Mutilated Finfish Proposed Rule Amendment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Marine Fisheries

N.C. Marine Fisheries Commission | Morgan Paris | Feb. 25, 2022
Presentation Overview

- Current mutilated finfish rule
- Limitations of current rule
- Issue origination
- Objectives
- Proposed mutilated finfish rule
- Ancillary tasks
- DMF recommendation and next steps
Current Mutilated Finfish Rule

15A NCAC 03M .0101  MUTILATED FINFISH
It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a size or harvest restriction without having head and tail attached, except:

(1) mullet when used for bait;
(2) hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing operation may be cut for bait at any one time; and
(3) tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.

History Note:  Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. January 1, 1991;
Temporary Amendment Eff. May 1, 2001;
Amended Eff. May 1, 2015; April 1, 2011; July 1, 2006; August 1, 2002;
Readopted Eff. April 1, 2019.
Limitations of Current Rule

• Lack of flexibility
• Time-intensive process to amend
• Ambiguous language
• Intent of rule: protect finfish, not manage cut bait
Issue Origination

• Recent issues with public unknowingly violating the mutilated finfish rule
• DMF identified need to potentially amend rule to address:
  o American eel
  o Spot
  o Atlantic croaker
  o Bluefish
  o Striped mullet
• August 2021 MFC motion for DMF to examine mutilated finfish rule
• DMF developed issue paper for rulemaking
Objectives

- Examine and address the current species exceptions and conflicts
- Amend the rule to provide flexibility
- Manage current conditions
- Manage variable conditions that could occur in the future
- Maintain finfish resource protections
15A NCAC 03M .0101 MUTILATED FINFISH

It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a size or harvest restriction possession limit, including size limit, recreational bag limit, commercial trip limit, or season, without having head and tail attached, except: unless otherwise specified in a rule of the Marine Fisheries Commission or a proclamation issued pursuant to a rule of the Marine Fisheries Commission.

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Ancillary Tasks

• Species that would continue to be subject to the requirements of the amended mutilated finfish rule:
  o American eel
  o Spot
  o Atlantic croaker
  o Bluefish

• Species currently exempt that would become subject to the requirements of the amended mutilated finfish rule:
  o Mullet
  o Hickory shad

• For each species, a proclamation could be issued if the Fisheries Director decides it is appropriate for the species to be used or continue to be used as cut bait.
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DMF Recommendation and Next Steps

• DMF recommends supporting the management option presented.
• If approved by the MFC, the fiscal analysis would be developed.
• The MFC could vote to begin the rulemaking process in August 2022.
• The earliest possible effective date would be approximately mid-June 2024.
• The MFC is scheduled to vote on the management option and associated language for rulemaking for the mutilated finfish rule.
Questions?
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POCKET SLIDES
Other Approaches Considered

1. Status Quo: no amendment to the current rule
   • Does not provide flexibility to address bait fish preferences and known conflicts with the rule that exist.
   • Need to amend the rule was identified by MFC and DMF.

2. Amend to add or revise species-specific exceptions
   • Rule would be amended based on management measures currently in place and measures would be subject to change based on stock assessment results and FMP requirements.
   • Approach would require some level of proclamation authority.

3. Inverse rule: could write such that only species specifically noted within the rule are subject to the requirements.
   • Approach would require some level of proclamation authority.

4. Use of ‘size limit’ instead of ‘possession limit’ to replace ‘size or harvest restriction’ in current rule.
   • Approach would decrease the enforceability of other regulations.
## Species-Specific Conflicts with Rule

<table>
<thead>
<tr>
<th>Species</th>
<th>Size Limit/Bag Limit</th>
<th>Fishery Management</th>
<th>Future Management Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spot</td>
<td>50 fish bag limit Commercial season In place at least 2 years</td>
<td>Popular cut bait in both recreational and commercial</td>
<td>Future TLA may alleviate management measures or indicate more stringent measures</td>
</tr>
<tr>
<td>Atlantic Croaker</td>
<td>50 fish bag limit Commercial season In place at least 3 years</td>
<td>Popular cut bait in both recreational and commercial fishery.</td>
<td>Future TLA may alleviate management measures or indicate more stringent measures</td>
</tr>
<tr>
<td>Bluefish</td>
<td>3 fish recreational bag limit</td>
<td>Popular cut bait in both recreational and commercial fishery.</td>
<td>In a rebuilding plan</td>
</tr>
<tr>
<td>Mullet</td>
<td>200 fish recreational bag limit</td>
<td>Currently allowed to be cut.</td>
<td>Stock assessment underway.</td>
</tr>
</tbody>
</table>
History of the Rule

Late 1980s: Requirement first appeared as…

“It is unlawful to land or possess aboard a vessel any striped bass, red drum, spotted seatrout, or flounder mutilated to the extent that accurate length measurement cannot be made.”

1991: New rule was adopted without species-specific exceptions stating…

“It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of finfish which is subject to a size or harvest restriction without having head and tail attached”

2002: Amended to exempt blueback herring, hickory shad, and alewife

2006: Amended to add mullet as an exemption

2011: Tuna was added to as an exception following rule 15A NCAC 03M .0520

2015: Blueback herring and alewife were dropped from list of exemptions

2019: Current version of rule was readopted. Excepts mullet without specifications, hickory shad provided no more than two are cut at a time, and tuna possessed in a commercial fishing operation.