

**NORTH CAROLINA**  
**FISHERY MANAGEMENT PLAN FOR INTERJURISDICTIONAL FISHERIES**  
**AMENDMENT 2**

**By**

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**Disclaimer:** Information in this Fishery Management Plan may have changed since publication based on updates to source documents.

## ACKNOWLEDGEMENTS

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## **EXECUTIVE SUMMARY**

Will be complete when final.

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## BACKGROUND

The [original N.C. Fisheries Management Plan \(FMP or Plan\) for Interjurisdictional Fisheries](#) was approved in September 2002, amended in 2008, and updated in 2015. The purpose of the Plan is to adopt management measures consistent with N.C. law, within approved FMPs by the Atlantic States Marine Fisheries Commission (ASMFC) and the South Atlantic and Mid-Atlantic fishery management councils (SAFMC and MAFMC, respectively) by reference as minimum standard. The purpose of the Plan is for the State to maintain compliance or compatibility with approved ASMFC and Council FMPs; to reduce duplication of effort between State, ASMFC, and Council FMPs; and foster improved communication between the MFC, its advisory committees, and the ASMFC and Councils.

The N.C. Fisheries Reform Act of 1997 (FRA) requires the Department of Environmental Quality (DEQ) to prepare FMPs for adoption by the Marine Fisheries Commission (MFC) for all commercially or recreationally significant species or fisheries that make up North Carolina's marine or estuarine resources. State FMPs are developed and drafted by the Division of Marine Fisheries (DMF) on behalf of the DEQ. For many interjurisdictional (migratory) species of commercial or recreational significance to North Carolina, FMPs have been developed and implemented by the compact of states under the ASMFC or the federal Councils. The goal of these plans, established under the [Atlantic Coastal Fisheries Cooperative Management Act](#) (ACFCMA; ASMFC FMPs) and the [Magnuson Stevenson Act](#) (MSA; federal Councils FMPs), are similar to the goals of the FRA to "ensure long-term viability" of these fisheries. For the purposes of this plan, managing for sustainable harvest as defined in the FRA is synonymous to targets defined in each of the ASMFC and Council FMPs.

N.C. General Statutes (N.C.G.S.) acknowledge overlapping authority and define the hierarchy of authority between the State, ASMFC, SAFMC, and MAFMC. Management measures established by the MFC must be consistent for fisheries where the ASMFC and Councils have primary jurisdiction. N.C.G.S. §113-182 clarifies that regulation of fish and fisheries in the Atlantic Ocean out to the limit of the federal Exclusive Economic Zone (EEZ) should be consistent with the MSA. Additionally, Article 19 of Chapter 113 of the N.C. General Statutes (N.C.G.S. §§113-251 through 113-258) fully incorporates the ASMFC compact. ASMFC and Council FMPs adopted by the MFC through the N.C. FMP for Interjurisdictional Fisheries are held to all standards established in N.C.G.S. §113-182.1 and associated policies.

The intent of this FMP is to provide the policy instrument so management measures contained in approved FMPs developed through the ASMFC and Council processes can be implemented in the state waters of North Carolina and define the roles and powers of the MFC and DMF in those processes. All FMPs and amendments are maintained electronically on the [DMF](#), [ASMFC](#), [SAFMC](#), or [MAFMC](#) websites.

## MANAGEMENT AUTHORITY

Fisheries management along the United States East Coast has overlapping authorities (Figure 1). The ASMFC consists of 15 states from Maine through the east coast of Florida and is governed by the ACFCMA. The ASMFC adopts plans for interjurisdictional species that have fisheries that occur primarily in state waters, 0-3 nautical miles offshore. However, there are species and

species groups jointly managed between the ASMFC and the Councils. Under the MSA fisheries are managed from 3-200 nautical miles offshore; the SAFMC manages from North Carolina through the east coast of Florida and the MAFMC manages from New York through Virginia. Although the SAFMC has primary management authority over federal waters off the coast of North Carolina, North Carolina is an active, voting member on the ASMFC, SAFMC, and MAFMC. In addition, the management unit for a Council-managed FMP can extend beyond the Council's range based on stock distribution. The MFC manages the state internal estuarine and ocean waters offshore to 3 nautical miles.

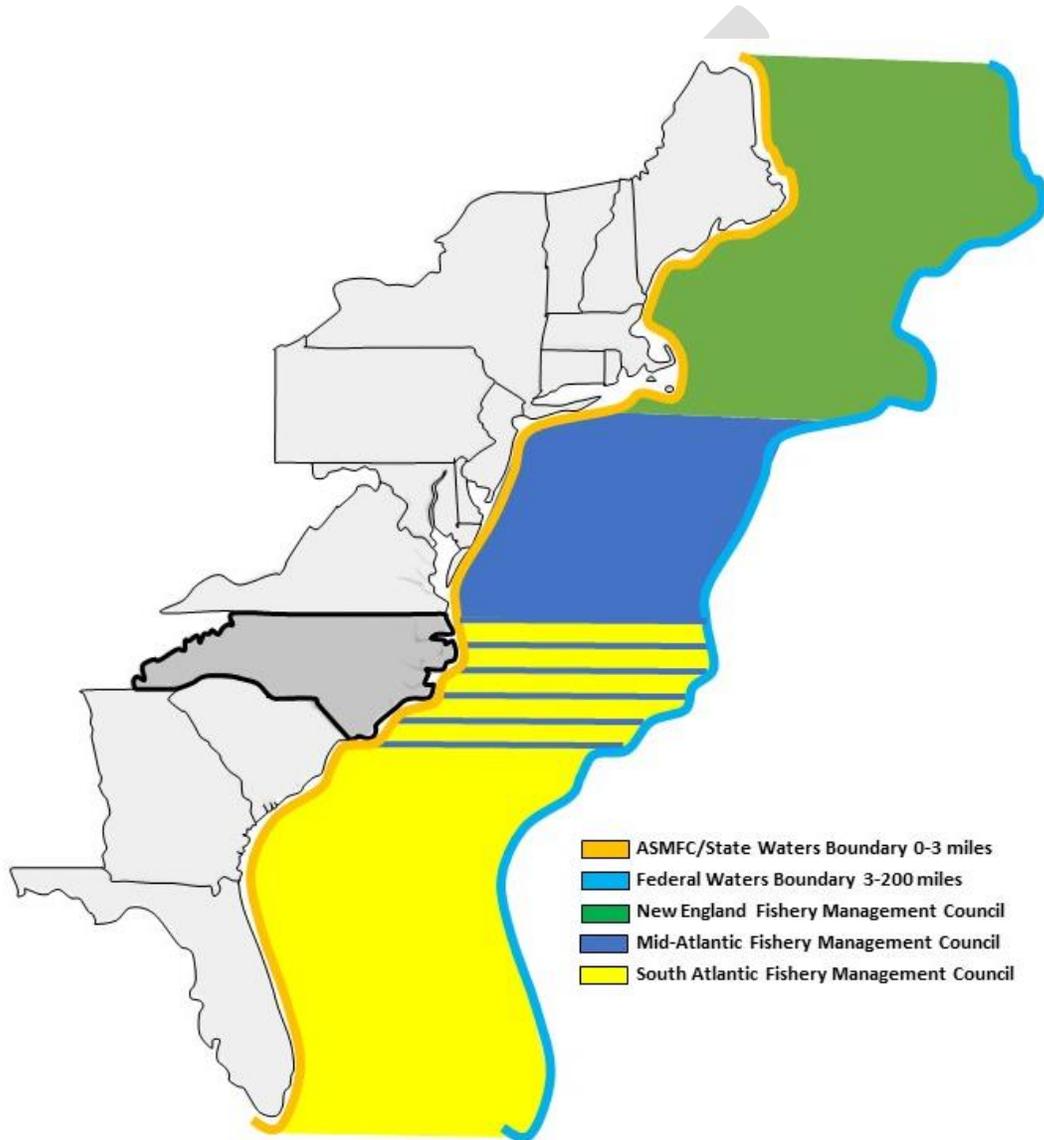


Figure 1. Management authorities of state (0-3 nautical miles) and federal (3-200 nautical miles) waters of the United States East Coast

The ACFCMA and the MSA grant the authority for management of coastal, interjurisdictional fisheries to the ASMFC and the Councils. These acts provide standards for the preparation and implementation of FMPs that will achieve and maintain sustainable harvest in coastal fisheries.

Participation by the State is critical to ensure N.C. fishermen and fisheries resources are considered and adequately protected. Through DMF staff, ASMFC and Council members, and citizen advisors, North Carolina participates fully in the development of interjurisdictional FMPs that impact N.C. commercial and recreational fisheries. This includes voting on fishery management plans, strategies, and measures.

Several N.C. General Statutes deal with the adoption of federal regulations developed under the authority of the ASMFC or adopted through federal Councils by the Secretary of Commerce. N.C.G.S. §150B-21.6 states “an agency may incorporate the following material by reference in a rule without repeating the text of the referenced material: . . . (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.” N.C.G.S. §113-228 states that the MFC “in its discretion may by reference in its rules adopt relevant provisions of federal laws and regulations as State rules.” Additionally, this statute provides for the MFC to be “exempt from any conflicting limitations in G.S. 150B-21.6 so that it may provide for automatic incorporation by reference into its rules of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Department.”

N.C.G.S. §143B-289.51 and N.C.G.S. §143B-289.52 provide authority for the MFC to advise the State regarding ocean and marine fisheries within the jurisdiction of the ASMFC and federal Councils, to manage or regulate fishing in the Atlantic Ocean, and to adopt relevant State rules for compliance or compatibility with or implementation of ASMFC or Council FMPs. Consequently, the DMF and MFC have the authority to develop an FMP that adopts ASMFC and federal Council plans by reference.

#### MANAGEMENT UNIT: FINFISH STOCKS MANAGED BY THE COUNCILS AND COMMISSION

The management unit comprises all finfish species managed by ASMFC and Council FMPs that are commercially or recreationally significant finfish species for North Carolina, as described in N.C.G.S. §113-182.1, or where there are overriding finfish species compliance requirements the State must adhere to in state waters, such as threatened or endangered species. Table 1 summarizes the finfish species or species groups managed under the N.C. FMP for Interjurisdictional Fisheries as of this amendment. Finfish species may be added to or removed from ASMFC or Council FMPs between comprehensive reviews of the N.C. FMP for Interjurisdictional Fisheries. If a finfish species of importance to the State is added to an ASMFC or Council FMP, that change is automatically incorporated into the N.C. FMP for Interjurisdictional Fisheries by reference. MFC Rule 15A NCAC 03M .0512 grants proclamation authority to comply with ASMFC or Council FMPs. If a finfish species is removed from an ASMFC or Council FMP, the authority is no longer in place to manage the species via MFC Rule 15A NCAC 03M .0512. Management measures must then be implemented by an existing species-specific rule, or a new rule must be adopted to manage the finfish species in State waters. Updates will be made to Table 1 as needed in the annual DMF FMP Review document and

during future comprehensive reviews of this plan to document finfish species added to or removed from the management unit covered by this FMP.

Table 1. Management Unit. Finfish species or species groups managed under the jurisdiction of the ASMFC, South and/or Mid-Atlantic fishery management councils and the N.C. MFC that are included in this Plan. Click on the “X” to go to the species management website.

Species or species group	Atlantic States Marine Fisheries Commission	South Atlantic Fishery Management Council	Mid-Atlantic Fishery Management Council	North Carolina Marine Fisheries Commission
American Eel	X			
Atlantic Croaker	X			
Atlantic Menhaden	X			
Atlantic Striped Bass	X			X
Atlantic Sturgeon <sup>2</sup>	X			
Black Drum	X			
<b>Black Sea Bass – North of Cape Hatteras</b>	X		X	
<b>Bluefish</b>	X		X	
Cobia	X			
Red Drum	X			X
River Herring	X			X
<b>Scup – North of Cape Hatteras</b>	X		X	
Shad	X			
<b>Sharks</b>	X			
<b>Spanish Mackerel</b>	X	X		
<b>Spiny Dogfish</b>	X		X	
Spot	X			
Spotted Seatrout	X			X
<b>Summer Flounder</b>	X		X	
Tautog	X			
Weakfish	X			
<b>Dolphin/Wahoo</b>		X		
<b>King Mackerel</b>		X		
<b>Snapper Grouper Complex (includes Black Sea Bass – South of Cape Hatteras)<sup>1</sup></b>		X		
<b>Monkfish</b>			X	

<sup>1</sup> Includes 51 different species

<sup>2</sup>Listed as endangered under the ESA.

**Bold** Species or species groups require federal permits for commercial and/or for-hire fishermen fishing in federal waters.

## GOAL AND OBJECTIVES

The goal of the N.C. FMP for Interjurisdictional Fisheries is to adopt FMPs, consistent with N.C. law, approved by the ASMFC or Councils by reference and implement corresponding fishery regulations in North Carolina to provide compliance or compatibility with approved FMPs and amendments, now and in the future. To achieve this goal, the following objectives shall be met:

1. Participate fully, consistent with N.C. law, in all levels (advisory panels, technical committees, stock assessment subcommittees, plan development and review teams, management boards, monitoring committees, and other committees) of the ASMFC and Council processes for developing FMPs and amendments through appropriately informed DMF staff, MFC members, citizen advisors, and the public at large.
2. Adopt management measures appropriate for N.C. coastal waters to implement measures approved by the ASMFC or promulgated by the Secretary of Commerce necessary to implement FMPs and achieve the sustainable harvest for ASMFC- and Council-managed species.
3. Promote education and public information to help identify the causes and nature of problems in the fish stocks managed by the ASMFC or Councils, their habitat and fisheries, and the rationale for management efforts to solve these problems.
4. Develop and implement a management and regulatory process that provides adequate resource protection and considers the needs of all user groups.

## INTERJURISDICTIONAL MANAGEMENT

Ideally, all measures to conserve the marine and estuarine resources of North Carolina would be developed and implemented solely under the State FRA FMP process. However, state and federal authorities and initiatives overlap for many interjurisdictional species. This FMP describes the overlap and hierarchy of authority defined in N.C.G.S. to implement management of interjurisdictional species among federal, interstate, and state management authorities.

### ATLANTIC STATES MARINE FISHERIES COMMISSION AND THE ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT

The [ASMFC](#) is an interstate compact ratified in 1942 to manage shared migratory fisheries resources from Maine to Florida. The ASMFC mission is “to promote the better utilization of the fisheries, marine, shell and diadromous, of the Atlantic seaboard through the development of cohesive fishery management plans along the Atlantic coast, rather than disparate state-specific plans for the same species.” The Commission's [Interstate Fisheries Management Program](#) (ISFMP) began in 1981. The goal of the program is to promote cooperative management through interstate FMPs.

The ISFMP operates under the direction of the ISFMP Policy Board and the species management boards. The ISFMP Policy Board is composed of one representative from each member state, the District of Columbia, the Potomac River Fisheries Commission, National Oceanic and Atmospheric Administration (NOAA) Fisheries, and United States Fish and Wildlife Service (USFWS). The Policy Board provides overall guidance and ensures consistency with the ISFMP Charter and between FMPs. The species management boards consider and approve the development and implementation of FMPs, including the integration of scientific information

and proposed management measures. In this process, the species management boards primarily rely on input from five main sources – species technical committees, plan development teams, plan review teams, the Law Enforcement Committee, and species advisory panels. North Carolina and the DMF have staff and citizens who serve as members of ASMFC management boards, various committees and teams, and advisory panels. The DMF Director, along with legislative and gubernatorial appointees, are the voting members on the ASMFC, with DMF staff and citizen advisors representing the scientific, environmental, commercial, and recreational interests of North Carolina.

In 1993, Congress enacted the [ACFCMA](#) which mandates all Atlantic states implement coastal FMPs (for fisheries within three nautical miles from shore) adopted by the ASMFC to safeguard the future of Atlantic coastal fisheries in the best interest of both the fishermen and the nation. The ACFCMA expanded and altered the powers and purposes of the ASMFC. The ASMFC was required by Congress to establish and implement fisheries management for migratory fish stocks along the Atlantic coast that had historically been state controlled. In so doing, the ASMFC exercises the sovereignty of the United States, rather than the collective power of the compact states. The ACFCMA also expanded the ASMFC jurisdiction to include conservation of the marine environment to assure the availability of coastal fisheries resources on a long-term basis.

#### FEDERAL REGIONAL FISHERY MANAGEMENT COUNCILS AND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

The 2006 reauthorization of the [MSA](#) maintains the establishment of the federal Councils to “exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of Fishery Management Plans which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans and which take into account the social and economic needs of the States.” Jurisdiction of the Councils is for all fish within the EEZ and fishery management authority beyond the EEZ over anadromous species and Continental Shelf fishery resources. The MSA calls for FMPs to set catch levels to prevent overfishing, based on scientific advice, by 2010 for stocks subject to overfishing. The Councils shall “establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability”. Management measures must be prepared and implemented to end overfishing immediately within two years of notification. In 2013, Congress began the process of reauthorization of the existing MSA, which continues at the time of this writing.

The Councils are comprised of the state Division Director, or their designee, and obligatory and at-large positions appointed by the U.S. Secretary of Commerce. Like the ASMFC, the Councils appoint citizen advisors from states that have an interest in the specific fishery, to serve on advisory panels to assist in the development of FMPs. Due to its geographic position as a transition zone between northern and southern fish populations, North Carolina is a member of both the Mid-Atlantic and South Atlantic fishery management councils.

## PROTECTED RESOURCES LAWS

N.C.G.S. §113-189 ensures the protection of migratory birds, marine mammals, sea turtles, and finfish by referencing the [Migratory Bird Treaty Act of 1918](#) (MBTA), the [Marine Mammal Protection Act of 1972](#) (MMPA), and the [Endangered Species Act of 1973](#) (ESA). The N.C. FMP for Interjurisdictional Fisheries references ASMFC and Council FMPs to comply with these federal requirements. The MBTA, MMPA, and ESA take precedence when considering FMP management.

The MBTA was established by Congress in 1918. This Act implements four international conservation treaties which the United States entered into with Canada in 1916, Mexico in 1936, Japan in 1972, and Russia in 1976. The intent is to ensure sustainability of all protected migratory bird species. The MBTA prohibits the take of protected migratory bird species without authorization by the Department of the Interior USFWS. In 2004, the MBTA was amended to clarify that it only applies to migratory species native to the United States or its territories. The Service publishes [a list](#) of all nonnative, human-introduced bird species to which the MBTA does not apply.

The MMPA was established by Congress in December 1972. NOAA Fisheries is responsible for protecting whales, dolphins, porpoises, seals, and sea lions. The USFWS protects walrus, manatees, sea otters, and polar bears. The primary objectives of the MMPA are to conserve and recover marine mammal species. The MMPA prohibits marine mammals from being harassed, fed, hunted, captured, or killed, or the attempt to do so. The Marine Mammal Commission provides the science-based oversight of United States and foreign policies and federal agency actions addressing human impacts on marine mammals and their ecosystems. NOAA Fisheries, under a Memoranda of Agreement with other agencies, issues regulations, national policies, and guidance to promote efficiency and consistency in implementing the MMPA. All marine mammals are protected under the MMPA, but some are also protected under the ESA.

The ESA was enacted by Congress in 1973 “to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, (and) to provide a program for the conservation of such endangered species and threatened species.” The ESA is a comprehensive act that covers many aspects of endangered species protection and management. The USFWS and the NOAA Fisheries Office of Protected Resources (OPR) share responsibility for implementing the provisions of the ESA. A species is considered “endangered” if it is in danger of extinction throughout all or a significant part of its range, and “threatened” if it is likely to become an endangered species within the foreseeable future.

The ESA prohibits the “take” of any listed species, which is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.” Exceptions are provided for in Sections 6, 7, and 10 of the ESA through permits specific to certain activities. Section 6 allows for cooperative agreements with States actively engaged in research and monitoring that directly benefits the conservation of listed species, Section 7 relates to interagency cooperation amongst federal agencies, while Section 10 allows for takes that are incidental to otherwise lawful activities, such as fishing.

There are two primary provisions to Section 7: 1) federal agencies shall further the goals of the

ESA; and 2) federal agencies must consult with NOAA Fisheries or USFWS to ensure actions funded, authorized, or carried out will not jeopardize listed species or result in critical habitat alterations. Although this section relates to federal agencies, state projects can be impacted. Projects with federal authorization or funding are subject to Section 7 consultation. DMF has received biological opinions regarding Section 7 consultations on several grants which data is used for state, ASMFC, and federal FMPs.

Section 10 permits are an important tool, as they allow for a fishery to continue (under constraints and conditions) that would otherwise have to shut down. DMF has worked with NOAA Fisheries OPR in the development of Section 10 permits for inshore gill net and shrimp trawl fisheries. The permits have allowed for alternate management measures for the fisheries under an approved conservation plan designed to minimize impacts to endangered and threatened species.

The N.C. FMP for Interjurisdictional Fisheries must ensure that no inconsistencies in management strategies exist regarding the MBTA, MMPA, and ESA requirements for species managed under this FMP or species-specific N.C. FMPs. FMPs need to minimize activities that jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Protected resources requirements take precedence over any FMP management considerations.

## **ASMFC AND COUNCILS FMP DEVELOPMENT**

The process for developing FMPs is similar at the ASMFC and Council levels, and in North Carolina as set by the FRA. The development of an FMP or amendment begins with a scoping process. This is the stage when issues are identified by the ASMFC or Councils with input from the public through public hearings. A public hearing document is produced by the plan development teams and the ASMFC or Councils. It contains management options aimed at rebuilding an overfished fishery or maintaining a sustainable fishery. After the scoping process, issues are discussed and included for additional analysis or rejected from further consideration. Proposed actions are reviewed by technical scientific committees to determine which alternatives achieve the conservation goals of the FMP.

A draft FMP or amendment is then developed by a species management board or Council committee and plan development team and taken out for public hearings (FMP development). Citizen advisory panels provide input during the scoping phase as well as prior to final action being taken. For ASMFC FMPs, public hearings may be held in the states that declare an interest in the fishery as well as online. For Council FMPs, public hearings are usually held in each representative state and/or online. At this point in the process, formal public comment is taken from individuals and organizations with an interest in the FMP. The ASMFC or Council reviews public comments and selects preferred alternatives. For FMPs developed by the ASMFC, final species management board approval is followed by final approval by the full Commission and enacted with no further comments accepted. Management measures contained in FMPs approved by the full ASMFC go to the individual states for implementation through each State's administrative process. Council-approved FMPs must be subsequently reviewed by NOAA

Fisheries, published in the Federal Register for a public comment period as required under the National Environmental Policy Act (NEPA) and approved by the Secretary of Commerce. For FMPs developed by the Councils, comments are accepted again after the proposed rule to implement management changes is published by the Secretary of Commerce.

An abbreviated process for implementing a defined set of management changes that does not require scoping is available for both the ASMFC and Councils. For ASMFC FMPs, a defined set of management changes and abbreviated process are outlined in each FMP's "adaptive management" section, and the public instrument used to describe the changes under consideration is called an "addendum." Similarly, for Council FMPs, both the management changes and abbreviated process are outlined in each FMP's "framework procedure," and the public instrument used to describe the changes under consideration is called a "framework amendment" or "regulatory amendment." For both ASMFC and Council FMPs, the suite of management changes allowed under this abbreviated process usually includes such items as size limits, recreational bag limits, commercial trip limits, closed seasons and quotas. For ASMFC FMPs, an addendum is noticed for a 30-day public comment period, and states may request a public hearing be conducted in their jurisdictions or online during that timeframe. For Council FMPs, a 30-day comment period on the proposed rule to implement management changes is noticed; unlike the full amendment process, there is no accompanying comment period on the amendment document itself. However, Councils will accept public comment on a regulatory amendment as part of their normal public comment process during and between Council meetings.

Finally, as part of the ISFMP under the ASMFC process, states and jurisdictions are allowed to implement management measures more restrictive than those required for compliance with an interstate FMP but may not be less restrictive than the minimum standards.

## **COORDINATION OF FMP DEVELOPMENT WITH THE N.C. MARINE FISHERIES COMMISSION**

Numerous individuals from member states are involved in the development of interjurisdictional FMPs; however, there is a need for specific roles to be identified for the DMF and the MFC to ensure that both are well-informed on the issues surrounding the development and approval of these ASMFC and federal plans.

In order to facilitate information exchange, the MFC is informed at their quarterly business meetings of ASMFC and federal Councils' activities. Copies of scoping documents, ASMFC or Council meeting summary memoranda, annual compliance reports, implementation plans, Public Information Brochures (PIBs), and all other pertinent documents are made available. The DMF MFC Liaison office staff is responsible for circulating documents to the MFC.

The MFC may refer any of these materials to its advisory committees for review. The MFC may also recommend additional alternatives appropriate for committee review and feedback. The DMF submits comments from the MFC to the appropriate management agency as part of the public input process. The DMF MFC Liaison office staff provides resulting documents, notices

of hearings, notices of final actions, and proposed rules to the MFC for review. Also, the DMF Public Information Officer forwards announcements regarding relevant ASMFC and Council issues to stakeholders via email distribution lists.

## **IMPLEMENTATION OF COMMISSION AND COUNCIL FMPS**

Federal law requires that the conservation management actions approved through an ASMFC or Council FMP be implemented by the State of North Carolina. Both the ACFCMA and the MSA contain measures that may be taken by the federal government should actions be taken, or fail to be taken, that will substantially and adversely affect the carrying out of such FMPS. Through the N.C. FMP for Interjurisdictional Fisheries, the MFC adopts management measures appropriate for North Carolina as the minimum standards for the management unit species or species group. This includes compliance requirements of ASMFC plans. As an example, the ASMFC Black Drum FMP required all states with a declared interest in the species to have established a maximum possession limit and minimum size limit of at least 12 inches by January 1, 2014, and to have increased the minimum size limit to no less than 14 inches by January 1, 2016.

If necessary, prior to MFC action, the DMF Director may implement any approved management measure by proclamation as authorized by MFC rule 15A NCAC 03M .0512. Per G.S. 113-221.1, there are three required elements that establish proclamation authority. The MFC must authorize the DMF Director the ability to issue a proclamation, there must be a particular rule in place, and the rule must be affected by a variable condition. If ASMFC- or Council-managed species continues to be subject to variable conditions, it will continue to be managed via proclamation authority to keep pace with the changes; this has been in practice with the N.C. FMP for Interjurisdictional Fisheries since the 2008 Amendment. Should conditions become stable, the MFC may consider rulemaking.

The N.C. FMP for Interjurisdictional Fisheries does not restrict the State of North Carolina or the MFC from implementing additional measures deemed appropriate by the best available information and in the best interest of the fisheries resources of North Carolina. The four species in Table 1 that also have N.C.-specific FMPS illustrate this point. The State FMP process provides N.C. citizens consideration of the stock condition, enhanced public involvement, and direct authority of the MFC to implement management strategies. Also, G.S. 150B-19.1 sets forth the principles of rulemaking to require that FMP rules, when appropriate, “shall be based on sound, reasonably available scientific, technical, economic, and other relevant information” and does not place an undue burden upon those persons or entities who must comply with the management action. The following brief overview of the four species with dual N.C. FMPS describes the specific conditions that prompted development of each individual N.C. FMP.

### Striped Bass

Atlantic striped bass abundance from North Carolina to Maine declined dramatically in the late 1970s. Because of the historical importance of striped bass to both the commercial and recreational sectors throughout the entire region, as well as the interjurisdictional migratory behavior of striped bass, the U.S. Congress passed the [Atlantic Striped Bass Conservation Act – P.L. 98-613 on October 31, 1984](#). The historical act established a unique state-based, federally

backed management scheme; however, it only applied to Atlantic Ocean migratory stocks, not the N.C. riverine native stocks.

The MFC and the N.C. Wildlife Resources Commission (WRC) in cooperation with USFWS implemented a Memorandum of Agreement in 1990 to address management of striped bass in the Albemarle Sound and Roanoke River (covered by the Atlantic Striped Bass Conservation Act). The original Estuarine Striped Bass FMP was approved by the MFC in 1994 and aimed to continue recovery of the Albemarle/Roanoke stock, which at the time was at historically low levels of abundance and was experiencing chronic spawning failures. For the first time, this comprehensive plan addressed the management of all estuarine stocks of striped bass in the State. The plan also satisfied the recommendation contained in the 1992 U.S. Fish and Wildlife Service Report to Congress for the North Carolina Striped Bass Study that such a plan be prepared. The N.C. Estuarine Striped Bass FMP conformed to the requirements in the N.C. FRA of 1997 to fully address management for all N.C. estuarine stocks and was approved in 2004.

#### River Herring

The ASMFC Interstate FMP for Shad and River Herring was initially approved in 1985. The FMP included greater biological monitoring and reporting requirements for river herring and recommended that existing management regimes be maintained or strengthened. Amendment 2 requires states and jurisdictions to develop sustainable fishery management plans (SFMPs) in order to harvest river herring in commercial and/or recreational fisheries after January 2012. Since North Carolina does not allow the harvest of river herring, an SFMP is not required at this time. Concern over continued reductions in both landings and juvenile survey values led to seasonal closures and harvest quotas in the early 1990s and adoption of the N.C. River Herring FMP in 2000 to comprehensively manage the fishery in state waters.

#### Red Drum

The red drum stocks in North Carolina were classified as stressed-declining in the 1997 DMF Stock Status Report and based on initial MFC FMP Guidelines, red drum were given high priority for immediate FMP development. The guidelines also provided for a provisional plan required within 90 days of a listing of stressed-declining in the DMF Stock Status Report. Interim measures were implemented in October 1998 to prevent further decline in the status of the red drum stocks and the MFC initiated the N.C. Red Drum FMP, completed in March 2001. At that time, the MFC determined additional state measures were crucial to protect a large year class of 14- to 15-inch red drum and to move toward reaching the SAFMC goal of 40 percent spawning potential ratio (SPR) and an overfishing definition of 30 percent SPR.

Prior to implementation of interim measures in 1998, red drum along the Atlantic coast were already managed jointly by the ASMFC and the SAFMC. The SAFMC Red Drum FMP was developed and passed in 1990 and adopted as Amendment 1 to the ASMFC Red Drum FMP. This joint FMP stated that intense fishing mortality on juvenile red drum in state waters was resulting in reduced recruitment to the adult spawning stock. Management measures in place prior to October 1998 were the result of these plans. The N.C. Red Drum FMP proceeded because measures taken as part of the ASMFC/SAFMC plan had been inadequate to prevent overfishing on the stock and no plan was in place for further action. The N.C. Red Drum FMP adopted the 30 percent overfishing and 40 percent target used in the ASMFC/SAFMC plans.

In 1999, the SAFMC recommended management authority for red drum be transferred fully to the states and managed by the ASMFC. This recommendation was in part due to the inability to determine the overfished status, and therefore stock rebuilding targets and schedules, as required under the revised Sustainable Fisheries Act of 1996. The transfer necessitated the development of an amendment to the interstate ASMFC FMP to include the provisions of the ACFCMA. ASFMC adopted Amendment 2 to the Red Drum FMP in June 2002 (ASMFC 2002), which serves as the current management plan for this species. Amendment 2 to the ASMFC FMP maintains the 30 percent overfishing and 40 percent target for SPR.

### Spotted Seatrout

Spotted seatrout are managed with guidance provided by the ASMFC Omnibus Amendment to the Interstate ASMFC FMPs for Spanish Mackerel, Spot, Spotted Seatrout. While North Carolina complies with the ASMFC spotted seatrout minimum size limit for both recreational and commercial sectors and has adopted the 20% SPR threshold, a separate N.C. Spotted Seatrout FMP was developed to fully address the status of the stock through the State stock assessment process and to ensure long-term sustainability for the spotted seatrout stock in North Carolina.

For species managed by both a species-specific N.C. FMP and the N.C. FMP for Interjurisdictional Fisheries, measures implemented to maintain compliance with an ASMFC or Council FMP are documented through a revision to the corresponding species-specific N.C. FMP. Changes in management strategies are documented in an information paper that is part of the FMP. The information paper provides the rationale agreed to by the DMF and the MFC for change in management under existing adaptive management authority. Adaptive management measures implemented by the revision shall be considered in the next review to the specific N.C. FMP.

It is important to note that significant DMF resources are invested to create and review State FMPs. Plan development takes upwards of two years, and the rulemaking process under the Administrative Procedure Act (N.C.G.S. 150B) adds additional time. Consideration of a mechanism for “retiring” a State FMP when the corresponding ASMFC or federal FMP adequately includes all elements that would be addressed under a State plan is addressed in Appendix 1: Simplify Management of Interjurisdictional Managed Species.

Should management actions be approved by the ASMFC or Councils that fail to meet legislative requirements or are deemed contrary to the best interest of the resources or fishermen of the State of North Carolina, the MFC may challenge those restrictions, realizing the implications of non-compliance will substantially and adversely affect the carrying out of an FMP. A majority vote of the MFC would be required to go out of compliance with an ASMFC FMP or to not complement the management measures contained in a Council FMP in state waters. For ASMFC FMPs, a determination of non-compliance for North Carolina would be forwarded to the Secretary of Commerce. If the Secretary determines that the measures the state failed to implement and enforce are necessary for conservation, a moratorium for the fishery in question is imposed within the waters of the non-complying state. Enforcement of the moratorium is by federal agents and the United States Coast Guard. For the Council FMPs, the Secretary of

Commerce may regulate the applicable fishery within the state boundaries if a state takes an action or fails to take any action that substantially and adversely affects the carrying out of a Council FMP.

An alternative to an MFC decision to go out of compliance or not complement measures is an appointment of a Compliance Advisory Panel (CAP) by the MFC chair. The CAP reviews whether consistency with an ASMFC or Council FMP should be challenged. Additionally, in cases where an FMP allows states to develop alternative management options, a CAP may be formed and recommend management actions most appropriate for the State to meet the requirements of an FMP. Many of the FMPs and amendments developed by ASMFC require an implementation plan to outline how a state will comply with required management measures.

Recommendations developed by the CAP are required to be reviewed by the MFC's Finfish Advisory Committee, regional advisory committees, and full MFC. The MFC will review and provide recommendations to DMF for presentation to the Councils/ASMFC. Once the implementation plan is approved by the Council/ASMFC, the MFC is required to adopt any rules necessary to comply with the ASMFC plan and/or necessary to complement actions in the federal Council plan. Some FMPs, however, impose mandatory fishery management measures, including quotas, bag limits, size limits, trip limits, etc., for which there are no options or exceptions. Mandatory management measures are required to be adopted by each state affected as the minimum standard except as noted in the challenge process previously described and presented in a state implementation plan.

Finally, North Carolina has considered withdrawing from the ASMFC compact on two occasions. The implications of withdrawal from the compact have been reviewed by the N.C. Attorney General's office and addressed in the 1995 legislative session with the creation of the Atlantic States Marine Fisheries Compact Withdrawal Committee in 1996. In both instances, the rationale against withdrawal is based on the finding that a state is still subject to the ASMFC actions, regardless of its membership in the compact (See [Interjurisdictional FMP 2008](#) for advisory memorandum from office of N.C. Attorney General). In other words, if a state chooses to leave the ASMFC compact, the state remains subject to the ASMFC requirements but loses voting rights during management determinations. The ASMFC does have an [appeal process](#) that a state may employ to have a decision made by a species management board reconsidered by the ISFMP Policy Board. The ISFMP charter also allows an appeal to the ISFMP Policy Board to challenge ASMFC out-of-compliance determinations.

In conclusion, a variety of tools exist within the framework of the N.C. FMP for Interjurisdictional Fisheries to ensure the needs of North Carolina's fisheries are considered during both the development and implementation of ASMFC and Council FMPs. The tools outlined in this plan are intended to assist in achieving the goals of minimizing duplication of management effort while meeting all relevant state and federal regulations.