

Fiscal Impact Analysis of Proposed Rule Amendments Regarding Interjurisdictional Species Management

Rule Amendments: 15A NCAC 03L .0207, .0301, .0302
15A NCAC 03M .0301, .0302, .0511, .0516, .0519

Name of Commission: N.C. Marine Fisheries Commission

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Impact Summary: State government: Yes
Local government: No
Federal government: No
Substantial impact: No

Authority:

North Carolina General Statutes

§ 113-134. Rules.

§ 113-182. Regulation of fishing and fisheries.

§ 113-221.1. Proclamations: emergency review.

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

Necessity: General Statute 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. The following eight rules regarding the management of harvest of interjurisdictional species have been reviewed and proposed for readoption with amendments that conform with current management and interstate and federal requirements.

I. Summary

The management and harvest restrictions of North Carolina's interjurisdictional fishery species are implemented through a state Fishery Management Plan (FMP) and N.C. Marine Fisheries Commission (MFC) rules that coordinate with relevant interstate and federal regulatory bodies. Since fish aren't contained within political boundaries, state, interstate, federal and even international authorities share fisheries management responsibilities. Over time, regulation of these species in North Carolina has shifted towards ongoing proclamations and rule suspensions by the DMF Director in order to keep pace with shifting interstate and federal regulations. The state is required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA, 1976) and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA, 1993) to comply with interstate and federal restrictions. The following proposed amendments and repeals through readoption seek to formalize proclamation authority of these interjurisdictional species in rule language and remove existing harvest requirements that are likely to be invalidated. These proposed changes would conform with existing management practices by the Division. Ultimately,

these proposed changes would increase NCDMF's efficiency in managing these species, which could generate a small benefit to the state moving forward. Alternatively, as these proposed changes do not alter the ongoing management practices for these interjurisdictional species, there are no costs expected either to the state or to enforcement.

II. Introduction and Purpose of Rule Changes

The N.C. Fishery Management Plan for Interjurisdictional Fisheries (IJ FMP) was approved by the MFC in September 2002 (NCDMF, 2002). The goal of the IJ FMP is to adopt FMPs, consistent with N.C. law, approved by the federal Councils or the Atlantic States Marine Fisheries Commission (ASMFC) 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. The goal of these plans, established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; federal Councils FMPs) and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA; ASMFC FMPs), are similar to the goals of the Fisheries Reform Act of 1997 (FRA) to "ensure long-term viability" of these fisheries.

Amendment 1 to the IJ FMP was adopted by the MFC in June 2008 (NCDMF, 2008). This amendment did not change the goal and objectives of the plan; however, it included a management strategy, with associated rule changes, to streamline and consolidate the use of proclamation authority by the N.C. Division of Marine Fisheries (DMF) Director to implement management measures to comply with or complement ASMFC and federal Council FMPs. In 2015, the IJ FMP was updated with additional information regarding the impetus for the original IJ FMP, changes in N.C. statutes, relevant management authorities, interstate and federal public process, and the link between overlapping state and ASMFC FMPs (NCDMF, 2015).

The primary MFC rule used for the management of species listed in the IJ FMP is 15A NCAC 03M .0512, Compliance with Fishery Management Plans. This rule delegates to the DMF Director the ability to issue proclamations to comply with federal Council and ASMFC FMPs or to implement state management measures for the interjurisdictional finfish species listed in the IJ FMP. The rule provides the necessary flexibility to address the variable condition of compliance with FMPs, as described in 15A NCAC 03H .0103.

Under Amendment 1 to the IJ FMP, several MFC rules for individual finfish species were repealed consistent with one of the main purposes of the plan: to avoid duplication of effort in the development of plans under the FRA for species or species groups where equivalent federal Council or ASMFC FMPs have been developed and adopted with full participation from the state of North Carolina. The rules that were repealed did not contain any static requirements; they only contained requirements subject to change as the federal Council or ASMFC FMPs changed. Prior to repeal of the rules, when a federal Council or ASMFC FMP changed an affected rule had to be suspended in whole or in part, under the authority of 15A NCAC 03I .0102, and a proclamation had to be issued under the authority of 15A NCAC 03M .0512 to maintain compliance with the corresponding FMPs. This could result in certain requirements remaining in the original rule and other requirements being implemented by proclamation, which was confusing for stakeholders. In other words, a stakeholder may have read a requirement in an individual species rule that had been suspended and not be aware that a different requirement was in place that had been issued by proclamation.

Consistent with the IJ FMP, MFC rules 15A NCAC 03M .0301, .0511, and .0516 are proposed for repeal through readoption. These rules relate to the harvest of Spanish and king mackerel, bluefish, and cobia, respectively. These rules currently only contain requirements that are subject to change under the ASMFC FMPs and the Mid-Atlantic Fishery Management Council and South Atlantic Fishery Management Council (federal Councils) FMPs for these species.

The proposed amendments are consistent with the goal and purpose of the IJ FMP. The changes will reduce confusion for stakeholders about the requirements in place for the management of these fisheries. There would be no change in DMF operation under the proposed changes because proclamations for these fisheries are already issued under 15A NCAC 03M .0512. Stakeholders would continue to rely on the issuance of a proclamation to know what changed and what is required to participate in these fisheries.

In some cases under the 2008 IJ FMP management strategy, an individual rule was retained if it contained any static requirements that were not expected to change, and thus would likely not need to be suspended in the future. This is the case for MFC rule 15A NCAC 03M .0519, Shad. Paragraph (c) of the rule states it “is unlawful to take or possess American shad from the Atlantic Ocean.” This is the only element of the current rule not expected to change. The remainder of the rule is proposed to be deleted so the requirements for the fishery can be implemented by proclamation as the requirements of the ASMFC Interstate FMP for Shad and River Herring change, as they have in recent years and are expected to continue doing so.

In addition to these proposed amendments to interjurisdictional finfish species, rules related to three different interjurisdictional crustacea and arthropod species are also proposed for readoption with similar amendments. Firstly, 15A NCAC 03L .0301 and .0302 pertain to the harvest of American lobster and spiny lobster, respectively. As the harvest requirements for these species is managed through the ASMFC and South Atlantic Fishery Management Council, respectively, proposed amendments seek to again apply proclamation authority for management. This allows harvest requirements to continue to align with ASMFC and federal Council regulations with greater flexibility and speed.

Regarding spiny lobster, a final rule for Regulatory Amendment 4 to the FMP for Spiny Lobster in the Gulf of Mexico and the South Atlantic (Regulatory Amendment 4) became effective July 23, 2018. Regulatory Amendment 4 increases the catch limit for spiny lobster based on updated landings information and revised scientific recommendations; and prohibits the use of traps for recreational harvest of spiny lobster in federal waters off North Carolina, South Carolina, and Georgia.

The current Marine Fisheries Commission rule is silent on this new prohibition on the use of traps for recreational harvest and the rule’s language in its current form suggests a vessel limit while the federal regulations do not, which has led to some confusion. Additionally, the current rule prohibits possessing aboard or landing detached spiny lobster tails, which is not in line with the current Gulf of Mexico and South Atlantic Fishery Management Councils’ FMP for Spiny Lobster in the Gulf of Mexico and South Atlantic that allows the tailing of spiny lobster by those who possess a federal spiny lobster tailing permit. The Fisheries Director does not have proclamation authority for spiny lobster via this rule or 15A NCAC 03M .0512, as the latter only applies to species listed in the N.C. IJ FMP. The IJ FMP does not apply to invertebrate species. Amending 15A NCAC 03L

.0302 to add proclamation authority for the Fisheries Director will provide needed flexibility to manage the spiny lobster fishery and stay in compliance with federal regulations.

Additionally, 15A NCAC 03L .0207 is proposed to amend the harvest restrictions of horseshoe crabs. While horseshoe crabs are already primarily managed via proclamation authority in rule, the proposed amendment exempts biomedical harvest from static requirements in the rule. Past stock assessments have demonstrated that biomedical harvest of horseshoe crabs in North Carolina has a negligible effect on the overall stock status (ASMFC, 2020). Thus, placing commercial harvest restrictions on this industry imposes an unnecessary burden on stakeholders. Upon amendment of this rule, the biomedical harvest would be managed by a separate proclamation outlining permit conditions and harvest restrictions. Since the ASMFC FMP covers the commercial quota and biomedical use, the proclamation authority proposed in the rule extends to both fisheries. A separate proclamation would be issued for each fishery under the authority of this rule.

Lastly, 15A NCAC 03M .0302 is proposed for readoption only with changes to capitalization. This rule prohibits the possession of a purse gill net on board a vessel when Spanish and king mackerel are being landed.

III. Fiscal Analysis

As the management of interjurisdictional species in North Carolina has continued by coordinating with interstate and federal regulatory bodies, the need for management via proclamation authority has emerged as a key tool in keeping up with the interstate and federal requirements that increasingly change and are difficult to predict. As a result, the suite of proposed amendments and repeals through readoption seek to conform North Carolina rule language with current practice, which simplifies management by implementing new requirements through proclamation, rather than also requiring rule suspension to meet interstate and federal harvest requirements.

As evidence of this practice, the management of the Spanish mackerel, king mackerel, bluefish, cobia, shad, and horseshoe crab fisheries are all currently augmented via proclamation, in addition to certain static requirements in rule (NCDMF, 2020). In fact, management by proclamation (as opposed to management by static rule requirements alone) has been ongoing sporadically for these species since 2013, with harvest requirements for each of these fisheries being implemented by more than one proclamation during this time to keep pace with interstate and federal requirements (C. Flora, Personal Communication, April 13, 2021). While the American and spiny lobster fisheries are not commercially active fisheries in North Carolina and proclamation authority is not currently in place, the Division is still required to conform to increasingly shifting ASMFC and SAFMC regulations, and therefore will rely on the proposed proclamation authority in each species rule to continue managing these species as they have historically been managed. Due to this, the primary role of this fiscal analysis is to assess potential impacts from simplifying the use of proclamations to conform management of interjurisdictional species with interstate and federal requirements.

a. Summary of Potential Economic Benefits

The primary economic impacts from the proposed amendments and repeals through readoption will occur as a small stream of benefits due to increased administrative efficiency. While the fisheries in question have relied on proclamation authority to align with interstate and federal

regulations dating back to 2013, the existence of management measures in rule required proclamations to contain both rule suspensions and requirements implemented in place of those rules. This requires additional procedures for the Division and the state, while rule suspension updates must also be provided to the MFC on a quarterly basis. By streamlining the management pipeline of these interjurisdictional species between interstate and federal bodies and the NCDMF, the state should expect an insignificant, non-quantifiable flow of benefits due to reduced time cost and administrative burden related to these fisheries.

b. Summary of Potential Economic Costs

Overall, the only expected impacts from the proposed rule amendments and repeals through readoption are the small stream of benefits described above. Given the consistent management of interjurisdictional species through proclamation in the past, the public is already aware of how to access shifting harvest regulation information for these species, and the proposed rules simply codify processes employed by both the Division and the public. Because of this, no costs are expected from the proposed rule amendments and repeals through readoption.

Lastly, as these rules have been continually managed through proclamation and stay current with shifting interstate and federal regulations, Marine Patrol is consistently aware of new harvest regulations or proclamations. Because of this, no additional costs to enforcement are expected.

References:

- “Atlantic Coastal Fisheries Cooperative management Act of 1993.” H.R. 2134, 103rd Congress. (1993). <https://www.congress.gov/bill/103rd-congress/house-bill/2134?s=1&r=5>.
- ASMFC (October 21, 2020). “Review of the Interstate Fishery Management Plan, Horseshoe Crab (*Limulus polyphemus*), 2019 Fishing Year.” Atlantic States Marine Fisheries Commission, Plan Review Team.
- “Magnuson–Stevens Fishery Conservation and Management Act.” H.R. 200, 94th Congress. (1976). <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg331.pdf>.
- NCDMF (September 30, 2020). “Proclamations Current.” North Carolina Division of Marine Fisheries, Fisheries Management Section. Accessed at <http://portal.ncdenr.org/web/mf/proclamations-current>.
- NCDMF (November, 2015). “Fishery Management Plan for Interjurisdictional Species, Information Update.” *North Carolina Division of Marine Fisheries, Fisheries Management Section*.
- NCDMF (June, 2008). “Interjurisdictional Fisheries Management Plan.” *North Carolina Division of Marine Fisheries, Fisheries Management Section*.
- NCDMF (September, 2002). “Interjurisdictional Fisheries Management Plan.” *North Carolina Division of Marine Fisheries, Fisheries Management Section*.

Appendix I: Proposed Rules

15A NCAC 03L .0207 is proposed for readoption with substantive changes as follows:

15A NCAC 03L .0207 HORSESHOE CRABS

(a) The annual (January through December) commercial quota for North Carolina for horseshoe crabs is established by the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab.

(b) The Fisheries Director may, by proclamation, impose any ~~or all~~ of the following restrictions on the taking of horseshoe crabs to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe ~~Crab~~: Crab or to implement state management measures:

- ~~(1) Specify season;~~
- ~~(2) Specify areas;~~
- ~~(3) Specify quantity;~~
- ~~(4) Specify means and methods; and~~
- ~~(5) Specify size.~~
- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

~~(c) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are subject to this Rule.~~

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
 Temporary Adoption Eff. August 1, 2000;
 Codifier determined that findings did not meet criteria for temporary rule on October 31, 2000;
 Temporary Adoption Eff. December 6, 2000;
 Eff. August 1, 2002;
 Amended Eff. April 1, 2011;
Readopted Eff. April 1, 2022.*

15A NCAC 03L .0301 is proposed for readoption with substantive changes as follows:

SECTION .0300 – LOBSTER

15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

(a) It ~~is~~ shall be unlawful to possess American lobster:

- ~~(1)~~ (1) with a carapace less than 3 3/8 inches or greater than 5 1/4 inches;
- ~~(2)~~ (1) which ~~that~~ has eggs or from which eggs have been artificially removed by any method;
- ~~(3)~~ (2) meats, detached meats, detached tails or ~~claws~~ claws, or any other part of a lobster that has been separated from the lobster;
- ~~(4)~~ (3) which ~~that~~ has an outer shell which has been speared; or
- ~~(5)~~ (4) that is a V-notched female lobster. A V-notched female lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs. A V-notched female lobster is also any female lobster ~~which that~~ is mutilated in a manner ~~which that~~ would hide, ~~obscure~~ obscure, or obliterate such a ~~mark~~; or mark.
- ~~(6)~~ (6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.

(b) ~~American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:~~

- ~~(1)~~ (1) the opening to be covered by the ghost panel shall be not less than 3 3/4 inches (9.53 cm) by 3 3/4 inches (9.53 cm);
- ~~(2)~~ (2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
- ~~(3)~~ (3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section;
- ~~(4)~~ (4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap; and
- ~~(5)~~ (5) contains at least one rectangular escape vent per trap, 2 inches by 5 3/4 inches minimum size, or two circular escape vents per trap, with a minimum inside diameter of 2 5/8 inches.

(b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of American lobster to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for American Lobster or to implement state management measures:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; ~~113-221~~; 113-221.1; 143B-289.52;
 Eff. January 1, 1991;
 Amended Eff. March 1, 1996;
 Temporary Amendment Eff. August 1, 2000;
 Amended Eff. April 1, 2009; September 1, 2005; April 1, 2001;
 Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03L .0302 is proposed for re adoption with substantive changes as follows:

15A NCAC 03L .0302 SPINY LOBSTER

It is unlawful to:

- (1) ~~Possess a egg bearing spiny lobster or a spiny lobster from which eggs have been stripped, scrubbed or removed;~~
- (2) ~~Possess spiny lobster with a carapace length less than 3 inches;~~
- (3) ~~Possess aboard a vessel or land more than two spiny lobsters per person;~~
- (4) ~~Possess aboard a vessel or land detached spiny lobster tails; or~~
- (5) ~~Take spiny lobsters with a gaff hook, spear or similar device. Possession of a speared, pierced, or punctured spiny lobster is prima facie evidence that prohibited gear was used.~~

The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of spiny lobster to maintain compliance with the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and the South Atlantic or to implement state management measures:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Readopted Eff. April 1, 2022.*

15A NCAC 03M .0301 is proposed for repeal through readoption as follows:

SECTION .0300 - SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

~~(a) Spanish Mackerel:~~

- ~~(1) It is unlawful to possess Spanish mackerel less than 12 inches fork length.~~
- ~~(2) It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.~~
- ~~(3) It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.~~

~~(b) King mackerel:~~

- ~~(1) It is unlawful to possess king mackerel less than 24 inches fork length.~~
- ~~(2) It is unlawful to possess more than three king mackerel per person per day taken for recreational purposes.~~
- ~~(3) It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:~~
 - ~~(A) by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or~~
 - ~~(B) between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit.~~
- ~~(4) It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).~~

~~(c) Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the Spanish mackerel and king mackerel possession limits established in Subparagraphs (a)(2) and (b)(2) of this Rule when fishing with more than three persons (including the captain and mate) on board.~~

~~(d) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.~~

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. January 1, 2000; July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2002; April 1, 2001;
Repealed Eff. April 1, 2022.*

15A NCAC 03M .0302 is proposed for reoption with substantive changes as follows:

15A NCAC 03M .0302 PURSE GILL NET PROHIBITED

It ~~is shall be~~ unlawful to have a purse gill net on board a vessel when taking or landing Spanish or ~~King Mackerel.~~
king mackerel.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03M .0511 is proposed for repeal through readoption as follows:

15A NCAC 03M .0511 BLUEFISH

~~It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.~~

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. March 1, 1994;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. September 9, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; April 1, 2003; August 1, 2000;
Repealed Eff. April 1, 2022.

15A NCAC 03M .0516 is proposed for repeal through readoption as follows:

15A NCAC 03M .0516 COBIA

- ~~(a) It is unlawful to possess cobia less than 33 inches fork length.~~
- ~~(b) It is unlawful to possess more than two cobia per person per day.~~

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Repealed Eff. April 1, 2022.

15A NCAC 03M .0519 is proposed for re adoption with substantive changes as follows:

15A NCAC 03M .0519 SHAD

~~(a) It is unlawful to take American shad and hickory shad by any method except hook and line from April 15 through December 31.~~

~~(b) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook and line or for recreational purposes.~~

~~(c) It is shall be unlawful to take or possess American shad from the Atlantic Ocean.~~

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. October 1, 2008;
Amended Eff. April 1, 2012;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*