

# Handouts





**From:** ARNOLD ASDENTI [<mailto:mulletman48@live.com>]  
**Sent:** Monday, February 17, 2014 6:15 PM  
**To:** Fish, Nancy  
**Subject:** Support of commercial fishing

Dear Ms Fish:

I would like to offer my support for the following letter written by Chris McCaffity. Please support us in this very important effort and keep commercial fishing alive in North Carolina.

Concerned citizens from across North Carolina respectfully ask our Legislature, Marine Fisheries Commission, and Division of Marine Fisheries not to pass any new laws that could restrict our freedom to fish or access local seafood until after the NC Fisheries Visioning Project is completed. We should all have a common goal of healthy fisheries that are responsibly harvested with very little waste. How we achieve that goal in ways that follow the Fisheries Reform Act requirement to manage NC's seafood for the benefit of all user groups including consumers is what will be discussed in the Visioning Project.

We can rebuild stocks that have been mismanaged while limiting waste without closing any more fisheries. We can feed more people, enhance recreational fisheries, and generate more revenue without any drastic measures that would further restrict our freedom to fish and eat NC seafood. We can find solutions that protect our freedom, jobs, and food supply by employing a little critical thinking and common sense.

We respectfully ask our Legislators and fishery managers to reject any attempts to advance agendas that would restrict some user group's access to our public resource for the exclusive benefit of another. We ask our public officials to listen to your constituents who overwhelmingly support solutions that give everyone a chance to enjoy our great state's seafood. We ask you to give us the opportunity to offer a positive vision for the future of our fisheries and incorporate our solutions into new Fishery Management Plans.

Our state's commercial fisheries are at a crossroads and we need to carefully consider which path we will take. Will we watch as one of our state's oldest industries fades into history or will we work to preserve our heritage, food supply, and recreational opportunities while protecting our fisheries for future generations?

Respectfully,  
Arnold P. Asdenti  
PO Box 411  
Harkers Island, NC 28531

**From:** Chris McCaffity [<mailto:freefish7@hotmail.com>]

**Sent:** Sunday, February 09, 2014 8:36 AM

**To:** Speaker Thom Tillis; President Pro Tem Phil Berger; Fish, Nancy; Ives, Brad; Senator Norman Sanderson; Rep. Pat McElraft; Daniel, Louis

**Subject:** Positive Solutions

Concerned citizens from across North Carolina respectfully ask our Legislature, Marine Fisheries Commission, and Division of Marine Fisheries not to consider any new laws that could restrict our freedom to fish or access local seafood until after the NC Fisheries Visioning Project is completed. We should all have a common goal of healthy fisheries that are responsibly harvested with very little waste. How we achieve that goal in ways that follow the Fisheries Reform Act requirement to manage NC's seafood for the benefit of all user groups including consumers is what will be discussed in the Visioning Project.

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**From:** Teresa Kirby [<mailto:teresa.kirbykrew@gmail.com>]  
**Sent:** Monday, February 10, 2014 6:27 PM  
**To:** Fish, Nancy; Speaker Thom Tillis; President Pro Tem Phil Berger  
**Subject:** Local seafood

Concerned citizens from across North Carolina respectfully ask our Legislature, Marine Fisheries Commission, and Division of Marine Fisheries not to consider any new laws that could restrict our freedom to fish or access local seafood until after the NC Fisheries Visioning Project is completed. We should all have a common goal of healthy fisheries that are responsibly harvested with very little waste. How we achieve that goal in ways that follow the Fisheries Reform Act requirement to manage NC's seafood for the benefit of all user groups including consumers is what will be discussed in the Visioning Project.

We can rebuild stocks that have been mismanaged while limiting waste without closing any more fisheries. We can feed more people, enhance recreational fisheries, and generate more revenue without any drastic measures that would further restrict our freedom to fish and eat NC seafood. We can find solutions that protect our freedom, jobs, and food supply by employing a little critical thinking and common sense.

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North Carolina's commercial fisheries are at a crossroads and we need to carefully consider which path we will take. Will we watch as one of our state's oldest industries fades into history or will we work to preserve our heritage, food supply, and recreational opportunities while protecting our fisheries for future generations?

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*Teresa and John Kirby*



-----Original Message-----

From: James Fletcher [<mailto:unfa34@gmail.com>]

Sent: Tuesday, February 18, 2014 1:13 PM

To: Fish, Nancy

Subject: Comment on river herring

Public Comment:

Gill net mesh size can be selected to catch 85% males; using smaller mesh size to target males would allow some commercial harvest for herring the entire season. do not need to stop herring fishing when correct net size will target males & allow females to bounce off web.

Closing a fishery should not be an option when gear size offers an alternative.

Recreational Fisheries should be managed by total length to be retained, Example 60 inches southern Flounders, 10 ---- 6 inch flounders or 4 15 fish with no discards. Is it better to utilize all fish caught or throw back dead fish?

Thank you, James Fletcher United National Fisherman's Association 123  
Apple Rd. Manns Harbor NC 27953 Phone: 252-473-3287 Cell: 757-435-8475  
Fax: 252-473-4969



**Comments to the Marine Fisheries Commission**  
**on Amendment 1 to the Shrimp Fishery Management Plan**

**North Carolina Fisheries Association, Inc. - Jerry Schill (received Jan. 8)**

There is one thing that is striking to me since getting back involved in fisheries issues after an absence of personal involvement for almost 9 years. I was with the North Carolina Fisheries Association for 18 years, from 1987 till 2005, and during that time served on numerous boards, committees and panels including 6 years on the South Atlantic Fishery Management Council and several years on the Joint Legislative Commission on Seafood & Aquaculture.

The one striking issue that I referred to is the loss of memory of what has transpired over the years in fishery management, in this case, in the shrimp bycatch history. Last summer in Raleigh it was crystal clear that many who were proposing gamefish or were involved with the banning of inside shrimping, had little to no experience in fisheries issues. There were others who knew better but had selective memories. I say that because I heard directly or indirectly that fishermen needed to compromise, and that opinion seemed to be based upon an assumption that commercial fishermen have not conceded anything when sitting at the table to discuss a myriad of issues, including bycatch. So let's talk about that.

When I started with NCFCA in 1987 I had no preconceived notions about anything regarding fishing issues. I had no bias from a trawling, gillnetting, bottom fishing, crabbing or even from a hook and line recreational fishing perspective. I didn't do any of it. My only connection to fishing was as a consumer. I was, however, attuned to the political winds and the public perception of a number of issues including the protection of turtles and bycatch issues. And so were many fishermen who made their living on the water. In the late 80s, the debate wasn't really about whether or not to protect turtles for example, but how to do it. We learned quickly that the federal government shoving a particular method down the fishermen's throat wasn't going to do it. It was only after fishermen got involved with the planning and testing was there success in coming up turtle excluder devices that worked.

And the same is true with bycatch reduction. Whether you prefer to call them BRDs, bycatch reduction devices, or FEDs, fish excluder devices, they came to be because they were developed and tested by fishermen. (We prefer BRDs because the word FED is so negative!)

In the case of North Carolina, many shrimpers used them voluntarily. Why? Because they worked! It's also important to note that North Carolina was the first state to mandate their use in shrimp trawls and it was OK with the shrimpers because most were using them anyway!

So why is this stuff important? I'll paraphrase something I heard the late Congressman Walter Jones, Sr., say at a Merchant Marine and Fisheries Committee meeting a long time ago: "NO fisheries regulation will work without the acceptance, albeit grudgingly, of the fishermen being regulated."

In the mid 80s, if any of the self-described conservationists who were complaining about bycatch in the shrimp trawl fishery could have envisioned North Carolina shrimpers helping to develop and actually use reduction devices that actually worked such as what we're using now, they would have thought they died and went to heaven!

Now, does that mean we should just forget about it and do nothing to reduce it even further? Absolutely not! But I would strongly caution this committee, when you make your recommendations to the Marine Fisheries Commission, not to push for any particular percentage reduction that is unattainable or worse yet, any threat of what you'll do to the fishermen if they don't reach that unattainable goal, because you will be doomed to fail from the start! (UNLESS the ultimate goal is the elimination of the shrimpers in the first place.)

Such a mandate back in the 80s would have doomed the process. Cooperation is the key, and yes, I know full well about those who claim otherwise. Just remember that they weren't sitting at the table back then and really have no idea what went on. The process I'm speaking about is not easy, but if our goal is to truly reduce bycatch even more, rather than sabre rattling, then the cooperative approach is the only way to be effective.

The North Carolina Fisheries Association appeals to you to go the route that was taken for many years and that is the fostering of cooperation on the studies and testing of ANY gear in our efforts to conserve our resources while allowing a proud and noble fishing tradition to continue.

Fishing families and the seafood consumers are counting on you!

**North Carolina Fisheries Association, Inc. - Steve Weeks (received Jan. 8)**

Commercial fisherman want to reduce bycatch for the viability of all finfish species, not just by reducing bycatch in the shrimp fishery, but in all fisheries, recreationally and commercially.

The North Carolina Fisheries Association is opposed to the Commission's recommendation requiring a minimum 40% reduction of finfish by weight within a 3 year period.

The Association supports the Division's recommendations to:

1. Convene a stakeholder group to initiate industry testing of bycatch reduction devices;
2. To allow any Federally certified bycatch reduction devices in all internal and offshore waters;
3. Upon Federal adoption of turtle excluder devices in skimmer trawls, state enforcement of the Federal requirement; and
4. Updating the scientific testing protocol for the state bycatch reduction device certification program.

The shrimp industry since the introduction of the bycatch reduction device has reduced bycatch by approximately 1/3. Before a bycatch reduction device can receive Federal certification it must reduce bycatch by a minimum of 30%. In addition to a bycatch reduction device, all commercial shrimp trawls require a turtle excluder device.

Recent testing by the National Marine Fisheries in conjunction with a North Carolina skimmer trawl fisherman has indicated that turtle excluder devices also reduce bycatch.

In addition, there has been a substantial reduction in effort in the shrimp industry. In 1994 there were 14,585 shrimp trips with otter trawls, in 2011 there were 3,004 trips, a 485% reduction. In 1994 there were 1,118 shrimp trawl trips, in 2011 there were 327 trips, a 340% reduction. In 1994 there were 2,109 channel net trips, in 2011 there were 531 trips, a reduction of 397%.

The recommended 40% reduction over a 3 year time period is not achievable without destroying the North Carolina shrimp industry, is without scientific basis and is arbitrary and capricious.

Scientifically the Division has not established an accurate finfish to shrimp, bycatch ratio. Director Daniel, at the hearing in Raleigh in August 2013, testified that there was no accurate basis in the bycatch ratio the State of North Carolina was using. This ratio is considerably higher than the ratio of all South Atlantic States according to data from National Marine Fisheries, Southeast Region.

Steven Parrish, a net maker and designer with significant experience and expertise in bycatch reduction devices spoke before the Southern Advisory Committee on January 8, 2014. Mr. Parrish advised that through his experience and testing a 40% additional reduction in bycatch was not achievable without a significant loss of the shrimp catch.

The reduction of bycatch in the shrimp fishery should be achieved in a reasonable manner and over a reasonable time period with cooperation between the State and the fisherman. It took years to develop, test and implement the fish excluder devices currently in use, which have to be Federally approved. There are currently Federally approved finfish excluder devices that the State of North Carolina will not allow the fisherman in State waters to use.

Kevin Brown with the Division, who is in charge of the bycatch reduction program, advised the Southern Advisory Committee on January 8, 2014 that he questions whether he has adequate personnel and resources to verify the data required to substantiate whether or not any reduction mandated by the Commission has been met.

In 2013 NOAA Fisheries awarded 16 grants totaling nearly \$2.4 million as a part of its Bycatch Reduction Engineering Program. Bycatch of various species – whether fish, marine mammals, or turtles – can have significant, biological, economic, and social impacts. Preventing and reducing bycatch is a shared goal of fisheries managers, the fishing industry, and the environmental community.

NOAA Fisheries' Bycatch Reduction Engineering Program provides funds critical to key partners for the research and development of innovative approaches and strategies for reducing bycatch.

Mr. Brown advised the Southern Advisory Committee on January 8, 2014 that he has applied for grants to assist in the research and testing of bycatch reduction devices.

This advisory committee should recommend the above recommendations of the Division and should not recommend the Commission's recommendation of a 40% bycatch reduction over a three year period as there is no scientific basis for said reduction and said reduction is not achievable without significant monetary loss to the North Carolina shrimp industry, which has traditionally been one of the more lucrative fisheries in this State.

**United National Fisherman's Association – Jim Fletcher (received Jan. 8)**

Do not need a number or percentage for the amount of by catch.

Reduction in shrimp Trawls. DIVISION & National Marine Fisheries Service needs to document the by Catch reduction from Turtle Excluder Devices. No credit is given for large fish excluded by Turtle Excluder Devices. {Loss of income to fishermen}

NOW! The committee should address the by catch from recreational fish that can be reduced by changing the regulations on all regulated recreational fish.

A possession limit for each species in total length in inches to be retained, all fish must be retained, thus allowing low income fishing from the bank access to fish for food.

In brought over the rail. Require barb less hooks on all recreational vessels, only allow barbed hooks on piers bridges or shore. Consider barbs on hook side away from shank. Trout as an example would have a 60 inch total length limit, thus allowing 5 12 inch fish Or 6 10 inch fish NO BY CATCH NO CATCH & RELEASE!

ELIMINATE BY CATCH OR HOOK & RELEASE IN RECREATIONAL FISHING.

**Coastal Fishery Reform Group - Joe Albea (received Jan. 16)**

The Coastal Fisheries Reform Group (CFRG) is a coalition of recreational coastal fishermen, who support sound management of our marine fisheries based upon the best available science. We represent many thousands of fishermen from across the state who fish in our coastal waters. We have had over 127,000 hits on our blog site (<http://cfrgnc.blogspot.com/>) where we have discussed coastal fisheries issues since 2009. In the role as a voice for the average salt water fisherman, we submit the following comments on the proposed Shrimp FMP amendment to reduce finfish bycatch that the Marine Fisheries Commission will consider at their February 2014 meeting.

We strongly believe that the draft amendment to the shrimp plan, which includes only proposals for industry testing of bycatch reduction devices, updating testing protocols for the state bycatch reduction device certification program, and requiring additional bycatch reduction devices in all shrimp trawl nets, falls woefully short of an acceptable proposal to amend the Shrimp FMP to reduce bycatch.

The Shrimp FMP Advisory Committee met several times over the course almost a year and many additional, significant measures were discussed and considered. The proposals emerging from the study are almost meaningless and will do little if anything to reduce finfish bycatch in shrimp trawling operations. The recommended amendment contains no options for gear restrictions, no time closures, no areas closures, and no target reduction in bycatch. The Shrimp FMP should be amended to include goals, timetables, and management measures to accomplish significant by-catch reduction and an aggressive data collection and analysis program to monitor the success of management actions taken over the next five year period.

We quote here from the draft amendment (page 65 Section 6.3 Shrimp Trawl Bycatch):  
*“As perhaps the prime example of the new policy positions, the re-authorized Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) contains a National Standard (#9) requiring bycatch minimization (USDOC 1996). National Standard 9 states: “Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” Additionally, in 1991 the MFC adopted a policy directing the DMF to establish the goal of reducing bycatch losses to the absolute*

*minimum and to consciously incorporate that goal into all of its, management considerations (Murray et al. 1991).”*

The CFRG urges the MFC to amend the Shrimp FMP to include the following provisions:

1. Limit all trawl nets in inshore coastal waters (especially Pamlico Sound) to a maximum headrope size of 110 feet and only allow two nets per boat. This would remove the large nets and their excessive bycatch but would allow the small trawlers that have shrimped in our sounds for generations to continue working uninterrupted. These smaller shrimp boats are mostly local boats, with local crews that sell their catch at local fish houses in North Carolina. Such a rule change would greatly benefit the vast majority of North Carolina shrimpers while truly helping our coastal economies and our marine resources by significantly reducing bycatch.
2. Limit tow times to 60 minutes. This would allow for some bycatch to be released alive and also increase the chance of sparing any endangered turtles which are entrapped in the net.
3. Delay shrimp season until the shrimp size has reached the level of having 36 to 41 (or lower) shrimp per pound. This would postpone the harvest of shrimp and allow juvenile finfish to grow larger and have more of a chance of escaping shrimp trawls. These fish would also have more time to move out of their nursery areas where the trawlers are now working. In addition, this change would cause the shrimp to be larger when they are harvested and market value would be greater, thereby benefiting shrimp fishermen.
4. Establish exclusion zones around both sides of our inlets where trawlers with headropes exceeding 110 feet would not be allowed. This would allow juvenile finfish that are transitioning to a life in the open ocean to escape our sounds without being killed by a shrimp trawler. These fish become concentrated when they are near the inlets and are especially vulnerable to trawlers until they can disperse into the ocean.

Now is the time to get serious about the finfish decimation caused by the current activities of shrimp trawlers in the inshore waters of NC. Destruction of fisheries resources of this magnitude cannot be tolerated any longer. If the proposed amendment to the Shrimp FMP is adopted as presented, the schedule for meaningful action will be delayed for years while we look for the magic solution that is right before us now. Establish some realistic goals, implement some meaningful management measures, set a timetable for implementation, evaluate improvements in terms of bycatch reduction, and make subsequent changes as dictated by results.

Joe Albea  
On behalf of Coastal Fisheries Reform Group

**North Carolina Wildlife Federation/Camo Coalition – Dick Hamilton (received Jan. 16)**

Dr. Daniel:

I have closely followed the course of the current attention given bycatch in the Shrimp FMP from the first proposal to simply revise the FMP to the decision to amend the FMP and all of the work of the Advisory Committee that was appointed and has worked for about a year to review the bycatch issue and make proposals to amend the FMP to address bycatch.

If I correctly interpret the draft amendment being considered now, the recommendations are limited to an industry study of bycatch reduction devices, updating testing protocols for the state bycatch reduction device certification program, and requiring additional bycatch reduction devices in all shrimp trawl nets. These limited proposals are not at all significant if we are trying to reduce bycatch from shrimp trawling in a timely and effective way. Many reasonable and effective means to reduce bycatch are available now. If we limit the amendment to these points, then bycatch will not come up again for five years. We need to at least adopt a list of alternative management measures such as gear restrictions, maximum tow times, area closures around inlets and a schedule for implementation and a plan for evaluation in terms of reduction of bycatch.

Essential to any deliberate, serious plan of action to address a natural resource issue as crucial as the unacceptable bycatch of immature finfish in shrimp trawls is a plan of action with a slate of management choices, a timetable of implementation and evaluation, and a target level of success. The draft amendment has none of these elements. The Advisory Committee discussed many of the management measures that could have given promise toward achieving a meaningful reduction in bycatch, but none of these actions are before the Commission for consideration. The omission of potential actions that could work flaws the whole process.

Now is the time to begin an approach toward reduction of shrimp trawling bycatch. We do not need more studies that will continue to show that finfish mortality is significant and the effect on their stocks is uncertain. We do not need to evaluate bycatch reduction devices as the main thrust of bycatch reduction. A risk of doing nothing substantial at this good opportunity is the possibility of a far more precipitous and radical change similar to what happened with the sea turtle and the gill nets.

Dick Hamilton

**North Carolina Wildlife Federation - Tim Gestwicki (received Jan. 17)**

Dr. Daniel:

Reference: Proposed amendment Shrimp FMP to Reduce Bycatch

The North Carolina Wildlife Federation is a statewide, non-profit, conservation organization dating back to 1945 dedicated to the professional management of our fish and wildlife resources based upon scientific principles. We represent many thousands of fishermen from across the state who fish in our coastal waters. It is within this purview that we submit the following comments on the proposed Shrimp FMP amendment to reduce finfish bycatch that the Marine Fisheries Commission will consider at their February 2014 meeting.

We strongly believe that the draft amendment to the shrimp plan falls far short of addressing the serious problem of bycatch in the shrimp trawling industry. It seem as if

the draft amendment includes only proposals for industry testing of by-catch reduction devices, updating testing protocols for bycatch reduction device certification program, and requiring additional by-catch reduction devices in all shrimp trawl nets. These limited proposals will do little if anything to reduce by-catch.

The Shrimp FMP Advisory Committee met several times over the course almost a year and many additional, significant measures were discussed and considered. The recommended amendment contains no options for gear restrictions, no time closures, no areas closures, and no target reduction in bycatch. We believe definite, measurable reductions must be implemented by and for the commercial trawlers. The Shrimp FMP should be amended to include definitive goals, timetables, and management measures to accomplish significant by-catch reduction and an aggressive data collection and analysis program to monitor the success of management actions taken over the next five year period.

NCWF urges the MFC to amend the Shrimp FMP to include the following provisions:

1. Limit all trawl nets in inshore coastal waters (especially Pamlico Sound) to a maximum headrope size of 110 feet and only allow one net per boat. This would remove the large nets and their excessive bycatch but would allow the small trawlers that have shrimped in our sounds for generations to continue working uninterrupted. These smaller shrimp boats are mostly local boats, with local crews that sell their catch at local fish houses in North Carolina. Such a rule change would greatly benefit the vast majority of North Carolina shrimpers while truly helping our coastal economies and our marine resources by significantly reducing bycatch.
2. Limit tow times to 45 minutes. This would allow for some bycatch to be released alive and also increase the chance of sparing any endangered turtles which are entrapped in the net.
3. Delay shrimp season until the shrimp size has reached the level of having 36 to 41 (or lower) shrimp per pound. This would postpone the harvest of shrimp and allow juvenile finfish to grow larger and have more of a chance of escaping shrimp trawls. These fish would also have more time to move out of their nursery areas where the trawlers are now working. In addition, this change would cause the shrimp to be larger when they are harvested and market value would be greater, thereby benefiting shrimp fishermen.
4. Establish exclusion zones around both sides of our inlets where trawlers with headropes exceeding 90 feet would not be allowed. This would allow juvenile finfish that are transitioning to a life in the open ocean to escape our sounds without being killed by a shrimp trawler. These fish become concentrated when they are near the inlets and are especially vulnerable to trawlers until they can disperse into the ocean. Now is the time to get serious about the finfish decimation caused by the current activities of shrimp trawling in the inshore waters of NC. Destruction of fisheries resources of this magnitude cannot and should not be tolerated any longer as it is in nobody's interests. If the proposed amendment to the Shrimp FMP is adopted as presented, the schedule for meaningful action will be delayed for years while we look for solutions, which in our opinion, are right before us now. We urge you to establish realistic goals, implement meaningful, deliberate, and measurable reductions by the

industry, management measures, set a timetable for implementation, evaluate improvements in terms of by-catch reduction, and make subsequent changes as dictated by results.

Thank you for considering our requests,

Tim Gestwicki  
CEO  
North Carolina Wildlife Federation

**Email (received Jan. 16)**

Please accept this communication as unconditional support of the Coastal Fisheries Reform Group's proposal, dated this day, regarding the referenced matter. My personal experience in a Marine Fisheries advisory capacity fosters my concern that, by the time any effective action is taken, it will be too late for the resource. Let's get on with a common sense approach, and do it now!  
Sincerely, Frank Liggett

**Email (received Jan. 16)**

To whom this may concern: I fully support the CFRG's position on the proposed amendment to reduce shrimp trawling bycatch in NC. I urge you to do everything in your power to look at the science, and the reality, of the unconscionable damage that shrimp trawling is daily perpetuating on our environment, and act accordingly.  
Thank you,  
Lee Dunn, Beaufort

**Phone call from Joe Buck (received Jan. 23)**

Joe Buck called and suggested that shrimping should not be allowed at night, because you catch a lot more bycatch at night compared to day time shrimping.

**Email from Paul Brown (received Jan. 31)**

- \* Limit all trawl nets in inshore coastal waters (especially Pamlico Sound) to a maximum headrope size of 110 feet and only allow two nets per boat.
- \* Limit tow times to 60 minutes to allow some by-catch to be released alive and increase the chance of sparing endangered turtles trapped in the nets.
- \* Delay shrimp season until the shrimp size has reached the level of having 36 to 41 (or less) shrimp per pound. This would postpone the harvest of shrimp and allow juvenile finfish to grow larger and have more of a chance of escaping shrimp trawls. These fish would also have more time to move out of their nursery areas where trawlers now work.
- \* Establish exclusion zones around both sides of inlets where trawlers with headropes exceeding 110 feet wouldn't be allowed.

"Now is the time to get serious about the finfish decimation caused by the current activities of shrimp trawlers in the inshore waters of North Carolina," CFRG wrote. "Destruction of fisheries resources of this magnitude cannot be tolerated any longer."

CFRG also asked the Commission to establish "realistic goals, implement some meaningful management measures, set a timetable for implementation, evaluate

improvements in terms of by-catch reduction, and make subsequent changes as dictated by results.” it's time to get serious about the damage being done to our nurserys in nc  
thank you  
paul brown  
600 n. rocky river rd.  
sanford n.c.

**Email from Bruce Lee (received Jan. 31)**

It's time to end inshore shrimp trawling. Not reduce, not alter limits, no other half-steps, END. The old song of jobs lost doesn't cut it anymore. The damage trawling does FAR outweighs the benefit and this can and has been proven in many ways. If you would like I can easily support this position with data. The snowball is growing if you haven't noticed. Long overdue change is coming to NC fisheries management. I hope to be able to count on you to finally take the big picture in to account and join every other east coast state and BAN inshore trawling. The reasons they banned it are 100% applicable here too.

Thanks,  
Bruce

**Email from Billy Reavis (received Jan. 31)**

The people of NC should know about the by catch situation, if they did maby their would be better management by the marine fishries. This has been going on for many years and has had a big impact on the poor fish stock situation.

Billy Reavis [bjreavis@gmail.com]

**Email from Hubert Parrott (received Jan. 31)**

This, if all reports are even half way accurate, is a travesty...there is absolutely no way that killing all those small spots, croakers, and weakfish can have anything but a disastrous effect on those species....it does not take a fisheries biologist to recognize the terrible practice needs to be stopped or at least drastically changed. Shrimp trawling by catch is the 600 lb. gorilla in the room and he isn't going away.I ask the MFC to address this issue and do what is right for the resource, for a change.I, and a great number of others, am fed up with the lack of foresight and continued lack of courage that has allowed this issue to fester like a boil on the reputation of fisheries management in our state.

Thank you,  
Hubert Parrott  
Hubert Parrott [ncparrott@gmail.com]

**Email from Charles Brown (received Jan. 31)**

I have fished the North Carolina coast for over 30 years and have seen how the shrimp trawlers have destroyed the NC fishing. I would pay triple for shrimp or fish than to continue seeing the shrimp trawlers continue to destroy the fishing for not only myself but for all future fishermen. First of all the Commission or personnel involved in making changes to the fishing laws that have interest or own commercial fishing license should be banned from voting on changes to the fishing regulations. I really believe that if the

N.C. Marine Fisheries Commission continue allowing nets and shrimp trawlers to continue in North Carolina, fishing for everyone will be destroyed. Looks at Virginia and how they banned nets and shrimp trawlers – five years after the ban, fishing is plentiful. Thanks for your time,

Charles Brown  
109 Holly Creek Rd  
Morrisville, NC 27560  
Brown, Charles (HNP) [Charles.Brown2@duke-energy.com]

**Email from Capt. Roger (received Jan. 31)**

The CFRG recommendations on shrimp trawling would be a great step in the right direction. Better still, STOP ALL TRAWLING INSIDE! Farm raised shrimp is the way to go. Recreational fishing has become so bad now that it is barely worth trying in NC coastal waters. Friends and I have been fishing at the coast for more than 50 years and have found it difficult to catch enough fish for one dinner in the last several years. Our long trips to Florida for great fishing would end if NC would copy Florida's approach to marine management.

[rcaproger@aol.com](mailto:rcaproger@aol.com)

**Email from Neil Smith (received Feb. 1)**

Ms. Fish: It is obvious that the SMP put forth by the Marine Fisheries Comm. is but a stopgap measure and will do nothing to actually limit the killing of juvenile finfish by trawlers in the sounds of NC. The coastal Fisheries Reform Group has listed a number of operating procedures and rules that IF ENACTED will actually give a more realistic chance for the survival of some of the affected finfish. I urge you to hear these proposals as a sincere effort to address the massive bycatch problem that retards any future growth of NC's fish stocks.

Sincerely,  
Neil M. Smith  
486 Tom Absher RD.  
Scottville, NC 28672  
[neilmlynn@skybest.com](mailto:neilmlynn@skybest.com)

**Email from Rick Sasser (received Feb. 13)**

Good Morning, Please take the following into consideration when you rate the impact of otter trawling caught NC shrimp for your FishWatch Bulletin.

The Atlantic States Marine Fisheries Commission is charged with managing weakfish (gray trout). The current weakfish stock status is severely depleted with the adult spawning population at levels so low, that further declines are expected. In fact, in 2003, the ASMFC projected a greater than 90% chance that weakfish biomass could fall to zero by 2015. In 2008, weakfish biomass was less than 4.5-million pounds, a 96% drop in thirty years. In a 2009 report, the ASMFC Weakfish Technical Committee states "Unless there has been a steady rise in weakfish juvenile discards since 1999, the emergence of a demographic bottleneck is consistent with enhanced predation (e.g. spiny dogfish and striped bass) on smaller weakfish."

What is a weakfish's #1 predator in NC? The Spiny Dogfish? The Striped Bass? The Pamlico Sound shrimp boat?

NCDMF Director Daniel has publicly stated that 4.5 to 1 is a clear and well established bycatch ratio in NC's shrimp industry. In 2008, NC landed 9.4-million pounds of shrimp. Approximately 68% of NC shrimp landings come from the Pamlico Sound system. According to NCDMF studies, juvenile weakfish represent approximately 7% of trawling bycatch in the Pamlico Sound. In those studies, weakfish bycatch averaged 27.5-fish per pound. In 2008, NC shrimp trawlers killed 55-million Pamlico Sound weakfish as bycatch, 2-million pounds. The total east coast weakfish spawning stock biomass was only 4.5-million pounds in 2008.

Bycatch is not only affecting weakfish, but also spot and croaker stocks- once both important seafood staples. Those two stocks had historical low catches in 2012. NC spot landings have dropped from 7.1-million pounds to less than 500,000-pounds, a 93% decline. NC croaker landings have dropped from 21.1-million pounds to 3.1-million pounds, an 85% decline.

On February 19-21, the NCMFC will meet in Morehead City and the topic of shrimp bycatch will be discussed. While there is always a possibility that meaningful change will come from that meeting, history will show such wishful thinking is doubtful. It appears the NCMFC is going to vote to "study" the issue for three more years, a vote for maintaining status quo. During the next three years, NC shrimpers will continue to trawl in critical habitat nursery areas important to weakfish, atlantic croaker, spot, southern flounder and blue crab. Important finfish and crab stocks will continue to decline as trawling bycatch kills 1.0 to 1.5 billion juvenile species in those three years.

I understand that it is difficult for outside agencies to control what happens in the territorial waters of NC, but those agencies can at minimum- acknowledge the problem, document it and suggest improvements to NC's unsustainable fishery practices, practices that are not only detrimental to NC fish stocks, but interstate fish stocks.

Thank you for your time and consideration.

Sincerely,  
Rick Sasser  
Goldsboro, NC  
[rick.sasser@hotmail.com](mailto:rick.sasser@hotmail.com)

-----Original Message-----

From: James Fletcher [mailto:unfa34@gmail.com]

Sent: Monday, February 17, 2014 3:07 PM

To: Fish, Nancy

Subject: Shrimp & shrimp BY Catch

Can all of by catch be converted to Economic Value & nothing was returned to water, would By Catch remain a problem in shrimp fishery?

Product would be worth 10 to 12.5 cent per pound. Pass question on to whom ever.

--

Thank you,

James Fletcher

United National Fisherman's Association

123 Apple Rd. Manns Harbor NC 27953

Phone: 252-473-3287

Cell: 757-435-8475

Fax: 252-473-4969

## **MODIFICATION OF ARTIFICIAL REEF RULES ISSUE PAPER**

**For Presentation at the Feb. 20, 2014 N.C. Marine Fisheries Commission Business Meeting**

### **I. ISSUE**

A petition for rulemaking was submitted to the Marine Fisheries Commission to modify N.C. Marine Fisheries Commission Rule 15A NCAC 03I .0109 to restrict commercial fishing gears on artificial reefs and research sanctuaries. The petition also requests a modification to 15A NCAC 03J .0402 to establish an additional 100-yard buffer around Artificial Reef 396 (Oriental Reef) and restrict commercial and other selected gears within the permitted reef site and the 100-yard buffer. In addition to all commercial gear, restricted gears include: cast nets, collapsible crab traps, gigs or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines. The additional proposed buffer would result in about a 98-percent increase in acreage of the reef from approximately 64 to 127 acres.

### **II. ORIGINATION AND CURRENT STATUS**

The petition for rulemaking submitted by Ronald Zielinski July 12, 2013 was approved by the N.C. Marine Fisheries Commission at its Aug. 29, 2013 meeting. This put the rules proposed by Mr. Zielinski into the Marine Fisheries Commission rulemaking process. As the next step in the process, the Division of Marine Fisheries (division), with subject matter expertise reviews the proposed rules and rule language and reports back to the Marine Fisheries Commission.

### **III. BACKGROUND**

The goal of North Carolina's artificial reef program is to develop, maintain, evaluate and administer a successful system of artificial reefs as an integral part of North Carolina's marine fisheries management program, so as to enhance marine fisheries habitat and public fishing and diving opportunities.<sup>1</sup> To accomplish this goal, reef sites are selected and developed to provide complex habitat that attracts and supports numerous species that are either target species for fishing or support those target species. The division monitors the artificial reefs for target species utilization and various components of the materials used and the design of the reef. The fish encountered in association with the reef are primarily in close proximity to the structures that provide either protection for prey species or concentrate prey for predator species. Some juvenile marine species, including such popular species as gag grouper, black sea bass, and flounder use estuarine artificial reefs as nurseries that provide protection and food prior to moving into the ocean. Other species like sheepshead are extremely structure-dependent, feeding on the various organisms that either attach to the structures or use them for protection. The division artificial reef staff incorporates the results of monitoring and sampling, recommendations from academic researchers and input from the public to improve the design, materials, and deployment procedures to maximize the sites for fishing. The division routinely monitors artificial reefs and sanctuaries to determine accuracy of material deployments, utilization by various species, and effectiveness of the materials and design. To date, there have been no instances of the public's fishing activities on and around the reefs impeding the monitoring, sampling, or development of the reefs, including the use of commercial and recreational gears. The overwhelming input from the fishing public is that they would like more material and more reefs.

Ronald Zielinski is a resident of Oriental and has been active in the enhancement of Artificial Reef 396, primarily through a Coastal Recreational Fishing License grant from the N.C. Marine Resources Fund. Sources of funding for Artificial Reef 396 include state appropriations, private donations, revenues from the U.S. Fish and Wildlife Sport Fish Restoration Program, and the N.C. Marine Resources Fund. In his petition, Mr. Zielinski cited the division's shift from development of ocean artificial reefs to coastal and inshore reef developments, improvements, and new projects to increase finfish and shellfish habitat. He stated there is a need to better protect artificial reefs and research sanctuaries with the proposed new rules. The petitioner's reasons for the new rules included the collaborative efforts of a grass roots group of the Town of Oriental recreational fishermen, the Town of Oriental, and division artificial reef staff to pursue additional funding sources and add additional types of materials to Artificial Reef 396. The petitioner stated that it would be counterproductive to these efforts to allow commercial gear and the additional selected gear to be used on Artificial Reef 396 and in the proposed buffer zone; however,

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<sup>1</sup> See N.C. Artificial Reef Master Plan, Oct. 1988 at [http://portal.ncdenr.org/c/document\\_library/get\\_file?uuid=d7dddb18-f546-48c8-98d1-4cc43016ed2a&groupId=38337](http://portal.ncdenr.org/c/document_library/get_file?uuid=d7dddb18-f546-48c8-98d1-4cc43016ed2a&groupId=38337).

these efforts are standard practice for all artificial reefs and oyster sanctuaries in North Carolina and are supported by the objectives of the N.C. Artificial Reef Master Plan. Mr. Zielinski said the accuracy of species utilization data collected on the site would be affected due to the lack of accountability for what has been removed, discarded or chased away by the use of commercial and additional selected gear (cast nets, collapsible crab traps, gigs or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines). In the petitioner's opinion, the identified gear to be used on or around the reef would adversely affect the data to be used to guide future projects regarding fish and oyster selectivity for preferred structure or material. Also, the petitioner expressed concern for research divers being exposed to increased dangers from active, abandoned or errant nets or pots if commercial fishing was allowed. Division artificial reef staff has not encountered abandoned gear that poses a hazard to monitoring artificial reef operations while diving or completing other related duties.

Mr. Zielinski stated additional concerns about allowing commercial gear on Artificial Reef 396 or possibly other coastal/inshore reefs or sanctuaries in North Carolina that have come up in his ongoing research. He provided an example of a conflict issue on an offshore artificial reef in New Jersey that led to the termination of future funds from the federal Sport Fish Restoration Program due to the conflict not being addressed. The funds could be restored once actions to address the conflicts interfering with recreational fishing on the reef were taken. It was Mr. Zielinski's assumption that gill nets would also create a conflict, although he did not provide information about a known conflict on Artificial Reef 396. Mr. Zielinski is researching whether reefs or sanctuaries in coastal inshore waters have to satisfy the same requirements as reefs in offshore federal waters if they have used U.S. Fish and Wildlife Sport Fish Restoration funds.

#### **IV. AUTHORITY**

##### North Carolina General Statutes

- 113-129. Definitions relating to resources.
- 113-132. Jurisdiction of fisheries agencies.
- 113-133. Abolition of local coastal fishing laws.
- 113-134. Rules.
- 113-135. General penalties for violating Subchapter or rules; increased penalty for prior convictions; interpretive provisions.
- 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.
- 113-182. Regulation of fishing and fisheries.
- 113-182.1. Fishery Management Plans.
- 113-201.1. Definitions.
- 113-221.1. Proclamations; emergency review.
- 143B-289.51. Marine Fisheries Commission – creation; purposes.
- 150B. Administrative Procedure Act.
- 150B-19.1. Requirements for agencies in the rule-making process.
- 150B-19.3. Limitation on certain environmental rules.
- 150B-20. Petitioning an agency to adopt a rule.
- Governor's Executive Order 70, 2010.<sup>2</sup>

#### **V. DISCUSSION**

The division Artificial Reef Program has initiated an effort to revitalize the existing estuarine artificial reefs while conducting sampling to determine areas that function as nursery habitat for several key species, several of which are referenced above in the background section. The ultimate goal of these efforts is multifaceted: to provide enhanced fishing opportunities through refinements in reef design and development, to identify sites in areas that provide the environmental conditions certain species require for nurseries prior to migrating offshore, and to use the information gained from monitoring the enhancements made on existing estuarine reefs to design and create new reefs in these nursery areas. Artificial Reef 396 is one of several reefs that will be monitored after materials are deployed.

In his petition, Mr. Zielinski stated that artificial reefs and research sanctuaries require protection from commercial fishing and other selected gear to reduce their influence on the species utilization sampling, including removal by

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<sup>2</sup> [http://portal.ncdenr.org/c/document\\_library/get\\_file?uuid=ccd34e27-07ae-49bf-81bd-27ce6d65d1f0&groupId=35268](http://portal.ncdenr.org/c/document_library/get_file?uuid=ccd34e27-07ae-49bf-81bd-27ce6d65d1f0&groupId=35268)

“harvest, discard, or being chased away.” This concept may have validity for specific gears that would not be appropriate on artificial reefs or research sanctuaries such as trawls, dredges, and gill nets, as these gears could either damage, relocate, or become entangled in the reef structures. But, the petitioner stated that the only commercial gear observed on the reef has been crab pots that were moved to designated areas when seasonal regulations dictated their movement. The petitioner stated that on 10 trips during May and early June 2013, an average of 5.4 crab pots were observed within the perimeter of the reef (64 acres). The petitioner and N.C. Marine Patrol have both stated that there have been no conflicts between users, commercial or recreational.

The petitioner stated that hook-and-line was the predominate gear used to harvest fish on the reef and he provided no evidence that any of the gears he proposed to be restricted are used on the reef or that their use would have any significant detrimental effects. If the concern on this reef is that by its intended use, it is no longer valuable for monitoring, then the gear that is used most and either removes or affects the fish to the greatest extent should be the restricted gear. That gear has been identified by the petitioner as hook-and-line. It seems apparent that the only gear being used on the reef that may be impacting the validity of the sampling is hook-and-line, which is the only gear that the petition supported being allowed. Restricting the most popular gear on this reef would not be consistent with one of the main purposes of the artificial reef: providing enhanced fishing opportunities to the public. Furthermore, if banning hook-and-line gear on the artificial reef, since it is having the greatest impact to the resource, is inconsistent with a primary use of the reef, then the restriction of other gears that have no documented use or identified impact certainly has no justification. The petitioner seems to want to change Artificial Reef 396 into a research sanctuary, which is not the purpose or goal of the efforts to build, monitor and maintain Artificial Reef 396 to enhance marine fisheries habitat and fishing and diving opportunities for the public.

The Oriental-based Lower Neuse Anglers fishing club has been asked to provide catch and catch-and-release data while fishing on the reef to add to needed information on species utilization, for which the petition included three examples. As of October 1, 2013, five individual fishing reports have been submitted to the Artificial Reef Program biologists. Trips occurred in May, June, and September 2013. It appears that use of this reef is either extremely low or the interest in partnering with the division by providing fishing reports is less of a priority than stated by the petitioner.

As part of the modification of the Division of Coastal Management Major Permit for Artificial Reef 396, a 30-yard buffer was included in the design. This permitted buffer was deemed to be sufficient to separate the reef structures from other uses, including various types of fishing activities and navigation. The petitioner, who has supported and given accolades to the division artificial reef staff that designed the site and submitted the permit modification application providing the 30-yard buffer, now has proposed that an additional 100-yard buffer is required, although there have been no documented conflicts. N.C. Marine Patrol Sergeant Carter Witten, supervisor of several Marine Patrol officers assigned to the Oriental area, confirmed that he is not aware of any complaints of user conflict on Artificial Reef 396. This undeveloped 30-yard area inside the perimeter provides an adequate buffer, in the opinion of the division, between the structures on the reef and the fish that utilize the structures, as well as for navigation and traditional fishing practices. The petitioner has not provided any justification for the additional 100-yard buffer where the proposed gear restrictions would be extended. The additional 100-yard buffer is over three times that deemed necessary by the Artificial Reef Program’s biologists and would result in approximately a 98-percent increase in acreage of the reef from approximately 64 to 127 acres. The petitioner has failed to substantiate the need for the increased restricted area, especially considering most fish will be in close proximity to the structures on the reef site.

The petitioner proposes to restrict all commercial fishing gear and additional gear including cast nets, collapsible crab traps, gigs or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines from Artificial Reef 396. Most of these gears are used by recreational fishermen that have purchased the same Coastal Recreational Fishing License that is required to use hook-and-line gear. Revenues from the sale of Coastal Recreational Fishing Licenses administered through the N.C. Marine Resources Fund, as well as revenues from the sale of fishing supplies and vessel fuel that help to fund the federal Sport Fish Restoration Program are both major sources of funding for artificial reefs. If the petitioner’s proposed rule changes are implemented, these N.C.-licensed recreational fishermen will be restricted from using the listed additional gear, although the petitioner provided no justification for the restriction.

Current N.C. Marine Fisheries Commission Rule 15A NCAC 031 .0109 provides the Fisheries Director authority through proclamation to prohibit or restrict the taking of fish and the use of any equipment in and around any

artificial reef or research sanctuary. This authority is used when warranted to address conflicts that cannot be resolved through discussion or formal mediation. The current rule provides the director with a tool to address any valid conflict that may occur on Artificial Reef 396 or any other reef or research sanctuary. The petitioner has not identified a conflict or provided justification for restricting gear use on the artificial reef or within the proposed additional 100-yard buffer. If the proposed restrictions were substantiated, then the Fisheries Director could use the existing rule to address the issues. Proclamation M-36-2013 was issued under the authority of this rule to address a user conflict related to the Yaupon Beach Artificial Reef 425 off Brunswick County and restricts the use of gill nets or trawls in the area of the reef. This is the only time this authority has been employed for an artificial reef in North Carolina.

The petitioner does identify the issue of the incongruity of the current marking protocol, marking each corner of the permitted reef with a buoy, and the language in 15A NCAC 03I .0109 (a) (1) "Artificial reefs shall be marked as near the center as feasible by one readily identifiable official buoy..." When that rule is reconsidered as part of the legislatively set rule review cycle, the language will be modified to reflect the current practice of complying with the requirements of the Coastal Area Management Act permit and the U.S. Coast Guard Private Aid to Navigation permit.<sup>3</sup> Current compliance with these permits has not created confusion or conflicts for the public utilizing the reef.

## VI. RECENTLY CHANGED LEGAL REQUIREMENTS FOR RULEMAKING

The petition for rulemaking submitted by Mr. Zielinski seems to be contrary to N.C. General Statute 150B-19.1, Requirements for agencies in the rule-making process. These standards were tightened in Senate Bill 781 in 2011, and those requirements are now codified in the N.C. Administrative Procedure Act at 150B-19.1. Listed are several of the requirements of paragraph (a) of this law; bolded portions indicate those that the petitioned rules do not seem to adhere to:<sup>4</sup>

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and **that are necessary to serve the public interest.**
- (2) An agency shall **seek to reduce the burden upon those persons or entities who must comply** with the rule.
- (3) **Rules shall be written in a clear and unambiguous manner** and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. **The agency shall not adopt a rule that is unnecessary or redundant.**
- (5) When appropriate, **rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information.** Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be **designed to achieve the regulatory objective in a cost-effective and timely manner.**

The petitioned rules may be problematic as to items (1), (2), (3), (4), (5), and (6), for failure to satisfy the statutory requirements, as follows:

- (1) **An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.**

In this case, there are no current user conflicts in the area of Artificial Reef 396 and the petitioner did not provide any justification for prohibiting the listed gears. Since there is already in place a protective 30-yard buffer zone, the division did not see this rule as needed to protect the resource.

- (2) **An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.**

By passing regulations that are, based upon division research and analysis, unnecessary, instead of reducing the burden upon regulated entities and persons, the agency would be imposing more burdensome restrictions, which is not allowed under the statute.

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<sup>3</sup> Periodic rule review is required by Session Law 2013-413.

<sup>4</sup> In addition to the requirements of 150B-19.1, agencies must also concurrently comply with the requirements of Governor's Executive Order 70, 2010, which requires that the "development of rules should be informed with rigorous analysis" and that "in promulgating rules, agencies should seek to achieve statutory goals as effectively and efficiently as possible."

**(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.**

The proposed rules submitted by the petitioner contain many requirements introduced by the word “may.” It is not entirely clear to the division from the proposed rule language what would and would not be required by these rules, making meaningful analysis of the specific impacts to affected stakeholders extremely difficult. This is equally important for N.C. Marine Patrol to have the ability to carry out its enforcement responsibilities.

**(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.**

The division understands that the impacted resource is already properly protected, since there is a protective 30-yard buffer zone included as part of Artificial Reef 396. The proposed rules would add an additional 100 yards to the current 30-yard buffer, and the impact of these buffers must be considered cumulatively. Also, there are no current user conflicts in the area of Artificial Reef 396. For these reasons, the division did not see the proposed rules as needed to protect the resource. On the contrary, it would be unnecessary and redundant and it would likely cause a deleterious cumulative effect on the regulated community.

**(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).**

Although unsupported claims have been presented by the petitioner, further research by the division has found no scientific, technical, or economic data to support a more burdensome regulation than the existing one.

**(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.**

After a careful analysis of the unsupported claims presented by the petitioner, the division has understood that the proposed rules would achieve no incremental benefits for protection of the resource that could possibly outweigh the burden placed on the regulated parties. Instead, if passed, the proposed rules would create a burden on the government of North Carolina concerning the implementation and law enforcement of the proposed rules.<sup>5</sup> Therefore, proposed rules would not meet the “cost-effective” standard imposed by the statute.

In addition, the proposed rules would raise issues related to the application of G.S. 150B-19.3,<sup>6</sup> which imposes several limitations on an agency enactment of regulations for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule.

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<sup>5</sup> See discussion of the requirement for rules to be clear and unambiguous.

<sup>6</sup> **G.S. 150B-19.3. Limitation on certain environmental rules.**

- (a) An agency authorized to implement and enforce State and federal environmental laws may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is required by one of the following:
- (1) A serious and unforeseen threat to the public health, safety, or welfare.
  - (2) An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.
  - (3) A change in federal or State budgetary policy.
  - (4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.
  - (5) A court order.
- (b) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:
- (1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.
  - (2) The Environmental Management Commission created pursuant to G.S. 143B-282.
  - (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
  - (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
  - (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
  - (6) The Commission for Public Health created pursuant to G.S. 130A-29.
  - (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

This petition for rulemaking proposes restrictions that are beyond what the division, in its professional judgment sees as necessary to serve the public interest and the proposed rules increase, rather than reduce, the burden upon those persons or entities who must comply. Current N.C. Marine Fisheries Commission Rule 15A NCAC 03I .0109 provides the Fisheries Director proclamation authority to prohibit or restrict the taking of fish and the use of any equipment in and around any artificial reef or research sanctuary, making the modifications requested in the petition unnecessary where a variable condition exists. If a variable condition, such as user conflicts, occurs, the existing proclamation authority can be employed to address the problem. If there is a problem of a concrete, ever-present nature, then modification to rules may be needed; however, the petitioner has not demonstrated such a problem exists, and the division has not found any information documenting problems. No conflicts between any users were identified and no issues with the use of any of the proposed gears to be restricted were provided. The regulatory objective of the rule can be realized in the most cost-effective and timely manner through the Fisheries Director addressing valid conflict issues on artificial reefs and research sanctuaries when and if they arise.<sup>7</sup>

All rules adopted by the Marine Fisheries Commission must comply with the G.S. 150B-19.1 requirements. Before a rule could become final, it would not only have to pass through all levels of the rulemaking process with the Marine Fisheries Commission, and be certified to the Office of State Budget and Management as compliant with the principles of 150B-19.1, it would also be reviewed by the Rules Review Commission, which would likely not approve a rule that fails to meet their legal standards.<sup>8</sup>

Because the proposed rules would limit access to Artificial Reef 396 without, in the division's opinion, resource-protective data to support doing so, there was also a concern that the proposed rules could violate the public trust doctrine. The concern with the eventual creation of a possible exclusive emolument and the consequential violation of the public trust doctrine was based on the facts that (i) the artificial reefs are the property of the state of North Carolina and are thus held in trust by the government for the benefit of the public as a whole and (ii) the petitioner could receive an individual, palpable benefit from the passage of the rule because he, like other recreational fishermen fishing similar gear in his area, could fish on the reef structure to the exclusion of commercial fishermen and other recreational gear-users.

However, although under the public trust doctrine, there is a constitutional prohibition on State restriction of public access to natural resources held by the State as a custodian of resources unless the restriction is necessary to preserve the asset for the overall benefit to the public, in this case the proposed rules would not be unconstitutional because they would not create exclusive fisheries to determined individuals and there was a resource-protective justification offered for the rules by the petitioner. While the division does not agree with the proffered justification, if the Marine Fisheries Commission, the rulemaking body, rejects the division's analysis and agrees with the petitioner's analysis, limiting access to the resource is likely constitutionally permissible. Therefore, the rule would not inherently (on its face) unreasonably restrict the public's access to the protected natural resources. That is because, although the rule would restrict the public access to the resource by regulating the manner of access, such regulation is consistent with the duty to protect and manage the resource and does not violate the public trust doctrine. However, although the rule facially does not violate the public trust doctrine, the fact that it is unnecessary and unduly restrictive creates issues under other applicable state laws and standards for rulemaking.<sup>9</sup>

Finally, the proposed rule changes submitted by the petitioner are subject to the same requirements of G.S. 150B, Administrative Procedure Act, as well as rules for filing, just like all other proposed rules. There are multiple steps in the rulemaking process for review by and input from the public, the division and the Marine Fisheries Commission. The process also requires approval by the Marine Fisheries Commission, the Office of State Budget and Management, the Office of Administrative Hearings, and the Rules Review Commission. The Office of State

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(8) The North Carolina Mining and Energy Commission created pursuant to G.S. 143B-293.1.

(9) The Pesticide Board created pursuant to G.S. 143-436. (2011-398, s. 2; 2012-143, s. 1(d).)

<sup>7</sup> Rule 15A NCAC 03I .0109 already provides the Fisheries Director proclamation authority to prohibit or restrict the taking of fish and the use of any equipment in and around any artificial reef or research sanctuary. This authority is used when warranted to address conflicts that cannot be resolved through discussion or formal mediation. Despite the fact the petitioner has failed to demonstrate a user conflict in the area of Artificial Reef 396, even if the petitioner demonstrates a conflict exists in the future, no rule change would be required to address this conflict.

<sup>8</sup> The Rules Review Commission's standards for rulemaking and required forms may be viewed at: <http://www.ncoah.com/rules/>.

<sup>9</sup> See discussion of G.S. 150B-19.1.

Budget and Management must certify that the requirements of G.S. 150B-19.1 have been met. It is the agency's responsibility to strive to comply with those requirements prior to submittal of proposed rules.<sup>10</sup> This is complicated by the disjunction between the requirements of G.S. 150B-19.1 and the lack of those same requirements in G.S. 150B-20 for petitioning an agency to adopt a rule. A petitioner is not mandated to meet the requirements of G.S. 150B-19.1 before an agency considers a rulemaking petition, requirements which could later prevent the petitioned rules from advancing through the rulemaking process. Additionally, if the Rules Review Commission receives written objections from 10 or more persons about the adoption of a permanent rule, the rule is subject to legislative review for final approval or disapproval. Approval of a petition for rulemaking and subsequent initiation of rulemaking does not presuppose final approval of the requested rule changes.

## VII. PROPOSED RULE(S)

The petitioner submitted proposed language to modify rules 15A NCAC 03I .0109 and 03J .0402, which is shown in Appendix I. The petitioner's same proposed language is shown below in the context of the existing rules.

### 15A NCAC 03I .0109 ARTIFICIAL REEFS AND RESEARCH SANCTUARIES

(a) The Fisheries Director may, by proclamation, prohibit or restrict the taking of fish and the use of any equipment in and around any artificial reef or research sanctuary. Any closure or restriction is subject to the following conditions:

- (1) Artificial reefs shall not be closed or restricted beyond 500 yards in the Atlantic Ocean or 250 yards in internal coastal waters. Artificial reefs shall be marked as near center as feasible by one readily identifiable official buoy and distances for closures or restrictions shall be measured from such buoy.
  - (A) Artificial reefs and research sanctuaries in internal coastal waters that are marked by U.S. Coast Guard buoys around the site may be closed or restricted to all commercial gear within the reefs or sanctuaries perimeter as marked by the above mentioned buoys.
  - (B) Up to 100 yards to the outside of said perimeter may be closed or restricted as a buffer zone.
  - (C) Additional gear restrictions may include cast nets, collapsible crab traps, gig's or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines.
  - (D) The method for determining measurements for closure or restrictions on the outside of perimeter buoy marked artificial reefs or research sanctuaries shall be the distance measured from said buoys or if necessary an imaginary straight line between the two perimeter buoys of the reef/sanctuary on the same side as the questioned infraction
- (2) Any closure or restriction shall be for no more than one year, subject to renewal in the discretion of the Fisheries Director.
- (3) The economic effect of the closure or restriction on fishing interests with respect to the size and location of the area and the nature of the equipment affected shall be considered before such closure is made and findings shall be made in writing which findings shall be available for public inspection at the office of Division of Marine Fisheries in Morehead City.

(b) It is unlawful to engage in any fishing activity, use any equipment, or conduct any other operation which has been prohibited by proclamation issued under this authority.

*History Note: Authority G.S. 113-134; 113-181; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Recodified from 15A NCAC 3I .0009 Eff. December 17, 1996;  
Amended Eff. April 1, 2015.*

### 15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

- (1) Atlantic Ocean - Dare County:
  - (A) Nags Head:

---

<sup>10</sup> The requirements placed on the Office of State Budget and Management and rulemaking agencies are contained in Governor's Executive Order 70, 2010; Session Law 2011-398; and Session Law 2013-413.

- (i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:
  - (I) From Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day.
  - (II) From November 1 through December 15.
- (ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.
- (B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:
  - (i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48.2500' N - 75° 32.7000' W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46.5000' N - 75° 32.3666' W) on Hwy. 12 over Oregon Inlet.
  - (ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.
- (C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center near Cape Point at a point 35° 12.9000' N - 75° 31.7166' W.
- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used during the time specified for the following areas:
  - (A) Topsail Beach. From January 1 through December 31, that area around Jolly Roger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.
  - (B) Surf City:
    - (i) From January 1 to June 30, that area around the Surf City Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach one-quarter mile from the pier and on the northeast by a line beginning at a point on the beach 750 feet from the pier extending seaward to intersect the offshore boundaries.
    - (ii) From July 1 to December 31, those areas around the pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach 750 feet from the pier and on the northeast by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundaries.
- (3) Atlantic Ocean - New Hanover County. Carolina Beach Inlet through Kure Beach. Commercial fishing gear may not be used during the times specified for the following areas:
  - (A) From the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier.
  - (B) From May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:
    - (i) From one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
      - (I) Strike nets may be used within 900 feet of the beach;
      - (II) Attended nets may be used between 900 feet and one-quarter mile of the beach.
    - (ii) Strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Rule.

- (iii) It is unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to a point on the beach 33°55.0026' N – 77°56.6630' W near the former location of New Inlet during the October surf fishing tournament in Carolina Beach.
  - (4) Pamlico River – Beaufort County. Goose Creek State Park. Commercial fishing gear may not be used from the Friday before Easter through December 31 for the following areas:
    - (A) Within 150 feet of the shoreline within park boundaries;
    - (B) Within the marked channel from Dinah Landing to the mouth of Upper Goose Creek.
  - (5) Neuse River - Pamlico County. Commercial fishing gear and selected additional gear may not be used during the dates specified in the following areas.
    - (A) From January 1 through December 31, within the buoyed perimeter of artificial Reef AR-396, including an additional configured buffer zone of 100 yards outside the aforementioned perimeter.
      - (i) The yearly closure or restrictions are subject to renewal in the discretion of the Fisheries Director
      - (ii) Additional restricted gear include, cast nets, collapsible crag traps, gig's, or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines
- (b) It is unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:
- (1) Neuse River and South River, Carteret County. No more than 1,200 feet of gill net(s) having a stretched mesh of five inches or larger may be used:
    - (A) Within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay.
    - (B) Within South River.
  - (2) Cape Lookout, Carteret County:
    - (A) Gill nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
    - (B) Seines may not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 a.m. Saturdays until 12:01 a.m. Mondays from May 1 through November 30.
  - (3) State Parks/Recreation Areas:
    - (A) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County.
    - (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
    - (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County.
  - (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
    - (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
    - (B) Canals within Pine Knoll Shores, Carteret County;
    - (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County; Harbor Village Marina on Topsail Sound, Pender County; and Marina and entrance canal within Carolina Marlin Club property adjacent to Newport River, Carteret County.
  - (5) Masonboro Inlet. Gill nets and seines may not be used:
    - (A) Within 300 feet of either rock jetty; and
    - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
  - (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the

placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.

- (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach.
- (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County. It is unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used.
- (9) Spooners Creek, Carteret County. It is unlawful to use gill nets and seines between sunset and sunrise in Spooners Creek entrance channel in Bogue Sound, all of Spooners Creek proper and the adjoining tributary canals and channels.

*History Note:* Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.52;  
Eff. March 1, 1996;  
Amended Eff. April 1, 2015; October 1, 2004; August 1, 2004; April 1, 2001.

### **VIII. PROPOSED MANAGEMENT OPTIONS**

(+ Potential positive impact of action)

(- Potential negative impact of action)

#### **A. Status quo**

- + Current rule provides the Fisheries Director proclamation authority to implement restrictions on artificial reefs and research sanctuaries as necessary.
- + Maintains current amenable use by all users
- + Allows for site-specific restrictions to be implemented, providing a means to address valid conflicts that cannot be solved through other means such as mediation
- + Maintains compliance with G.S. 150B

#### **B. Restrict all commercial gear and additional gear (cast nets, collapsible crab traps, gigs or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines) use on the marked artificial reef site and within the proposed additional 100-yard buffer zone on Artificial Reef 396.**

- Implements an unnecessary restriction when conflicts have not been shown to exist.
- Potentially creates user conflicts (commercial/recreational and recreational/recreational) due to proposed restrictions
- Increases complexity of commercial operations near the unmarked 100-yard buffer zone
- Places additional administrative responsibilities on limited staff by pursuing rulemaking that does not meet the legal standards of G.S. 150B.

### **IX. RECOMMENDATION**

The Division of Marine Fisheries and Marine Fisheries Commission process for initiating rulemaking begins with a full examination of an issue in the form of an issue paper. This issue paper includes background information, authority for rulemaking, discussion of the issue, recently changed legal requirements for rulemaking, proposed rules, proposed management options, and recommendations. After thorough review of this issue and in consideration of the requirements of G.S. 150B, Administrative Procedure Act, as well as the absence of any documented conflict on or around Artificial Reef 396, and the petitioner's request to authorize the exclusive use of one gear (hook-and-line), the division recommends status quo.

Prepared by: Craig Hardy, craig.hardy@ncdenr.gov, 252-808-8046

# APPENDIX I

## Text of proposed rule(s)

This proposal could be placed under ---SUBCHAPTER 031- GENERAL RULES

### SECTION .0100 – GENERAL RULES

15(A)NCAC 031 .0109

(a)

(1)

- (A) Artificial reefs and research sanctuaries in internal coastal waters that are marked by U.S. Coast Guard buoys around the site may be closed or restricted to all commercial gear within the reefs or sanctuaries perimeter as marked by the above mentioned buoys.
- (B) Up to 100 yards to the outside of said perimeter may be closed or restricted as a buffer zone.
- (C) Additional gear restrictions may include cast nets, collapsible crab traps, gig's or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines.
- (D) The method for determining measurements for closure or restrictions on the outside of perimeter buoy marked artificial reefs or research sanctuaries shall be the distance measured from said buoys or if necessary an imaginary straight line between the two perimeter buoys of the reef / sanctuary on the same side as the questioned infraction

This proposal could be placed under --- SUBCHAPTER 031-GENERAL RULES

### SECTION .0100-GENERAL RULES

15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS

(a) -----

- (5) Neuse River---Pamlico County. Commercial fishing gear and selected additional gear may not be used during the dates specified in the following areas.
  - (A) From January 1 through December 31, within the buoyed perimeter of Artificial Reef AR-396, including an additional configured buffer zone of 100 yards outside the afore mentioned perimeter.
    - (i) The yearly closure or restrictions are subject to renewal in the discretion of the Fisheries Director
    - (ii) Additional restricted gear include, cast nets, collapsible crab traps, gig's, or pointed implements, hand operated rakes, minnow traps, seines less than 30 feet in length, manually or mechanically propelled spears and trot lines





## **NORTH CAROLINA MARINE FISHERIES COMMISSION DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

### COMMISSIONERS

**PAT MCCRORY**  
Governor

**JOHN E. SKVARLA, III**  
Secretary

**PAUL ROSE**  
Chairman

**ANNA BECKWITH**  
Morehead City  
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**KELLY DARDEN**  
Greenville  
**MARK GORGES**  
Wrightsville Beach

**CHUCK LAUGHRIDGE**  
Harkers Island  
**ALLYN POWELL**  
Gloucester  
**JOE SHUTE**  
Morehead City  
**JOSEPH J. SMITH, JR.**  
Hampstead

Feb. 14, 2014

Secretary John E. Skvarla, III  
N.C. Department of Environment and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Dear Secretary Skvarla:

Enclosed for your signature is a letter to Governor McCrory endorsing the nomination of a slate of qualified candidates for consideration by the U.S. Secretary of Commerce for an obligatory appointment to the Mid-Atlantic Fishery Management Council. The Magnuson-Stevens Fishery Conservation and Management Act specifies that state governors must submit a slate of not less than three qualified individuals for each applicable council vacancy. Council appointments will be effective August 2014. Mr. Dewey Hemilright currently serves as a North Carolina obligatory appointee to the Mid-Atlantic Fishery Management Council and is seeking reappointment. State governors must submit nominations for council appointments to the National Marine Fisheries Service no later than March 15, 2014.

The N.C. Marine Fisheries Commission compiled a slate of nominees for an obligatory appointment to the Mid-Atlantic Fishery Management Council in accordance with N.C. General Statute 113-260. The commission submits the names of Mr. Dewey Hemilright, Mr. Chris Hickman and Mr. Mike Ireland for your review and Governor McCrory's consideration as nominees for a N.C. obligatory appointment to the Mid-Atlantic Fishery Management Council. All of the nominees are North Carolina residents, and by reason of their occupational or other experience, scientific expertise or training, are knowledgeable regarding the conservation and management of the commercial or recreational harvest of North Carolina's fisheries resources. The commission chose to submit the name of Mr. Dewey Hemilright as a preferred candidate for Governor McCrory's consideration.

The enclosed letter from Governor McCrory to the National Oceanic and Atmospheric Administration Assistant Administrator for Fisheries addresses the requirements of the Magnuson-Stevens Fishery Conservation and Management Act concerning the nominees' residency, knowledge of fisheries of the council's geographical area, and persons that were consulted in the recreational and commercial communities regarding the nominations. The Division of Marine Fisheries has reviewed the nomination

Secretary Skvarla

Feb. 14, 2014

Page 2

materials submitted by the candidates to ensure all forms are complete and all required information is provided. It is requested the enclosed nomination materials be forwarded to Mr. Charles Duckett in the governor's office as soon as possible. The governor's letter and the enclosed nomination materials must be received by the National Marine Fisheries Service no later than March 15, 2013.

Thank you for the opportunity to participate in the nomination process for an obligatory appointment to the Mid-Atlantic Fishery Management Council. Should you have questions or need additional information concerning the nominees or the nomination process, please feel free to contact me or Dr. Michelle Duval, Executive Assistant for Councils, Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557, phone 252-808-8011.

Sincerely,



Paul C. Rose, Chairman  
N.C. Marine Fisheries Commission

MD/nf

Enclosure

cc (letter only): Charles Duckett      Louis Daniel  
                         Josh Arant                    Michelle Duval  
                         Brad Ives                           Nancy Fish  
                         Jim Hawhee  
                         Neal Robbins



JOHN M. TYSON  
CHAIRMAN

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PERRY Y. NEWSON  
EXECUTIVE DIRECTOR

Volume 17, Issue 1

*SEI Filing: Reminder & FAQs*

February 2014

## **2014 SEI FILING: REMINDER & FREQUENTLY ASKED QUESTIONS**

### **DEADLINE & WHO HAS TO FILE**

- 1. WHAT IS THE FILING DEADLINE?** Completed SEIs must be filed on or before **April 15, 2014**.
- 2. WHO HAS TO FILE?** Public servants, legislators, and judicial officers (justices, judges, district attorneys, clerks of court). *However*, State employees who are covered by the State Government Ethics Act because of their State employment **and** make less than \$60,000 per year do not have to file an SEI.
- 3. DO I HAVE TO FILE AN SEI IF I AM NO LONGER IN OFFICE? YES.** Elected officers who were subject to the SEI filing requirements while in office (Constitutional Officers, Legislators, and Judicial Officers) **must file an SEI by April 15<sup>th</sup> the year after leaving office.** For additional information on this requirement, please contact the SEI Unit.
- 4. DO I STILL HAVE TO FILE IF MY TERM HAS ALREADY EXPIRED OR WILL EXPIRE ON OR BEFORE APRIL 15TH?** If your term has already expired or will expire on or before April 15, 2013 and **you have not been replaced or have not resigned prior to April 15th, you are still required to file an SEI on or before April 15, 2014.**
- 5. DO I NEED TO PROVIDE A HOME ADDRESS AS WELL AS A MAILING ADDRESS? YES,** if you are a person holding or seeking to hold an elected office with a residency requirement, with the exception of Judicial Officers. **Judicial Officers are only required to provide a mailing address.** Judicial Officers include justices or judges of the General Court of Justice, district attorneys and clerks of court.

### **FILING METHODS & FORMS**

- 1. HOW DO I FILE?** You may choose to file by one of the following methods:
  - a. Manually.** You may complete the form by hand, sign and mail or hand-deliver it to the Commission.
  - b. Fillable.** You may complete the form online, print, sign and mail or hand-deliver it to the Commission. In order to access the fillable web form, you must obtain an NCID user id and password.
  - c. Electronic.** You may complete **and** file the form electronically. In order to access the electronic filing web form, you must obtain an NCID user id and password.
- 2. IS THERE A "NO CHANGE" FORM? Yes.**
  - a. 2014 SEI No Change Form.** If you filed a 2013 SEI **and** you have had **no changes** since your 2013 filing, you may file a No Change Form.
  - b. 2014 Long Form.** If either of the following apply to you, you **must** file a Long Form:
    - i.** You filed a 2013 SEI but you have had changes since your 2013 filing; or,
    - ii.** You are a first time filer or have been appointed to a new or additional position/board.

3. **WHERE DO I ACCESS THE FORM, INSTRUCTIONS & NCID INFORMATION?** All information is on our website at: <http://www.ethicscommission.nc.gov/sei/default.aspx>

## **COMPLETING THE FORM**

1. **WHAT DATE DO I USE IN ANSWERING THE QUESTIONS?** December 31, 2013. Unless otherwise indicated in the particular question, your answers should be as of December 31st of the preceding year.
2. **DO I HAVE TO RESPOND TO EVERY QUESTION?** Yes. You **must** respond to **all** questions.
3. **WHO IS INCLUDED AS MY IMMEDIATE FAMILY?** Immediate family includes your spouse (unless legally separated), minor children, and members of your extended family (your and your spouse's adult children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons), **that reside in your household.**
4. **DO I HAVE TO INCLUDE MY CHILD WHO IS AWAY AT COLLEGE?** Yes. If you have a child who is 18 or older and temporarily resides away from home, that child is "residing in the household" for each year in which the child is claimed as a dependent on your Federal Income Tax Return.
5. **DO I INCLUDE MY HOUSE ON QUESTION 1?** Yes.
6. **I OWN A COMPANY OR I AM A PARTNER IN A COMPANY THAT OWNS REAL ESTATE. DO I LIST THOSE HOLDINGS ON QUESTION 1?** No. The question only asks for real estate owned directly by the filer, filer's spouse or member of the filer's immediate family. However, you do list the name of the company on either Question 5 (publicly held) or Question 6 (privately held).
7. **IS QUESTION 5 CUMULATIVE OR PER STOCK?** The threshold is per stock/per company. List only each company in which you or members of your immediate family own more than a \$10,000 interest.
8. **DO I LIST MUTUAL FUNDS, A 401K, OR AN INDEX FUND THROUGH A BROKER ON QUESTION 5?** No. These types of investments do not have to be listed because you do not control what stocks are purchased.
9. **IS QUESTION 8 CUMULATIVE OR PER DEBT?** Per debt. List each loan or debt over \$10,000.
10. **DO I LIST A SECOND MORTGAGE ON MY PRIMARY RESIDENCE IN QUESTION 8?** No. Like your first mortgage, this is a debt related to your primary personal residence and does not have to be listed.
11. **HOW DO I RESPOND TO QUESTION 10?** First, list income from the job you had last year (even though you already listed your employer on page 1). Second, list any other sources that paid you or members of your immediate family over \$5,000, except those specifically excluded by the question.

## **PENALTIES**

1. **ARE THERE FINES FOR LATE OR NON-FILING?** Yes. The State Ethics Commission may levy a \$250.00 penalty for failure to timely file a complete SEI.
2. **ARE THERE CRIMINAL PENALTIES?** Yes. Knowingly concealing or failing to disclose information is a Class 1 misdemeanor. Knowingly providing false information is a Class H felony. In addition, knowingly concealing, failing to disclose, or providing false information may be used in prosecutions by other law enforcement agencies.

## SEI UNIT CONTACT INFORMATION

Phone: (919) 715-2071

Fax: (919) 715-1644

E-mail: [SEI@doa.nc.gov](mailto:SEI@doa.nc.gov)

Website: <http://www.ethicscommission.nc.gov>

---

### SEI UNIT STAFF:

- Susan Lundberg, SEI Attorney
- Diana Latta-Faison, Paralegal
- Dorothy Strickland, MPO/RPO Paralegal
- Beth Carpenter, Administrative Assistant
- Anitra Hill, Administrative Assistant
- LaTonya Washington, Office Assistant





# Atlantic States Marine Fisheries Commission

## 2014 Winter Meeting Summary

*Vision: Sustainably Managing Atlantic Coastal Fisheries*

2014 Winter Meeting  
Alexandria, VA  
February 4-6, 2014

For more information, please contact  
the identified individual,  
Toni Kerns, ISFMP, or  
Tina Berger, Communications

703.842.0740

### Meeting Summaries, Press Releases and Motions

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## ATLANTIC HERRING SECTION (FEBRUARY 4, 2014)

### *Press Release*

### **ASMFC Atlantic Herring Section Initiates Plan Amendment**

Alexandria, VA – The Commission’s Atlantic Herring Section initiated a new amendment with the primary purpose of more fully protecting spawning herring in Area 1A (inshore Gulf of Maine). The draft amendment will review and consider changes to the Area 1A spawning area regulations as well as consider (1) removing the fixed-gear set-aside rollover provision, (2) requiring the declaration of intended fishing gear types prior to the quota periods, and (3) requiring vessel fish holds to be emptied of fish before leaving the dock on a fishing trip.

The draft amendment is initiated to correct inconsistencies in the application of current spawning area regulations. In preparation for the amendment, the Section has tasked the Technical Committee to review the current default closure dates, area delineations, and time periods. The draft amendment will also propose removing the rollover provision for the fixed gear set-aside in order to allow for increased opportunities for small scale fixed gear fishermen when Atlantic herring are present after the overall Area 1A quota has been harvested by the limited access fishery.

Further, the draft amendment will propose that vessel owners declare in advance their intended fishing gear type for each quota period in order to provide managers with an estimate of effort for each quota period and better inform the Section’s decisions regarding harvest control measures (e.g., days out). Additionally, in order to address concerns about the discards and full reporting, the draft amendment will propose vessel holds be emptied of fish before leaving the dock on a fishing trip.

A Public Information Document (PID) will be developed in consultation with the New England Fishery Management Council to ensure consistent regulations with the federal fishery management plan. The PID will be available for Section consideration in the Commission’s Spring Meeting. For more information, please contact, Melissa Yuen, Fishery Management Plan Coordinator, at [myuen@asmfc.org](mailto:myuen@asmfc.org) or 703.842.0740.

###

PR14-01

### *Motions*

**Move to initiate Atlantic Herring Draft Addendum VII, with the purpose to: review the efficacy of spawning areas in Area 1A, consider changes to the spawning areas in Area 1A, and remove the rollover provision for the fixed gear quota set aside.**

Motion made by Mr. Train and seconded by Mr. Grout. Motion carries unanimously.

**Move to initiate an Amendment that will require vessel owners to declare in advance their intended fishing gear type for quota periods and require vessel fish holds to be empty before leaving the dock on a fishing trip.**

Motion made by Mr. Stockwell and seconded by Mr. Grout. Motion carries.

**Move that the items in the previously passed motion be included in the Amendment.**

Motion made by Mr. Grout and seconded by Dr. Pierce. Motion carries.

**Move that the Board approve the 2013 - 2015 Area 1B specifications: Season May 1 – December 31.**

Motion made by Mr. Augustine and seconded by Mr. Grout. Motion carries.

**WINTER FLOUNDER MANAGEMENT BOARD (FEBRUARY 4, 2014)**

*Press Release*

**ASMFC Winter Flounder Board Sets 2014 Recreational Measures for Southern New England/Mid-Atlantic Stock**

Alexandria, VA – The Commission’s Winter Flounder Management Board set specifications for the 2014 recreational fishing season for the Southern New England/Mid-Atlantic (SNE/MA) stock. The season will extend from March 1 to December 31 with a two fish creel limit. This change is an expansion of the 60-day recreational open season. The action is intended to increase fishing opportunities in the southern range where other species’ availability may be limited later in the year. All other commercial and recreational management measures for the Gulf of Maine (GOM) and SNE/MA stocks will be maintained (see Table 1).

Table 1. Minimum commercial and recreational management measures for the Inshore Winter Flounder FMP. No changes were specified for FY2013.

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

The Board reaffirmed its commitment to work cooperatively with the New England Fishery Management Council and NOAA Fisheries Northeast Regional Office to effectively rebuild winter flounder stocks throughout their range. For more information, please contact, Melissa Yuen, Fishery Management Plan Coordinator, at [myuen@asmfc.org](mailto:myuen@asmfc.org) or 703.842.0740.

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PR14-02

***Motions***

**Move that the Board approve the 2012 state compliance reports and FMP Review for Winter Flounder and approve *de minimis* request for Delaware.**

Motion by Mr. Augustine and seconded by Mr. Fote. Motion passes.

**Move to allow a winter flounder recreational open season from March 1 to December 31 at a 2 fish limit in Southern New England.**

Motion made by Mr. Simpson and seconded by Mr. Gibson. Motion passes (6 in favor, 2 opposed, 2 abstentions).

**Move to increase the 2014 winter flounder commercial possession limit from 50 to 100 lbs in Southern New England.**

Motion made by Mr. Gibson and seconded by Mr. Simpson. Motion fails (2 in favor, 8 opposed).

**Move to task the Technical Committee to determine the impact of a moratorium on landings and possessions in state waters, on mortality, and the ability of winter flounder stocks to rebuild.**

Motion made by Mr. Grout and seconded Mr. Augustine. Motion fails (2 in favor, 7 opposed, 1 abstentions).

**ATLANTIC STRIPED BASS MANAGEMENT BOARD (FEBRUARY 4, 2014)**

***Meeting Summary***

The Atlantic Striped Bass Management Board met to consider Draft Addendum IV for public comment and review state compliance with the Fishery Management Plan for the 2012 fishing year.

Draft Addendum IV proposes changes to the fishing mortality reference points for Atlantic striped bass including stock specific reference points for the Chesapeake Bay and Albemarle Sound/Roanoke River. Considering the Technical Committee (TC) is still developing the stock-specific reference points, the Board decided to combine Draft Addendum IV (that addresses reference points) with Draft Addendum V that will consider potential management options to achieve the new reference points. The intent of combining these addenda are to provide a management context to the change in reference points (e.g., associated seasons, bag and size limits, and commercial quotas). The Board will consider the combined draft addendum for public comment at its May meeting.

The Board tasked the TC, Law Enforcement Committee, and Advisory Panel to evaluate a potential recommendation to the National Marine Fisheries Service to consider opening the exclusive economic zone to catch and release fishing. The Plan Review Team will report back to the Board in May regarding the outcome of those discussions.

The Board reviewed and accepted the 2013 Fishery Management Plan Review for the 2012 fishing year. Massachusetts and Delaware had commercial quota overages in 2012 resulting in reduced quotas for the 2013 fishing year. The Plan Review Team found all states in compliance for the 2012 fishing year.

For more information, please contact Mike Waine, Fishery Management Plan Coordinator, at [mwaine@asmfc.org](mailto:mwaine@asmfc.org) or 703.842.0740.

***Motions***

**Move to accept the 2013 FMP Review.**

Motion made by Mr. Augustine and seconded by Dr. Duval. Motion carries.

**SUMMER FLOUNDER, SCUP AND BLACK SEA BASS MANAGEMENT BOARD**  
**(FEBRUARY 4, 2014)**

*Press Release*

**ASMFC Summer Flounder, Scup, and Black Sea Bass Board Approves Regional Management for 2014 Recreational Summer Flounder and Black Sea Bass Fisheries**

Alexandria, VA –The Commission’s Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXV to the Summer Flounder and Black Sea Bass Fishery Management Plan, establishing regional recreational management for both species for the 2014 fishing year. For summer flounder, the Addendum creates management measures by region with the intent of providing more equity in recreational harvest opportunities along the coast, especially between New York and New Jersey. The approved summer flounder regions are Massachusetts and Rhode Island; Connecticut through New Jersey; Delaware through Virginia; and North Carolina. For black sea bass, the Board also approved the continuation of management measures by northern (Massachusetts – New Jersey) and southern regions (Delaware – North Carolina).

Addendum XXV was initiated to address a growing concern that current summer flounder management measures are not providing recreational fishermen along the coast with equitable harvest opportunities to the resource. Its adaptive regional management approach is designed to allow the management program to adjust to past, current, and future changes to the resource and the fishery. Under this approach, all states within a region will be required to have the same possession limit, size limit, and season length. The Technical Committee will work with the states to develop, for Board consideration and approval, measures for each region that will collectively achieve, but not exceed, the recreational harvest limit. The adaptive regional management approach has been approved for the 2014 fishing year only.

For black sea bass, the Board approved the continuation of ad hoc regional management measures by northern (Massachusetts – New Jersey) and southern regions (Delaware – North Carolina). This approach has been used since 2011 and offers some advantages over coastwide regulations, which can disproportionately impact states within the management unit. Specifically, regional measures address geographic differences in the stock (size, abundance and seasonality) while maintaining the consistent application of management measures by neighboring states. States in the northern region will reduce their catch based on the region’s performance in 2013. The Technical Committee will work with the states to develop regional management measures for Board consideration and approval. States in the southern region will implement measures consistent with federal regulations (current recommended federal measures are a 12.5 inch TL minimum fish size, 15 fish possession limit, and open season from May 19 – September 18 and October 18 – December 31). The regulations of the two regions combined will achieve the required coastwide harvest reduction in order to not exceed the 2014 recreational harvest limit. The Board approved the ad hoc regional measures approach for the 2014 fishing year, with the option of extending it through 2015 by Board action.

Addendum XXV will be available on the Commission website by the end of February. For more information, please contact Kirby Rootes-Murdy, Fishery Management Plan Coordinator, at [krootes-murdy@asmfc.org](mailto:krootes-murdy@asmfc.org) or 703.842.0740.

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PR14-03

### ***Meeting Summary***

The Summer Flounder, Scup and Black Sea Bass Management Board met to consider final approval on Draft Addendum XXV, consider approval of state scup recreational proposals, and elect a Vice Chair. At the December 2013 joint Commission/Mid-Atlantic Fishery Management Council meeting the Board approved the use of adaptive management approaches to set state scup recreational measures for 2014. All states indicated that they would maintain status quo management measures for the scup recreational fishery in 2014. Mike Luisi from Maryland was elected as Vice Chair.

For more information, please contact Kirby Rootes-Murdy, Fishery Management Plan Coordinator, at [krootes-murdy@asmfc.org](mailto:krootes-murdy@asmfc.org) or 703.842.0740.

### ***Motions***

#### **Main Motion**

**Move to adopt Adaptive Regional Management Option 3a under Addendum XXV Summer Flounder for the 2014 fishery for one year.**

Motion made by Mr. Gilmore and seconded by Mr. Miller.

#### **Motion to Substitute**

**Move to substitute Option 1 Conservation Equivalency and Option 2 for Option 3a under Addendum XXV for Summer Flounder.**

Motion made by Mr. Fote and seconded by Mr. Bellavance.

#### **Move to call the question (for substitute motion).**

Motion made by Mr. Adler and seconded by Mr. Gilmore. Motion carries.

#### **Motion to Substitute**

**Move to substitute Option 1 Conservation Equivalency and Option 2 for Option 3a under Addendum XXV for Summer Flounder.**

Motion made by Mr. Fote and seconded by Mr. Bellavance. Motion fails (4 in favor, 7 opposed).

#### **Motion to Amend**

**Move to amend the motion to make RI its own region, so the Northern Region would consist of CT, NY and NJ.**

Motion made by Mr. Simpson and seconded by Mr. Bellavance. Motion fails.

#### **Motion to Substitute**

**Move to substitute to adopt Adaptive Regional Management Option 3b for Option 3a.**

Motion made by Mr. Ballou and seconded by Mr. Bullard. Motion carries.

#### **Main Motion as Substituted**

**Move to adopt Adaptive Regional Management Option 3b under Addendum XXV Summer Flounder for the 2014 fishery for one year.**

Motion carries.

**Move to adopt Option 2 Ad Hoc Regional Measures under Black Sea Bass section of Addendum XXV.**

Motion made by Mr. Adler and seconded by Mr. Augustine. Motion carries.

**Move to accept Option 2 (one-year extension) on the timeline for black sea bass.**

Motion made by Mr. Adler and seconded by Mr. Bellavance. Motion carries.

**Move to approve Addendum XXV as amended today.**

**Motion** made by Mr. Augustine and seconded by Mr. Miller. Motion carries (Roll call vote: In favor – MA, RI, CT, NY, DE, MD, NC, USFWS, NMFS; Opposed – NJ, VA; Abstentions – PRFC).

**EXECUTIVE COMMITTEE (FEBRUARY 5, 2014)**

***Meeting Summary***

The Executive Committee discussed the process for developing an ASMFC position on Magnuson-Stevens reauthorization. The Committee agreed to hold a workshop at the Spring Meeting to review the status and timing of reauthorization efforts and develop an ASMFC position on priority issues. The Committee discussed the status of state administration of the Marine Recreational Information Program intercept surveys. A workshop will be held at the Spring Meeting to brief the states on the timeline of the effort and provide time for states to discuss lessons learned by states that are currently conducting the intercept survey. The Committee continued work on the Commission's Conflict of Interest Policy. An updated draft of the policy will be provided to the Legislators and Governor's Appointee (LGA) Commissioners for discussion at the Spring Meeting. The full Commission will review the input from the LGA Commissioners and consider final approval of the policy at the Spring Meeting. For more information, please contact Laura Leach, Director of Finance and Administration, at [lleach@asmfc.org](mailto:lleach@asmfc.org) or 703.842.0740.

***Motions***

No motions made.

**NORTHEAST AREA MONITORING AND ASSESSMENT PROGRAM BOARD (FEBRUARY 5, 2014)**

***Meeting Summary***

The NEAMAP Board met to receive reports from each survey and the NEAMAP technical committees as well as to discuss emerging issues. The Southern New England/Mid-Atlantic Nearshore Trawl Survey, the Maine-New Hampshire Inshore Trawl Survey, and the Massachusetts DMF Bottom Trawl Survey provided updates on their 2013 activities and summarized the increasing use of survey data in stock assessments. The Board then listened in to a portion the MAFMC Research-Set Aside (RSA) auction. The Board reviewed how the auction operates and the implications for RSA funding support to the Southern New England/Mid-Atlantic Nearshore Trawl Survey. The Board also discussed other potential funding sources for NEAMAP surveys. Board members ended their session with reviewing draft criteria for the inclusion of other surveys interested in joining the Program. The Board will create a document outlining the benefits to adding surveys to both the surveys themselves and NEAMAP as a whole. The group also recommended that the NEAMAP technical committees meet more frequently to encourage even more collaboration among surveys toward standardizing sampling and data management methodologies. For more information, please contact Shanna Madsen, Fisheries Science Coordinator, at (703) 842-0740 or [smadsen@asmfc.org](mailto:smadsen@asmfc.org).

## **ATLANTIC MENHADEN MANAGEMENT BOARD (FEBRUARY 5, 2014)**

### ***Meeting Summary***

The Atlantic Menhaden Management Board met to evaluate a conservation equivalency request from the State of Florida and review progress on the upcoming benchmark stock assessment.

Florida requested the state be exempt from its quota (FL quota =66,995 pounds) based on two reasons (1) its longstanding history of menhaden conservation given its 1995 net ban and (2) concern about unreported landings from its cast net fishery, which resulted in a small quota share of the resource under Amendment 2. The Board noted that Florida is not the only state with issues of unreported landings from small scale bait fisheries, resulting in an inaccurate quota allocation for cast net fisheries coastwide. To more accurately estimate the magnitude of cast net bait harvest and encourage reporting from this sector, the Board passed a motion that enabled cast net fisheries to harvest under the bycatch allowance provision in Amendment 2 for the 2014 and 2015 fishing seasons. An added provision of this allowance is that states with cast net fisheries are responsible to significantly enhance and improve reporting in those fisheries. Further, the Board committed to evaluating landings that occurred under the bycatch allowance provision during the 2013 fishing year and will look to refine a definition of bycatch fisheries for Atlantic menhaden, with the potential to revise the bycatch allowance landing limit through adaptive management.

The Technical Committee (TC) continues to make progress on the 2014 benchmark stock assessment and recently held a Data Workshop to review state and regional datasets, preliminary analyses of life history characteristics, fishery dependent CPUE indices, and juvenile/adult abundance indices. The TC also reviewed a preliminary analysis of the historical tagging data used to estimate natural mortality and movement rates and formulated a plan to incorporate these estimates into new assessment models. The next step will be the Assessment Workshop in June 2014, with the peer review scheduled for December 2014.

For more information, please contact Mike Waine, FMP Coordinator at [mwaine@asmfc.org](mailto:mwaine@asmfc.org) or 703.842.0740.

### ***Motions***

#### **Main Motion**

**Move to manage cast net fisheries for menhaden under the bycatch allowance, with the state bearing responsibility for reporting.**

Motion made by Mr. Fote and seconded by Mr. Gilmore. Motion amended.

#### **Motion to Substitute**

**Move to substitute to develop an addendum that would allow cast net fisheries for menhaden, subject to trip limits and exempt from state quotas, with states bearing the responsibility for reporting cast net fishery catch.**

Motion made by Dr. Pierce and seconded by Rep. Kumiega. Motion fails (5 in favor, 12 opposed).

#### **Motion to Amend**

**Motion to amend to add in for 2014 and 2015.**

Motion made by Mr. Borden and seconded by Mr. Allen. Motion carries without objection.

### **Motion to Amend**

**Move to amend to add “for the state of Florida” after “menhaden”.**  
Motion made by Mr. White and seconded by Mr. Simpson. Motion fails.

### **Main Motion as Amended**

**Move to manage cast net fisheries for menhaden under the bycatch allowance for 2014 and 2015, with the states bearing responsibility for reporting.**  
Motion carries (11 in favor, 6 opposed).

## **WEAKFISH MANAGEMENT BOARD (FEBRUARY 5, 2014)**

### ***Meeting Summary***

The Weakfish Management Board met to review the 2013 stock status indicators and discuss Delaware’s conservation equivalency proposal. The weakfish stock has not recovered and is still at low levels according to relative fishing mortality, juvenile abundance indices, and other indicators. The next benchmark stock assessment is scheduled to be completed in 2015, with the Data Workshop to be held in 2014. The Commission will issue a press release soliciting fishery-dependent and -independent data in advance of the Data Workshop.

The Board approved Delaware’s conservation equivalency proposal to change from net closure days to a closed season. The collapse in the weakfish fishery in Delaware has caused gill netters to switch to other species such as menhaden and black drum. The net closure days severely impacted these fisheries, as 45% of the days in May and June (the peak season) were closed to gill netters. The new closed season allows gill netters to participate in the menhaden and black drum fisheries while continuing to meet the 32% reduction in fishing mortality that was required in Amendment 3. The Board also elected Rob O’Reilly as the new Vice Chair of the Weakfish Board. For more information, please contact Marin Hawk, Fishery Management Plan Coordinator, at mhawk@asmfc.org or 703.842.0740.

### ***Motions***

**Move to approve Delaware’s request for conservation equivalency.**  
Motion made by Dr. Daniel and seconded by Mr. Augustine. Motion passes unanimously.

## **BUSINESS SESSION (FEBRUARY 5, 2014)**

### ***Press Release***

### **ASMFC Approves 2014 – 2018 Strategic Plan**

Alexandria, VA – The Atlantic States Marine Fisheries Commission unanimously approved its 2014 – 2018 Strategic Plan at its 2014 Winter Meeting. The Plan revises the Commission’s long-term vision to “Sustainably Managing Atlantic Coastal Fisheries” and establishes seven major goals and related strategies to pursue this vision. The Strategic Plan will guide the Commission’s activities over the next five years and will be implemented through annual action plans.

“This Strategic Plan is the culmination of extensive and thoughtful strategic planning by my fellow Commissioners,” states Commission Chair Dr. Louis B. Daniel, III of North Carolina. “The document revises the Commission’s long-term vision, values, driving forces, and goals to better respond to new challenges and opportunities in Atlantic coast fisheries management. The Commissioners’ goal, through

the review process, was to strengthen the Strategic Plan to make it more effective, concise, and accessible to the public. We are deeply grateful for the thoughtful input we received from our stakeholders, with more than 4,500 comments submitted during the public comment period. Commissioners were pleased to learn that an overwhelming majority of the public's comments supported the direction of the Commission and we are committed to addressing the other issues raised through our annual action plans.”

The Plan's seven goals are:

1. Rebuild, maintain, fairly allocate, and promote Atlantic coastal fisheries
2. Provide the scientific foundation for and conduct stock assessments to support informed management actions
3. Promote compliance with fishery management plans to ensure sustainable use of Atlantic coast fisheries
4. Protect and enhance fish habitat and ecosystem health through partnerships and education
5. Strengthen stakeholder and public support for the Commission
6. Advance Commission and member states' priorities through a proactive legislative policy agenda
7. Ensure the fiscal stability & efficient administration of the Commission

The 2014 – 2018 Strategic Plan is available on the Commission website at [http://www.asmfc.org/files/pub/2014-2018StrategicPlan\\_Final.pdf](http://www.asmfc.org/files/pub/2014-2018StrategicPlan_Final.pdf).

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PR14-04

### ***Motions***

#### **Main Motion**

**Move to approve the 2014 – 2018 Strategic Plan and to include the summary of public comment and a notation that the ASMFC considers this Strategic Plan a living document.**

Motion made by Mr. Cole and seconded by Mr. Fote.

#### **Motion to Substitute**

**Motion to substitute to approve the 2014 – 2018 Strategic Plan. We will consider the comments offered in our next version and Annual Action Plan.**

Motion made by Mr. Abbott and seconded by Mr. Adler. Motion carries.

#### **Main Motion as Substituted**

**Move to approve the 2014 – 2018 Strategic Plan. We will consider the comments offered in our next version and Annual Action Plan.**

Motion carries unanimously.

## **INTERSTATE FISHERIES MANAGEMENT PROGRAM POLICY BOARD (FEBRUARY 5, 2014)**

### ***Meeting Summary***

The ISFMP Policy Board met with Eileen Sobeck, the new Assistant Administrator for NOAA Fisheries. Ms. Sobeck talked about her commitment to strong state/federal partnerships. Commissioners warmly greeted her and committed to continuing to work cooperatively with NOAA Fisheries on shared fishery management issues.

Nancy Wallace, the Division Chief of the NOAA Marine Debris Program, presented an overview of the program and recent research/projects along the Atlantic coast. NOAA Marine Debris Program undertakes efforts to reduce adverse impacts of lost and discarded fishing gear on living marine resources and navigation safety. This includes research; the development of alternatives to gear that pose threats; the development of methods for marking gear to enhance tracking, recovery, and identification; and the development non-regulatory measures and incentives to reduce the volume of lost and discarded gear and aid in its recovery. Ms. Wallace also presented an overview of the upcoming impact assessment for the entire Chesapeake Bay Region to begin in 2014.

NOAA Fisheries presented information on an upcoming proposed rule to implement special management zones (SMZs) for five artificial reefs in federal waters off the coast of Delaware. The rulemaking is in response to the recommendations of the Delaware Fish and Wildlife Department (DFW) and the Mid-Atlantic Fishery Management Council (Council) that the SMZs be established. The DFW requested that the Council designate five artificial reef sites, currently permitted by the U.S. Corps of Engineers in the exclusive economic zone, as SMZs under the regulations implementing the Council's Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The Council has recommended, and NOAA Fisheries is considering, that all five artificial reefs be established as SMZs through a regulatory amendment. The action would allow only hook-and-line and spear fishing, including the taking by hand, in the artificial reef designated areas (all year round), and these measures would be implemented with a 500-yard buffer around each artificial reef site.

Staff presented the results of the 2014 Commissioner Survey. The survey measures the Commissioners' opinions regarding the progress and actions of the Commission in the previous year. There was an overall positive trend that the Commission was working towards its mission and vision.

Staff presented the Policy Board with definitions of the categories used in the Annual Performance of the Stocks. Each August the Commission updates the performance of all managed species in order to provide a gauge of how well stocks are performing in comparison to their reference points and the actions boards have taken in the past few years. Commission species are divided into 5 categories: Rebuilt, Rebuilding, Concern, Depleted, and Unknown. The Policy Board discussed adding an additional category, viable. Staff will revise the definitions based on Policy Board feedback.

The Policy Board tasked Commission leadership to work with the New England Management Council, through the Northeast Regional Coordinating Council, on cooperative management in the winter flounder fishery. The NEFMC manages winter flounder in federal waters. For more information, please contact Toni Kerns, ISFMP Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org) or 703.842.0740.

### ***Motions***

No motions made.

## **AMERICAN EEL MANAGEMENT BOARD (FEBRUARY 6, 2014)**

### ***Press Release***

### **Maine Implements First Ever Quota for Glass Eel Fishery**

Alexandria, VA – The Commission's American Eel Management Board approved a conservation equivalency proposal from the State of Maine to allow quota management of its glass eel fishery. A quota of 11,749 pounds will be in place for Maine's 2014 glass eel fishing season, which begins on

March 22<sup>nd</sup>. This quota, developed with input from Maine's fishing industry and Tribal Nations, represents a 35% reduction from the 2013 Maine's glass eel harvest. In addition to quota management, Maine will also be implementing a harvester swipe card system with daily dealer reporting in order to increase accuracy and timeliness of landings data and reduce opportunities for illegal harvest.

Prior to this fishing year, the Maine glass eel fishery was regulated by the 1998 Fishery Management Plan (FMP) which requires all states to maintain as conservative or more conservative management measures at the time the FMP was approved. Under the FMP, Maine's glass eel fishery was regulated by gear restrictions and a license cap. The change from input controls (gear restrictions and license cap) to output controls (quota management) should allow for increased management flexibility and conservation of the resource.

The Board continues to work on the elements of Draft Addendum IV, which will propose coastwide conservation measures for American eel fisheries. The Board will consider approval of the Draft Addendum for public comment at its next meeting in May 2014.

For more information, please contact Kate Taylor at [ktaylor@asmfc.org](mailto:ktaylor@asmfc.org) or 703.842.0740.

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PR14-05

### ***Meeting Summary***

The American Eel Board met to review a conservation equivalency proposal from the State of Maine and an aquaculture request from the American Eel Farm (NC), as well as receive an update on the development of Draft Addendum IV and the completion of tasks assigned to the Technical Committee. At the Annual Meeting in October the state of Maine proposed to develop, with industry, a plan to reduce glass eel harvest by 25-40%. The proposed plan developed by the state, through conservation equivalency, implements a glass eel quota of 11,794 pounds for the 2014 fishing season, combined with increased monitoring and enforcement efforts. The Board unanimously approved the conservation equivalency proposal.

The American Eel Farm submitted a request for harvest of 750 pounds of glass eels in North Carolina under a NC Division of Marine Fisheries Scientific and Educational Collection Permit. The Board did not approve the request. However, the Board tasked the Plan Development Team to review state scientific permitting requirements and develop recommendations, if any, for allowances of commercial harvest under a scientific permit for inclusion in Draft Addendum IV.

The Technical Committee provided a progress report on the development of Draft Addendum IV. The addendum was initiated at the Annual Meeting and will potentially include proposed measures on glass and yellow eel quota management, the New York silver eel fishery, fisheries independent monitoring, law enforcement penalties, and harvest allowances under scientific permits.

For more information please contact, Kate Taylor, Senior FMP Coordinator at [ktaylor@asmfc.org](mailto:ktaylor@asmfc.org) or 703.842.0740.

### ***Motions***

**Move to allow the State of Maine to suspend the use of input controls currently used (license and gear caps) to manage the glass eel harvest and move to the use of an output control with buffer and payback provisions as presented today as a 2014 conservation equivalency request.**

Motion made by Commissioner Keliher and seconded by Mr. Augustine. Motion passes unanimously.

**Move the acceptance of the 35% reduction from 2013 harvest of 18,076 pounds to 11,749 pounds for the 2014 season in Maine. Any overages would be paid back the following year with a reduction in the 2015 season.**

Motion made by Commissioner Keliher and seconded by Mr. Augustine. Motion carries (19 in favor).

#### **Main Motion (Tabled)**

**Move to include the following in draft addendum IV: define the criteria to issue a state scientific permit for all life stages; define the maximum amount of eels that could be harvested and sold under a scientific permit without board approval; define the minimum amount of eel that could be harvested and sold under a scientific permit with Board approval.**

Motion made by Mr. R. White and seconded by Mr. Borden. Motion tabled.

**Move to table this motion until a decision is made on the aquaculture proposal from North Carolina.**

Motion made by Mr. Diodati and seconded by Mr. O'Reilly. Motion carries (19 in favor).

**Move to accept the American eel farm request and that all of the provisions requested by the TC be included in the permit requirements for the 2014 season.**

Motion made by Dr. Daniel and seconded by Mr. Lustig. Motion fails (1 in favor, 17 opposed, 1 null).

#### **Motion to Remove from Table**

**Motion to remove the previous motion from the table.**

Motion made by Mr. Abbott and seconded by Mr. Augustine. Motion carries without objection.

#### **Main Motion**

**Move to include the following in Draft Addendum IV: define the criteria to issue a state scientific permit for all life stages; define the maximum amount of eels that could be harvested and sold under a scientific permit without board approval; define the minimum amount of eel that could be harvested and sold under a scientific permit with Board approval.**

Motion made by Mr. R. White and seconded by Mr. Borden. Motion carries unanimously.

### **SHAD & RIVER HERRING MANAGEMENT BOARD (FEBRUARY 6, 2014)**

#### ***Meeting Summary***

The Shad and River Herring Management Board met to review the FMP Review, state compliance and Shad Habitat Plans. The Board approved the FMP Review and *de minimis* requests for ME, NH and MA for shad, and NH and MA for river herring. The Board approved all Shad Habitat Plans submitted in accordance with Amendment 3. The Board noted the Hudson River, Merrimack River and Florida plans are missing, although no date was set as a final submission date. Finalized Shad Habitat Plans indicate that barriers to migration are the largest threat to shad. The Plans also highlighted the need for more data on the impacts of climate change on shad stocks.

Amendments 2 and 3 require recreational data from the states but few states have surveys to collect this data and have been relying on the Marine Recreational Information Program to fulfill that requirement. The Board tasked the Technical Committee to evaluate the accuracy and usefulness of this data for management with an exploration of additional recreational data sources. Further, the Technical Committee will explore methods to ensure all required data are submitted in a timely manner.

The Board received an update on Mid-Atlantic and New England Fishery Management Council actions in relation to river herring and shad. The most notable action was catch caps in the Atlantic mackerel and herring fisheries for shad and river herring. The Board agreed that this is a good step for management in federal waters to ensure protection of the species throughout their range. The Board elected Bill Goldsborough as Board Vice-Chair. For more information, please contact Marin Hawk, Fishery Management Plan Coordinator, at [mhawk@asmfc.org](mailto:mhawk@asmfc.org) or 703.842.0740.

### *Motions*

**Move to accept the 2013 FMP Review and recommendations of the PRT for de minimis status for ME, NH, and MA for shad, and NH and MA for river herring. Task the TC with the PRT recommendations.**

Motion made by Mr. Adler and seconded by Mr. Augustine. Motion carries unanimously. (19 in favor).

**Move to approve shad habitat plans that have been received to date.**

Motion made by Dr. Duval and seconded by Mr. Augustine. Motion carries unanimously (19 in favor).

## **STURGEON MANAGEMENT BOARD (FEBRUARY 6, 2014)**

### *Meeting Summary*

The Sturgeon Management Board accepted the benchmark stock assessment terms of reference which will guide the stock assessment committee in the development of the assessment for Atlantic sturgeon. The Plan Review Team (PRT) recommended that the states work to incorporate to the extent possible ongoing research to aid in the understanding of stock structure and status through the benchmark assessment process.

The Board accepted the 2013 Fishery Management Plan Review for the 2012 fishing year. The PRT found all states in compliance for the 2012 fishing year. The PRT suggested that the states coordinate with the Commission regarding the progress of Section 10 incidental take permits. For more information, please contact Mike Waine, FMP Coordinator at [mwaine@asmfc.org](mailto:mwaine@asmfc.org) or 703.842.0740.

### *Motions*

**Move to approve terms of reference for benchmark stock assessment.**

Motion made by Dr. Daniel and seconded by Mr. Simpson. Motion carries unanimously.

**Move to approve the FMP Review and state compliance as presented today.**

Motion made by Mr. Augustine and seconded by Mr. Lustig. Motion passes unanimously.

**Move to approve John Pedrick (PA) and Kelly Place (VA) to the Advisory Panel for Sturgeon.**

Motion made by Mr. O'Reilly and seconded by Mr. Feigenbaum. Motion carries unanimously.

## **SPINY DOGFISH & COASTAL SHARKS MANAGEMENT BOARD (FEBRUARY 6, 2014)**

### *Meeting Summary*

The Spiny Dogfish and Coastal Sharks Management Board met to review the Coastal Sharks FMP Review, state proposals for Addendum III, and a white paper concerning shark seasons and possession limits. Both the Coastal Sharks FMP Review and the state proposals for Addendum III were approved. The Board also approved *de minimis* requests from Maine and New Hampshire under Addendum III.

The Board reviewed the white paper on coastal sharks season and possession limits in order to streamline the specifications process each year. The Board will submit a letter to NOAA Fisheries requesting a postponement of the Large Coastal Sharks season until July 1<sup>st</sup> for the 2015 fishing season. This will enable states the greatest access to the resource. Depending on how this opening date works in 2015, the Board will consider requesting the same opening date for subsequent years. For more information, please contact Marin Hawk, Fishery Management Plan Coordinator, at [mhawk@asmfc.org](mailto:mhawk@asmfc.org) or 703.842.0740.

***Motions***

**Move to approve the Coastal Sharks FMP review as presented today.**

Motion by Mr. Augustine, second by Mr. Bellavance. Motion carries without objection.

**Move to approve the state implementation plans for Addendum III and grant *de minimis* status to ME and NH.**

Motion by Mr. Augustine, second by Mr. Adler. Motion approves by unanimous consent.

**HORSESHOE CRAB MANAGEMENT BOARD (FEBRUARY 6, 2014)**

***Meeting Summary***

The Horseshoe Crab Management Board met to review a North Carolina transfer request, receive an update on the New England and New York stock status trends, and discuss confidentiality and mortality issues in the biomedical sector. North Carolina exceeded their quota of 24,036 crabs by approximately 2,247 crabs. The state requested a transfer of 3,000 crabs from Georgia. This request was approved based on the small number of crabs.

The Board received an update on the stock trends in New England and New York. Relative fishing mortality for the New England bait and biomedical sectors had similar increasing trends since 2011. Relative fishing mortality in the New York region has increased steadily since 2000. The Board also requested an update from the Law Enforcement Committee on horseshoe crab enforcement concerns (e.g., poaching).

The Board discussed increases in biomedical mortality and the inability to use the data in stock assessments due to confidentiality issues. The Board will continue to work closely with the biomedical industry and the Stock Assessment Subcommittee to incorporate biomedical mortality information in future stock status analyses or assessments without compromising data confidentiality. For more information, please contact Marin Hawk, Fishery Management Plan Coordinator, at [mhawk@asmfc.org](mailto:mhawk@asmfc.org) or 703.842.0740.

***Motions***

**Move to approve the transfer request from Georgia to North Carolina.**

Motion made by Dr. Daniel and seconded by Mr. Estes. Motion carries unanimously.

**SOUTH ATLANTIC STATE/FEDERAL FISHERIES MANAGEMENT BOARD (FEBRUARY 6, 2014)**

***Press Release***

**ASMFC South Atlantic Board Initiates Draft Addendum to Address Management of Atlantic Croaker and Spot**

Alexandria, VA –The Commission’s South Atlantic State/Federal Fisheries Management Board has initiated the development of a Draft Addendum to the Fishery Management Plans for Spot and Atlantic Croaker. The Draft Addendum will propose replacing the current trigger analysis with the use of a traffic light approach in determining management measures for both species along the coast. The Draft Addendum will also include options that will allow for conservation equivalency measures to achieve reductions in catch and harvest when needed.

The Board initiated the Draft Addendum in response to concerns over trends in the spot and Atlantic croaker fisheries. The current management of Atlantic croaker and spot compares annual changes in various trigger indices (recent landings and survey information) for each non-assessment year to review trends in the fisheries. The results of the most recent trigger analysis found declines in the commercial and recreational landings for both Atlantic croaker and spot fisheries but did not trip the triggers. The Technical Committee was concerned that the current triggers do not illustrate long-term trends in the stocks and lack specific and timely management responses.

The traffic light approach has been used as a precautionary framework for fisheries with limited data to allow for a reasonable level of resource management. The name comes from assigning a color (red, yellow, or green) to categorize relative levels of indicators on the condition of the fish population or fishery. The approach provides a clear illustration of the trends in the fishery and the need for management action. This method has been developed for use in the blue crab fisheries of North Carolina and Georgia.

The proposed traffic light approach is expected to be an interim approach until the completion of the next stock assessment for both species. The Draft Addendum will be presented to the Board for consideration and approval in May 2014. For more information, please contact Kirby Rootes-Murdy, Fishery Management Plan Coordinator, at [krootes-murdy@asmfc.org](mailto:krootes-murdy@asmfc.org) or 703.842.0740.

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PR14-06

***Meeting Summary***

The South Atlantic State/Federal Management Board met to review a number of items including the updated traffic light method analysis report for spot and Atlantic croaker; state compliance reports and Fishery Management Plan Reviews for Spot, Spotted Seatrout, and Spanish Mackerel; and an alternative management proposal for Virginia’s commercial red drum fishery.

The Board reviewed and accepted the Fishery Management Plan Reviews for Spot, Spotted Seatrout, and Spanish Mackerel. The Board approved the *de minimis* requests from New York, New Jersey, Delaware, and Georgia for Spanish Mackerel; South Carolina and Georgia for Spot; and New Jersey for Spotted Seatrout.

The Board approved the proposed changes to Virginia's commercial red management measures, reducing their maximum size limit from 26 to 25 inches and increasing their possession limit from 3 to 5 fish. The Board elected Jim Estes from Florida as Vice-Chair. For more information, please contact Kirby Rootes-Murdy, Fishery Management Plan Coordinator, at [krootes-murdy@asmfc.org](mailto:krootes-murdy@asmfc.org) or 703.842.0740.

***Motions***

**Move that the Board task the staff and TC to develop a draft addendum, with an appropriate suite of options that will adopt and employ the traffic light approach to manage spot and croaker. This will be an interim approach until the next stock assessment.**

Motion made by Dr. Laney and seconded by Mr. Grist. Motion carries unanimously.

**Move that the South Atlantic Board request the Assessment Science Committee consider developing a spot benchmark stock assessment.**

Motion made by Dr. Daniel and seconded by Mr. Allen. Motion carries unanimously.

**Move to approve state compliance reports and 2013 FMP Reviews for Spot, Spotted Seatrout, and Spanish Mackerel for the 2012 fishing year.**

Motion made by Mr. Woodward and seconded by Dr. Daniel. Motion carries.

**Move to approve *de minimis* status for the states of New York (Spanish Mackerel), New Jersey (Spanish Mackerel, Spotted Seatrout), Delaware (Spanish Mackerel), South Carolina (Spot), and Georgia (Spot, Spanish Mackerel).**

Motion made by Mr. Woodward and seconded by Dr. Daniel. Motion carries.

**Move to accept VA's proposal to lower its commercial maximum size limit from 26" to 25" and increase the VA commercial possession limit from 3 to 5 fish.**

Motion made by Mr. Grist and seconded by Mr. Gary. Motion carries unanimously.