

# **SMALL MESH GILL NET RULES MODIFICATION**

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DECISION DOCUMENT**

**SMALL MESH GILL NET RULES MODIFICATION  
INFORMATION PAPER**

# Small Mesh Gill Net Rule Modification

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Decision Document for MFC Advisory Committees

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## Decisions

Provide input and or recommendations for small mesh gill net rules modifications and advise the Division of Marine Fisheries on further development toward rulemaking.

## Purpose and Needs

The purpose of the Small Mesh Gill Net Rule Modifications Information Paper is to review the current rules and the available fisheries data for the small mesh gill net fishery and to develop potential options for rulemaking. The potential options address regulatory complexity, the reduction of bycatch in the small mesh gill net fishery, and to the greatest extent practical reducing conflict between gill net users and other stakeholders. Gill nets are one of the most controversial fishing gears fished in North Carolina waters. Although gill net fishing effort is down significantly over the last two decades, this gear continues to be the subject of differing debate and opinion concerning the impact on our fisheries.

## Background

Because of the history and complexity of issues surrounding the gill net fishery in North Carolina, the Secretary of the Department of Environmental Quality directed the Division to conduct a thorough review of the small mesh gill net fishery to simplify regulatory complexity, to reduce bycatch, and to sustain stocks important to recreational and commercial fishermen. As a result, the Division, with the endorsement of the MFC, implemented a two-part plan.

- 1) The DMF Director issued a [proclamation](#) limiting the allowable yardage and modifying attendance requirements in portions of the state.
- 2) The DMF established an internal Gill Net Work Group to review current rules, fisheries data and develop options addressing regulatory complexity and bycatch reduction for consideration by the MFC.

The MFC has the authority to adopt rules for management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction ([G.S. 143B-289.52](#)). In recent years, modifications to gill net management resulting from the adoption of FMPs or other circumstances have largely been implemented through the DMF director's existing proclamation authority, not through rulemaking. This has resulted in a patchwork of small mesh gill net restrictions spanning many rules and proclamations, contributing to stakeholder confusion and administrative burden.

Bycatch is a concern in all fisheries managed by the MFC and small mesh gill nets, under certain configurations and times of the year, have the potential to be a large source of this unintended catch. Regulations such as minimum mesh size, attendance requirements, and seasonal or permanent area and set time restrictions have the potential to reduce the incidence of bycatch and ultimately dead discards. Additionally, these regulatory measures can aid fishery managers in constraining harvest of state and federal quota managed stocks by focusing effort and harvest in areas or times where the target species is more available, and effort is better characterized. Lastly, these regulatory measure in combination with one another can more discretely define how and where small mesh gill nets can be utilized to maximize efficiency of the gear and reduce competition and conflicts with other gear types and user groups.

The Division's Gill Net Work Group produced an information paper that includes an overview of the current small mesh gill net fishery and proposed management options. Information papers are developed by DMF staff to provide an overview of any topic the MFC requests for rulemaking consideration. The work group reviewed and summarized available data on the characteristics of the small mesh fishery including typical gear configurations, species targeted, seasonality of catch, bycatch concerns with the gear, and identified four potential issues to address the aforementioned concerns.

Issues identified by the DMF Gillnet Work Group include:

- Implement yardage limits for the small mesh gillnet fishery;
- Adjust 'attendance' time and area requirements;
- Implement set and retrieval time and setback/area restrictions;
- Increase the minimum mesh size.

A range of proposed management options were developed for each of these issues that attempt to address some or all of the concerns identified by the Department and the Commission.

At their November 2020 meeting the MFC reviewed the Small Mesh Gill Net Rule Modification Information Paper and selected several options for further development. In addition, the MFC requested a review of the full document, including their selected options, by the appropriate advisory committees.

In July 2021, the Northern, Southern and Finfish Advisory Committees met to review and provide input on the Small Mesh Gill Net Rule Modification Information Paper and related MFC selected options. The advisory committee recommendations are included below and a full description of their discussions may be read in the meeting minutes provided in the August 2021 MFC Meeting Briefing Materials under Committee Reports.

## Objectives for this Meeting

- Review the Small Mesh Gill Net Rules Modification Information Paper and Advisory Committee comments.
- Consider recommending options for further consideration by the MFC.
- Consider recommending any additional options for consideration by the MFC.
- Suggest prioritization for any rulemaking to implement preferred option and advise the division on next steps for rule making.

## Overview of Current Regulations

### *Yardage Restrictions*

Yardage restrictions under current rule:

- There are no small mesh gill net yardage limits currently in rule.

Yardage restrictions currently in proclamation:

- Small mesh gill nets are currently restricted to 800 yards with an exception for drift gill nets in Pamlico Sound of 1500 yards from May 1 – October 31.

### *Attendance Requirements*

Attendance requirements under current rule:

- “Attended” is currently defined in [Rule 15A NCAC 03I .0101](#) as being in a vessel, in the water, or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- Within 100 feet of the Intracoastal Waterway from start of Alligator River canal to South Carolina line
- For gill nets with a stretched mesh less than five inches and within 200 yards of shore, in any areas designated in [Rule 15A NCAC 03R .0112\(a\)](#)
- For gill nets with a stretched mesh less than five inches and within 200 yards of shore, from May 1 to November 30 in any areas designated in [Rule 15A NCAC 03R .0112\(b\)](#) including primary nursery areas, permanent secondary nursery areas, and no trawl areas

Attendance requirements currently in proclamation:

- Deer and School House creeks in Bogue Sound
- Newport River and its tributaries from 7:00 am to 7:00 pm
- Year round within 200 yards of shore in Bay and Pungo rivers and lower portions of the Pamlico and Neuse rivers

#### *Set Time and Area Restrictions*

Prohibition on setting gill nets in current rule:

- Within 150 or 300 yards of bridge crossings in numerous river systems statewide
- Use of gill nets within various set distances from pound nets
- Numerous small embayments, basins, and areas described in [Rule 15A NCAC 03J .0402](#)
- In joint fishing waters of Lake Mattamuskeet and within 800 feet of Lock No. 1 on the Cape Fear River
- Adjacent to marked fishing piers

Prohibition on setting gill nets in current proclamations:

- Joint coastal fishing waters from midnight on Friday to midnight on Sunday except for portions of Albemarle and Currituck Sounds

#### *Mesh size limits*

- Current rule prohibits use of gill nets with mesh size less than 2.5 ISM

## Proposed Management Options

The proposed management options below were identified by the DMF Gillnet Work Group. The preferred management selected or added by the MFC during their November 2020 business meeting are highlighted in grey. The options are organized by issue and listed numerically. The recommendations from the MFC advisory committees are included after the list of options for each issue. A more thorough discussion of these options can be found in the Small Mesh Gill Net Rules Modification Information paper, including a list of the options with positive and negative impacts beginning on page 22 of the information paper.

## Yardage Limits

*Yardage limits can be used to constrain effort within a fishery to moderate removals over time. For example, a quota managed species can be managed in this way to ensure quota is available throughout the fishing season. Additionally, yardage limits have the potential to address concerns of user conflict.*

### Options

**1:** *Status quo* (see current regulations above)

**2:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 2,000 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved.

**3:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 1,500 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved.

**4:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved

**5:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individuals involved.

**6:** Specify that the allowable yardage of gill nets, with stretched mesh less than four inches, shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved, except for drift gill nets from May 1 – October 31 shall not exceed 1,500 yards.

**7:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individual involved, except for drift gill nets from May 1 – October 31 shall not exceed 1,500 yards.

**8:** Specify that the allowable yardage of gill nets, with stretched mesh less than four inches, shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved. The DMF director may by proclamation allow up to 1,500 yards of drift gill net and specify the area and time it may be fished.

**9:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individuals involved. The DMF director may by proclamation allow up to 1,500 yards of drift gill net and specify the area and time it may be fished.

**10:** Allow for an exemption up to 2,000 yards through proclamation from December 1<sup>st</sup> – April 30<sup>th</sup>. (Option added by MFC)

### Advisory Committee Recommendations

Southern AC - Passed a motion supporting Option 9.

Northern AC – Consider options to set upper limits to yardage requirements by region for small mesh gill nets; consider exclusions for small mesh drift gill nets.

Finfish AC – Supports MFC not making any gill net fishery more restrictive than 2,000 yards unless already restricted by a current FMP.

### Attendance Requirements

*The intent of the attendance requirement is to indirectly limit the amount of gear that can be fished and directly reduce mortality of discards and protected species. Small mesh gill net attendance requirements have been implemented as a strategy in species specific FMP's, such as striped bass and red drum, to decrease dead discards of these species. Options for amending attendance requirements presented below were developed for areas south of Albemarle Sound. Attendance requirements in Albemarle sound and its tributaries are applicable to various ranges of mesh sizes and do not have distance from shore qualifiers. In addition to feedback on the proposed options, the MFC requested that the DMF provide input on the definition of "attendance" at their next meeting.*

#### Option

**1:** Status quo (see current regulations above)

**2:** Codify restrictions currently in proclamation into rule.

**3:** Require year-round statewide attendance within 200 yards of shore and/or within designated areas currently in rule, whichever is more restrictive.

**4:** Require year-round statewide attendance for gill nets with mesh size less than four inches.

**5:** Require year-round attendance within 200 yards of shore in all areas currently designated in [Rule 15A NCAC 03R .0112](#).

**6:** Require year-round attendance in all areas currently designated in [Rule 15A NCAC 03R .0112](#).

**7:** Require year-round attendance in all creeks and/or water bodies less than 200 yards wide. (Most areas that would be affected by this option already have a 200 yard requirement or are included in [Rule 15A NCAC 03R .0112](#) and have seasonal attendance requirements. A year round 200 yards from shore attendance requirement would cover these areas.)

**8:** Modify distance requirement in the definition of "attend" to allow person and/or vessel being occupied to be within 500 yards of gear being fished.

**9:** Modify distance requirement in the definition of "attend" to allow person and/or vessel being occupied to be within 500 yards of gear being fished south of Highway 58.

**10:** Remove distance requirement from the definition of "attend" to require a person to be physically in contact with the gear at all times.

**11:** No attendance requirement statewide from December 1 – April 30<sup>th</sup>. (Option added by MFC)

## Advisory Committee Recommendations

Southern AC – Support Option 3 for attendance requirements because it will have the biggest positive impact on bycatch reduction.

Northern AC – Status quo on modifying current restrictions (no further restrictions on time and area for attendance); Support Option 8 and 11.

Finfish AC – Support Option 1 (Status quo) and 11 for attendance requirements. Also support for Option 2 for attendance issues unless already restricted by current FMP.

## Set Time and Area Restrictions

*Set time restrictions refer to when nets can be set in estuarine waters and how long they can be fished before being retrieved. Currently, set nets cannot be fished in joint coastal waters during weekends. Modifying when nets can be set and the duration they can be fished could reduce overall effort and alleviate conflicts between other fisheries and user groups. Area restrictions can be used to address concerns over bycatch in areas where the potential is high and used as a tool to reduce conflicts between other fisheries and users.*

### Option

- 1:** *Status quo* (see current regulations above)
- 2:** Codify restrictions currently in proclamation into rule.
- 3:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than
- 4:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than noon the following day statewide.
- 5:** Specify that nets may not be fished from midnight on Friday to midnight on Sunday statewide.
- 6:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than one hour after sunrise in areas or Management Units determined by the MFC.
- 7:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than noon the following day in areas or Management Units determined by the MFC.
- 8:** Specify that nets may not be set within 200 feet of docks and improved shorelines. Allow exemption for personal docks and docks where the fishing operation has written permission to fish within 200 feet of dock and/or improved shoreline.
- 9:** Prohibit use of small mesh nets in areas of high conflict determined by the MFC.
- 10:** No set time requirements from December 1<sup>st</sup> – April 30<sup>th</sup>. (Option added by MFC)

## Advisory Committee Recommendations

Southern AC – Support Option 5 for set time restrictions. (No quorum; support unanimous by consensus)

Northern AC – Support status quo for set time and area restrictions.

Finfish AC – Support Option 1 and 2 for set time and area restrictions; oppose consideration of Option 9 and continue with current user conflict mediation process.

### Mesh size limits

*Modifying the minimum mesh that can be used to directly address the selectivity of the net which can potentially reduce the incidence of capturing undersized fish, contributing to fewer discards and increasing the efficiency of the gear.*

#### Option

1: *Status quo* - 2.5 ISM (see current regulations above)

2: Increase the minimum mesh size to 2.625 inch ISM

3: Increase the minimum mesh size to 2.75 inch ISM

4: Increase the minimum mesh size to 3.0 inch ISM

#### Advisory Committee Recommendations

Southern AC – Support Option 4 for mesh size in an effort to reduce bycatch. (No quorum; support unanimous by consensus)

Northern AC – Support status quo for minimum mesh size, unless specific problems are identified that need to be addressed such as excessive discards or bycatch mortality in particular fisheries.

Finfish AC – Support status quo for modifying mesh size and ask DMF provide information to help with decisions on mesh size. (Information on harvest by mesh size included in information paper)

### Additional Advisory Committee Recommendations

Southern AC – Recommends that the Marine Fisheries Commission consider the prohibition of small mesh gillnets in Internal Coastal Waters as a management option. Motion passes 3-2-1

Northern AC – Recommended that the Trip Ticket Program be modified to include information on target species, mesh size, soak time, net length and any other information that would be informative to management of the small mesh gill net fishery.

Finfish AC - Ask DMF staff provide information on bycatch by various gill net fisheries to the MFC to help with decisions on yardage and mesh size. (Information on proportion of bycatch for set nets included in Table 4 of the information paper)

### Next Steps

- The MFC will review the Small Mesh Gill Net Rule Modification Information Paper and Advisory Committee recommendations. They will consider selecting options to move forward for further development towards rulemaking.
- If the MFC decides to move forward with further development of options, the DMF will begin drafting an issue paper. The issue paper will include further examination of each selected option and will include draft rule language for the commissions' consideration.

## **Small Mesh Gill Net Rule Modifications Information Paper**

**August 12, 2021**

### **I. ISSUE**

The estuarine small mesh gill net fishery in North Carolina is managed and regulated by North Carolina Fishery Management Plans (FMPs) and numerous North Carolina Marine Fisheries Commission (MFC) rules and North Carolina Division of Marine Fisheries (DMF) proclamations. Over time, the rules and proclamations that implement the small mesh gill net requirements have become overly complex and need to be streamlined. There are also concerns about biological impacts from the use of small mesh gill nets. The primary issues to be addressed concern the streamlining and simplification, where possible, of all rules that directly or indirectly regulate small mesh gill nets, reduction and increased survival of bycatch, greater flexibility with constraining harvest of quota managed fisheries, and to the greatest extent practical reducing conflict between gill net users and other stakeholders.

### **II. ORIGINATION**

The Secretary of the Department of Environmental Quality and the DMF director.

### **III. BACKGROUND**

North Carolina General Statutes authorize the MFC to adopt rules for the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction (G.S. 113-134; G.S. 143B-289.52). The MFC has authority to adopt FMPs and the DMF is charged with preparing them (G.S. 113-182.1; G.S. 143B-289.52). Further, the MFC may delegate to the DMF director in its rules the authority to issue proclamations suspending or implementing MFC rules that may be affected by variable conditions (G.S. 113-221.1; G.S. 143B-289.52). Variable conditions include compliance with FMPs, biological impacts, bycatch issues, and user conflict, among others (15A NCAC 03H .0103). The estuarine gill net fishery in North Carolina is managed and regulated by FMPs and numerous MFC rules and DMF proclamations. Rules are periodically amended to implement changes in management goals and strategies for various fisheries and are the primary mechanism for implementing FMPs under the Fisheries Reform Act of 1997 (FRA).

In recent years, modifications to gill net management resulting from the adoption of FMPs or other circumstances have largely been implemented through the DMF director's existing proclamation authority, not through rulemaking. This is primarily due to the need to implement management changes in a timely fashion and to accommodate variable conditions. Over time, this has resulted in incongruent restrictions between rules and proclamations. Additionally, many of the rules related to small mesh gill nets were first developed prior to the FRA and have not been thoroughly considered with the addition of more recent rules developed through the FMP process.

The aforementioned circumstances have created a patchwork of small mesh gill net restrictions spanning many rules and proclamations, contributing to stakeholder confusion and administrative burden. This paper proposes options for streamlining many of the restrictions on small mesh gill nets by codifying many of the management measures found in proclamations into rule and modifying existing rules to better represent current fishing practices and management goals. The primary issues to be addressed concern the streamlining and simplification, where possible, of all rules that directly or indirectly regulate small mesh gill nets, reduction and increased survival of bycatch, greater flexibility with constraining harvest of quota managed fisheries, and to the greatest extent practical reducing conflict between gill net users and other stakeholders.

The estuarine small mesh gill net fishery is a multi-species fishery that operates year-round. The species targeted and the type of gill net used varies by season and area (NCDMF 2018). Small mesh gill nets are used to harvest many commercially valuable estuarine finfish species by using a variety of net configurations with mesh sizes specific to the intended target species. Multiple species are landed during a single trip; however, the target species usually dominates the catch (NCDMF 2008). In North Carolina, gill nets are restricted to a minimum stretched mesh size of 2.5 inches inside stretched mesh (ISM) (15A NCAC 03J .0103 (a)). The DMF categorizes gill nets with ISM from 2.5 to less than 5 inches as small mesh (Daniel 2013). Although the rule uses "mesh length" and not "mesh size", their meanings are identical for the purpose of this document; this helps to demarcate the discussion of "mesh size" from

“net length” throughout the document. Small mesh gill nets are generally classified into three categories based on how the net is deployed and fished: set gill nets, runaround gill nets, and drift gill nets (Figure 1; Table 1) (Steve et al. 2001). For the purpose of this document, “set” gill nets, or “set nets”, includes anchored, fixed, and stationary nets.

Set nets (Figure 1a) are the predominate gill net method used in North Carolina. They are kept stationary with the use of anchors or stakes attached to the bottom or attached to some other structure attached to the bottom, at both ends of the net (15A NCAC 03I .0101). Set nets can be further classified as sink or float gill nets (Steve et al. 2001). A sink gill net fishes from the bottom up into the water column a fixed distance by having a lead line (bottom line) heavy enough to sink to the bottom. Depending on the height of the net and the depth of the water, the float line (top line) may or may not be submerged below the surface of the water. A float gill net may fish the entire water column by having the top line with buoys sufficient for floating on the surface of the water, or a portion of the water column depending on the depth of the net (number of meshes deep). Set nets are deployed by dropping one end of the net and running out the rest of the length of net usually in a line. Once deployed, soak times for fishing set nets vary depending on factors such as target species, water temperature, season, waterbody, and regulations (NCDMF 2018).

A runaround gill net is an actively fished gear used to encircle schools of fish (Figure 1b). They are deployed with a weight and a buoy at one end that enables the rest of the net to be fed out, creating a closed circle around the school of fish due to the vessel’s path. Runaround gill nets tend to be deep nets capable of fishing the entire water column. Mesh sizes and net lengths vary depending on the size of the targeted species (Steve et al. 2001). Another form of runaround gill net is the strike net or drop net. Rather than deploying the net in a circle, the net is set parallel to shore, often with one end anchored to the bank. Once the net is set, the boat is driven between the net and the shore to drive fish into the net (NCDMF 2018). Soak times for all types of runaround gill nets are almost always an hour or less.

Drift gill nets are unanchored, non-stationary nets that are actively attended (i.e., remain attached to the vessel or the fishing operation remains within 100 yards of the gear) (Figure 1c) and tend to have shorter soak times than set nets. They are constructed with lighter lead lines to allow for the net to drift with the current. The small mesh drift gill nets currently employed in North Carolina estuaries are primarily used to target Spanish mackerel and bluefish in Pamlico Sound. This gear can also be used to target spot (as a sink net) and striped mullet (typically fishing the entire water column) in areas primarily from Core Sound and south (Steve et al. 2001).

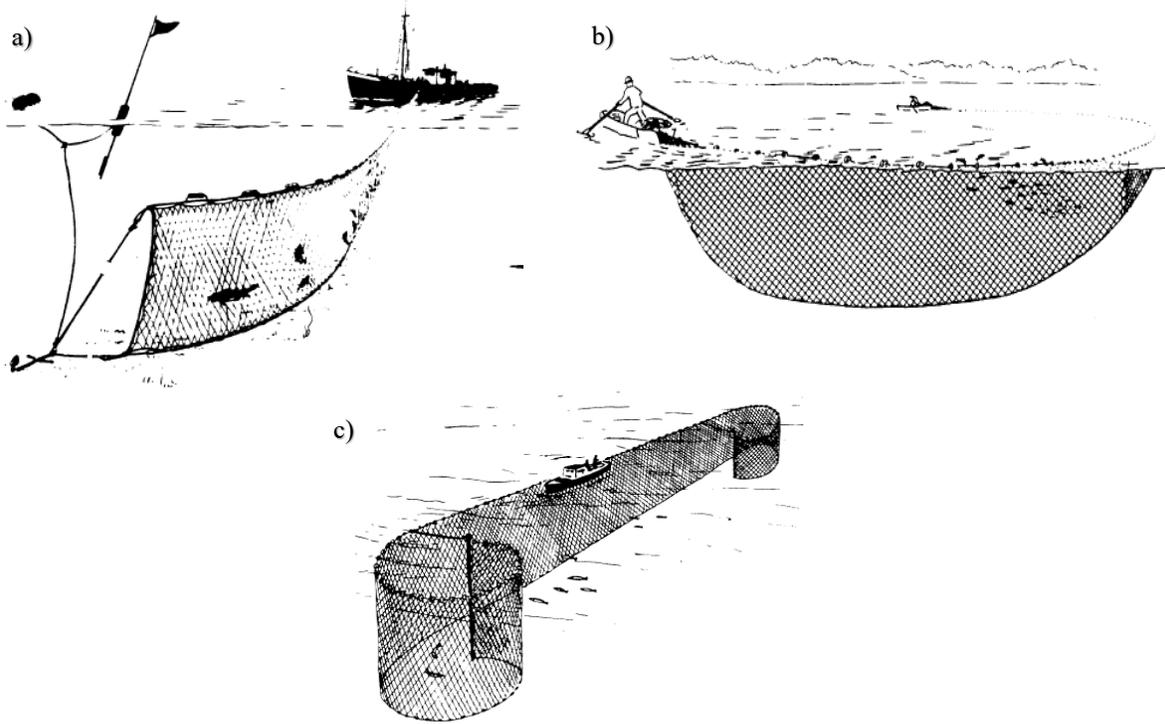


Figure 1. Illustrations of (a) set, (b) runaround, and (c) drift gill nets extracted from Steve et al. (2001).

Table 1. Small mesh gill net gear categories with descriptions and capture method descriptions.

Small Mesh Gill Net Gear Categories		Sub-Categories	Gear Description	Capture Method
Anchored/Fixed/ Stationary/Set	}	Sink	Attached to bottom or some other structure by anchors or stakes at both ends. Sink nets are fished from the bottom up into the water column.	Passively Fished - For both sink and float set nets the gear is left in place for a period of time. Fish, if appropriately sized, swim into the net and are gilled.
		Float	Attached to bottom or some other structure by anchors or stakes at both ends. Float nets are fished from the top down into the water column. Depending on target species nets fish part of the water column or the entire water column.	
Runaround	}	Circle	Attached to the bottom at one end. Once the end is set, the rest of the net is then fed out of a boat creating a circle and meeting back at the original set point. Generally, these nets fish the entire water column.	Actively Fished - Used to encircle a school of fish. Primary target species for this gear is striped mullet.
		Strike; Drop	Attached to the bottom at one end. Deployed along shore with the terminal end finishing at another point along the shore. The boat is driven into the blocked section to “drive” the fish into the net and are then retrieved.	Actively Fished - Used to corral or intercept a school of fish and then immediately retrieve. Primary target species for this gear is striped mullet, and spotted seatrout to a lesser extent.
Drift			Attached to boat or free-floating with close attendance. Lighter leadlines and no anchors allow the net to drift. Depending on target species and water depth, nets fish part of the water column or the entire water column. Primarily used in Pamlico Sound to target Spanish mackerel and bluefish.	Actively Fished - Drift with the water current with continuous attendance.

The following analysis and information are presented to characterize the small mesh gill net fishery in North Carolina relative to time, area, configuration, and species composition of the harvested and discarded catch:

**Methods**

Information specific to North Carolina’s estuarine gill net fishery was gathered from three DMF sampling programs briefly described below:

*N.C. Trip Ticket Program*

The N.C. Trip Ticket Program began in 1994. This program requires licensed commercial fishermen to sell their catch to licensed DMF fish dealers, who are then required to complete a trip ticket for every transaction. Data collected on trip tickets include gear type, area fished, species harvested, and total weights of each individual species. Information recorded on trip tickets for gear type and characteristics is self-reported by the dealer. This information may be verified by DMF fish house staff after the fact, but the potential exists that some trips may be mischaracterized by dealers. In 2004, trip tickets included mesh size categories for gill nets: small mesh = <5 inch ISM, and large mesh = ≥5 inch ISM.

However, the use of this new field was not prevalent until about 2008 because dealers were still using old trip tickets they had on hand.

#### *Commercial Fish House Sampling*

Commercial fishing activity is monitored through fishery dependent (fish house) sampling. Sampling occurs dockside as fish are landed. Commercial fishermen and/or dealers are interviewed by DMF staff, and the catch is sampled. Samplers collect data on location fished, effort (soak time, net length, etc.), gear characteristics (net type, net depth, mesh size, etc.), and the size distribution of landed species.

#### *Commercial Observer Program*

On board observations of commercial estuarine gill nets, primarily set nets, occur through Program 466. Observers collect data on effort (soak time, net length, etc.), location fished, gear characteristics, and the size and fate (harvest, discard, etc.) of captured species. The Observer Program was born out of the need to estimate incidental takes of protected species such as sea turtles and Atlantic sturgeon in estuarine set nets per the DMF's Endangered Species Act Section 10 Incidental Take Permits (National Marine Fisheries Service [NMFS] 2013, 2014). As a result, observations of runaround or drift gill nets are rare.

Data from 2015 to 2019 for these three programs were used to characterize North Carolina's estuarine small mesh gill net fisheries. For trip ticket data, the species of highest abundance in landings was considered the target species for each trip. Using the presumed small mesh targeted species, the trip was then defined as either small mesh or large mesh. Species commonly targeted and landed from small mesh gear were retained for further characterization. Basing analysis on presumed targeted species allows for results that describe the gear parameters associated with each species (see NCDMF 2008 for further description of methodology). Once a target species was defined for all trips, the method of fishing (set net, runaround gill net, or drift gill net), mesh size, and net length were characterized based on available fish house sampling and observer data from 2015 through 2019 for each of the target species. Because there were no observer trips for runaround or drift gill nets, gear characteristics for those fisheries were based solely on data collected from fish house sampling. For this analysis, species targeted with large mesh gill nets (>5 inch ISM) were excluded and species targeted with small mesh gill nets (<5 inch ISM) were retained. Fishing effort and gear characteristics were also examined across management units defined in the DMF's ITP for sea turtles (Figure 2) (Byrd et al. 2020). The delineation of management units (A, B, C, D1, D2, and E) was based on three primary factors: similarity of fisheries and management; extent of known protected species interactions in commercial gill net fisheries; and unit size and corresponding ability to monitor fishing effort (Daniel 2013). Information on finfish discards from small mesh gillnets was summarized directly from the Observer Program.

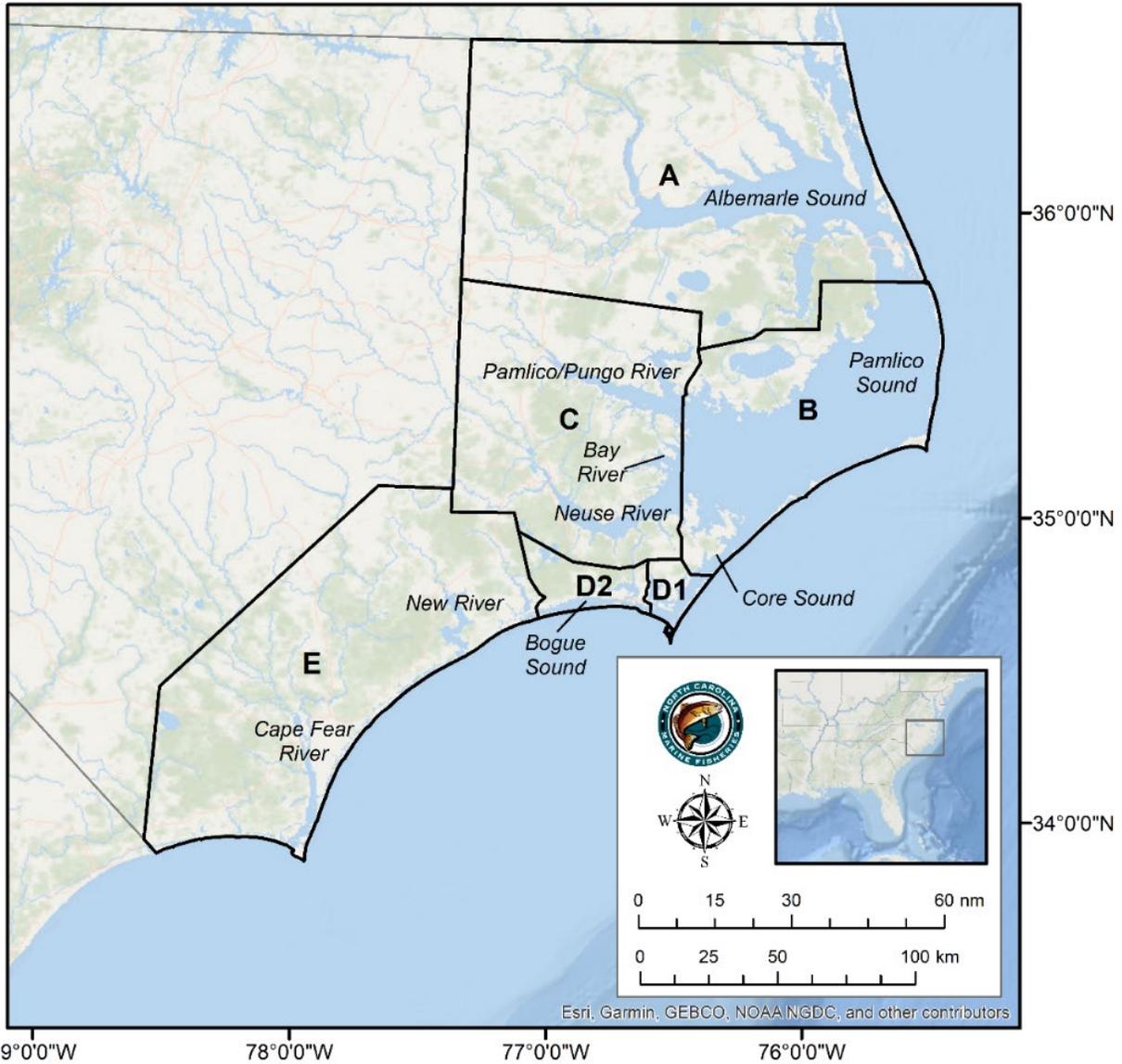


Figure 2. Locations of management units (A, B, C, D1, D2, and E) outlined in DMF’s Endangered Species Act Section 10 Incidental Take Permit for sea turtles.

**Results**

*Set Nets*

Although the number of species encountered in set nets is diverse, over 99% of trips targeted at least one of 10 primary species (Table 2). These include the following, in order of magnitude: bluefish, striped mullet, spotted seatrout, Atlantic menhaden, spot, white perch, Spanish mackerel, hickory shad, weakfish, and sea mullet (kingfish spp.). The most common mesh size used for these target species was 3.25 inch ISM and modal mesh sizes generally ranged from 3.0 to 3.5 inch ISM. Exceptions include smaller mesh sizes ( $\leq 2.88$  inch ISM) employed for gill nets targeting weakfish and sea mullet. Proportionally, harvest of the 10 primary targeted species occurred from mesh sizes 3.0 inches ISM and greater with the exception of sea mullet and spot (Figure 3). The average yards of gill net fished per trip was highest for Spanish mackerel (1,643 yards) compared to less than 1,000 yards for all other target species. Maximum yards reported for a trip was typically between 2,000 and 3,000 yards for most species. Average yards fished was generally consistent across management units with some higher averages in management units B and D depending on target species (Figure 2; Table 3).

Seasonality and area fished for set nets varies by target species (Figure 4). Bluefish trips occurred commonly in Pamlico Sound and Core Sound with trips peaking in spring. Striped mullet set net trips occurred primarily in Albemarle Sound and Pamlico Sound. Although these trips occurred year around, they peaked in the fall. Targeted spotted seatrout trips occurred in all regions with the highest number of trips in the Pamlico, Pungo and Neuse River areas. Spotted seatrout trips peaked in the fall and early winter. Set nets for Atlantic menhaden were most common in Pamlico and Albemarle Sounds peaking in March and April. Spot trips primarily occurred from Core Sound and south with a sharp seasonal peak in October. White perch occurred in northern areas led by trips in the Albemarle Sound in early spring. Spanish mackerel set net trips occurred primarily in Pamlico Sound during the summer. Hickory shad trips commonly occurred in the Pamlico Sound and Albemarle Sound. This fishery was seasonal, peaking from January to March. Weakfish trips occurred primarily in Pamlico Sound from fall through spring. Sea mullet trips occurred primarily from Pamlico Sound, Core Sound and south. The trips peaked during spring and again during fall.

Discards observed in the set net fishery vary seasonally and by target fishery and include both regulatory discards (fish not retained due to size limit restrictions, trip limits or seasons) and unmarketable catch. Table 4 includes harvest and discard information of species caught from trips targeting the 10 primary species identified for set nets. Proportionally, species closed to harvest (alewife and river herring) and species with size limits and seasonal closures (black drum, red drum, southern flounder, and striped bass) contributed the most to observed discards in the fishery.

Table 2. Number of small mesh (<5 inch ISM) set net trips in N.C. estuarine waters using data from the N.C. Trip Ticket Program (n=34,249) by target species with associated gear characteristics from fish house sampling and observer programs during 2015-2019. Two modal mesh sizes (the mesh sizes most often observed) are provided when differences exist between fish house sampling and observer programs. Species are listed in order of magnitude (Percent of total trips).

Species	Trips	Avg./ Yr	Percent	Modal Mesh	Avg. Yds	Max Yds	Avg Value <sup>†</sup>
Bluefish*	8,035	1,607	23	3.0 / 3.25	925	3,000	\$228,903
Striped mullet	5,399	1,080	16	3.25 / 3.5	575	1,900	\$99,851
Spotted seatrout	4,483	897	13	3.5	706	3,190	\$202,255
Atlantic menhaden	4,089	818	12	3.0 / 3.25	743	2,500	\$51,943
Spot	3,269	654	10	3.0 / 3.25	659	3,200	\$100,944
White perch	3,215	643	9	3.25 / 3.5	598	2,500	\$72,952
Spanish mackerel*	2,114	423	6	3.12	1,643	2,000	\$321,961
Hickory shad	1,939	388	6	3.25 / 3.5	783	2,100	\$21906
Weakfish	1,201	240	3	2.88 / 3.25	937	2,500	\$51,643
Sea mullet	505	101	1	2.62 / 3.0	740	1,200	\$36,276

\*Some trips for bluefish and Spanish mackerel may be mischaracterized as set net trips when they were actually driftnet trips, skewing the average and maximum yards reported. See *Commercial Fish House Sampling* description in the Methods section for more information.

<sup>†</sup>Values reported for total landings of species from small mesh gill nets (<5 inch ISM) and are not specific to gear categories (i.e set nets, runaround, and drift)

Table 3. Average yards fished per small mesh (<5 inch ISM) set net trip by target species across gill net management unit during 2015-2019. See map in Figure 1 for locations of management units (MU).

Species	MU-A	MU-B	MU-C	MU-D	MU-E
Bluefish	876	975	350	909	356
Striped mullet	621	540	486	577	505
Spotted seatrout	725	811	667	597	955
Atlantic menhaden	528	814	767	467	.
Spot	.	.	1,150	622	501
White perch	658	701	425	.	.
Spanish mackerel	.	1,643	.	.	.
Hickory shad	849	979	543	1,675	.
Weakfish	.	820	.	1,228	500
Sea mullet	.	1,200	.	625	.

Table 4. Characterization of number of fish harvested and discarded and proportion of total catch discarded for small mesh (<5-inch ISM) set gill net trips for each of the 10 primary target species observed by Division of Marine Fisheries onboard observers from 2015-2019.

Species	Discard	Harvest	Proportion of catch discarded
Alewife	2,815	3	100%
Atlantic Croaker	77	629	11%
Black Drum	1,593	52	97%
Bluefish	118	3,346	3%
Hickory Shad	529	3,100	15%
Sea Mullet	12	141	9%
Red Drum	821	53	94%
River Herrings	1,728	.	100%
Southern Flounder	345	169	67%
Spanish Mackerel	6	198	3%
Spot	39	3,915	1%
Spotted Seatrout	228	1,296	15%
Striped Bass	631	107	86%
Striped Mullet	65	3,761	2%
Weakfish	58	727	7%
White Perch	154	17,764	1%



Figure 3. Proportion of catch by discrete mesh size (ISM) from set nets for each of the 10 primary target species in N.C. estuarine waters during 2015-2019.

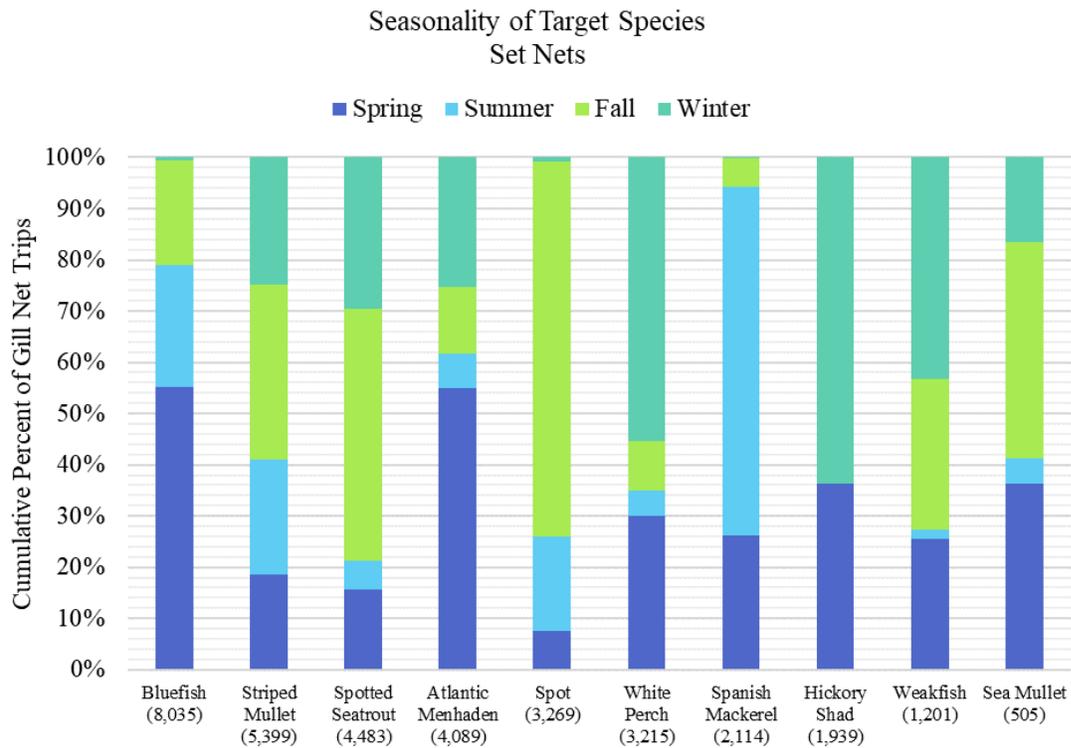
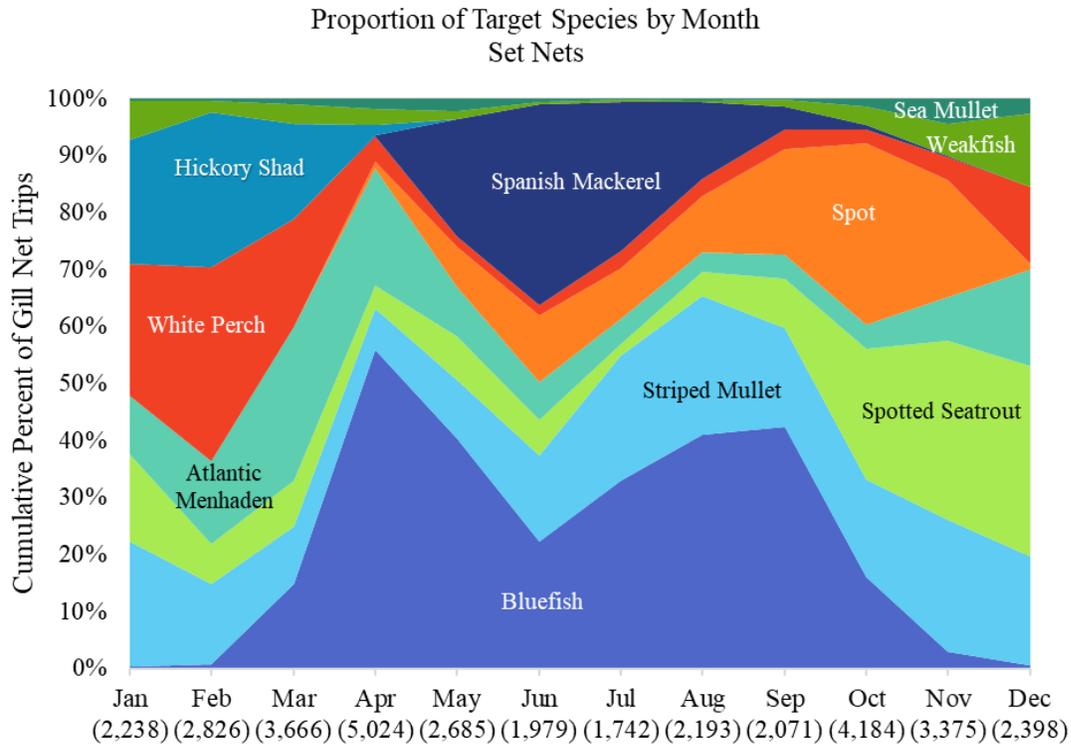


Figure 4. Percentage of set net trips for each of the 10 primary target species across months (top) and seasons (bottom) in N.C. estuarine waters during 2015-2019. Total trips per month or species are shown in parentheses under the x-axis labels.

### *Runaround Gill Nets*

Runaround gill nets are commonly deployed throughout the year and across all coastal waters of North Carolina. The catch from runaround gill nets is more species-specific than from set nets. This gear usually targets striped mullet, spotted seatrout, and, to a lesser extent, spot and bluefish (Table 5). Generally, the nets are deployed on fish that are visually spotted (i.e., striped mullet) or in areas specific to a species (i.e., spotted seatrout). Mesh sizes differ according to the target species. During 2015-2019, three target species (striped mullet, spotted seatrout, and spot) accounted for 87% of all runaround gill net trips. The modal mesh size was 4 inch ISM for striped mullet, 3.5 inch ISM for spotted seatrout, and 2.8 inch ISM for spot. Although modal mesh size was the most commonly encountered for a species, mesh size used for a given species such as striped mullet varied based on the season and market (i.e., smaller mesh sizes for the bait mullet fishery and larger mesh sizes for the roe mullet fishery). Proportionally, most harvest of spotted seatrout, bluefish, and striped mullet from runaround gill nets occurred from mesh sizes 3.0 inches ISM (Figure 5). Spot were mostly harvested from smaller mesh sizes with very few landings from 3.0 inches or greater ISM. Average net lengths generally ranged from 400 to 500 yards, but there was high variability with maximum net lengths ranging from 700 to 3,000 yards, depending on species (Table 5). There was little variability in average net length among areas.

For runaround gill net trips, seasonality and area fished varied by target species (Figure 6). Striped mullet were targeted in all areas, but primarily in Pamlico Sound and Core/Bogue sounds with fishing increasing in late summer and peaking in the fall (October and November). Spotted seatrout were most commonly targeted with runaround gill nets in the Pamlico, Pungo, Bay, and Neuse rivers. Targeted trips increased in October and peaked in November before diminishing through the winter. The runaround spot fishery was most common in the rivers, Core Sound, and southern portions of the state. Effort was high during June through October with the traditional spot fishery peaking in October. Bluefish are most commonly targeted with runaround gill nets in Pamlico and Core/Bogue sounds with peak trips occurring in April.

Table 5. Number of small mesh (<5 inch ISM) runaround gill net trips in N.C. estuarine waters using data from the N.C. Trip Ticket Program (n=17,548) by target species with associated gear characteristics from fish house sampling and observer programs during 2015-2019. Species are listed in order of magnitude (Percent of total trips).

Species	Trips	Avg/Yr	Percent	Modal Mesh	Avg Yds	Max Yds
Striped mullet	9,232	1,846	53	4.0	412	1,250
Spotted seatrout	4,611	922	26	3.5	493	1,150
Spot	1,434	287	8	2.8	380	700
Bluefish	508	102	3	3.3	746	3,000
Others(n=20)	1,763	353	10	3.3	580	1,400

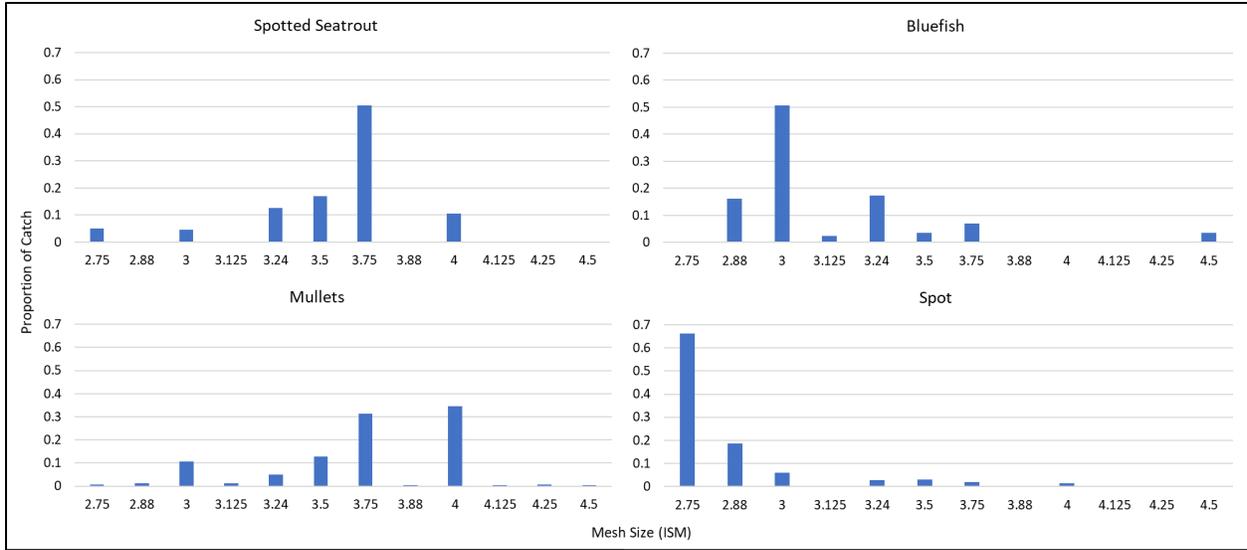


Figure 5. Proportion of catch by discrete mesh size (ISM) from runaround gill nets for each of the 10 primary target species in N.C. estuarine waters during 2015-2019.

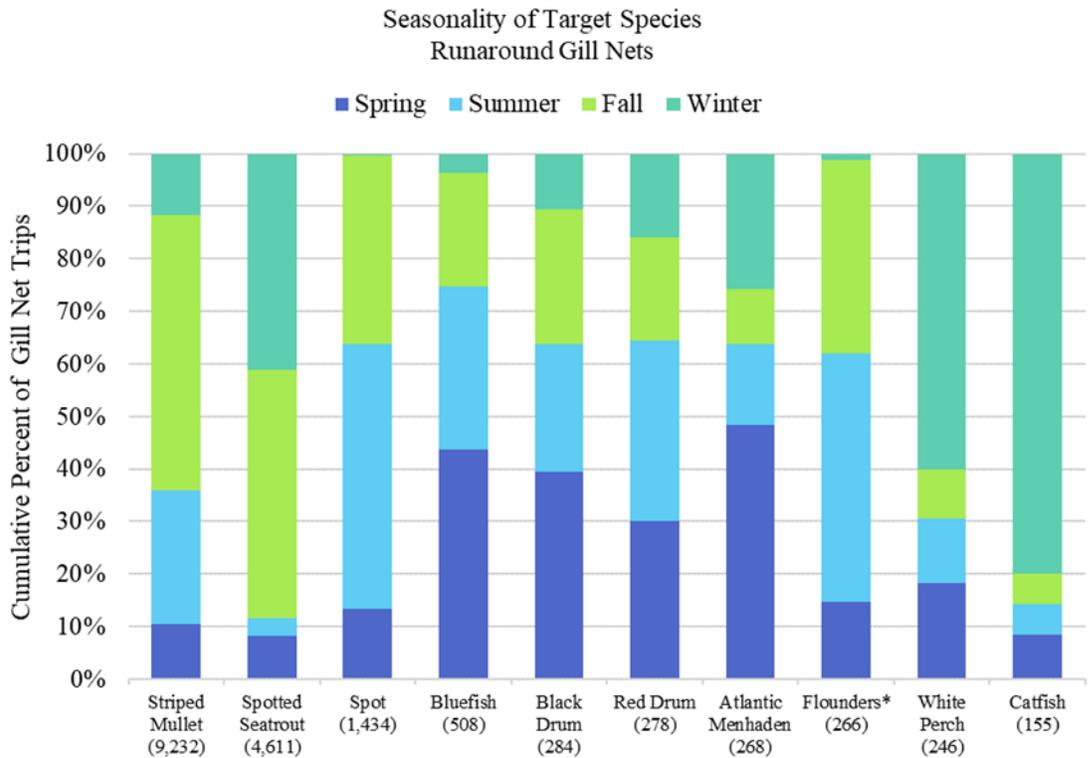
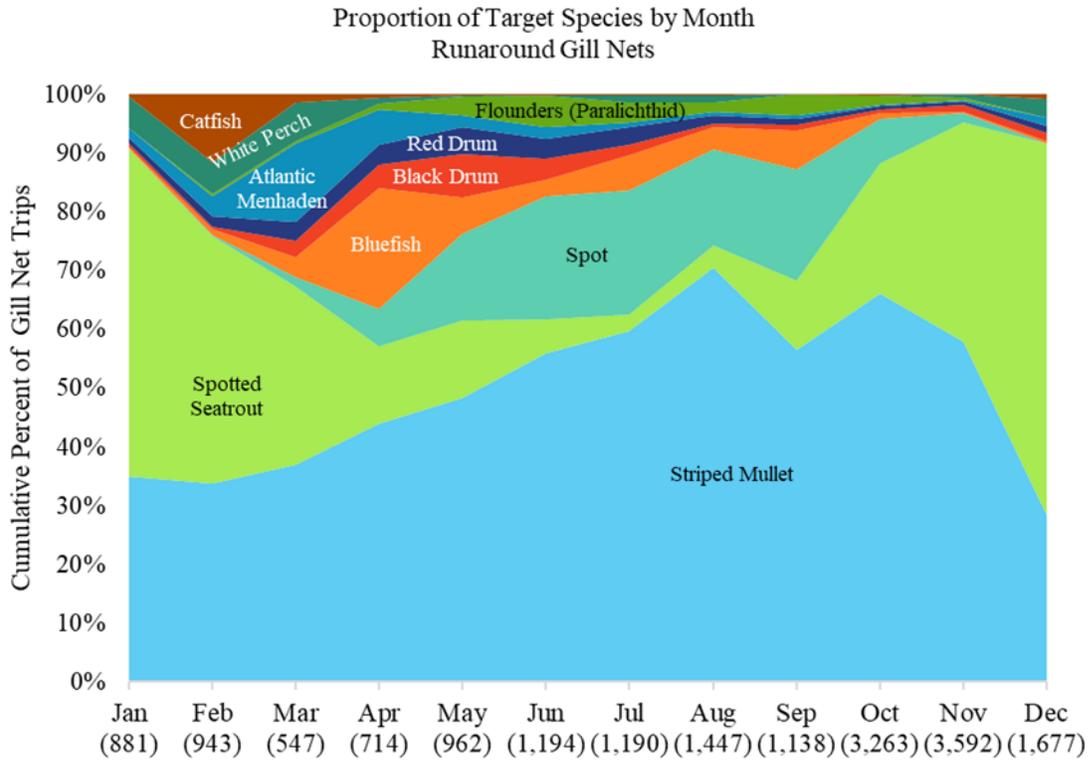


Figure 6. Percentage of runaround gill net trips for each of the ten primary target species across months (top) and seasons (bottom) in N.C. estuarine waters during 2015-2019. Total trips per month or species are shown in parentheses under the x-axis labels. An asterisk (\*) indicates Paralichthid founders.

*Drift Gill Nets*

The small mesh drift gill net fishery occurs almost entirely in Pamlico Sound and is dominated by trips targeting Spanish mackerel and to a lesser extent bluefish and spot (Table 6). Like the runaround gill net fishery, the drift gill net fishery is highly species selective due to the areas fished, season fished, and mesh sizes used. The modal mesh size used to target Spanish mackerel and bluefish was 3.5 inch ISM, while modal mesh size used to target spot was 2.9 inch ISM. Proportionally, most of the harvest of Spanish mackerel and bluefish occurred from mesh sizes 3.25 inches ISM and greater (Figure 7). Average yards fished per trip was 1,981 yards for Spanish mackerel and 1,820 yards for bluefish. Maximum yards fished for both Spanish mackerel and bluefish was 3,000 yards.

The Spanish mackerel and bluefish drift gill net fisheries occur almost entirely in Pamlico Sound with the Spanish mackerel fishery occurring from May through September and the bluefish fishery occurring throughout the summer and peaking in August (Figure 8). Although bluefish is a major species captured in this fishery, its occurrence is closely tied to trips targeting Spanish mackerel. The spot drift gill net fishery occurs almost entirely in the southern waters of the state, primarily in October and November. The drift gill net fishery for striped mullet primarily occurs in Pamlico Sound and Core/Bogue sounds south. Striped mullet are targeted in the late spring/early summer for bait, and in the fall for roe. Although the sample size is low, average mesh size in the spring from trips landing striped mullet is smaller than in the fall. Anecdotal reports from fishermen lend additional support to these observations.

Table 6. Number of small mesh (<5 inch ISM) drift gill net trips with associated gear characteristics by target species in N.C. estuarine waters during 2015-2019.

Species	Trips	Avg/Yr	Percent	Modal Mesh	Avg Yds	Max Yds
Spanish mackerel	644	129	52	3.5	1,981	3,000
Bluefish	207	41	17	3.5	1,820	3,000
Spot	202	40	16	2.86	933	1,400
Striped mullet	111	22	9	3	417	500
Others (n=6)	86	17	7	3.88	900	1,900

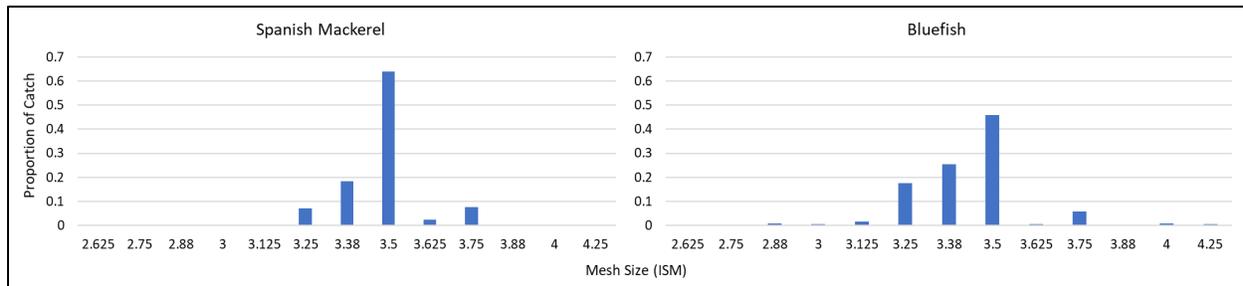


Figure 7. Proportion of catch by discrete mesh size (ISM) from drift gill nets for each of the 10 primary target species in N.C. estuarine waters during 2015-2019.

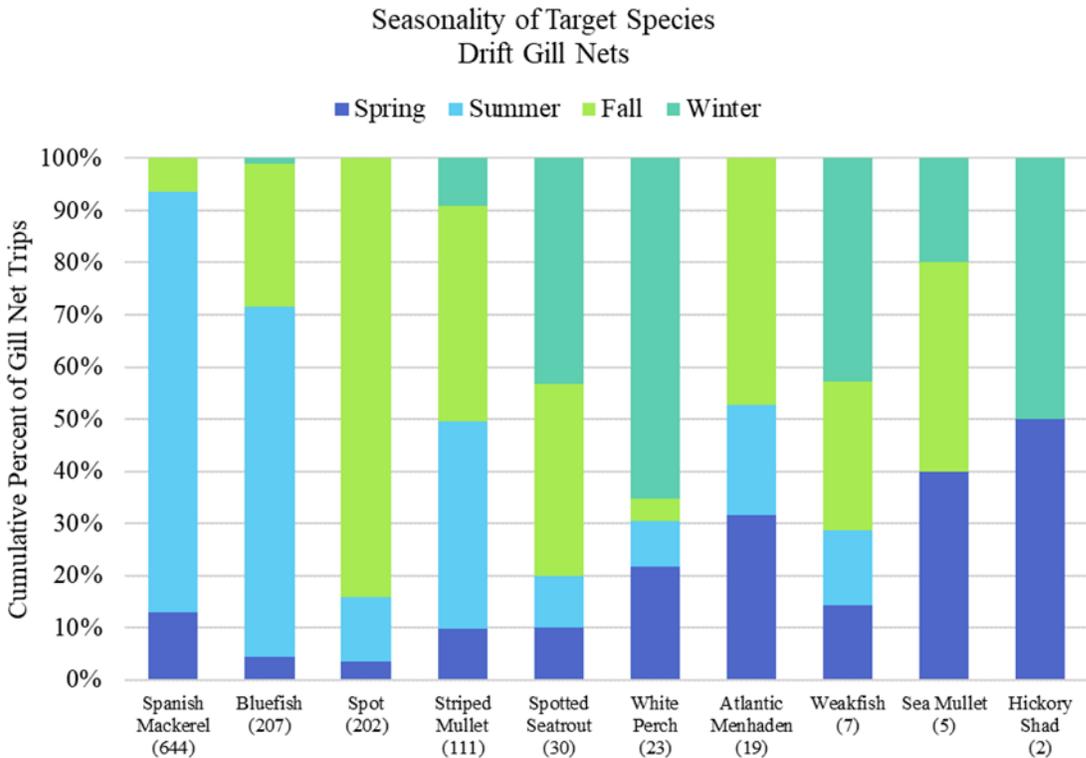
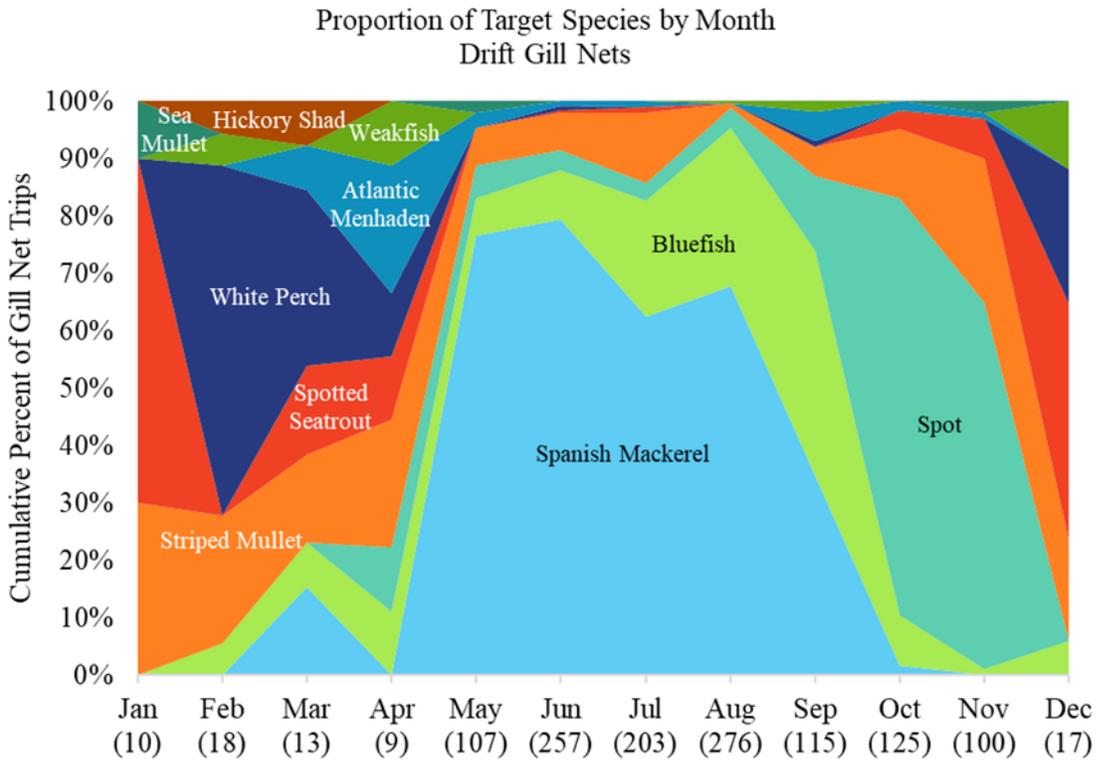


Figure 8. Percentage of drift gill net trips for each of the 10 primary target species across months (top) and seasons (bottom) in N.C. estuarine waters during 2015-2019. Total trips per month or species are shown in parentheses under the x-axis labels.

#### *Measures used to address bycatch*

Numerous gill net restrictions have been implemented over the years, either by proclamation or rule, through the FMP process. These restrictions have followed development of state FMPs that have identified bycatch as a source of mortality impeding stock growth and productivity. Recommendations for reducing bycatch of state managed species developed through the FMP process and in general, addressed species specific concerns to reduce mortality at critical life history stages and/or sub-legal sizes. These measures were informed by studies that enumerated the frequency that target, and non-target species were caught and discarded from the nets, their subsequent survival, and gear parameters and set characteristics of the nets typically fished. These restrictions have included minimum setbacks from shore for set nets, tie downs to limit the amount of the water column fished by the gear, and either seasonal or area specific required attendance and closures.

As part of the original FRA, G.S. 143B-289.52 charged the MFC to establish guidance criteria as to the contents of FMPs. The MFC adopted the “Guidelines for North Carolina Fishery Management Plans”, which set a standard for FMPs to design management measures that minimize waste of fishery resources, including both target and bycatch species. The Red Drum FMP (NCDMF 2001) and subsequent amendment (NCDMF 2008) identified non-harvest loss of red drum as a key factor contributing to the uncertainty of stock status of the species. While non-harvest losses of red drum likely occur to some extent from various commercial gears, it has been well accepted that the primary non-harvest loss is likely due to the bycatch of red drum in the estuarine gill net fishery. As a result, the 2001 N.C. Red Drum FMP took measures to reduce red drum bycatch in the estuarine gill net fishery by requiring the seasonal attendance of small mesh gill nets (<5” inch ISM). The rationale for employing attendance requirements to reduce non-harvest loss is that fishermen can actively fish their gear and release red drum and other sub-legal fish quickly, reducing the chance of harm to the fish from the gear. Gill nets of this mesh size select for red drum less than 18” total length and are a significant source of the bycatch mortality, particularly in months when water temperatures are high.

Following the original FMP, North Carolina regulations required the attendance of small mesh gill nets from May 1 through October 31 in areas known to be critical for juvenile red drum. The areas where attendance is required include all primary and secondary nursery areas, areas within 200 yards of any shoreline, and the extensive area of shallow grass flats located behind the Outer Banks. An exemption to this rule lifts the attendance requirement for the region from Core Sound to the South Carolina border in October to allow for the fall spot fishery. A study conducted in Core Sound during 1999 indicated that catches of red drum during the October fall spot fishery were relatively low. All observed trips conducted during the study occurred while gill netters were fishing nets set approximately 100 yards from shore. This practice of setting nets well off the shoreline was to be effective at reducing the incidence of juvenile red drum bycatch in this fishery. During the same study, DMF gill nets set less than 100 yards from shore had substantially more red drum bycatch than did sets made at  $\geq 100$  yards from shore.

Amendment 1 to the Red Drum FMP further refined the gill net attendance rules based on additional data collection by the DMF to focus regulations on areas and times when mortality and interactions were highest. Major modifications included extending the attendance requirement to November 30 and reducing the distance from shore attendance requirement to 50 yards in Pamlico Sound and in the area from Core Sound and south.

#### **IV. AUTHORITY**

- § 14-4.1. Legislative review of regulatory crimes.
- § 113-134. Rules.
- § 113-182. Regulations of fishing and fisheries.
- § 113-182.1. Fishery Management Plans.
- § 113-221.1. Proclamations; emergency review.
- § 143B-289.52. Marine Fisheries Commission – powers and duties.

15A NCAC 03H .0103 PROCLAMATIONS, GENERAL  
15A NCAC 03I .0102 TEMPORARY SUSPENSION OF RULES

#### **V. DISCUSSION**

To address the issues identified by the Secretary of the Department of Environmental Quality and the DMF director, four categories of options for discussion and consideration are presented below (yardage limits, attendance

requirements, set time and area restrictions, and mesh size limits). These various categories of potential rule modifications, in combination, attempt to streamline and simplify small mesh gill net rules, address bycatch in small mesh gill nets, provide for greater flexibility with constraining harvest of quota managed species, and to the greatest extent practical reduce conflicts between gill net users and other stakeholders. Each section will discuss the aforementioned categories relative to the proposed management options.

#### *Yardage limits*

As a management tool, yardage limits can be utilized to constrain effort within a fishery to moderate removals over time. This is a common management practice for quota managed species to ensure quota is available throughout the fishing season or as long as reasonably possible. When coupled with requirements for attendance, the measure can potentially contribute to higher rates of survival of discarded fish by promoting more frequent fishing of the gear. Additionally, yardage limits have the potential to address concerns of user conflict. Simply put, less gear in the water can translate to potentially lower incidence of interaction with other fisheries. There are no yardage limits that currently exist in rule for nets less than 4 inch ISM. Nets greater than 4 inch ISM are limited to a maximum of 2,000 yards in rule (15A NCAC 03J .0103 (b)(3)(B)) but are currently restricted to 1,500 yards by proclamation. The DMF director has authority to limit the amount of yardage through proclamation for either small or large mesh gill nets and has restricted the amount of allowable yardage for small mesh gill nets recently to 800 yards with an exception for drift gill nets in Pamlico Sound of 1,500 yards from May 1 – October 31. The exception allows for the Spanish mackerel and bluefish fisheries that primarily operate in Pamlico Sound to use more net to maintain efficiency and profitability of trips (further explained below).

Option 1 would maintain the current yardage limits for small mesh gill nets and proclamation authority for the DMF director to modify as needed. With the current yardage limits in place, issues related to dead discards and management of quota managed fisheries may have been adequately addressed. However, these yardage limits have not been in place for a full fishing year so the effect on the aforementioned issues is not yet known.

Options 2 through 9 provide for the establishment of yardage limits for small mesh gill nets statewide. The proposed yardage limits were informed by the previously summarized characterization of the small mesh gill net fishery and reasonable alternatives are proposed that mirror either the maximum or average yardages observed currently in the fishery. Additionally, options are proposed that allow for exemptions for drift gill net fisheries, to provide: greater flexibility for fisheries that may need more gear to remain viable, typically do not have a high incidence of bycatch, and/or occur in areas away from shore and other fisheries that may contribute to conflict.

Option 2 would establish a 2,000-yard limit for small mesh gill nets statewide in Internal Coastal Waters, which are all Coastal Fishing Waters except the Atlantic Ocean. This would be consistent with the large mesh limit currently in rule and provide clarity for stakeholders on the allowable yardage of net in state waters. In general, most net fisheries in the state, excluding some drift gill net fisheries, average considerably less yardage than 2,000 yards. This action is not expected to reduce the amount of total net yardage fished in the state, but will provide a “top end” for yardage where one currently does not exist in rule. It would also allow for the drift gill net fishery to continue as-is, relatively unaffected given that the average yardage of drift gill nets is less than 2,000 yards. This may constrain some trips, but there would not be a need to consider special exemptions for the fishery.

Option 3 would establish a 1,500-yard limit for all small mesh gill net fisheries in Internal Coastal Waters. This yardage limit is closer to the current statewide average for all combined small mesh gill net trips. This may affect the drift gill net fishery more than Option 2, but is still equivalent to the average amount of yardage fished and may help constrain effort and landings for the Spanish mackerel and bluefish quota managed fisheries by limiting the potential for large catches. However, this option does not reduce the amount of yardage fished in other small mesh gill net fisheries statewide, so there would be little benefit realized for the issues of reducing bycatch and user conflict.

Option 4 would establish an 800-yard small mesh gill net limit statewide in Internal Coastal Waters. This would make the state consistent with yardage restrictions currently in place through proclamation for Albemarle Sound and its tributaries, simplifying statewide regulations for the gear. However, based on stakeholder feedback the drift gill net fishery may be greatly affected by this yardage limit to the point that the viability of the fishery may be in question. Excluding the drift gill net fishery, 800 yards approximates the statewide average of net yardage fished in the small mesh gill net fishery. This would offer some benefits towards addressing issues with bycatch and user conflict, but in areas of the state south of Highway 58, the average yardage of net fished is much less.

Option 5 would establish two yardage limits based on area, with an 800-yard small mesh gill net limit statewide North of Highway 58 in Internal Coastal Waters and a 500-yard small mesh gill net limit South of Highway 58 in Internal Coastal Waters. A 500-yard limit south of Highway 58 would more closely match the average yardage currently fished in those areas of the state, imparting the same benefits and concerns for areas north highlighted under Option 4. Also, the same concerns for the drift gill net fishery exist for this option.

The drift gill net fishery operates in large, open bodies of water generally away from areas frequented by other fisheries. This fishery does not typically interact with other net fisheries or recreational fisheries, translating into lower reports of conflict relative to set and strike net fisheries. Nets are attended when fished and non-marketable bycatch can be low. The primary targeted species of the drift gill net fishery are Spanish mackerel and bluefish; both quota managed fisheries. In general, due to the larger vessels needed to safely fish open bodies of water, higher yardages of net are typically fished to maximize profitability of the trips. Given this, Options 6 through 9 provide for exemptions for this fishery relative to statewide yardage limits described above. Options 6 and 7 allow for 1,500 yards of small mesh drift gill net from May 1 – October 31, primarily allowing for the Spanish mackerel drift gill net fishery to occur, but with yardage limits approximately equal to the average amount of yardage observed in the fishery. A 1,500-yard allowance for the Spanish mackerel drift gill net fishery still allows for the traditional fishery but may limit the amount of gear fished and potentially increase the frequency that fishermen fish their nets, leading to decreased discard mortality. However, the time period may not allow for other fisheries like bluefish or bait fisheries to seasonally operate when their targeted species are available. Options 8 and 9 allow for flexibility in providing a drift gill net yardage exception by allowing the DMF director to increase the yardage limit for drift gill nets up to 1,500 yards by proclamation and specify the area and time for this exception. Similar to options 8 and 9, option 10 would allow for an exemption of up to 2,000 yards by proclamation from December through April for all small mesh nets. This would allow fisheries for bluefish and bait to operate with yardage amounts in excess of the current 800 yard limit which may increase the efficiency and profitability of those trips. However, if the Director allows for this exemption, then there is the potential that bycatch of some fisheries may increase.

#### *Attendance requirements*

Bycatch, and minimizing waste of target and non-target species in N.C. gill net fisheries has been addressed in many FMPs. As part of FMPs for red drum (NCDMF 2001; 2008) and striped bass (NCDMF 2004; 2013), small mesh gill net (<5.0 inch ISM) attendance requirements have been implemented as a strategy to decrease dead discards of these species. “Attended” is defined in Rule 15A NCAC 03I .0101 as being in a vessel, in the water, or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attendance does not include being in a building or structure. The intent of the attendance requirement is to indirectly limit the amount of gear that can be fished and directly reduce mortality of discards and protected species. All options and discussion of attendance requirements in this section are only applicable to areas south of Albemarle Sound. Attendance requirements in Albemarle Sound are applicable to ranges of mesh sizes and do not have distance from shore qualifiers as the rest of the state does.

Small mesh gill net attendance was first implemented in Pamlico and Neuse rivers by proclamation in 1995. Expanded attendance requirements are now in rule from the Red Drum FMP for the state (15A NCAC 03J .0103) (Appendix, Figure A1). Rule 15A NCAC 03J .0103(g) and (h) state:

- (g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the gill net attended areas designated in 15A NCAC 03R .0112(a).
- (h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through November 30 in the Internal Coastal Waters and Joint Fishing Waters of the state designated in 15A NCAC 03R .0112(b).

Year-round small mesh gill net attendance is required in the upper portions of the rivers (Pamlico and Neuse) and within 200 yards of shore in the lower rivers (Figure 9). From May 1 through November 30 small mesh gill nets must be attended in all primary and permanent secondary nursery areas, no trawl areas, within 50 yards of shore in Pamlico and Core sounds, and all coastal waters south to the North Carolina/South Carolina state line. An exemption to this rule lifts the attendance requirement for the region from Core Sound to the South Carolina border in October to allow for the fall spot fishery. Overall, the amount of small mesh gill net effort has been reduced in areas with attendance requirements.

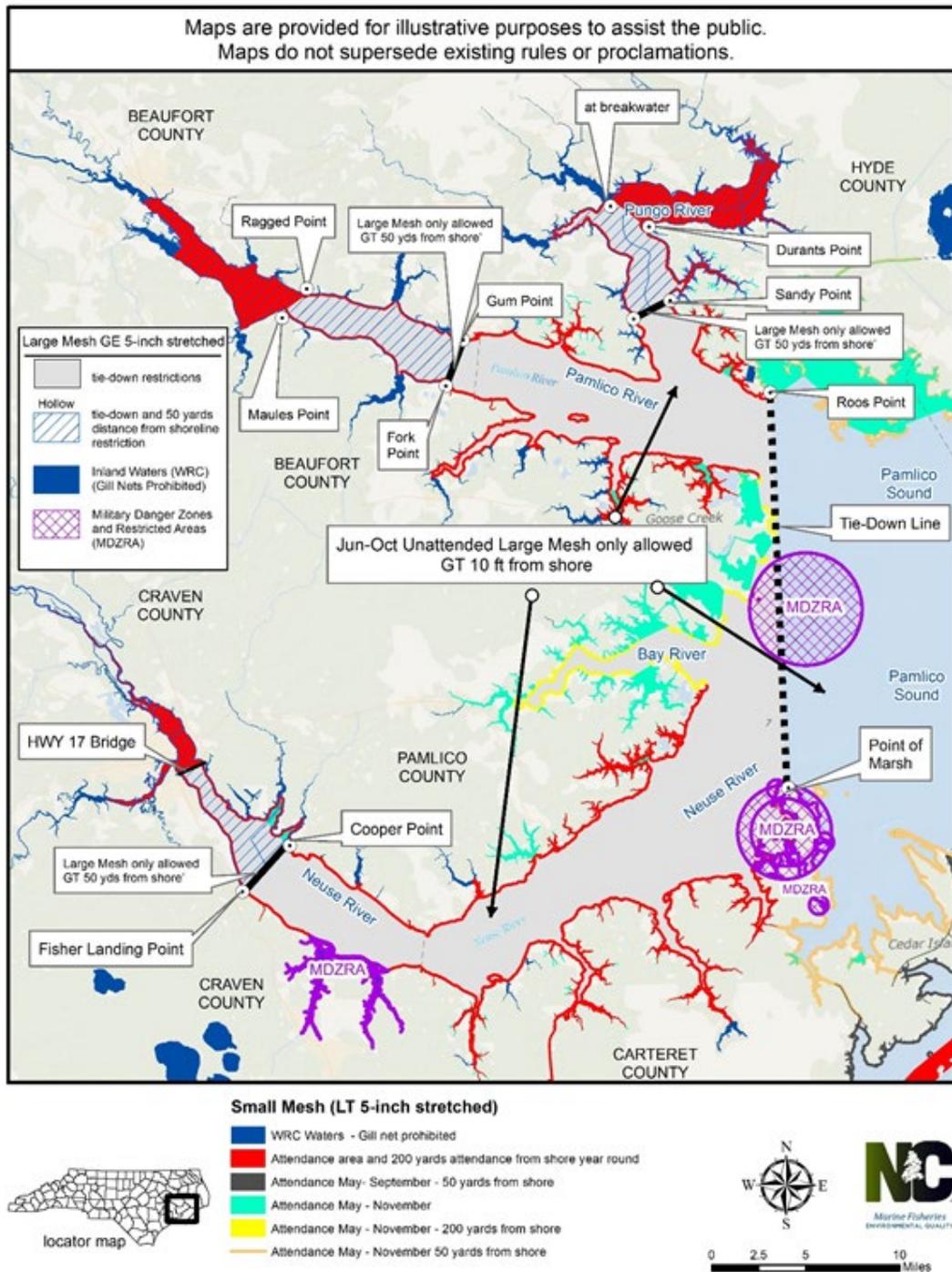


Figure 9. Gill net regulations for small and large mesh gill nets in the Pamlico, Pungo, Bay, and Neuse rivers.

Implementation of areas and seasons where small mesh gill net attendance is required was informed by analysis of best available data from onboard commercial fishery observers and fishery-independent (DMF) gill net sampling. For example, a study conducted in Core Sound during 1999 indicated catches of red drum during the October fall spot fishery were relatively low (NCDMF 2001). All observed trips conducted during the study occurred while gill netters

were fishing nets set approximately 100 yards from shore, which was effective at reducing the incidence of juvenile red drum bycatch in the fishery. Fishery-independent gill nets set concurrently by the DMF caught substantially more red drum within 100 yards from shore than those set greater than 100 yards from shore. This information was used as the basis for exempting the October spot fishery in Core Sound from attendance requirements.

Fishery-independent gill net data was also used to inform decisions regarding extending attendance for small mesh gill nets within 200 yards of shore to include the area of the lower Neuse out to the mouth of the river and to modify the seasonal attendance requirement to include the period of May 1 through November 30 in all primary and permanent secondary nursery areas, no trawl areas, within 50 yards of shore in Pamlico and Core sounds, and all coastal waters south to the North Carolina/South Carolina state line (NCDMF 2008). These decisions were based on acute mortality of sub-legal red drum for each month during fishery-independent gill net sampling. Because of the rigorous process used in identifying the need for attendance requirements and reductions in effort associated with implementation of attendance requirements, regulations have largely been effective in reducing dead discards of red drum and striped bass from small mesh gill nets. Conversely, removing attendance requirements statewide, even for a portion of the year, could potentially increase the likelihood of dead discards and undermine the conservation benefits of current fishery management plans.

However, because of the patchwork nature of areas requiring small mesh gill net attendance and differences in seasonality of attendance requirements, the simplification of existing rules may alleviate confusion and aid in enforceability. Other attended areas are implemented via proclamation (see Option 1 below), which creates flexibility in how they are implemented but may lead to confusion. Codifying these requirements in rule would maintain consistency with how most attendance requirements are implemented and reduce potential for confusion by the fishing public.

While existing small mesh gill net requirements are likely adequate for reducing discard mortality, expansion of attendance areas, or attendance seasons, would likely lead to greater survival of discards over a broader area and time range. Requiring year-round attendance of small mesh gill nets set within 200 yards from shore statewide would create consistency in rules and possibly reduce dead discards. This measure would mostly impact areas outside of the Pamlico and Neuse rivers (year-round attendance required within 200 yards from shore in rivers; Figure 1). Year-round attendance could also be considered for areas designated in Rule 15A NCAC 03R .0112(b) (i.e., primary nursery areas, permanent secondary nursery areas, no trawl areas). This would create consistency in the timing of attendance requirements.

Increasing the area or time when attendance is required would cause some concerns about safety because of the need to remain on the water attending nets. This is of particular concern in the northern part of the state where waterbodies are larger with fewer sheltered areas. In addition, attendance requirements have been shown to reduce effort, so any additional requirements would likely further limit the small mesh gill net fishery, and potentially cause shifts to the runaround and drift gill net fisheries. The opportunity cost of trips for fishermen may increase with additional attendance requirements translating to increase effort for the same amount of fish.

Consideration could also be given to modifying the definition of attended. Currently, the requirement for attendance is being within 100 yards of the gear. Some stakeholders have pointed out that a modification in the attendance definition to allow for a greater distance from gear could impart some benefits relative to efficiency of the fishing operation. The distance requirement could be increased to increase efficiency of the fishing operation, but this is counterproductive for the overall effort examined in this document as it could allow for more gear to be fished. That said, a greater distance could provide the flexibility to fish multiple smaller shots of gill net that could be fished more quickly, offsetting the increased attendance requirements and reducing opportunity costs for fishermen overall. This type of modification may be useful in smaller waterbodies in the southern part of the state (south of Highway 58) where shorter lengths of net are used and can be more readily attended. However, this requirement could also lead to increased time in-between fishing different shots of net that could cause enforcement issues and may lead to increased dead discards. The distance threshold could be modified to require being physically in contact with the gear at all times. This modification would cause set nets to be fished more like runaround or drift gill nets and would likely limit dead discards and would be easily enforced. However, this would eliminate the ability to set multiple shots of gill net and could create unsafe fishing conditions. This modification would likely lead to extreme declines in small mesh set net effort.

### *Set time and area restrictions*

Set time and area restrictions for gill nets currently in rule prohibit setting nets: within 150 or 300 yards of bridge crossings in various rivers and waterbodies (15A NCAC 03J .0102; 15A NCAC 03J .0103(d)(2)); within various distances from pound nets (15A NCAC 03J .0103(d)(1)); in numerous small embayments, basins, and areas (15A NCAC 03J .0402); and in joint fishing waters of Lake Mattamuskeet and within 800 feet of Lock Number 1 on the Cape Fear River (15A NCAC 03Q .0107(2)(a); .0107(3)). Pursuant to Rule 15A NCAC 03J .0103(b), the DMF director may, by proclamation, specify the time, area, and means and methods for setting gill nets. Per proclamation M-3-2014, it has been unlawful to set gill nets in joint coastal waters from midnight on Friday to midnight on Sunday except for portions of Albemarle and Currituck sounds since Feb. 5, 2014. Additional area restrictions implemented in proclamation include prohibiting the use of gill nets near Martins Point in Currituck Sound since Dec. 2, 2016 (M-26-2016) to reduce user group conflict, and upstream of the ferry lines in the Neuse and Pamlico rivers since March 18, 2019 (M-6-2019) to fulfill a directive by the MFC pursuant to N.C. General Statute 113-221.1 (d).

Keeping the current restrictions for set time and area for small mesh gill nets would allow for the DMF director to maintain the ability to modify restrictions via proclamation, which may reduce confusion for fishermen who are familiar with the current set time and area restrictions. However, this option does not address the concerns raised with conflict between user groups in areas not covered under current rule or proclamation. By codifying the restrictions on set time and area currently in proclamation into rule, regulatory complexity could be reduced but would limit the ability of the DMF director to modify restrictions via proclamation, reducing flexibility to address variable conditions. The process for rule change is lengthy and as a result could delay changes to management strategies and could complicate the ability to implement FMPs in a timely fashion.

Further restricting the time and/or days that small mesh gill nets may be set and retrieved could potentially reduce user conflict by removing the gear from the water during times when recreational activities are highest (i.e., recreational fishing, kayaking, pleasure boating, etc. in daylight hours, on weekends, and during high effort seasonal times). Set time restrictions could potentially only be required during certain times of the year when the expectation of user conflicts is diminished due to low effort from other gear and user groups. This could allow greater access for gill nets during certain times of the year to maximize cost efficiency of trips. Reduced soak times may limit the number of dead discards, as well as aid in the management of quota managed species (i.e., Spanish mackerel and bluefish) by constraining landings, potentially leading to longer fishing seasons. Depending on what time nets are specified to be retrieved, the expected reductions in conflict could be diminished if the soak times extend too long into daytime hours. Conversely, if the specified retrieval time is early in the morning, safety at sea becomes an issue for fishermen travelling long distances in dark conditions to retrieve their gear on time. Restricting the time nets may be set and fished could potentially result in lost revenue from declines in effort, as well as disrupt the supply of harvest to markets.

Defining the times in specific areas that nets can be set could potentially serve as a more fine-tuned approach to address user group conflict issues with the small mesh gill net fishery. Restricting soak times in certain areas or management units could result in the same outcomes (both positive and negative) as discussed for set time restrictions. However, the area and time restrictions could be tailored to fit areas where the need to reduce user group conflict is highest. While it might be beneficial in reducing conflict, restrictions by area would result in regulatory inconsistencies across waterbodies and could create a perceived inequality among commercial fishermen who fish different areas of the state. Another option would be to prohibit the use of nets in certain areas or within a specified distance of docks or improved shorelines, regardless of the time of day. While this option could permanently reduce conflict in restricted areas, it would remove access for net fishermen from public trust waters. Also, implementing this option could result in increased localized abundance of some species if the loss of harvest by gill nets is not recouped by other gears.

### *Mesh size limits*

Minimum mesh size for gill nets has gone unchanged in rule since the 2.5 inch mesh size for all “nets” was first implemented by the Department of Conservation and Development in 1927. Minimum mesh size restrictions currently in rule make it unlawful to use gill nets with a mesh size less than 2.5 inch ISM. (15A NCAC 03J .0103 (a) (1)). The only variations are in proclamations effective in areas of the Albemarle, Currituck, Roanoke, and Croatan sounds (Management Unit A) that restrict gill net minimum mesh sizes to 3.0 inch ISM. Gill nets from 2.5 inches to less than 5.0 inches are generally considered small mesh nets.

Preliminary analysis of mesh sizes indicates that the minimum mesh size currently in rule is smaller than what fishermen are using with some exception. Gill net trips for sea mullet and spot are typically those using mesh sizes

smaller than 3.0 inch ISM. The most common modal mesh sizes used in the small mesh fishery was 3.25 inches and mesh sizes generally ranged from 3.0 to 3.5 inch ISM (Tables 2, 5, and 6).

Mesh size options presented include minimums of 2.625, 2.75, and 3.0 inch ISM. DMF staff reached out to multiple gill net fishermen and there was no support for increasing the minimum mesh size requirements to 3.0 inch ISM. Most of the fishermen were in support of increasing the minimum mesh size to 2.75 inch ISM because they currently use that size or larger. Some fishermen expressed concern that an increase in minimum mesh size requirements might adversely affect the sea mullet fishery in the ocean that generally uses 2.5 – 2.625 inch ISM sizes. There was considerable discussion that increasing the minimum mesh size would allow escapement of smaller spot and croaker and that sea mullet normally captured in the smaller mesh sizes would eventually “grow into” the larger mesh sizes.

Increasing the minimum mesh size for small mesh gillnets has the potential to reduce and/or shift landings of target species. Although expected reductions are difficult to project due to changes in fishing behavior, landings of target species at discrete mesh sizes can be used to inform expected reductions in harvest. An increase of minimum mesh size would have the greatest effect on landings for spot and sea mullet (Figures 3, 5, and 7). Spot landings from small mesh gill nets could potentially be decreased up to 45% for set nets and 85% for runaround nets across the range of mesh size options presented. Sea mullet landings have the potential to decrease up to 65% from set nets across the range of mesh size options presented. Expected reductions for other target species identified in the information paper range from very little to moderate reductions across the range of mesh size options presented.

Increases in minimum mesh size requirements could potentially reduce incidence of regulatory discards in some fisheries by modifying gill net selectivity. Although some catches of marketable species may decline due to the change in selectivity, it is hard to know the level of impact, good or bad, this increase may have. It is likely that changes may result in both positive and negative impacts to fisheries and stocks depending on the species.

## VII. PROPOSED MANAGEMENT OPTIONS

(Options selected by the Marine Fisheries Commission for further consideration and development at their November 2020 business meeting are highlighted grey)

### *Yardage limits*

**Option 1:** *status quo* – no yardage limit in rule for gill nets with stretched mesh less than four inches

- + No rule change required
- + DMF director has proclamation authority under current rules to implement yardage limits.
- + No need for fishermen to modify current gear
- + No additional regulation for Marine Patrol to enforce
- Unlimited yardage makes controlling harvest for quota managed fisheries difficult
- Excessive yardage can contribute to high mortality of discarded fish and other marine organisms

**Option 2:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 2,000 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved.

- + Establishes small mesh yardage limit above current statewide average providing minimal impact to fishermen, but constrains further expansion of small mesh gill net effort
- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Would create consistency with current yardage limit for nets with stretched mesh greater than four inches
- Some fisheries currently use in excess of 2,000 yards and will be disproportionately affected by the yardage limit.
- Some fishermen may need to modify gear/vessel to comply.

**Option 3:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 1,500 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved.

- + Uses the best available data to set the yardage limit at the current statewide average
- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Is consistent with current management measures in proclamation for gill nets with stretched mesh greater than four inches
- + DMF director has proclamation authority under current rules to implement yardage limits less than 1,500 if needed.
- +/- Reduces the current average level of effort and provides conservation benefits by potentially increasing the frequency that attended gear is fished and thereby increasing the potential for survival of discarded fish
- +/- Areas of the state south of Hwy 58 average considerably less than 1,500 yards and will not be affected by this limit.
- Some fisheries currently use in excess of 1,500 yards and will be disproportionately affected by the yardage limit.
- Some fishermen may need to modify gear/vessel to comply.

**Option 4:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved

- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + DMF director has proclamation authority under current rules to implement yardage limits less than 800 if needed.

- +/- Reduces the current average level of effort and provides conservation benefits by potentially increasing the frequency that attended gear is fished and thereby increasing the potential for survival of discarded fish
- +/- Changes to per-trip cash flows due to reduction of gear fished, potential increase of product quality, reduction of net needed to purchase and maintain, and increase in trip efficiency
- Most fisheries in internal waters north of Highway 58 will be affected; some may be reduced to the point that it is not feasible (i.e., drift gill net fishery).
- Some fishermen may need to modify gear/vessel to comply.

**Option 5:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individuals involved

- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
  - + DMF director has proclamation authority under current rules to implement yardage limits less than 800 if needed.
  - + Lesser yardage limit south of Highway 58 better reflects current yardage use in these areas and imparts some reduction in overall yardage fished.
  - +/- Reduces the current average level of effort and provides conservation benefits by potentially increasing the frequency that attended gear is fished and thereby increasing the potential for survival of discarded fish
  - +/- Changes to per-trip cash flows due to reduction of gear fished, potential increase of product quality, reduction of net needed to purchase and maintain, and increase in trip efficiency
  - Most fisheries statewide will be affected; some may be reduced to the point that it is not feasible (i.e., drift gill net fishery).
  - Some fishermen may need to modify gear/vessel to comply.
  - Increases difficulty of enforcement; would require Marine Patrol to physically measure gear

**Option 6:** Specify that the allowable yardage of gill nets, with stretched mesh less than four inches, shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved, except for drift gill nets from May 1 – October 31 shall not exceed 1,500 yards.

- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Provides exclusion for drift gill nets during the portion of the year the Spanish mackerel and bluefish fisheries are active
- +/- Reduces the current average level of effort and provides conservation benefits by potentially increasing the frequency that attended gear is fished and thereby increasing the potential for survival of discarded fish
- +/- Changes to per-trip cash flows due to reduction of gear fished, potential increase of product quality, reduction of net needed to purchase and maintain, and increase in trip efficiency
- Some fishermen may need to modify gear/vessel to comply.
- Increases difficulty of enforcement; would require Marine Patrol to physically measure gear

**Option 7:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individual involved, except for drift gill nets from May 1 – October 31 shall not exceed 1,500 yards.

- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Provides exclusion for drift gill nets during the portion of the year the Spanish mackerel and bluefish fisheries are active

- + Lesser yardage limit south of Highway 58 better reflects current yardage use in these areas and imparts some reduction in overall yardage fished.
- +/- Reduces the current average level of effort and provides conservation benefits by potentially increasing the frequency that attended gear is fished and thereby increasing the potential for survival of discarded fish
- +/- Changes to per-trip cash flows due to reduction of gear fished, potential increase of product quality, reduction of net needed to purchase and maintain, and increase in trip efficiency
- Some fishermen may need to modify gear/vessel to comply
- Increases difficulty of enforcement; would require Marine Patrol to physically measure gear

**Option 8:** Specify that the allowable yardage of gill nets, with stretched mesh less than four inches, shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved. The DMF director may by proclamation allow up to 1,500 yards of drift gill net and specify the area and time it may be fished.

- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Allows for flexibility to accommodate fisheries where a high volume of gear during certain times and/or areas could be utilized with low incidence of discards
- +/- Can reduce the current average level of effort and provide conservation benefits by potentially increasing the frequency that attended gear is fished and thereby increasing the potential for survival of discarded fish
- +/- Changes to per-trip cash flows due to reduction of gear fished, potential increase of product quality, reduction of net needed to purchase and maintain, and increase in trip efficiency
- Some fishermen may need to modify gear/vessel to comply.
- Increases difficulty of enforcement; would require Marine Patrol to physically measure gear

**Option 9:** Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individuals involved. The DMF director may by proclamation allow up to 1,500 yards of drift gill net and specify the area and time it may be fished.

- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Allows for flexibility to accommodate fisheries where a high volume of gear during certain times and/or areas could be utilized with low incidence of discards
- + Lesser yardage limit south of Highway 58 better reflects current yardage use in these areas and imparts some reduction in overall yardage fished.
- +/- Can reduce the current average level of effort and provide conservation benefits by potentially increasing the frequency that attended gear is fished and thereby increasing the potential for survival of discarded fish
- +/- Changes to per-trip cash flows due to reduction of gear fished, potential increase of product quality, reduction of net needed to purchase and maintain, and increase in trip efficiency
- Some fishermen may need to modify gear/vessel to comply.
- Increases difficulty of enforcement; would require Marine Patrol to physically measure Gear

**Option 10:** Allow for an exemption up to 2,000 yards through proclamation from December 1<sup>st</sup> – April 30<sup>th</sup>.

- + Allows for flexibility to accommodate fisheries where a high volume of gear during certain times and/or areas could be utilized with low incidence of discards
- +/- Changes to per-trip cash flows due to reduction of gear fished, potential increase of product quality, reduction of net needed to purchase and maintain, and increase in trip efficiency
- Some fishermen may need to modify gear/vessel to comply.
- Increases difficulty of enforcement; would require Marine Patrol to physically measure

## Gear

### *Attendance requirements*

Options for amending attendance requirements presented below were developed for areas south of Albemarle Sound. Attendance requirements in Albemarle sound and its tributaries are applicable to various ranges of mesh sizes and do not have distance from shore qualifiers. These restrictions were developed over countless years of FMP development and management responses to regional issues and differ drastically than regulations in the rest of the state.

#### **Option 1:** *status quo* – attendance requirements under current rule:

- “Attended” is currently defined in Rule 15A NCAC 03I .0101 as being in a vessel, in the water, or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- Within 100 feet of the Intercostal Waterway from start of Alligator River canal to South Carolina line
- For gill nets with a stretched mesh less than five inches and within 200 yards of shore, in any areas designated in Rule 15A NCAC 03R .0112(a)
- For gill nets with a stretched mesh less than five inches and within 200 yards of shore, from May 1 to November 30 in any areas designated in Rule 15A NCAC 03R .0112(b) including primary nursery areas, permanent secondary nursery areas, and no trawl areas

Attendance requirements currently in proclamation:

- Deer and School House creeks in Bogue Sound
- Newport River and its tributaries from 7:00 am to 7:00 pm
- Year round within 200 yards of shore in Bay and Pungo rivers and lower portions of the Pamlico and Neuse rivers

- + No rule change required
- + DMF director has proclamation authority under current rules to modify
- + Fishermen are familiar with current attendance requirements
- + No additional regulation for Marine Patrol to enforce
- + Addresses concerns raised with conflict in some areas of the state
- Attendance requirements are not consistent statewide, which can cause difficulty of enforcement

#### **Option 2:** Codify restrictions currently in proclamation into rule.

- + Reduces regulatory complexity by having all current attendance requirements in rule
- +/- Limits the discretionary ability of the DMF director to modify requirements via proclamation
- +/- Rule changes take time, which can delay changes to management strategy.
- Could add complexity to implementing FMPs in a timely manner

**Option 3:** Require year-round statewide attendance within 200 yards of shore and/or within designated areas currently in rule, whichever is more restrictive.

- + Reduces regulatory complexity by having consistent attendance requirements statewide
- + Potentially reduces incidence of dead discards by reducing soak times and requiring active fishing of gear
- +/- Limits the discretionary ability of the DMF director to modify requirements via proclamation
- Concerns with safety at sea if fishermen are required to attend gear
- Potential decline in efficiency of trips
- Rule changes take time, which can delay changes to management strategy.
- Could add complexity to implementing FMPs in a timely manner

**Option 4:** Require year-round statewide attendance for gill nets with mesh size less than four inches.

- + Reduces regulatory complexity by having consistent attendance requirements statewide
- + Potentially reduces incidence of dead discards by reducing soak times and requiring active fishing of gear
- + Ease of enforcement compared to current requirements
- +/- Limits the discretionary ability of the DMF director to modify requirements via proclamation
- Concerns with safety at sea if fishermen are required to attend gear in open waters
- Concerns with safety of Marine Patrol in open waters
- Potential decline in efficiency of trips
- Rule changes take time, which can delay changes to management strategy.
- Could add complexity to implementing FMPs in a timely manner

**Option 5:** Require year-round attendance within 200 yards of shore in all areas currently designated in Rule 15A NCAC 03R .0112.

- + Reduces regulatory complexity by removing seasonal requirements (May 1 to November 30 in areas designated in Rule 15A NCAC 03R .0112(b)) creating consistency with other year-round attendance requirements
- + Potentially reduces incidence of dead discards by reducing soak times and requiring active fishing of gear
- +/- Limits the discretionary ability of the DMF director to modify requirements via proclamation
- Concerns with safety at sea if fishermen are required to attend gear
- Potential decline in efficiency of trips
- Rule changes take time, which can delay changes to management strategy.
- Could add complexity to implementing FMPs in a timely manner

**Option 6:** Require year-round attendance in all areas currently designated in Rule 15A NCAC 03R .0112.

- + Reduces regulatory complexity by removing seasonal requirements (May 1 to November 30 in areas designated in Rule 15A NCAC 03R .0112(b)) creating consistency with other year-round attendance requirements
- + Potentially reduces incidence of dead discards by reducing soak times and requiring active fishing of gear
- +/- Limits the discretionary ability of the DMF director to modify requirements via proclamation
- Concerns with safety at sea if fishermen are required to attend gear, especially in large open water areas
- Potential decline in efficiency of trips
- Rule changes take time, which can delay changes to management strategy.
- Could add complexity to implementing FMPs in a timely manner

**Option 7:** Require year-round attendance in all creeks and/or water bodies less than 200 yards wide. (Most areas that would be affected by this option already have a 200 yard requirement or are included in Rule 15A NCAC 03R .0112 an have seasonal attendance requirements. A year round 200 yards from shore attendance requirement would cover these areas.)

- + Potentially reduces conflict in confined areas that multiple user groups occupy
- + Reduces regulatory complexity by removing seasonal requirements (May 1 to November 30 in areas designated in Rule 15A NCAC 03R .0112(b)) creating consistency with other year-round attendance requirements
- + Potentially reduces incidence of dead discards by reducing soak times and requiring active fishing of gear
- +/- Limits the discretionary ability of the DMF director to modify requirements via proclamation
- Potential decline in effort and profitability of trips
- Rule changes take time, which can delay changes to management strategy.
- Could add complexity to implementing FMPs in a timely manner

**Option 8:** Modify distance requirement in the definition of "attend" to allow person and/or vessel being occupied to be within 500 yards of gear being fished.

- + An increase in the distance requirement will allow fishermen to set and attend multiple shots of shorter nets within a larger area as opposed to setting fewer, larger sets.
- + The ability to fish shorter shots of net over a larger area actively has the potential to increase efficiency of the gear and operation while simultaneously mitigating the incidence of dead discards.
- Increases the effort needed for enforcement by expanding the allowable area an operation can fish
- Can create scenarios where an operation would not be able to physically observe their nets for protected species interactions but still be considered "attended", i.e., nets out of view around a marsh edge

**Option 9:** Modify distance requirement in the definition of "attend" to allow person and/or vessel being occupied to be within 500 yards of gear being fished south of Highway 58.

- + An increase in the distance requirement will allow fishermen to set and attend multiple shots of shorter nets within a larger area as opposed to setting fewer, larger sets.
- + The ability to fish shorter shots of net over a larger area actively has the potential to increase efficiency of the gear and operation while simultaneously mitigating the incidence of dead discards.
- + Increasing the attendance distance south of Highway 58 will allow operations in this area to more efficiently fish their gear within the narrow confines of the fishable habitat.
- Increases the effort needed for enforcement by expanding the allowable area an operation can fish
- Can create scenarios where an operation would not be able to physically observe their nets for protected species interactions but still be considered "attended", i.e., nets out of view around a marsh edge

**Option 10:** Remove distance requirement from the definition of "attend" to require a person to be physically in contact with the gear at all times.

- + Will ensure that nets are attended and actively fished, potentially reducing to the maximum extent practicable the incidence of dead discards
- Fishermen would be limited to one net and therefore efficiency of trips may be reduced.
- Profitability of some trips may be reduced to the point that some fisheries may no longer be Feasible.

**Option 11:** No attendance requirement statewide from December 1 – April 30<sup>th</sup>.

- +/- Changes to per-trip cash flows due to potential changes in trip efficiency
- Would remove the attendance requirement from all areas currently designated in 15A NCAC 03R .0112(a & b) thereby increasing the likelihood of bycatch and dead discards within nursery areas
- Would remove the attendance requirement within 100 feet of the Intercoastal Waterway thereby increasing the likelihood of interactions with marine traffic
- Would remove the attendance requirement in areas of the state currently covered in proclamations as part of user conflict resolutions

*Set time and area restrictions*

**Option 1: status quo – prohibition on setting gill nets in current rule:**

- Within 150 or 300 yards of bridge crossings in numerous river systems statewide
- Use of gill nets within various set distances from pound nets
- Numerous small embayments, basins, and areas described in Rule 15A NCAC 03J .0402
- In joint fishing waters of Lake Mattamuskeet and within 800 feet of Lock No. 1 on the Cape Fear River
- Adjacent to marked fishing piers

Prohibition on setting gill nets in current proclamations:

- Joint coastal fishing waters from midnight on Friday to midnight on Sunday except for portions of Albemarle and Currituck Sounds
  - + No rule change required
  - + DMF director has proclamation authority under current rules to modify
  - + Fishermen are familiar with current set time and area restrictions.
  - + No additional regulation for Marine Patrol to enforce
  - Does not address concerns raised with conflict in areas not covered under current rule or proclamation

**Option 2: Codify restrictions currently in proclamation into rule.**

- + Reduces regulatory complexity by having all restrictions in rule
- +/- Limits the discretionary ability of the DMF director to modify restrictions via proclamation
- Rule changes take time, which can delay changes to management strategy.
- Could add complexity to implementing FMPs in a timely manner

**Option 3: Specify that nets may be set no sooner than one hour before sunset and retrieved no later than one hour after sunrise statewide.**

- + Potentially reduces conflict between user groups
- + Potentially reduces incidence of dead discards by reducing soak times
- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- Reduces the time that gear is in the water

**Option 4: Specify that nets may be set no sooner than one hour before sunset and retrieved no later than noon the following day statewide.**

- + Potentially reduces conflict between user groups
- + Potentially reduces incidence of dead discards by reducing soak times
- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Promotes safety at seas by allowing additional time during daylight hours to retrieve gear
- Expected reductions in conflict may be diminished due to increased soak time during daylight hours.

**Option 5: Specify that nets may not be fished from midnight on Friday to midnight on Sunday statewide.**

- + Reduces the potential for user conflict by removing nets from the water during times when recreational and pleasure boat activity is presumed to be high
- + Enforcement staff can more easily identify and enforce net violations.
- Potential loss in revenue from decline in effort
- Disruption in supply of harvest to local markets

**Option 6:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than one hour after sunrise in areas or Management Units determined by the MFC.

- + Potentially reduces conflict between user groups
- + Potentially reduces incidence of dead discards by reducing soak times
- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Limits setting time requirements to areas where conflict occurs
- Creates inconsistent restrictions across areas that may prove troublesome for enforcement
- Reduces the time that gear is in the water

**Option 7:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than noon the following day in areas or Management Units determined by the MFC.

- + Potentially reduces conflict between user groups
- + Potentially reduces incidence of dead discards by reducing soak times
- + May help constrain landings of quota managed species (Spanish mackerel and bluefish) and provide for greater fishing opportunities through extended open seasons
- + Limits setting time requirements to areas where conflict occurs
- + Promotes safety at seas by allowing additional time during daylight hours to retrieve gear
- Creates inconsistent restrictions across areas that may prove troublesome for enforcement
- Expected reductions in conflict may be diminished due to increased soak time during daylight hours.

**Option 8:** Specify that nets may not be set within 200 feet of docks and improved shorelines. Allow exemption for personal docks and docks where the fishing operation has written permission to fish within 200 feet of dock and/or improved shoreline.

- + Potentially reduces conflict between net fishermen and property owners by removing the gear from areas that could pose conflict
- Removes access for net fishermen from public trust waters
- Need to define docks and improved shorelines for effective enforcement
- Reductions in conflict around docks and improved shorelines may be offset by concentrated effort in other areas.

**Option 9:** Prohibit use of small mesh nets in areas of high conflict determined by the MFC.

- + Temporarily or permanently reduces conflict in restricted areas
- + Abundance of some marine species may increase in these areas if loss of harvest is not completely recouped by other participants and gears.
- +/- Limits the discretionary ability of the DMF director to modify restrictions via proclamation
- Potentially reduces profitability of gill net trips around restricted areas
- Could add complexity to implementing FMPs

**Option 10:** No set time requirements from December 1<sup>st</sup> – April 30<sup>th</sup>.

- + Allows access to areas during times of the year when effort from other fisheries and user groups may be low translating into lower probability of conflict
- +/- Changes to per-trip cash flows due to potential changes in trip efficiency
- Would remove midnight on Friday to midnight on Sunday restriction for Joint Coastal Waters potentially increasing the incidence of conflict between gill nets and other gears and users

*Mesh size limits*

**Option 1: status quo** – current rule prohibits use of gill nets with mesh size less than 2.5 ISM

- + No rule change required
- + DMF director has proclamation authority under current rules to modify mesh size restrictions, if needed
- + No need for fishermen to modify current gear
- + No additional regulation for Marine Patrol to enforce
- Two and one-half inches may select for sub-legal sizes in some fisheries and promote excessive discards. However, the incidence of sub-legal/unmarketable catch is low and variable across species so impacts from mesh size are difficult to quantify and may be negligible.

**Option 2: Increase the minimum mesh size to 2.625 inch ISM**

- + Potentially reduces incidence of regulatory discards in some fisheries by modifying selectivity of gill nets
- + Few trips utilize mesh sizes less than three inches.
- Catches of some marketable species may decline due to changes in gill net selectivity; i.e., kingfishes, spot, and Atlantic croaker.
- Some fishermen may need to modify gear/vessel to comply.

**Option 3: Increase the minimum mesh size to 2.75 inch ISM**

- + Potentially reduces incidence of regulatory discards in some fisheries by modifying selectivity of gill nets
- + Few trips utilize mesh sizes less than three inches.
- Catches of some marketable species may decline due to changes in gill net selectivity; i.e., kingfishes, spot, and Atlantic croaker.
- Some fishermen may need to modify gear/vessel to comply.

**Option 4: Increase the minimum mesh size to 3.0 inch ISM**

- + Potentially reduces incidence of regulatory discards in some fisheries by modifying selectivity of gill nets
- + Few trips utilize mesh sizes less than three inches.
- Catches of some marketable species may decline due to changes in gill net selectivity; i.e., kingfishes, spot, and Atlantic croaker.
- Some fishermen may need to modify gear/vessel to comply.

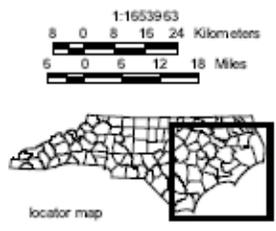
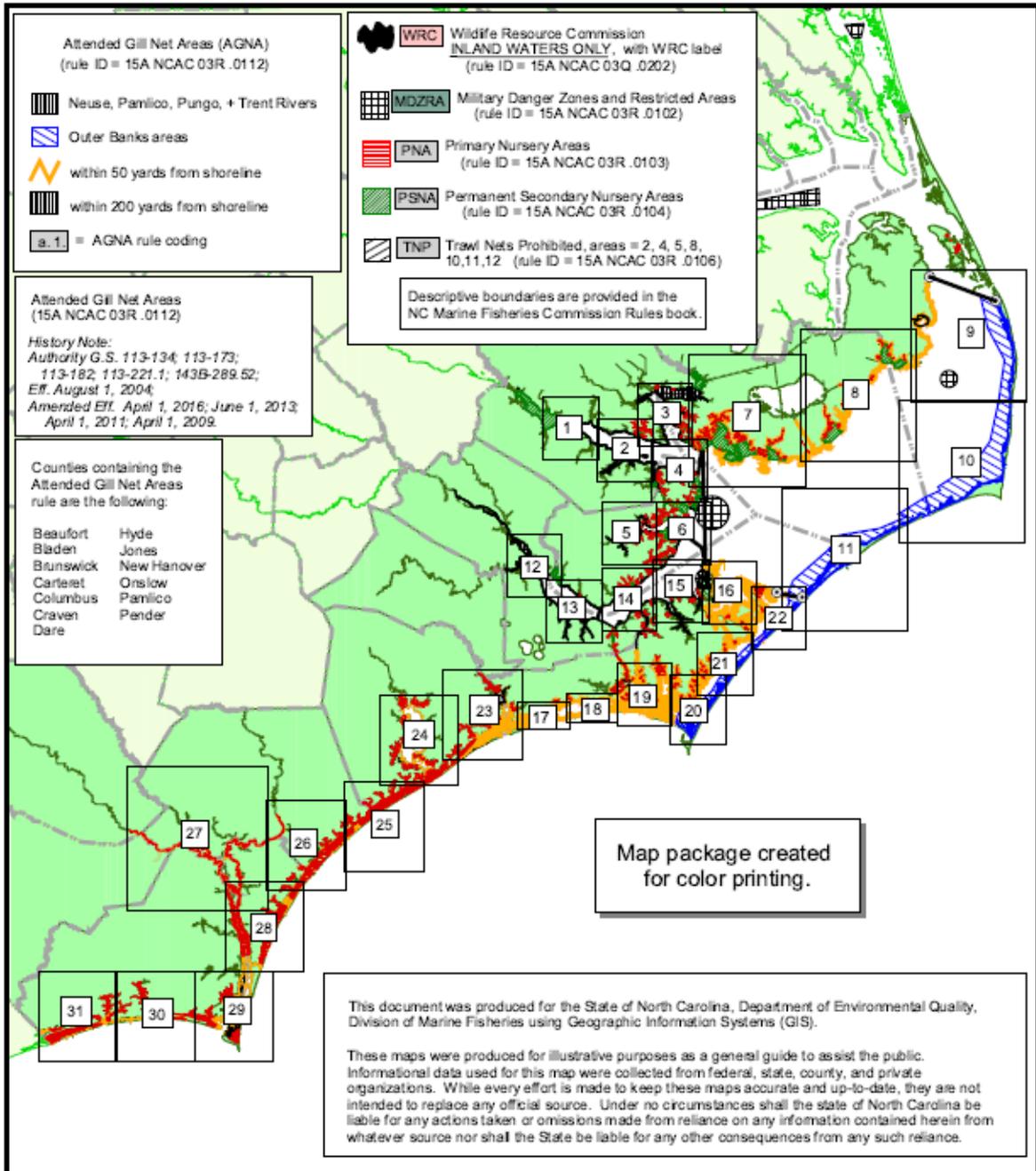
**VII. SUMMARY FINDINGS AND RECOMENDATIONS**

The above information summarizes the available data on the small mesh gill net fishery in North Carolina and provides an initial commentary on actions that the MFC may consider during deliberations of potential changes to the management of small mesh gill nets. The DMF's Gill Net Work Group requests that the MFC continue to 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. Issues and actions are presented as potential rule changes, but the MFC can elect to pursue implementation of preferred actions through proclamation or some combination with rule changes. It may be prudent to consider directing the implementation of some actions through the DMF director's proclamation authority while rule changes are developed to provide an opportunity to inform the effectiveness of the changes to the management strategy.

## VIII. REFERENCES CITED

- Byrd, B. L., J. K. McConnaughey and S. A. Smith. 2020. Annual Sea Turtle Interaction Monitoring of the Anchored Gill-Net Fisheries in North Carolina for Incidental Take Permit Year 2019 (1 September 2018 – 31 August 2019). Annual Completion Report for Activities under Endangered Species Act Section 10 Incidental Take Permit No. 16230. North Carolina Department of Environmental Quality, Division of Marine Fisheries. Morehead City, North Carolina. 59 pp.
- Daniel, L. B. 2013. Application for an Individual Incidental Take Permit under the Endangered Species Act of 1973 for Atlantic Sea Turtle Populations of: Loggerhead, *Caretta caretta*, Green, *Chelonia mydas*, Kemp's ridley, *Lepidochelys kempii*, Leatherback, *Dermochelys coriacea*, Hawksbill, *Eretmochelys imbricata*. 13 June 2013. NCDMF, 3441 Arendell St, Morehead City, NC. 154 p. (<https://www.fisheries.noaa.gov/webdam/download/66756029>)
- National Marine Fisheries Service (NMFS). 2013. Endangered Species; File No. 16230. Notice of permit issuance. Federal Register 78: 57132-57133 (<https://www.federalregister.gov/d/2013-22592>).
- NMFS. 2014. Endangered Species; File No. 18102. Issuance of permit. Federal Register 79:43716-43718 (<https://www.federalregister.gov/d/2014-17645>).
- North Carolina Division of Marine Fisheries (NCDMF). 2001. Red Drum Fishery Management Plan. N.C. Department of Environment and Natural Resources, North Carolina Division of Marine Fisheries, Morehead City, N.C. 112 pp.
- NCDMF. 2004. North Carolina Estuarine Striped Bass Fishery Management Plan. N.C. Department of Environment and Natural Resources, Division of Marine Fisheries, Morehead City, N.C. 374 pp.
- NCDMF. 2008. North Carolina Red Drum Fishery Management Plan Amendment 1. North Carolina Department of Environmental Quality, Division of Marine Fisheries. Morehead City, North Carolina. 269 pp.
- NCDMF. 2013. Amendment 1 to the North Carolina Estuarine Striped Bass Fishery Management Plan. N.C. Department of Environment and Natural Resources, Division of Marine Fisheries, Morehead City, N.C. 829 pp.
- NCDMF. 2018. Assessment of North Carolina Commercial Finfisheries, 2013-2018. Final Performance Report for Award Number NA13NMF4070191. North Carolina Department of Environmental Quality, Division of Marine Fisheries. Morehead City, North Carolina. 272 pp.
- Steve, C., J. Gearhart, D. Borggaard, L. Sabo and A.A. Hohn. 2001. Characterization of North Carolina Commercial Fisheries with Occasional Interactions with Marine Mammals. NOAA Technical Memorandum NMFS-SEFSC-458. 60 pp.
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Nov. 3, 2020  
July 6, 2021  
August 12, 2021

Appendix



Attended Gill Net Areas  
for  
Gill Nets Less Than  
5 Inches Mesh Length

(Index Map)  
Map A

Map Datum: North American Datum 1983 (NAD83)  
Map Projection: North Carolina State Plane (NC State Plane)  
Map Date: April 2016

Figure A1. Map of attended areas for small mesh gill nets (<5 inch ISM) <http://portal.ncdenr.org/web/mf/attended-gill-net-areas>