annual catch limit for wahoo to the recreational sector. Allocate 3.00% of the revised total annual catch limit for wahoo to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of wahoo available to either sector.

APPROVED BY COUNCIL

MOTION 5: SELECT ALTERNATIVE 4 AS THE PREFERRED ALTERNATIVE IN ACTION 4.

Action 4. Revise sector allocations and sector annual catch limits for wahoo

Alternative 4. Allocate 97.00% of the revised total annual catch limit for wahoo to the recreational sector. Allocate 3.00% of the revised total annual catch limit for wahoo to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of wahoo available to either sector.

APPROVED BY COUNCIL

MOTION 6: CHOOSE ALTERNATIVE 5 AS PREFERRED IN ACTION 5.

Action 5. Revise the trigger for the post-season recreational accountability measures for dolphin.

Alternative 5. Implement post season accountability measures in the following fishing year if the total (commercial and recreational combined) annual catch limit is exceeded.

APPROVED BY COUNCIL

MOTION 7: ADD ALTERNATIVES 5, 6, AND 7 TO ACTION 6.

Action 6. Revise the post-season recreational accountability measures for dolphin Alternative 5. In the following fishing year monitor landings and if landings are projected to meet the sector ACL, reduce the bag limit and/or the vessel limit (Sub-alternatives 5a and/or 5b) first and if needed reduce the length of the recreational fishing season by the amount necessary to prevent the annual catch limit from being exceeded. However, the vessel limit, bag limit, and/or recreational fishing season will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary. Sub-alternative 5a. Reduce the bag limit by the amount necessary but not below X fish per person per day (Council to fill in the number).

Sub-alternative 5b. Reduce the vessel limit by the amount necessary but not below X fish per vessel per day (Council to fill in the number).

Alternative 6. In order to prevent the annual catch limit from being exceeded in the following fishing year, reduce the bag limit first, and, if necessary, shorten the length of the recreational fishing season. The bag limit will not be reduced below X fish per person per day (Council to fill in the number). However, the bag limit, and/or recreational fishing season, will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

Alternative 7. In order to prevent the annual catch limit from being exceeded in the following fishing year, reduce the vessel limit first, and, if necessary, shorten the length of the recreational fishing season. The vessel limit will not be reduced below X fish per vessel per day (Council to fill in the number). However, the vessel limit, and/or recreational fishing season, will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

APPROVED BY COUNCIL

MOTION 8: SELECT ALTERNATIVE 5 AS PREFERRED IN ACTION 6.

Action 6. Revise the post-season recreational accountability measures for dolphin

Alternative 5. In the following fishing year monitor landings and if landings are projected to meet the sector ACL, reduce the bag limit and/or the vessel limit (Sub-alternatives 5a and/or 5b) first and if needed reduce the length of the recreational fishing season by the amount necessary to prevent the annual catch limit from being exceeded. However, the vessel limit, bag limit, and/or recreational fishing season will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

Sub-alternative 5a. Reduce the bag limit by the amount necessary but not below X fish per person per day (Council to fill in the number).

Sub-alternative 5b. Reduce the vessel limit by the amount necessary but not below X fish per vessel per day (Council to fill in the number).

APPROVED BY COUNCIL

MOTION 9: MOVE ALTERNATIVE 6 AND 7 IN ACTION 6 TO THE CONSIDERED BUT REJECTED SECTION.

MOTION 10: SELECT ALTERNATIVE 2 AS PREFERRED IN ACTION 7.

Action 7. Revise the trigger for the post-season recreational accountability measures for wahoo

Alternative 2. Implement post season accountability measures in the following fishing year if the recreational annual catch limits are constant and the 3-year geometric mean of landings exceed the recreational sector annual catch limit. If in any year the recreational sector annual catch limit is changed, the moving multi-year geometric mean of landings will start over.

APPROVED BY COUNCIL

MOTION 11: SELECT ALTERNATIVE 2 AS PREFERRED IN ACTION 8.

Action 8. Revise the post-season recreational accountability measures for wahoo Alternative 2. Reduce the length of the following recreational fishing season by the amount necessary to prevent the annual catch limit from being exceeded in the following year. However, the length of the recreational season will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

APPROVED BY COUNCIL

MOTION 12: ACCEPT THE IPT'S EDITS TO ACTION 9.

Action 9. Allow properly permitted commercial fishing vessels with trap, pot, or buoy gear on board that are not authorized for use in the dolphin wahoo fishery to possess commercial quantities of dolphin and wahoo

Alternative 1 (No Action). The following are the only authorized commercial gear types in the fisheries for dolphin and wahoo in the Atlantic Exclusive Economic Zone: automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic Exclusive Economic Zone that has on board gear types (including trap, pot, or buoy gear) other than authorized gear types may not possess a dolphin or wahoo. The current commercial trip limit for wahoo is 500 pounds. The current trip limit for dolphin is 4,000 pounds once 75 percent of the commercial sector annual catch limit is reached. Prior to reaching 75 percent of the commercial sector annual catch limit, there is no commercial trip limit for dolphin.

Alternative 2. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and valid federal commercial permits required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 is authorized to retain dolphin caught by rod and reel while in possession of such gears. A vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fishery for dolphin may not possess a dolphin. Dolphin retained by such a vessel shall not exceed:

Sub-alternative 2a. 250 pounds gutted weight Sub-alternative 2b. 500 pounds gutted weight Sub-alternative 2c. 750 pounds gutted weight Sub-alternative 2d. 1,000 pounds gutted weight

Alternative 3. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and valid federal commercial permits required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 is authorized to retain wahoo caught by rod and reel while in possession of such gear types. A vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fisheries for wahoo may not possess a wahoo. The wahoo commercial trip limit will be 500 pounds.

APPROVED BY COUNCIL

MOTION 13: SELECT SUB-ALTERNATIVE 2B AND ALTERNATIVE 3 AS PREFERRED IN ACTION 9.

Action 9. Allow properly permitted commercial fishing vessels with trap, pot, or buoy gear on board that are not authorized for use in the dolphin wahoo fishery to possess commercial quantities of dolphin and wahoo

Alternative 2. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and valid federal commercial permits required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 is authorized to retain dolphin caught by rod and reel while in possession of such gears. A vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fishery for dolphin may not possess a dolphin. Dolphin retained by such a vessel shall not exceed:

Sub-alternative 2b. 500 pounds gutted weight

Alternative 3. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and valid federal commercial permits required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 is authorized to retain wahoo caught by rod and reel while in possession of such gear types. A vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fisheries for wahoo may not possess a wahoo. The wahoo commercial trip limit will be 500 pounds.

MOTION 14: SELECT ALTERNATIVE 2 AND ALTERNATIVE 3 AS PREFERRED IN ACTION 10.

Action 10. Remove the requirement of vessel operators or crew to hold an Operator Card in the Dolphin Wahoo Fishery

Alternative 2. Neither a vessel operator nor any crewmember is required to have an Operator Card for an Atlantic Charter/Headboat for Dolphin/Wahoo Permit to be valid.

Alternative 3. Neither a vessel operator nor any crewmember is required to have an Operator Card for an Atlantic Dolphin/Wahoo Commercial Permit to be valid.

APPROVED BY COUNCIL

MOTION 15: ADD A SUB-ALTERNATIVE UNDER ALTERNATIVE 3 IN ACTION 11 OF 30 FISH PER VESSEL.

Action 11. Reduce the recreational vessel limit for dolphin

Alternative 3. In Florida only, the recreational daily bag limit is 10 dolphin per person, not to exceed:

APPROVED BY COUNCIL

MOTION 16: ADD A SUB-ALTERNATIVE UNDER ALTERNATIVE 2 IN ACTION 11 OF 30 FISH PER VESSEL.

Action 11. Reduce the recreational vessel limit for dolphin

Alternative 2. The recreational daily bag limit is 10 dolphin per person, not to exceed:

APPROVED BY COUNCIL

MOTION 17: ADD AN ALTERNATIVE THAT IS THE SAME AS ALTERNATIVE 3 IN ACTION 11, BUT INCLUDES GEORGIA, SOUTH CAROLINA, AND FLORIDA.

APPROVED BY COUNCIL

MOTION 18: SELECT ALTERNATIVE 1 IN ACTION 12 AS THE PREFERRED ALTERNATIVE.

Action 12. Allow filleting of dolphin at sea on board charter or headboat vessels in the Atlantic Exclusive Economic Zone north of the Virginia/North Carolina border. Alternative 1 (No Action). Dolphin possessed in the Atlantic Exclusive Economic Zone must be maintained with head and fins intact, with specific exceptions for fish lawfully harvested in the Bahamas. Such fish harvested from the Atlantic Exclusive Economic Zone may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

APPROVED BY COUNCIL

MOTION 19: APPROVE ALL ACTIONS IN DOLPHIN WAHOO AMENDMENT 10, AS MODIFIED, FOR PUBLIC HEARINGS TO TAKE PLACE BEFORE THE MARCH 2021 MEETING.

APPROVED BY COUNCIL

MOTION 20: APPROVE THE FOLLOWING TIMING AND TASKS:

- Conduct public hearings for amendment 10 before the march 2021 meeting.
- Continue work on amendment 10 for review at the march 2021 meeting.

APPROVED BY COUNCIL

Habitat Protection and Ecosystem Based Management Committee

MOTION 1: MOVE THAT WE CHOOSE OPTION 2A AS PREFERRED. APPROVED BY COUNCIL

MOTION 2: APPROVE CORAL AMENDMENT 10 FOR SCOPING AT THE MARCH 2021 COUNCIL MEETING.

APPROVED BY COUNCIL

MOTION 3: COUNCIL ESTABLISH A HABITAT AND ECOSYSTEM BLUEPRINT DEVELOPMENT TEAM

APPROVED BY COUNCIL

MOTION 4: ADOPT THE FOLLOWING TIMING AND TASKS:

- Prepare Coral Amendment 10 for scoping during the March 2021 Council meeting with the intent to approve in June 2021.
- Work with SSC Chair to establish membership of the SSC Ecosystem Model Workgroup.
- Coordinate with SSC Chair, the SA EwE Model Team and the SSC Ecosystem Model Workgroup to complete Ecosim review and schedule webinars/workshop and timing necessary to complete 1-2 priority applications of model by October 2021.
- Facilitate SA EwE Model Team initial parameterization of SA Ecospace component of SA EwE with future review and guidance provided by the SSC Ecosystem Model Workgroup.

- Staff provide guidance and priorities on mapping/characterization of South Atlantic deepwater coral ecosystems.
- Staff facilitate scheduling (based on Council input) for online public seminar on NOAA Deep Sea Coral Research and Office of Exploration and Research Mapping and Geomorphic Characterization of Deep Sea Coral Ecosystems in the South Atlantic Region. AFTER MARCH 2021

APPROVED BY COUNCIL

MOTION 5: MOVE OVERSIGHT OF EWE MODEL DEVELOPMENT TO THE SSC AND SUPPORT A WORKSHOP TO EXPLORE APPLYING IT TO THE QUESTIONS OF INTEREST

APPROVED BY COUNCIL

Executive Committee

MOTION 1: APPROVE THE FINAL 2020 OPERATIONAL BUDGET AS PRESENTED.

APPROVED BY COUNCIL

MOTION 2: APPROVE THE DRAFT 2021 OPERATIONAL BUDGET AS PRESENTED AND MODIFIED.

APPROVED BY COUNCIL

Citizen Science Committee

MOTION 1: ADOPT THE REVISED CITIZEN SCIENCE PROGRAM VISION, MISSION, GOALS, OBJECTIVES, STRATEGIES, AND INDICATORS WITH MODIFICATIONS AS NEEDED.

APPROVED BY COUNCIL

Advisory Panel Committee

MOTION 1: REAPPOINT CHRIS BURROWS, BOB FREVERT, RICHARD HARRIS, GLEN HOPKINS, JON REYNOLDS, AND TIM SCALISE TO THE DOLPHIN WAHOO ADVISORY PANEL.

APPROVED BY COUNCIL

MOTION 2: APPOINT ROM WHITAKER III, JAMES "CHIP" BERRY AND RICHARD DELIZZA TO THE DOLPHIN WAHOO AP.

APPROVED BY COUNCIL

MOTION 3: APPOINT THE INDIVIDUALS LISTED IN TABLE 1 TO THE OUTREACH AND COMMUNICATION ADVISORY PANEL.

Table 1. Recommended Appointments to the Outreach and Communications Advisory

 Panel.

New Structure: 21 Seats				
State Seats				
4 Sea Grant Seats (+ 3 Seats)				
NC Sea Grant: Scott Baker				
SC Sea Grant: Graham Gaines				
GA Sea Grant: Bryan Fluech				
FL Sea Grant: Shelly Krueger				
4 State Agency Seats				
NCDMF: Patricia Smith				
SCDNR: Erin Weeks				
GADNR: Tyler Jones				
MyFWC: Melissa Crouch				
Fishermen Seats				
For-Hire Seat : Mark Phelp				
Commercial Seat : Cinthia Sandoval				
Private Recreational Seat: George Patane				
At-Large Fishermen's Seat: Robert Todd				
Other Seats				
Media Seat Steve: Doughtery				
Peer & Agency Seats				
Gulf Council: Emily Muehlstein				
Caribbean Council: Diana Martino				
Mid-Atlantic Council: Mary Clark Sabo				
ASMFC: Tina Berger				
Agency Seats				
SERO: Sean Meehan				
At-Large Seat: Katie Latanich				
At-Large Seat: Bebe Dalton Harrison				
United States Coast Guard: Lt. James Bruce				

Full Council II

MOTION 1: DIRECT STAFF TO DO THE FOLLOWING:

- Prepare ABC Control Rule Amendment options language for the Council to consider during the March 2021 meeting.
- Coordinate the ORCS Working Group to develop recommendations for consideration in the ABC Control Rule Amendment.

<u>FINAL</u> SUMMARY REPORT CITIZEN SCIENCE COMMITTEE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL Via Webinar December 10, 2020

The Committee approved the December 2020 Citizen Science (CitSci) Committee meeting agenda and the minutes from the June 2020 meeting.

Citizen Science Program Planning

Staff and Rick Bonney gave a brief overview of the program and evaluation planning activities conducted by the CitSci Operations Committee during 2020. These activities included revision and development of the Program's vision, mission, goals, objectives, strategies, and indicators, as well as, identifying audiences and potential evaluation questions.

The goals, objectives, strategies, and indicators were initially reviewed by the Council at their June 2020 meeting. Since this meeting, the Ops Committee has drafted revised vision and mission statements and identified two new indicators. The Council reviewed and discussed these items in the revised Program Planning document and made two suggestions:

- Add clarifying language to note the new indicator about research priorities is focused on the diversity of research priorities that have been addressed.
- Add language to the new indicator about endorsement letters clarifying that these may only be solicited for external projects.

The following motion was made:

MOTION #1: ADOPT THE REVISED CITIZEN SCIENCE PROGRAM VISION, MISSON, GOALS, OBJECTIVES, STRATEGIES, AND INDICATORS WITH MODIFICATIONS AS NEEDED.

APPROVED BY COMMITTEE APPROVED BY COUNCIL

NOTE: The revised vision, mission, goals, and objectives will be incorporated and updated in the Citizen Science SOPPS. The strategies and indicators will be housed in documents outside of the SOPPS.

Program Evaluation Proposal

Evaluating the SAFMC's Citizen Science Program will require determining whether its mission, vision, and goals are being realized after a set period of time. Because many of the program's goals will take years to accomplish, overall evaluation results will not be evident for many years. However, a comprehensive program evaluation should be adopted early on because baseline data must be collected against which change over time can be measured.

Work to address the Program's first three goals (developing, implementing, and maintaining a program framework; facilitating development facilitating development of individual projects; and ensuring project data are accessible, robust, and fit for purpose) is underway. Evaluating whether these goals are being achieved can be done after project results are in and can be examined. The fourth goal (fostering learning, collaboration, and engagement) will be much harder to measure. To address this goal, we will need baseline information on the knowledge, attitudes, collaborations, engagement, and trust levels of the various stakeholders. The baseline data can be compared with information about these attributes after the stakeholders have engaged with the program for longer periods of time.

Rick Bonney and staff presented an overview of the draft Citizen Science Program Evaluation Proposal which is focused on collecting this baseline information. The proposal was informed by the Citizen Science Ops Committee's discussions and has been reviewed by Ops Committee members. The proposal includes a three-phase approach consisting of interviews and the development and implementation of a survey. The suggested approach is to address phases one and two in 2021 using funds designated for the 2020 Citizen Science Ops meeting and consider phase 3 in 2022.

Overall the Committee was supportive of the proposal. Council members were asked to help identify potential interview participants. Potential interviewees would ideally be identified by January 2021. Staff can provide background information, as needed, to help recruit potential participants.

Citizen Science Program Update

The Committee received an update from staff on the Citizen Science Program, highlighting program and project activities that have occurred since the September 2020 Council meeting. A brief summary of the programmatic activities is below.

- Program evaluation plan development
- CitSci Advisory Panel Meetings: Operations Committee met Oct. 2020 and Projects Advisory Committee met Nov 2020
- FISHstory project included in FY19-20 NOAA CitSci Report to Congress
- Bioscience manuscript submitted with revisions and accepted for publication
- Continued outreach efforts: citsci social media, bimonthly emails, quarterly newsletter articles

The Committee also received updates on projects and collaborations in progress and under development. Updates were given on the two pilot projects in progress: SAFMC Scamp Release and FISHstory, as well as a The Nature Conservancy led project focused on promoting Gray's reef through engaging Georgia anglers.

The projects and collaborations under development include a project to collect data on rare species observations to potentially serve as an early warning system for shifting species; a project to collect diver observations on data limited species; potential collaboration to expand the NEFSC's eMOLT (Environmental Monitoring of Lobster Traps and Large Trawls) project; and a potential collaboration with the Dolphinfish Research Program to expand their tagging efforts. Additionally the Program has continued the collaboration with the SEFSC to coordinate a series of Dolphin Wahoo participatory workshops.

Other Business

No further business was brought before the Committee.

Full Council Session 1 December 7, 2020 (Closed Session) Advisory Panel Selection FINAL REPORT

The Council met in Closed Session on Monday, December 7, 2020 to review applications for open seats on the Dolphin Wahoo Advisory Panel, Law Enforcement Advisory Panel and the newly restructured Outreach and Communications Advisory Panel.

The Council also reviewed updates and edits to the Council's Advisory Panel Policy and the structure of the Mackerel Cobia Advisory Panel. The Council provided the following recommendations during Council Session 1 for Council consideration during Council Session III (Open Session).

Advisory Panel Appointments

Dolphin Wahoo Advisory Panel

REAPPOINT CHRIS BURROWS, BOB FREVERT, RICHARD HARRIS, GLEN HOPKINS, JON REYNOLDS, AND TIM SCALISE TO THE DOLPHIN WAHOO ADVISORY PANEL. APPROVED BY COUNCIL

APPOINT ROM WHITAKER III, JAMES "CHIP" BERRY AND RICHARD DELIZZA TO THE DOLPHIN WAHOO AP. APPROVED BY COUNCIL

Outreach and Communications Advisory Panel

The Council provided the following recommendations for appointments to the Outreach and Communications Advisory Panel. Table 1 provides a summary of the recommendations.

APPOINT SCOTT BAKER, GRAHAM GAINES, BRYAN FLUECH, AND SHELLY KRUEGER AS SEA GRANT REPRESENTATIVES ON THE OUTREACH AND COMMUNICATIONS AP.

APPOINT PATRICIA SMITH, ERIN WEEKS, TYLER JONES AND MELISSA CROUCH AS STATE AGENCY REPRESENTATIVES ON THE OUTREACH AND COMMUNICATIONS AP.

APPOINT EMILY MUEHLSTEIN, DIANA MARTINO, AND MARY CLARK SABO AS REPRESENTATIVES OF THE GULF OF MEXICO FISHERY MANAGEMENT COUNCIL, CARIBBEAN FISHERY MANAGEMENT COUNCIL AND MID-ATLANTIC FISHERY MANAGEMENT COUNCIL AND TINA BERGER AS A REPRESENTATIVE FOR THE ATLANTIC STATES MARINE FISHERIES COMMISSION TO THE OUTRECH AND COMMUNICATIONS ADVISORY PANEL. APPOINT SEAN MEHAN AS THE NOAA FISHERIES REPRESENTATIVE AND LT. JAMES BRUCE AS THE USCG REPRESENTATIVE TO THE OUTREACH AND COMMUNICATIONS AP.

APPOINT MARK PHELPS (FOR-HIRE) AND CINTHIA SANDOVAL (COMMERCIAL) TO THE OUTREACH AND COMMUNICATIONS AP.

APPOINT GEORGE PATANE (PRIVATE RECREATIONAL SEAT) TO THE OUTREACH AND COMMUNICATIONS AP.

APPOINT STEVE DOUGHERTY (MEDIA SEAT) ON THE OUTREACH AND COMMUNICATIONS AP.

APPOINT BEBE DALTON HARRISON (AT-LARGE SEAT) TO THE OUTREACH AND COMMUNICATIONS AP.

APPOINT KATIE LATANICH (AT-LARGE SEAT) TO THE OUTREACH AND COMMUNICATIONS AP.

MOTION: APPOINT THE INDIVIDUALS LISTED IN TABLE 1 TO THE OUTREACH AND COMMUNICATION ADVISORY PANEL.

APPROVED BY COUNCIL

Table 1. Appointments to the Outreach and Communications Advisory Panel.

New Structure: 21 Seats				
State Seats				
4 Sea Grant Seats (+ 3 Seats)				
NC Sea Grant: Scott Baker				
SC Sea Grant: Graham Gaines				
GA Sea Grant: Bryan Fluech				
FL Sea Grant: Shelly Krueger				
This designation eliminated (-1 seat)				
Shelly moved to FL Sea Grant above.				
4 State Agency Seats				
NCDMF: Patricia Smith				
SCDNR: Erin Weeks				
GADNR: Tyler Jones				
MyFWC: Melissa Crouch				
Fishermen Seats				
For-Hire Seat (MARK PHELPS)				
Commercial Seat (CINTHIA SANDOVAL)				
Private Recreational Seat (+1 Seat) (GEORGE				
PATANE)				

At-Large Fishermen's Seat (+1 Seat) (ROBERT				
TODD)				
Other Seats				
This seat eliminated (-1 seat)				
Media Seat (STEVE DOUGHTERY)				
Peer & Agency Seats				
4 Peer Seats (+ 2 seats)				
Gulf Council: Emily Muehlstein				
Caribbean Council: Diana Martino				
Mid-Atlantic Council – Mary Clark Sabo				
ASMFC – Tina Berger				
Agency Seats				
SERO Seat				
Sean Meehan				
At-Large Seat (KATIE LATANICH)				
At-Large Seat (BEBE DALTON HARRISON)				
United States Coast Guard				
Lt. James Bruce				

DIRECTION TO STAFF:

- Readvertise the open seat on the Dolphin Wahoo Advisory Panel (target commercial replacement) for consideration at the Council's June 2021 meeting.
- Contact the Law Enforcement Advisory Panel for recommendations for commercial applicants.
- Develop recommendations for consideration in March that address allowing ad-hoc or liaison members from other APs to participate on the Law Enforcement AP. (Note that a policy will not be in place to allow a Wreckfish ITQ Shareholder be included as part of the Law Enforcement AP meeting in February 2021 as recommended.)
- Incorporate edits to the Advisory Panel Policy as discussed and review again at the March 2021 Council meeting.

• Develop a "white paper" addressing a joint ASMFC and SAFMC Spanish Mackerel Advisory Panel for presentation to the Council at the March 2021 meeting.

<u>FINAL</u> SUMMARY REPORT FULL COUNCIL II SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL DECEMBER 2020

(MEETING HELD VIA WEBINAR)

The Council met via webinar on December 7, 2020.

ABC Control Rule Amendment

Council staff gave a presentation describing development of the Acceptable Biological Catch (ABC) Control Rule Amendment, including actions and alternatives considered to this point. Amendment development was paused awaiting guidance from NMFS, which was issued in July 2020. The Scientific and Statistical Committee (SSC) also further discussed their recommendations on the amendment at their October 2020 meeting. Genny Nesslage, SSC Chair, presented the SSC's recommendations, including the formation of an SSC Work Group to investigate current literature on Only Reliable Catch Stocks (ORCS) and adjust application of the ABC control rule to ORCS as appropriate through this amendment.

The Council asked about whether development of this amendment has been with consultation of other Councils to help align language and application principles, where possible. Control rules from other regions were referenced and parts were considered during development of the amendment, but there has not been direct interaction with other Councils or SSCs. The Council directed staff to coordinate with other Councils as the amendment is further developed. The Council also supported the formation of the ORCS Working Group to further develop that aspect of the ABC control rule. The Council did note that the amendment's timeline may need to be adjusted to account for the Working Group's needs. The Council discussed problematic mixing of scientific uncertainty assessment with the Council's management risk decisions and directed further consideration of how these processes could be separated within the ABC control rule. The SSC agrees with this approach, and a potential method used by the Caribbean Council (detailed in Ralston et al.) was suggested.

Draft Amendment 14 to the HMS FMP

Guy` DuBeck, NOAA Fisheries Highly Migratory Species Management Division staff, delivered a presentation to the Council on Draft Amendment 14 to the 2006 Consolidated Highly Migratory (HMS) Species Fishery Management Plan (FMP). The amendment will create a new framework for the establishment of ABCs and annual catch limits (ACLs) for Atlantic shark fisheries, consistent with the National Standard 1 guidelines. Specifically, the preferred management options in Amendment 14 for Atlantic sharks will create a tiered ABC control rule, allow consideration of phase-in ABC control rules, actively manage all sector ACLs, establish an ACL for each Atlantic shark management group without commercial ACL quota linkages, allow carry-over for underharvest of commercial quotas, and compare a three-year average of fishing mortality estimates to the overfishing limit to determine overfishing status. The Council provided feedback on the amendment in addition to expressing ongoing concerns over the effects that increased shark predation is having on Council-managed fisheries.

Timing and Tasks:

MOTION: DIRECT STAFF TO DO THE FOLLOWING:

- Prepare ABC Control Rule Amendment options language for the Council to consider during the March 2021 meeting.
- Coordinate the ORCS Working Group to develop recommendations for consideration in the ABC Control Rule Amendment.

SUMMARY REPORT DOLPHIN WAHOO COMMITTEE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL Webinar December 9, 2020

The Committee approved amended minutes from the September 2020 meeting and the agenda.

Status of Amendments under Formal Review

The Committee was updated on the status of Dolphin Wahoo Amendment 12 that adds bullet mackerel and frigate mackerel to the Dolphin Wahoo Fishery Management Plan and designates them as Ecosystem Component species. This amendment was submitted to the NMFS Southeast Regional Office on December 3, 2020 and is undergoing rule making.

Summary report for the October 2020 Dolphin Wahoo Advisory Panel meeting

The Dolphin Wahoo Advisory Panel (AP) met on October 28, 2020 via webinar to discuss items pertaining to the dolphin wahoo fishery. Christopher Burrows, the AP Chair, delivered the report to the Committee. The AP received updates on recent Council actions, developing amendments, and other relevant topics. In addition, the AP provided input for a Fishery Performance Report on wahoo.

Revise Dolphin and Wahoo Management Measures: Amendment 10

Amendment 10 includes actions that accommodate updated recreational data from the Marine Recreational Information Program by revising the annual catch limits and sector allocations for dolphin and wahoo. The amendment also contains actions that implement various other management changes in the fishery including revising recreational accountability measures, accommodating possession of dolphin and wahoo on vessels with certain unauthorized gears onboard, removing the operator card requirement, reducing the recreational vessel limit for dolphin, and allowing filleting of dolphin at sea onboard for-hire vessels North of the Virginia/North Carolina border.

The Committee discussed the amendment and provided the following guidance as well as made the following motions:

MOTION #1: APPROVE THE IPT'S SUGGESTED PURPOSE AND NEED STATEMENTS IN AMENDMENT 10.

The *purpose* of Dolphin Wahoo Amendment 10 is to revise the catch levels [acceptable biological catch (ABC) and annual catch limits (ACL)], sector allocations, accountability measures, and management measures for dolphin and wahoo. Management measures address authorized gear and the operator card requirement in the dolphin and wahoo fisheries, as well as recreational vessel limits and allowing fillets at sea onboard for-hire vessels in the dolphin fishery.

The *need* for Dolphin Wahoo Amendment 10 is to base conservation and management measures on the best scientific information available and increase net benefits to the Nation, consistent

with the Magnuson-Stevens Fishery Conservation and Management Act and its National Standards.

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #2: APPROVE THE IPT'S SUGGESTED EDITS IN ACTION 3.

Action 3. Revise sector allocations and sector annual catch limits for dolphin **Note:** The revised total annual catch limit in Alternatives 1 (No Action) through 4 reflects Preferred Alternative 2 in Action 1 in Amendment 10 to the Fishery Management Plan for Dolphin and Wahoo of the Atlantic. The revised total annual catch limit includes recreational landings from Monroe County, Florida, and incorporates recreational data as per the Marine Recreational Information Program using the Fishery Effort Survey method, as well as updates to commercial and for-hire landings.

Alternative 3. Allocate 93.00% of the revised total annual catch limit for dolphin to the recreational sector. Allocate 7.00% of the revised total annual catch limit for dolphin to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of dolphin available to either sector.

Alternative 4. Allocate 92.00% of the revised total annual catch limit for dolphin to the recreational sector. Allocate 8.00% of the revised total annual catch limit for dolphin to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of dolphin available to either sector.

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #3: SELECT ALTERNATIVE 3 AS THE PREFERRED ALTERNATIVE IN ACTION 3.

Action 3. Revise sector allocations and sector annual catch limits for dolphin Alternative 3. Allocate 93.00% of the revised total annual catch limit for dolphin to the recreational sector. Allocate 7.00% of the revised total annual catch limit for dolphin to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of dolphin available to either sector.

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #4: APPROVED THE IPT'S SUGGESTED EDITS IN ACTION 4. Action 4. Revise sector allocations and sector annual catch limits for wahoo

Note: The revised total annual catch limit in Alternatives 1 (No Action) through 4 reflects Preferred Alternative 2 in Action 2 in Amendment 10 to the Fishery Management Plan for Dolphin and Wahoo of the Atlantic. The revised total annual catch limit includes recreational landings from Monroe County, Florida, and incorporates recreational data as per the Marine Recreational Information Program using the Fishery Effort Survey method, as well as updates to commercial and for-hire landings. **Alternative 4.** Allocate 97.00% of the revised total annual catch limit for wahoo to the recreational sector. Allocate 3.00% of the revised total annual catch limit for wahoo to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of wahoo available to either sector.

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #5: SELECT ALTERNATIVE 4 AS THE PREFERRED ALTERNATIVE IN ACTION 4.

Action 4. Revise sector allocations and sector annual catch limits for wahoo Alternative 4. Allocate 97.00% of the revised total annual catch limit for wahoo to the recreational sector. Allocate 3.00% of the revised total annual catch limit for wahoo to the commercial sector. This is based on the Council's intent to explore alternatives for sector allocations that would not result in a decrease in the current pounds of wahoo available to either sector.

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #6: CHOOSE ALTERNATIVE 5 AS PREFERRED IN ACTION 5. Action 5. Revise the trigger for the post-season recreational accountability measures for dolphin

Alternative 5. Implement post season accountability measures in the following fishing year if the total (commercial and recreational combined) annual catch limit is exceeded. APPROVED BY COMMITTEE

APROVED BY COUNCIL

MOTION #7: ADD ALTERNATIVES 5, 6, AND 7 TO ACTION 6.

Action 6. Revise the post-season recreational accountability measures for dolphin Alternative 5. In the following fishing year monitor landings and if landings are projected to meet the sector ACL, reduce the bag limit and/or the vessel limit (*Sub-alternatives 5a and/or 5b*) first and if needed reduce the length of the recreational fishing season by the amount necessary to prevent the annual catch limit from being exceeded. However, the vessel limit, bag limit, and/or recreational fishing season will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

Sub-alternative 5a. Reduce the bag limit by the amount necessary but not below X fish per person per day (*Council to fill in the number*).

Sub-alternative 5b. Reduce the vessel limit by the amount necessary but not below X fish per vessel per day (*Council to fill in the number*).

Alternative 6. In order to prevent the annual catch limit from being exceeded in the following fishing year, reduce the bag limit first, and, if necessary, shorten the length of the recreational fishing season. The bag limit will not be reduced below X fish per person per day (*Council to fill in the number*). However, the bag limit, and/or recreational fishing season, will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary. **Alternative 7.** In order to prevent the annual catch limit from being exceeded in the following fishing year, reduce the vessel limit first, and, if necessary, shorten the length of the recreational

fishing season. The vessel limit will not be reduced below X fish per vessel per day (*Council to fill in the number*). However, the vessel limit, and/or recreational fishing season, will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #8: SELECT ALTERNATIVE 5 AS PREFERRED IN ACTION 6.

Action 6. Revise the post-season recreational accountability measures for dolphin Alternative 5. In the following fishing year monitor landings and if landings are projected to meet the sector ACL, reduce the bag limit and/or the vessel limit (*Sub-alternatives 5a and/or 5b*) first and if needed reduce the length of the recreational fishing season by the amount necessary to prevent the annual catch limit from being exceeded. However, the vessel limit, bag limit, and/or recreational fishing season will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

Sub-alternative 5a. Reduce the bag limit by the amount necessary but not below X fish per person per day (*Council to fill in the number*).

Sub-alternative 5b. Reduce the vessel limit by the amount necessary but not below X fish per vessel per day (*Council to fill in the number*).

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #9: MOVE ALTERNATIVE 6 AND 7 IN ACTION 6 TO THE CONSIDERED BUT REJECTED SECTION.

Action 6. Revise the post-season recreational accountability measures for dolphin Alternative 6. In order to prevent the annual catch limit from being exceeded in the following fishing year, reduce the bag limit first, and, if necessary, shorten the length of the recreational fishing season. The bag limit will not be reduced below X fish per person per day (*Council to fill in the number*). However, the bag limit, and/or recreational fishing season, will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary. Alternative 7. In order to prevent the annual catch limit from being exceeded in the following fishing season. The vessel limit first, and, if necessary, shorten the length of the recreational fishing season. The vessel limit will not be reduced below X fish per vessel per day (*Council to fill in the number*). However, the vessel limit, and/or recreational fishing season, will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

APPROVED BY COMMITTEE APROVED BY COUNCIL

DIRECTION TO STAFF FOR ACTION 6:

- Examine a vessel limit of 10, 20, and 30 fish.
- Examine a bag limit of 2, 3, 4, and 5 fish.
- Examine combinations of bag limit and vessel limits whichever is less (emphasis on most restrictive measure).

MOTION #10: SELECT ALTERNATIVE 2 AS PREFERRED IN ACTION 7.

Action 7. Revise the trigger for the post-season recreational accountability measures for wahoo

Alternative 2. Implement post season accountability measures in the following fishing year if the recreational annual catch limits are constant and the 3-year geometric mean of landings exceed the recreational sector annual catch limit. If in any year the recreational sector annual catch limit is changed, the moving multi-year geometric mean of landings will start over. APPROVED BY COMMITTEE

APROVED BY COUNCIL

DIRECTION TO STAFF FOR ACTION 7:

• Revisit geometric vs arithmetic mean and provide examples.

MOTION #11: SELECT ALTERNATIVE 2 AS PREFERRED IN ACTION 8.

Action 8. Revise the post-season recreational accountability measures for wahoo Alternative 2. Reduce the length of the following recreational fishing season by the amount necessary to prevent the annual catch limit from being exceeded in the following year. However, the length of the recreational season will not be reduced if the Regional Administrator determines, using the best available science, that it is not necessary.

APPROVED BY COMMITTEE

APROVED BY COUNCIL

MOTION #12: ACCEPT THE IPT'S EDITS TO ACTION 9.

Action 9. Allow properly permitted commercial fishing vessels with trap, pot, or buoy gear on board that are not authorized for use in the dolphin wahoo fishery to possess commercial quantities of dolphin and wahoo

Alternative 1 (No Action). The following are the only authorized commercial gear types in the fisheries for dolphin and wahoo in the Atlantic Exclusive Economic Zone: automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic Exclusive Economic Zone that has on board gear types (including trap, pot, or buoy gear) other than authorized gear types may not possess a dolphin or wahoo. The current commercial trip limit for wahoo is 500 pounds. The current trip limit for dolphin is 4,000 pounds once 75 percent of the commercial sector annual catch limit is reached. Prior to reaching 75 percent of the commercial sector annual catch limit, there is no commercial trip limit for dolphin.

Alternative 2. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and the necessary state and/or valid federal commercial permits for required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 are is authorized to retain dolphin and wahoo caught by rod and reel while in possession of such gears. The wahoo commercial trip limit will remain at 500 pounds. A person aboard a vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fisheries fishery for dolphin and wahoo may not possess a dolphin or wahoo. Dolphin retained by such a vessel on trips when trap, pot, or buoy gear are on board shall not exceed: (*Sub-alternatives 2a through 2d*)

Sub-alternative 2a. 250 pounds gutted weight Sub-alternative 2b. 500 pounds gutted weight Sub-alternative 2c. 750 pounds gutted weight

Sub-alternative 2d. 1,000 pounds gutted weight

Alternative 3. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and valid federal commercial permits required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 is authorized to retain wahoo caught by rod and reel while in possession of such gear types. A vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fisheries for wahoo may not possess a wahoo. The wahoo commercial trip limit will be 500 pounds.

APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #13: SELECT SUB-ALTERNATIVE 2B AND ALTERNATIVE 3 AS PREFERRED IN ACTION 9.

Action 9. Allow properly permitted commercial fishing vessels with trap, pot, or buoy gear on board that are not authorized for use in the dolphin wahoo fishery to possess commercial quantities of dolphin and wahoo

Alternative 2. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and valid federal commercial permits required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 is authorized to retain dolphin caught by rod and reel while in possession of such gears. A vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fishery for dolphin may not possess a dolphin. Dolphin retained by such a vessel shall not exceed:

Sub-alternative 2b. 500 pounds gutted weight

Alternative 3. A vessel in the Atlantic Exclusive Economic Zone that possesses both an Atlantic Dolphin/Wahoo Commercial Permit and valid federal commercial permits required to fish trap, pot, or buoy gear or is in compliance with permit requirements specified for the spiny lobster fishery in 50 C.F.R. §622.400 is authorized to retain wahoo caught by rod and reel while in possession of such gear types. A vessel in the Atlantic Exclusive Economic Zone that has on board other gear types that are not authorized in the fisheries for wahoo may not possess a wahoo. The wahoo commercial trip limit will be 500 pounds.

APPROVED BY COMMITTEE

APROVED BY COUNCIL

MOTION #14: SELECT ALTERNATIVE 2 AND ALTERNATIVE 3 AS PREFERRED IN ACTION 10.

Action 10. Remove the requirement of vessel operators or crew to hold an Operator Card in the Dolphin Wahoo Fishery

Alternative 2. Neither a vessel operator nor any crewmember is required to have an Operator Card for an Atlantic Charter/Headboat for Dolphin/Wahoo Permit to be valid.

Alternative 3. Neither a vessel operator nor any crewmember is required to have an Operator Card for an Atlantic Dolphin/Wahoo Commercial Permit to be valid.

APPROVED BY COMMITTEE

MOTION #15: ADD A SUB-ALTERNATIVE UNDER ALTERNATIVE 3 IN ACTION 11 OF 30 FISH PER VESSEL. Action 11. Reduce the recreational vessel limit for dolphin Alternative 3. In Florida only, the recreational daily bag limit is 10 dolphin per person, not to exceed: APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #16: ADD A SUB-ALTERNATIVE UNDER ALTERNATIVE 2 IN ACTION 11 OF 30 FISH PER VESSEL. Action 11. Reduce the recreational vessel limit for dolphin Alternative 2. The recreational daily bag limit is 10 dolphin per person, not to exceed: APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #17: ADD AN ALTERNATIVE THAT IS THE SAME AS ALTERNATIVE 3 IN ACTION 11, BUT INCLUDES GEORGIA, SOUTH CAROLINA, AND FLORIDA. APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #18: SELECT ALTERNATIVE 1 IN ACTION 12 AS THE PREFERRED ALTERNATIVE.

Action 12. Allow filleting of dolphin at sea on board charter or headboat vessels in the Atlantic Exclusive Economic Zone north of the Virginia/North Carolina border. Alternative 1 (No Action). Dolphin possessed in the Atlantic Exclusive Economic Zone must be maintained with head and fins intact, with specific exceptions for fish lawfully harvested in the Bahamas. Such fish harvested from the Atlantic Exclusive Economic Zone may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. APPROVED BY COMMITTEE APROVED BY COUNCIL

MOTION #19: APPROVE ALL ACTIONS IN DOLPHIN WAHOO AMENDMENT 10, AS MODIFIED, FOR PUBLIC HEARINGS TO TAKE PLACE BEFORE THE MARCH 2021 MEETING. APPROVED BY COMMITEE APROVED BY COUNCIL

OTHER DIRECTION TO STAFF FOR AMENDMENT 10:

ADD AN ACTION TO REVISE BAG AND VESSEL LIMITS FOR WAHOO (WITH UNDERSTANDING THAT ANALYSES MAY NOT BE READY FOR PUBLIC HEARINGS AND STAFF SEND DRAFT LANGUAGE TO COUNCIL CHAIR AND VICE CHAIR AND COMMITTEE CHAIR AND VICE CHAIR BEFORE PUBLIC HEARINGS)

- INCLUDE 1 FISH PER PERSON BAG LIMIT
- RANGE OF VESSEL LIMITS FROM 2-8 FISH

Other Business

There were no items discussed under other business.

Timing and Tasks:

MOTION #20: APPROVE THE FOLLOWING TIMING AND TASKS:

- CONDUCT PUBLIC HEARINGS FOR AMENDMENT 10 BEFORE THE MARCH 2021 MEETING.
- CONTINUE WORK ON AMENDMENT 10 FOR REVIEW AT THE MARCH 2021 MEETING.

<u>FINAL</u> SUMMARY REPORT EXECUTIVE COMMITTEE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL DECEMBER 2020

(MEETING HELD VIA WEBINAR)

The South Atlantic Council's Executive Committee met via webinar on December 10, 2020. The Committee approved the agenda and minutes from September 2020.

Executive Director Annual Performance Evaluation – CLOSED SESSION

The Committee met in a closed session to conduct the annual performance evaluation of the Executive Director. The Committee also received a legal briefing during this session.

2021 Draft Budget Review

The Committee approved the final 2020 budget and the draft 2021 budget during a meeting held on November 12, 2020. Budget motions from that meeting will be brought before the Council for consideration during the Full Council session of this meeting. An updated budget, including guidance from the November 12 meeting, was reviewed at this meeting.

The Committee received a request from the Southeast Regional Office (SERO) to allow SERO to hold back some of the 2021 Council funding to support additional permit system upgrades. This is considered a means of transferring unspent travel funds, resulting from COVID impacts on Council operations, to SERO to support the permit system. Members noted that the Council has many unmet needs that have built up over past years due to budget shortcomings, and that the Council imposed significant funding restrictions over the last few years to stay within its budget. It was also noted that, because no funding for 2021 has been received and the federal budget has yet to be approved, the Council does not know the funding situation for 2021. The Committee recommended that it could not support a funding transfer at this time.

Kelly Klasnick went over revisions to the 2021 Activity Schedule. The revisions provide greater detail in the 'other meetings' section, including items such as Liaisons to other Councils, CCC activities, and Council workgroups.

The motions below were approved by The Committee at its November 2020 meeting:

MOTION 1: APPROVE THE FINAL 2020 OPERATIONAL BUDGET AS PRESENTED. APPROVED BY COUNCIL

MOTION 2: APPROVE THE DRAFT 2021 OPERATIONAL BUDGET AS PRESENTED AND MODIFIED.

2021 FMP Workplan

The Committee was provided an updated workplan that addresses the excessive workload expected to start in March 2021. The overload was resolved primarily by refining the expected discussion time at 2021 meetings and adjusting the timelines by skipping consideration of some amendments at some Council meetings. The skipped meetings allow time for SSC and AP discussions on the amendments.

The revised workload includes opportunities for new items to be added to the workplan. Placeholders were added for projects to start in September 2021, March 2022, and September 2022. The Committee proposed starting a Dolphin Wahoo amendment to address the longline fishery in September 2021. Other priorities added to the list for future consideration include addressing the Mutton Snapper assessment in 2022 and considering changes in Wahoo possession and vessel limits. Further discussion will be held at Full Council to determine how best to address the Wahoo changes. The Council will continue to review this workplan at each meeting and revise as necessary, based on progress toward completing ongoing amendments and addressing other activities that arise.

<u>FINAL</u> SUMMARY REPORT HABITAT PROTECTION AND ECOSYSTEM BASED MANAGEMENT COMMITTEE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL Via Webinar December 8, 2020

The Committee approved a revised agenda and minutes from the March 2020 meeting.

Coral Amendment 10

Roger Pugliese provided an overview of the Coral Amendment 10 options paper on possible establishment of a Shrimp Fishery Access Area (SFAA) along the eastern boundary of the northern extension of the Oculina Bank CHAPC to address a previous request from the rock shrimp fishery to provide access to historic fishing grounds. Anne Deaton, Habitat Ecosystem AP Chair; Jocelyn Karazsia, Coral AP Chair; and Mike Merrifield, Deep-Water Shrimp AP Chair, provided comments and recommendations on options for scoping Coral Amendment 10. The Committee approved the following motions:

MOTION 1: MOVE THAT WE CHOOSE OPTION 2A AS PREFERRED. APPROVED BY COMMITTEE APROVED BY COUNCIL

Option 2. Create a Shrimp Fishery Access Area (SFAA) along eastern edge of northern extension of Oculina CHAPC.

Option 2. Alternative 2a.

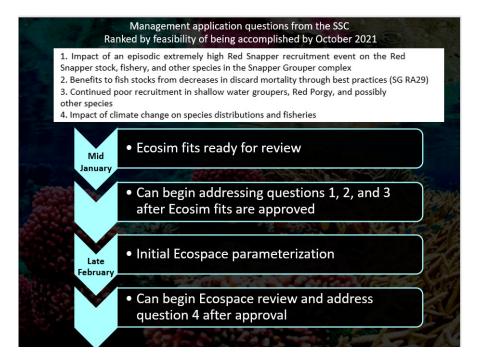
SFAA boundaries based on coordinates presented by fishermen as part of March 2014 public comment.

Alternative 2a SFAA (2014)			
Point	Latitude	Longitude	
1	29.725	-80.2634	
2	29.58102	-80.2502	
3	29.56872	-80.2644	
4	29.49025	-80.2544	
5	29.29213	-80.1728	
6	29.183	-80.1442	
7	29.05973	-80.1246	
8	28.90697	-80.0898	
9	28.81013	-80.0728	
10	28.5	-80.017	

MOTION 2: APPROVE CORAL AMENDMENT 10 FOR SCOPING AT THE MARCH 2021 COUNCIL MEETING. APPROVED BY COMMITTE APROVED BY COUNCIL

Ecopath with Ecosim (EwE) Model Development and Review

Luke McEachron, FWRI, provided an introduction on the development of an EwE model (and Ecospace) and application to support fishery management. Roger Pugliese introduced the development of the South Atlantic EwE model and Lauren Gentry, FWRI, provided an overview of the South Atlantic EwE model, potential application to SA issues and possible timing. Anne Deaton, highlighted Habitat and Ecosystem AP member comments and recommendations. Genny Nesslage, SSC Chair, presented the South Atlantic EwE model review and SSC recommendations from the October 2020 meeting. The SSC endorsed the review as presented and including the recommendation to establish a standing Ecosystem Model Workgroup to support future model development and application. The Committee expressed support for the SA EwE Model Team to work with the SSC Ecosystem Model Workgroup to complete Ecosim review and, working with the SSC Chair, establish a process to address 1 or 2 of the priority questions noted below (the priority questions were presented to the SSC and ranked by the SA EwE Model Team).



Habitat and Ecosystem Program Blueprint

Staff provided an overview of Council habitat and ecosystem mandates, Habitat Protection and Ecosystem Based Management Advisory Panel responsibilities and function, conservation and management action supporting habitat conservation, regional partner coordination, online information including the FEP II Dashboard and tools supporting long-term conservation and Ecosystem Based Fishery Management in the region. The Committee discussed development of a Habitat and Ecosystem Blueprint and establishment of a Habitat and Ecosystem Blueprint Development Team to discuss scope of and process to develop an overarching document.

MOTION 3: COUNCIL ESTABLISH A HABITAT AND ECOSYSTEM BLUEPRINT DEVELOPMENT TEAM APPROVED BY COMMITTEE APROVED BY COUNCIL

Habitat and Ecosystem Advisory Panel Reports

Anne Deaton provided an overview of over-arching agenda items covered over multiple meetings (October 2019, April 2020, and October 2020) of the Habitat Protection and Ecosystem Based Management Advisory Panel. Major areas addressed included:

- Coordination with BOEM representative on the AP on energy development focusing on supporting renewable energy and the developing Kitty Hawk wind project.
- Updates on ongoing research and newly mapped and characterized deep water coral ecosystems and support for presentation on comprehensive research activities and support for an ecosystem approach in future conservation efforts to protect newly discovered resources.
- Technical presentations characterizing sand shoal habitats, the science behind established dredge windows and recent research on impacts of beach renourishment to support climate-informed revision to the Council's Policy Statement on Beach Dredge and Fill, Renourishment and Large-Scale Coastal Engineering.
- Provided input to NOAA researchers developing NOAAs SEFSC South Atlantic Climate Vulnerability Assessment and the South Atlantic Ecosystem Status Report. The Panel was encouraged with the recent progress and supports completion of the drafts so additional guidance can be provided to support the Councils' needs.
- Continued support for implementation of FEP II and input on state, federal and local efforts supporting actions in the FEP II Roadmap update.

The Habitat and Ecosystem Panel, during in-person meetings, routinely engage members informally through breakout sessions and other in person activities which are affected with the necessary move to the present meeting format.

FEP II Roadmap Update

Review and discussion of the FEP II Roadmap was deferred to the next Committee meeting.

Timing and Task(s)

MOTION 4: ADOPT THE FOLLOWING TIMING AND TASK(S):

- 1. Prepare Coral Amendment 10 for scoping during the March 2021 Council meeting with the intent to approve in June 2021.
- 2. Work with SSC Chair to establish membership of the SSC Ecosystem Model Workgroup.
- 3. Coordinate with SSC Chair, the SA EwE Model Team and the SSC Ecosystem Model Workgroup to complete Ecosim review and schedule webinars/workshop and timing necessary to complete 1-2 priority applications of model by October 2021.
- 4. Facilitate SA EwE Model Team initial parameterization of SA Ecospace component of SA EwE with future review and guidance provided by the SSC Ecosystem Model Workgroup.
- 5. Staff provide guidance and priorities on mapping/characterization of South Atlantic deepwater coral ecosystems.

6. Staff facilitate scheduling (based on Council input) for online public seminar on NOAA Deep Sea Coral Research and Office of Exploration and Research Mapping and Geomorphic Characterization of Deep Sea Coral Ecosystems in the South Atlantic Region. - AFTER MARCH 2021

APROVED BY COUNCIL

MOTION: MOVE OVERSIGHT OF EWE MODEL DEVELOPMENT TO THE SSC AND SUPPORT A WORKSHOP TO EXPLORE APPLYING IT TO THE QUESTIONS OF INTEREST

<u>FINAL</u> SUMMARY REPORT MACKEREL COBIA COMMITTEE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL Webinar December 9, 2020

The Committee approved minutes from the June 2020 meeting and the agenda.

CMP Framework Amendment 10 - King mackerel catch levels

At the June 2020 meeting the Council directed staff to begin work on an options paper that would include consideration of sector allocations and catch level adjustments based on SSC recommendations the recent stock assessment update. The Committee reviewed a draft options paper, Mackerel Cobia Advisory Panel recommendations, and considered potential topics to include in the amendment.

The following motion was approved:

MOTION #1: APPROVE COASTAL MIGRATORY PELAGICS FRAMEWORK AMENDMENT 10 FOR SCOPING. APPROVED BY COMMITTEE APPROVED BY COUNCIL

DIRECTION TO STAFF:

- PROVIDE LANDINGS FROM THE MID-ATLANTIC REGION. INCLUDE ALTERNATIVES TO CONSIDER 5%, 10%, 15%, AND 20% BUFFER BETWEEN ABC AND ACL.
- REVIEW SECTOR ALLOCATIONS IN LIGHT OF THE REVISED MRIP NUMBERS. INCLUDE ALTERNATIVES THAT WOULD MAINTAIN THE CURRENT POUNDAGE FOR THE COMMERICAL SECTOR. FEEDBACK FROM THE IPT ON OTHER ALTERNATIVE OPTIONS.
- CONSIDER AN INCREASE IN BAG LIMIT FOR FLORIDA (3PP), CONSIDER MODIFYING THE SIZE LIMIT (INCLUDING REMOVAL), CONSIDER CUT FISH REGULATIONS FOR THE REC SECTOR INCLUDING STATE AND LE CONCERNS.

CMP Amendment 32 – Gulf cobia catch levels

Gulf Council staff presented draft management measures to end overfishing of Gulf cobia. The options include updating the Gulf cobia OFL, ABC, and ACL to incorporate the adjustment of recreational catch to the MRIP-FES. Additional management measures for consideration include modifications to bag limits, vessel limits, and size limits. Since Gulf Cobia is jointly managed with the Gulf of Mexico Fishery Management Council, options also include updating the CMP framework procedures to clarify the language about the responsibilities of each Council. The Committee reviewed the draft options and provide the following guidance on the range of alternatives to include in CMP Amendment 32:

- It would be beneficial to have consistency in regulations between the Gulf zone and the Florida east coast zone.
 - Include alternatives that would allow the Florida east coast zone and Gulf zone regulations to be consistent with regulations currently in place in Gulf state waters off Florida.
- A minimum size limit above 36-in FL may not be ideal because larger cobia can be challenging to handle once caught and are often gaffed which may have an impact on mortality.
- A minimum size limit of 33-in FL may be ideal because fish have reached reproductive maturity. Alternatively, a minimum size limit of 36-in FL may increase spawning potential.
- The alternatives addressing modifications to the framework procedure are unclear. The document should include more detail on each council's responsibility and examples.

Mackerel Cobia Advisory Panel Report

The Mackerel Cobia Advisory Panel met on November 2, 2020 in Charleston, SC. Ira Laks, AP Chair, provided a summary of the Advisory Panel discussion and recommendations on CMP Framework Amendment 10, CMP Amendment 32, the Citizen Science Program, Spanish mackerel, and advisory panel membership.

Note: Council staff drafts the timing and task motion based on Committee action. If points

require clarification, they will be added to the draft motion. The Committee should review this wording carefully to be sure it accurately reflects their intent prior to making the motion.

Timing and Task(s)

MOTION #2: ADOPT THE FOLLOWING TIMING AND TASKS:

- 1. Continue work on CMP Framework Amendment 10 and prepare a draft for discussion and scoping at the March 2021 meeting.
- 2. Continue working with Gulf Council staff to develop CMP Amendment 32 for additional review at the March 2021 meeting.

<u>FINAL</u> SUMMARY REPORT SNAPPER GROUPER COMMITTEE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL DECEMBER 2020

(MEETING HELD VIA WEBINAR)

The Committee met via webinar on December 7 and 8, 2020. The Committee approved the minutes from the September 2020 meeting and the agenda for the December 2020 Committee meeting.

Status of Amendments under Formal Review

NMFS SERO staff updated the Committee on the status of amendments under review or recently submitted:

Snapper Grouper Regulatory Amendment 34 – Proposed rule published 11/16/20 with a comment period through 12/16/2020.

Yellowtail Snapper Stock Assessment

Chris Swanson, Florida Fish and Wildlife Conservation Commission (FWC) delivered a presentation to the Committee on the Yellowtail Snapper stock assessment (SEDAR 64). The Gulf and South Atlantic SSCs met jointly on October 30, 2020 to provide an ABC recommendation. Genny Nesslage, Scientific and Statistical Committee (SSC) Chair, delivered the SSCs' recommendations to the Committee. The following direction to staff is recommended:

- 1. Start a joint Amendment to set a new ACL for Yellowtail Snapper.
- 2. Ask the leadership of the two SSCs (Gulf and South Atlantic) to develop a game plan, that the Councils will review, for how to deal with developing ABCs for jointly managed stocks with two different Council ABC control rules.
 - a. This problem was surfaced during the Yellowtail Snapper assessment, but it will come up again with future assessments, such as with the Mutton Snapper assessment.
 - b. This group should also address how to deal with the differences in the Stock Synthesis (SS3) and Beaufort Assessment Model (BAM) when applying the ABC control rules.

Additional rationale and direction below were provided at Full Council:

- Engage staff from SEFSC and FRWI modeling staff who were conducting comparison between the two models (BAM and SS3).
- Issues between models are based on modeling styles.
- SSCs to discuss jointly (sub-set of SSCs initially and eventually whole SSCs) and then bring input back to Councils.
- A workgroup would:
 - Develop procedures to address stocks crossing jurisdictional boundaries.
 Guidance is needed for SSCs to move forward with addressing species that overlap jurisdictions but are managed under separate FMPs and control rules.
 - Develop best practices for resolving use of different control rules.

Evaluating the Need for Conservation and Management for 9 Snapper Grouper Species Council staff facilitated discussion of whether Blackfin Snapper, Coney, Cubera Snapper, Margate, Misty Grouper, Silk Snapper, Saucereye Porgy, Yellowedge Grouper, and Yellowfin Grouper need continue to need conservation and management or merit designation as ecosystem component species. Jimmy Hull, Snapper Grouper Advisory Panel (AP) Chair, presented the AP's recommendations on this topic. Committee members stated that Misty Grouper, Saucereye Porgy, and Blackfin Snapper are important in some species areas of the South Atlantic and provided the following direction to staff:

- Do not consider Margate, Yellowedge Grouper, Yellowfin Grouper, Silk Snapper and Cubera Snapper for removal from the Snapper Grouper FMP.
- Include possible action to evaluate species for need of conservation and management under the Snapper Grouper FMP in a future unassessed species amendment. Work with SEFSC on possible approach for setting a single ACL with an (assessed) indicator species for data-poor species.

Wreckfish ITQ Modernization (Amendment 48)

The Committee discussed an options paper and reviewed input from Wreckfish ITQ shareholders. In addition, the Committee received a presentation from SERO staff on how other ITQ Programs are administered in the Gulf of Mexico and on the usefulness of the current Wreckfish Permit. The Committee provided the following direction to staff:

- Retain the current goals and objectives for the Wreckfish ITQ Program without modification. The Committee recommended no substantial changes to the program other than modernizing existing systems.
- Include an action that would consider the following recreational allocations: *de minimis*, 1%, and a percentage between 1% and 5%. Corresponding commercial allocations would be 100%, 99%, and between 99% and 95%. The no action alternative would retain the 95% commercial and 5% recreational allocation.
- Develop actions and alternatives to transition from the current paper-based system to an electronic reporting system.
- Develop actions and alternatives to modify the commercial fishing year (currently from April 15-April 14 with a January 16 to April 14 closure) and include an alternative for a calendar fishing year to alleviate potential administrative issues associated with resetting the IFQ computing systems.
- Obtain input on offloading requirements from the Law Enforcement AP, perhaps with additional input from a shareholder representative, and develop an action and alternatives to modify the current offloading time and site protocols.
- Develop an action with alternatives to address issues with wreckfish permit.
- Develop an action to address economic data collection (if the SEFSC is able to stratify the current snapper grouper economic data collection to ensure that all wreckfish shareholders are included, this action may not be needed).
- Develop actions to implement a cost recovery program to include where all participants would follow the same timing for payment.

Included in this amendment are the Snapper Grouper FMP Goals and Objectives that were approved in the Vision Blueprint but have yet to be adopted for the FMP.

The Committee made the following motion: **MOTION 1:** APPROVE SNAPPER GROUPER AMENDMENT 48 FOR SCOPING DURING THE MARCH 2021 COUNCIL MEETING. APPROVED BY COMMITTEE **APPROVED BY COUNCIL**

Red Porgy (Amendment 50)

Council staff presented an overview of a decision document including preliminary analyses and recommendations from the Snapper Grouper AP. The Committee discussed that decades of management measures have not helped improve the status of Red Porgy in the region and recruitment has continued to be poor. It was acknowledged that the stock's condition may be due to factors unrelated to fishing. It was also stated that it is possible the at there have been changes in the environment that have cause low recruitment, but scientist do not know the timescale of that change and for how long it will persist into the future. Also, projections tend to be optimistic because they assume that discards are decreasing at the same rate as landings, so part of the reason recovery has been elusive could be because the projections have been too optimistic.

The Committee provided the following guidance and made the motions below:

MOTION 2: DO NOT SELECT A PREFERRED ALTERNATIVE PRIOR TO SCOPING **SUBSTITUTE MOTION:** SELECT ALTERNATIVE 2 UNDER ACTION 2 AS PREFERRED **Action 2. Revise the Red Porgy total annual catch limit and optimum yield Alternative 2.** Revise the annual catch limit and optimum yield for Red Porgy to equal the updated acceptable biological catch based on the results of the latest stock assessment (SEDAR 60 2020). The 2026 annual catch limit would remain in place until modified. SUBSTITUTE MOTION BECOMES MAIN MOTION MAIN MOTION APPROVED BY COMMITTEE **APPROVED BY COUNCIL**

Direct staff/IPT to:

- Examine the following range of trip limits for the commercial sector:
 - o 15, 20, 30, and 45 fish in season 1 (Jan-Apr)
 - o 15, 20, 30, 45, and 60 fish in season 2 (May-Dec)
 - Do not consider a spawning season closure for the commercial sector
- Prepare analyses to examine the effects of closing the recreational fishery for red porgy in synchrony with the shallow water grouper spawning season closure (January-April)
- Prepare analyses to examine the effects of closing the recreational fishery for red porgy in waves 3 and 4.
- Prepare analyses to examine the effects of reducing the red porgy bag limit to:
 - 1 fish per angler per trip;
 - 2 fish per angler per trip;
 - 3 fish per angler per trip; (no action) and

- examine the combined effects of bag limit reductions with closures above.
- Prepare analyses to examine a recreational fishing season occurring in wave 3 or wave 4.
- Prepare analyses with a range of recreational vessel limits (if there are adequate data for such analyses).
- Include options for modifications to accountability measures.

Greater Amberjack (Amendment 49)

At the June 2020 meeting, the Council directed staff to begin work on an amendment to adjust catch limits and allocations based on information from SEDAR 59 (2020) and SSC recommendations. At this meeting, staff presented an overview of the drafted options paper and requested guidance from the Committee on possible actions and a range of alternatives to develop for consideration at the March 2021 meeting. A draft timeline was presented that would complete development of this amendment in 2022. The Committee requested information on how the fishing year has evolved throughout the recent management history. The Committee also requested that the IPT explore a range of optimum yield values separate from the total ACL and additional allocation options. Finally, the Committee requested the AP discuss and provide input on potential changes to management measures that could be incorporated into Amendment 49. The AP is currently scheduled to meet next in April 2021.

Snapper Grouper AP Recommendations not covered in previous items

The Committee did not discuss additional input or recommendations from the Snapper Grouper Advisory Panel due to time constraints.

Other Business

There was no Committee discussion under Other Business.

Timing and Tasks:

MOTION 3: DIRECT STAFF TO DO THE FOLLOWING:

- Include action to evaluate species for need of conservation and management under the Snapper Grouper FMP in a future unassessed species amendment. Work with SEFSC on possible approach for setting a single ACL with an (assessed) indicator species for data-poor species.
- Prepare the Wreckfish ITQ Modernization Amendment (Amendment 48) for scoping during the March 2021 Council meeting.
- Start an amendment (in cooperation with the Gulf Council) to set a new ACL for Yellowtail Snapper. Direction to continue this work in SG Am 44 (which had been suspended).
- Refer to guidance under item above addressing Yellowtail Snapper to create workgroup.
- Conduct scoping hearings for the Red Porgy Amendment (Amendment 50) in winter 2021 and bring back comments to the Committee at the March 2021 meeting.
- Schedule online public seminar: Red Snapper diet composition using DNA barcoding of fish prey (MARMAP).
- Prepare Greater Amberjack Amendment (Amendment 49) draft scoping document for the Committee to consider during the March 2021 meeting.

APPROVED BY COUNCIL



HMS



ROY COOPER Governor MICHAEL S. REGAN Secretary

JOHN G. BATHERSON Acting Director

January 29, 2021

MEMORANDUM

TO: N.C. Marine Fisheries Commission
 FROM: Steve Poland, Executive Assistant for Councils & Highly Migratory Species Lead
 SUBJECT: Highly Migratory Species Update

Issue

Highly Migratory Species activity update.

Action Needed

For informational purposes only, no action is needed at this time.

Overview

The Highly Migratory Species (HMS) Advisory Panel (AP) met on December 7th, 2020 via webinar. The Advisory Panel discussed Draft Amendment 14 to the consolidated Atlantic HMS FMP, Atlantic billfish management, and the HMS Electronic Technologies Plan.

Amendment 14

Draft <u>Amendment 14 to the Consolidated Atlantic HMS FMP</u> proposes modifying the framework procedures to address changes to the National Standard guidelines and establish new procedures for determining the acceptable biological catch (ABC) and annual catch limits (ACL) for the Atlantic shark fisheries. The AP expressed a desire to include actions that establish a quota reserve, much like the Bluefin tuna reserve category, for sharks so more tonnage can be added towards the end of a fishing season if landings appear to be approaching the quota. Staff with the HMS Division said that this would be difficult given that shark landings are not reported in a timely manner like Bluefin tuna and would result in significant delays in quota transfers.

Atlantic Billfish Management

Staff with the HMS Division provided the AP an <u>overview of Atlantic billfish management</u> including a history of the development of management measures and potential responses to the 2020 overage of the recreational landings quota. The International Commission for the Conservation of Atlantic Tunas (ICCAT) have designated blue marlin as overfished with overfishing occurring (2018) with white marlin and round scale spearfish being overfished with no overfishing occurring (2019). In 2001, the HMS Division negotiated with ICCAT for the quota of 250 marlins (blue, white, and round scale spearfish combined) for the U.S. fishery. Under the Consolidated Atlantic HMS FMP, all sales of marlin are prohibited and all landings are considered

recreational with any over harvest subtracted from the quota the following year. The size limits for blue marlin are 99-inches lower jaw fork length (LJFL) and 66-inches LJFL for white marlin and round scale spearfish with no bag limit (NC Marine Fisheries Commission Rule 15A NCAC 03M .0507 establishes a one fish per day aggregate bag limit). The FMP includes a provision that allows for size limits to be altered within a range of 117-inches to 138-inches for blue marlin and 70-inches to 79-inches for white marlin and round scale spearfish.

After the September AP meeting, NOAA Fisheries announced that the recreational landings limit for Atlantic blue marlin, white marlin, and round scale spearfish had been exceeded. NOAA Fisheries published a <u>notice</u> on September 10th prohibiting the retention on these species for the remainder of the fishing year. At the time of the December AP meeting, landings totals were 72 blue marlin, 95 white marlin, and 66 round scale spearfish. A reporting mistake led to an erroneous 276 billfish being landed. After this was discovered and appropriate adjustments and corrections were made, the current landings total for 2020 stands at 233 fish. However, the HMS Division decided to keep the retention prohibition in place through December 31, 2020 because the reported total was so close to the quota. Four additional fish were reported landed between the time of the notice and effective date of the retention limit. The AP discussed if possible actions needed to be considered to reduce the landings of billfish in the following year to ensure there is no overage. Staff from HMS reported that an increase in third quarter landings compared to 2019 contributed to the high landings totals, with tournaments having a 42% increase in landings in 2020. It was reported that the sizes of the billfish landed were close the federal minimum size limits.

HMS Electronic Technologies Plan

Staff presented a summary of the HMS Divisions draft <u>Electronic Technologies Implementation</u> <u>Plan</u> for AP review and discussion. The AP had a general discussion of current applications that involve HMS permits and the need to streamline all federal reporting requirements into a single application or as few applications as possible. Comments included fisherman on the AP stating they no longer report online if it can be avoided because of the complexity of the electronic reporting systems.



PROTECTED RESOURCES UPDATE



ROY COOPER Governor MICHAEL S. REGAN Secretary

JOHN G. BATHERSON Acting Director

January 28, 2021

MEMORANDUM

TO:	North Carolina Marine Fisheries Commission
FROM:	Barbie Byrd, Biologist Supervisor Protected Resources Program, Fisheries Management Section
SUBJECT:	Protected Resources Program Update

Issue

Summary information is provided from the division's Protected Resources Program for the most recent Incidental Take Permit (ITP) seasonal report (fall) provided to the National Marine Fisheries Service (NMFS). The fall (September – November) 2020 season begins the new ITP year (September 1, 2020 – August 31, 2021).

Action Needed

For informational purposes only, no action is needed at this time.

Overview

Fall 2020 Seasonal Report

The fall 2020 seasonal report for the Sea Turtle ITP is provided from the division's Protected Resources Program. A seasonal report is not required for the Atlantic Sturgeon ITP. However, individual reports of Atlantic Sturgeon interactions are provided to the National Marine Fisheries Service (NMFS). During fall 2020, there were three observed Atlantic sturgeon interactions (all alive) from large mesh gill nets and zero from small mesh gill nets.

Due to protective measures to help prevent the spread of COVID-19, the Protected Resources Program received a waiver from the NMFS on March 24, 2020 for maintaining observer coverage until further notice. Observers and Marine Patrol officers have continued to conduct alternative platform observations to limit potential COVID-19 exposure between fishermen and observers. During the fall 2020 flounder large mesh gill net fishery, the program mobilized resources from other Fisheries Management programs to build enough alternative platform teams to observe the fishery at a projected 10% coverage level.

There were 17 observed sea turtle interactions from large mesh gill nets and zero from small mesh gill nets during the fall (12 alive green sea turtles, three dead green sea turtles, one alive loggerhead sea turtle, and one alive Kemp's ridley sea turtle). There also were nine green sea turtles (all alive) self-reported in large mesh gill nets during the fall.

The fall 2020 seasonal report can be found at the following link:

Fall 2020 Seasonal Sea Turtle ITP Report

2020 Fall Seasonal Progress Report Incidental Take Permit No. 16230 September 1 – November 30, 2020



John McConnaughey Protected Species Biologist North Carolina Division of Marine Fisheries

January 8, 2021

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SUMMARY

This report summarizes activities of the Observer Program during the fall season (September 1 - November 30, 2020) of Incidental Take Permit (ITP) Year 2021 (September 1, 2020 – August 31, 2021) for ITP No. 16230. Throughout this document, all references to gill nets are for anchored gill nets only.

Significant regulatory changes similar to fall 2019 remained in effect during the fall 2020 large mesh gill net fishery for southern flounder (*Paralichthys lethostigma*). These regulations were included in Amendment 2 of the Southern Flounder Fishery Management Plan adopted by the North Carolina Marine Fisheries Commission on August 23, 2019. This action was taken because the most recent southern flounder stock assessment indicated that the stock is overfished and overfishing is occurring. North Carolina state law requires management actions be taken to end overfishing within 2 years and recover the stock from an overfished condition within 10 years.

To reduce harvest in the large mesh gill-net fishery, the state was divided into 3 flounder management areas; Northern, Central, and Southern (Figure 1). Each area was scheduled an exact open and close date for fishing effort. The Northern area was open from September 15, 2020 through October 6, 2020, the Central area was open from October 1, 2020 through October 19, 2020, and the Southern area was open from October 1, 2020 through November 2, 2020. Gill net activity was still subject to conditions put forth by federally issued ITPs for sea turtle and sturgeon incidental takes, and areas could be closed by proclamation should allowable take numbers be approached or exceeded.

In the past, projected observer coverage needed to meet levels required in the ITP were calculated for each mesh size category and management unit using the average reported trips from the previous five years (e.g., 2015-2019 for the 2020 fall season). These average numbers of reported trips by mesh category and management unit were then used in seasonal reports to estimate observer coverage achieved for a given season. This method was used for the small mesh gill net fishery. Given the significant reductions in the southern flounder fishery, an alternative method was needed to project fishing effort for large mesh gill nets. Instead, reported fishing trips for each of the previous five years were compared to the number of possible fishing days that year separately for each management unit. The resulting average fishing trips/fishing day across the five years was applied to the number of days in fall 2020 that the fishery was open. For this report, we also are comparing the observer coverage estimates using the projected fishing trips outlined above to observer coverage estimates based on preliminary trip ticket data of reported trips for large and small mesh gill nets.

A complete list of anchored gill net proclamations implemented during the 2020 fall season can be found in Table 3. A map showing management unit distribution can be found in Figure 2 and maps for relevant proclamations can be found at: http://portal.ncdenr.org/web/mf/2020-proclamations.

All observed trips during fall 2020 were alternative platform trips due to the COVID-19 pandemic. Due to the need to have two observers on each alternative platform trip, Marine Patrol officers contributed additional effort to ensure that observer coverage requirements were met. Overall observer coverage of the large mesh gill net fishery was similar using projected trips (20.3%) or preliminary reported trips (19.7%) Regardless of method, estimated observer coverage exceeding 10% in all management units. No trips were obtained in Management Unit D1 because the management unit was closed for the entirety of the 2020 fall season (Table 1).

Overall observer coverage of the small mesh gill net fishery was similar using projected trips (4.0%) or preliminary reported trips (4.2%). Regardless of method, estimated observer coverage exceeding 1% in all management units (Table 2).

There were 17 observed sea turtle interactions from large mesh gill nets and zero from small mesh gill nets during the 2020 fall season, (Table 4; Figure 3). The species composition consisted of 12 alive green sea turtles, three dead green sea turtles, one alive loggerhead sea turtle, and one alive Kemp's ridley sea turtle (Table 4). The cumulative estimated and/or observed takes for large mesh gill nets were calculated daily to ensure that authorized takes were not exceeded (Table 6).

There were eight green sea turtles (all alive) reported in large mesh gill nets set in management unit B by a commercial fisherman working with Duke University on a research project testing LED lights as a deterrent for sea turtle bycatch. Additionally, one fisherman self-reported a live sea turtle interaction in a large mesh gill net in management unit E (Table 5; Figure 4).

As per the ITP, the division established a permit in September 2014 to register all fishermen participating in the large and small mesh gill net fisheries (Estuarine Gill Net Permit – EGNP). Permits are renewed on an annual basis, based on the fiscal year for licenses. Contact information associated with the EGNPs are used by observers to call fishermen to schedule trips. Observers also attempt to contact fishermen in person at boat ramps and on the water when possible. Each contact attempt by phone or in-person was logged into a database with categories of the response (e.g., left voicemail, booked trip) (Table 8). During fall 2020, observers logged 465 contacts with only seven of them resulting in a booked trip (Table 9).

TABLES

Table 1. For large mesh gill nets, estimated percent observer coverage calculated from observer trips (≥ 4 inch) and projected and reported fishing trips from the Trip Ticket Program (≥ 5 inch) by management unit for fall 2020 (September - November).

		Trips	Coverage (%)			
Management Unit ¹	Projected Trips	Reported Trips ²	Observed	Projected Trips Coverage (%)	Reported Trips Coverage (%)	
А	555	929	111	20.0	11.9	
В	337	310	71	21.1	22.9	
С	190	103	42	22.1	40.8	
D1 ³	n/a	n/a	n/a	n/a	n/a	
D2	180	111	37	20.6	33.3	
Е	321	178	61	19.0	34.3	
Total	1,583	1,631	322	20.3	19.7	

¹ Table 3 contains all of the openings and closings for each management unit

² Preliminary trips from Trip Ticket data September - November 2020

³D1 closed to large mesh for entire 2020 fall season

Table 2. For small mesh gill nets, estimated percent observer coverage calculated from observer trips (< 4 inch) and projected and reported fishing trips from the Trip Ticket Program (< 5 inch) by management unit for fall 2020 (September - November).

		Trips	Coverage (%)		
Management Unit ¹	Projected Trips	Reported Trips ²	Observed	Projected Trips Coverage (%)	Reported Trips Coverage (%)
А	263	317	10	3.8	3.2
В	812	1,016	27	3.3	2.7
С	137	183	2	1.5	1.1
D1 ³	45	1	1	2.2	100.0
D2	199	130	11	5.5	8.5
E	430	154	24	5.6	15.6
Total	1,886	1,801	75	4.0	4.2

¹ Table 3 contains all openings and closings for each management unit

² Preliminary trips from Trip Ticket data September - November 2020

Table 3. Openings and closings of management units by date and regulation change from the fall 2020 season (September - November) for anchored large and small mesh gill nets during ITP Year 2021.

Year	Date(s)	Regulation change
2020	September 4	This proclamation supersedes Proclamation M-10-2020 dated April 28, 2020. In Management Unit A, it maintains small mesh gill net attendance requirements. It expands the portion of Management Unit A to include the Chowan River that allows the use of run-around, strike, drop, and trammel gill nets with a stretched mesh length of 5 $\frac{1}{2}$ inches through 6 $\frac{1}{2}$ inches to harvest blue catfish. (M-13-2020)
2020	September 15	This proclamation supersedes Proclamation M-13-2020 dated September 2, 2020. It opens the previously closed Management Unit A to the use of gill nets for the purpose of harvesting flounder in accordance with Amendment 2 to the N.C. Southern Flounder Fishery Management Plan and the Sea Turtle ITP. It maintains the exempted areas in MUA open to the use of run-around, strike, drop, and trammel gill nets to harvest blue catfish. It also maintains small mesh gill net attendance requirements in the entirety of Management Unit A. (M-14-2020)
2020	September 15	This proclamation supersedes Proclamation FF-34-2019, dated September 12, 2019. It establishes commercial flounder season dates for Internal Coastal Waters by Flounder Management Area. It maintains a 15-inch total length minimum size limit. It also maintains the regulation making it unlawful to possess flounder taken from anchored large mesh gill nets with a stretched mesh length less than 6 inches. It makes it unlawful for a commercial fishing operation to possess flounder from the Atlantic Ocean Waters taken by any method other than trawls. This action is being taken to comply with the requirements of Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. (FF-25-2020)
2020	September 30	This proclamation supersedes Proclamation M-6-2020 dated April 8, 2020. This proclamation opens Management Units B (subunits only), C, D2 and E to the use of gill nets with a stretched mesh length of 4 inches through 6 ½ inches (except as described in Section III.) in accordance with Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. (M-15-2020)

Cont. Ta	able 3	
2020	October 6	This proclamation supersedes proclamation M-14-2020 dated September 10, 2020. It closes Management Unit A to the use of large mesh gill nets with overnight soaks for the purpose of harvesting flounder. It maintains the exempted portion of Management Unit A that allows the use of runaround, strike, drop, and trammel gill nets with a stretched mesh length of $5 \frac{1}{2}$ inches through $6 \frac{1}{2}$ inches to harvest blue catfish. It maintains small mesh gill net attendance requirements in the entirety of Management Unit A. (M-16-2020)
2020	October 1	This proclamation supersedes proclamation M-15-2020 dated September 25, 2020. This proclamation closes Management Unit B (subunits SGNRA 1-4, MGNRA and portions of CGNRA) and Management Unit C to the us of gill nets with a stretched mesh length of 4 inches through 6 ½ inches (except as described in Section III.). It maintains openings in Managemen Units D2 and E. These actions are being taken in accordance with Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. (M-19-2020)
2020	November 2	This proclamation supersedes proclamation M-19-2020 dated October 16, 2020. This proclamation closes all management units south of Manageme Unit A to the use of gill nets with a stretched mesh length of 4 inches through 6 ½ inches (except as described in Section III.) in accordance wit Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. (M-20-2020)

						Curved Ca	rapace (mm)
Date	Management Unit	Latitude	Longitude	Species	Disposition	Length	Width
10/1/2020	В	35.03800	76.11700	Green	alive	279	241
10/1/2020	В	35.03600	76.12000	Green	alive	343	259
10/1/2020	В	35.00119	76.16446	Green	alive	332	281
10/2/2020	В	35.35800	75.56500	Green	alive	n/a	n/a
10/2/2020	E	34.17600	77.84500	Green	alive	342	330
10/6/2020	В	35.36000	75.56000	Green	alive	304	266
10/6/2020	В	35.36000	75.56000	Green	alive	317	279
10/6/2020	В	35.45300	75.51400	Green	alive	304	254
10/6/2020	В	35.36000	75.56000	Green	dead	330	273
10/7/2020	В	35.33092	75.59394	Green	alive	357	306
10/7/2020	В	35.45100	75.51200	Green	alive	330	279
10/7/2020	В	35.33328	75.58375	Green	dead	284	245
10/8/2020	В	34.81448	76.37898	Loggerhead	alive	422	412
10/9/2020	E	34.44000	77.54000	Green	alive	n/a	n/a
10/13/2020	Е	34.70000	77.10000	Kemps	alive	n/a	n/a
10/15/2020	В	34.89843	76.31883	Green	dead	354	316
10/22/2020	Е	34.42300	77.57600	Green	alive	330	254

Table 4. Summary of observed sea turtle interactions in anchored large mesh gill nets from the fall 2020 season (September - November) for ITP Year 2021. No interactions were observed in small mesh gill nets.

Table 5. Summary of reported sea turtle interactions in anchored large mesh gill nets from the fall 2020 season (September - November) for ITP Year 2021.

						Curved Ca	rapace (mm)
Date	Management Unit	Latitude	Longitude	Species	Disposition	Length	Width
10/7/2020	В	34.93213	76.32092	Green	Alive	355	300
10/13/2020	В	34.95613	76.37484	Green	Alive	350	310
10/22/2020	В	34.90899	76.33775	Green	Alive	323	271
10/23/2020	В	34.93697	76.32745	Green	Alive	334	286
10/23/2020	В	34.93689	76.32862	Green	Alive	301	270
10/23/2020	В	34.93689	76.32862	Green	Alive	n/a	n/a
10/27/2020	E	n/a	n/a	Green	Alive	n/a	n/a
10/28/2020	В	34.92282	76.33705	Green	Alive	350	296
10/29/2020	В	34.92284	76.35858	Green	Alive	323	294

	Green			Kemp's ridley		Loggerhead		Unknown	
Management Unit	Alive	Dead	Alive	Dead	Alive	Dead	Alive	Dead	
А	0	0	0	0	0	0	0	0	
В	20.3	9	0	0	*1	0	0	0	
С	0	0	0	0	0	0	0	0	
D1	0	0	0	0	0	0	0	0	
D2	0	0	0	0	0	0	0	0	
E	10.2	0	4.3	0	0	0	0	0	
Total	30.5	9	4.3	0	1	0	0	0	

Table 6. Summary of estimated and/or observed cumulative sea turtle interactions during the fall 2020 season (September - November) by management unit for anchored large mesh gill nets for ITP Year 2021.

*Indicates observed takes

Categories	Category description
1	Left message with someone else
2	Not fishing general
3	Fishing other gear
4	Not fishing because of weather
5	Not fishing because of boat issues
6	Not fishing because of medical issues
7	Booked trip
8	Hung up, got angry, trip refusal
9	Call back later time/date
10	Saw in person
11	Disconnected
12	Wrong number
13	No answer
14	No answer, left voicemail
15	Not fishing because of natural disaster (e.g., hurricane)

Table 7. Categories and descriptions of fishermen responses for the Observer Program's contact logs used for analysis.

Table 8. Contacts made (n = 465) by observers to schedule trips listed by month and categorized by response type (0-15). Number of contacts are provided by total number (top), percent for total season (middle), and percent for each month (bottom) for the fall 2020 season (September - November) of ITP Year 2021.

						Cate	gories ¹ ((# Per N	Ionth)							
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
September	2	63	27	5	2	1	3	2	10	2	31	1	110	73	0	332
October	6	27	4	1	2	2	4	6	7	0	6	0	30	29	0	124
November	0	1	2	0	0	1	0	0	0	1	0	0	4	0	0	9
Total	8	91	33	6	4	4	7	8	17	3	37	1	144	102	0	465
						Categ	gories ¹ (% Per N	(Ionth)							
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
September	0.6	19.0	8.1	1.5	0.6	0.3	0.9	0.6	3.0	0.6	9.3	0.3	33.1	22.0	0.0	100.0
October	4.8	21.8	3.2	0.8	1.6	1.6	3.2	4.8	5.6	0.0	4.8	0.0	24.2	23.4	0.0	100.0
November	0.0	11.1	22.2	0.0	0.0	11.1	0.0	0.0	0.0	11.1	0.0	0.0	44.4	0.0	0.0	100.0
Total	1.7	19.6	7.1	1.3	0.9	0.9	1.5	1.7	3.7	0.6	8.0	0.2	31.0	21.9	0.0	100.0
						Catego	ories ¹ (%	6 Total	Season)							
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
September	0.4	13.5	5.8	1.1	0.4	0.2	0.6	0.4	2.2	0.4	6.7	0.2	23.7	15.7	0.0	71.4
October	1.3	5.8	0.9	0.2	0.4	0.4	0.9	1.3	1.5	0.0	1.3	0.0	6.5	6.2	0.0	26.7
November	0.0	0.2	0.4	0.0	0.0	0.2	0.0	0.0	0.0	0.2	0.0	0.0	0.9	0.0	0.0	1.9
Total	1.7	19.6	7.1	1.3	0.9	0.9	1.5	1.7	3.7	0.6	8.0	0.2	31.0	21.9	0.0	100.0

¹ Contact type categories: 1) Left message with someone else 2) Not fishing general 3) Fishing other gear 4) Not fishing because of weather 5) Not fishing because of boat issues 6) Not fishing because of medical issues 7) Booked trip 8) Hung up, got angry, trip refusal 9) Call back later time/date 10) Saw in person 11) Disconnected 12) Wrong number 13) No answer 14) No answer, left voicemail 15) Not fishing because of natural disaster (e.g., hurricane)

FIGURES

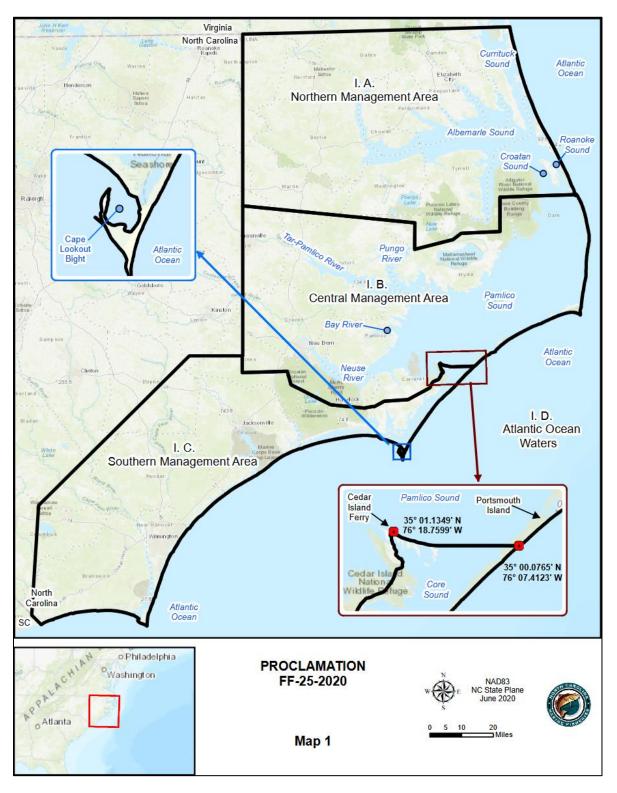


Figure 1. Map for proclamation FF-25-2020. See Table 3 for full proclamation description.

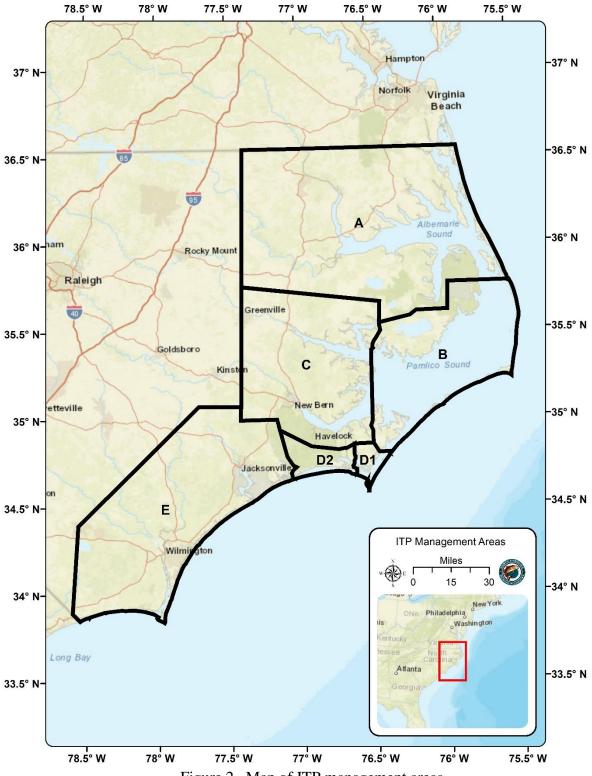


Figure 2. Map of ITP management areas.

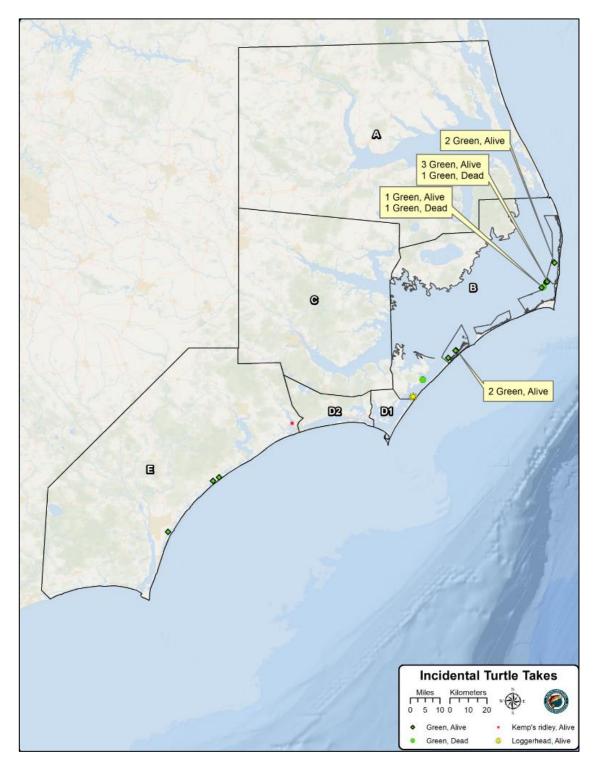


Figure 3. Map of observed sea turtle interactions across management units (A, B, C, D1, D2, E) in anchored large mesh gill nets (n = 17) by species and disposition (alive/dead) for the 2020 fall season (September - November) of ITP Year 2021 (September 1, 2020 – August 31, 2021).

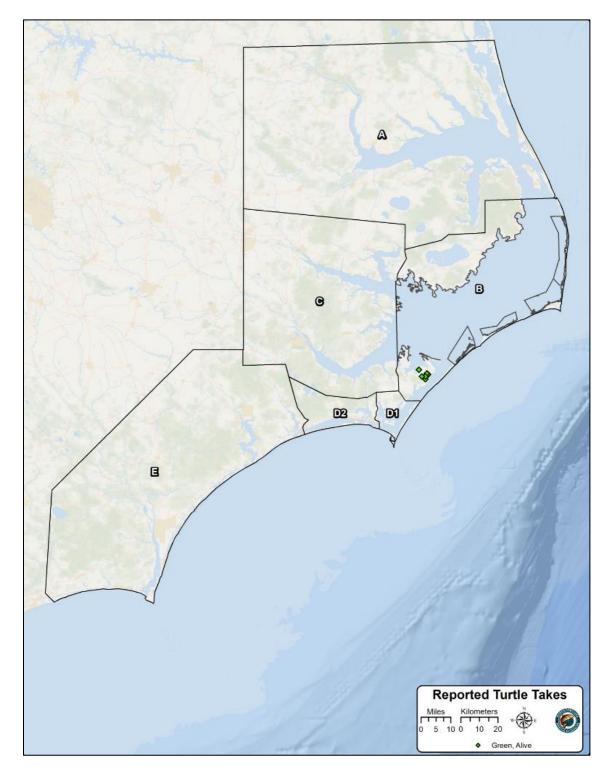


Figure 4. Map of reported sea turtle interactions across management units (A, B, C, D1, D2, E) in anchored large mesh gill nets (n = 9) by species and disposition (alive/dead) for the 2020 fall season (September - November) of ITP Year 2021 (September 1, 2020 – August 31, 2021). No coordinates were obtained for one reported interaction in management unit E.



LANDINGS UPDATE FOR RED DRUM & SOUTHERN FLOUNDER

Red Drum Landings 2019-2020

Landings are complete through January 26, 2021.

2019 landings are final. 2020 and 2021 landings are preliminary.

Longia	nanige are ni	an 2020 and 2021 landinge are promiting.			
Year	Month	Species	Pounds	2009-2011	2013-2015
				Average	Average
2019	9	Red Drum	1,508	28,991	35,003
2019	10	Red Drum	8,080	43,644	63,659
2019	11	Red Drum	5,357	14,318	27,646
2019	12	Red Drum	1,763	3,428	2,197
2020	1	Red Drum	1,853	5,885	1,700
2020	2	Red Drum	1,322	3,448	3,996
2020	3	Red Drum	1,040	5,699	3,971
2020	4	Red Drum	2,425	7,848	6,528
2020	5	Red Drum	4,473	13,730	9,661
2020	6	Red Drum	5,890	12,681	6,985
2020	7	Red Drum	6,839	13,777	15,618
2020	8	Red Drum	13,627	21,252	15,846

FY20 Fishing Year (Sept 1, 2019 - Aug 31, 2020) Landings 54,177

Year	Month	Species Pounds 2009-2011 2013-2	
		Average Aver	age
2020	9	Red Drum 31,745 28,991 35,	003
2020	10	Red Drum 56,119 43,644 63,	659
2020	11	Red Drum 24,887 14,318 27,	646
2020	12	Red Drum 11,105 3,428 2,	197
2021	1	Red Drum 0 5,885 1,	700
2021	2	Red Drum	
2021	3	Red Drum	
2021	4	Red Drum	
2021	5	Red Drum	
2021	6	Red Drum	
2021	7	Red Drum	
2021	8	Red Drum	

FY21 Fishing Year (Sept 1, 2020 - Aug 31, 2021) Landings 123,856

*partial trip ticket landings only

***landings are confidential

Year	Month	Species	Pounds	Dealers	Trips	Average (2007-2009)
2017	1	SOUTHERN FLOUNDER	1,677	38	122	7,713
2017	2	SOUTHERN FLOUNDER	2,758	55	215	4,617
2017	3	SOUTHERN FLOUNDER	8,254	67	874	23,512
2017	4	SOUTHERN FLOUNDER	9,591	83	787	68,389
2017	5	SOUTHERN FLOUNDER	33,105	105	1,121	122,514
2017	6	SOUTHERN FLOUNDER	74,785	115	1,904	154,090
2017	7	SOUTHERN FLOUNDER	74,879	108	1,755	170,387
2017	8	SOUTHERN FLOUNDER	102,751	116	2,364	201,862
2017	9	SOUTHERN FLOUNDER	235,915	128	2,849	396,301
2017	10	SOUTHERN FLOUNDER	548,740	142	3,971	781,717
2017	11	SOUTHERN FLOUNDER	302,286	123	2,003	392,150
2017	12	SOUTHERN FLOUNDER	166	7	8	37,303
2018	1	SOUTHERN FLOUNDER	610	14	43	7,713
2018	2	SOUTHERN FLOUNDER	1,833	34	154	4,617
2018	3	SOUTHERN FLOUNDER	2,815	43	387	23,512
2018	4	SOUTHERN FLOUNDER	8,142	74	769	68,389
2018	5	SOUTHERN FLOUNDER	18,342	90	951	122,514
2018	6	SOUTHERN FLOUNDER	42,501	105	1,407	154,090
2018	7	SOUTHERN FLOUNDER	57,273	117	1,495	170,387
2018	8	SOUTHERN FLOUNDER	72,495	121	1,916	201,862
2018	9	SOUTHERN FLOUNDER	109,125	114	1,776	396,301
2018	10	SOUTHERN FLOUNDER	363,339	109	3,062	781,717
2018	11	SOUTHERN FLOUNDER	226,832	89	1,352	392,150
2018	12	SOUTHERN FLOUNDER	471	5	5	37,303
2019	1	SOUTHERN FLOUNDER	524	25	74	7,713
2019	2	SOUTHERN FLOUNDER	558	23	69	4,617
2019	3	SOUTHERN FLOUNDER	1,412	44	216	23,512
2019	4	SOUTHERN FLOUNDER	5,966	66	448	68,389
2019	5	SOUTHERN FLOUNDER	36,666	92	1,038	122,514
2019	6	SOUTHERN FLOUNDER	61,035	109	1,437	154,090
2019	7	SOUTHERN FLOUNDER	59,404	109	1,554	170,387
2019	8	SOUTHERN FLOUNDER	95,588	109	1,778	201,862
2019	9	SOUTHERN FLOUNDER	51,734	59	551	396,301
2019	10	SOUTHERN FLOUNDER	327,291	119	2,333	781,717
2019	11	SOUTHERN FLOUNDER	159,595	58	537	392,150
2020	3	SOUTHERN FLOUNDER	***	***	***	23,512
2020	4	SOUTHERN FLOUNDER	***	***	***	68,389
2020	8	SOUTHERN FLOUNDER	143	3	5	201,862
2020	9	SOUTHERN FLOUNDER	86,644	31	792	396,301
2020	10	SOUTHERN FLOUNDER	340,281	138	2,613	781,717
2020	11	SOUTHERN FLOUNDER	52,642	27	71	392,150
2021	3	SOUTHERN FLOUNDER	***	***	***	23,512

*2020 and 2021 data are preliminary. 2017-2019 data are complete.

***Data are confidential







ROY COOPER Governor

MICHAEL S. REGAN Secretary

JOHN G. BATHERSON Acting Director

MEMORANDUM

TO:	N.C. Marine Fisheries Commission
FROM:	Kathy Rawls, Fisheries Management Section Chief
SUBJECT:	Temporary Rule Suspension

Issue

In accordance with the North Carolina Division of Marine Fisheries Resource Management Policy Number 2014-2, Temporary Rule Suspension, the North Carolina Marine Fisheries Commission will vote on any new rule suspensions that have occurred since the last meeting of the commission.

Findings

No new rule suspensions have occurred since the November 2020 meeting.

Action Needed

For informational purposes only, no new action is needed at this time.

Overview

In accordance with policy, the division will report current rule suspensions previously approved by the commission as non-action, items. The current rule suspensions previously approved by the commission are as follows:

NCMFC RULE 15A NCAC 03M .0301 (b)(2) and (3)(A)(B) King Mackerel

Suspension of portions of this rule is for a time certain. This rule suspension allows the division to increase the recreational possession limit of King Mackerel in accordance with action taken by the South Atlantic Fishery Management Council to address economic losses to the recreational fishing communities and industries. This suspension was implemented in proclamation FF-37-2020 and will expire at 11:59 P.M. on March 16, 2021.

NCMFC RULE 15A NCAC 03M .0511 Bluefish

Suspension of this rule is for an indefinite period. Suspension of this rule allows the division to reduce bluefish creel limits in compliance with the requirements of the Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Bluefish Fishery Management

Plan to reduce recreational harvest of bluefish. This suspension was implemented in proclamation FF-1-2020.

NCMFC Rule 15A NCAC 03J .0103 (h) Gill Nets, Seines, Identification, Restrictions

Suspension of a portion of this rule is for an indefinite period. Suspension of this rule allows the division to implement year around small mesh gill net attendance requirements in certain areas of the Tar, Pamlico and Neuse River systems. This action was taken as part of a department initiative to review existing small mesh gill net rules to limit yardage and address attendance requirements in certain "hot spot" areas of the state. This suspension continues in proclamation M-12-2020.

NCMFC Rule 15A NCAC 03R .0110 (4)(5) Crab Spawning Sanctuaries

Suspension of portions of this rule is for an indefinite period. Suspension of this rule allows the division to revise the boundaries for the Drum Inlet and Barden Inlet crab spawning sanctuaries in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. This suspension was implemented in proclamation M-7-2020.

NCMFC Rules 15A NCAC 03L .0201 (a)(b) Crab Harvest Restrictions, 03L .0203 (a) Crab Dredging and 03J .0301 (a)(1), (g)(h) Pots

Suspension of portions of these rules is for an indefinite period. Suspension of these rules allows the division to implement requirements for the blue crab fishery in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. These suspensions were continued in proclamation M-1-2021.

NCMFC Rule 15A NCAC 03L .0103 (a)(1) Prohibited Nets, Mesh Lengths and Areas

Continued suspension of portions of this rule is for an indefinite period. This allows the division to adjust trawl net minimum mesh size requirements in accordance with the May 2018 Revision to Amendment 1 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in proclamation SH-3-2019.

NCMFC 15A NCAC 03M .0516 Cobia

Continued suspension of this rule is for an indefinite period. This allows the division to manage the commercial and recreational cobia fisheries in accordance with management actions taken by the commission and in accordance with the Atlantic States Marine Fisheries Commission's Interstate Cobia Fishery Management Plan. This suspension was continued in proclamation FF-8-2021.

NCMFC Rule 15A NCAC 03J .0501 Definitions and Standards for Pound Nets and Pound Net Sets

Continued suspension of portions of this rule is for an indefinite period. This allows the division to increase the minimum mesh size of escape panels for flounder pound nets in

accordance with Amendment 2 of the North Carolina Southern Flounder Fishery Management Plan. This suspension was implemented in proclamation M-34-2015.

NCMFC Rule 15A NCAC 03M .0519 Shad & 03Q .0107 Special Regulations: Joint Waters

Continued suspension of portions of these rules is for an indefinite period. This 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 continued in Proclamation FF-8-2021.



RECREATIONAL HOOK AND LINE MODIFICATIONS

RECREATIONAL HOOK AND LINE MODIFICATIONS MEMO

RECREATIONAL HOOK AND LINE MODIFICATIONS ISSUE PAPER



ROY COOPER Governor

MICHAEL S. REGAN Secretary

JOHN G. BATHERSON Acting Director

February 1, 2021

MEMORANDUM

TO:	N.C. Marine Fisheries Commission
FROM:	Steve Poland, Executive Assistant for Councils
SUBJECT:	Hook and Line Modifications

Issue

At its May 2020 business meeting, the Marine Fisheries Commission (MFC) directed staff to initiate rulemaking to "require the use of barbless non-offset circle hooks when hook size relates to 2/0 or larger while using natural bait. In addition, barbs on treble hooks must be bent down." This motion followed the presentation and discussion of an information paper titled "Information on requiring the use of circle hooks and bent-barbed treble hooks in North Carolina." The paper summarized the available science on the efficacy of requiring circle hooks and barbless treble hooks to reduce hook trauma and dead discards in hook and line fisheries and provided policy and enforcement considerations for potential modifications to hook requirements in North Carolina. Commentary in the paper included a discussion on the enforceability of hook requirements, summary of current circle hook management in North Carolina and within neighboring jurisdictions, and potential social and economic impacts from hook size and style requirements.

Findings

- Circle hooks are defined in rule 15A NCAC 03J .0306 as hooks with the point bent perpendicularly back towards the shank and the barb compressed or removed. However, this definition does not include a requirement for non-offset hooks. Both proposed rule options modify this definition to include the criteria requested by the MFC.
- The motion passed by the MFC would require the use of barbless, non-offset circle hooks to be used when fishing with natural bait that are equivalent to "2/0 or larger." Hook sizes are not standardized by the industry and often vary greatly across and within manufacturers. Gap width, the distance from the point of the hook to the shank, is a discrete measurement that can be used as a proxy for size requirements.
- The division provided information on the common gap width for 15 circle hooks sized 2/0 by the manufacturer and 11 j-hook style weighted jig heads. The maximum gap size measured across both hook types was 0.69-inches.
- Rule 15A NCAC 03J .0306 currently requires 4/0 circle hooks be used in areas of Pamlico sound during the late summer red drum breeding season overnight. If the MFC decides to modify the rule to require circle hooks greater than a discrete gap width, they may want to consider modifying the 4/0 requirement for red drum. Additional evaluation on the appropriate size of 4/0 equivalent hooks is needed.
- Rule 15A NCAC 03J .0306 includes definitions for four terms: "circle hook", "non-offset", "gap width", and "natural bait". Under the rule readoption process and as part of an examination of all defined terms in MFC rules, DMF staff may recommend these four definitions ultimately be placed

State of North Carolina | Division of Marine Fisheries

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in Rule 15A NCAC 03I .0101, Definitions, where they would apply to all rules within Chapter 03. This work will be completed before the formal rulemaking process begins later this year. The content of the definitions will be preserved, consistent with the MFC's selection of its preferred management option.

- Option 1 would provide status quo; no mandatory circle hook when fishing with natural bait or pinched barb/barbless treble hook requirement.
- Option 2 would require the use of barbless, non-offset circle hooks when fishing with natural bait and pinched barb/barbless treble hooks statewide.
- Option 3 would require the use of barbless, non-offset circle hooks when fishing with natural bait and pinched barb/barbless treble hooks statewide but exclude the hook requirements for anglers trolling with natural bait and using trot lines.
- Trolling is a difficult activity to define for enforcement and an exclusion for trolling with natural bait will need to be carefully developed. The definition of trolling will need to be further refined and explored with MFC input to ensure 'work-arounds' or 'loop holes' to the requirement are not inadvertently permitted.
- A delayed effective date of the proposed rules will allow additional time for manufacturers and retailers to produce and stock compliant gear and provide time for outreach and education to the angling public to ensure a high likelihood of compliance.

Action Needed

- The Division requests a confirmation on the intent of the scope of their motion from the May 2020 meeting. The motion passed by the MFC would require the use of circle hooks and barbless treble hooks for all activities, regardless of sector, except for specific exclusions defined in the proposed rule.
- The Division requests that the MFC provided input on the following:
 - Gap width measurement for circle hook requirements and potential exclusions for circle hook and treble requirements in option 3, including input for a potential definition of "trolling" if option 3 is selected.
 - The red drum specific hook size requirement of 4/0 and the modification of said requirement to be consistent with discrete gap width measurements.
 - Delaying the effective date of the proposed rules to ensure greater compliance of the gear requirements.
- The MFC can potentially vote on the preferred management option.

For more information, please refer to the full document titled "Hook Modifications in Coastal Fishing Waters Issue Paper" that is included in the briefing materials.

Hook Modifications in Coastal Fishing Waters Issue Paper

Feb. 4, 2021

I. ISSUE

Require the use of barbless, non-offset circle hooks greater than 2/0 while fishing with natural bait and the use of barbless or pinched barbed treble hooks in coastal fishing waters.

II. ORIGINATION

At the request of the N.C. Marine Fisheries Commission (MFC), an information paper was presented on the current science and efficacy of modifying hook requirements to reduce release mortality of finfish at the May 2020 meeting. After review and deliberation, the MFC voted in favor of directing the Division of Marine Fisheries (DMF) to initiate the rule making process to require the use of barbless, non-offset circle hooks when hook size relates to 2/0 or larger while fishing with natural bait and also require that treble hooks must have barbs compressed or removed.

III. BACKGROUND

The location and severity of hook-related injuries is an important factor in determining catch-and-release mortality. A number of studies have shown the use of circle hooks in marine recreational fisheries reduces deep hooking and release mortality in marine finfish species (Grover et al. 2002; Lukacovic and Uhhoff 2002; Skomal et al. 2002). The basic mechanics of a circle hook are explained by Johanes (1981). As a fish consumes a baited-circle hook and moves away, the hook naturally slides to the edge of the mouth in an orientation that allows for the gap to position around the jaw (Figure 1). As the pressure begins to increases, the hook point begins to "bite" against the soft flesh around the mandible or hinge. As pressure further increases, the hook rotates fully around and the fish is hooked. The circular design with the hook pointed back towards the shank prevents the hook from backing out completely while steady pressure is applied. Because the orientation of the hook point is not the same as the shank (Figure 1), when pressure is applied to the hook via the fishing line, the point does not catch as it would with a traditional style "J" hook. This reduces the chance of deep hooking when a hook is swallowed past the esophageal sphincter (Kerstetter and Graves 2006).

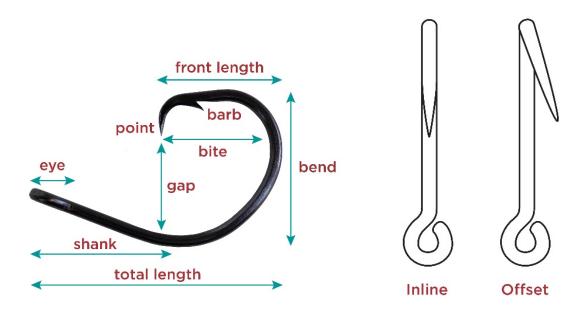


Figure 1. Basic hook anatomy and barb orientation. Reproduced from: <u>www.in-fisherman.com/editorial/all-about-hooks/154924</u>.

Hook size, fishing style, fish feeding mode, and mouth morphology are all elements that contribute to the effectiveness of circle hooks. In a study on bluegills, circle hooks permanently impaired vision of up to 22% of the fish, much more than J-hooks (Cooke et al. 2003). Conversely, Graves and Horodysky (2008) state that the post-release survival of white marlin captured using circle hooks is significantly higher than J-hooks. There was no significant difference in survival among different configurations of non-offset circle hooks commonly employed in the white marlin troll fishery (i.e. offset, bite, gap, bend, etc.) suggesting that the use of a non-offset circle hook, regardless of configuration, is better. These varying factors make the implementation of circle hook regulations as a universal solution to reduce release mortality for all fisheries in coastal waters complex. Several studies have recommended that management agencies focus on recommending circle hooks only for instances for which appropriate scientific data exist (Cooke and Suski 2004, Serafy et al. 2012). While the use of circle hooks may present a conservation benefit in some of these fisheries, only the adult red drum fishery in Pamlico Sound has been fully evaluated comparing large J-hooks to circle hooks in our coastal waters (Beckwith and Rand 2005).

Literature for the effects of treble hooks on the survival of captured and released fish is limited and at this time, few studies have been reviewed for species that occur in the state. Studies in Texas showed no significant differences in release mortality for red drum and spotted seatrout between J-hooks and treble hooks (Matlock et al. 1993; Stunz and McKee 2006). Unfortunately, these studies did not include circle hooks as a gear type for comparison.

A growing body of literature suggests that the use of circle hooks by recreational saltwater anglers reduces discard mortality (Cooke et al. 2012). Despite this general consensus, inconsistency exists regarding the definition of a circle hook among federal, regional, and state management authorities (Table 1). This complicates the implementation of management actions across regulatory jurisdictions. However, an overlapping characteristic across all circle hook definitions include *"the point turned perpendicularly back to the shank"*.

Table 1. Definitions of a "circle hook" across multiple management authorities.

National Marine Fisheries Service (NMFS) Highly Migratory Species Division (HMS): A circle hook is defined as "A hook with the point turned perpendicularly back to the shank to form a generally circular or oval shape." An offset circle hook is further defined as "a circle hook originally designed and manufactured so that the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side." (50 C.F.R. § 635.2)

Atlantic States Marine Fisheries Commission (ASMFC): A circle hook is defined as "Non-offset hook with the point turned perpendicularly back to the shank."

Gulf of Mexico Fishery Management Council (GMFMC) and South Atlantic Fishery Management Council (SAFMC): A circle hook is defined as "A fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape." (50 C.F.R. § 622.2)

N.C. Marine Fisheries Commission (MFC): A circle hook is defined as "A hook with the point of the hook directed perpendicularly back toward the shank, and with the barb either compressed or removed". (15A NCAC 03J .0306)

Inconsistency among management authorities is further complicated by non-uniformity in circle hook design among and within major hook manufacturers. While hooks may have the same basic anatomy (Figure 1), extensive combinations of attributes (gap, bite, shank length, total length, eye, barb, bend), and barb orientation (offset or inline) make it almost impossible to adequately classify a hook by the manufacturer sizing.

Hooks are manufactured from a myriad of metal and alloys (vanadium, high-carbon steel, stainless steel, etc.) and may come with an assortment of coatings for color preference and/or corrosion resistance. Most importantly, there is no size standardization within and among manufacturers. Figure 2 presents 4/0 hooks from three manufacturers (Eagle Claw, Mustad, Owner) with gap measurements ranging from 10mm to 14mm. The largest difference in gap shown is from two separate models of Eagle Claw 4/0 hooks. The same holds true for J-hook sizing as well. Although offerings are limited at this time, most hook manufactures do offer barbless versions of circle hooks and treble hooks.

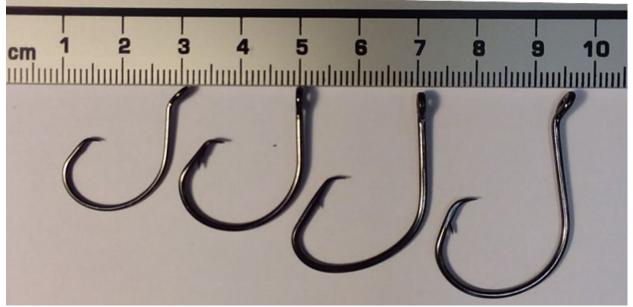


Figure 2. Example 4/0 circle hooks from 3 manufacturers displaying the differences in gap width. Left to right; Eagle Claw L2004EL, Mustad 3994-BN, Owner 5114T-141, Eagle Claw L7228BPG.

Currently, circle hook requirements exist in rule for specific areas and times primarily to protect spawning aggregations of red drum. Catch and release mortality of adult red drum has been shown to be a conservation concern of the species and was addressed in Amendment 1 to the N.C. Red Drum Fishery Management Plan (FMP). Specific research was conducted in the Pamlico Sound adult red drum fishery to estimate recreational release mortality, determine factors contributing to release mortality and determine the differences in deep hooking events between circle hooks and J-hooks (Aguilar 2003, Beckwith and Rand 2004a, Beckwith and Rand 2004b). Studies by Aguilar (2003) and Beckwith and Rand (2004a) had overall mortality rates ranging from 3.8% to 6.7% based on adult red drum that were held for three days after being caught using either circle hooks or J-hooks. Considering just fish that were deep hooked, mortality rates were much higher (>15%) and all mortalities in the study showed evidence of internal bleeding from being deep hooked (Aguilar 2003, Beckwith and Rand 2004a). Aguilar (2003) found that circle hooks had a significantly lower incidence of deep hooking than J-hooks when both were fished on standard bottom fishing rigs. Beckwith and Rand (2004b) advanced these findings and found that a large (Mustad 14/0 and 16/0 circle hook (Style: 39960D)) or intermediate (Eagle Claw 8/0 circle hook (Style: L2004EL)) sized circle hook combined with a short leader and a fixed weight resulted in the lowest incidence of deep hooking (4%) in the study. This was compared to greater than 50% deep hooking with a 7/0 J-hook rigged with a standard leader and a slip weight (Beckwith and Rand 2004a).

Amendment 1 to the N.C. Red Drum FMP considered the issue of targeting adult red drum and the associated release mortality in light of this research. Management options included hook requirements (size and type), seasonal closures and area closures. The primary focus was in protecting spawning aggregations of red drum in Pamlico Sound where catch rates were high and deep hooking and elevated mortality was known to be an issue. Impacts to other fisheries both in terms of species affected, seasons, and areas played a major role in crafting the final rule that was adopted by the MFC. Also, because the majority of the effort in the adult red drum fishery using bait occurred primarily at night, the final rule limited the circle hook requirements to nighttime fishing to avoid conflicts with anglers using J-hooks to target tarpon. A further concern in rule adoption was the enforceability of a specific hook size given the lack of standardization in the tackle industry and the need to specifically define what constituted a circle hook. The benefit to the stock however was given paramount importance over these obstacles at the time the rule was adopted. Efforts were made to educate the public on what constituted a legal rig both by giving rigs away at boating access points and by publishing the rig configuration on the DMF website.

To date, red drum is the only species under the management authority of the MFC on which a comprehensive evaluation on the efficacy of using circle hooks to reduce deep hooking and catch and release mortality has been conducted. No empirical information is available on the size of hooks relative to the incidence of deep hooking and

rate of discard mortality or any other species. Additionally, there have been no studies conducted in North Carolina on the effects of treble hooks on the catch and release mortality of finfish.

IV. AUTHORITY

North	Carolina	General	Statutes	

G.S. § 14-4.1.	Legislative review of regulatory crimes.
G.S. § 113-134.	Rules.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 143B-289.51.	Marine Fisheries Commission – creation; purposes.
G.S. § 143B-289.52.	Marine Fisheries Commission – powers and duties.

Marine Fisheries Commission Rules 15A NCAC 03J .0306 Hook and line

V. DISCUSSION

Compliance with regulations requiring the use of circle hooks and bent barbs on treble hooks can only be achieved if the following factors are met: 1) enforceable rules for the use and modification of the gear including clear and quantifiable definitions of circle hooks and barbless treble hooks, 2) readily available gear that complies with the aforementioned definition, 3) reasonable exclusions for fisheries and activities where catch rates may be disproportionally affected using the new required gear, 4) extensive public education on the proper use of new gear, and 5) clearly articulated benefits relative to current conservation and management strategies employed for our marine resources. Failing to consider or act on these factors will significantly curtail compliance with any regulations prescribing the use of circle hooks and bent barbed treble hooks and potentially undermine the conservation benefits of employing such practices.

To ensure effective and enforceable regulations, a definition of a circle hook including quantifiable metrics must be established. Numerous management agencies, including the DMF, already define what a circle hook is in rule, with some variation. The circle hook requirements for sharks and striped bass are based on the ASMFC's circle hook definition (Table 1). The current MFC rule (15A NCAC 03J .0306) that defines a circle hook does not require the use of a non-offset hook but does require that the barb be pinched down. Research evaluating the effectiveness of circle hooks in reducing deep hooking suggests that the gear loses its intended effectiveness if the point is offset (Prince et al 2002). Additionally, rule 15A NCAC 03J .0306 requires the use of a circle hook for hooks larger than 4/0 in areas of Pamlico sound and its tributaries during certain times of the year and nighttime hours. As described previously, hook manufacturers do not standardize the sizes of their hook offerings. If hook size is to be considered, a definition including "the point turned perpendicularly back to the shank" and establishing discrete measurements for gap and offset should be included. In order for officers to testify in a court of law to the size of a circle hook, a gauge or measuring device will be needed similar to what is currently used for crabs, oysters, clams, and finfish. The current MFC rule defining a circle hook and prescribing its use is considered un-enforceable as written given the aforementioned inconsistencies in hook size. Officers can inspect the tackle relative to rig requirements listed in the rule, but are unable to enforce hook size requirements.

The MFC desires to require non-offset circle hooks be used that are equivalent to 2/0 or larger while fishing with natural bait. To base a circle hook requirement off of size, a discrete measurement that Marine Patrol and anglers can verify is needed. Gap width, the distance between the point of the hook and the shank, offers the best and most consistent attribute to standardize size. Functionally, the gap is also the aspect of the hook that controls for fish size and hookset the most. Table 2 summarizes the gap width of 15 readily available 2/0 circle hooks by gap width from five manufacturers. It was noted by some members of the MFC that anglers, especially in for-hire operations, will use weighted hooks or jig heads with live or natural bait to reduce the incidence of deep hooking. Because a weighted hook or jig is more difficult for a fish to manipulate and swallow before an angler has the opportunity to set it, it is assumed that this configuration offers more of a conservation benefit than a J-hook with a weighted leader. Table 3 summarizes the gap width of eight common and readily available jig heads from two manufacturers. If requiring the use of circle hooks while fishing with natural bait using hooks equivalent to 2/0 or higher, then it may be prudent to designate the minimum gap width to the upper end of the range of the weighted hook and jig heads commonly available in the marketplace. A gap width measurement of three-fourths of an inch would allow for all of the jig heads measured

in Table 3. to be fished and provides Marine Patrol and the angling public a common and easily distinguished measurement for compliance.

		Gap Width	Gap Width
Brand	Style	(cm)	(inches)
Eagle Claw	L8197F	1.15	0.45
Eagle Claw	TK619R	1.13	0.44
Eagle Claw	TK4	1.15	0.45
Eagle Claw	L197BKG	1.15	0.45
Eagle Claw	L2222G	1.05	0.41
Gamakatsu	208412	1.2	0.47
Gamakatsu	42412	1.05	0.41
Gamakatsu	265412	1.2	0.47
Mustad	39944-BN	1.05	0.41
Mustad	39951NP-RB	1.02	0.40
Mustad	39954NP-BN	0.99	0.39
Mustad	39951NP-BN	1.1	0.43
Mustad	39940NP-BN	0.97	0.38
Owner	5114-121	1.15	0.45
VMC	7381CB	1.24	0.49

Table 2. Hook manufacturer, hook style, and hook gap width in centimeters and inches for circle hooks.

Table 3. Hook manufacturer, hook style and jig head weight in ounces, and hook gap width in centimeters and inches for jig heads.

Brand	Style	Gap width (cm)	Gap width (inches)
Bluewater Candy	X-eyed ball jig 1/16 oz.	1.5	0.59
Bluewater Candy	X-eyed ball jig 1/8 oz.	1.5	0.59
Bluewater Candy	X-eyed ball jig 3/16 oz.	1.5	0.59
Bluewater Candy	X-eyed ball jig 1/4 oz.	1.75	0.69
Bluewater Candy	After Shock 1/16 oz.	1.4	0.55
Bluewater Candy	After Shock 1/8 oz.	1.4	0.55
Gotcha	1/8 oz.	1.2	0.47
Gotcha	1/4 oz.	1.2	0.47
Gotcha	3/8 oz.	1.45	0.57
Gotcha	1/2 oz.	1.45	0.57
Z Man	Trout Eyes 1/4 oz.	1.2	0.47

Circle hooks outperform J-hooks in reducing deep hooking of fish when using natural baits due to the manner in which natural bait is typically fished. These baits are often fished suspended or on the bottom with slack line which allows the fish to swallow the bait and hook without the tension or movement of the line or bait rig spooking or otherwise preventing the fish from consuming the bait. To aid in enforcement and ensure that anglers are using circle hooks when fishing with such bait, a clear definition of what does and does not constitute natural bait is needed. Other jurisdictions have defined natural and artificial bait for the purpose of requiring or excluding their use in certain fisheries or areas. The Wildlife Resources Commission defines bait in mountain trout waters as "any living or dead organism (plant or animal), or parts thereof, or prepared substances designed to attract fish by the sense of taste or smell" (15A NCAC 10C .0205). Anglers are prohibited from using natural bait in mountain trout waters, which

includes not only live or dead bait, but also prepared or synthetic baits and attractants. A definition this broad applied to coastal waters could impact access to certain fisheries by limiting certain bait and lure configurations or undermine any conservation benefits to circle hooks by creating unintentional "loop holes" to avoid their use. The burden would fall on Marine Patrol and anglers to determine if the bait, lure, or attractant they are using contains natural parts of animal or plants, which may cause confusion and inability to enforce the requirements. Some manufactures may not disclose on the packaging of the lure or attractant if it is plant or animal based or synthetically derived. Additionally, it could go beyond the intent of the MFC by prohibiting fishing practices that do not pose a conservation concern.

Catch rates are another factor to consider with the implementation of circle hook regulations. Depending on the species targeted and style of fishing, rates of hook-up and landings can differ greatly between J-hooks and circle hooks. In a Maryland striped bass study, anglers using J-hooks landed a fish 42% of the time they detected a strike. When using non-offset circle hooks, anglers landed a fish 27% of the time. J-hooks were 52% more efficient than non-offset circle hooks in landing a fish once a strike was detected (Lukacovic and Uphoff 2002). The reduction in catch especially in trolling fisheries may present a significant concern with compliance. Trolling for king mackerel with strip baits or dead ballyhoo requires the use of 7/0 to 9/0 J-hooks. Catch rates for king mackerel using circle hooks while trolling has been shown to be reduced significantly (Rudershausen et al. 2011). Additionally, live bait trolling using barbed and barbless treble hooks have not been evaluated for differences in catch rates. Option 3 for the proposed rule would allow for anglers to use J-hooks while fishing with natural bait as long as they are trolling and would allow the use of barbed treble hooks. The MFC could consider an exemption only for the circle hook requirement and maintain the barbless requirement for treble hooks while trolling. Sheepshead are typically targeted using natural baits and either small, short shanked J-hooks or small treble hooks. Their hard mouth and dentition often require anglers to forcibly set the hook to ensure proper hooks set. A circle hook in this situation would not set. The equivalent 2/0 or larger aspect of the proposed rule would still allow anglers to fish smaller J-hooks with natural bait as long as those J-hooks' gap widths measure less than the equivalent 2/0 size decided on by the MFC. Catch rates may not differ using barbless treble hooks but there has been no research to evaluate the effectiveness of different hook types or the incidence of deep hooking using traditional methods and gear for this species. Another notable species that some anglers target in North Carolina using natural bait are flounder. They can be harvested drifting cut bait, fishing live bait, and with jigs in combination with natural or synthetic baits. Flounder are ambush predators and engulf baits and prey as they drift or swim by and do not typically swim off after consuming a bait. It is up to the angler to set the hook either actively or passively by drifting by. The effectiveness of circle hooks for flounder will depend on the fishing method with which circle hooks are employed. For example, circle hooks will likely be more effective when anchored or shore fishing with natural bait than when used from a boat at drift. No studies have evaluated the efficacy of circle hooks on the capture and survival of flounder in North Carolina. A study conducted on summer flounder in New York and Virginia tested for difference in hook type and survival in the recreational fishery and observed no significant difference between circle hooks and J-hooks (Malchoff and Lucy 1998).

The effective implementation of new gear regulations and best fishing practices will require an extensive public outreach and education campaign to educate anglers on the correct use of the new gear. A Texas study that evaluated hook types as well as rig configurations, bait, and angler experience level found that the only significant predictor of post release mortality was angler skill level with higher mortality associated with beginner/novice fishermen (Stunz and McKee 2006). The DMF has long prompted the use of ethical angling practices including the use of circle hooks. The DMF publishes and distributes a pamphlet titled "Ethical Angling: A Guide to Responsible Fishing", which details the use of circle hooks, catch and release, and proper handling of fish. The DMF also distributes bumper stickers depicting a red drum and circle hook encouraging anglers to fish responsibly. Partnerships with the SAFMC, the FishSmart program supported by the Angler Action Foundation, and others have provided numerous other informational brochures and tackle giveaways to promote the use of circle hooks and other gears, such as fish descending devices, and information on best handling practices. DMF staff have distributed over 500 red drum short leader rigs (with circle hook) obtained through its partnership with FishSmart. In addition to efforts by FishSmart, the NMFS Recreational Fisheries Policy Program provided 7,000 circle hooks of various sizes for distribution by the DMF. Staff assembled these hooks into "inshore" and "offshore" packages along with informational pamphlets for distribution. Over half of these were distributed during 2019. While it is challenging to quantify the impacts of information campaigns on angler use of circle hooks, anecdotal reports by Marine Patrol indicate that most anglers are using circle hooks while bait fishing in Pamlico Sound for red drum during the day, while regulations only require use at night. Any modifications to hook requirements for North Carolina anglers should be accompanied with an extensive public outreach and education campaign to educate anglers on the new regulations, the benefits of complying with the new regulations, and the proper techniques for utilizing the required gear.

The promotion of barbless treble hooks as a conservation measure has largely been replaced by the use of single inline hooks. The eye of this style of hook is turned inline and is meant to replace treble hooks on topwater and suspending hard baits. Their use has been promoted for a variety of reasons: less damage to fish, ease of unhooking, fish hooked more securely, less likely to collect grass or debris, and angler safety. This trend is gaining ground in the industry. Many manufacturers have started selling lures already rigged with single hooks. A local tackle shop in Eastern North Carolina advertised a promotion in June 2019 where anglers could bring five lures and have the trebles swapped out for inline single hooks. This trend is being driven by the tackle industry, retailers, and conservation-minded anglers. A coordinated public information campaign by the DMF and tackle shops may shift the needle toward the use of single inline hooks in specific fisheries such as artificial lures for speckled trout.

Several N.C. General Statutes (NCGS) address the authority for and requirements of implementing MFC rules. NCGS 113-134 authorizes the MFC to adopt rules to implement requirements of NCGS 113, Subchapter IV, Conservation of Marine and Estuarine and Wildlife Resources. The N.C. Fisheries Reform Act (FRA) of 1997 restructured the way North Carolina managed its coastal fisheries and enacted general statutes for the MFC, Coastal Habitat Protection Plan, Fishery Management Plans (FMPs), Marine Fisheries Law Enforcement, and Commercial Fishing Licenses. NCGS 143B-289.52 requires the MFC to adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, including commercial and sports fisheries resources. NCGS 113-182.1 requires the DMF to develop FMPs for adoption by the MFC with the goal of the plans to ensure the long-term viability of North Carolina's commercially and recreationally significant species or fisheries. The N.C. Administrative Procedure Act (APA; NCGS 150B) applies to an agency's exercise of its authority to adopt a rule and states a rule is not valid unless it is adopted in substantial compliance with the requirements of the APA.

Currently, there are six species on the N.C. FMP schedule that would be affected by changes in hook requirements. Estuarine Striped Bass, Kingfishes, Red Drum, Sheepshead, Southern Flounder, and Spotted Seatrout all support significant recreational fisheries and any changes to hook requirements could have potential impacts on the fisheries and associated anglers. Variations in size, location, and fishing techniques as they apply to the above species would require specific considerations when selecting appropriate hook size, shape, materials, etc. These variations make assigning one circle hook requirement across the board for various species problematic. What might work for one species may not be suitable for another. Additionally, given that paucity of research for state managed species and the current and potential future un-quantified metrics of use with circle hooks and barbless treble hooks, the DMF may be unable to incorporate the positive effects of these management measures into stock assessments. Rather, any conservations gains realized by the required use of these gears will have to be indirectly inferred from multiple assessments.

The FMP development process is a slow, deliberative process that requires significant public input and legislative review. Considering the significant variability in effectiveness of circle hook requirements, developing this issue within each state FMP may be a more effective approach. This would allow the DMF to evaluate existing literature, data, and current management to develop circle hook requirements that are specific to that species and associated fisheries and potentially evaluate their effectiveness directly. Development of FMP amendments for Estuarine Striped Bass, Southern Flounder, and Spotted Seatrout are currently underway, and consideration of circle hook and barbless treble hook requirements could be addressed in those upcoming amendments. Addressing hook requirements on a species-specific basis is also consistent with upcoming requirements for sharks and striped bass by the ASMFC and for snapper-grouper complex species by the SAFMC.

It is important to explain a few ancillary items of note regarding the proposed rule text. First, Rule 15A NCAC 03J .0306 currently requires 4/0 circle hooks be used in areas of Pamlico Sound during the late summer red drum breeding season overnight. If the MFC decides to modify the rule to require circle hooks greater than a discrete gap width, they may want to consider modifying the 4/0 requirement for red drum to relate to a corresponding gap width, consistent with the N.C. Red Drum FMP. Additional evaluation on the appropriate size of 4/0 equivalent hooks is needed. Second, Rule 15A NCAC 03J .0306 includes definitions for four terms: "circle hook", "non-offset", "gap width", and "natural bait". Under the rule readoption process and as part of an examination of all defined terms in MFC rules, DMF staff may recommend these four definitions ultimately be placed in rule 15A NCAC 03I .0101, Definitions, where they would apply to all rules within Chapter 03. This work will be completed before the formal rulemaking process begins later this year. The content of the definitions will be preserved, consistent with the MFC's selection of its preferred management option. Regarding option 3 for the proposed rule, it should be noted that trolling is a difficult

activity to define for enforcement and an exclusion for trolling with natural bait will need to be carefully developed if option 3 is selected. The definition of trolling will need to be further refined and explored with MFC input to ensure "work-arounds" or "loop holes" to the requirement are not inadvertently allowed. Next, a delayed effective date of the proposed rules will allow additional time for manufacturers and retailers to produce and stock compliant gear and provide time for outreach and education to the angling public to ensure a high likelihood of compliance. The date provided in the proposed rule text is for illustrative purposes and can be modified by the MFC for the final proposed rule text. Lastly, it should be noted that any rule about gear restrictions will be subject to legislative review under G.S. 14-4.1 due to a conviction under the rule carrying criminal penalties. Satisfying these requirements will take additional time before the rule can become effective.

VI. PROPOSED RULE(S)

Option 2

15A NCAC 03J .0306 HOOK AND LINE

(a) For the purpose of this Rule:

(1) "circle hook" shall mean a hook with the point of the hook directed perpendicularly back towards the shank with the barb either compressed or removed.

(2) "gap width" shall mean the shortest distance from the point of the hook to the shank.

(3) "natural bait" shall mean any living or dead organism (animal or plant) and part thereof.

(4) "non-offset" shall mean a hook with the point in the same plane as the shank.

(b) Effective April 1, 2023 or upon the effective date of this Rule, whichever is later, and except as provided in Paragraph (c) of this Rule, it shall be unlawful to use any hook with:

- (1) a gap width greater than three-fourths inch that is not a non-offset, non-stainless steel circle hook while fishing with natural bait; or
- (2) multiple points that do not have the barbs either compressed or removed.

(c) In It shall be unlawful to use any hook larger than 4/0 from July 1 through September 30 in the Internal Coastal Waters of Pamlico Sound and its tributaries south of the Albemarle Sound Management Area as defined in 15A NCAC 03R .0201 and north of a line beginning at a point 34° 59.7942' N – 76° 14.6514' W on Camp Point, running easterly to a point 34° 58.7853' N – 76° 09.8922' W on Core Banks, it shall be unlawful to use any hook larger than 4/0 from July 1 through September 30 while using natural bait from 7:00 p.m. to 7:00 a.m. unless the terminal tackle consists of:

- (1) a "circle hook", which for the purpose of this Rule shall mean a hook with the point of the hook directed perpendicularly back toward the shank and with the barb either compressed or removed; and
- (2) <u>of a circle hook and a fixed sinker not less than at least two ounces in weight, secured not more than</u> six inches from the fixed weight to the circle hook.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52; Eff. April 1, 2009; Readopted Eff. April 1, 2019; <u>Amended Eff. April 1, 2022 (Pending legislative review pursuant to S.L. 2019-198).</u>

Option 3 15A NCAC 03J .0306 HOOK AND LINE

(a) For the purpose of this Rule:

- (1) "circle hook" shall mean a hook with the point of the hook directed perpendicularly back towards
 the shank with the barb either compressed or removed.
- (2) "gap width" shall mean the shortest distance from the point of the hook to the shank.
- (3) "natural bait" shall mean any living or dead organism (animal or plant) and part thereof.
- (4) "non-offset" shall mean a hook with the point in the same plane as the shank.

(b) Effective April 1, 2023 or upon the effective date of this Rule, whichever is later, and except as provided in Paragraphs (c) and (d) of this Rule, it shall be unlawful to use any hook with:

- (1) a gap width greater than three-fourths inch that is not a non-offset, non-stainless steel circle hook while fishing with natural bait; or
- (2) multiple points that do not have the barbs either compressed or removed.

(c) In It shall be unlawful to use any hook larger than 4/0 from July 1 through September 30 in the Internal Coastal Waters of Pamlico Sound and its tributaries south of the Albemarle Sound Management Area as defined in 15A NCAC 03R .0201 and north of a line beginning at a point 34° 59.7942' N – 76° 14.6514' W on Camp Point, running easterly to a point 34° 58.7853' N – 76° 09.8922' W on Core Banks, it shall be unlawful to use any hook larger than 4/0 from July 1 through September 30 while using natural bait from 7:00 p.m. to 7:00 a.m. unless the terminal tackle consists of:

- (1) a "circle hook", which for the purpose of this Rule shall mean a hook with the point of the hook directed perpendicularly back toward the shank and with the barb either compressed or removed; and
- (2) <u>of a circle hook and a fixed sinker not less than at least</u> two ounces in weight, secured not more than six inches from the fixed weight to the circle hook.

(d) Effective April 1, 2023 or upon the effective date of this Rule, whichever is later, the use of trot lines and trolling are exempt from Paragraph (b) of this Rule.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52; Eff. April 1, 2009; Readopted Eff. April 1, 2019; <u>Amended Eff. April 1, 2022 (Pending legislative review pursuant to S.L. 2019-198).</u>

VII. PROPOSED MANAGEMENT OPTIONS

- 1. Status quo: do not proceed with rulemaking to modify hook requirements and continue public outreach and education on best fishing practices and ethical angling to reduce the incidence of deep hooking and post release mortality of fish. If catch and release mortality is an issue identified for a managed species, consider hook requirements and other fishing practices within the framework of a Fishery Management Plan.
 - + Avoids any economic impact to tackle manufactures, retailers, and the fishing public.

- + Does not impose terminal tackle requirements for fisheries that would not benefit from circle hook and barbless treble hook requirements and that research is not available to elucidate the potential benefits of the measure.
- Does not reduce the potential for dead discards in some hook and line fisheries.
- 2. Amend MFC rule 15A NCAC 03J .0306 to require the use of non-offset circle hooks with a gap width of threefourths inch or larger while fishing with natural bait and that all treble hooks must have the barbs compressed or removed.
 - + Potentially increase the survival of captured and released fish by reducing the likelihood of deep hooking or hook trauma.
 - + J-hook sizes below the specified gap width specification may still be used with natural bait thereby not affecting fisheries where smaller hook sizes are needed with natural bait to be effective (i.e. sheepshead live bait fishery).
 - Economic impact to tackle manufactures, retailers, and the fishing public due to compliance with hook regulations.
 - In general, potential for a decrease in catch rates with barbless or pinched barb treble hooks and circle hooks. Fisheries where larger J-hooks are used with natural bait in an active style where research has not demonstrated a positive benefit to using circle-hooks (i.e. trolling strip baits/dead bait rigs for king mackerel) may be disproportionally affected contributing to greater angler dissatisfaction.
 - Potential for decreased catch rates for gear employing circle hooks that is not actively tended and fished (i.e. trotlines) due to bait and fish retention impacts from barbless requirement.
- 3. Amend MFC rule 15A NCAC 03J .0306 to require the use of non-offset circle hooks with a gap width of threefourths inch or larger while fishing with natural bait and that all treble hooks must have the barbs compressed or removed with exceptions for the size requirement when trolling natural bait and using trot line gear.
 - + Potentially increase the survival of captured and released fish by reducing the likelihood of deep hooking or hook trauma.
 - + J-hook sizes below the specified gap width specification may still be used with natural bait thereby not affecting fisheries where smaller hook sizes are needed with natural bait to be effective (i.e. sheepshead live bait fishery).
 - + No change in catch rate for troll and trotline fisheries.
 - +/- Defining and enforcing the act of trolling is difficult and may restrict and/or allow some activities that are not considered traditional trolling activities.
 - Economic impact to tackle manufactures, retailers, and the fishing public due to compliance with hook regulations.
 - In general, potential for a decrease in catch rates with barbless or pinched barb treble hooks and circle hooks contributing to angler dissatisfaction.

VIII. RECOMMENDATION

The DMF does not offer a recommendation for the options presented. However, the DMF would like the MFC to consider the following findings and requests feedback on the action items identified when deliberating the proposed management options.

- In general, the science supports the use of circle hooks as a means to reduce hook trauma and discard mortality
 - Aside from extensive research on red drum, few studies have been conducted in North Carolina that evaluate the effectiveness of circle hooks.
 - Studies suggests that off-set circle hooks negate the positive benefits of circle hooks.
- Very little research exists on the effects of hook trauma by treble hooks.
- No industry standard exists for circle hook style and size. If circle hook use is required:
 - a clear definition of what constitutes a circle is needed, and

- o a discrete measurement is required for effective enforcement.
- A gap width measurement of three-fourths of an inch would allow for most common weighted jig heads to be fished and provides Marine Patrol and the angling public a common and easily distinguished measurement for compliance.
- Other management jurisdictions that require the use of circle hooks focus on single species/fisheries or complexes to implement hook requirements, which:
 - reduces unintended consequences of regulating terminal tackle that could affect activities that are not associated with high incidences of deep hooking (i.e. live bait trolling, exclusion of species with unique mouth physiologies, etc.), and
 - increases the likelihood of compliance and enforcement by specifying the exact type of activity allowed or prohibited and/or time and location that the gear can be used.
- Positive and negative social and economic effects from the proposed actions include:
 - o potential decrease in angler satisfaction through decreased catch rates for some species,
 - o positive impact to catch rates if population responds to reduced discard mortality, and
 - o economic impact to anglers and tackle shops to purchase and procure compliant hooks.

Items identified as needing additional input from the MFC include:

- The DMF requests a confirmation on the intent of the scope of their motion from the May 2020 meeting. The motion passed by the MFC would require the use of circle hooks and barbless treble hooks for all activities, regardless of sector, except for specific exclusions defined in the proposed rule.
- The DMF requests that the MFC provided input on the following:
 - Gap width measurement for circle hook requirements and potential exclusions for circle hook and treble requirements in option 3, including input for a potential definition of "trolling" if option 3 is selected.
 - The red drum specific hook size requirement of 4/0 and the modification of said requirement to be consistent with discrete gap width measurements.
 - Delaying the effective date of the proposed rules to ensure greater compliance of the gear requirements.

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Prepared by: Steve Poland, Steve.Poland@ncdenr.gov, 252-808-8011 Jan. 12, 2021 Revised: Jan. 27, 2021 Feb. 4, 2021

Notice of Text Attachment

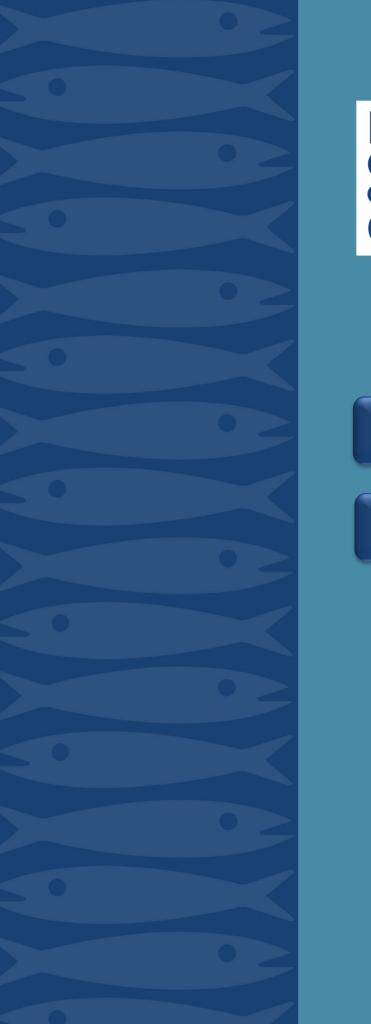
#7 – Explain Reason for Proposed Rule(s):

15A NCAC 03X .#### NAME OF RULE

MFC Rulebook Index Worksheet

Rule	Subject	Index Entry (Bold major headings)	Add/Delete/
		(Bold major headings)	No Change

Ancillary Items:



HIGH EFFICIENCY GEAR RESTRICTIONS ON ARTIFICIAL REEFS IN STATE OCEAN WATERS

HIGH EFFICIENCY GEAR RESTRICTIONS ON ARTIFICIAL REEFS IN STATE OCEAN WATERS MEMO

HIGH EFFICIENCY GEAR RESTRICTIONS ON ARTIFICIAL REEFS IN STATE OCEAN WATERS INFORMATION PAPER



ROY COOPER Governor

MICHAEL S. REGAN

February 3, 2021

JOHN G. BATHERSON Acting Director

MEMORANDUM

TO:	N.C. Marine Fisheries Commission
FROM:	Jason Peters, Enhancement Program Supervisor, Habitat and Enhancement Jacob Boyd, Section Chief, Habitat and Enhancement
SUBJECT:	Gear Restrictions as a Management Tool for Artificial Reefs in State Ocean Waters

Issue

At its November 2020 business meeting, the N. C. Marine Fisheries Commission (MFC) voted to initiate the rulemaking process to restrict highly efficient fishing gears on artificial reefs in state ocean waters to protect all species of finfish. An issue paper is included in the briefing materials and provides an overview of gear restrictions as a management tool for artificial reefs in North Carolina and recent federal action to restrict highly efficient fishing gears at artificial reef sites in the EEZ. With this paper, management options are presented to establish similar gear restrictions on artificial reefs in state ocean waters, applying to all finfish species.

Action Needed

At its February 2020 business meeting the commission is scheduled to vote to select their preferred management option and any associated language for rulemaking.

Findings

- The historical purpose of artificial reefs is to create habitat for fish that is publicly accessible for fishing and diving opportunities.
- Restricting the use of highly efficient fishing gears on artificial reefs can decrease overexploitation of the reefs and increase protection of protected species.
- Implementation of gear restrictions is an effective management tool for artificial reefs.
- While the MFC's current artificial reef rule grants proclamation authority to implement gear restrictions for North Carolina's 13 artificial reefs in state ocean waters, those restrictions are subject to conditions that cannot be met because the rule is obsolete.
- To establish highly efficient fishing gear restrictions, the current artificial reef rule (15A NCAC 03I .0109) is proposed for amendment to remove all reference to artificial reefs, focusing solely on research sanctuaries.
- In addition to amending the existing artificial reef rule, two new rules are proposed for adoption to set coordinates delineating boundaries of the artificial reefs in state ocean waters (15A NCAC 03R .0119) and to set restrictions for the use of highly efficient fishing gears for those artificial reefs (15A NCAC 03J .0404).
- Rule 15A NCAC 03J .0404 includes definitions for the three allowed gear types: "hand line", "hook and line", and "spearfishing gear". Under the rule readoption process and as

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part of an examination of all defined terms in MFC rules, DMF staff may recommend these three definitions ultimately be placed in Rule 15A NCAC 03I .0101, Definitions, where they would apply to all rules within Chapter 03. This work will be completed before the formal rulemaking process begins later this year. The content of the definitions will be preserved, consistent with the MFC's selection of its preferred management option.

- If approved, SMZs in the EEZ will provide protections to snapper-grouper species only, while proposed rules for artificial reefs in state ocean waters will protect all species. Differences in these regulations may present issues for enforcement and compliance, given that users commonly transit between reefs in the EEZ and reefs in state waters during a single trip.
- Of note, AR-430 (listed #13 in proposed 15A NCAC 03R .0119) is pending agency review for a boundary modification to encompass reef materials found outside the existing boundary. This modification will not change the total area of the reef, rather shift the center point slightly in a north-northeastward direction. Because of this pending action, the coordinates provided in the proposed rule text are subject to change. The final coordinates will be brought later this year if the commission elects to proceed with the rulemaking process.
- Option 1 provides status quo; no defined boundaries for artificial reefs in state ocean waters, no specific gear restrictions to protect finfish at these locations, and no authority for MFC or DMF Director to establish future restrictions.
- Option 2 is to proceed with rulemaking to protect all species from highly efficient fishing gear on artificial reefs in state ocean waters.

Recommendation

The division recommends proceeding with rulemaking to protect all species from highly efficient fishing gear on artificial reefs in state ocean waters as described in management option 2.

For more information, please refer to the full document titled "Proposed Rules to Restrict Highly Efficient Fishing Gears on Artificial Reefs in State Ocean Waters Issue Paper" included in this Briefing Book.

PROPOSED RULES TO RESTRICT HIGHLY EFFICIENT FISHING GEARS ON ARTIFICIAL REEFS IN STATE OCEAN WATERS ISSUE PAPER

Feb. 5, 2021

I. ISSUE

To establish protections for all finfish species on artificial reefs in state ocean waters by adopting rules restricting the use of highly efficient fishing gears.

II. ORIGINATION

On Nov. 19, 2020 the MFC voted to initiate the rulemaking process to restrict highly efficient fishing gears on artificial reefs in state ocean waters to protect all species of finfish.

III. BACKGROUND

The N.C. Division of Marine Fisheries (DMF) manages 43 ocean artificial reefs located between 0.5 - 38 nautical miles (nm) off the coast of North Carolina in the Atlantic Ocean (Figure 1). The majority of these artificial reefs (30) are located in the federally managed Exclusive Economic Zone (EEZ; 3-200 nm) and the remaining artificial reefs sites (13) are located in state ocean waters (0-3nm; Figure 1).

Federal fisheries executed off the North Carolina coast in the EEZ are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. § 1801 et. seq.). The responsibility for decision making for many of these fisheries is delegated from the US Secretary of Commerce to the South Atlantic Fishery Management Council (SAFMC), with the final decisions made by the Secretary. The MSA, along with creating regional councils to manage federal fisheries, authorized the creation of Special Management Zones (SMZs). These SMZs are designated marine areas in the EEZ where specific restrictions can be implemented through an existing Fishery Management Plan (FMP).

Recent Regulatory Action

In June 2019, at the DMF director's request, the SAFMC began development of proposed gear restrictions at North Carolina artificial reefs in the federal EEZ. In the director's letter, DMF acknowledged the potential for artificial reefs to aggregate fishery resources and requested SMZ designation with restrictions intended to prevent overexploitation of the resources by use of highly efficient fishing gears. Subsequently, proposed rules were prepared under the SMZ framework provided by the SAFMC Snapper Grouper FMP, offering protections to only those species listed within the snapper grouper complex. The goals of these restrictions were to avoid depletion of snapper grouper species on artificial reefs, promote equitable fishing on the artificial reefs, and reduce derelict gear.

In June 2020, the SAMFC approved Regulatory Amendment 34 to the Snapper Grouper FMP, including gear restrictions on North Carolina artificial reefs in the EEZ. These harvest and gear restrictions will apply only within the boundaries of artificial reefs in the EEZ and specify that: harvest of snapper grouper species is only allowed by hand line, rod and reel, and spearfishing gear with spearfishing gear being limited to the applicable recreational bag and possession limits (SAFMC 2020). The text is currently pending review by the US Department of Commerce (USDOC). If approved by the US Secretary of Commerce and subsequently codified into the Code of Federal Regulations (CFR), all 30 ocean artificial reefs off of North Carolina's coast in the EEZ will be designated as SMZs with harvest and gear restrictions. Harvest and gear restrictions would only apply to the snapper grouper fishery, not to other species, within the boundary of the 30 ocean artificial reefs in the EEZ off North Carolina, and not to the remaining 13 artificial reefs located in North Carolina's state ocean waters. Like those in the EEZ, artificial reefs in North Carolina's state ocean waters are designed as publicly accessible fish aggregation areas, susceptible to overexploitation and potentially having negative interactions with protected species listed under the ESA (Jennings et al. 1999; Lloret et al. 2008; Barnette 2017).

A presentation titled, "Special Management Zones in State Waters" was delivered during the MFC meeting on Aug. 20, 2020. The presentation included a summary of artificial reefs in North Carolina and the status of the DMF gear restriction request to the SAFMC. Following the presentation, the MFC passed a motion asking the DMF to study making North Carolina's artificial reefs in state ocean waters SMZs, possibly limiting the allowable gear, and to bring recommendations back to the MFC at its November 2020 meeting.

An information paper titled, "Gear Restrictions as a Management Tool for Artificial Reefs in State Waters" was delivered during the MFC meeting on Nov. 19, 2020. After discussion, the MFC voted to initiate the rulemaking process to restrict highly efficient fishing gears on artificial reefs in state ocean waters to protect all species of finfish as a complement to the restrictions in process for artificial reefs in the EEZ for snapper grouper species.

Artificial Reef Fisheries

North Carolina's artificial reefs, both in state ocean waters and in the EEZ, are home to a myriad of resident and migratory species. The species abundance, biomass and richness of fish assemblages found on artificial reefs vary according to the type of artificial reef construction and water depth of the site (Paxton et al. 2018). Therefore, the composition of species at reefs in state ocean waters is likely different than that of artificial reefs in the EEZ. While sub-tropical species, like those in the snapper grouper complex, are less likely to be observed at reefs in state ocean waters, a variety of other frequently targeted species such as flounder (*spp.*) are common and subject to overexploitation by highly efficient fishing gears. These reefs in state ocean waters are important habitat for state managed species, including spotted seatrout (*Cynoscion nebulosus*), red drum (*Sciaenops ocellatus*), sheepshead (*Archosargus probatocephalus*), and southern flounder (*Paralichthys lethostigma*). Among recreational fishermen, flounder (*spp.*), red drum, and spotted seatrout are the top three most targeted species, according to a 2018 survey (Table 1; Stemle and Condon 2018). Federally and interjurisdictionally managed species are also found inhabiting North Carolina's reefs in state ocean waters including black drum (*Pogonias cromis*), summer flounder (*Paralichthys dentatus*), and weakfish (*Cynoscian regalis*) to name a few.

Highly Efficient Fishing Gears

The purpose of state artificial reef programs is to develop hard bottom habitat that aggregate fishery resources and improve user access to fisheries. Fish aggregating on artificial reefs may be subject to overexploitation, particularly when highly efficient fishing gears are used for harvest. Highly efficient fishing gears, for the purposes of artificial reef management, are those that offer advantages over other gears through increased catch per effort. Gears with this characteristic may be considered all those other than hand line, hook and line, rod and reel, and spearfishing gear and can lead to overly exploited artificial reefs. "Hook and line" is considered synonymous with "rod and reel", the latter of which is defined in the CFR for purposes of management by the SAFMC. Spearfishing gear is considered efficient but differs from other gears with this characteristic because its efficiency is derived from visually selective harvest of individual fish; catch per unit effort does not differ much from hand line and rod and reel gear. By restricting the use of highly efficient fishing gears on artificial reefs, the likelihood of overexploitation is reduced. Overly exploited artificial reefs may negatively affect user access to the resource and result in other negative biological effects. For example, complex reproductive strategies of certain species may be disrupted when larger individuals are disproportionately removed by highly efficient fishing gear, having a cascading effect on long-term sustainability (SAFMC 2020; Jennings et al. 1998; Jennings et al. 1999; Lloret et al. 2008).

Fishing Effort on Artificial Reefs and Economic Effects

While empirical data on fishing activity at artificial reefs are limited, the Marine Recreational Information Program (MRIP) and observational data suggests the artificial reefs in state ocean waters do experience fishing effort. The MRIP seeks to survey recreational fishing effort and estimate catch on the state's resources, including fishing effort on artificial reefs. The MRIP uses an array of sampling techniques including mail and telephone surveys, vessel logbooks, and the Access Point Angler Intercept Survey (APAIS). Field technicians interview fishermen at fishing access points (e.g., piers, boat ramps) and obtain information from the fisherman such as demographics, where they fished, and what they caught. Notably, one of the questions asks whether the fisherman fished on an artificial reef. The 2016-2019 results from the APAIS show that trips made with private vessels to artificial reefs make up approximately 12-15% of all private vessel ocean trips (Table 2). The MRIP surveys do not gather specific information on which artificial reefs were visited, however on average, a greater proportion of trips were made to artificial reefs

in state waters than in the EEZ. This is noteworthy because there are considerably fewer artificial reef options in state ocean waters, suggesting individual reefs in state ocean waters may be visited more frequently and therefore receive more fishing effort than individual artificial reefs in the EEZ.

Currently, there are not enough data to accurately quantify the economic value of artificial reefs (SAFMC 2020). Estimating economic impacts of gear restrictions at these locations is also difficult to quantify due to limited data on artificial reefs including: use, gear use, harvest, and other direct or indirect expenditures. However, restricting allowable gears on artificial reefs is likely to have a direct impact on fisheries which rely on those gears, through loss of revenue. The 13 artificial reefs in state ocean waters have a cumulative area of approximately 3.45 nm² (Table 3). Given the relative size of these sites, maximum revenue losses may be low, as was forecasted for the snapper grouper fishery in Regulatory Amendment 34 (SAFMC 2020). However, gear restriction as an action to maintain abundance of the resource may offer an offsetting positive economic impact through increased user access and subsequent expenditures.

Protected Species

Artificial reefs have also been found to play important roles as habitat and foraging areas for protected species, which are managed by the National Oceanic and Atmospheric Administration (NOAA) Fisheries under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). There are 29 species of fish, mammals, sea turtles, and corals listed under the Southeast US ESA region. While not all of these species occur in North Carolina, notable species of fish that do occur include the Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) and scalloped hammerhead (*Sphyrna lewini*). Additionally, populations of several endangered whales, including the highly endangered North Atlantic right whale (*Eubalaena glacialis*), occur in North Carolina waters for a portion of the year (Hayes et al. 2017). Sea turtles, all of which are protected species under the ESA, are known visitors to artificial reefs and utilize them for shelter and foraging in the same way they utilize natural reefs (Barnette 2017). Artificial reefs can pose risks of entanglement with fishing line, entrapment inside material or vessels that can lead to drownings, and if in close proximity to newly hatched sea turtles' shoreline sites, may lead to increased predation on the turtles once they enter the water (Barnette 2017). Fishing gear restrictions can reduce the likelihood of gear entanglement and therefore may provide a benefit to sea turtles relative to the current baseline (SAFMC 2020).

Recently, the NOAA Protected Resources Division (PRD) performed an ESA Section 7 programmatic consultation and rendered a biological opinion regarding the effects of North Carolina artificial reefs on protected species. In their biological opinion, NOAA PRD recommended that the DMF Artificial Reef Program take all measures possible to reduce derelict fishing gear on artificial reef material. This directive is intended to prevent entanglement and death of protected species, especially sea turtles that are exposed and may be vulnerable to fishing gear including trawls, gillnets, purse seines, longlines, bandit gear, hand lines, pound nets, and traps (NOAA PRD 2019). Like those proposed for SMZs, restrictions that exclude the aforementioned gears at reefs in state ocean waters may be necessary to ensure permitting for future artificial reef enhancement in North Carolina.

Species	% Anglers Who Target
Flounder	47
Red drum	40
Spotted Sea Trout	37
Black Drum	29
Weakfish	26
Spot	25
Bluefish	25
Spanish Mackerel	24
Croakers	23
Sea Mullet/Whiting	20
Striped Bass	19
Other	18
Sheepshead	15
Pompano	15
Cobia	13

	Per	cent (%) of Trips to Artifici	al Reefs
Year	<3nm	>3nm	Total
2016	8.78	6.29	15.07
2017	5.86	8.34	14.19
2018*	UNKNOWN	UNKNOWN	UNKNOWN
2019	7.06	5.74	12.80

Table 2. Access Point Angler Intercept Survey (APAIS) results from ocean artificial reef trips in private vessels only.

*Data from 2018 are not known due to a categorization error from the artificial reef survey question.

Table 3. Size (nautical miles squared) of all 13 artificial reefs in state ocean waters in North Carolina. *Area of Material* is a representation of two-dimensional area of actual reef materials (vessels, bridge rubble, pipe, etc.) within the artificial reef site boundaries. *Total Reef Area* represents the total permitted area of the artificial reef site.

Site	Area Of Material (nm ²)	Total Reef Area (nm²)
AR-160	0.00169	0.19146
AR-165*		0.19146
AR-275	0.00095	0.19146
AR-315	0.00960	0.76584
AR-320	0.00791	0.19146
AR-342	0.00387	0.19146
AR-360	0.00202	0.19146
AR-364	0.00197	0.19146
AR-370	0.00382	0.76584
AR-378	0.00391	0.19146
AR-378B	0.00022	0.19146
AR-425	0.00235	0.19146
AR-430	0.01987	0.19146
Total	0.05819	3.44630

*Area of material at AR-165 has not been calculated due to how recently material has been deployed.

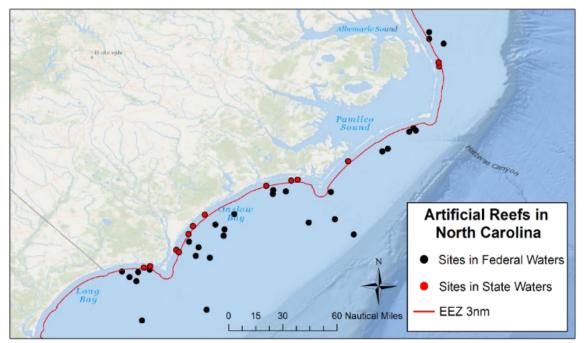


Figure 1. North Carolina ocean artificial reefs separated by state (13 sites; 0-3 nm) and federally (30 sites; 3-200 nm) managed waters.

IV. AUTHORITY

North Carolina General Statutes	
G.S. § 14-4.1.	Legislative review of regulatory crimes.
G.S. § 113-134.	Rules.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 143B-289.51.	Marine Fisheries Commission – creation; purposes.
G.S. § 143B-289.52. (b) (10)	Marine Fisheries Commission – powers and duties. [artificial reefs]

Marine Fisheries Commission Rules

15A NCAC 03I .0102	Temporary Suspension of Rules
15A NCAC 03I .0109	Artificial Reefs and Research Sanctuaries

V. DISCUSSION

The MFC has authority to implement management measures regarding ocean and marine fisheries in the Atlantic Ocean (G.S. 143B-289.51) and can adopt rules to regulate fishing and fisheries (G.S. 113-134; G.S. 113-182). Additionally, the MFC has authority to establish standards and adopt rules to regulate the location and utilization of artificial reefs in coastal waters (G.S. 143B-289.52). There is only one current MFC rule for artificial reefs (15A NCAC 03I .0109) and it needs to be updated.

Current Artificial Reef Rule

Currently, the MFC has one rule specifically pertaining to artificial reefs (15A NCAC 03I .0109) that also addresses research sanctuaries and originally provided a mechanism for implementing gear restrictions at designated locations. This rule does not contain specific gear restrictions; instead, it delegates authority to the DMF director who may issue a proclamation to prohibit or restrict the taking of fish and the use of equipment in and around artificial reefs and research sanctuaries. Restrictions under this rule are limited to one year and to be applied, artificial reefs must be marked in the center by a readily identifiable buoy; distances for closures or restrictions are measured from the buoy.

For many years, the Artificial Reef Program maintained large buoys to mark the center of certain artificial reefs. Presumably, this was an aid to navigation, helping boaters and anglers locate fishing grounds. Mariners could find habitat by navigating within a published distance of the buoys. With the advent of GPS technology and inexpensive marine electronics such as chart plotters, the function of these buoys as navigation aids decreased over time. In 2016, the DMF decommissioned its only vessel capable of maintaining these large and expensive buoy systems. With the help of the US Coast Guard, all remaining buoys at ocean artificial reefs were permanently removed by 2017. While there are no buoys present on ocean artificial reefs, the current rule text still requires them as a condition for the DMF director to establish closures or restrictions. Currently, as the rule is written, neither the DMF director nor the MFC can apply highly efficient fishing gear restrictions at artificial reefs in state ocean waters.

The MFC Rule 15A NCAC 03I .0109 is subject to readoption per G.S. 150B-21.3A by June 30, 2022. As part of that process, the rule is proposed to be amended to relocate the components of the rule pertaining to artificial reefs to new rules proposed for adoption, as discussed below. Removing the components about artificial reefs would focus the rule on research sanctuaries. Research sanctuaries are areas that are protected from fishing gears to provide sanctuary for research. Closures in and around a research sanctuary are for one-year periods with renewals allowed at the discretion of the DMF director by proclamation. Modified rule language is proposed to retain proclamation authority for the DMF director to issue time-limited closures or restrictions for research sanctuaries via 15A NCAC 03I .0109 (see proposed rules section). If DMF staff identify additional amendments needed for readoption of the rule relative to the "research sanctuaries" content, the amendments will be presented to the MFC in a separate document.

Proposed Boundary Rule

In North Carolina, artificial reefs can be described as broadly designated areas, within which habitat is artificially placed or constructed in a series of patches. Materials placed within these boundaries have been surveyed and mapped by DMF to confirm locations and to advertise to the public. Boundaries for artificial reefs in the ocean are circular and defined by a single centroid coordinate and radius distance. Circular boundaries have been reviewed and

acknowledged by state and federal permitting agencies and apply to all artificial reefs in both state and federal waters (Figure 2). When describing area, managers typically refer to boundary area as the total artificial reef area (acres) within the boundaries delineated in rule or by proclamation. Habitat footprint area refers to the cumulative total area of artificial reef patches only, not to include unconsolidated soft bottom, and so is a sub-set of the total artificial reef area (Figure 2).

To establish gear requirements, area boundaries must first be codified to provide the location of artificial reefs that are subject to the specific gear requirements. A proposed new rule (15A NCAC 03R .0119) would set coordinates delineating boundaries of the artificial reefs in state ocean waters. Then, a second proposed new rule (15A NCAC 03J .0404) would set requirements for those artificial reefs in state ocean waters identified in the first rule (see proposed rules section).

While there are currently 13 artificial reefs in state ocean waters, future development plans may include additional new sites. Further, extreme environmental conditions may result in artificial reef material movement and a subsequent need to modify boundaries. The proposed new rules, in conjunction with existing rule 15A NCAC 03I .0102 for rule suspensions, would provide proclamation authority to the DMF director to designate new or modified artificial reef boundaries to account for these variable conditions until rules could be amended with updated boundaries.

In the proposed rule text, it is of note that AR-430 (listed #13) is presently under review by the N.C. Division of Coastal Management and the US Army Corps of Engineers. The DMF has submitted its application to those agencies to modify the existing boundary. After a physical survey of the reef, it was determined that some artificial reef materials were inadvertently placed beyond the permitted boundaries. To encompass these materials, a slight north-northeastward shift of the center point of this reef is required. No change in the total reef area is proposed. Because of this pending action, the coordinates provided in the proposed rule text below are subject to change. The final coordinates will be brought to the MFC when the formal rulemaking process begins later this year.

Proposed Gear Restrictions Rule

Highly efficient fishing gears offer exceptional advantages through increased catch per effort and reduce or eliminate the incentive of users with other fishing gears to fish on or promote artificial reefs (SAFMC 1983). Limitations on the use of highly efficient fishing gears, as proposed, also moderate the potential for disproportionate user access and reduce the potential for negative interactions with protected species listed under the ESA.

For consistency with SAFMC gear restrictions for artificial reefs in the EEZ, the proposed new gear restrictions rule (15A NCAC 03J .0404) would restrict the harvest of all finfish within the artificial reef boundaries in state ocean waters from all gears other than hand line, hook and line, and spearfishing gear (which includes bang sticks and powerheads). "Hook and line" is considered synonymous with "rod and reel", the latter of which is defined in the CFR for purposes of management by the SAFMC. Definitions for "hand line", "hook and line", and "spearfishing gear" are proposed in the new rule. All harvest by spearfishing gear would be restricted to recreational limits. The proposed new rule does not explicitly name any species to ensure the rule would apply to all finfish species within the artificial reef site boundaries in state ocean waters, as requested by the MFC at its meeting on Nov. 19, 2020.

The proposed new rule would also provide authority to the DMF director to close the designated artificial reefs in state ocean waters to the use of specific fishing gear, including the gears otherwise allowed (hook and line, hand line, and spearfishing gear). This additional authority is intended as a mechanism to address variable conditions at the artificial reefs such as biological impacts and user conflicts (e.g., overharvest by bang sticks, protected species concerns, protection of future additional ocean artificial reefs).

Finally, the MFC Rule 15A NCAC 03I .0101 (Definitions) is subject to readoption per G.S. 150B-21.3A by June 30, 2022. As part of that process, DMF staff is examining the defined terms within this rule as well as defined terms in other MFC rules. An important distinction about the location of a defined term within rules is its scope of applicability. Definitions in 15A NCAC 03I .0101 apply to all rules within Chapter 03, Marine Fisheries, whereas definitions in other MFC rules only apply to a specific rule or section of rules (as indicated). As a result of the effort to examine all defined terms, three defined terms proposed in 15A NCAC 03J .0404 for this issue may be more appropriately located in the broader definition rule, 15A NCAC 03I .0101. Based on the MFC's selection of its preferred management option

for this issue paper and remaining consistent with the content of the proposed defined terms, the final recommended location of the defined terms will be brought to the MFC when the formal rulemaking process begins later this year.

Enforcement Considerations

Many artificial reefs in the ocean are in relatively close proximity to one another (<10 nm) and as a result, users often visit multiple sites in a single trip, including state and EEZ sites. The artificial reefs in the EEZ are managed by the SAFMC and are proposed to be designated as SMZs while the artificial reefs in state ocean waters are managed by the MFC. The primary difference between the two management strategies is that proposed rules at EEZ artificial reefs place restrictions on the harvest of certain species, while proposed rules for artificial reefs in state ocean waters place restrictions on certain gears for all finfish species. At EEZ artificial reefs, restrictions are placed on the harvest of snapper grouper species, per the FMP, such that only certain gears may be used to harvest those species. At these artificial reefs, there are no specific gear restrictions or possession limits for finfish species other than snapper grouper species. At artificial reefs in state ocean waters, proposed rules will not be implemented through an FMP, therefore regulations are on the gears themselves and protections subsequently apply to all finfish species.

From an enforcement perspective, similarities among restrictions at the artificial reefs in the EEZ and in the state ocean waters may be viewed positively. However, some compliance and enforcement challenges will likely exist, considering that license holders often visit multiple sites with different regulations in a single trip. Perhaps most notably for spearfishing, possession limits for finfish harvested with this gear may be different at EEZ artificial reefs than at artificial reefs in state ocean waters because snapper grouper species harvested with spearfishing gear at EEZ artificial reefs is limited to the applicable recreational bag and possession limits (SAFMC 2020). For example, a commercial quantity of a non-snapper-grouper species may be legally taken by spear and possessed at AR-330 in the EEZ, however that catch becomes illegal if the fisherman then transits to nearby AR-315, an artificial reef in state ocean waters, and uses spears to harvest different species of finfish while still possessing an otherwise legally harvested catch from AR-330. This is because at AR-315, harvest by spear of any species would be restricted to the recreational limit, but that is not the case at AR-330. For enforcement, it is critical for the proposed Rule 15A NCAC 03J.0404 to prohibit possession of any finfish (not just snapper grouper species) taken with spearfishing gear in excess of a recreational limit within the boundaries of an artificial reef in state ocean waters because the regulations are on the gears themselves and applicable to all finfish species, as explained above. In effect, any license holder who harvests a commercial limit of any finfish species by spear may not visit an artificial reef in state ocean waters while in possession of those finfish.

With respect to gear, neither the SMZ rules or the proposed MFC rules restrict possession of highly efficient fishing gears, only the use of those gears in certain fishing practices. Under proposed rule language, users are free to occupy any artificial reef site regardless of location with highly efficient fishing gears onboard.

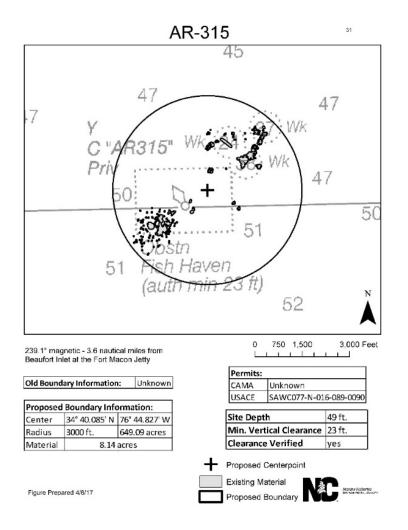


Figure 2. An excerpt from the document titled, "North Carolina Division of Marine Fisheries Artificial Reef and Oyster Sanctuary Site Information." This document was reviewed and approved by the N.C. Division of Coastal Management (July 10, 2017) and The US Corps of Engineers (October 25, 2017). The excerpted page provides an example of site-specific information for AR-315, Atlantic Beach Reef, including a descriptive location, center point coordinates, radius, and water depth, along with chart depictions of existing artificial reef habitat on site. Similar pages have been created for every artificial reef and oyster sanctuary managed by DMF. "Boundary area" is all area within the circular boundary. "Footprint area" refers to the cumulative total area of artificial reef patches only, within the artificial reef boundary.

Summary

The artificial reefs located in North Carolina's state ocean waters are managed under the authority of the MFC. To establish highly efficient fishing gear restrictions for artificial reefs in state ocean waters, the current rule (15A NCAC 03I .0109) is proposed for amendment to remove all reference to artificial reefs, focusing solely on research sanctuaries. In addition to amending the existing rule, two new rules are proposed for adoption to set coordinates delineating boundaries of the artificial reefs in state ocean waters (15A NCAC 03R .0119) and to set restrictions for the use of highly efficient fishing gears for those artificial reefs (15A NCAC 03J .0404). This is similar to the management of other designated types of areas set forth in Subchapter 03R Section .0100 (Descriptive Boundaries) with restrictions set forth in a corresponding Subchapter such as 03J for gears. It should be noted that any rule on gear restrictions will be subject to legislative review under G.S. 14-4.1 due to a conviction under the rule carrying criminal penalties. Satisfying these requirements will take additional time before the rules can become effective.

VI. PROPOSED RULE(S)

1	15A NCAC 03I	.0109 is proposed for readoption with substantive changes as follows:
2		
3	15A NCAC 031	.0109 ARTIFICIAL REEFS AND RESEARCH SANCTUARIES
4	(a) The Fisheri	es Director may, by proclamation, prohibit or restrict the taking of fish and the use of any equipment
5	in and around a	ny artificial reef or research sanctuary. Any closure or restriction shall be for no more than one year,
6	subject to renew	al at the discretion of the Fisheries Director.is subject to the following conditions:
7	(1)	Artificial reefs shall not be closed or restricted beyond 500 yards in the Atlantic Ocean or 250 yards
8		in internal coastal waters. Artificial reefs shall be marked as near center as feasible by one readily
9		identifiable official buoy and distances for closures or restrictions shall be measured from such buoy.
10	(2)	Any closure or restriction shall be for no more than one year, subject to renewal in the discretion of
11		the Fisheries Director.
12	(3)	The economic effect of the closure or restriction on fishing interests with respect to the size and
13		location of the area and the nature of the equipment affected shall be considered before such closure
14		is made and findings shall be made in writing which findings shall be available for public inspection
15		at the office of Division of Marine Fisheries in Morehead City.
16	(b) It is shall be	unlawful to engage in any fishing activity, use any equipment, or conduct any other operation which
17	<u>that </u> has been pr	ohibited by proclamation issued under this authority.
18		
19	History Note:	Authority G.S. 113-134; 113-181; 113-182; <u>113-221.1; 1</u> 43B-289.52;
20		Eff. January 1, 1991;
21		Recodified from 15A NCAC 3I .0009 Eff. December 17, 1996;
22		Readopted Eff. April 1, 2022 (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03R .0119 is proposed for adoption as follows:

-		
3	15A NCAC 031	R .0119 OCEAN ARTIFICIAL REEFS
4	The Ocean Artif	ficial Reefs referenced in 15A NCAC 03J.0404 are delineated in the following Coastal Fishing Waters
5	of the Atlantic (Dcean:
6	(1)	AR-160: within the circular area described by a center point at 35° 43.8880' N - 75° 26.7710' W and
7		radius extending 1,500 feet.
8	(2)	AR-165: within the circular area described by a center point at 35° 41.6720' N - 75° 26.3130' W and
9		radius extending 1,500 feet.
10	(3)	AR-275: within the circular area described by a center point at 34° 50.0930' N - 76° 16.8800' W and
11		radius extending 1,500 feet.
12	<u>(4)</u>	AR-315: within the circular area described by a center point at 34° 40.0850' N - 76° 44.8270' W and
13		radius extending 3,000 feet.
14	(5)	AR-320: within the circular area described by a center point at 34° 39.5330' N - 76° 48.4170' W and
15		radius extending 1,500 feet.
16	<u>(6)</u>	AR-342: within the circular area described by a center point at 34° 36.6720' N - 77° 2.1890' W and
17		radius extending 1,500 feet
18	(7)	AR-360: within the circular area described by a center point at 34° 20.9830' N - 77° 36.1830' W and
19		radius extending 1,500 feet
20	<u>(8)</u>	AR-364: within the circular area described by a center point at 34° 14.8060' N - 77° 42.8550' W and
21		radius extending 1,500 feet
22	<u>(9)</u>	AR-370: within the circular area described by a center point at 34° 10.4530' N - 77° 45.2810' W and
23		radius extending 3,000 feet.
24	(10)	AR-378: within the circular area described by a center point at 34° 1.8070' N - 77° 52.0910' W and
25		radius extending 1,500 feet
26	(11)	AR-378b: within the circular area described by a center point at 34° 0.6420' N - 77° 50.6540' W and
27		radius extending 1,500 feet
28	(12)	AR-425: within the circular area described by a center point at 33° 53.0480' N - 78° 6.5250' W and
29		radius extending 1,500 feet
30	(13)	AR-430: within the circular area described by a center point at 33° 52.1900' N - 78° 10.0000' W and
31		radius extending 1,500 feet
32		
33	History Note:	Authority G.S. 113-134; 113-182; 143B-289.52;
34		<i>Eff. April 1, 2022.</i>

1 2

15A NCAC 03J .0404 is proposed for adoption as follows:

2	
3	15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS
4	(a) For the purpose of this Rule:
5	(1) "hand line" shall mean fishing gear that is set and pulled by hand and consists of one vertical line to
6	which may be attached leader lines with hooks.
7	(2) "hook and line" shall mean one or more hooks attached to one or more lines and shall include rod
8	and reel, a fishing rod designed to be hand-held with a manually or electrically operated reel
9	attached.
10	(3) "spearfishing gear" shall mean spears, Hawaiian slings, or similar devices that propel pointed
11	implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar
12	means.
13	(b) It shall be unlawful to use fishing gear in Ocean Artificial Reefs designated in 15A NCAC 03R .0119 except hand
14	line, hook and line, and spearfishing gear, and except as further limited in accordance with Paragraph (d) of this Rule.
15	(c) It shall be unlawful to possess finfish taken with spearfishing gear in excess of a recreational limit within the
16	boundaries of a designated Ocean Artificial Reef.
17	(d) The Fisheries Director may, by proclamation, close the areas designated in 15A NCAC 03R .0119 to the use of
18	specific fishing gear, including the gears otherwise allowed in Paragraph (b) of this Rule, based on biological impacts
19	or user conflicts.
20	(e) The Fisheries Director may, by proclamation, designate and modify Ocean Artificial Reefs in Coastal Fishing
21	Waters of the Atlantic Ocean, based on biological impacts or variable spatial distribution, including shifted artificial
22	reef material.
23	
24	History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
25	Eff. April 1, 2022 (Pending legislative review pursuant to S.L. 2019-198).

VII. PROPOSED MANAGEMENT OPTIONS

- 1. Status quo: do not proceed with rulemaking to protect all species from highly efficient fishing gear on artificial reefs in state ocean waters.
 - + No rule changes are required.
 - + Avoids any economic impact on some N.C. commercial license holders.
 - Does not resolve outdated rule language for artificial reefs.
 - Does not comply with MFC motion.
 - Does not provide the MFC or the DMF director the ability to implement restrictions for highly efficient fishing gears as a management tool for artificial reefs in state ocean waters.
 - Does not resolve disproportionate user access at artificial reefs in state ocean waters.
 - Does not resolve inconsistencies with federal regulations expected for artificial reefs in the EEZ.
- 2. Adopt MFC Rule 15A NCAC 03R .0119 to set coordinates delineating boundaries of the artificial reefs in state ocean waters and MFC Rule 15A NCAC 03J .0404 to establish highly efficient fishing gear restrictions at those locations. Also, amend MFC Rule 15A NCAC 03I .0109 to remove all references to artificial reefs.
 - + Resolves outdated rule language for artificial reefs.
 - + Achieves the goal of the MFC motion.
 - + Gives the MFC the ability to implement restrictions for highly efficient fishing gears as a management tool for artificial reefs in state ocean waters.
 - + Improves disproportionate user access at artificial reefs in state ocean waters.
 - + Helps ensure sustainable use of public resources.
 - + Takes a proactive measure to reduce derelict gear and protect ESA listed species.
 - + Provides proclamation authority to the DMF director to designate new or modified artificial reef boundaries in state ocean waters.
 - + Provides proclamation authority to the DMF director to modify restricted gears at artificial reefs in state ocean waters in accordance with stated variable conditions.
 - +/- Improves consistency with federal regulations expected for artificial reefs in the EEZ.
 - May have a negative economic impact for some N.C. commercial license holders.
 - Presents enforcement and compliance challenges.

VIII. RECOMMENDATION

The DMF recommends option two.

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MFC Rulebook Index Worksheet

Rule	Subject	Index Entry (Bold major headings)	Add/Delete/ No Change

Ancillary Items:



SHELLFISH LEASE REGULATION IN HIGH USE AREAS



ROY COOPER Governor MICHAEL S. REGAN

Secretary

January 29, 2021

JOHN G. BATHERSON Acting Director

MEMORANDUM

TO:	N.C. Marine Fisheries Commission
FROM:	Jacob Boyd, Section Chief
	Habitat Enhancement Section
SUBJECT:	Shellfish Lease User Conflict Reduction Update

Issue

The Division of Marine Fisheries will present user conflict reduction information to and seek input for further action from the N.C. Marine Fisheries Commission (MFC) based on the concentration of shellfish leases in the state's waterbodies that are identified as high use areas (HUA).

Action Needed

The DMF is seeking input from the MFC about proceeding with the development of caps to limit shellfish lease acreage in identified HUAs, as well as other areas the MFC may want to include.

Findings

- The MFC passed a motion at their August 2020 meeting asking the N.C. Division of Marine Fisheries (DMF) to study the concentration of shellfish leases in given water bodies and bring recommendations on potential user conflicts to the February 2021 meeting.
- Shellfish leases can often conflict with public trust uses, which makes balancing these issues and determining compatibility challenging and somewhat subjective.
- A multifaceted approach is required to address user conflict issues related to shellfish leases in North Carolina.
- Multiple sources of authority govern the responsibilities of the MFC and the Department of Environmental Quality (DEQ) for development of private, commercial shellfish leases in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation.
- One of these grants authority to the MFC to adopt rules to limit the number of acres in any area that may be granted as shellfish leases to assure the public that some waters will remain open and free from shellfish lease activities.
- Other states have developed acreage limits, in consultation with the fishing industry and other regulatory agencies and stakeholders, as a management tool for shellfish leases.
- Available GIS data, such as current acreage of leased waters and closed shellfish growing areas, can inform decisions about limiting shellfish lease acreage.

MFC Authority

North Carolina General Statute (N.C.G.S.) § 113-201 ("Legislative findings and declaration of policy; authority of MFC") details the General Assembly's legislative findings and declaration of policy for cultivation of shellfish in North Carolina. N.C.G.S. § 113-201 provides that "shellfish cultivation provides increased seafood production and long-term economic and employment opportunities" and "provides increased ecological benefits to the estuarine environment . . .". Areas leased for private shellfish cultivation purposes are commonly referred to as shellfish aquaculture or shellfish leases. To enhance shellfish cultivation, the policy of the state is declared to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation. The MFC is empowered to make rules and take all steps necessary to develop and improve shellfish aquaculture. The MFC has the authority to adopt rules to limit the number of acres in any area that may be granted as shellfish leases to assure the public that some waters will remain open and free from shellfish lease activities.¹

In addition to the authority granted in N.C.G.S. § 113-201, N.C.G.S. § 113-202 ("New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966") sets the minimum standards for compatibility to discern suitable areas for shellfish leases based on a number of factors, including but not limited to water quality, ability to cultivate shellfish, existing shellfish resources on the proposed shellfish lease, and other public trust uses in the area. N.C.G.S. § 113-202 also provides the MFC authority to adopt rules to define the commercial production of shellfish.²

The corresponding MFC rules can be found in 15A NCAC 03K and 15A NCAC 03O .0200. Changes to three of these rules are underway and others are in development to satisfy requirements of Session Law (S.L.) 2019-37 and the N.C. Administrative Procedure Act at N.C.G.S. § 150B-21.3A ("Periodic Review and Expiration of Existing Rules").³ The MFC powers and duties include the power and duty to establish standards and adopt rules to manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in N.C.G.S. § 113-202.⁴

Multiple sources of authority govern the responsibilities of the MFC and the DEQ for development of private, commercial shellfish leases in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation. One of these grants authority to the MFC to adopt rules to limit the number of acres in any area that may be granted as shellfish leases to assure the public that some waters will remain open and free from shellfish lease activities.⁵ In addition, the General Assembly has implemented changes and required several studies over the past few years for managing the shellfish aquaculture industry and the resulting user conflicts. These studies include the 2016 Shellfish Aquaculture Plan Report, the 2018 N.C. Strategic Plan for Shellfish Mariculture: A Vision to 2030 ("Plan"), and the 2019 joint DMF-MFC User Conflict Study ("Study").^{6,7,8}

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¹ N.C.G.S. § 113-201

² N.C.G.S. § 113-202

³ https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-37.pdf

⁴ N.C.G.S. 143B-289.52(b)(7)

⁵ N.C.G.S. § 113-201

 $^{^{6}\} https://ncseagrant.ncsu.edu/ncseagrant_docs/oysters/DEQ\%202016\%20Shellfish\%20Aquaculture\%20Plan\%20Report.pdf$

⁷ North Carolina Strategic Plan for Shellfish Mariculture: A Vision to 2030 (Drs. Joel Fodrie, Charles Peterson, Christine Voss, and Christopher Baillie on behalf of the North Carolina Shellfish Mariculture Advisory Committee)

⁸ Study on How to Reduce User Conflict Related to Shellfish Cultivation Leases (N.C. Department of Environmental Quality, Division of Marine Fisheries and N.C. Marine Fisheries Commission), 2019

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In 2019, the General Assembly passed the shellfish aquaculture bill in S.L. 2019-37, which included the Study that describes the complicated and often lengthy permitting process now in place in North Carolina for shellfish leases.⁹ Separate studies and directives mandated by S.L. 2019-37 include: the development of Shellfish Enterprise Areas (SEAs) and potential SEAs in moratorium areas, and the Pamlico Sound Shellfish Aquaculture Pilot Project for a few larger-size shellfish leases. These studies require the development and implementation of new methods and procedures for the shellfish lease application process. A brief overview of the MFC's authority and responsibilities for shellfish leases is provided in Table 1.

Table 1. Overview of the North Carolina Marine Fisheries Commission's (MFC) authority and responsibilities for shellfish leases.

Law	Title
N.C.G.S. § 113-201	Legislative findings and declaration of policy; authority of MFC
N.C.G.S. § 113-202	New and renewal leases for shellfish cultivation
N.C.G.S. § 143B-289.52	MFC – powers and duties
S.L. 2019-37	Provide further support to the shellfish aquaculture industry

User Conflict Information from Other States

Although the concept of public trust waters somewhat differs among states, the larger user conflict issues created by shellfish leases seem to remain constant. The Study summarized user conflict information from other states including providing background information on how other states manage shellfish leases. The following is a synopsis of the background information provided in the Study.¹⁰

Many states have been facing similar user conflict issues much longer than North Carolina. The leasing of public waters for shellfish leases goes through an established public process in all states. This public process ensures that concerned stakeholders receive both sufficient notification of proposed shellfish leases and an opportunity to raise and address their concerns publicly, though the specifics of these processes vary among states. Like North Carolina, other states require shellfish leases to not unreasonably interfere with other public trust uses. Siting authorities review proposed shellfish lease sites and are tasked with addressing and balancing potential user conflicts during the shellfish lease application review process.

However, some states take a more proactive front-end approach. In Maine and Rhode Island, for example, applicants must have a pre-application meeting with regulating agencies and town officials to discuss proposed shellfish lease operations. In both states, meetings allow officials who are familiar with competing uses in the area to advise applicants of potential user conflict issues to give them an opportunity to modify applications before submittal.

A common element of user conflicts with shellfish leases revolves around the fear that shellfish leases will eventually take over the majority of a waterbody. In New York and Rhode Island, acreage caps have been used to address these concerns in areas of high residency and water use. Suffolk County (New York) established an acreage cap of 60 acres that can be leased each year for new

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⁹ https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-37.pdf

¹⁰ Study on How to Reduce User Conflict Related to Shellfish Cultivation Leases (N.C. Department of Environmental Quality, Division of Marine Fisheries and N.C. Marine Fisheries Commission), 2019

shellfish leases. Rhode Island, in consultation with the fishing industry and other regulatory agencies and stakeholders, implemented a maximum of five (5) percent of a coastal salt pond that can be leased for shellfish aquaculture. This was based on a calculated ecosystem carrying capacity but has been used as a de facto social carrying capacity tool. While ecosystem carrying capacity describes the maximum population an area can sustain in biological terms, social carrying capacity describes the maximum amount of use (i.e., recreational, commercial, industrial) an area can sustain in terms of social acceptance. New York included a review period that automatically initiated review of the acreage limits after 10 years to determine if they were still appropriate. Beyond size caps and residency requirements, shellfish leases are subject to a variety of parameters in different states that limit their expansion. These requirements include various shellfish lease terms and physical restrictions.

The Study also referenced the 2018 - N.C. Strategic Plan for Shellfish Mariculture: A Vision to 2030 ("Plan") that provided recommendations to inform the General Assembly on possible legislative actions that could address many of the current user conflict issues surrounding shellfish leases.¹¹ The Plan detailed research showing that further understanding is needed of the societal implications of shellfish leases that hinder the ability of government agencies to determine where shellfish leases are most suitable. Other needs include regionally specific information on social carrying capacity of shellfish leases and other tools to minimize user conflict. While research into the social effects of the expanding shellfish aquaculture industry cannot ensure there will be no user conflict issues, these inquiries inform decision makers and facilitate a better understanding of user conflict resolution approaches that are important to developing an overall understanding of the relationship of the shellfish aquaculture industry and the surrounding coastal communities. Social carrying capacity is inherently location-specific and because coastal counties and waterbodies can be drastically different from one another, the number of shellfish leases that is socially acceptable within an area will vary among regions.

Current/Ongoing Efforts

The DMF is currently working to implement numerous recommendations from multiple studies mandated by the General Assembly to enhance existing procedures for managing the shellfish aquaculture industry and the resulting user conflicts. These studies and directives include:

- 1. User Conflict Study;
- 2. Shellfish Aquaculture Enterprise Areas (SEAs);
- 3. SEAs: Moratorium Areas Study;
- 4. Pamlico Sound Shellfish Aquaculture Pilot Project; and
- 5. Administrative Remedy for Shellfish Leasing Appeals.

DMF is exploring possible ways to complete large-scale shellfish lease investigations required by both the SEA and Pamlico Sound Pilot studies. The DMF also continues to develop changes to existing shellfish lease rules to address user conflict issues and other requirements of S.L. 2019-37. User conflict issues must be approached holistically by addressing these issues in collaboration with multiple user groups to provide outreach and feedback to ensure shellfish aquaculture operations are consistent with sound science, public trust uses, and business planning, marketing, and training.

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¹¹ North Carolina Strategic Plan for Shellfish Mariculture: A Vision to 2030 (Drs. Joel Fodrie, Charles Peterson, Christine Voss, and Christopher Baillie on behalf of the North Carolina Shellfish Mariculture Advisory Committee)

Existing Data/Methodology to Calculate Available Acres

Shellfish leases are divided into two types: bottom and water column. A leaseholder must have a shellfish bottom lease to have a shellfish water column lease. The shellfish water column lease can be granted over the entire footprint of a shellfish bottom lease, or on a portion of the lease. The main objective when calculating total acres leased is to determine the amount of bottom leased for shellfish aquaculture. Therefore, when calculating leased acres in a waterbody, only the footprint of the shellfish bottom lease is used. Because a shellfish water column lease is directly over a shellfish bottom lease, those acres are not included in calculating total acres leased in a waterbody to avoid inflation.

At its August 2020 meeting, the MFC asked DMF staff to study the concentration of shellfish leases in water bodies and bring back recommendations to limit shellfish lease acreage in identified HUAs. These areas are waterbodies/areas where the number of shellfish leases and shellfish lease applications have increased to the point of taking up large portions of available space and/or causing increased user conflicts. Based on available information, DMF staff determined initial HUAs throughout the state and calculated the approximate number of acres that were available for shellfish leases within these HUAs (Table 2). These leasable area calculations are based on the same criteria that are used when reviewing initial shellfish lease applications.

These criteria are the minimum standards established by the General Assembly as set forth in N.C.G.S. § 113-202 and by the MFC in 15A NCAC 03O .0200. As a first step, the minimum standards are used to identify suitable areas for shellfish leases based on numerous factors, including water quality, ability to cultivate shellfish, submerged aquatic vegetation (SAV), and existing shellfish resources on the proposed area. The resulting calculation includes only acres that are considered leasable based on definitive data/information (Table 3). Next, other factors, including federal permitting requirements (i.e., U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) No. 48: Regional Conditions) must be considered to determine if a shellfish lease can be sited and how many potential shellfish leases can be sited in a specific area (Table 4).¹² These other factors cannot be estimated and are considered on a case-by-case basis during the shellfish lease application process under the authority of the shellfish lease statutes and rules and federal requirements.

To illustrate this concept, DMF staff calculated total acres for Stump Sound (847 acres), which is identified as an HUA (Table 5). For the first step, areas in which a shellfish lease cannot be placed based on the definitive data/information (i.e., SAV, navigation channels, closed areas, current/proposed shellfish leases) were excluded (Figure 1). This was compared to the number of acres currently leased (120 acres or 14% of the waterbody) to calculate the potential number of leasable acres still available to be leased (586 acres or 69% of the waterbody; Table 5; Figure 2). To complete the exercise, a proposed shellfish lease would be considered on a case-by-case basis for siting requirements to determine if the proposed shellfish lease can be sited in a particular portion of the area in question.

Included in the changes to three of the shellfish lease rules that are underway is a new requirement to add a 250-foot buffer between shellfish leases. Currently, there are no buffer requirements between shellfish leases. The 250-foot buffer will enhance navigation between and around shellfish leases and was developed based on existing USACE NWP No. 48 setback requirements for U.S. Coast

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¹² Nationwide Permit 48 - Commercial Shellfish Aquaculture Activities Effective Date: March 19, 2017; Expiration Date: March 18, 2022 (NWP Final Notice, 82 FR 1860)

Guard navigation aids. To demonstrate this, the 250-foot buffer between shellfish leases was added to the data layers used in the previous illustration where a shellfish lease cannot be placed (311 acres or 37% of the waterbody; Table 5; Figure 3). The potential number of leasable acres was recalculated to include the 250-foot buffer (410 acres or 48% of the waterbody; Table 5; Figure 4). Further, to demonstrate how a proposed shellfish lease would be considered on a case-by-case basis for siting requirements in Stump Sound, two new simulated shellfish leases were added to the data layers used in the previous illustration that included the 250-foot buffer between shellfish leases (339 acres or 40% of the waterbody; Table 5; Figure 5). The two new simulated shellfish lease sites were determined based on the average size of the current shellfish leases in the area (Figure 5). The potential number of leasable acres was recalculated to include the two new simulated shellfish leases (369 acres or 44% of the waterbody; Table 5; Figure 6).

It is important to note that while limiting shellfish acres in identified HUAs may help alleviate user conflicts within the HUAs, it could end up shifting effort away from the HUAs to areas that are not currently HUAs but would become so. In some identified HUAs, shellfish leases may be self-limiting and acreage caps may not yield the intended effect.

Waterbody
New River
Stump Sound (Mainland Areas, Permuda Island Bay, Seaside Areas)
Topsail Sound (Mainland Areas)
Topsail Sound (Mainland Areas, Waters Bay, Banks Channel, Seaside Areas, Green Channel)
Newport River

Table 3. Data layers used in calculating the amount of available leasable acres.
--

Number	Data Layers
1	Current and proposed shellfish leases and franchises
2	Research sanctuaries
3	250' from developed shoreline
4	20' from undeveloped
5	Submerged aquatic vegetation (SAV)
6	Cultch planting sites
7	Oyster Sanctuaries
8	Seed Oyster Management Areas (SOMA)
9	Shellfish Growing Areas (SGA) – closed
10	Military Restricted Area & Danger Zones
11	Submerged Lands Claims (SLC)
12	Moratoriums
13	Pound nets
14	Intracoastal Waterway (ICW) - 250' buffer
15	National Estuarine Research Reserve (NERR)/DCM Coastal Reserve Boundary
16	National Park Service
17	US Fish and Wildlife Service Lands
18	Other permitted restoration areas

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Table 4. Other factors used when siting a shellfish lease.

Number	Other Factors
1	Natural shellfish in area (shellfish bottom mapping)
2	250' buffer between shellfish leases
3	USACE NWP No. 48: Regional Conditions - 1/3 waterbody, 250' navigational aids, not in USACE setbacks or marked/unmarked channels
4	User conflicts
5	Shellfish Enterprise Areas (SEAs)

Table 5. The total number of acres and percent of waterbody for Stump Sound including current shellfish leases, current shellfish leases with a 250-foot buffer, and simulated new shellfish leases with a 250-foot buffer.

				With 250' Buffer				
	Figure 1	Figu	ire 2	Figure 3	Figure 4	Figure 5	Figure 6	
	Stump Sound	Current Shellfish Leases	Potential Leasable Area	Current Shellfish Leases	Potential Leasable Area	Simulated New Shellfish Leases	Remaining Potential Leasable Area	
Acres	847	120	586	311	410	339	369	
Percent	N/A	14%	69%	37%	48%	40%	44%	

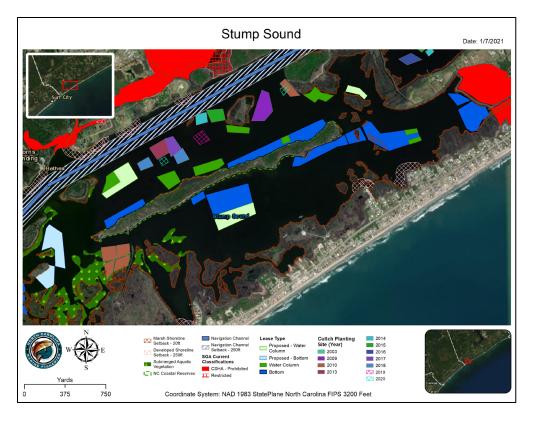


Figure 1. Stump Sound including all the data layers used to determine the number of potential leasable areas.

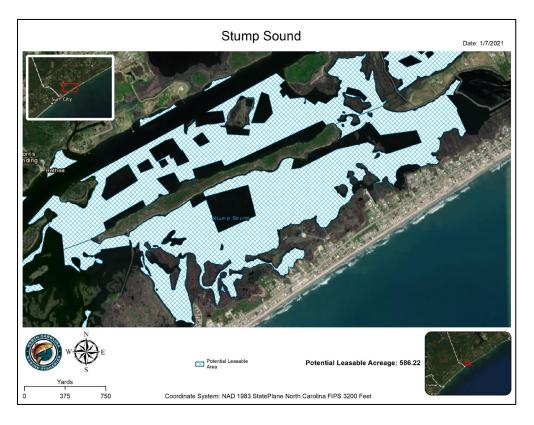


Figure 2. Stump Sound total potential leasable acres.

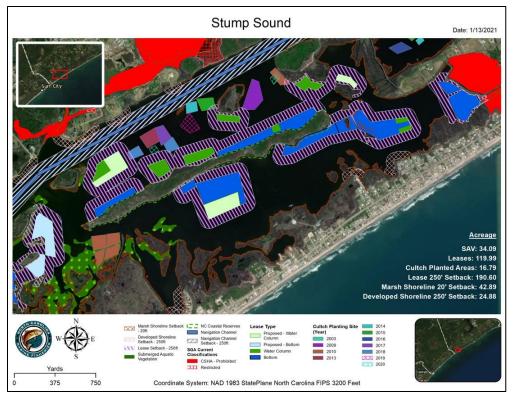


Figure 3. Stump Sound with data layers including the 250-foot buffer between shellfish leases used to determine the number of potential leasable areas.



Figure 4. Stump Sound total potential leasable acres including the 250-foot buffer between shellfish leases.



Figure 5. Example of two new simulated shellfish leases sited in Stump Sound with data layers including the 250-foot buffer between shellfish leases used to determine the number of potential leasable areas.



Figure 6. Example of two new simulated shellfish leases sited in Stump Sound and the total potential leasable acres including the 250-foot buffer between shellfish leases.

Recommendation

The use of acreage caps is a potential tool for managing shellfish leases and the effectiveness will vary depending on the particular geographic area along the coastline. Other states have developed acreage caps in consultation with the fishing industry, regulatory agencies, and stakeholders. Available GIS data, such as current acreage of leased waters and closed shellfish growing areas, can inform decisions about limiting shellfish lease acreage. The DMF is currently working to implement numerous recommendations from multiple studies mandated by the General Assembly to enhance existing procedures for managing the shellfish aquaculture industry and the resulting user conflicts.

If the MFC develops rules to implement caps to limit shellfish lease acreage in HUAs, the DMF recommends involving the public and other stakeholders from the beginning of the process to foster stakeholder buy-in, more readily address concerns before rules are implemented, and maintain transparency in the regulatory process. The DMF also recommends exploring the use of an automatic review period (i.e., sunset clause) to be included in any potential rule language to allow the opportunity to reevaluate the HUAs to assess the ongoing appropriateness and identify any new HUAs. User conflict issues must be approached holistically by addressing these issues in collaboration with multiple user groups to provide outreach and feedback to ensure shellfish aquaculture operations are consistent with sound science, public trust uses, and business planning, marketing, and training.

Input Needed from MFC

If the MFC wants to proceed with the development of rules to limit shellfish lease acreage in HUAs, the DMF requests the following input:

- Feedback on areas identified as HUAs;
- Other geographic areas of concern to examine further as potential HUAs; and
- Entities to include for soliciting stakeholder input, such as MFC advisory committees and industry groups.

Next steps could include the DMF developing an issue paper with proposed rules and presenting it to MFC advisory committees, industry groups, and other stakeholders to solicit stakeholder input. This information could then be brought to the MFC for selection of its preferred management option, development of the required fiscal analysis, and presentation to the MFC to begin the rulemaking process.

If the MFC does not support proceeding with the development of rules at this time, there are numerous measures in place and forthcoming to address shellfish lease user conflicts. It is a viable option to allow time for the previous studies and mandates to be fully implemented and the benefits to be realized before promulgating additional requirements for the management of shellfish leases.



COASTAL HABITAT PROTECTION PLAN

COASTAL HABITAT PROTECTION PLAN MEMO

COASTAL HABITAT PROTECTION PLAN DRAFT JANUARY 21, 2021 MEETING MINUTES



ROY COOPER Governor

MICHAEL S. REGAN Secretary

JOHN G. BATHERSON Acting Director

January 25, 2021

MEMORANDUM

- TO: Marine Fisheries Commission Environmental Management Commission Coastal Resources Commission
- **FROM:** Jimmy Johnson, APNEP Anne Deaton, DMF

SUBJECT: 2021 Coastal Habitat Protection Plan Amendment Update

Issue

Update the Marine Fisheries Commission (MFC), Coastal Resources Commission (CRC), and Environmental Management Commission (EMC) on the status of the ongoing amendment to the 2021 North Carolina Coastal Habitat Protection Plan (CHPP).

Action Needed

For informational purposes only, no action is needed at this time.

Overview

At the MFC and CRC 's November 2020 business meeting, and the EMC's December 2020 business meeting, staff provided an update on the 2021 Coastal Habitat Protection Plan Amendment. Staff reviewed the modified timeline for completing the amendment (Table 1).

Since the last commission meetings, a CHPP Steering Committee meeting was held in January 2021. Background on the ecological value of coastal wetlands, their status, and the need for protection and restoration was reviewed. Similarly, the status and ongoing monitoring efforts of the six coastal fish habitats was presented. This background information will be included in the Wetlands Protection and Restoration Issue Paper and the Habitat Status and Monitoring Issue Paper, respectively. A draft of both issue papers and recommended actions will be presented at the next CHPP Steering Committee meeting. At the February MFC, the February CRC and the March EMC commission meetings, staff will present similar background on these two issue papers.

A draft of the issue paper entitled "Reducing Inflow and Infiltration associated with Wastewater Infrastructure to Improve Water Quality" was reviewed along with draft recommended actions. There was discussion regarding who is responsible for some of the recommended actions and the mechanism to get actions done, as well as some rewording suggestions for the proposed actions. The actions for this issue paper will primarily fall under the authority of EMC and the State

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Water Infrastructure Authority. The CHPP Steering Committee passed a motion to support the recommended actions with the understanding that there may be some revisions after further consultation with agencies and other appropriate groups.

Dr. Martin Posey, CHPP Steering Committee Chair, informed attendees that the committee sent two letters of support for grant proposals. One project entitled "Multiscale mapping, monitoring, and modeling to assess vulnerability of North Carolina's coast to sea level rise", would provide updated information on coastal wetland distribution using emerging technologies in remote sensing, as well as long and short term analyses of coastal change with sea level rise. These outcomes will be highly beneficial for assessing trends, prioritizing needed wetland protection and restoration efforts, and planning for coastal resilience. The other proposal, entitled "Evaluating a tiered approach to inform long-term monitoring, assessment, and decision-support processes for seagrass management and conservation", will continue coastwide high salinity submerged aquatic vegetation (SAV) mapping efforts and develop standardized protocols for monitoring at sentinel sites. This collaborative monitoring proposal will aid in determining SAV trends needed to guide management actions.

Action	Quarter	MFC	CRC	EMC
Provide CHPP background,				
implementation progress, and process	Fall 2019	Nov 15	Nov 20	Nov 14
for 2021 amendment				
Provide background on SAV,	Summer	Aug 20-21	Sep 9	Sep 10
Compliance, and I&I issue papers	2020	Aug 20-21	Sep 7	
Provide update on timeline	Fall 2020	Nov 19-20	Nov 18-19	Nov 18-19
Present background on Wetlands and	Winter 2021	Feb 17-19	Feb 17-18	Mar 10-11
Habitat Monitoring issue papers	W IIItel 2021	1001/-19	1001/-10	
Provide update on revision status	Spring 2021	May 19-21	Jun 9-10	May 12-13
Present entire draft amendment; ask to take out for public comment (action	Summer 2021	Aug 25-27	Sep 15-16	Sep 8-9
_item)	2021			
Review public comments received; ask	Fall 2021	Nov 17-19	Nov 9-10	Nov 17-18
for final plan approval (action item)	1 all 2021	1101 17-19	1107 9-10	110/ 1/-10
Present public friendly short plan for outreach purposes	Spring 2022	TBD	TBD	TBD

Table 1. Timeline of CHPP milestones relevant to DEQ commission meetings.



ROY COOPER Governor MICHAEL S. REGAN Secretary

MEMORANDUM

TO:	Coastal Resources Commission Environmental Management Commission Marine Fisheries Commission Coastal Habitat Protection Plan Steering Committee
FROM:	Jimmy Johnson Albemarle-Pamlico National Estuary Partnership Anne Deaton Division of Marine Fisheries

DATE: January 25, 2021

SUBJECT: Coastal Habitat Protection Plan Steering Committee Meeting

The Coastal Habitat Protection Plan Steering Committee met via webinar at 9:00 a.m. Thursday, January 21, 2021. The following attended:

Commissioners:	Martin Posey, Pete Kornegay, Bob Emory, Larry Baldwin, David Anderson,
DMF Staff:	Yvonne Bailey Anna Daton, Casay Knight, Alan Bianghi, Kasas Zinn, Jasah Bayd, Kim
DMF Stall.	Anne Deaton, Casey Knight, Alan Bianchi, Kacee Zinn, Jacob Boyd, Kim
	Harding, Nolen Vinay
APNEP Staff:	Bill Crowell, Jimmy Johnson, Trish Murphey
DCM Staff:	Mike Lopazanski, Daniel Govoni, Curt Weychert
DWR Staff:	Danny Smith, Jim Hawhee, Karen Higgins, Amanda Mueller, Chris Pullinger
DEMLR Staff:	Brian Wrenn, Samir Dumpor
Public:	Paul Cough (APNEP Leadership Council), Kelly Garvy (The Pew Charitable
	Trust) Leda Cunningham (The Pew Charitable Trust), Todd Miller (NCCF),
	Michael Flynn (NCCF), Liz Rasheed (SELC), Melissa Whaling (SELC), Geoff
	Gisler (SELC), Melissa Whaling (SELC), Brooks Rainey Person (SELC),
	Anne Coan (NC Farm Bureau Federation), Chris Baillie (ECU), Emory
	Wellman (ECU), Stacy Trackenberg (ECU), Katie Warnell (Duke), Krista
	Early (Environment NC), Ryan Bethea (Oysters Carolina), Cat Bowler
	(Audubon NC), Corry Plott (Coldwater Consulting)



WELCOME, INTRODUCTIONS AND APPROVE AGENDA

Chairman Martin Posey (MFC) welcomed everyone on the webinar and asked them to sign in through the chat including their affiliation and what everyone is looking forward to in 2021, in order to get a list of attendees.

APPROVE AGENDA FROM JULY 30, 2020 MEETING

Motion by Yvonne Bailey to approve the minutes. Seconded by David Anderson. Motion carries unanimously.

APPROVE MINUTES FROM OCTOBER 16, 2020 MEETING

Motion by David Anderson to approve the minutes. Seconded by Yvonne Bailey. Motion carries unanimously.

REVIEW TIMELINE

Jimmy Johnson (APNEP) reviewed the timeline of the 2021 Coastal Habitat Protection Plan (CHPP) amendment. Work continues to complete the remaining issue papers. The issue paper, Reducing Inflow and Infiltration (I & I) from Wastewater Infrastructure to Improve Water Quality, is mostly complete. There are two more issue papers being developed. The background for those issue papers will be presented today and drafts will be provided to the committee in the spring. The public will be able to comment on the draft this summer and will go through final approval of the amendment in November by the three commissions. Johnson noted that following completion of the amendment, a document similar to the 2016 CHPP that is aimed toward the general public will be developed in 2022.

REPORT BACK FROM COMMISSION MEETINGS

Chairman Posey provided an update on the November Marine Fisheries Commission and that staff provided background on issue papers of which the commission was very supportive.

Yvonne Bailey (EMC) provided an update from the Environmental Management Commission (EMC). They met in December with CHPP staff presenting the revised timeline, meeting minutes from October and a memo. She highlighted items from the memo to other members of the EMC with no questions from members.

Bob Emory (CRC) provided an update to the Coastal Resources Commission (CRC) in November. There was interest from other CRC commissioners about the SAV issue paper and the nutrient standards recommendations. Larry Baldwin (CRC) discussed the goals of the SAV/water quality issue paper and answered questions about the ability to put recommended actions into place and if some of these goals were attainable.

REVIEW OF ISSUE PAPERS IN PROGRESS

Wetland Protection and Restoration with Focus on Nature-Based Methods

Chris Baillie (ECU) presented information that will be in the draft issue paper. He highlighted the value of wetlands along with the different threats and the different ecosystem services they provide. He reviewed the various kinds of wetlands and wetland classification systems with a focus on palustrine and estuarine wetlands. Ninety-five percent of wetlands are located in the



North Carolina Department of Environmental Quality | Division of Human Resources 217 West Jones Street | 1601 Mail Service **226** rer | Raleigh, North Carolina 27699-1601 919.707.8300 coastal plains within the four CHPP regions. He also discussed the role of wetlands, their biodiversity and their contribution to recreation and fisheries production. Approximately 70% of endangered, threatened, or of special concern in NC are wetland dependent. There are numerous fish species that are dependent on wetlands and the value to both recreational and commercial fishing. He also discussed the value of wetlands to water quality by providing filtration, sedimentation control, and reduction of nitrogen and phosphorus, as well as their shoreline stabilization, carbon sequestration, recreational and tourism values. He discussed the history of wetland loss from pre-colonial times to present day. Loss of wetlands appears to be accelerating over the past 50 years. He discussed conversion of wetlands over the past 20 years as captured through the NOAA Coastal Change Analysis (C-CAP) program. He provided information on the Hardison Amendment, shoreline hardening and climate change.

Bob Emory (CRC) asked if timber harvest was accounted for with conversion of palustrine forested wetlands to palustrine scrub/shrub and whether, if left undisturbed, succession could return these areas to forested wetlands. Baillie answered that timber harvest does account for conversion of forested wetlands to scrub shrub wetlands and, if the hydrology had not been altered through ditching, reforestation could occur.

Chairman Posey asked about the extent of salt water intrusion impacts we are seeing in the Cape Fear River and how much of a problem this will be in the future. Baillie stated that in the C-CAP data, you do not see documentation of palustrine wetlands converting to emergent wetlands; however, this is because the relatively course 30x30m pixel land class mapping generated by National Wetlands Inventory (NWI) and used by NOAA C-CAP has limited ability to detect small scale changes between less disparate land classes. This speaks to the need for higher resolution mapping capabilities. Baillie also commented on the need for estuarine marshes to be able to transgress through migration corridors which will also result in loss of palustrine wetlands.

Baldwin commented on Baillie's presentation and asked if he had considered work by Dr. Matt Ricker with NCSU who is doing soil studies. He has documented two to three-foot loss of coastal shoreline along the Alligator River where there is no development of any kind. Baillie stated there are a number of studies that document erosion impacts and are seeing similar rates of loss. He also stated that work by Dr. Carolyn Currin (NOAA-NCCOS) has shown that most marshes in NC are not keeping up with sea level rise, stating that these marsh edge losses and erosion are typically the result of global-scale anthropogenic impacts, in the form of climatechange induced sea level rise and increasingly frequent and intense storms.

Bailey asked about the coordination with DWR since a lot of these issues relate to them and are also addressed in DWR basin plans. Anne Deaton (DMF) stated that DWR is a key division on the CHPP Team and staff are participating on the call today. There is also a lot of coordination with the CHPP Team to provide background for the basin plans that will help improve water quality.

Reducing Inflow and Infiltration (I & I) to Improve Water Quality

Deaton presented the latest draft of the I & I issue paper. She explained how both inflow and infiltration impact water quality. She discussed several studied on water quality impacts and the prevalence of I & I issues. Infiltration tends to drive most flows and coastal conditions make



North Carolina Department of Environmental Quality | Division of Human Resources 217 West Jones Street | 1601 Mail Service **227** ter | Raleigh, North Carolina 27699-1601 919.707.8300 them worse. Most areas are located in three foot or less elevation and are very vulnerable to I & I, and climate change will make this issue worse. She provided information on the number of sanitary sewer overflow (SSO) incidences. These overflows are most likely an underestimate because some may not be observed or detected. She discussed the economic impacts on communities. She also discussed the State Water Infrastructure Authority (SWIA) and its role in funding. She discussed the amount of funds that has been issued and what is still needed. Deaton also pointed out how low-income rural areas are most impacted.

Deaton then reviewed the recommended actions and the source of each recommended action and whether they would require a rule change. She discussed the need to make them SMART (Specific, measurable, achievable, relevant, time bound).

Chairman Posey asked about recommendation number seven and eight, and who would be responsible (what group) for the implementation. Deaton noted that the NC Resilient Coastal Communities Program, staffed by DCM, could be a mechanism to get local governments to develop climate adaptation strategies involving wastewater infrastructure. Posey stated that it would be good to have the responsible group or groups identified within these recommendations. He also asked about funding sources.

Baldwin stated funding is paramount in I & I and without funding, nothing will be able to happen. He suggested a way to keep costs down is to put liners inside leaky collection lines, rather than replace sections of pipes. This would be much more economical than building a new system. There is a need for huge incentives for towns to take care of I & I. Adding pipe liners could increase capacity by almost 20% and is economical. Deaton said that she would include the liner idea in the paper.

Chairman Posey asked for a motion for the steering committee to consider supporting these actions. Bob Emory (CRC) asked about jurisdiction of the different recommendations and if the different agencies supported these recommendations. Deaton explained that there were several discussions on these recommendations with David May (DWR) and Danny Smith (DWR) and they supported them as a way to reduce SSOs. They are also on board with prioritizing the coastal areas. Baily asked about the process of rulemaking and if it would go through staff, EMC, and the public. Deaton explained that once the plan was final, the CHPP Team would work with staff and EMC to move any rulemaking actions forward. Baldwin stated that he would like to take these recommendations to the commissions first because he did not want to speak for the CRC. Bailey agreed with Baldwin. Bailey also recommended that the EMC's Water Quality Committee review the recommendations.

Johnson stated to the committee that they are free to do what they want but the commissions are relying on the steering committee to provide guidance, since the steering committee receives more detailed information and has the time to discuss it. Because of this, Johnson said it would be better for the steering committee to support these actions in principle with the understanding that they can be adjusted or revised. Baldwin stated there was a lot of water quality involved. He had no problems with funding needs and to look at elevating structures but the recommendations need to be more targeted. When these are taken to the commissions, it needs to be clear who is responsible. Deaton said that the three full commissions are getting background presentations on



North Carolina Department of Environmental Quality | Division of Human Resources 217 West Jones Street | 1601 Mail Service **228** rer | Raleigh, North Carolina 27699-1601 919.707.8300 all the issue papers in pieces, so they will be familiar with the issues, but will not review the recommended actions until the draft plan is completed for their review.

Motion by Yvonne Bailey to support the recommended actions of the I & I issue paper. Seconded by Pete Kornegay. Motion passes 5 to 1. Baldwin opposed.

BREAK

Chairman Posey called a 10-minute break.

Habitat Monitoring to Assess Status and Regulatory Effectiveness

Casey Knight (DMF) provided a presentation on this issue paper. She provided background on the CHPP goals and discussed the need for monitoring for all six coastal habitat types: water column, shell bottom, wetlands, submerged aquatic vegetation (SAV), hard bottom, and soft bottom. There is a need for a good understanding of trends to be able to manage properly. She discussed the water column as the connector to all the other habitats and the importance of good water quality to support the other habitats. She discussed the trends seen in the four different CHPP regions including trends in Phosphorus, Nitrogen, Chlorophyll *a*, turbidity, dissolved oxygen and Ph. She discussed the Nutrient Sensitive Waters classifications and the lack of standards for nutrients, and monitoring of fish kills and algal blooms. She discussed water quality monitoring by DMF Shellfish Sanitation and Recreational Water Quality monitoring in shellfish growing areas and recreational swimming areas.

Knight next discussed monitoring of shell bottom and provided a history of oysters from the 1880s to the present. In the 1940s the shellfish rehabilitation program began with the development of oyster sanctuaries and the planting of cultch. She discussed the changes in oyster harvest with a shift from commercial public bottom harvest to more oysters coming from private bottom harvest. She provided information on the oyster sanctuary program where there have been 15 oyster sanctuaries constructed and have been strategically placed in Pamlico Sound for larval production. She then described the estuarine bottom mapping program. There are approximately 16,700 acres of subtidal shell bottom, and 5,351 acres of intertidal shell bottom. The majority of subtidal shell bottom occurs in SHA Region 3 (White Oak River Basin), and the majority of intertidal shell bottom occurs in SHA Region 4 (Cape Fear and Lumber River Basins). Knight reviewed the SAV mapping efforts, and the 191,155 acres of the known historical extent in NC and extent of change previously shown in the SAV issue paper.

Knight discussed the hard bottom habitat and that it is limited to mostly south of Cape Hatteras. It is estimated that there are approximately 500,000 acres. There is little information as far as status of hard bottom but is very important to the snapper group complex. She finished with a description of the soft bottom habitat which is a vast resource with an estimated 2.9 million acres in NC's estuaries and coastal rivers. Global losses of soft bottom have been documented, but little is known about the status of soft bottom in NC. Soft bottom can also be a potential sink and source of chemical and microbial containments.

There were no questions from the committee.

SUPPORT FOR RESEARCH EFFORTS



Chairman Posey reviewed two letters of support for two proposals related to CHPP priority areas and includes support for "Evaluating a tiered approach to inform monitoring, assessment, and decision making elements for seagrass management and conservation" which will focus on high salinity SAV habitat and "Coastal resilience multi-scale mapping and monitoring to assess vulnerability of NC's coast to sea level rise" which will focus on wetlands.

PUBLIC COMMENT

No public comment.

ISSUES FROM COMMISSIONERS

Chairman Posey brought up the idea of having a working group formed to discuss win-win recommendations that could be accomplished quickly, particularly concerning water quality related issues. The NC Coastal Federation and the Pew Charitable Trust offered to work with CHPP staff to brainstorm items and timeframe. Baldwin stated that he thought it would be a great idea to work with a small group of stakeholders on the issue of water quality and to have more input and suggestions from stakeholders. Johnson asked for clarification as to whether there would be a stakeholder group for each priority issue or only one stakeholder group. Chairman Posey stated it would only be one stakeholder group that would focus on water quality issues and recommendations that have already been presented to the committee. The intent would be to provide supplemental recommendations that could be pursued quickly. Johnson stated that he will contact Todd Miller with NCCF and Leda Cunningham with Pew and work out details.

ADJOURN

Johnson will send out information regarding the date of the next meeting. Motion by Larry Baldwin to adjourn. Seconded by Pete Kornegay. Motion passed unanimously.

/plm





A TEN YEAR PRESCRIPTION TO RECOVER THE ALBEMARLE SOUND - ROANOKE RIVER STRIPED BASS STOCK

A Ten-Year Prescription for the Recovery

of the Albemarle Sound/Roanoke River Striped Bass Stock

Introduction

According to the most recent stock assessment, the Albemarle Sound/Roanoke River Striped Bass stock is overfished and overfishing is occurring. In addition, flooding of the Striped Bass spawning grounds on the Roanoke River during the past four years has resulted in poor reproduction. Therefore, the stock is in a much-diminished state as compared to that of the 1990s when Striped Bass were very abundant.

The combination of overfishing and poor juvenile recruitment has left the stock in such a condition that DMF and WRC have proposed very low levels of harvest for 2021. These harvest levels are so low as to call into question whether they are justifiable at all. Given the inherent error and lack of precision in the stock assessment model, it is doubtful that the proposed harvest levels can be taken without doing further harm to what can only now be described as a remnant stock. The citizens of North Carolina would be better served by preserving the remaining Striped Bass as spawning stock rather than as a commodity until such time as spawning grounds river flow conditions support successful recruitment.

Realistically, 10 years (at least) will be required to restore size and age classes of Striped Bass. The following time frame discussion outlines what will be necessary to have a reasonable chance at restoration of the stock. **The presence of an ongoing multi-species gill net fishery is not compatible with Striped Bass recovery**. In some year's past, the numbers of Striped Bass gill net bycatch discards greatly exceeded the numbers of Striped Bass harvested. In addition, numbers of Striped Bass caught and released in the Albemarle Sound and Roanoke River recreational fishery are quite high and need to be controlled.

Fishing mortality and supplemental fingerling stockings are the only factors within our control in an effort to restore the Albemarle Sound/Roanoke River Striped Bass stock. Only during spawning seasons with average rainfall can the US Army Corps of Engineers provide optimum river flows from Kerr Lake critical to successful Striped Bass spawning. We are therefore left with few options but to reduce fishing mortality to near zero and to consider Striped Bass fingerling stocking as a last resort. Annual updates and review of the stock assessment model and its targets will be necessary to monitor progress of the recovery.

Time Frame and Actions

2021

- Begin moratorium on harvesting Striped Bass in Albemarle Sound and tributaries including Roanoke River and tributaries. Prohibit the possession or sale of Striped Bass. Begin two-year phase out of gill nets except for large mesh gill nets in Chowan River for Blue Catfish. Pound nets and fyke nets allowable for other species.
- Prohibit the use of natural bait in the Albemarle Sound and Roanoke River recreational fishery and require single barbless hooks until further notice.
- Maintain weekly contact with US Army Corps of Engineers and Dominion Energy during the spawning period to negotiate appropriate flows for the Roanoke River. Carry out annual DMF Striped Bass Juvenile Abundance sampling in Albemarle Sound, Fishery Independent sampling, as well as WRC Spawning Grounds Spawning Stock Assessment on the Roanoke River. Update stock assessment.

2022

- Maintain moratorium on harvesting Striped Bass. Begin second year of phase out of gill nets except for large mesh gill nets in Chowan River for Blue Catfish. Pound nets and fyke nets allowable for other species.
- Maintain weekly contact with US Army Corps of Engineers and Dominion Energy during the spawning period to negotiate appropriate flows for the Roanoke River. Carry out annual DMF Striped Bass Juvenile Abundance sampling in Albemarle Sound, Fishery Independent sampling, as well as WRC Spawning Grounds Spawning Stock Assessment on the Roanoke River. Update stock assessment.

2023

- Maintain moratorium on harvesting Striped Bass. Use of gill nets in Albemarle Sound and tributaries are hereby prohibited except for large mesh gill nets in Chowan River for Blue Catfish. Pound nets and fyke nets allowable for other species.
- Maintain weekly contact with US Army Corps of Engineers and Dominion Energy during the spawning period to negotiate appropriate flows for the Roanoke River. Carry out annual DMF Striped Bass Juvenile Abundance sampling in Albemarle Sound, Fishery Independent sampling, as well as WRC Spawning Grounds Spawning Stock Assessment on the Roanoke River. Update stock assessment.

2024, 2025, 2026

- Maintain moratorium on harvesting Striped Bass.
- Maintain weekly contact with US Army Corps of Engineers and Dominion Energy during the spawning period to negotiate appropriate flows for the Roanoke River. Carry out annual DMF Striped Bass Juvenile Abundance sampling in Albemarle Sound, Fishery Independent sampling, as well as WRC Spawning Grounds Spawning Stock Assessment on the Roanoke River. Update stock assessment.
- Should the Striped Bass stock not have responded by 2026, begin supplemental fingerling stocking.

2027, 2028, 2029

- Maintain moratorium on harvesting Striped Bass.
- Maintain weekly contact with US Army Corps of Engineers and Dominion Energy during the spawning period to negotiate appropriate flows for the Roanoke River. Carry out annual DMF Striped Bass Juvenile Abundance sampling in Albemarle Sound, Fishery Independent sampling, as well as WRC Spawning Grounds Spawning Stock Assessment on the Roanoke River. Update stock assessment.
- Continue supplemental fingerling stocking.

2030

- Depending upon results of stock assessment, explore the possibility of reopening the recreational Striped Bass fishery. Explore the possibility of reopening the commercial Striped Bass fishery using hook and line, pound nets and fyke nets as the allowable gears of capture.
- Maintain weekly contact with US Army Corps of Engineers and Dominion Energy during the spawning period to negotiate appropriate flows for the Roanoke River. Carry out annual DMF Striped Bass Juvenile Abundance sampling in Albemarle Sound, Fishery Independent sampling, as well as WRC Spawning Grounds Spawning Stock Assessment on the Roanoke River. Update stock assessment.
- Continue supplemental fingerling stocking.

Benefits of this 10-Year Plan

Overfishing ends within two years.

The need for an Incidental Take Permit for sturgeon and sea turtles in Albemarle Sound is diminished.

The need for gill net observers is negated.

Major sources of Striped Bass mortality are removed. Striped bass will be free from unintentional capture and handling except from pound nets, fyke nets, and recreational catch and release where survival rates are high.

Costs of this 10-Year Plan

Loss of use of gill nets in the Striped Bass and multi-species fishery.

Although alternative gears are available, some commercial fishermen will not likely invest in new gears.

Bait shops that sell natural bait during Striped Bass season will experience a loss of income. However, this loss may be mitigated by the sale of artificial lures that meet hook configuration requirements.



FISHERY MANAGEMENT PLANS

STATUS OF ONGOING PLANS

SOUTHERN FLOUNDER FMP AMEMDMENT 3

ESTUARINE STRIPED BASS FMP AMENDMENT 2 DEVELOPMENT

SHRIMP FMP AMENDMENT 2 UPDATE



Acting Director

Jan. 29, 2021

MEMORANDUM

TO: N.C. Marine Fisheries CommissionFROM: Corrin Flora, Fishery Management Plan Coordinator Fisheries Management Section

SUBJECT: Fishery Management Plan Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of ongoing North Carolina fishery management plans (FMPs).

Action Needed

For informational purposes only, no action is needed at this time.

Overview

This memo provides an overview on the status of six North Carolina FMPs for the Feb. 2021 MFC business meeting.

Southern Flounder FMP

Staff continue to develop the Southern Flounder FMP Amendment 3, addressing comprehensive, long-term management strategies. In fall 2020, the Southern Flounder FMP Advisory Committee (AC) assisted the division with development of Amendment 3 to continue rebuilding the stock. Lead staff provided a summary overview of Amendment 3 progress at the Nov. 2020 MFC business meeting. The MFC passed a motion requesting analysis of varying commercial and recreational harvest allocation percentages. Lead staff will provide a summary of harvest allocation analysis at the Feb. 2021 MFC business meeting.

Shrimp FMP

At its Feb. 2020 business meeting, the MFC received a summary of the public comments submitted, received an overview of the potential management strategies and the FMP timeline, and approved the goal and objectives for Amendment 2. The goal adopted by the MFC is to manage the shrimp fishery to provide adequate resource protection, optimize long-term harvest, and minimize ecosystem impacts. Staff continue to develop the first draft of the Shrimp FMP Amendment 2. The division is examining management strategies to promote habitat protection,

reduce bycatch in the shrimp trawl fishery, and potential changes to existing shrimp management strategies adopted in previous plans.

The Shrimp FMP AC has been appointed. The AC will assist the division with development of Amendment 2 through virtual workshops in March 2021. At the Feb. 2021 MFC business meeting, lead staff will provide an overview of the FMP development and request additional feedback on management strategies developed to address issues as they relate to the goal and objectives.

Estuarine Striped Bass FMP

At the Nov. 2020 MFC business meeting, lead staff provided an overview of the Amendment 1 FMP review, including the Central Southern Management Area stock report, the Albemarle-Roanoke stock report, and the recent Revision to Amendment 1. Commercial and recreational harvest reductions implemented through the 2020 Revision management strategy went into effect Jan. 1, 2021. On Jan. 14, 2021, and in accordance with the harvest reductions, the Wildlife Resources Commission issued a proclamation outlining the 2021 striped bass harvest in the Roanoke River Management Area. Management strategies implemented through the Revision to Amendment 1 will continue until the adoption of Amendment 2.

Development of Amendment 2 began with a scoping period held Nov. 2-15, 2020. Lead staff will present an overview of the scoping period and the draft goal and objectives of Amendment 2 at the Feb. 2021 MFC business meeting. Additionally, the division will solicit input from the MFC on any additional management strategies to be considered for Amendment 2.

Spotted Seatrout FMP

A benchmark stock assessment for spotted seatrout is underway coinciding with the scheduled Spotted Seatrout FMP review. The prior stock assessment from 2014 indicated the stock is not overfished and is not experiencing overfishing. The benchmark stock assessment will be completed late 2021 or early 2022.

Striped Mullet FMP

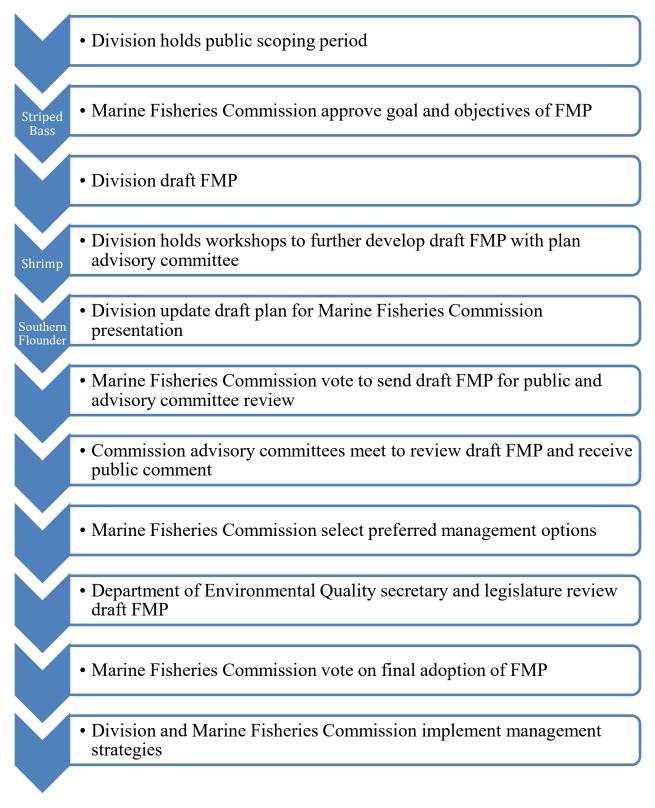
A benchmark stock assessment for striped mullet is underway coinciding with the scheduled Striped Mullet FMP review. The previous stock assessment update, through terminal year 2017, indicated the stock is not experiencing overfishing. Due to a poor relationship between spawning stock biomass and juvenile abundance, overfished status was unable to be determined. The benchmark stock assessment will be completed in 2022.

Interjurisdictional FMP

The scheduled review of the Interjurisdictional (IJ) FMP is underway. The management strategy of this unique state FMP is to adopt management measures appropriate for North Carolina contained in existing finfish FMPs approved by the Council or the Atlantic States Marine Fisheries Commission (ASMFC), which North Carolina is subject to, by reference as minimum standard(s). This avoids duplication of effort in the development of North Carolina species plans under the Fisheries Reform Act for species or species groups already subject to federal FMPs. When adopted by reference in the IJ FMP, the Council and ASMFC FMPs are held to the standards established in G.S. 113-182.1 and most associated policies. The last IJ FMP update was completed in 2015. The Plan Development Team met in Jan. 2021 to begin their review of

the plan. A process to be incorporated in the plan will addresses the best mechanism to "retire" a state plan covered by the IJ FMP.

NORTH CAROLINA FISHERY MANAGEMENT PLANS Feb. 2021





SOUTHERN FLOUNDER FMP AMENDMENT 3

SOUTHERN FLOUNDER FMP AMENDMENT 3 MEMO

SOUTHERN FLOUNDER FISHERY SECTOR ALLOCATIONS



ROY COOPER Governor MICHAEL S. REGAN Secretary

January 29, 2021

MEMORANDUM

TO:	N.C. Marine Fisheries Commission
FROM:	Michael S. Loeffler and Anne L. Markwith Southern Flounder FMP Co-Leads
SUBJECT:	Southern Flounder FMP Allocation Issue Paper

Issue

At its November 2020 business meeting the N.C. Marine Fisheries Commission (MFC) asked the division to review several allocation scenarios for Amendment 3 to the NC Southern Flounder FMP. The division has provided the MFC with analysis that shows various commercial and recreational harvest allocation percentages as requested. The sector allocation selected by the MFC will provide the basis for implementing quota management in the southern flounder fishery.

Action Needed

At its February 2021 business meeting the commission is scheduled to vote to select their preferred sector allocations for Amendment 3 to the Southern Flounder FMP. If the commission chooses an allocation other than the historically based allocation, they may also need to consider ramifications to the gear sub-allocations.

Findings

- National Oceanic and Atmospheric Administration (NOAA) defines allocation as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. In fisheries managed by the South Atlantic and Gulf of Mexico fishery management councils, the share a sector gets is typically based on historical harvest amounts.
- Redistribution of harvest or allocations among sectors at this time is not based on a biological need, may alter rebuilding timelines, and impacts each user group.
- The division analyzed commercial and recreational data from 2017, the terminal year of the stock assessment. Table 1 shows the allocations as requested by the MFC as well as an option for an allocation based on the historical harvest. The historically based allocation of 73% commercial 27% recreational, which was used in Amendment 2, is based on historical harvest.
- Changes to sector allocation may have negative and positive impacts to different sub-sectors in the southern flounder fishery. Allocation shifts to the recreational sector would provide additional harvest, possibly allowing for longer seasonal access if the daily bag limit is lowered. If the daily bag limit is not lowered from four fish, gains from increased allocation may provide a buffer against potential overages from increased angler success.
- Reductions in the commercial allocation may have negative impacts on the commercial fishery as a lower allocation will result in a reduced harvest period. It is also prudent to consider gear sub-allocations within the sectors as allocation shifts may have consequences that impact one gear category more than another.

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- Changes in allocation may alter the rebuilding schedule. Projections for rebuilding use a model that accounts for the rate of removal according to the size class that each sector harvests to estimate changes in spawning stock biomass. Allocation changes would impact the overall size range of fish removed from the population and could impact model projections.
- With the exception of the historical allocation, we expect these proposed scenarios to further reduce the overall value of the commercial southern flounder fishery at the gain of the recreational sector. The magnitude of these economic changes within each sector is unknown and unquantifiable.
- Table 1. Allocation options for the North Carolina southern flounder fishery that maintain overall landings reduction of 72%, with 532,352 lb available for allocation. The % Allocation value describes the percentage of the TAL that would be made available to each sector. The % Reduction describes the percent reduction each sector would incur when compared with the 2017 harvest. The Historically based allocation is based on 2017 landings data.

-	Total Allowable Landings (TAL) in Pounds					
-		Con	nmercial	Recreational		
	% Allocation (Comm./Rec.)	TAL	% Reduction	TAL	% Reduction	Change in TAL
Historical Harvest	73/27	390,493	72%	141,859	72%	0
	70/30	372,646	73%	159,706	68%	+/- 17,847
MFC	65/35	346,029	75%	186,323	63%	+/- 44,464
Requested Options	60/30/10*	358,459	74%	173,893	66%	+/- 32,034
Options	60/40	319,411	77%	212,941	58%	+/- 71,082
	50/50	266,176	81%	266,176	47%	+/- 124,317

* This denotes a 10% allocation for gigs that was further divided out to each sector based on historically based allocation (73/27).

For more information, please refer to the full document titled, "Southern Flounder Fishery Sector Allocations Issue Paper" that is included in the briefing materials.

SOUTHERN FLOUNDER FISHERY SECTOR ALLOCATIONS

February 04, 2021

I. ISSUE

Provide the N.C. Marine Fisheries Commission (MFC) with analysis that shows various commercial and recreational allocation percentages.

II. ORIGINATION

At the November 2020 MFC business meeting; the MFC passed a motion to consider commercial and recreational allocations in the Southern Flounder Fishery Management Plan (FMP) Amendment 3 of 70/30, 65/35, 60/30 with 10% allotment for gigging, 60/40, and 50/50.

III. BACKGROUND

National Oceanic and Atmospheric Administration (NOAA) defines allocation as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals (NOAA 2006). In fisheries managed by the South Atlantic and Gulf of Mexico fishery management councils, the share a sector gets is typically based on historical harvest amounts. Revisions to allocations do occur, most commonly to account for changes among sectors or stock status. Changes among sectors includes scenarios where one group consistently has excess allocation remaining, which can be re-allocated to another sector based on management preferences. Changes to stock status also impact reallocation; if the stock rebuilds and harvest levels can be increased quota would be increased to allow for more harvest. Authority to make changes to allocations lies with the commission or body charged with making management decisions. For the purpose of this paper the term "sector" will be used to differentiate between the commercial and recreational components of the southern flounder fisheries.

At its November 2020 business meeting the MFC asked the division to review several allocation scenarios for Amendment 3 to the NC Southern Flounder FMP. The sector allocation selected by the MFC will provide the basis for implementing quota management in the southern flounder fishery. Selection of allocations is informed by data provided by the division, in this case historical landings. The commission can also rely on economic, social, and behavioral aspects of each sector that may influence allocation decisions.

The historically based allocation of 73% commercial 27% recreational (Table 1) in Amendment 2 is based on historical harvest for each sector from 2017. As with the 73/27 historically based allocation, the commercial and recreational sectors include gear sub-allocations based on historical harvest. In the initial draft of Amendment 3 discussed with the FMP Advisory Committee (AC) the recommendation for the commercial sector is for separate mobile gear (all gears except pound nets) and pound net categories (approximately 50/50) and for the recreational sector to have separate hook-and-line and gig gears (89/11 allocation). Different allocation scenarios will significantly change available harvest in a sector, so the commission will need to consider ramifications to the gear sub-allocations and whether those fisheries remain realistically viable to prosecute. The amount of landings for a specific fishery may be too low to invest further in the expense of the gear, if sub-allocations are not changed.

Much like regional councils, the MFC and North Carolina Wildlife Resources Commission (WRC) have historically allocated quotas to fishing sectors based on historical harvest, and in some fisheries like the Albemarle Sound and Roanoke River Management Areas striped bass fishery the quota was ultimately revised so a 50/50 parity was achieved between the commercial and recreational sectors. In 1991, the initial striped bass quota was allocated 62.5/37.5 based on historical landings. After seven years of rebuilding at this initial allocation, the stock's spawning stock biomass (SSB) was declared recovered, allowing for an increase in quota. In 1998, the quota was increased by 94,340 pounds, of which 29% was allocated to the commercial sector and the remaining 71% was allocated to the recreational sector. This increase brought the quota allocation to a 50/50 parity.

IV. AUTHORITY

North Carolina General Statutes G.S. 113-134 RULES G.S. 113-182 REGULATIONS OF FISHING AND FISHERIES G.S. 113-182.1 FISHERY MANAGEMENT PLANS G.S. 143B-289.52 MARINE FISHERIES COMMISSION – POWERS AND DUTIES

V. DISCUSSION

Initial analyses of southern flounder quota allocations followed the convention of using historical landings from a previous year or years. To provide information for the MFC motion, commercial and recreational data were analyzed based on 2017 harvest data, the terminal year of the stock assessment. Table 1 shows the allocation options as requested by the MFC.

Shifting allocation between sectors is within the authority of the MFC (G.S. 113-134, 113-182, 113-182.1, and 143B-289.52). Changes to sector allocation may have negative and positive impacts to different sub-sectors in the southern flounder fishery. Allocation shifts to the recreational sector would provide additional harvest possibly allowing for longer seasonal access if the daily bag limit is lowered. If the bag limit is not lowered, gains from increased allocation may help to provide a buffer against potential overages from increased angler success (see *Sustainable Harvest issue paper*).

The commercial sector total allowable landings (TAL) would be lowered by the same amount of the recreational gains. As noted earlier it is also prudent to consider the gear sub-allocations within the sectors as allocation shifts may have consequences that impact one gear category more than another (Table 2). Reductions in the commercial allocation may have negative impacts on the commercial fishery as a lower allocation will result in a reduced harvest period. The *Description of the Fishery* section within draft Amendment 3 contains additional information that provides background details on landings, effort, and economic data for the commercial and recreational fisheries. For reference those tables have been added to this Issue Paper. Table 3 provides commercial southern flounder landings by year and gear and Table 4 provides the number of trips, average pounds per trip, and the number of participants by year and gear.

Table 5 shows the annual variation in harvest for the recreational hook-and-line fishery and what the following years TAL consequences might have been. In table 5, landings during the identified season were displayed on a yearly basis to provide examples of overages that could have occurred

compared to the TAL necessary for rebuilding based on historical landings. If more fish are available because of a good year class both sectors would likely see increases in harvest. For the recreational sector, where daily reporting is not available, the larger the bag limit the greater the risk of exceeding the TAL.

Tables 6 & 7 demonstrate the effects to the recreational sector between the historical landings (73/27) and a 60/40 allocation. For each table, annual landings data (2008 through 2017) were prorated to an Aug 16-Sept 30 season under different bag limits (1 fish, 2 fish, 3 fish, 4 fish). Estimated landed pounds were then compared to a 73/27 allocation (Table 6) and a 60/40 allocation (Table 7) to determine whether or not the TAL would be exceeded for each bag limit option based on the percent of the allocated harvested. Finally, the percent of the allocated harvested for each year was used to calculate the subsequent year allocation for each bag limit option. Any overages that occur in one year will be deducted in subsequent years, possibly resulting in no recreational fishery for a year or more. It should be noted that for the recreational sector, where daily reporting is not realistic, the larger bag limits increase the risk of exceeding the TAL. When compared to each other, Tables 6 and 7 also show that with more allocation provided to the recreational fishery and a lower bag limit, the lower the chance of the recreational fishery of exceeding their TAL.

Future increases in total quota would not occur until the southern flounder SSB is recovered and this cannot be determined until an updated stock assessment is completed. Additionally, changes in allocation may alter the rebuilding schedule. Projections for rebuilding use a model that accounts for the rate of removal according to the size class that each sector harvests to estimate changes in SSB. Allocation changes would impact the overall size range of fish removed from the population and could therefore have some impact on the model projections.

All of the proposed reallocation scenarios increase recreational quota while lowering the commercial quota, there is the expectation that similar economic effects will follow. Specifically, as the overall commercial allocation is reduced, the total value of the commercial southern flounder industry will decrease, while the value of the recreational southern flounder fishery may be mitigated to some extent due to increased angler expenditures to target this species (Figure 8, Figure 9, Figure 10). However, economic losses and gains are unpredictable.

Decreasing the commercial allocation may result in a proportional decrease in value. It is possible, per-pound southern flounder prices may rise with reduced supply, counter-acting the losses from reduced quota. However, if commercial quota reductions were large enough, the southern flounder fishery could see reduced participation, creating even larger economic losses. The magnitude of these economic changes within each sector is unknown and unquantifiable.

Allocation deliberations should take into consideration the limited southern flounder TAL. Reallocation between sectors at this time could have unintended social and economic consequences that are most noticeable at the finer level of specific fisheries within each sector. It may be more prudent to allocate future quota increases towards one sector over the other as SSB expands. This can be achieved in future amendments with methodic increases until the preferred allocation is achieved.

VI. PROPOSED MANAGEMENT OPTIONS

Below are possible overarching positive and negative impacts for all options which may inform the MFC's deliberations in its decision. The options are listed after the impacts.

- + Shifting allocation to the recreational sector may buffer against recreational overages.
- +/- Allocation not based on biological need.
- +/- Allocation other than historically based allocation is not based on historical landings.
- +/- Increasing allocation to the recreational sector provides more fish to harvest but depending on amount may not increase the season dates, season lengths or bag limits.
- + Increasing allocation to the recreational sector mitigates some of the economic impact of the severe reductions to the recreational fishery.
- Decreasing allocation to the commercial fishery exacerbates the economic impact of the commercial fishery.
- Increasing allocation to the recreational fishery provides additional harvest to the sector with the least precise estimates.
- Changes in allocation may alter the rebuilding schedule (changing allocation changes the fish available to each sector and their associated selectivity, projections are based on sector specific selectivity's).
- Depending on how much allocation is shifted to the recreational sector there may be significant impacts to the commercial seasons.
- May be necessary to adjust allocations within a sector to maintain specific gear-based fisheries.
- Shifting allocation to the recreational sector may increase the chance of the commercial sector exceeding their allocation.

Option 1. Historically based allocation (73 commercial/27 recreational) Option 2. 70/30 Option 3. 65/35 Option 4. 60/30/10, includes a 10 percent allocation for the gig fishery Option 5. 60/40 Option 6. 50/50

VII. LITERATURE CITED

NOAA 2006, NOAA Tech. Memo NMFS-F/SPO 69

Prepared by Michael S. Loeffler, <u>michael.loeffler@ncdenr.gov</u>, 252-264-3911 Anne L Markwith, <u>Anne.Markwith@ncdenr.gov</u>, 910-796-7292 Revised Date December 07, 2020 December 17, 2020 January 04, 2021 January 19, 2021 February 01, 2021 February 04, 2021

-	8) in Pounds				
		Con	Commercial		reational	
	% Allocation (Comm./Rec.)	TAL	% Reduction	TAL	% Reduction	Change in TAL
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	70/30	372,646	73%	159,706	68%	+/- 17,847
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Requested	60/30/10*	358,459	74%	173,893	66%	+/- 32,034
Options	60/40	319,411	77%	212,941	58%	+/- 71,082
	50/50	266,176	81%	266,176	47%	+/- 124,317

Table 1. Allocation options for the North Carolina Southern Flounder fishery that maintain overall landings reduction of 72% with 532,352 lb available for allocation.

1. This denotes a 10% allocation for gigs that was further divided out to each sector based on historically based allocation (73/27).

Table 2. Sub-allocations for the commercial and recreational sectors for NCMFC options based on the 2017 harvest.

	Comme	rcial	Recreationa	1
NCMFC Option	Mobile Gear	Pound Net	Hook-and-Line	Gig
Historically Based				
Allocation	195,105	195,388	126,315	15,544
70/30	186,188	186,458	142,206	17,500
65/35	172,889	173,140	165,907	20,416
^{1.} 60/30/10	180,228	178,231	159,706	14,187
60/40	159,590	159,821	189,608	23,333
50/50	132,992	133,184	237,010	29,166

1. This denotes a 10% allocation for gigs that was further divided out to each sector based on historically based allocation (73/27).

Year	Gill Net	Pound Net	Gigs	Other	Total
2008	1,770,204 (68%)	685,546 (26%)	82,846 (3%)	63,793 (2%)	2,602,390
2009	1,658,074 (69%)	591,534 (25%)	84,303 (4%)	62,329 (3%)	2,396,240
2010	958,271 (57%)	571,151 (34%)	128,081 (8%)	32,054 (2%)	1,689,557
2011	652,810 (52%)	464,546 (37%)	113,414 (9%)	16,680 (1%)	1,247,450
2012	879,373 (53%)	569,388 (35%)	149,387 (9%)	47,989 (3%)	1,646,137
2013	1,096,060 (50%)	924,887 (42%)	118,489 (5%)	46,955 (2%)	2,186,391
2014	659,394 (39%)	860,216 (51%)	135,273 (8%)	18,628 (1%)	1,673,511
2015	392,339 (33%)	667,847 (56%)	130,277 (11%)	12,422 (1%)	1,202,885
2016	361,570 (40%)	398,258 (44%)	126,983 (14%)	10,953 (1%)	897,765
2017	552,292 (40%)	697,814 (50%)	136,094 (10%)	8,416 (1%)	1,394,617
Average	898,039 (53%)	643,119 (38%)	120,515 (7%)	32,022 (2%)	1,693,694

Table 3. Annual commercial southern flounder landings in pounds by gear type, 2008-2017.Numbers in parentheses are the percent of the total landings for each gear in a given year. Source: North Carolina Trip Ticket Program.

*Percentages may not total 100% due to rounding.

Table 4. Annual trips, average landings per trip (APT), and number of participants (#PAR) by gear type in the southern flounder fishery, 2008-2017. Source: North Carolina Trip Ticket Program.

	Trips ¹ / APT /	Gill Net Trips/ APT/	Pound Net Trips /	Gig Trips /	Other Trips /
Year	#PAR ²	#PAR	APT / #PAR	APT / #PAR	APT / #PAR
2008	28,966 / 90 / 1,235	23,493/75/924	1,508 / 455 / 83	1,459 / 57 / 140	2,510 / 25 / 413
2009	29,395 / 82 / 1,299	23,691 / 70 / 992	1,746 / 339 / 85	1,450 / 58 / 143	2,510 / 25 / 426
2010	20,408 / 83 / 1,182	15,134 / 63 / 837	1,610 / 355 / 84	2,283 / 56 / 226	1,384 / 23 / 329
2011	15,810 / 79 / 1,039	11,403 / 57 / 759	1,370 / 339 / 63	2,076 / 55 / 212	963 / 17 / 250
2012	20,926 / 79 / 1,202	14,713 / 60 / 855	1,754 / 325 / 84	3,000 / 50 / 288	1,462 / 33 / 291
2013	23,579 / 93/ 1,286	16,968 / 65 / 933	2,111 / 438 / 82	2,408 / 49 / 270	2,094 / 22 / 343
2014	18,121 / 92 / 1,222	11,778 / 56 / 799	1,806 / 476 / 88	2,655 / 51 / 316	1,887 / 10 / 373
2015	13,880 / 87 / 1,029	8,465 / 46 / 674	1,803 / 370 / 81	2,616 / 50 / 307	1,002 / 12 / 249
2016	13,336 / 67 / 945	8,422 / 43 / 591	1,423 / 280 / 77	2,657 / 48 / 323	838 / 13 / 227
2017	17,963 / 78 / 1,048	12,363 / 45 / 713	1,908 / 366 / 88	2,752 / 49 / 310	943 / 9 / 237
Average	20,238 / 84 / 1,149	14,643 / 61 / 808	1,704 / 377/ 82	2,336 / 52 / 254	1,559 / 21 / 314

1 The number of trips, average landings per trip, and number of participants is from all trips that recorded southern flounder across all gear types including pound nets, gill nets, gigs, and other.

2 The annual number of participants cannot be summed by gear as many individuals fish multiple gears per trip.

Table 5. Recreational hook-and-line landings of southern flounder Aug 16 – Sept 30 at the 4-fish bag limit for current season and years compared to the status quo allocation (73/27 - does not include discards). Highlighted cells indicate overages in TAL the previous year resulting in closures the following year.

Year	Pounds Landed	% Overage	Subsequent Year Allocation
2008	106,493	-15.7%	126,315
2009	204,422	61.8%	48,209
2010	260,665	*106.4%	0
2011	348,203	*175.7%	0
2012	213,170	68.8%	39,461
2013	396,543	^213.9%	0
2014	133,016	5.3%	119,615
2015	142,540	12.8%	110,091
2016	172,348	36.4%	80,283
2017	108,420	-14.2%	126,315

* Denotes a scenario where the recreational hook-and-line fishery would not have quota in subsequent year resulting in a 1-year closure due to overages.

^ Denotes a scenario where the recreational hook-and-line fishery would not have a quota in 2 subsequent years resulting in a 2- year closure due to overages.

Table 6. Example of predicted harvest of southern flounder for a recreational hook-and-line season and compared to a 73/27 allocation and then applied to subsequent years to show future harvest during an Aug 16 – Sept 30 season. Highlighted cells indicate bag limits that exceed the TAL for the indicated year.

		Percent of Allocation Harvested based												
		Harvest	of Souther		(pounds)			allocation		Subsequent Year Allocation (pounds)				
		4 Fish	3 Fish	2 Fish	1 Fish	4 Fish	3 Fish	2 Fish	1 Fish	4 Fish	3 Fish	2 Fish	1 Fish	
Season	Year	Bag	Bag	Bag	Bag	Bag	Bag	Bag	Bag	Bag	Bag	Bag	Bag	
Aug 16 -														
Sept 30	2008	106,492	106,492	106,492	91,066	84%	84%	84%	72%	126,315	126,315	126,315	126,315	
Aug 16 -														
Sept 30	2009	204,486	187,897	160,774	126,395	162%	149%	127%	100%	48,144	64,733	91,856	126,235	
Aug 16 -														
Sept 30	2010	260,612	246,868	218,187	166,911	206%	195%	173%	132%	-	5,762	34,443	85,719	
Aug 16 -														
Sept 30	2011	349,421	326,406	310,900	247,169	277%	258%	246%	196%	-	-	-	5,461	
Aug 16 -														
Sept 30	2012	213,292	198,612	184,701	145,504	169%	157%	146%	115%	39,338	54,018	67,929	107,126	
Aug 16 -														
Sept 30	2013	396,801	313,050	278,762	210,948	314%	248%	221%	167%	-	-	-	41,682	
Aug 16 -														
Sept 30	2014	132,458	132,458	127,395	114,937	105%	105%	101%	91%	120,172	120,172	125,235	126,315	
Aug 16 -														
Sept 30	2015	142,881	137,615	129,351	90,711	113%	109%	102%	72%	109,749	115,015	123,279	126,315	
Aug 16 -														
Sept 30	2016	168,236	168,236	165,769	156,700	133%	133%	131%	124%	84,394	84,394	86,861	95,930	
Aug 16 -														
Sept 30	2017	114,667	114,667	110,461	97,184	91%	91%	87%	77%	126,315	126,315	126,315	126,315	

Table 7. Example of predicted harvest of southern flounder for a recreational hook-and-line season and compared a 60/40 allocation and then applied to subsequent years to show future harvest during an Aug 16 – Sept 30 season. Highlighted cells indicate bag limits that exceed the TAL for the indicated year.

		Horwoot	of Southeri	n Floundor	(nounds)	Percent		on Harvest allocation	ed based	Subsequent Year Allocation (pounds)			
Season	Year	4 Fish Bag	3 Fish Bag	2 Fish Bag	1 Fish Bag	4 Fish Bag	3 Fish Bag	2 Fish Bag	1 Fish Bag	4 Fish Bag	3 Fish Bag	2 Fish Bag	1 Fish Bag
Aug 16 -	1 cui												
Sept 30	2008	106,492	106,492	106,492	91,066	56%	56%	56%	48%	189,608	189,608	189,608	189,608
Aug 16 - Sept 30	2009	204,486	187,897	160,774	126,395	108%	99%	85%	67%	174,730	189,608	189,608	189,608
Aug 16 - Sept 30	2010	260,612	246,868	218,187	166,911	137%	130%	115%	88%	118,604	132,348	161,029	189,608
Aug 16 - Sept 30	2011	349,421	326,406	310,900	247,169	184%	172%	164%	130%	29,795	52,810	68,316	132,047
Aug 16 - Sept 30	2012	213,292	198,612	184,701	145,504	112%	105%	97%	77%	165,924	180,604	189,608	189,608
Aug 16 - Sept 30	2013	396,801	313,050	278,762	210,948	209%	165%	147%	111%		66,166	100,454	168,268
Aug 16 - Sept 30	2014	132,458	132,458	127,395	114,937	70%	70%	67%	61%	189,608	189,608	189,608	189,608
Aug 16 - Sept 30	2015	142,881	137,615	129,351	90,711	75%	73%	68%	48%	189,608	189,608	189,608	189,608
Aug 16 - Sept 30	2016	168,236	168,236	165,769	156,700	89%	89%	87%	83%	189,608	189,608	189,608	189,608
Aug 16 - Sept 30	2017	114,667	114,667	110,461	97,184	60%	60%	58%	51%	189,608	189,608	189,608	189,608

Table 8. Economic impacts associated with commercial southern flounder fishing in North
Carolina from 2008-2017. Data below represent the actual effort data from southern
flounder harvest, along with the estimated economic impacts to the state of North
Carolina using IMPLAN statistical software. Data from the 2016 NOAA Fisheries
Economics of the U.S. report, along with internal division survey data, are also used to
generate estimates. Note: impact estimates across categories are not additive.

Year	Pounds Landed	Ex-vessel Value	Participants	Estimated Sales Impact	Estimated Income Impacts	Estimated Employment Impact	Estimated Value Added Impact
2008	2,602,390	\$ 5,650,295	1,235	\$ 25,473,137	\$ 10,483,954	1,544	\$ 19,654,727
2009	2,396,240	\$ 4,609,932	1,299	\$ 20,547,716	\$ 8,550,927	1,545	\$ 16,161,407
2010	1,689,557	\$ 3,695,889	1,182	\$ 15,743,327	\$ 6,531,811	1,380	\$ 12,223,365
2011	1,247,450	\$ 2,753,128	1,039	\$ 11,771,643	\$ 4,884,958	1,186	\$ 9,140,235
2012	1,646,137	\$ 4,451,482	1,202	\$ 18,795,084	\$ 7,827,308	1,440	\$ 14,613,360
2013	2,186,391	\$ 5,673,190	1,286	\$ 23,172,478	\$ 9,654,261	1,591	\$ 17,977,144
2014	1,673,511	\$ 4,839,672	1,222	\$ 19,547,618	\$ 8,134,986	1,482	\$ 15,109,459
2015	1,202,885	\$ 3,823,567	1,029	\$ 15,852,258	\$ 6,621,987	1,235	\$ 12,379,619
2016	897,765	\$ 3,610,533	945	\$ 10,724,064	\$ 6,301,409	1,129	\$ 11,716,727
2017	1,394,617	\$ 5,655,751	1,048	\$ 20,489,984	\$ 9,494,322	1,335	\$ 17,676,161
Average	1,693,694	\$ 4,476,342	1,149	\$ 18,211,731	\$ 7,848,592	1,387	\$ 14,665,220

Gear									
Year		Gigs		Gigs Gill Net		Other		Pound Net	
2008	\$	173,360.40	\$	3,798,463.23	\$ 132,612.99	\$	1,545,858.19	\$	5,650,294.81
2009	\$	159,031.29	\$	3,160,714.37	\$ 116,727.33	\$	1,173,458.93	\$	4,609,931.91
2010	\$	267,481.76	\$	2,067,067.19	\$ 66,800.66	\$	1,294,539.05	\$	3,695,888.65
2011	\$	256,846.25	\$	1,397,565.13	\$ 34,239.01	\$	1,064,477.33	\$	2,753,127.72
2012	\$	388,313.40	\$	2,343,199.01	\$ 126,800.50	\$	1,593,169.23	\$	4,451,482.14
2013	\$	320,379.72	\$	2,742,686.75	\$ 114,816.10	\$	2,495,307.19	\$	5,673,189.76
2014	\$	414,205.88	\$	1,884,626.34	\$ 53,262.79	\$	2,487,576.97	\$	4,839,671.98
2015	\$	417,188.88	\$	1,235,835.53	\$ 38,535.39	\$	2,132,006.71	\$	3,823,566.52
2016	\$	506,533.39	\$	1,442,921.16	\$ 42,422.91	\$	1,618,655.33	\$	3,610,532.80
2017	\$	547,308.32	\$	2,220,594.81	\$ 32,975.26	\$	2,854,872.71	\$	5,655,751.10
Total	\$3	3,450,649.29	\$	22,293,673.52	\$ 759,192.93	\$	18,259,921.64	\$	44,763,437.39

Table 10. Economic impacts associated with recreational southern flounder fishing in North
Carolina from 2008-2017. Impacts are generated using IMPLAN statistical software
and division recreational survey data. Trips are defined as a fishing trip for which any
flounder is the primary or secondary target, or southern flounder was caught during
that trip. All job impacts represent both part- and full-time jobs. Note: Impact
estimates across categories are not additive.

Year	Estimated Total Flounder Trips	Trip Expenditures	Estimated Sales Impact	Estimated Income Impact	Estimated Employment Impact	Estimated Value-Added Impact
2008	2,701,930	\$ 403,612,123	\$ 376,417,686	\$ 135,957,566	3,292	\$ 205,722,681
2009	1,482,500	\$ 215,695,683	\$ 200,699,372	\$ 72,448,738	1,770	\$ 109,870,023
2010	1,877,504	\$ 280,546,465	\$ 262,481,379	\$ 95,039,325	2,312	\$ 143,569,612
2011	1,796,204	\$ 283,056,149	\$ 250,861,698	\$ 90,609,485	2,212	\$ 137,255,698
2012	1,744,458	\$ 277,772,559	\$ 244,156,371	\$ 88,393,860	2,159	\$ 133,589,470
2013	1,707,904	\$ 273,226,860	\$ 238,202,597	\$ 86,449,024	2,105	\$ 130,332,132
2014	1,639,593	\$ 269,763,604	\$ 229,373,566	\$ 83,466,334	2,027	\$ 125,444,042
2015	1,708,499	\$ 279,669,886	\$ 228,724,518	\$ 83,228,735	2,037	\$ 125,250,995
2016	1,714,200	\$ 279,905,674	\$ 232,116,853	\$ 84,789,195	2,079	\$ 127,093,283
2017	1,250,216	\$ 210,976,279	\$ 171,358,430	\$ 62,652,077	1,532	\$ 93,793,106
Average	1,762,301	\$ 77,422,528	\$ 243,439,247	\$ 88,303,434	2,153	\$ 133,192,104



ESTUARINE STRIPED BASS FMP

ESTUARINE STRIPED BASS FMP AMENDMENT 2 MEMO

ESTUARINE STRIPED BASS FMP AMENDMENT 2 SCOPING DOCUMENT



ROY COOPER Governor MICHAEL S. REGAN Secretary JOHN G. BATHERSON

Acting Director

Jan. 29, 2021

MEMORANDUM

TO:	N.C. Marine Fisheries Commission
FROM:	Charlton H. Godwin and M. Todd Mathes, Striped Bass FMP Co-Leads Fisheries Management Section
SUBJECT:	Striped Bass Fishery Management Plan Amendment 2

Issue

Review the draft Goal and Objectives for Amendment 2 to the N.C. Estuarine Striped Bass Fishery Management Plan (FMP) and discuss the management strategies to be considered during development of Amendment 2.

Actions Needed

- I. Vote on approval of N.C. Estuarine Striped Bass FMP Amendment 2 goal and objectives.
- II. Discuss and provide input on potential management strategies to be considered during development of Amendment 2.

Background

The division with Wildlife Resource Commission (WRC) staff are continuing development of Amendment 2 to the N.C. Estuarine Striped Bass FMP. Results from the 2020 benchmark stock assessment indicate the Albemarle-Roanoke striped bass stock is overfished and overfishing is occurring in the terminal year of the assessment (2017). In response, the November 2020 Revision to Amendment 1 to the N.C. Estuarine Striped Bass FMP implemented adaptive management measures to immediately address overfishing by reducing the Total Allowable Landings (TAL) to 51,216 pounds. Management actions for the Albemarle-Roanoke stock in Amendment 2 will focus on ending overfishing and rebuilding the spawning stock biomass to provide sustainable harvest. There is no stock status determination for the Central Southern Management Area (CSMA), comprised of the Tar-Pamlico, Neuse, and Cape Fear rivers. Continuous stocking efforts and lack of natural recruitment in these systems prevented the use of traditional stock assessment techniques.

I. Goal and Objectives:

The next step in the FMP process is for the Marine Fisheries Commission (MFC) to vote on approval of the goal and objectives. The draft of the goal and objectives are as follows:

Goal:

Manage the estuarine striped bass fisheries to achieve self-sustaining populations that provide sustainable harvest based on science-based decision-making processes. If biological and/or environmental factors prevent a self-sustaining population, then alternate management strategies will be implemented that provide protection for and access to the resource.

State of North Carolina | Division of Marine Fisheries 3441 Arendell Street | P.O. Box 769 | Morehead City, North Carolina 28557

252-726-7021 **256**

Objectives:

- Implement management strategies within North Carolina and encourage interjurisdictional management strategies that maintain and/or restore spawning stock with adequate age structure and abundance to maintain recruitment potential and to prevent overfishing.
- Restore, enhance, and protect critical habitat and environmental quality in a manner consistent with the • Coastal Habitat Protection Plan, to maintain or increase growth, survival, and reproduction of the striped bass stocks.
- Use biological, social, economic, fishery, habitat, and environmental data to effectively monitor and ٠ manage the fisheries and their ecosystem impacts.
- Promote stewardship of the resource through public outreach and interjurisdictional cooperation • regarding the status and management of the North Carolina striped bass stocks, including practices that minimize bycatch and discard mortality.

II. Potential Management Strategies

The PDT has identified potential management strategies, and associated management measures for the two estuarine striped bass stocks which are listed below. A scoping period was held to solicit public input about these management strategies and any additional strategies suggested by the public. Identifying strategies during scoping allows the PDT adequate time to fully analyze and develop management measures during the drafting of an Amendment. The division is now seeking input from the commission on the management strategies to be

Estuarine Striped Bass FMP Amendment 2 Management Strategies

Sustainab	Hook and Line as Legal Commercial Gear			
Albemarle-Roanoke Stock	CSMA Stocks^	Both N.C. Stocks		
 Manage with Total Allowable Landings (TAL) Adjust TAL based on stock assessments Quota monitoring Seasons and areas Size limit changes Gear modifications/limits Bag/trip limits Adaptive management Stocking 	 Adaptive management (recovery metrics) No-Possession Provision Continued: Gear modifications/limits Stocking No-Possession Provision NOT Continued: Manage with TAL Quota monitoring Seasons and areas Size limit changes Gear modifications/limits Bag/trip limits 	 Participation Gear modifications/limits Adaptive management 		
	Stocking			

^ Separate management strategies are being developed for the: 1) Tar-Pamlico/Neuse and 2) Cape Fear systems.

considered during development of Amendment 2. Further explanation of these management strategies, as well as the proposed timeline for Amendment 2 can be found in the Amendment 2 Scoping Document.

Scoping Period

The division held its public scoping period for Amendment 2 from Nov. 2 through Nov. 15, 2020. The scoping period is an opportunity for the division to notify the public that development of Amendment 2 to the N.C. Estuarine Striped Bass FMP is underway, to seek public input of proposed management strategies and to help identify additional potential management strategies.

In addition to accepting comments through an online questionnaire and U.S. mail, the division held two virtual scoping meetings where the public could participate online or by telephone. The division received three comments from attendees during the meetings, two comments through U.S. mail, and 20 online comments. Comments were primarily focused on one or more of the management measures under the sustainable harvest management strategy for each system. No additional potential management strategies were identified.

Scoping Document

Photo By: Buzz Bryson Striped bass spawning in the Roanoke River, Weldon, NC

Management Strategies for

Amendment 2 to the North Carolina Estuarine Striped Bass Fishery Management Plan





October 2020



Photo By: Jesse Bissette

Can't attend but want to submit comments? Here's how!

Written comments can be submitted by online form or by U.S. mail.Comments sent by U.S. mail must be received by Nov. 15, 2020 to be accepted. The division will not accept public comment through email.

To comment by online form:

The online form can be accessed through the N.C. Estuarine Striped Bass Amendment 2 Information Page (<u>http://portal.ncdenr.org/web/mf/</u> <u>striped-bass-amendment-topic</u>). Please use the link at the bottom of the information page.

<u>To comment by U.S. mail, please</u> <u>submit written comments to:</u>

N.C. Division of Marine Fisheries N.C. Estuarine Striped Bass FMP Amendment 2 Scoping Comments P.O. Box 769 Morehead City, NC 28557 The N.C. Division of Marine Fisheries seeks your input on management strategies for the Estuarine Striped Bass Fishery Management Plan.

> A scoping period for public comment begins Nov. 2, 2020 and ends Nov. 15, 2020.

> > Comments must be received by 5 p.m. (EST) on Nov. 15, 2020.

Scoping Meetings

DMF staff will provide information about Amendment 2 to the N.C. Estuarine Striped Bass FMP. A public comment period will follow.

The public may participate in the meeting online or by telephone. To facilitate comments, the division is asking those who wish to speak during the meeting to pre-register.

Links to scoping information, including registration to speak, webinar instructions, the call-in telephone number, and other references, can be found through the N.C. Estuarine Striped Bass Amendment 2 Information Page (<u>http://portal.ncdenr.org/web/mf/striped-bass-amendment-topic</u>).

Thursday, Nov. 5, 2020: 6 p.m. to 8 p.m.

https://ncdenrits.webex.com/ncdenrits/onstage/g.php? MTID=e4fc435aebfcdedafed56b82e7def8173

> Event number 171 493 2224 Event password 1234 Join by audio only +1-415-655-0003 US TOLL

Monday, Nov. 9, 2020: 6 p.m. to 8 p.m.

https://ncdenrits.webex.com/ncdenrits/onstage/g.php? MTID=ebedeb5306d80ed62d46c9b0db81f9783

Event number 171 937 9432

Event password 1234

Join by audio only +1-415-655-0003 US TOLL

Questions about the estuarine striped bass stocks, fisheries, or Amendment 2 to the North Carolina Estuarine Striped Bass Fishery Management Plan?



Contact the leads:

Charlton Godwin

Todd Mathes

Fisheries Biologist DMF, Elizabeth City 252-264-3911 Co-lead Fisheries Biologist DMF, Washington 252-948-3872 Co-lead

Jeremy McCargo Fisheries Biologist WRC, Raleigh 919-707-4081

Questions about the FMP Process?

Kathy Rawls

Fisheries Management Section Chief, Morehead City 252-808-8074

Corrin Flora

Fisheries Management Plan Coordinator, Morehead City

252-726-7021

Purpose of the Scoping Document

The purpose of this document is to inform the public the review of the N.C. Estuarine Striped Bass Fishery Management Plan (FMP) is underway and to provide an opportunity for the public to comment on identified management strategies or identify other relevant strategies in the management of the estuarine striped bass fishery. Striped bass in North Carolina are jointly-managed by the N.C. Marine Fisheries Commission (MFC) and N.C. Wildlife Resources Commission (WRC). Input received at the start of the FMP review process may shape the final amendment and its management measures (solutions). To help focus the input received from the public, this document provides an overview of initially identified strategies, as well as background information on the fisheries and the stocks. A series of questions about each strategy is also provided for the public to consider when thinking about the strategies; in general: What should estuarine striped bass management be? Are changes needed and, if so, what changes are needed?

Additional management strategies may be considered in Amendment 2 dependent on statutory requirements, available data, research needs, and the degree of impact the management strategy would have and

Scoping provides an opportunity

for the public to comment on

strategies identified by the

division as well as any additional

relevant strategies for possible

consideration for the

development of the FMP.

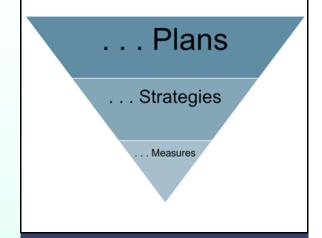
how effective the solution would be. If the division determines a management strategy raised during the scoping period might have positive impacts on the stocks, additional examination of the strategy may be undertaken in the development of the FMP.

What is Scoping?

Scoping is the first stage of the process to determine the appropriate contents of an FMP. Scoping serves many purposes including: (1) to provide notice to the public that a formal review of the FMP is underway by the N.C. Division of Marine Fisheries (DMF or division), (2) inform the public of the stock status of the species (3) solicit stakeholder input on a list of strategies identified by the DMF and identify other relevant strategies that may need to be addressed, and (4) recruit potential advisors to serve on the advisory committee (AC) for the FMP that is appointed by the MFC. The public will have more opportunity to provide comments as the amendment is developed; however, scoping is the first and best opportunity to provide input on potential strategies for DMF to consider before an amendment is developed.

FISHERY MANAGEMENT PLANS - A TIERED APPROACH

Fishery Management



Management PLANS are implemented to achieve specified management goals for a fishery, such as sustainable harvest, and include background information, data analyses, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans, research recommendations, and management strategies.

Management STRATEGIES are adopted to help reach the goal and objectives of the plan. They are the sum of all the management measures selected to achieve the biological, ecological, economic, and social objectives of the fishery.

Management MEASURES are the actions implemented to help control the fishery as stipulated in the management strategies.

Developing an amendment

Annually, the DMF reviews all species for which there are FMPs for North Carolina and provides an update to the MFC. This review indudes any recommended changes to the schedule for FMP review and amendment development. Per N.C. law, any changes to the schedule must be approved by the N.C. Department of Environmental Quality (N.C. DEQ) Secretary.

When a plan is opened for review, the first step of the formal amendment process begins with a stock assessment of the species when applicable, followed by the scoping period. After relevant strategies have been identified

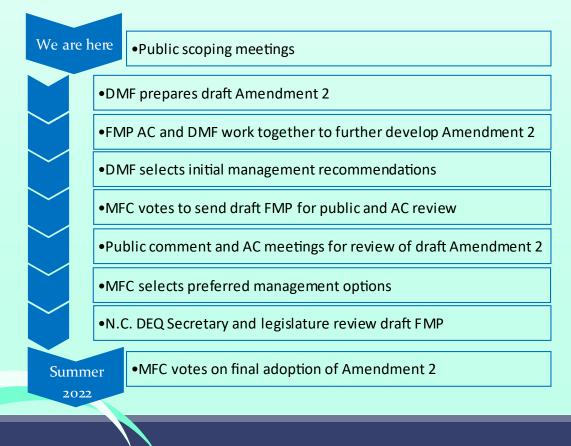


WRC electrofishing spawning stock survey index of abundance Roanoke River, Weldon, NC.

by the DMF, the public (during the scoping period), and by the MFC, the division's plan development team (PDT) develops a preliminary draft amendment. The first draft will be completed before the FMP AC is appointed. Once appointed, the AC will meet with the PDT at a series of workshops to assist in developing the FMP by further refining the draft amendment. Upon completion of this draft, the amendment is taken to the MFC for approval to go out for public comment and review by the MFC's standing and regional ACs. Following consideration of public and AC comment, the MFC selects its preferred management measures for Amendment 2. Next, draft Amendment 2 goes to the N.C. DEQ Secretary and the legislature for review before the MFC votes on final approval of the amendment.

In the case of a jointly managed species such as striped bass, the WRC consults throughout the FMP amendment process. WRC staff participate in the development of the stock assessment and serve on the PDT. Concurrent with MFC actions, the WRC board reviews the draft FMP, selects preferred management measures, considers its support of the final FMP recommendations, and initiates rulemaking as required.

FMP Timeline



Why is this happening now?

The 2020 N.C. FMP Review Schedule shows the review of the N.C. Estuarine Striped Bass FMP is underway. To begin the development of Amendment 2 to the N.C. Estuarine Striped Bass FMP, the division conducted assessments of the Albemarle-Roanoke striped bass stock, and the striped bass stocks in the Tar-Pamlico, Neuse, and Cape Fear rivers.



Pictured: Adam B. Cape Fear River, N.C.

Amendment 2 Background

There are two geographic management units and four striped bass stocks included in the North Carolina Estuarine Striped Bass FMP. The northern management unit is comprised of two harvest management areas: the Albemarle Sound Management Area (ASMA) and the Roanoke River Management Area (RRMA). The striped bass stock in these two harvest management areas is referred to as the Albemarle-Roanoke (A-R) stock, and its spawning grounds are in the Roanoke River in the vicinity of Weldon, NC. The southern geographic management unit is the Central Southern Management Area (CSMA) and includes all internal coastal, joint and contiguous inland waters of North Carolina south of the ASMA to the South Carolina state line. There are spawning stocks in each of the major river systems within the CSMA; the Tar-Pamlico, the Neuse, and the Cape Fear. Only the A-R stock is included in the management unit of Amendment 6 to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate FMP for Atlantic Striped Bass (ASMFC 2003).

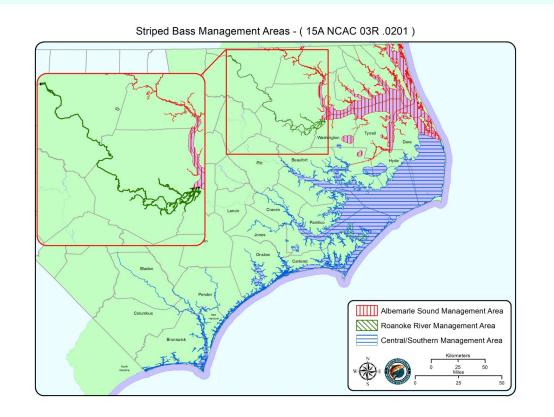
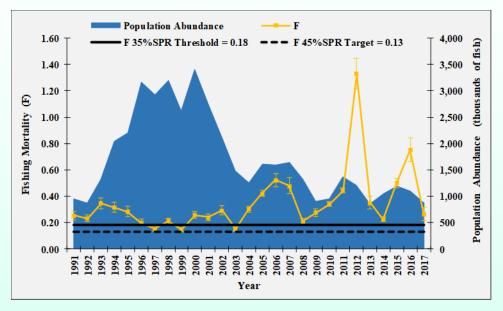
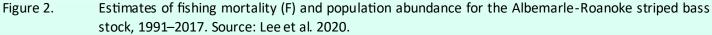


Figure 1. North Carolina's estuarine striped bass management areas.

Albemarle-Roanoke striped bass stock assessment and stock status

Results from the 2020 benchmark stock assessment indicate the A-R striped bass stock is overfished and overfishing is occurring in the terminal year of the assessment (2017) relative to the updated biological reference points (BRPs). These BRPs are based on spawning stock biomass (SSB) targets and thresholds of SSB 45%SPR Target = 350,371 lb and SSB35%SPR Threshold = 267,390 lb respectively, and fishing mortality (F) targets and thresholds of F45%SPR Target = 0.13 and F35%SPR Threshold = 0.18 (Figures 2 and 3; Lee et al. 2020).





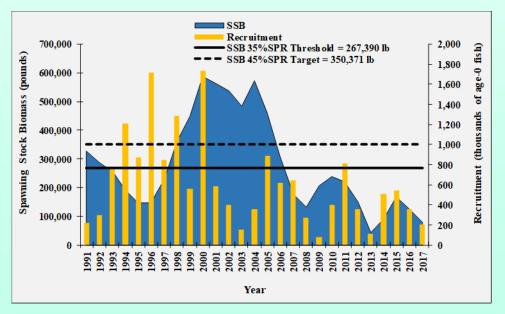


Figure 3.

Estimates of spawning stock biomass (SSB) and recruitment of age-0 fish coming into the population each year for the Albemarle-Roanoke striped bass stock, 1991–2017. Source: Lee et al. 2020.

Albemarle-Roanoke Striped Bass in North Carolina

A-R striped bass have long supported recreational and commercial fisheries in the Albemarle Sound region and its tributaries and the northern Outer Banks. Commercial harvest of striped bass occurs throughout the fall and winter into the early spring. Since 1991 gill-nets are the main commercial harvest gear with minimal harvest also from pound nets. Recreational striped bass fishing occurs throughout the year, with harvest seasons allowed in the fall and winter and through the spring as striped bass migrate to the spawning grounds. During the late spring and summer, catch-and-release fishing is also popular.



Recreational anglers, Albemarle Sound bridge. Photo credit: DMF staff Pictured: K.D. and Kenny Hewitt

Harvest has been controlled by a fixed annual poundage amount known as total allowable landings (TAL) since 1991. The TAL is split evenly between commercial and recreational sectors, and the recreational TAL is further divided evenly between the ASMA and RRMA (Figure 4). Since the last TAL increase to 550,000 lb in 2003, combined landings from all fisheries in the ASMA and RRMA have not exceeded 460,853 lb and have averaged 235,278 lb per year with a low of 108,432 lb in 2013. The commercial sector did not reach their TAL in any years from 2005 to 2013. Even with the 2014 reduction in the TAL to 275,000 lb the commercial and recreational sectors in the ASMA did not reach the TAL for years 2014–2017. Harvest in all sectors has increased since 2017, with the commercial sector reaching the TAL in 2019 causing the DMF to close the fall commercial harvest season before December 31 for the first time since 2010. This increase in harvest is likely due to the above-average year classes produced in 2014 and 2015 (Figures 3 and 4).

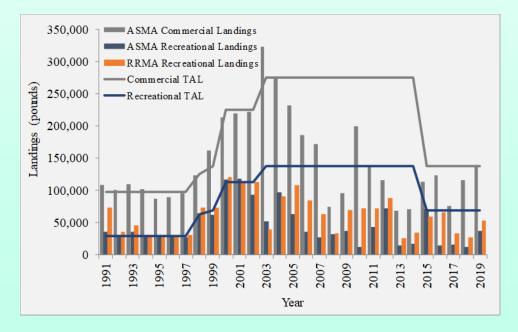


Figure 4. Striped bass landings from the Albemarle Sound Management Area commercial and recreational sectors and Roanoke River Management Area recreational sector, and the commercial and recreational total allowable landings, 1991–2019.



Pictured: Kaden

Based on results from the estimates of total abundance from the stock assessment (Figure 2), the reason for the decline in harvest is likely a decline in overall stock abundance due to poor recruitment starting in 2001 (Figure 3). The assessment noted the importance of river flow on recruitment and noted declining recruitment in the time series does not appear to result solely from reduced abundance due to amount harvested, as recruitment started declining when SSB was at high levels (Figure 3; Lee et. al 2020).

Average total removals in the fisheries (sector combined) during 2012–2017 were composed of 84% landings, with dead discards equaling 16% in numbers of fish (Figure 5). Discards in the ASMA commercial fishery from 2012 to 2017 were estimated using a generalized linear model framework based on onboard observer data combined with data from the DMF Trip Ticket Program. Discards in the recreational fishery are estimated by multiplying the number of fish released by a delayed mortality estimate of 6.4% (Nelson 1998).

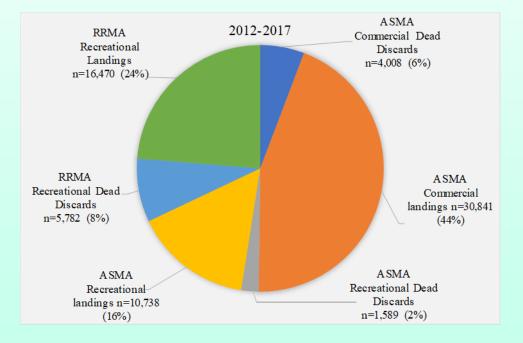


Figure 5. Average number of striped bass landed and discarded from the commercial and recreational fisheries in the Albemarle Sound Management Area (ASMA) and Roanoke River Management Area (RRMA), 2012-2017. Source: Lee et al. 2020.

Tar-Pamlico, Neuse, and Cape Fear river striped bass stocks review

There is no stock status determination for the CSMA striped bass stocks, comprised of the Tar-Pamlico, Neuse, and Cape Fear rivers. Continuous stocking efforts since 1980 and lack of natural recruitment in these waters prevent the use of traditional stock assessment techniques. The Central Southern Management Area Stock Report (Mathes et al. 2020) is a documentation of all data collected, management efforts, and major analyses completed for these river stocks.





Striped Bass Larvae Photo By: Robert Michelson, Coastal Review Online

The report also serves as a record of completed research efforts with implications for fishery management and as a guide for future research based on results

Juvenile striped bass tagged for stocking into the Tar-Pamlico River Photo By: Corrin Flora

and identified data gaps. It evaluates the likelihood of successful population rebuilding under various simulations of stocking and fishery management strategies such as different harvest levels and size limits. Tagging studies in the Cape Fear River showed a consistent decline in striped bass abundance estimates from 2012 to 2018 despite a no-possession regulation since 2008. The need for continued conservation to achieve a sustainable harvest is supported by the lack of recruitment, constrained size and age distributions, low abundance, the absence of older fish in all stocks, and the high percentage of stocked fish in the population (Cushman et al. 2018; Farrae and Darden 2018).

Tar-Pamlico, Neuse, and Cape Fear river striped bass in North Carolina

Striped bass have long supported recreational and commercial fisheries in the CSMA region and its tributaries. Since 2004 commercial landings in the CSMA have only been allowed in the spring of the year and have been constrained by an annual TAL of 25,000 pounds established in 1994. Over the past 10 years, landings have closely followed the annual TAL due to daily quota monitoring that allows the season to be closed each year when the TAL is reached, except for 2008 when less than half of the TAL was landed and the season stayed open through April 30. Since 2004 striped bass commercial landings in the CSMA have averaged 24,179 pounds and ranged from a low of 10,115 pounds in 2008 to a high of 32,479 pounds in 2004 (Figure 6).

Within the CSMA recreational harvest occurs in the fall and spring and there is a significant recreational catch -and-release fishery throughout the year. Since 2004 striped bass recreational landings have averaged 13,511 pounds but in 2016 and 2017 recreational harvest increased to just over 25,000 lb each year (Figure 6).

From 2012 to 2017 total removals in the commercial and recreational fisheries were composed of 73% landings and 27% dead discards (Figure 7). Discards in the CSMA commercial fishery from 2012 to 2017 were estimated using a generalized linear model framework using on-board observer data combined with data from the DMF trip ticket program. Discards in the recreational fishery are estimated by multiplying the number of fish released by a delayed mortality estimate of 6.4% (Nelson 1998).

There has been a commercial and recreational no-possession provision in the Cape Fear River since 2008. At the MFC's February 2019 business meeting, Supplement A to Amendment 1 to the North Carolina Estuarine Striped Bass FMP was approved instituting a recreational and



Pictured: DMF Staff. Roanoke River, Weldon, NC

commercial no-possession provision in the CSMA. On March 13, 2019, the MFC held an emergency meeting at which time they passed a motion requiring the Director to issue a proclamation prohibiting the use of all gill-nets upstream of the ferry lines from the Bayview Ferry to Aurora Ferry on the Pamlico River and the Minnesott Beach Ferry to Cherry Branch Ferry on the Neuse River.

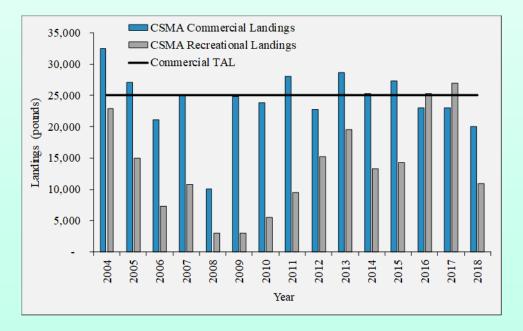


Figure 6. Striped bass landings from the Central Southern Management Area (CSMA) commercial and recreational sectors and the commercial total allowable landings (TAL), 2004–2018. Commercial landings were included for the Cape Fear River for 2004–2008. Recreational landings include the Tar-Pamlico and Neuse rivers only.

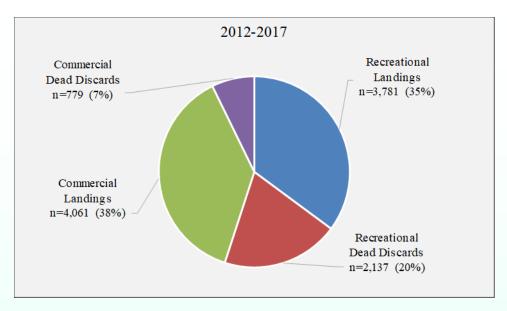
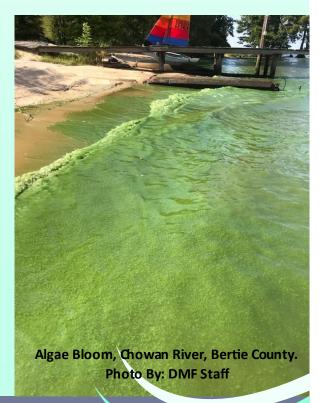


Figure 7. Average number of striped bass landed and discarded from the commercial and recreational fisheries in the Tar-Pamlico and Neuse rivers, 2012–2017.

Habitat and Fish Stocks

With the important relationship between habitat and fish populations, the goal to protect and enhance habitats supporting coastal fisheries comes from the implementation of the Coastal Habitat Protection Plans (NCDEQ. 2016; CHPP, G.S. 143B-279.8). While much of the concern over declining fish stocks has been directed at overfishing, habitat loss and water quality degradation make a stock more susceptible to decline

and may hinder stock recovery efforts. The CHPP is undergoing its mandated five-year review, with adoption planned for summer 2021. One of the priority issues, "Submerged Aquatic Vegetation (SAV) Protection and Restoration, with Focus on Water Quality Improvements" has implications for North Carolina striped bass stocks. SAV is especially sensitive to water quality impairment from nutrient and sediment pollution and has been considered a "coastal canary", serving as a valuable bio -indicator of the overall health of coastal ecosystems (Stevenson, 1998). The primary mechanism to restore and sustain SAV is by improving water quality. The CHPP strategy for SAV involves modifying water quality criteria, such as chlorophyll a levels and nutrient standards to reduce nutrient loading, allowing increased light penetration that is critical for submerged vegetation. This will not only benefit SAV but address the algal blooms in the Albemarle Sound area and other poor water quality impacts to fish like striped bass. It is imperative the fishing community actively participate in the ongoing CHPP review and add their voice to support the actions outlined in the CHPP.



Amendment 2 Management Strategies

Albemarle-Roanoke Striped Bass Stock Sustainable Harvest:

Background

Although this document is specific to the ongoing development of Amendment 2 to the N.C. Estuarine Striped Bass FMP, it is important to note under the existing Amendment 1 there is adaptive management language that states, "Should the target F be exceeded, then restrictive measures will be imposed to reduce F to the target level" (NCDMF 2013). Actions authorized in Amendment 1 are being considered to lower F to address sustainable harvest in the interim as Amendment 2 is completed. This action maintains compliance with Amendment 1 to the North Carolina Estuarine Striped Bass FMP and ASMFC's Addendum IV to Amendment 6 to the Interstate FMP for Atlantic Striped Bass while the Amendment 2 sustainable harvest management strategy is developed.

Amendment 2 will focus on development of management strategies that address both the overfished and overfishing status of the A-R stock relative to the Fisheries Reform Act (FRA) of 1997, which states each plan "shall specify a time period, not to exceed two years from the date of the adoption of the plan, for ending overfishing..." and "specify a time period, not to exceed 10 years from the date of adoption of the plan, for achieving a sustainable harvest". Projections from the terminal year of the stock assessment that model how SSB responds in the coming years to various levels of harvest are used to calculate a new TAL that will accomplish the dual mandate of the FRA. As shown in Figure 8, the actual level of recruitment occurring in future years is an important factor in the level of expected increase in SSB. Projections use multiple levels of recruitment to inform managers of the uncertainty associated with assumptions about future stock recruitment and the related increases in SSB.



Pictured: Jennifer Lewis

Tagging on the spawning grounds Roanoke River, Weldon NC. DMF staff

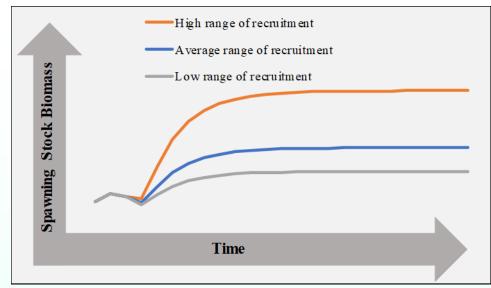


Figure 8.

8. A graphical illustration of how assumptions about the level of future recruitment impacts stock projections of spawning stock biomass (SSB).

The necessary management measures currently in place in Amendment 1 to manage a TAL and prevent harvest from exceeding it each year include:

- adjust the TAL based on benchmark stock assessments and assessment updates
- daily quota monitoring of commercial harvest
- weekly quota monitoring of recreational harvest
- open and/or close harvest seasons to remain below the TAL
- authorize or restrict fishing methods and gear
- limit size, quantitates taken or possessed (i.e., daily recreational creel limits and commercial limits)
- restrict fishing areas



Striped bass being tagged with commercial harvest tags Frog Island fish house Weeksville, NC Photo By: Chris Kelly



Pictured: Shane

Questions for the Public

- Which of the existing management measures do you support to maintain harvest within limits of the specified TAL?
- In the event of a low TAL that restricts the regular harvest seasons, would you prefer a short season of consecutive harvest days or slightly longer season with only selected harvest days each week? Which harvest days would you prefer?
- Do you support investigating size limit changes for A-R striped bass?
- What recreational and/or commercial gear or area restrictions would you support to reduce discard mortality to rebuild the A-R stock?

Tar-Pamlico, Neuse, and Cape Fear rivers striped bass stocks:

Sustainable Harvest:

Background

There has been a commercial and recreational no-possession provision in the Cape Fear River and its tributaries since 2008. This no-possession measure was implemented to help support specific goals of Amendment 1, which are to achieve sustainable harvest through science-based decision-making processes that conserves the resource. Prior to 2019, harvest in the CSMA was managed by commercial and recreational seasons, harvest and size limits, and gear restrictions, and constrained by an annual commercial TAL of 25,000 lb. Additionally, measures in Supplement A to Amendment 1 of the N.C. Estuarine Striped Bass FMP were implemented in March 2019 that implemented a no-possession provision in the commercial and recreational striped bass fisheries, as well as commercial set gill-net restrictions requiring tie-downs and distance from shore (DFS) measures to apply year-round, in the CSMA (NCDMF 2019). Supplement actions need to be contained within Amendment 2 management strategies in order to stay in effect.

Concurrent in timing but independent of the MFC's adoption of Supplement A is the MFC directed proclamation that prohibits the use of all gill-nets upstream of the ferry lines from the Bayview Ferry to Aurora Ferry on the Pamlico River and the Minnesott Beach Ferry to Cherry Branch Ferry on the Neuse River. As in this case when the commission enacted the provision to direct issuance of a proclamation, the fisheries director has no discretion to choose another management option and is bound by law to follow the commission decision. The MFC may alter this directive at any time or as part of Amendment 2, and if they choose not to do so, the proclamation actions remain in effect.

Harvest will be allowed if the no-possession measure in Supplement A is not continued in Amendment 2, and other management strategies should be considered to rebuild the stock. Possible stocking and fishery management strategies for CSMA striped bass were evaluated using a demographic matrix model (Mathes et al. 2020). Model results indicated CSMA striped bass populations are depressed to an extent that sustainability is unlikely at any level of fishing mortality. Lack of natural reproduction in CSMA systems requires continuous stocking to maintain the populations unless environmental and biological characteristics are improved.



NCSU graduate student surgically implanting a acoustic tracking tag in a striped bass to be stocked in the Neuse river. Photo By: USFWS.

Management strategies could be implemented to expand the age structure of the population and increase abundance of older fish which, given appropriate environmental conditions, may promote natural reproduction. Some environmental conditions can be addressed through the CHPP while biological characteristics can be addressed by altering stocking strategies including consideration of stocking fish better suited to environmental conditions in the CSMA. However, if management strategies implemented through Amendment 2 are unsuccessful at achieving sustainable harvest and external factors are deemed to make establishment of sustainable striped bass populations in CSMA systems impossible, other management strategies, including returning to a hatchery-supported fishery, could be considered in future Amendments.

If the no-harvest provision in the CSMA remains in place, adaptive management could be used to determine under what conditions the fishery could re-open. For example, collecting young-of-year striped bass in juvenile sampling would indicate successful natural reproduction, decreased contribution of stocked fish could potentially indicate successful recruitment, an increase in the number of older fish would indicate expansion of the age structure of the stock, and increased abundance in the independent surveys could indicate population growth. Conversely, adaptive management could also be used as a means to reconsider management strategies if establishment of self-sustaining populations in CSMA systems is determined to be unattainable.



DMF staff conducting Independent Gill Net Index of Abundance Survey Western Albemarle Sound

Questions for the Public

No-Possession Provision – Amendment 1 (applicable to Cape Fear River) and Supplement A Management Measures

If the No-Possession Provision is Continued

- Do you support continuing the no-possession provision in the CSMA? For how long?
- If the no-possession provision remains, what gear modifications or restrictions should be considered to reduce bycatch and discards?
- Do you support continued stocking in the CSMA?

If the No-Possession Provision is Not Continued

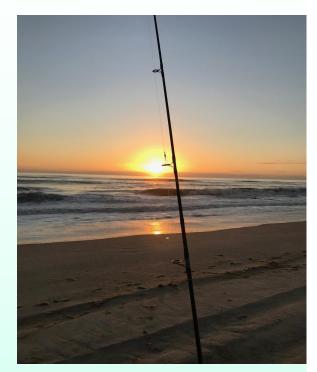
- What management measures should be considered to allow for sustainable harvest (i.e., TAL, closed and open harvest seasons, daily trip limits)?
- Do you support investigating size limit changes for CSMA striped bass?
- What gear modifications or restrictions should be considered to reduce bycatch and discards?
- Do you support continued stocking in the CSMA?

Applicable to all North Carolina's Striped Bass stocks:

Hook-and-line allowed as legal commercial gear in North Carolina's striped bass fisheries:

Background

Amendment 1 to the N.C. Estuarine Striped Bass FMP included an issue paper discussing hook-and-line as a legal commercial gear in the ASMA and CSMA commercial striped bass fisheries. The result was a recommendation by the DMF and MFC to maintain status quo with adaptive management – (Do not allow hook-and-line as commercial gear in the estuarine striped bass fishery unless the use of traditional gears is prohibited). However, through development of the Amendment 1 and discussing the issue paper, the ACs and the DMF recognized that while allowing hook-and-line as a commercial gear could potentially have some positive impacts to the striped bass resource and stakeholders, there would need to be additional discussion of how to best implement the measure. Therefore, the rule that specifically prohibited the use of hook-andline as a commercial gear was repealed and now that gear is prohibited as a commercial gear in the striped bass fishery through proclamation. If through development of Amendment 2 the MFC votes to allow hook-and-line as a commercial gear, the tools are already in place to implement the measure.

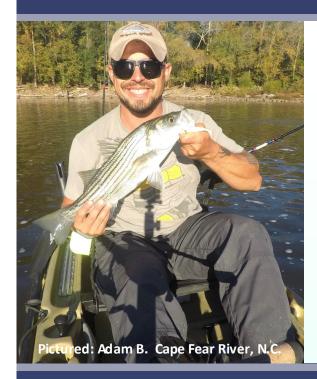


Recreational angling, Outer Banks N.C. Photo By: Rick Denton

Questions for the Public

• Do you support hook-and-line as a legal commercial gear in the striped bass commercial fishery?





Questions for the Public about Potential Management Strategies



- 1. What management strategies already under consideration do you support for Amendment 2?
- 2. Are there other relevant strategies not included herein that should be consider for Amendment 2?

Additional management strategies may be considered in Amendment 2 dependent on statutory requirements, available data, research needs, and the degree of impact the management strategy would have and how effective the solution would be. If the division determines a management strategy raised during the scoping period might have positive impacts on the stocks, additional examination of the strategy may be undertaken in the development of the FMP Amendment 2.





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Wild young-of-year striped bass, DMF juvenile striped bass index of abundance survey

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Scoping Document

Management Strategies for Amendment 2 to the N. C. Estuarine Striped Bass Fishery Management Plan

NORTH CAROLINA DIVISION OF MARINE FISHERIES

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SHRIMP FMP AMENDMENT 2 UPDATE

SHRIMP FMP AMENDMENT 2 MEMO

SHRIMP FMP AMENDMENT 2 GOAL AND OBJECTIVES



ROY COOPER Governor MICHAEL S. REGAN Secretary

JOHN G. BATHERSON Acting Director

January 29, 2021

MEMORANDUM

 TO: N.C. Marine Fisheries Commission
 FROM: Chris Stewart, Shrimp FMP Co-lead, Fisheries Management Jason Rock, Shrimp FMP Co-lead, Fisheries Management Daniel Zapf, Shrimp FMP Co-lead, Fisheries Management

SUBJECT: Shrimp Fishery Management Plan Amendment 2 Update

Issue

During the Feb. 2021 Marine Fisheries Commission (MFC) business meeting Division of Marine Fisheries (DMF) staff will present a progress update on the continuing development of the N.C. Shrimp Fishery Management Plan (FMP) Amendment 2 as well as next steps.

DMF staff developed four draft issue papers to address the Shrimp FMP goal and objectives approved by the MFC in February 2020. Issue papers incorporate input provided by the MFC to address concerns identified in recent petitions for rulemaking. Development will continue during the Shrimp Advisory Committee (AC) virtual workshops that are scheduled for March 2021. During the virtual workshops, the Shrimp AC will participate in discussions of and provide input to the division on the issues. Workshops provide a more informal setting for staff and AC members to collaborate in development of the amendment. These discussions allow the division to consider input from the AC, which is comprised of members representing scientific, recreational, commercial, and conservation communities, prior to sending the draft plan to the commission. The MFC will be provided a comprehensive overview of Amendment 2, including the four issue papers, during their May 2021 business meeting. At that time, the MFC will be asked to vote to send the draft FMP out for public and standing and regional advisory committee review. Commissioners are strongly encouraged to attend the AC workshops to hear detailed discussions regarding each FMP issue.

Action Needed

For informational purposes only, no action needed at this time.

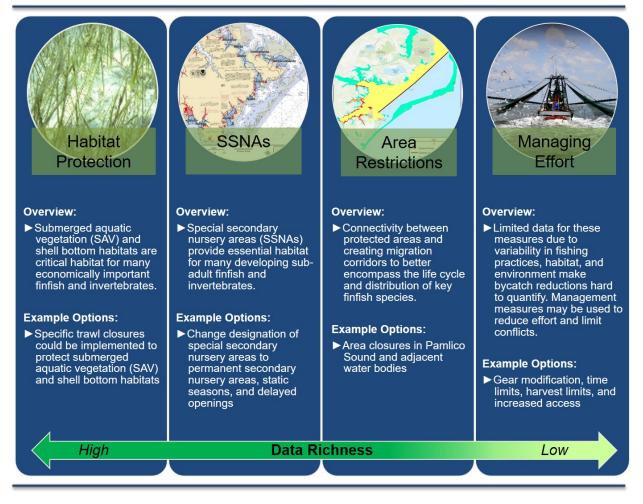
The division requests the commission review, discuss, and provide feedback on the issues identified by the division in accordance with the MFC approved Amendment 2 goal and objectives.

Findings

- The issues focus on the impacts of the shrimp fishery to habitat and bycatch.
- Habitat benefits and bycatch reductions from all measures are non-quantifiable.

- Each of the issues are inter-related; management measures discussed in one issue paper are connected to measures in other issue papers and must be considered in conjunction with one another.
- Data richness, which describes the availability and quality of data used for decision making, varies across issue papers and was a key factor in developing DMF's initial discussion points.
- Generalized options within each issue paper are outlined below.

Shrimp Fishery Management Plan Amendment 2 Issues



Amendment 2 Issue Papers

Management of Shrimp Trawling for Protection of Critical Habitats

- Examines submerged aquatic vegetation and shell bottom habitats and how they overlap with areas open to shrimp trawling.
- Area specific shrimp trawl closures could be implemented to protect critical habitats; focuses on internal waters from Core Sound south to the NC-SC state line.

Shrimp Management in Special Secondary Nursery Areas

- Examine ways to reduce bycatch in the 15 remaining Special Secondary Nursery Areas (SSNA). Rule changes associated with Amendment 1 are expected in Spring 2021 to change nine SSNAs to permanent Secondary Nursery Areas (SNA), which eliminates trawling in these areas.
- Static seasons with delayed openings could be implemented to reduce bycatch or the remaining SSNAs could be reclassified as SNAs eliminating all trawling in these areas.

Area Restrictions to Reduce Shrimp Trawl Bycatch in North Carolina

- Examines options to increase connectivity between protected areas to better encompass the life cycle and distribution of key economically important species.
- Focuses on Pamlico Sound and adjacent tributaries and must be considered in conjunction with recommendations from the SSNA and critical habitat issue papers which focus on areas south of Pamlico Sound.

Managing Effort and Gear Modifications in the Shrimp Fishery to Reduce Bycatch

- Examines ways to reduce bycatch by further restricting effort via gear modifications (i.e., reducing headrope), allowable fishing times (i.e., reduce days of week fished, daily fishing times, and tow times), and harvest limits as well as increasing access for non-trawl gears.
- Data limitations are apparent and management measures chosen in this paper will likely depend on measures chosen in other issue papers.

Amendment 2 Goal and Objectives

(approved at Feb. 2020 MFC business meeting)

<u>Goal</u>: Manage the shrimp fishery to provide adequate resource protection, optimize long-term harvest, and minimize ecosystem impacts. The following objectives will be used to achieve this goal.

- 1. Reduce bycatch of non-target species of finfish and crustaceans, as well as protected, threatened, and endangered species.
- 2. Promote the restoration, enhancement, and protection of habitat and environmental quality in a manner consistent with the CHPP.
- 3. Develop a strategy through the CHPP to review current nursery areas and to identify and evaluate potential areas suitable for designation.
- 4. Use biological, environmental, habitat, fishery, social, and economic data needed to effectively monitor and manage the shrimp fishery and its ecosystem impacts (i.e., bycatch, habitat degradation).
- 5. Promote implementation of research and education programs designed to improve stakeholder and the general public's understanding of shrimp trawl bycatch impacts on fish population dynamics.



RULEMAKING UPDATE

2020-2021 RULEMAKING UPDATE MEMO

RULEMAKING PACKAGE B UPDATE

2021-2022 ANNUAL RULEMAKING CYCLE PREVIEW



Jan. 29, 2021

ROY COOPER Governor

MICHAEL S. REGAN Secretary

JOHN G. BATHERSON Acting Director

MEMORANDUM

TO:	N.C. Marine Fisheries Commission
FROM:	Catherine Blum, Rulemaking Coordinator
	Marine Fisheries Commission Office
SUBJECT:	Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of the 2020-2021 annual rulemaking cycle, including rulemaking in accordance with the Periodic Review and Expiration of Existing Rules per G.S. 150B-21.3A, and request the MFC vote on final approval of readoption and amendment of 41 rules in "Package B".

Findings

- Periodic Review and Readoption of Rules Requirements
 - North Carolina G.S. 150B-21.3A, adopted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 03 Marine Fisheries: On June 14, 2018, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2022 for 172 MFC rules.
 - 15A NCAC 18A Sanitation: On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024 for 164 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- Regarding the 41 rules in "Package B", one individual provided general comments about the three shellfish lease user conflict rules (15A NCAC 03O .0200).
- At its February meeting, the MFC is scheduled to receive an update about and vote on final approval of readoption and amendment of 41 rules in 15A NCAC 03 and 18A in accordance with G.S. 150B-21.3A.
- If approved, the rules have an intended effective date of May 1, 2021, except for rules subject to legislative review per Session Law 2019-198.

Action Needed

In accordance with G.S. 150B-21.3A, the MFC is scheduled to vote on final approval of readoption and amendment of 41 rules in 15A NCAC 03 and 18A as published in the N.C. Register Oct. 1, 2020, except for additional technical changes recommended to three rules in 15A NCAC 03O .0200.

Recommendation

The division recommends the MFC vote on final approval of readoption and amendment of the 41 rules in 15A NCAC 03 and 18A in accordance with G.S. 150B-21.3A. For more information, please refer to the Rulemaking section of the briefing materials.

2020-2021 Annual Rulemaking Cycle

"Package B" (41 rules)

At its August 2020 business meeting, the MFC approved Notice of Text for readoption and amendment of the 50 rules in "Package B," 41 of which will be presented to the MFC at its February 2021 meeting for final approval. These 41 rules cover the following subjects:

- Classification of Shellfish Growing Waters and Laboratory Procedures (readopt 14 rules);
- Rules with minor changes relating to standards for commercial shellfish sanitation and processing procedures (readopt 21 rules);
- Shellfish Lease User Conflicts, per Session Law 2019-37 (readopt 3 rules);
- Shrimp Fishery Management Plan Amendment 1 Special Secondary Nursery Areas (2 rules; 1 readoption and 1 amendment); and
- Oyster Sanctuaries (amend 1 rule).

Nine other rules in "Package B" for the subject "General Regulations: Joint" will be brought to the MFC for final approval later in 2021 to allow time to address public comments that were received.

On Oct. 1, 2020 the proposed rules were published in the *N.C. Register*. The 41 rules have an intended effective date of May 1, 2021, except for rules subject to legislative review per Session Law 2019-198 (see *Shellfish Lease User Conflicts* below). The MFC accepted public comments on the proposed rules from Oct. 1 through Nov. 30, 2020; one written public comment was received about the nine rules for the subject "General Regulations: Joint" (that will be addressed later). Two online public hearings were held via WebEx on Oct. 21 and 27, 2020. One member of the public attended the Oct. 27 hearing and provided general comments about the shellfish lease user conflict rules. The MFC is scheduled to receive an update on the public comments at its February 2021 business meeting and vote on final approval of the rules in accordance with G.S. 150B-21.3A.

For more information, please refer to the materials for "Package B" in the <u>Rulemaking</u> section of the briefing materials, including a table showing the timing of the steps in the process, the Oct. 1, 2020 news release about the proposed rules, an excerpt from the Oct. 1, 2020 *N.C. Register* containing the proposed rules as published, a revised version of 15A NCAC 03O .0201, .0202, and .0204 with technical changes (see *Shellfish Lease User Conflicts* below), a summary of each public hearing, and the written comment received. Also, the corresponding fiscal analyses for the proposed rules are available on the division website at <u>http://portal.ncdenr.org/web/mf/mfc-proposed-rules</u> (click on May 1, 2021 "Package B").

Classification of Shellfish Growing Waters and Laboratory Procedures (readopt 14 rules)

The MFC is scheduled to vote on final approval to readopt 15A NCAC 18A .0431, .0704, .0901-.0910, .0913, and .0914. These rules were proposed for readoption and repeal through readoption to update shellfish sanitation laboratory procedures, sanitation survey reporting requirements, standards for classifying shellfish waters, and definitions to conform with current national standards. North Carolina must meet these minimum standards in order for N.C. shellfish to be sold through interstate commerce. Rule language was also proposed to formalize the use of conditionally approved shellfish areas to increase the overall flow of shellfish from the state; the use of conditional areas has been in place in North Carolina for over 20 years. Additional amendments to the rules update rule language to be more concise and consistent. In short, none of the proposed rule changes lead to any substantive changes in the ongoing operations of the division, but rather conform language to these practices and requirements.

Rules with minor changes relating to standards for commercial shellfish sanitation and processing procedures (readopt 21 rules)

The MFC is scheduled to vote on final approval to readopt 15A NCAC 18A .0140-.0143, .0146, .0150, .0154, .0155, .0159, .0160, .0163, .0167, .0169-.0172, .0179, .0180, and .0188-.0190. The rules address sanitation standards for commercial crustacea processing procedures. The proposed readoptions include amendments that are of an administrative nature to update the rules, such as correcting grammar, typographical errors, and updating agency names, and contain no structural changes. Eight of the rules contain no changes.

Shellfish Lease User Conflicts, per Session Law 2019-37 (readopt 3 rules)

The MFC is scheduled to vote on final approval to readopt 15A NCAC 03O .0201, .0202, and .0204. These rules were proposed for readoption in accordance with the requirements of Session Law 2019-37, which was passed with the explicit goal of providing increased support to the state's shellfish aquaculture industry. Central to this was the goal of understanding user conflict issues of shellfish leasing and amending state regulations based on these findings. Section 9 of the law required the N.C. Department of Environmental Quality, division, and MFC to study how to reduce user conflict related to shellfish cultivation leases, and to adopt rules and reform internal operating procedures consistent with the findings of the study.

Proposed rule amendments are based on the results of the study and aim to reduce user conflict issues while supporting a productive shellfish aquaculture industry. Specifically, the proposed amendments increase setback limits from developed shorelines for new shellfish leases, limit the allowable number of corners for demarcating shellfish leases to simplify polygon shape, set new criteria for shellfish lease stakes and signage to alleviate navigation concerns, and initiate a new leaseholder training program that emphasizes user conflict reduction strategies.

One member of the public attended the Oct. 27 online hearing and provided general comments about the shellfish lease user conflict rules. A summary of the public hearing is included in the <u>Rulemaking</u> section of the briefing materials. There is also a revised version of 15A NCAC 03O .0201, .0202, and .0204 with technical changes included for the MFC's consideration for final approval; these changes conform the rules to forthcoming amendments to the other rules in that Section for readoption so all rules use consistent terminology. Lastly, 15A NCAC 03O .0204 is subject to legislative review pursuant to Session Law 2019-198 and G.S. 14-4.1, Legislative review of regulatory crimes, and thus is expected to have a delayed effective date. The MFC may request a group of related rules to become effective at the same time per G.S. 150B-21.3.

Shrimp Fishery Management Plan Amendment 1 Special Secondary Nursery Areas (2 rules; 1 amendment and 1 readoption)

The MFC is scheduled to vote on final approval to amend one rule (15A NCAC 03R .0104) and readopt one rule (15A NCAC 03R .0105). These rules were proposed to reclassify nine Special Secondary Nursery Areas (SSNAs) to Secondary Nursery Areas (SNAs), as recommended by the N.C. Shrimp Fishery Management Plan Amendment 1. The nine areas have not been opened to trawling since at least 2004, so there are no effective changes to the shrimp trawl fishery. These changes convert 8,670 acres of current SSNA waters to SNAs. The reclassification results in a small mesh gill net attendance requirement in these waters, except for Scranton Creek. All areas have gill net attendance requirements now; the proposed rules require additional attendance in all waters, not just 50 yards from the shoreline, from May 1 to Nov. 30.

Oyster Sanctuaries (amend 1 rule)

The MFC is scheduled to vote on final approval to amend 15A NCAC 03R .0117, consistent with the N.C. Oyster Fishery Management Plan. In order for oyster sanctuary reef sites to serve their intended management function as sanctuaries for oyster broodstock, harvest protections need to be applied. The term "sanctuary" refers to reefs protected from oyster harvest in MFC rule or by proclamation issued by the Fisheries Director under the authority of MFC rule. This rule was proposed to add the five most recently developed oyster sanctuaries (i.e., Long Shoal, Little Creek, Pea Island, Raccoon Island, and Swan Island), currently protected by proclamation authority, to the existing permanent rule delineating the sanctuary boundaries. Rule amendments also update boundaries for three existing sanctuaries (i.e., Ocracoke and Clam Shoal) from rule, as they no longer function as biologically productive oyster sanctuaries.

2021-2022 Annual Rulemaking Cycle Preview

Division staff will provide a preview of potential rules in the MFC's 2021-2022 annual rulemaking cycle at its February 2021 business meeting. There will be two packages of rules, similar to the 2020-2021 cycle, due to the number of rules remaining to be readopted. Please see Figure 1, detailed in the Background Information section below, that shows the MFC's rule readoption schedule. Also, the <u>Rulemaking</u> section of the briefing materials includes tables showing the timing of the steps in the process for "Package A" and "Package B" of the 2021-2022 cycle.

Background Information

Periodic Review and Expiration of Existing Rules per G.S. 150B-21.3A

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. 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. The first is a report phase, which has concluded, followed by the readoption of rules. An evaluation of the rules under the authority of the MFC was undertaken in two lots (see Figure 1.) The MFC has 211 rules in Chapter 03 (Marine Fisheries), of which 172 are subject to readoption, and 164 rules in Chapter 18, Subchapter 18A (Sanitation) that are also subject to readoption. The MFC is the body with the authority for the approval steps prescribed in the process.

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Proposed	Rule Readoption (116)	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Proposed	Rule Rea	adoption (1	22)	6/30/24 deadline

Figure 1. Marine Fisheries Commission rule readoption schedule to comply with G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.

N.C. Marine Fisheries Commission 2020-2021 Annual Rulemaking Cycle Package B

	February 2021
Time of Year	Action
February-July 2020	Fiscal analysis of rules prepared by DMF staff and
	approved by Office of State Budget and Management
August 2020	MFC approves Notice of Text for Rulemaking
October 2020	Publication of proposed rules in the North Carolina
	Register
October-November	Public comment period held
2020	
Oct. 21 and 27, 2020	Public hearings held via WebEx
February 2021	MFC considers approval of permanent rules
April 2021	Rules reviewed by Office of Administrative Hearings/
	Rules Review Commission
April 15, 2021	Commercial license sales begin
May 1, 2021 or	Proposed effective date of rules; some rules are subject
TBD	to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 1, 2021	Rulebook supplement available online

Michael S. Regan Secretary



Release: Immediate	Contact: Patricia Smith
Date: Oct. 1, 2020	Phone: 252-726-7021

MEDIA ADVISORY: Comment period opens, public hearings scheduled for various marine fisheries rules

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on proposed amendments and re-adoption of 50 rules under a state-mandated periodic review schedule.

Most of the rules pertain to shellfish lease user conflicts, reclassification of Special Secondary Nursery Areas, oyster sanctuaries, classification of shellfish growing waters, and sanitation standards for commercial crustacea processing procedures.

Other rules pertaining to joint fishing waters are proposed for re-adoption with no changes.

Two public hearings will be held by web conference on Oct. 21 at 6 p.m. and on Oct. 27 at 6 p.m. The public may join the meetings online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing.

Members of the public also may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Recreational Water Quality Rules Comments, P.O Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Nov. 30, 2020.

Links to the public hearing registration form and online comment form, as well as text of the proposed rules and links to join the meeting, can be found on the N.C. Marine Fisheries Commission's <u>Proposed Rules Page</u>.

The N.C. Marine Fisheries Commission proposes re-adoption of a portion of rules in 15A NCAC 03O (shellfish lease user conflicts), 15A NCAC 03Q (joint fishing waters), 15A NCAC 03R (Special Secondary Nursery Areas and oyster sanctuaries), and 15A NCAC 18A (shellfish growing waters and shellfish sanitation and processing). Proposed rule changes will:

- Address user conflicts associated with shellfish leases while supporting a productive shellfish aquaculture industry, as required by <u>NCGA Session Law 2019-37</u>. The proposed changes will increase setback requirements from developed shorelines for new shellfish leases; limit the allowable number of corner markers for demarcating shellfish leases to simplify the polygon shapes; set new criteria for shellfish lease stakes and signage to alleviate navigation concerns; and, initiate a new shellfish leaseholder training program that emphasizes user conflict reduction strategies.
- Reclassify nine Special Secondary Nursery Areas to Secondary Nursery Areas, as recommended by the Shrimp Fishery Management Plan Amendment 1. The nine areas have not been opened to trawling since at least 2004, so there will be no effective change to the shrimp trawl fishery; however, the reclassification will result in a small mesh gill net attendance requirement in these waters, except for Scranton Creek. All areas have gill net attendance requirements now; the proposed rules would require additional attendance in all waters, not just 50 yards from the shoreline, from May 1 to Nov. 30.
- Amend the oyster sanctuaries rule by adding five new sites (Long Shoal, Little Creek, Pea Island, Raccoon Island, and Swan Island), updating boundaries for three existing sites (Neuse River, West Bluff, and Gibbs Shoal), and removing two sites that no longer function as sanctuaries (Ocracoke and Clam Shoal).

Roy Cooper Governor

Michael S. Regan *Secretary*



- Update shellfish sanitation laboratory procedures, sanitation survey reporting requirements, standards for classifying shellfish waters, and definitions to conform with current national standards.
- Readopt with no changes nine rules that pertain to joint fishing waters, in accordance with a state-mandated periodic review schedule.
- Correct grammar, typographical errors, and update agency names.

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in February 2021 and have an earliest effective date of April 1, 2021.

For questions about the N.C. Marine Fisheries Commission rulemaking process, email <u>Catherine Blum</u>, rules coordinator for the N.C. Division of Marine Fisheries.

WHO:	Marine Fisheries Commission
WHAT:	Two Public Hearings for Proposed Rules
WHEN:	Oct. 21 at 6 p.m. Oct. 27 at 6 p.m.
WHERE:	Meeting by Web Conference <u>Click Here</u> for Information and to Sign Up to Speak

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NORTH CAROLINA

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings Rules Division 1711 New Hope Church Road	984-236-1850	
Raleigh, North Carolina 27609	984-236-1947 FAX	
contact: Molly Masich, Codifier of Rules Dana McGhee, Publications Coordinator Lindsay Silvester, Editorial Assistant Cathy Matthews-Thayer, Editorial Assistant	molly.masich@oah.nc.gov dana.mcghee@oah.nc.gov lindsay.silvester@oah.nc.gov cathy.thayer@oah.nc.gov	984-236-1934 984-236-1937 984-236-1938 984-236-1901
<u>Rule Review and Legal Issues</u>		
Rules Review Commission 1711 New Hope Church Road Raleigh, North Carolina 27609	984-236-1850 984-236-1947 FAX	
contact: Amber Cronk May, Commission Counsel Amanda Reeder, Commission Counsel Ashley Snyder, Commission Counsel Karlene Turrentine, Commission Counsel Alexander Burgos, Paralegal Julie Brincefield, Administrative Assistant	amber.may@oah.nc.gov amanda.reeder@oah.nc.gov ashley.snyder@oah.nc.gov karlene.turrentine@oah.nc.gov alexander.burgos@oah.nc.gov julie.brincefield@oah.nc.gov	984-236-1936 984-236-1939 984-236-1941 984-236-1948 984-236-1940 984-236-1935
Fiscal Notes & Economic Analysis Office of State Budget and Management 116 West Jones Street Raleigh, North Carolina 27603-8005 Contact: Carrie Hollis, Economic Analyst	osbmruleanalysis@osbm.nc.gov	984-236-0689
NC Association of County Commissioners 215 North Dawson Street Raleigh, North Carolina 27603 contact: Amy Bason	919-715-2893 amy.bason@ncacc.org	
NC League of Municipalities 150 Fayetteville Street, Suite 300 Raleigh, North Carolina 27601 contact: Sarah Collins	919-715-4000	
	scollins@nclm.org	
Legislative Process Concerning Rulemaking 545 Legislative Office Building 300 North Salisbury Street Raleigh, North Carolina 27611	919-733-2578 919-715-5460 FAX	
Jason Moran-Bates, Staff Attorney		

Jeremy Ray, Staff Attorney

NORTH CAROLINA REGISTER

Publication Schedule for January 2020 – December 2020

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
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35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF **REQUIRED COMMENT PERIOD** An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

PROPOSED RULES

General	50% of the otherwise applicable fee	\$25
General Title V ACI	10% of the otherwise applicable fee	
(Note: fees shaded in gray are fees for ca	endar year 2020, not adjusted for inflation for 2021)	

Permit application fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204. The current permit application fees shall be found on the Division's website at https://deq.nc.gov/about/divisions/air quality/air quality-permit.

permits/modifying applying for air quality permit.

(e) The current annual permit fees, annual complexity fees, and permit application fees shall be found on the Division's website at https://deq.nc.gov/about/divisions/air-quality/air-quality-

permits/modifying-applying-for-air-quality-permit.

(e)(f) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d)(g) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include: include the amount of actual emissions of each pollutant that exceeds 4,000 tons per year and the actual emissions of pollutants listed in Subparagraphs (1) through (4) of this Paragraph as follows:

- (1) carbon monoxide;
- any pollutant that is regulated solely because it is a Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act (ozone depletors);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard pursuant to Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

(4) greenhouse gases.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(e)(h) The nonattainment area added fee shall be applicable only to Title V facilities required to comply with 15A NCAC 02D .0531 (Sources in Nonattainment Areas), 15A NCAC 02D .0900 (Volatile Organic Compounds), or 15A NCAC 02D .1400 (Nitrogen Oxides) and either:

- (1) are in an area designated in 40 CFR 81.334 as nonattainment, or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

(f)(i) The facility category, Title V (PSD or NSR/NAA), in the permit application fees table in Paragraph (b)(d) of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531.

 $(\underline{g})(\underline{j})$ The facility category, Title V (PSD and NSR/NAA), in the permit application fees table in Paragraph $(\underline{b})(\underline{d})$ of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 and .0531.

(h)(k) Minor modification permit applications that are group processed shall require the payment of only one permit application fee per facility included in the group.

(i)(1) No permit application fee shall be required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change pursuant to 15A NCAC 02Q .0523 (Changes Not Requiring Permit Revisions), or for a construction date change, a test date change, a reporting procedure change, or a similar change.

(j)(m) The permit application fee paid for modifications pursuant to 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were subject to 15A NCAC 02Q .0500, Title V Procedures.

(k)(n) An applicant who files permit applications pursuant to 15A NCAC 02Q .0504 shall pay an application fee equal to the application fee for the permit required pursuant to 15A NCAC 02Q .0500; this fee shall cover both applications, provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued pursuant to 15A NCAC 02Q .0500 are established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "Minor Modification" in the table in Paragraph (b)(d) of this Rule.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d).

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03R. 0104, 0117, readopt with substantive changes the rules cited as 15A NCAC 03O. 0201, 0202, 0204; 03R. 0105; 18A. 0146, 0150, 0.0154, 0.0155, 0.0159, 0.0160, 0.0167, 0.0171, 0.0172, 0.0179, 0.0180, 0.0189, 0.0190, 0.704, 0.901-.0907, 0.909, 0.913, 0.914, readopt without substantive changes the rules cited as 15A NCAC 03Q. 0.0101-.0109; 18A. 0.0140-.0143, 0.0163, 0.0169, 0.0170, 0.0188, and repeal through readoption the rules cited as 15A NCAC 18A. 0431, 0.908, and 0.910.

Link to agency website pursuant to G.S. 150B-19.1(c): http://portal.ncdenr.org/web/mf/mfc-proposed-rules

Proposed Effective Date:

15A NCAC 03O .0204; 03Q .0107: automatically subject to legislative review (S.L. 2019-198) All other rules: April 1, 2021

Public Hearing: In an abundance of caution and to address protective measures to help prevent the spread of COVID-19, these public hearings will be held by webinar.

Date: October 21, 2020

Time: 6:00 p.m.

Location: WebEx Events meeting link for Oct. 21:

https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e9 643b0b8096a03f9e8e7aedc69f00aa5

Event number for Oct. 21: 171 042 8393 Event password for Oct. 21: 1234

Date: October 27, 2020

Time: 6:00 p.m.

Location: WebEx Events meeting link for Oct. 27:

https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e9 c38fe4cfb0d9fc1c4e4d02a818988ce

Event number for Oct. 27: 171 724 2813 *Event password for Oct.* 27: 1234

Reason for Proposed Action:

15A NCAC 03O .0201STANDARDSANDREQUIREMENTSFORSHELLFISHBOTTOMLEASESANDFRANCHISESANDWATERCOLUMNLEASES15A NCAC 03O .0202SHELLFISHBOTTOMANDWATERCOLUMNLEASEAPPLICATIONSLEASES15A NCAC 03O .0204MARKINGSHELLFISHLEASESANDFRANCHISESANDFRANCHISESAND

In accordance with G.S. 150B-21.3A and Session Law 2019-37, proposed amendments to these three rules aim to reduce user conflict issues while supporting a productive shellfish aquaculture industry. Specifically, the amendments proposed would increase setback limits from developed shorelines for new shellfish leases, limit the allowable number of corners for demarcating shellfish leases to simplify polygon shape, set new criteria for shellfish lease stakes and signage to alleviate navigation concerns, and initiate a new leaseholder training program that emphasizes user conflict reduction strategies. Session Law 2019-37 was passed with the explicit goal of providing increased support to the state's shellfish aquaculture industry. Central to this was the goal of understanding user conflict issues of shellfish leasing and amending state regulations based on these findings. Section 9 of the law required the N.C. Department of Environmental Quality, N.C. Division of Marine Fisheries, and the N.C. Marine Fisheries Commission to study how to reduce user conflict related to shellfish cultivation leases, and to adopt rules and reform internal operating procedures consistent with the findings of the study. Proposed rule amendments are based on the results of the study.

15A NCAC 03Q .0101	SCOPE AND PURPOSE
15A NCAC 03Q .0102	INLAND FISHING WATERS
15A NCAC 03Q .0103	COASTAL FISHING WATERS
15A NCAC 03Q .0104	JOINT FISHING WATERS

15A NCAC 03Q .0105 **POSTING DIVIDING LINES** 15A NCAC 03Q .0106 APPLICABILITY OF **RULES:** JOINT WATERS 15A NCAC 03Q .0107 **SPECIAL REGULATIONS: JOINT** WATERS 15A NCAC 03Q .0108 MANAGEMENT **RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN** JOINT WATERS 15A NCAC 030 .0109 **IMPLEMENTATION OF** ESTUARINE STRIPED BASS MANAGEMENT PLANS: **RECREATIONAL FISHING**

In accordance with G.S. 150B-21.3A, these nine rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters are proposed for readoption by the N.C. Marine Fisheries Commission with no changes.

15A NCAC 03R .0104 PERMANEMENT SECONDARY NURSERY AREAS 15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS

In accordance with G.S. 150B-21.3A (15A NCAC 03R .0105) and the N.C. Shrimp Fishery Management Plan (FMP) Amendment 1 (both rules), proposed amendments to these two rules reclassify nine Special Secondary Nursery Areas (SSNAs) as Secondary Nurserv Areas (SNAs). In 2015, the N.C. Marine Fisheries Commission adopted the Shrimp FMP Amendment 1. One of the final management measures to implement after adoption of Amendment 1 was to evaluate changing the designation of nine SSNAs that have not been opened to trawling since at least 2004 to SNAs. The evaluation was undertaken and shows these nine sites have all been functioning as SNAs for nearly 30 years. None of these sites has been opened for trawling since 1991 at the latest, except for one site (Newport River), which was opened by proclamation in 2004. These changes would convert approximately 8,670 acres of current SSNA waters to SNAs, making them subject to all standard SNA gill net attendance requirements under 03R .0112(b)(1). The two practical differences between SNAs and SSNAs relates to trawling and small mesh gill net attendance. In SNAs, it is unlawful to use trawl nets for any purpose, but since none of the proposed SSNAs has been opened to trawling since at least 2004, the only impactful management change is the new requirements related to small mesh gill net attendance in all but one of these waters. (Scranton *Creek would see no changes in its small mesh gill net attendance* requirements.) Appendix III of the fiscal analysis of the proposed rules contains tables and figures for the nine areas that shows the gill net attendance requirements that would be in place once the rule changes become effective.

15A NCAC 03R .0117 OYSTER SANCTUARIES

This rule is proposed for amendment consistent with the N.C. Oyster Fishery Management Plan. Rule amendments are proposed to add the boundaries of the five most recently developed oyster sanctuaries (i.e., Long Shoal, Little Creek, Pea Island, Raccoon Island, and Swan Island) and update boundaries for three existing sanctuaries (i.e., Neuse River, West Bluff, and Gibbs Shoal). Boundaries delineating the area for two existing sanctuaries (i.e., Ocracoke and Clam Shoal) are proposed to be removed from rule as they no longer function as biologically productive oyster sanctuaries. The term "sanctuary" refers to reefs protected from oyster harvest in N.C. Marine Fisheries Commission (MFC) rule or by proclamation issued by the Fisheries Director under the authority of MFC rule.

15A NCAC 18A .0140 **FLOORS** 15A NCAC 18A. 0141 WALLS AND CEILINGS 15A NCAC 18A .0142 LIGHTING 15A NCAC 18A .0143 VENTILATION 15A NCAC 18A .0163 **COOKED CRUSTACEA REFRIGERATION** 15A NCAC 18A .0169 **FREEZING** 15A NCAC 18A .0170 **SHIPPING** 15A NCAC 18A .0188 HAZARD ANALYSIS

In accordance with G.S. 150B-21.3A, these eight rules that relate to standards for commercial shellfish sanitation and processing procedures are proposed for readoption with no changes.

15A NCAC 18A .0146 **PREMISES** 15A NCAC 18A .0150 SEWAGE DISPOSAL 15A NCAC 18A .0154 **EMPLOYEES'** PERSONAL **ARTICLES** 15A NCAC 18A .0155 SUPPLY STORAGE 15A NCAC 18A .0159 SEPARATION OF OPERATIONS 15A NCAC 18A .0160 RAW CRUSTACEA RECEIVING AND REFRIGERATION 15A NCAC 18A .0167 **DELIVERY WINDOW OR SHELF CRUSTACEA** 15A NCAC 18A .0171 **WHOLE OR CRUSTACEA PRODUCTS** 15A NCAC 18A .0172 **COOKED** CLAW **SHIPPING CONDITIONS** 15A NCAC 18A .0179 **RECALL PROCEDURE** 15A NCAC 18A .0180 SAMPLING AND TESTING HACCP PLAN 15A NCAC 18A .0189 15A NCAC 18A .0190 **SANITATION MONITORING** REQUIREMENTS

In accordance with G.S. 150B-21.3A, these 13 rules that relate to standards for commercial shellfish sanitation and processing procedures are proposed for readoption with minor changes, such as updates to punctuation, agency names, capitalization, acronym introduction, and a missing degree symbol for a temperature provided.

15A NCAC 18A .0431 STANDARDS FOR AN APPROVED SHELLFISH GROWING AREA

In accordance with G.S. 150B-21.3A, this rule is proposed for repeal, as it is redundant with rule 15A NCAC 18A .0904.

15A NCAC 18A .0704LABORATORY PROCEDURES15A NCAC 18A .0914LABORATORY PROCEDURES

In accordance with G.S. 150B-21.3A, the proposed amendments replace an outdated set of standards for the types of laboratories and laboratory methods that can be used to support the North Carolina Shellfish Sanitation and Recreational Water Quality Section with a set of standards that will bring North Carolina rules into agreement with current national standards, and will better protect the health of shellfish consumers. These amendments will also provide North Carolina with additional flexibility regarding the types of laboratory tests that are permissible for use within the program.

15A NCAC 18A .0901 DEFINITIONS

In accordance with G.S. 150B-21.3A, the proposed amendments update definitions to conform with proposed changes to other rules in 15A NCAC 18A .0900.

15A NCAC 18A .0902CLASSIFICATIONOFSHELLFISH GROWING WATERS

In accordance with G.S. 150B-21.3A, the proposed amendments eliminate the interchangeable use of two differently defined terms, "shellfish growing waters" and "shellfish growing areas", in order to improve the clarity of what this rule requires.

15A NCAC 18A .0903SANITARY SURVEYS15A NCAC 18A .0910RECLASSIFICATION

In accordance with G.S. 150B-21.3A, the proposed amendments update the reporting requirements that need to be met in order to classify shellfish growing waters or to modify existing classifications, and to bring those requirements in line with the national standards. The proposed amendments include details on the required frequency of reporting as well as the required contents of each report. Rule .0910 is proposed for repeal, with the requirements of the rule being moved into .0903 instead, for improved clarity and organization.

15A NCAC 18A .0904 APPROVED WATERS

In accordance with G.S. 150B-21.3A, the proposed amendments replace an outdated set of standards used for the classification of shellfish harvesting waters with a set of standards that would bring North Carolina rules into agreement with current national requirements, and would better protect the health of shellfish consumers. These amendments would also provide North Carolina with additional flexibility regarding the types of laboratory tests that are permissible for use in the classification of shellfish growing waters.

15A NCAC 18A .0905 CONDITIONALLY APPROVED WATERS

In accordance with G.S. 150B-21.3A, the proposed amendments define the criteria that must be met in order to classify shellfish growing waters with the conditionally approved classification. They would also bring North Carolina rules into agreement with current national requirements by defining the required contents of management plans that must be developed for any conditionally approved waters, and by adding in the requirement that all conditionally approved growing waters be re-evaluated on an annual basis to ensure that the classification remains appropriate.

15A NCAC 18A .0906 RESTRICTED AREAS

In accordance with G.S. 150B-21.3A, the proposed amendments define the criteria that must be met in order to classify shellfish growing waters with the restricted classification. They would also bring North Carolina rules into agreement with current national requirements by defining the specific bacteriological standards that must be met for restricted waters to be used as a source of shellstock for depuration.

15A NCAC 18A .0907 **PROHIBITED WATERS** 15A NCAC 18A .0908 **UNSURVEYED AREAS BUFFER ZONE** 15A NCAC 18A .0909

In accordance with G.S. 150B-21.3A, the proposed amendments replace an outdated set of standards and requirements used for the prohibited classification of shellfish harvesting waters with a set of standards and requirements that would bring North Carolina rules into agreement with current national requirements, and would better protect the health of shellfish consumers. These modifications would also reduce redundancy between rules. The requirements contained in .0908 are redundant with and better suited for inclusion in .0907, so .0908 is proposed for repeal.

15A NCAC 18A .0913 **PUBLIC HEALTH EMERGENCY**

In accordance with G.S. 150B-21.3A, the proposed amendments update the language in the rule to reflect that the Shellfish Sanitation and Recreational Water Quality Section is now part of the Division of Marine Fisheries, instead of the Division of Environmental Health.

Comments may be submitted to: Catherine Blum, P.O. BOX 769, Morehead City, NC 28557

Written comments may also be submitted via an online form available at http://portal.ncdenr.org/web/mf/mfc-proposed-rules.

Comment period ends: November 30, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- \boxtimes State funds affected
- \boxtimes Local funds affected
- Substantial economic impact (>= \$1,000,000)
 - **Approved by OSBM**
 - No fiscal note required

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 030 - LICENSES, LEASES, FRANCHISES AND PERMITS

SECTION .0200 - LEASES AND FRANCHISES

15A NCAC 03O .0201 STANDARDS AND **REQUIREMENTS FOR SHELLFISH BOTTOM LEASES** AND FRANCHISES AND WATER COLUMN LEASES

(a) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish cultivation purposes:

- the proposed lease area shall not contain a (1)"natural shellfish bed," as defined in G.S. 113-201.1, or have 10 bushels or more of shellfish per acre;
- (2)the proposed lease area shall not be closer than 100 250 feet to from a developed shoreline, shoreline or a water-dependent shore-based structure, except no minimum setback is required when the area to be leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped shoreline; and shoreline. For the purposes of this Rule, a water-dependent shore-based structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;
- (3) the proposed lease area shall not be closer than 250 feet to an existing shellfish lease;
- (4) the proposed lease area, either alone or when considered cumulatively with existing shellfish leases in the area, shall not interfere with navigation or with existing, traditional uses of the area; and
- the proposed lease area shall not be less than (3)(5)one-half acre and shall not exceed 10 acres.

(b) To be suitable for leasing for aquaculture purposes, water columns superjacent to leased bottom shall meet the standards in G.S. 113-202.1 and water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2.

(c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- they produce and market 10 bushels of shellfish (1)per acre per year; and
- (2)they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

(d) Water column leases shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- (1)they produce and market 40 bushels of shellfish per acre per year; or
- (2)the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

(e) The following standards shall be applied to determine compliance with Paragraphs (c) and (d) of this Rule:

- (1) Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and franchises," or "shellfish production on leases and franchises" shall be included in the lease and franchise reports required by Rule .0207 of this Section.
- (2) If more than one lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one lease or franchise. Shellfish transplanted between leases or franchises shall be credited as planting effort on only one lease or franchise.
- (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. The lease or franchise shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for shellfish bottom leases. The lease or franchise shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 202.2 to be deemed in compliance for shell fish bottom leases. The lease or franchise shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for water column leases.
- (4) All bushel measurements shall be in standard U.S. bushels.
- (5) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
 - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
 - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.
- (6) Production and marketing rate averages shall be computed irrespective of transfer of the lease or franchise. The production and marketing rates shall be averaged for the following situations using the time periods described:
 - (A) for an initial bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
 - (B) for a renewal bottom lease or franchise, over the consecutive full calendar years beginning January 1 of

the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;

- (C) for a water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
- (D) for a bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.
- (7) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

(f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries.

Authority G.S. 113-134; <u>113-182;</u> 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52.

15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

(a) Application forms are available from the Division's office headquarters at <u>Division of Marine Fisheries</u>, 3441 Arendell Street, Morehead City, NC 28557 for persons desiring to apply for shellfish bottom and water column leases. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including an inset vicinity map showing the location of the proposed lease with detail sufficient to permit on-site identification and must <u>shall</u> meet the information requirements pursuant to G.S. 113-202(d).

(b) As a part of the application, the applicant shall submit a management plan <u>Shellfish Lease Management Plan</u> for the area to be leased on a form provided by the Division which meets the following standards: <u>that shall:</u>

- (1) States state the methods through which the applicant will cultivate and produce shellfish consistent with the minimum requirements set forth in 15A NCAC 03O .0201; in accordance with Rule .0201 of this Section;
- (2) <u>States state</u> the time intervals during which various phases of the cultivation and production plan will be achieved;
- (3) <u>States state</u> the materials and techniques that will be utilized in management of the lease;
- (4) Forecasts forecast the results expected to be achieved by the management activities; and

(1)

- (5) Describes <u>describe</u> the productivity of any other leases or franchises held by the applicant. <u>applicant; and</u>
- (6) state the locations of each corner defining the area to be leased with no more than eight corners.

(c) The completed application, map or diagram, and management plan Shellfish Lease Management Plan for the requested lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.

(d) Applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees holding one or more shellfish cultivation leases which are not meeting production requirements, shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package the Shellfish Aquaculture Education Program provided by the Division of Marine Fisheries. Division. The examination Shellfish Aquaculture Education Program shall demonstrate the applicant's knowledge of: provide the applicant information on shellfish aquaculture including:

licant ir	formation on shellfish aquaculture including:
(1)	the shellfish lease application process;
(2)	shellfish lease planting and production
	requirements;
(3)	lease marking requirements;
(4)	lease fees;
(5)	shellfish harvest area closures due to pollution;
(6)	safe handling practices;
(7)	lease contracts and renewals;
(8)	lease termination criteria; and
(9)	shellfish cultivation techniques.
(1)	shellfish lease application process;
<u>(2)</u>	shellfish lease requirements and techniques;
<u>(3)</u>	shellfish sanitation and National Shellfish
	Sanitation Program requirements;
<u>(4)</u>	shellfish harvest requirements;
<u>(5)</u>	aquaculture permits;
<u>(6)</u>	best management practices; and
(7)	shellfish lease user conflict avoidance.
ter an ai	polication is deemed to have met all requirements

(e) After an application is deemed to have met all requirements and is accepted by the Division, the applicant shall identify the area for which a lease is requested with stakes at each corner in accordance with 15A NCAC 03O .0204(a)(1)(A). Rule .0204(a)(1)(A) of this Section. The applicant shall attach to each stake a sign, provided by the Division containing the name of the applicant, the date the application was filed, and the estimated acres. The applicant shall be responsible for ensuring the sign remains in place until the lease application process is completed.

Authority G.S. 113-134; <u>113-182;</u> 113-201; 113-202; 143B-289.52.

15A NCAC 03O .0204 MARKING SHELLFISH LEASES AND <u>WATER COLUMN LEASES AND</u> FRANCHISES

(a) All shellfish bottom leases, franchises, and water column leases shall be marked by the leaseholder or franchise holder as follows:

- Shellfish bottom leases and franchises shall be marked by:
 - (A) Stakes stakes of wood or plastic material at least three inches in diameter no less than three inches in diameter and no more than 12 inches in diameter at the water level mean high water mark and extending at least four feet above the mean high water mark. mark for each corner, except stakes more than 12 inches in diameter approved as part of a Coastal Area Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 shall be allowed. The stakes shall be firmly jetted or driven into the bottom at each corner. corner as set forth in Rule .0202(b)(6) of this Section.
 - (B) Signs signs displaying the number of the lease or franchise and the name of the owner printed in letters at least three inches high must be firmly attached to each corner stake.
 - (C) yellow light reflective tape or yellow light reflective devices on each corner stake. The yellow light reflective tape or yellow light reflective devices shall be affixed to each corner stake, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
 - (C)(D) Supplementary supplementary stakes of wood or plastic material, material no less than three inches in diameter and no more than four inches in diameter, not farther apart than 50 yards 150 feet or closer together than 50 feet and extending at least four feet above the mean high water mark, must shall be placed along each boundary, except when such would interfere if doing so interferes with the use of traditional navigation channels.
- (2) Water Shellfish water column leases shall be marked by anchoring two yellow buoys, meeting the material and minimum size requirements specified in 15A NCAC 3J .0103(b) at each corner of the area or by larger buoys, posts and by signs giving notice and providing caution in addition to the required signs as identified and approved by the Secretary in the Management Plan. management plan.

(b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management plan, must shall conform to Subparagraph (a)(1)(C) Part (a)(1)(D) of this Rule and may not exceed one for each 1,200 square feet. Marking at concentrations of stakes greater than one for each 1,200 square

feet constitutes use of the water column and a water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2. (c) All areas claimed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather than the number of the lease. However, claimed areas not being managed and cultivated shall not be marked.

(d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary pursuant to Departmental Rule 15A NCAC 1G .0207 that a G.S. 113 205 claim to a marked area has been denied.

(e)(d) It is shall be unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on shellfish leases and franchises including, but not limited to, fishing, hunting, swimming, wading wading, and navigation.

(f)(e) The Division has no duty to protect any shellfish bottom lease, franchise, or water column lease not marked in accordance with Paragraph (a) of this Rule.

Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205.

SUBCHAPTER 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

SECTION .0100 - GENERAL REGULATIONS: JOINT

15A NCAC 03Q .0101 SCOPE AND PURPOSE

The rules in this Section pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters and joint fishing waters. These rules are adopted jointly by the Marine Fisheries Commission and the Wildlife Resources Commission. In addition to the classification of the waters of the state these joint rules set forth guidelines to determine which fishing activities in joint waters are regulated by the Marine Fisheries Commission and which are regulated by the Wildlife Resources Commission. Finally, the joint rules set forth special fishing regulations applicable in joint waters that can be enforced by officers of the Division of Marine Fisheries and the Wildlife Resources Commission. These regulations do not affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any matters other than those specifically set out.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0102 INLAND FISHING WATERS

Inland fishing waters are all inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to inland fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are inland fishing waters. The regulation and licensing of fishing in inland fishing waters is under the jurisdiction of the Wildlife Resources Commission. Regulations and laws administered by the Wildlife Resources Commission regarding fishing in inland fishing waters are enforced by wildlife enforcement officers.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0103 COASTAL FISHING WATERS

Coastal fishing waters are the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to coastal fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulations and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except that inland game fish (exclusive of spotted seatrout, weakfish, and striped bass) are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal waters are enforced by fisheries enforcement officers. Regulations regarding inland game fish in coastal fishing waters are enforced by wildlife enforcement officers unless otherwise agreed to by the Wildlife Resources Commission.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0104 JOINT FISHING WATERS

Joint fishing waters are those coastal fishing waters, hereinafter set out, denominated by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e) as joint fishing waters. All waters which are tributary to joint fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are classified as joint fishing waters. The regulation and licensing of fishing in joint waters shall be as stated in 15A NCAC 3Q .0106.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0105 POSTING DIVIDING LINES

The dividing lines of all major bodies of water and watercourses which are divided by the agreement of the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs in so far as may be practicable. Unmarked and undesignated tributaries shall have the same classification as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any regulation pertaining to any such body of water or portion thereof. Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT WATERS

(a) All coastal fishing laws and regulations administered by the Department of Environment and Natural Resources and the Marine Fisheries Commission apply to joint waters except as otherwise provided, and shall be enforced by fisheries enforcement officers.

(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to joint waters and shall be enforced by wildlife enforcement officers:

- (1) all laws and regulations pertaining to inland game fishes,
- (2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,
- (3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 03Q .0106:

- (1) Striped Bass
 - (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches long (total length).
 - (b) It is unlawful to possess striped bass or striped bass hybrids between the lengths of 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
 - (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
 - (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
 - (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate,

per person per day, regardless of the number of management areas fished.

- (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
- (g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.
- (2) Lake Mattamuskeet:
 - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
 - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hookand-line.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT WATERS

(a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201. (b) In order to effectively manage the recreational hook and line harvest in joint waters of the Albemarle Sound-Roanoke River stock of striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas; the Albemarle Sound Management Area and the Roanoke River Management Area as designated in 15A NCAC 03R .0201. The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing waters of the Roanoke River Management Area. The Marine Fisheries Commission shall have principal management responsibility for the stock in the coastal, joint and inland waters of the Albemarle Sound Management Area. The annual quota for recreational harvest of the Albemarle-Roanoke striped bass stock shall be divided equally between the two management areas. Each commission shall implement management actions for recreational harvest within their respective management areas that will be consistent with the North Carolina Estuarine Striped Bass Fishery Management Plan.

Authority G.S. 113-132; 113-134; 143B-289.52.

15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management actions for recreational fishing pursuant to their respective rule-making powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in the following management areas:

- (1) In the Roanoke River Management Area, the exclusive authority to open and close seasons and areas, and establish size and creel limits whether inland or joint fishing waters shall be vested in the Wildlife Resources Commission. An instrument closing any management area in joint waters shall operate as and shall be a jointly issued instrument opening or closing seasons or areas to harvest in the Roanoke River management area.
- (2)In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether coastal or joint fishing waters shall be vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota is about to be exceeded. In the Albemarle Sound Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal waters, excluding the Roanoke River Management Area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland waters and tributaries to the waters affected.

Authority G.S. 113-132; 113-134; 113-182; 143B-289.52.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS

The permanent secondary nursery areas referenced in 15A NCAC 03N .0105(a) are delineated in the following coastal water areas:

- Roanoke Sound: Inner Shallowbag Bay - west of a line beginning on the northeast shore at a point 35° 54.6729' N – 75° 39.8099' W; running southerly to the southeast shore to a point 35° 54.1722' N – 75° 39.6806' W;
- (2) In $\underline{\text{in}}$ the Pamlico Long Sound Area:
 - (a) Long Shoal River north of a line beginning at the 5th Avenue Canal at a point 35° 35.2120' N 75° 53.2232' W; running easterly to the east shore on Pains Point to a point 35° 35.0666' N 75° 51.2000' W;

- (b) Pains Bay east of a line beginning on Pains Point at a point $35^{\circ} 35.0666' N - 75^{\circ} 51.2000' W$; running southerly to Rawls Island to a point $35^{\circ} 34.4666' N - 75^{\circ} 50.9666' W$; running easterly to the east shore to a point $35^{\circ} 34.2309' N - 75^{\circ} 50.2695' W$;
- (c) Wysocking Bay northwest of a line beginning at Benson Point at a point 35° 22.9684' N 76° 03.7129' W; running northeasterly to Long Point to a point 35° 24.6895' N 76° 01.3155' W;
- (d) Juniper Bay-Cunning Harbor north of a line beginning on the west shore of Juniper Bay at a point $35^{\circ} 20.6217'$ N - $76^{\circ} 15.5447'$ W; running easterly to a point $35^{\circ} 20.4372'$ N - 76° 13.2697' W; running easterly to the east shore of Cunning Harbor to a point $35^{\circ} 20.3413'$ N - $76^{\circ} 12.3378'$ W;
- (e) Swanquarter Bay north of a line beginning at The Narrows at a point $35^{\circ} 20.9500' \text{ N} 76^{\circ} 20.6409' \text{ W}$; running easterly to the east shore to a point $35^{\circ} 21.5959' \text{ N} 76^{\circ} 18.3580' \text{ W}$;
- (f) Deep Cove The Narrows north and east of a line beginning on the west shore at a point $35^{\circ} 20.9790' \text{ N} - 76^{\circ}$ 23.8577' W; running southeasterly to Swanquarter Island to a point 35° $20.5321' \text{ N} - 76^{\circ} 22.7869' \text{ W}$; and west of a line at The Narrows beginning on the north shore to a point $35^{\circ} 20.9500' \text{ N} - 76^{\circ} 20.6409' \text{ W}$; running southerly to Swanquarter Island to a point 35° $20.7025' \text{ N} - 76^{\circ} 20.5620' \text{ W}$;
- (g) Rose Bay north of a line beginning on Long Point at a point $35^{\circ} 23.3404'$ N - $76^{\circ} 26.2491'$ W; running southeasterly to Drum Point to a point $35^{\circ} 22.4891'$ N - $76^{\circ} 25.2012'$ W;
- (h) Spencer Bay northwest of a line beginning on Roos Point at a point 35° 22.3866' N 76° 27.9225' W; running northeasterly to Long Point to a point 35° 23.3404' N 76° 26.2491' W;
- (i) Abel Bay northeast of a line beginning on the west shore at a point $35^{\circ} 23.6463' \text{ N} 76^{\circ} 31.0003' \text{ W}$; running southeasterly to the east shore to a point $35^{\circ} 22.9353' \text{ N} 76^{\circ} 29.7215' \text{ W}$;
- Mouse Harbor west of a line beginning on Persimmon Tree Point at a point 35° 18.3915' N 76° 29.0454' W; running southerly to Yaupon

Hammock Point to a point 35° 17.1825' N – 76° 28.8713' W;

- (k) Big Porpoise Bay northwest of a line beginning on Big Porpoise Point at a point 35° 15.6993' N 76° 28.2041' W; running southwesterly to Middle Bay Point to a point 35° 14.9276' N 76° 28.8658' W;
- (1) Middle Bay west of a line beginning on Deep Point at a point 35° 14.8003' N - 76° 29.1923' W; running southerly to Little Fishing Point to a point 35° 13.5419' N - 76° 29.6123' W;
- (m) Jones Bay west of a line beginning on Mink Trap Point at a point 35° $13.4968' N - 76^{\circ} 31.1040' W;$ running southerly to Boar Point to a point 35° $12.3253' N - 76^{\circ} 31.2767' W;$ and
- (n) $\frac{\text{In} in}{\text{In}}$ the Bay River Area:
 - (i) Bonner Bay southeast of a line beginning on the west shore at a point 35° 09.6281' N 76° 36.2185' W; running northeasterly to Davis Island Point to a point 35° 10.0888' N 76° 35.2587' W; and
 - (ii) Gales Creek-Bear Creek north and west of a line beginning on Sanders Point at a point 35° 11.2833' N 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N 76° 34.2833' W;
- (3) In $\underline{\text{In}}$ in the Pamlico and Pungo Rivers Area:
 - (a) Pungo River north of a line beginning on the west shore at a point 35° 32.2000' N 76° 29.2500' W; running east near Beacon "21" to the east shore to a point 35° 32.0833' N 76° 28.1500' W;
 - (b) Pungo Creek west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N – 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N – 76° 37.7590' W;
 - (c) Scranton Creek south and east of a line beginning on the west shore at a point 35° 30.6810' N 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N 76° 28.6766' W;
 - (d) Slade Creek east of a line beginning on the west shore at a point 35° 27.8879' N – 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N – 76° 32.7361' W;

- (b)(e) Fortescue Creek east of a line beginning on Pasture Point at a point 35° 25.9213' N - 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N - 76° 31.9641' W;
- (c)(f) Pamlico River west of a line beginning on Ragged Point at a point 35° 27.5768' N - 76° 54.3612' W; running southwesterly to Mauls Point to a point 35° 26.9176' N - 76° 55.5253' W;
- (h) South Creek west of a line beginning on Hickory Point at a point 35° 21.7385' N – 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N – 76° 41.7870' W;
- (i) Bond Creek/Muddy Creek south of a line beginning on Fork Point at a point 35° 20.7534' N - 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N - 76° 41.4645' W;
- (e)(j) In in the Goose Creek Area, Campbell Creek west of a line beginning on the north shore at a point 35° 17.3600' N 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N 76° 37.0965' W; and
- (f)(k) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N – 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N – 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N – 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N – 76° 31.7226' W;
- (4) In \underline{in} the Neuse River Area:
 - (a) Lower Broad Creek west of a line beginning on the north shore at a point 35° 05.8314' N 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N 76° 35.7249' W;
 - (b) Greens Creek north of a line beginning on the west shore of Greens Creek at a point $35^{\circ} 01.3476' \text{ N} 76^{\circ} 42.1740' \text{ W}$; running northeasterly to the east shore to a point $35^{\circ} 01.4899' \text{ N} 76^{\circ} 41.9961' \text{ W}$;

- (c) Dawson Creek north of a line beginning on the west shore at a point 34° 59.5920' N - 76° 45.4620' W; running southeasterly to the east shore to a point 34° 59.5800' N - 76° 45.4140' W;
- (d) Goose Creek north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N 76° 56.0092' W;
- (e) Upper Broad Creek northeast of a line beginning at a point on Rowland Point on the north shore at a point 35° 02.6166' N 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N 76° 56.7865' W;
- (f) Clubfoot Creek south of a line beginning on the west shore at a point 34° 54.5424' N 76° 45.7252' W; running easterly to the east shore to a point 34° 54.4853' N 76° 45.4022' W; and
- (g) In in the Adams Creek Area, Cedar Creek east of a line beginning on the north shore at a point 34° 56.1203' N 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N 76° 38.8153' W;
- (5) Newport River west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N - 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N - 76° 43.3296' W;
- (5)(6) Virginia Creek all waters of the natural channel northwest of the primary nursery area line;
- (6)(7) Old Topsail Creek all waters of the dredged channel northwest of the primary nursery area line;
- (7)(8) Mill Creek all waters west of a line beginning on the north shore at a point 34° 20.6420' N 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N 77° 42.2400' W;
- (8)(9) Pages Creek all waters west of a line beginning on the north shore at a point 34° 16.1610' N 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N 77° 46.1670' W;
- (11) Cape Fear River all waters bounded by a line beginning on the south side of the Spoil Island

at the intersection of the Intracoastal Waterway and the Cape Fear River ship channel at a point 34° 01.5780' N – 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N – 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N – 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N – 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to point of origin;

- (12) Lockwood Folly River all waters north of a line beginning on Howells Point at a point 33° 55.3680' N – 78° 12.7930' W and running in a westerly direction along the Intracoastal Waterway near Intracoastal Waterway Marker "46" to a point 33° 55.3650' N – 78° 13.8500' W;
- (13) Saucepan Creek all waters north of a line beginning on the west shore at a point 33° 54.6290' N - 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N - 78° 22.8670' W; and
- (10)(14) Davis Creek all waters east of a line beginning on Horse Island at a point 33° 55.0160' N – 78° 12.7380' W; running southerly to Oak Island to a point 33° 54.9190' N – 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N – 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the IWW <u>Intracoastal Waterway</u> and Davis Canal to a point 33° 55.2690' N – 78° 11.6550' W.

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS

The special secondary nursery areas referenced in 15A NCAC 03N .0105(b) are designated in the following coastal water areas: (1) Roanoke Sound:

- Roanoke Sound:
 (a) Outer S
 - Outer Shallowbag Bay west of a line beginning on Baum Point at a point $35^{\circ} 55.1461' \text{ N} - 75^{\circ} 39.5618' \text{ W}$; running southeasterly to Ballast Point to a point $35^{\circ} 54.6250' \text{ N} - 75^{\circ}$ 38.8656' W; including the canal on the southeast shore of Shallowbag Bay; and
 - (b) Kitty Hawk Bay/Buzzard Bay within the area designated by a line beginning at a point on the east shore of Collington Collington Creek at a point 36° 02.4360' N 75° 42.3189' W; running westerly to a point 36°

02.6630' N - 75° 41.4102' W; running along the shoreline to a point 36° 02.3264' N - 75° 42.3889' W; running southwesterly to a point 36° 02.1483' $N - 75^{\circ} 42.4329'$ W; running along the shoreline to a point 36° 01.6736' N -75° 42.5313' W; running southwesterly to a point 36° 01.5704' $N - 75^{\circ} 42.5899'$ W; running along the shoreline to a point 36° 00.9162' N -75° 42.2035' W; running southeasterly to a point 36° 00.8253' N - 75° 42.0886' W; running along the shoreline to a point 35° 59.9886' N -75° 41.7284' W: running southwesterly to a point 35° 59.9597' $N - 75^{\circ} 41.7682'$ W; running along the shoreline to the mouth of Buzzard Bay to a point 35° 59.6480' N - 75° 32.9906' W; running easterly to Mann Point to a point 35° 59.4171' N - 75° 32.7361' W; running northerly along the shoreline to the point of beginning;

- (2) In the Pamlico and Pungo rivers Area:
 - Pungo Creek west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N 76° 37.7590' W;
 - (b) Scranton Creek south and east of a line beginning on the west shore at a point 35° 30.6810' N 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N 76° 28.6766' W;
 - (c) Slade Creek east of a line beginning on the west shore at a point 35° 27.8879' N 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N 76° 32.7361' W;
 - (d) South Creek west of a line beginning on Hickory Point at a point 35° 21.7385' N 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N 76° 41.7870' W; and
 - (e) Bond Creek/Muddy Creek south of a line beginning on Fork Point 35° 20.7534' N 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N 76° 41.4645' W;

(3)(2) In in the West Bay Area:

(a) West Thorofare Bay - south of a line beginning on the west shore at a point 34° 57.2199' N - 76° 24.0947' W; running easterly to the east shore to a

point 34° 57.4871' N - 76° 23.0737' W;

- (b) Long Bay-Ditch Bay west of a line beginning on the north shore of Ditch Bay at a point 34° 57.9388' N 76° 27.0781' W; running southwesterly to the south shore of Ditch Bay to a point 34° 57.2120' N 76° 27.2185' W; then south of a line running southeasterly to the east shore of Long Bay to a point 34° 56.7633' N 76° 26.3927' W; and
- (c) Turnagain Bay south of a line beginning on the west shore at a point 34° 59.4065' N 76° 30.1906' W; running easterly to the east shore to a point 34° 59.5668' N 76° 29.3557' W;
- (4)(3) In in the Core Sound Area:
 - (a) Cedar Island Bay northwest of a line beginning near the gun club dock at a point 34° 58.7203' N 76° 15.9645' W; running northeasterly to the south shore to a point 34° 57.7690' N 76° 16.8781' W;
 - (b) Thorofare Bay-Barry Bay northwest of a line beginning on Rumley Hammock at a point 34° 55.4853' N – 76° 18.2487' W; running northeasterly to Hall Point to a point 34° 54.4227' N – 76° 19.1908' W;
 - (c) Nelson Bay northwest of a line beginning on the west shore of Nelson Bay at a point 34° 51.1353' N 76° 24.5866' W; running northeasterly to Drum Point to a point 34° 51.6417' N 76° 23.7620' W;
 - (d) Brett Bay north of a line beginning on the west shore at a point 34° $49.4019' \text{ N} - 76^{\circ} 26.0227' \text{ W}$; running easterly to Piney Point to a point 34° $49.5799' \text{ N} - 76^{\circ} 25.0534' \text{ W}$; and
 - (e) Jarrett Bay north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N – 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N – 76° 28.7955' W;
- (5)(4) In in the North River Area:
 - (a) North River north of a line beginning on the west shore at a point 34° $46.0383' N - 76^{\circ} 37.0633' W$; running easterly to a point on the east shore 34° $46.2667' N - 76^{\circ} 35.4933' W$; and
 - (b) Ward Creek east of a line beginning on the north shore at a point 34° $46.2667' N - 76^{\circ} 35.4933' W;$ running southerly to the south shore to a point $34^{\circ} 45.4517' N - 76^{\circ} 35.1767' W;$

- (6) Newport River west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N 76° 43.3296' W;
- (7)(5) New River all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point 34° 34.7680' N 77° 23.9940' W; running southerly to the south side of the bridge at a point 34° 34.6000' N 77° 23.9710' W;
- (8)(6) Chadwick Bay - all waters west of a line beginning on the northeast side of Chadwick Bay at a point 34° 32.5630' N - 77° 21.6280' W; running southeasterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; running westerly to Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; following the shoreline in Fullard Creek to a point 34° 32.0340' N - 77° 22.7160' W; running northwesterly to a point 34° 32.2210' N - 77° 22.8080' W; following the shoreline to the west point of Bump's Creek at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W; following the shoreline of Chadwick Bay back to the point of origin; and
- (9)(7) Intracoastal Waterway all waters in the IWW Intracoastal Waterway maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N – 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N – 77° 30.4710' W; and all waters in the IWW Intracoastal Waterway maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf City; City.
- (10) Cape Fear River all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the IWW and the Cape Fear River ship channel at a point 34° 01.5780' N 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230'N 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to point of origin;
- (11) Lockwood Folly River all waters north of a line beginning on Howells Point at a point 33° 55.3680' N – 78° 12.7930' W and running in a westerly direction along the IWW near IWW Marker "46" to a point 33° 55.3650' N – 78° 13.8500' W; and
- (12) Saucepan Creek all waters north of a line beginning on the west shore at a point 33°

54.6290' N 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N 78° 22.8670' W.

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03R .0117 OYSTER SANCTUARIES

The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following coastal water areas:

- (1) Croatan Sound area: within the area described by a line beginning at a point 35° 48.2842' N-75° 38.3360' W; running southerly to a point 35° 48.1918' N 75° 38.3360' W; running westerly to a point 35° 48.1918' N 75° 38.4575' W; running northerly to a point 35° 48.2842' N 75° 38.4575' W; running easterly to the point of beginning.
- (2)(1) Pamlico Sound area:
 - (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running westerly to a point 35° 48.1918' N -75° 38.4575' W; running northerly to a point 35° 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.
 - (a)(b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N 75° 40.5083' W; running southerly to a point 35° 43.5000' N 75° 40.5083' W; running westerly to a point 35° 43.5000' N 75° 40.7500' W; running northerly to a point 35° 43.6833' N 75° 40.7500' W; running easterly to the point of beginning.
 - (c) Pea Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N -76° 23.4040' W; running westerly to a point 35° 05.3680' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
 - (d) Long Shoal: within the area described by a line beginning at a point 35° 33.8600' N - 75° 49.9000' W; running southerly to a point 35° 33.8600' N -75° 49.7670' W; running westerly to a point 35° 33.7510' N - 75° 49.7670' W; running northerly to a point 35° 33.7510' N - 75° 49.9000' W; running easterly to the point of beginning.
 - (b)(e) Gibbs Shoal: within the area described by a line beginning at a point 35°

27.3557' N 75° 55.8434' W; 35° 27.3550' N - 75° 55.9190' W; running southerly to a point 35° 27.1732' N 75° 55.8434' W; 35° 27.1010' N - 75° 55.9190' W; running westerly to a point 35° 27.1732' N 75° 56.0735' W; 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35° 27.3557' N 75° 56.0735' W; 35° 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.

- (e)(f) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N 76° 22.1612' W; running southerly to a point 35° 22.7717' N 76° 22.1612' W; running westerly to a point 35° 22.7717' N 76° 22.3377' W; running northerly to a point 35° 22.9126' N 76° 22.3377' W; running easterly to the point of beginning.
- (d)(g) West Bluff: within the area described by a line beginning at a point 35° 18.3000' N 76° 10.0890' W; 35° 18.3160' N 76° 10.2960' W; running southerly to a point 35° 18.1460' N 76° 10.0890' W; 35° 18.3160' N 76° 10.0690' W; running westerly to a point 35° 18.1460' N 76° 10.2760' W; 35° 18.1290' N 76° 10.2760' W; running northerly to a point 35° 18.3000' N 76° 10.2760' W; 35° 18.1290' N 76° 10.2760' W; 35° 18.1290' N 76° 10.2760' W; 35° 18.1290' N 76° 10.2760' W; anning easterly to the point of beginning.
- (e) Clam Shoal: within the area described by a line beginning at a point 35° 17.4800' N 75° 37.1800' W; running southerly to a point 35° 17.1873' N 75° 37.1800' W; running westerly to a point 35° 17.1873' N 75° 37.4680' W; running northerly to a point 35° 17.4800' N 75° 37.4680' W; running easterly to the point of beginning.
- (f)(h) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N 76° 30.1780' W; running southerly to a point 35° 14.1150' N 76° 30.1780' W; running westerly to a point 35° 14.1150' N 76° 30.3320' W; running northerly to a point 35° 14.1580' N 76° 30.3320' W; running easterly to the point of beginning.
- (i) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N - 76° 27.5040' W; running southerly to a point 35° 05.6020' N -76° 26.7650' W; running westerly to a

point 35° 05.4850' N - 76° 26.7640' W; running northerly to a point 35° 05.4990' N - 76° 27.5030' W; running easterly to the point of beginning.

- Ocracoke area: within the area described by a line beginning at a point 35° 10.8150' N 75° 59.6320' W; running southerly to a point 35° 10.6320' N 75° 59.6320' W; running westerly to a point 35° 10.6320' N 75° 59.8530' W; running northerly to a point 35° 10.8150' N 75° 59.8530' W; running easterly to the point of beginning.
- (j) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N 76° 23.5370' W; running southerly to a point 35° 05.4760' N 76° 23.4040' W; running westerly to a point 35° 05.3860' N 76° 23.4040' W; running northerly to a point 35° 05.3680' N 76° 23.5370' W; running easterly to the point of beginning.
- (h)(k) West Bay: within the area described by a line beginning at a point 34° 58.8517' N 76° 21.3632' W; running southerly to a point 34° 58.7661' N 76° 21.3632' W; running westerly to a point 34° 58.7661' N 76° 21.4735' W; running northerly to a point 34° 58.8517' N 76° 21.4735' W; running easterly to the point of beginning.
- (3)(2) Neuse River: River area:

(g)

- (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76° 30.9840' W; running southerly to a point 35° 02.6940' N -76° 30.7940' W; running westerly to a point 35° 02.5380' N - 76° 30.7940' W; running northerly to a point 35° 02.5380' N - 76° 30.9840' W; running easterly to the point of beginning.
- (b) Neuse River: within the area described by a line beginning at a point 35° 00.4742' N 76° 31.9550' W; 35° 00.4910' N 76° 31.9550' W; running southerly to a point 35° 00.3920' N 76° 31.9550' W; 35° 00.3750' N 76° 31.9550' W; anning westerly to a point 35° 00.3920' N 76° 32.0550' W; 35° 00.3750' N 76° 32.0550' W; 35° 00.4742' N 76° 32.0550' W; 35° 00.4910' N 76° 32.0550' W; anning easterly to the point of beginning.

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Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

SUBCHAPTER 18A - SANITATION

SECTION .0100 - HANDLING: PACKING: AND SHIPPING OF CRUSTACEA MEAT

15A NCAC 18A .0140 FLOORS

Floors shall be of concrete or other equally impervious material, constructed so that they may be easily cleaned and shall be sloped so that water drains.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0141 WALLS AND CEILINGS

(a) Walls and ceilings shall be constructed of smooth, easily cleanable, non-corrosive, impervious material.

(b) Insulation on cooked crustacea cooler walls shall be covered to the ceiling with a smooth, easily cleanable, non-corrosive, impervious material.

(c) Doors and windows shall be properly fitted and maintained in good repair.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0142 LIGHTING

(a) Natural or artificial lighting shall be provided in all parts of the facility. Minimum lighting intensities shall be as follows:

- (1) 50 foot-candles on working surfaces in the picking and packing rooms and areas.
- (2) 10 foot-candles measured at a height of 30 inches above the floor throughout the rest of the processing portion of the facility.

(b) Light bulbs within the processing portion of the facility shall be shatterproof or shielded to prevent product contamination in case of breakage.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0143 VENTILATION

All rooms and areas shall be ventilated.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0146 PREMISES

(a) Premises under the control of the owner shall be kept clean at all times. Waste materials, rubbish, other articles articles, or litter shall not be permitted to accumulate on the premises. Other items shall be properly stored.

(b) Measures shall be taken to prevent the harborage and breeding of insects, rodents, rodents, and other vermin on premises.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0150 SEWAGE DISPOSAL

All sewage and other liquid wastes shall be disposed of in a public sewer system or in the absence of a public sewer system, by an on-site method approved by the Division <u>of Marine Fisheries</u> or the Department of <u>Environment, Health, and Natural Resources.</u> Environmental Quality.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES

Employees' street clothing, aprons, <u>gloves</u>, and personal articles shall not be stored in rooms or areas described in Rule .0159(b) of this Section.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0155 SUPPLY STORAGE

Shipping containers, boxes boxes, and other supplies shall be stored in a storage room or area. The storage room or area shall be kept clean.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0159 SEPARATION OF OPERATIONS

(a) Facility design shall provide for continuous flow of raw materials and product to prevent contamination by exposure to areas involved in earlier processing steps, refuse refuse, or other areas subject to contamination.

(b) The following processes shall be carried out in separate rooms or areas:

- (1) Raw <u>raw</u> crustacea receiving or refrigeration. <u>refrigeration;</u>
- (2) Crustacea cooking. crustacea cooking;
- (3) Cooked cooked crustacea air cool. air-cool;
- (4) <u>Cooked</u> <u>cooked</u> crustacea refrigeration. refrigeration;
- (5) Picking. picking;
- (6) Packing. packing;
- (7) <u>Picked picked</u> crustacea meat refrigeration. refrigeration:
- (8) Pasteurizing/thermal processing. pasteurizing or thermal processing:
- (9) Machine picking. <u>machine picking</u>;
- (10) Repacking. repacking; and
- (11) Other other processes when carried out in conjunction with the cooking of crustacea or crustacea meat.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0160 RAW CRUSTACEA RECEIVING AND REFRIGERATION

(a) Only fresh crustacea shall be accepted for processing.

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(b) Within two hours of receipt at the facility, crustacea shall be cooked or placed in a refrigerated area maintaining a temperature of 50° F ($\frac{10}{10^{\circ}}$ C) or below.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION

(a) The cooked crustacea cooler shall be large enough to store all cooked crustacea and maintain a minimum temperature of 40° F (4.4° C). The cooler shall open directly into the picking room or into a clean, enclosed area leading into the picking room.

(b) Cooked crustacea shall be stored at a temperature between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature if not immediately processed. The cooler shall be equipped with an accurate, operating thermometer.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF

A delivery window or a non-corrosive shelf shall be provided between the picking room and packing room or area. The delivery window shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other material approved by the Division <u>of Marine Fisheries</u> and sloped to drain towards the picking room.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0169 FREEZING

(a) If crustacea or crustacea meat is to be frozen, the code date shall be followed by the letter "F." $\,$

(b) Frozen crustacea or crustacea meat shall be stored at a temperature of 0° F (-18° C) or less.

(c) The frozen storage rooms shall be equipped with an accurate, operating thermometer.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0170 SHIPPING

Cooked crustacea and crustacea meat shall be shipped between 33° F (0.5° C) and 40° F (4.4° C). Frozen crustacea products shall be shipped at 0° F (-18° C) or below.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0171 WHOLE CRUSTACEA OR CRUSTACEA PRODUCTS

Whole crustacea, <u>claws</u>, or any other crustacea products shall be prepared, <u>packaged packaged</u>, and labeled in accordance with the rules of this Section.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS

(a) Vehicles used to transport cooked claws shall be mechanically refrigerated, enclosed, tightly constructed, kept <u>clean</u> <u>clean</u>, and equipped with an operating thermometer.

(b) Cooked crab claws shall be stored and transported between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature.

(c) All vehicles shall be approved by the Division <u>of Marine</u> <u>Fisheries</u> prior to use.

(d) Cooked claw shipping containers shall be marked for intended use, <u>cleaned cleaned</u>, and sanitized prior to use and approved by the Division.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0179 RECALL PROCEDURE

Each owner of a cooked crustacea or crustacea meat facility or repacker facility shall keep on file a written product recall procedure. A copy of this recall procedure shall be provided to the Division. Division of Marine Fisheries.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0180 SAMPLING AND TESTING

Samples of cooked crustacea or crustacea meat may be taken and examined by the Division <u>of Marine Fisheries</u> at any time or place. Samples of cooked crustacea or crustacea meat shall be furnished by the owner or operator of facilities, trucks, carriers, stores, restaurants <u>restaurants</u>, and other places where cooked crustacea or crustacea meat are sold.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0188 HAZARD ANALYSIS

Each dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to occur for each kind of crustacea or crustacea meat product processed by that dealer and to identify the preventative measures that the dealer can apply to control those hazards.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0189 HACCP PLAN

Each dealer shall have and implement a written HACCP Hazard Analysis and Critical Control Points (HACCP) Plan. The owner or authorized designee shall sign the plan when implemented and after any modification. The plan shall be reviewed and updated, if necessary, at least annually. The plan shall, at a minimum:

- (1) <u>List list the food safety hazards that are</u> reasonably likely to occur;
- (2) List list the critical control points for each of the food safety hazards;

- List <u>list</u> the critical limits that must be met for each of the critical control points;
- List <u>list</u> the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;
- (5) List list any corrective action plans to be followed in response to deviations from critical limits at critical control points;
- (6) <u>Provide provide</u> a record keeping system that documents critical control point monitoring; and
- (7) <u>List list</u> the verification procedures, and frequency thereof, that the dealer will use.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS

Each dealer shall monitor, at a minimum, the following sanitation items:

- (1) Safety safety of water;
- (2) <u>Condition condition</u> and cleanliness of food contact surfaces;
- (3) **Prevention** prevention of cross contamination;
- (4) <u>Maintenance maintenance</u> of hand washing, hand <u>sanitizing sanitizing</u>, and toilet facilities;
- (5) Protection protection of crustacea or crustacea meat, crustacea or crustacea meat packaging materials materials, and food contact surfaces from adulteration;
- (6) <u>Proper proper</u> labeling, storage storage, and use of toxic compounds;
- (7) <u>Control control</u> of employees with adverse health conditions; and
- (8) <u>Exclusion exclusion</u> of pests from the facility.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0431 STANDARDS FOR AN APPROVED SHELLFISH GROWING AREA

In order that an area be approved for shellfish harvesting for direct market purposes the following criteria must be satisfied as indicated by sanitary survey:

- (1) the shoreline survey has indicated that there is no significant point source contamination;
- (2) the area is not so contaminated with fecal material that consumption of the shellfish might be hazardous;
- (3) the area is not so contaminated with radionuclides or industrial wastes that consumption of the shellfish might be hazardous; and

(4) the median fecal coliform Most Probable Number (MPN) or the geometric mean MPN of water shall not exceed 14 per 100 milliliters, and not more than 10 percent of the samples shall exceed a fecal coliform MPN of 43 per 100 milliliters (per five tube decimal dilution) in those portions of areas most probably exposed to fecal contamination during most unfavorable hydrographic conditions.

Authority G.S. 130A-230.

SECTION .0700 - OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES

15A NCAC 18A .0704 LABORATORY PROCEDURES

(a) The laboratory and the laboratory operator shall be approved by the Division. All laboratory analyses used to evaluate the effectiveness of the depuration process shall be performed by a laboratory found to conform or provisionally conform to the requirements established under the National Shellfish Sanitation Program (NSSP), as determined by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA certified State Shellfish Laboratory Evaluation Officer.

(b) The laboratory shall conduct routine bacterial examinations of process water and shellfish, and special examinations when necessary or required in accordance with Rule. 0706 of this Subchapter.

(c)(b) Bacterial examinations of shellfish and sea water shall be made in accordance with "Recommended Procedures for Examination of Sea Water and Shellfish", American Public Health Association, Inc., which is adopted by reference in accordance with G.S. 150B-14(c), or other methods approved by the Division. A copy of this publication is available for inspection at the Shellfish Sanitation Office, Marine Fisheries Building, Arendell Street, Morehead City, North Carolina 28557. All methods for the analysis of depuration process water and shellfish that are used to evaluate the effectiveness of the depuration process shall be cited in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests or validated for use by the NSSP under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation Conference. If there is an immediate or ongoing critical need for a method and no method approved for use within the NSSP exists, the following may be used:

- (1) <u>a validated Association of Analytical</u> <u>Communities, Bacteriological Analysis</u> <u>Manual, or Environmental Protection Agency</u> <u>method; or</u>
- (2) an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish.

(c) The laboratory shall conduct examinations of depuration process water and shellfish and conduct special examinations if necessary or required, in accordance with Rules .0706 through .0709 of this Section.

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(d) All other physical, chemical, or biological tests shall be conducted according to "Standard Methods for the Examination of Water and Waste Water", prepared and published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation, which is adopted by reference in accordance with G.S. 150B 14(c), or other methods approved by the Division. A copy of this publication is available for inspection at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901 DEFINITIONS

The following definitions shall apply throughout this Section.

- (1) <u>"Approved area"</u> <u>"Approved"</u> means an area <u>shellfish growing waters</u> determined suitable for the harvesting of shellfish for direct market purposes.
- (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries or any other area with restricted tidal flow.
- (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as determined by a plate count.
- (3)(4) "Commercial marina" means marinas a marina that offer offers one or more of the following services: fuel, transient dockage, haul-out facilities, or repair services.
- (4)(5) "Conditionally approved area" approved" means an area shellfish growing waters that are subject to predictable intermittent pollution but that may be used for harvesting shellfish for direct market purposes when management plan criteria are met.
- (5) "Depuration" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled method.
- (6) "Division" means the Division of Environmental Health Marine Fisheries or its authorized agent.
- (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall be calculated by:
 - (a) calculating the arithmetic mean and standard deviation of the sample result logarithms (base 10);
 - (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
 - (c) <u>adding the product from Sub-Item (b)</u> of this Item to the arithmetic mean; and
 - (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the estimated 90th percentile.

- (7)(8) "Fecal coliform" means bacteria of the coliform group which that will produce gas from lactose in a multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5°C plus or minus 0.2°C in a water bath.
- (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- (8) "Growing waters" means waters which support or could support shellfish life.
- (9)(10) "Marina" means any water area with a structure (dock, basin, floating dock, etc.) which that is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than 10 boats.
- (10)(11) "Marine biotoxins" means a poisonous substance accumulated by shellfish feeding upon dinoflagellates containing toxins. any poisonous compound produced by marine microorganisms and accumulated by shellstock.
- (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the two middle numbers when the sequence has an even number of numbers.
- (11)(13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-stateindustry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (12)(15) "Open-system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- (13)(16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- (14)(17) "Prohibited area" "Prohibited" means an area shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.
- (15)(18) "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.
- (16) "Relaying" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.
- (17)(19) "Restricted area" "Restricted" means an area shellfish growing waters from which shellfish may be harvested only by permit and are subjected to an approved depuration process or

relayed to an approved area. <u>a suitable and</u> <u>effective treatment process through relaying or</u> <u>depuration.</u>

- (18)(20) "Sanitary survey" means the <u>written</u> evaluation of factors that affect the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (19)(21) "Shellfish" means oysters, mussels, scallops and all varieties of clams. However "shellfish" as defined in G.S. 113-229, except the term shall not include scallops when the final product is the shucked adductor muscle only.
- (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey and that is used to track the location where shellfish are harvested.
- (23) <u>"Shellfish growing waters" means marine or</u> estuarine waters that support or could support shellfish life.
- (24) <u>"Shellstock" means live molluscan shellfish in</u> <u>the shell.</u>
- (20)(25) "Shoreline survey" means a visual inspection of the environmental factors that affect the sanitary quality of a growing area and identifies sources of pollution when possible. an in-field inspection to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area.
- (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution and scheduled sufficiently far in advance to support random collection with respect to environmental conditions.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0902 CLASSIFICATION OF SHELLFISH GROWING WATERS

(a) All actual and potential shellfish growing areas waters shall be classified by the Division of Marine Fisheries as to their suitability for shellfish harvesting. Growing Shellfish growing waters shall be designated with one of the following classifications:

- (1) Approved area, approved;
- (2) Conditionally approved area, conditionally approved;
- (3) Restricted area, restricted; or
- (4) **Prohibited area.** prohibited.

(b) Maps showing the boundaries and classification of shellfish growing areas waters shall be maintained by the Division.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0903 SANITARY SURVEY

(a) Growing Shellfish growing waters shall be divided into growing areas by the Division. Division of Marine Fisheries. Maps showing the boundaries of these shellfish growing areas shall be maintained by the Division and can be found at: http://portal.ncdenr.org/web/mf/shellfish-closure-maps.

(b) Except in shellfish growing areas where all shellfish growing waters are classified as prohibited, the Division shall complete a A sanitary survey report shall be conducted for each shellfish growing area at least once every three years years. except growing areas that are totally prohibited, and

(c) A sanitary survey report shall include the following:

- (1) A a shoreline <u>survey</u>. survey to evaluate pollution sources that may affect the area.
- (2) A hydrographic survey to evaluate meteorological and hydrographic an evaluation of meteorological, hydrodynamic, and geographic factors that may affect distribution of pollutants.
- a bacteriological microbiological survey to (3) assess water quality. A bacteriological microbiological survey shall include the collection of growing area water samples and their analysis for fecal coliforms. The number and location of sampling stations shall be selected to produce the data necessary to effectively evaluate all point and non-point pollution sources. sources identified during the shoreline survey. A minimum of 15 six samples shall be collected annually from each designated sampling station. sets of samples shall be collected from growing areas during the three year evaluation period. Areas without a shoreline may be sampled less frequently.
- (4) <u>a determination of the appropriate classification</u> for all shellfish growing waters within the shellfish growing area in accordance with Rule .0902 of this Section.

(d) A written sanitary survey report shall be required to designate any portion of a shellfish growing area with a classification other than prohibited, or for a reclassification from:

- (1) prohibited to any other classification;
- (2) restricted to conditionally approved or approved; or
- (3) conditionally approved to approved.

All other reclassifications may be made without a sanitary survey. (e) In each calendar year that a shellfish growing area is not evaluated with a sanitary survey, a written annual evaluation report shall be completed by the Division and shall include the following:

- (1) <u>a microbiological survey to assess water quality</u> as set forth in Subparagraph (c)(3) of this Rule.
 - (2) an evaluation of changes in pollution source impacts that may affect the classifications of the shellfish growing area.

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If the annual evaluation determines conditions have changed and a classification for shellfish growing waters is incorrect, the Division shall initiate action to reclassify the shellfish growing waters in accordance with Rule .0902 of this Section.

(c) Sanitary survey reports shall be prepared every three years. (d)(f) All sanitary Sanitary survey reports and annual evaluation reports shall be maintained by the Division.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0904 APPROVED AREAS WATERS

An area Shellfish growing waters classified as approved for shellfish harvesting for direct market purposes, must satisfy shall meet the following criteria as indicated by a sanitary survey; survey, as set forth in Rule .0903 of this Section:

- (1) the shoreline survey has indicated that there is no significant point source contamination; indicates there are no significant point sources of pollution;
- (2) the area is not contaminated with fecal material, pathogenic microorganisms, poisonous and <u>or</u> deleterious substances, or marine biotoxins that may render consumption of the shellfish hazardous; <u>and</u>
- (3) the median fecal coliform Most Probable Number (MPN) or the geometric mean MPN of water shall not exceed 14 per 100 milliliters, and not more than ten percent of the samples shall exceed a fecal coliform MPN of 43 per 100 milliliters (per five tube decimal dilution) in those portions of areas most probably exposed to fecal contamination during adverse pollution conditions.
- (3) the microbiological survey, as set forth in Rule .0903 (b)(3) of this Section, indicates the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:
 - (a) <u>a median fecal coliform most probable</u> <u>number (MPN) or geometric mean</u> <u>MPN of 14 per 100 milliliters;</u>
 - (b) <u>a median fecal coliform colony-</u> forming units (CFU) or geometric mean CFU of 14 per 100 milliliters;
 - (c) an estimated 90th percentile of 43 MPN per 100 milliliters for a five-tube decimal dilution test; or
 - (d) an estimated 90th percentile of 31 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0905 CONDITIONALLY APPROVED AREAS WATERS

(a) <u>An area Shellfish growing waters</u> may be classified as conditionally approved if <u>the Division of Marine Fisheries</u> <u>determines the following:</u>

- (1) the sanitary survey indicates the area shellfish growing waters will not meet the approved area waters classification criteria as set forth in Rule .0904 of this Section under all conditions, for a reasonable period of time and the factors determining these periods are known and predictable. but will meet those criteria under certain conditions;
- (2) <u>the conditions when the shellfish growing</u> waters will meet the approved waters classification criteria are known and predictable:
- (3) the public bottom within those shellfish growing waters support a population of harvestable shellfish; and
- (4) <u>staff are available to carry out the requirements</u> <u>defined in the management plan, as set forth in</u> <u>Paragraph (b) of this Rule.</u>

(b) A written management plan shall be developed by the Division for conditionally approved areas. This plan shall define the conditions under which the shellfish growing waters may be open to the harvest of shellfish. If the conditions defined in the management plan are not met, the Division shall immediately close the shellfish growing waters to shellfish harvesting.

(c) When management plan criteria are met the Division may recommend to the Division of Marine Fisheries the area may be opened to shellfish harvesting on a temporary basis.

(d) When management plan criteria are no longer met or public health appears to be jeopardized, the Division will recommend to the Division of Marine Fisheries immediate closure of the area to shellfish harvesting.

(c) All conditionally approved growing waters shall be reevaluated on an annual basis. A written report summarizing this re-evaluation shall be produced and shall include the following:

- (1) <u>an evaluation of compliance with management</u> <u>plan criteria;</u>
- (2) <u>a review of the cooperation of all persons</u> involved;
- (3) an evaluation of bacteriological water quality in the growing waters with respect to the standards for the classification; and
- (4) <u>an evaluation of critical pollution sources.</u>

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0906 RESTRICTED AREAS

(a) <u>An area Shellfish growing waters</u> may be classified as restricted <u>restricted if</u>: when a sanitary survey indicates a limited degree of pollution and the area is not contaminated to the extent that indicates that consumption of shellfish could be hazardous after controlled depuration or relaying.

(1) <u>a sanitary survey indicates there are no</u> <u>significant point sources of pollution.</u> (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels that shellstock can be made safe for human consumption by either relaying or depuration.

(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC

18A, 18A .0300. Rules Governing the Sanitation of Shellfish.

(c) Depuration of shellfish shall be conducted in accordance with <u>all applicable rules, including 15A NCAC 03K and</u> 15A NCAC 18A, <u>18A .0300 and .0700.</u> Rules Governing the Sanitation of Shellfish.

(d) For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the microbiological survey, as set forth in Rule .0903 (b)(3) of this Section, indicates the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:

- (1) <u>a median fecal coliform most probable number</u> (MPN) or geometric mean MPN of 88 per 100 <u>milliliters;</u>
- (2) <u>a median fecal coliform colony-forming units</u> (CFU) or geometric mean CFU of 88 per 100 <u>milliliters;</u>
- (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
- (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0907 PROHIBITED AREAS WATERS

A growing area shall be classified prohibited if there is no current sanitary survey or if the sanitary survey or other monitoring program data indicate that the area does not meet the criteria as specified in approved, conditionally approved or restricted classifications. The taking of shellfish for any human food purposes from such areas shall be prohibited.

Shellfish growing waters shall be classified as prohibited if:

- (1) no current sanitary survey, as set forth in Rule .0903 of this Section, exists for the growing area; or
- (2) the sanitary survey determines:
 - (a) the shellfish growing waters are adjacent to a sewage treatment plant outfall or other point source outfall with public health significance.
 - (b) the shellfish growing waters are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render consumption of shellfish from those growing waters hazardous.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0908 UNSURVEYED AREAS

Growing areas which have not been subjected to a sanitary survey shall be classified as prohibited.

Authority G.S. 130A-230.

15A NCAC 18A .0909 BUFFER ZONE ZONES

A prohibited area shall be established as a buffer zone around each wastewater treatment plant outfall.

(a) The Division of Marine Fisheries shall establish a buffer zone around the following:

- (1) marinas, in accordance with Rule .0911 of this Section.
- (2) wastewater treatment plant outfalls or other point source outfalls determined to be of public health significance, in accordance with the latest approved edition of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance, Chapter IV: Shellstock Growing Areas.
- (b) Buffer zones shall be classified as prohibited.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0910 RECLASSIFICATION

(a) Any upward revision of an area classification shall be supported by a sanitary survey and documented in the sanitary survey report.

(b) A downward revision of an area classification may be made without a sanitary survey.

(c) When growing waters are reclassified, appropriate recommendations shall be made to the Division of Marine Fisheries regarding the opening and closure of the waters for the harvest of shellfish for human consumption.

Authority G.S. 130A-230.

15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY (a) The Division <u>of Marine Fisheries</u> shall recommend to the Division of Marine Fisheries immediate closure of immediately close any potentially impacted shellfish growing waters to the harvesting of shellfish in the event of a public health emergency. (b) The Division shall recommend to the Division of Marine Fisheries re opening may re-open shellfish growing waters when <u>if</u> the condition causing the public health emergency no longer exists and shellfish have had sufficient time to purify naturally from possible contamination.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0914 LABORATORY PROCEDURES All laboratory examinations for water and shellfish used for the evaluation of growing areas shall be made in accordance with the latest approved edition by the Food and Drug Administration of "Recommended Procedures for Examination of Sea Water and Shellfish", American Public Health Association, Inc., which is adopted by reference in accordance with G.S. 150B-14(c). A copy of this publication is available for inspection at the Shellfish Sanitation Office, Marine Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.

(a) All laboratory analyses used for the evaluation of shellfish growing areas shall be performed by a laboratory found to conform or provisionally conform to the requirements established under the National Shellfish Sanitation Program (NSSP), as determined by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA certified State Shellfish Laboratory Evaluation Officer.

(b) All methods for the analysis of shellfish and shellfish growing waters that are used for the evaluation of shellfish growing areas shall be cited in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests or validated for use by the NSSP under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation Conference. If there is an immediate or ongoing critical need for a method and no method approved for use within the NSSP exists, the following may be used:

- (1)a validated Association of Analytical Communities, Bacteriological Analysis Manual, or Environmental Protection Agency method; or
- (2)an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish.

Authority G.S. 130A 230; 113-134; 113-182; 113-221.2; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g, that the Wildlife Resources Commission intends to readopt with substantive changes the rules cited as 15A NCAC 10B.0409; and 10H.1201-.1207.

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.ncwildlife.org/Proposed-Regulations

Proposed Effective Date: February 1, 2021

Public Hearing:

Date: October 29, 2020 **Time:** 6:00 pm **Location:** *Please follow this link to register for the webinar:* https://ncwildlife.zoom.us/webinar/register/WN_v9T879ApQzK DtMp2wm7XKw or join by telephone: 877 853 5247 (Toll Free) or 888 788 0099 (Toll Free) Webinar ID: 970 1200 3770

Reason for Proposed Action: The rules in 15A NCAC 10H .1200 were part of the agency's 2016 periodic review of rules package. All rules in this Section were determined to be necessary with substantive public interest and require readoption. Because

these rules have only been amended once since 1990, revisions were necessary to update language, clarify requirements and improve regulatory oversight.

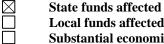
Because of the proposed changes to the 10H .1200 rules, 15A NCAC 10B .0409 needed to be updated to align the requirements for trappers to those for fox preserve owners.

Comments may be submitted to: *Rule-making Coordinator,* 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org

Comment period ends: November 30, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.



 \boxtimes

Local funds affected

Substantial economic impact (>= \$1,000,000)

Approved by OSBM No fiscal note required

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0400 - TAGGING FURS

15A NCAC 10B .0409 SALE OF LIVE FOXES AND COYOTES TO CONTROLLED FOX HUNTING PRESERVES

(a) In counties with a trapping season for foxes and coyotes that do not prohibit live sale, Licensed licensed trappers may, subject to the restrictions on taking foxes in G.S. 113-291.4, live-trap foxes and coyotes during any open trapping that season for foxes and covotes, and sell them to licensed controlled fox hunting preserves in accordance with the following conditions: conditions set forth in this Rule.

(1)(b) Licensed trappers are exempt from caging, captivity permit or and captivity license requirements set forth in 15A NCAC 10H .0300 for any live-trapped foxes or coyotes trapped for the purpose of sale to controlled fox hunting preserves. This

	15A NCAC 030	0.0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM
3		0.0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES
4		AND FRANCHISES <mark>-AND-WATER COLUMN LEASES</mark>
5	(a) All areas of	f the public bottom underlying Coastal Fishing Waters shall meet the following standards and
6	requirements, in	addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish
7	cultivation aquae	<mark>culture </mark> purposes:
8	(1)	the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-
9		201.1, or have 10 bushels or more of shellfish per acre;
10	(2)	the proposed shellfish lease area shall not be closer than 100-250 feet to from a developed shoreline,
11		shoreline or a water-dependent shore-based structure, except no minimum setback is required when
12		the area to be leased borders the applicant's property, the property of "riparian owners" as defined
13		in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by
14		undeveloped shoreline; and shoreline. For the purposes of this Rule, a water-dependent shore-based
15		structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;
16	(3)	the proposed shellfish lease area shall not be closer than 250 feet to an existing [shellfish] lease:
17	<u>(4)</u>	the proposed shellfish lease area, either alone or when considered cumulatively with existing
18		[shellfish] leases in the area, shall not interfere with navigation or with existing, traditional uses of
19		the area; and
20	(3)<u>(5)</u>	the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.
21	(b) To be suitab	le for leasing for <u>shellfish</u> aquaculture purposes, <u>shellfish</u> water columns <u>co</u>lumn leases superjacent
22	to <mark>leased <u>a</u> shell</mark>	<mark>fish </mark> bottom <u>lease</u> shall meet the standards in G.S. 113-202.1 and <u>shellfish</u> water columns_column
23	leases superjace	nt to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2.
24	(c) Franchises r	ecognized pursuant to G.S. 113-206 and shellfish bottom leases shall be terminated unless they meet
25	the following rec	quirements, in addition to the standards in and as allowed by G.S. 113-202:
26	(1)	they produce and market 10 bushels of shellfish per acre per year; and
27	(2)	they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre
28		per year, or a combination of cultch and seed shellfish where the percentage of required cultch
29		planted and the percentage of required seed shellfish planted totals at least 100 percent.
30	(d) Water Shellf	ish water column leases shall be terminated unless they meet the following requirements, in addition
31	to the standards	in and as allowed by G.S. 113-202.1 and 113-202.2:
32	(1)	they produce and market 40 bushels of shellfish per acre per year; or
33	(2)	the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.
34	(e) The following	ng standards shall be applied to determine compliance with Paragraphs (c) and (d) of this Rule:
35	(1)	Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing
36		activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and

15A NCAC 03O .0201 is readopted with changes as published in 35:07 NCR 761-762 as follows:

1		franchises," or "shellfish production on leases and franchises" shall be included in the shellfish lease
2		and franchise reports required by Rule .0207 of this Section.
3	(2)	If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases
4		or franchises used in the production of the shellfish shall be designated as the producing lease or
5		franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease
6		or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as
7		planting effort on only one lease or franchise.
8	(3)	Production and marketing information and planting effort information shall be compiled and
9		averaged separately to assess compliance with the requirements of this Rule. The shellfish lease or
10		franchise shall meet both the production requirement and the planting effort requirement within the
11		dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for shellfish bottom
12		leases. The shellfish lease or franchise shall meet either the production requirement or the planting
13		effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in
14		compliance for shellfish water column leases.
15	(4)	All bushel measurements shall be in standard U.S. bushels.
16	(5)	In determining production and marketing averages and planting effort averages for information not
17		reported in bushel measurements, the following conversion factors shall be used:
18		(A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
19		(B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds
20		of fossil stone equal one bushel.
21	(6)	Production and marketing rate averages shall be computed irrespective of transfer of the shellfish
22		lease or franchise. The production and marketing rates shall be averaged for the following situations
23		using the time periods described:
24		(A) for an initial <u>shellfish</u> bottom lease or franchise, over the consecutive full calendar years
25		remaining on the bottom lease or franchise contract after December 31 following the
26		second anniversary of the initial bottom lease or franchise;
27		(B) for a renewal <u>shellfish</u> bottom lease or franchise, over the consecutive full calendar years
28		beginning January 1 of the final year of the previous bottom lease or franchise term and
29		ending December 31 of the final year of the current bottom lease or franchise contract;
30		(C) for a shellfish water column lease, over the first five-year period for an initial water column
31		lease and over the most recent five-year period thereafter for a renewal water column lease;
32		or
33		(D) for a <u>shellfish</u> bottom lease or franchise issued an extension period under Rule .0208 of
34		this Section, over the most recent five-year period.
35	(7)	In the event that a portion of an existing shellfish lease or franchise is obtained by a new owner, the
36		production history for the portion obtained shall be a percentage of the originating lease or franchise

1		production equal to the percentage of the area of lease or franchise site obtained to the area of the
2		originating lease or franchise.
3	(f) Persons ho	lding five or more acres under all shellfish bottom leases and franchises combined shall meet the
4	requirements es	tablished in Paragraph (c) of this Rule before submitting an application for additional shellfish lease
5	acreage to the D	Division of Marine Fisheries.
6		
7	History Note:	Authority G.S. 113-134; <u>113-182;</u> 113-201; 113-202; 113-202.1; 113-202.2; 113-206;
8		<i>143B-289.52;</i>
9		Eff. January 1, 1991;
10		Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;
11		Temporary Amendment Eff. October 1, 2001;
12		Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;
13		<u>Readopted Eff. May 1, 2021.</u>

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15A NCAC 03O .0202 is readopted with changes as published in 35:07 NCR 762-763 as follows:

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15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

- 4 (a) Application forms are available from the Division's office headquarters at Division of Marine Fisheries, 3441
- 5 Arendell Street, Morehead City, NC 28557 for persons desiring to apply for <u>a</u>shellfish bottom and water column
- 6 leases. lease. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including
- 7 an inset vicinity map showing the location of the proposed <u>shellfish</u> lease with detail sufficient to permit on-site
- 8 identification and <u>must-shall</u> meet the information requirements pursuant to G.S. 113-202(d).
- 9 (b) As a part of the application, the applicant shall submit a management plan Shellfish Lease Management Plan for
- 10 the area to be leased for shellfish aquaculture purposes on a form provided by the Division which meets the following
- 11 standards:that shall:
- 12 (1) States state the methods through which the applicant will cultivate and produce shellfish consistent
 13 with the minimum requirements set forth in 15A NCAC 03O .0201; in accordance with Rule .0201
 14 of this Section;
- 15 (2) States state the time intervals during which various phases of the cultivation and production plan
 will be achieved;
- 17 (3) States state the materials and techniques that will be utilized in management of the shellfish lease;
- 18 (4) Forecasts forecast the results expected to be achieved by the management Shellfish Lease
 19 Management Plan activities; and
- 20
 (5)
 Describes describe the productivity of any other shellfish leases or franchises held by the

 21
 applicant.applicant; and
 - (6) state the locations of each corner defining the area to be leased with no more than eight corners.
- (c) The completed application, map or diagram, and management plan Shellfish Lease Management Plan for the requested shellfish lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.
- (d) Applicants and transferees not currently holding a shellfish eultivation-lease, and applicants and transferees
 holding one or more shellfish eultivation-leases which are not meeting production requirements, shall complete and
- 29 submit an examination, with a minimum of 70 percent correct answers, based on an educational package the Shellfish
- 30 Aquaculture Education Program provided by the Division of Marine Fisheries. Division. The examination Shellfish
- 31 Aquaculture Education Program shall demonstrate the applicant's knowledge of: provide the applicant information on
- 32 shellfish aquaculture including:
- 33 (1) the shellfish lease application process;
- 34 (2) shellfish lease planting and production requirements;
- 35 (3) lease marking requirements;
- 36 (4) lease fees;
- 37 (5) shellfish harvest area closures due to pollution;

1	(6)	safe handling practices;
2	(7)	lease contracts and renewals;
3	(8)	lease termination criteria; and
4	(9)	-shellfish cultivation techniques.
5	(1)	shellfish lease application process:
6	<u>(2)</u>	shellfish lease requirements and techniques;
7	(3)	shellfish sanitation and National Shellfish Sanitation Program requirements;
8	(4)	shellfish harvest requirements;
9	(5)	aquaculture permits;
10	(6)	best management practices; and
11	(7)	shellfish lease user conflict avoidance.
12	(e) After an app	lication is deemed to have met all requirements and is accepted by the Division, the applicant shall
13	<mark>identify <u>mark</u>th</mark>	e area for which a shellfish lease is requested with stakes at each corner in accordance with 15A
14	NCAC 030 .02	04(a)(1)(A). <u>Rule .0204(a)(1)(A) of this Section.</u> The applicant shall attach to each stake a sign,
15	provided by the	Division containing the name of the applicant, the date the application was filed, and the estimated
16	acres. <u>The appli</u>	cant shall be responsible for ensuring the sign remains in place until the shellfish lease application
17	process is comp	eted.
18		
19	History Note:	Authority G.S. 113-134; <u>113-182;</u> 113-201; 113-202; 143B-289.52;
20		Eff. January 1, 1991;
21		Amended Eff. April 1, 2011; September 1, 2005; May 1, 1997; September 1, 1991;
22		<u>Readopted Eff. May 1, 2021.</u>

1 2 15A NCAC 03O .0204 is readopted with changes as published in 35:07 NCR 763-764 as follows:

3 15A NCAC 03O .0204 MARKING SHELLFISH LEASES AND [WATER COLUMN LEASES AND] 4 FRANCHISES

5	(a) All shellfish	bottom le	cases, franchises, and water column leases <mark>and franchises</mark> shall be marked <u>by the leaseholder</u>
6	or franchise holder as follows:		
7	(1)	(1) Shellfish bottom leases and franchises shall be marked by:	
8		(A)	Stakes stakes of wood or plastic material at least three inches in diameter no less than three
9			inches in diameter and no more than 12 inches in diameter at the water level-mean high
10			water mark and extending at least four feet above the mean high water mark mark for each
11			corner, except stakes more than 12 inches in diameter approved as part of a Coastal Area
12			Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 shall
13			be allowed. The stakes shall be firmly jetted or driven into the bottom at each corner.corner
14			as set forth in Rule .0202(b)(6) of this Section.
15		(B)	Signs signs displaying the number of the shellfish lease or franchise and the name of the
16			owner printed in letters at least three inches high must be firmly attached to each corner
17			stake.
18		<u>(C)</u>	yellow light reflective tape or yellow light reflective devices on each corner stake. The
19			yellow light reflective tape or yellow light reflective devices shall be affixed to each corner
20			stake, shall cover a vertical distance of not less than 12 inches, and shall be visible from all
21			directions.
22		(<u>C)(D)</u>	Supplementary supplementary stakes of wood or plastic material, material no less than
23			three inches in diameter and no more than four inches in diameter, not farther apart than
24			50 yards 150 feet or closer together than 50 feet and extending at least four feet above the
25			mean high water mark, must shall be placed along each boundary, except when such would
26			interfere if doing so interferes with the use of traditional navigation channels.
27	(2)	Water S	Shellfish water column leases shall be marked by anchoring two yellow buoys, meeting the
28		materia	l and minimum size requirements specified in 15A NCAC 3J .0103(b) at each corner of the
29		area or	by larger buoys, posts and by signs giving notice and providing caution in addition to the
30		required	<u>1</u> signs as identified and approved by the Secretary in the Management Plan.[management
31		<mark>plan.]<u>Sl</u></mark>	nellfish Lease Management Plan as set forth in Rule .0202 of this Section.
32	(b) Stakes mark	ting areas	of management within shellfish bottom leases or franchises, as approved in the management
33	plan, <u>Shellfish L</u>	Lease Man	nagement Plan, must shall conform to Subparagraph (a)(1)(C) Part (a)(1)(D) of this Rule and
34	may not exceed one for each 1,200 square feet. Marking at concentrations of stakes greater than one for each 1,200		
35	square feet constitutes use of the water column and a shellfish water column lease is required in accordance with G.S.		

36 113-202.1 or G.S. 113-202.2.

1	(c) All areas cla	imed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the	
2	county clerk of c	court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be	
3	marked in accord	dance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather	
4	than the number	of the shellfish lease. However, claimed areas not being managed and cultivated shall not be marked.	
5	(d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary		
6	pursuant to Depa	artmental Rule 15A NCAC 1G .0207 that a G.S. 113-205 claim to a marked area has been denied.	
7	(e)(d) It is shall	be unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable	
8	waters on shellfish leases and franchises including, but not limited to, fishing, hunting, swimming, wading wading.		
9	and navigation.		
10	(f)(e) The Divis	ion has no duty to protect any shellfish bottom lease, franchise, or water column lease <u>or franchise</u>	
11	not marked in accordance with Paragraph (a) of this Rule.		
12			
13	History Note:	Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205;	
14		<i>143B-289.52;</i>	
15		Eff. January 1, 1991;	
16		Amended Eff. September 1, 1997; March 1, 1994; October 1, 1992; September 1, 1991;	
17		<u>Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).</u>	

MARINE FISHERIES COMMISSION SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES DIVISION OF MARINE FISHERIES WEBEX ONLINE HEARING OCT. 21, 2020, 6 PM

Marine Fisheries Commission:	Robert McNeill
Division of Marine Fisheries Staff:	Catherine Blum, Jacob Boyd, Jordan Byrum, David Dietz, Dana Gillikin, Charlton Godwin, Andy Haines, Shannon Jenkins, Tina Moore, Shawn Nelson, Jason Peters, Chris Stewart, Katy West, Valerie Wunderly
Wildlife Resources Commission Staff:	Christopher Bova, Carrie Ruhlman
Public:	None
Media:	None

Marine Fisheries Commissioner Robert McNeill, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission proposed rules at 6 p.m. No one from the public or media was in attendance. Two members of the Wildlife Resources Commission staff were in attendance; however, they stated they were in attendance to listen to public comments, not to provide comments. Seeing no one to provide comments on the proposed rules, Commissioner McNeill closed the hearing at 6:10 p.m.

/cb

MARINE FISHERIES COMMISSION SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES DIVISION OF MARINE FISHERIES WEBEX ONLINE HEARING OCT. 27, 2020, 6 PM

Marine Fisheries Commission:	Sam Romano
Division of Marine Fisheries Staff:	Catherine Blum, Jacob Boyd, Jordan Byrum, David Dietz, Dana Gillikin, Andy Haines, Shannon Jenkins, Tina Moore, Shawn Nelson, Jason Peters, Jason Rock, Chris Stewart, Katy West, Valerie Wunderly
Public:	Sandi Fisher
Media:	None

Marine Fisheries Commissioner Sam Romano, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission (MFC) proposed rules at 6 p.m. One member of the public was in attendance.

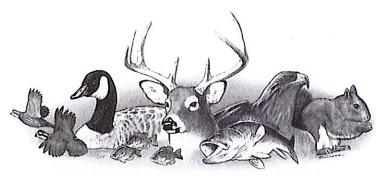
Commissioner Romano explained there are 50 rules proposed by the MFC and the proposed effective date of the rule package is April 1, 2021. He said public comments on the proposed rules will be presented to the MFC at its Feb. 17-19, 2021 meeting prior to its vote on final approval of the rules. He reviewed guidelines of the public hearing process and explained the hearing is a formal process to receive public comments only about the proposed rules as published in the *N.C. Register*.

Division staff member Catherine Blum reviewed the proposed rules by explaining the reason for proposed action as published in Volume 35, Issue 07 of the *N.C. Register*. She said the proposed effective date of the rules is April 1, 2021, except for 15A NCAC 03O .0204 and 03Q .0107, which are automatically subject to legislative review per Session Law 2019-198. She said the comment period ends Nov. 30, 2020 and comments may be submitted by U.S. Mail or by online form available on the division's website.

Commissioner Romano opened the floor for the public to provide comments.

Sandi Fisher, a property owner in New Hanover County, said she is confused about how the proposed shellfish lease user conflict rules will help what she has encountered in the Myrtle Grove Sound area. She said the training class is a good idea, but there is a lack of information on proposed shellfish leases; she saw small white sticks appear in the water in the middle of winter and even after paddling up to them in her kayak she was not sure what their purpose was. Mrs. Fisher recommended an information program closer to what the Division of Coastal Management has so riparian owners are more informed about what is proposed. She was not aware of the configuration, bottom survey, and other information about this proposed shellfish lease until an administrative hearing occurred, which is an expensive way for everyone involved to proceed. She said much more transparency is needed at the early stages of what is being proposed. Mrs. Fisher said shellfish leases cause a reduction in housing value even though viewshed is not considered a proper objection; decreased housing value is a valid concern, especially near narrow waterways where a large portion of the view contains materials from the lease.

Hearing no further comments on the proposed rules, Commissioner Romano closed the hearing at 6:15 p.m. Division staff stayed online after the hearing to address questions Mrs. Fisher had about the shellfish lease program and share information about the new online shellfish aquaculture tool.



Resources Commission

Cameron Ingram, Executive Director

November 20, 2020

Catherine Blum Rulemaking Coordinator N.C. Division of Marine Fisheries P.O. Box 769 Morehead City, NC 28557 catherine.blum@ncdenr.gov

RE: Comments on Division of Marine Fisheries Joint Fishing Water Rules (15A NCAC 03Q .0100)

The Wildlife Resources Commission (WRC) respectfully submits the following comments on the Division of Marine Fisheries (DMF) Joint Fishing Water Rules, formally proposed by the Marine Fisheries Commission (MFC) on August 20, 2020 and noticed in the N.C. Register on October 1, 2020.

15A NCAC 03Q .0101 Scope and Purpose

This rule states that all rules in Section 03Q .0100 are adopted jointly by the MFC and WRC. As such, we believe that readoption of these rules will require a vote from both boards prior to completion of the rule-making process. While the WRC does not oppose the MFC noticing these unchanged rules, we would appreciate the chance to discuss potential updates to these 30-year old rules and the DMF's plan to ensure joint readoption prior to final approval.

15A NCAC 03Q .0102 Inland Fishing Waters

Per G.S. 150B-19(4), an agency may not adopt a rule that repeats the content of a law, a rule, or a federal regulation. The first sentence of this rule re-states the statutory definition of coastal fishing waters and should be revised to reference G.S. 113-129.

15A NCAC 03Q .0103 Coastal Fishing Waters

Per G.S. 150B-19(4), an agency may not adopt a rule that repeats the content of a law, a rule, or a federal regulation. The first sentence of this rule re-states the statutory definition of coastal fishing waters and should be revised to reference G.S. 113-129. Additionally, the list of inland game fish is outdated. This sentence should be revised to either list current species or reference Rule 15A NCAC 10C .0301 Inland Game Fishes Designated.

15A NCAC 03Q .0105 Posting Dividing Lines

While posting dividing lines was historically the preferred and most accurate method for differentiating the classifications on the water, this is likely no longer the most accurate means of communicating this information to the public. We believe, at a minimum, this rule should be updated to reference the

descriptive boundaries of Coastal-Joint-Inland Waters, currently in Rule 03Q .0202, and direct the public to online maps for more accurate and dependable information. However, we also believe the descriptive boundaries of Coastal-Joint-Inland Waters should be moved to this rule or another joint rule within this Section, to ensure mutual agreement on the dividing lines through joint rulemaking in the future.

15A NCAC 03Q .0106 Applicability of Regulations: Joint Waters

Subparagraph (b)(2) of this Rule is inaccurate, as it does not account for the Coastal Recreational Fishing License (CRFL). Since 2007, either an inland fishing license or CRFL has been acceptable licensure for hook-and-line fishing in joint waters. Additionally, as license requirements are specified in statute, we recommend removing them from this rule.

Subparagraph (b)(3) does not accurately describe how regulations are implemented and enforced on the water. Over time, the premise from which this rule was written has changed, as has the application. Amendments are needed to make requirements of this rule reflect expectations of implementation on the water. These amendments should be determined based on discussion and agreement between the DMF and the WRC. Prior to readoption, the WRC would welcome a discussion on amendments to this rule.

General

The names of both DMF and WRC enforcement officers are inconsistent throughout these rules. Please update all rules to use the phrase "wildlife officers" when referencing WRC enforcement.

The WRC intends to modify the joint rules in Section 10C .0100 to address the issues mentioned above and incorporate technical changes to ensure compliance with current Administrative Procedure Act requirements. We would be happy to share those proposed amendments with the DMF and would welcome the opportunity to collaborate on changes to ensure consistency between joint fishing water rules in both sections of the N.C. Administrative Code prior to readoption.

We look forward to working with you and thank you for the opportunity to comment on these proposed rules. If you have any questions, please contact me at 919-707-0011 or <u>carrie.ruhlman@ncwildlife.org</u>.

Regards,

el.

Carrie Ruhlman Rulemaking Coordinator N.C. Wildlife Resources Commission

N.C. Marine Fisheries Commission 2021-2022 Annual Rulemaking Cycle Package A

	February 2021
Time of Year	Action
November 2020	MFC votes on preferred management options
Nov. 2020-Jan. 2021	DMF staff drafts proposed rule options
February 2021	MFC votes on preferred option for proposed rule text
February-April 2021	Fiscal analysis of rules prepared by DMF staff and
	approved by Office of State Budget and Management
May 2021	MFC approves Notice of Text for Rulemaking
August 2021	Publication of proposed rules in the North Carolina
	Register
August-October 2021	Public comment period held
August 2021	Public hearing(s) held (details to be determined)
November 2021	MFC considers approval of permanent rules *
January 2022	Rules reviewed by Office of Administrative Hearings/
	Rules Review Commission
April 1, 2022 or	Proposed effective date of rules unless rules are subject
TBD	to legislative review per S.L. 2019-198 and G.S. 14-4.1.
April 1, 2022	Rulebook supplement available online
April 15, 2022	Commercial license sales begin

* 15A NCAC 03 readoption deadline of June 30, 2022 for final MFC approval

N.C. Marine Fisheries Commission 2021-2022 Annual Rulemaking Cycle Package B

	February 2021
Time of Year	Action
November 2020	MFC votes on preferred management options
Nov. 2020-Jan. 2021	DMF staff drafts proposed rule options
February 2021	MFC votes on preferred option for proposed rule text
February-July 2021	Fiscal analysis of rules prepared by DMF staff and
	approved by Office of State Budget and Management
August 2021	MFC approves Notice of Text for Rulemaking
October 2021	Publication of proposed rules in the North Carolina
	Register
October-November	Public comment period held
2021	
October 2021	Public hearing(s) held (details to be determined)
February 2022	MFC considers approval of permanent rules *
April 2022	Rules reviewed by Office of Administrative Hearings/
	Rules Review Commission
April 15, 2022	Commercial license sales begin
May 1, 2022 or	Proposed effective date of rules unless rules are subject
TBD	to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 1, 2022	Rulebook supplement available online

* 15A NCAC 03 readoption deadline of June 30, 2022 for final MFC approval