



North Carolina Wildlife Federation

Affiliated with the National Wildlife Federation

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Via Electronic Mail and U.S. Postal Service

Chairman Sammy Corbett
N.C. Marine Fisheries Commission
Division of Marine Fisheries
PO Box 769
Morehead City, North Carolina 28557
samjcorbett3@gmail.com

**Re: Modification to Petition for Rulemaking Submitted to N.C. Marine Fisheries
Commission on November 2, 2016**

Chairman Corbett:

On behalf of the North Carolina Wildlife Federation (“the Federation” or “Petitioner”), the undersigned filed a Petition for Rulemaking (“Petition”) on November 2, 2016. The Federation wishes to make two substantive modifications to the Petition and two recommendations to the N.C. Marine Fisheries Commission (“MFC” or “Commission”), which are described in detail below.

First, Petitioner wishes to modify its proposal to reduce headrope length on all shrimp trawls in North Carolina Coastal Fishing Waters. The Petition currently proposes limiting maximum headrope length on all shrimp trawls operating in all Coastal Fishing Waters to 90 feet under 15A N.C. Admin. Code 3L.0103. Petition at 11-12, Ex. A at 4-5. Upon further consideration, Petitioner now requests that headrope length be reduced from the current 220 feet to 90 feet in all Internal Coastal Fishing Waters and requests that the Commission establish a 110 headrope limit in all other Coastal Fishing Waters in the Atlantic Ocean. This modification is reflected in the updated proposed rules, attached hereto as Exhibit A.

This change to the Petition will allow commercial fishermen operating in Coastal Fishing Waters in the Atlantic Ocean to continue to use gear that was recently modified to meet the current 220 foot limit on headrope length for all trawls in Internal Coastal Fishing Waters; this rule went into effect on January 1, 2017. *See* Amendment 1 to Shrimp Fishery Management Plan (March 2015), available at <http://portal.ncdenr.org/web/mf/fmps-under-development>; *see also* 15A N.C. Admin. Code 3L.0103(d). A 110 foot headrope limit would allow commercial fisherman to continue to use existing nets that comply with the current 220 foot headrope limit.

Petitioner also wishes to modify its proposal regarding trawling activities in Special Secondary Nursery Areas (“SSNAs”) under 15A N.C. Admin. Code 3N.0105 to allow for an additional day of shrimp trawling in Coastal Fishing Waters. The Petition proposes restricting trawling to a total of three days per week in all SSNAs. Upon further consideration and review of existing rules, Petitioner now requests that trawling in SSNAs in Internal Coastal Fishing Waters be limited to three days per week and that trawling in SSNAs in Coastal Fishing Waters in the Atlantic Ocean be limited to four days per week. This modification would increase the overall fishing days in Coastal Fishing Waters in the Atlantic Ocean from three to four days per week under Petitioner’s proposal. This modification is also reflected in Exhibit A.

In addition to the above modifications, Petitioner also wishes to make the following recommendations to the Commission. In the Petition, Petitioner proposed a size limit for Atlantic croaker and spot for all commercial and recreational fisheries in order to limit the harvest of juvenile fish of these species. *See* Petition at 13-14. As noted in the expert technical report attached to the Petition, limits on mesh size in commercial fishing gear are often used to achieve the same result. *See* Petition, Ex. B at 19. Mesh selectivity studies evaluating the most appropriate mesh size to limit harvest of juvenile Atlantic croaker and spot are not available, however, and therefore, Petitioner is unable to propose a mesh size limit to complement the size limit contained in the proposed rules. Petitioner recommends that the MFC immediately commission a mesh selectivity study to evaluate the mesh size most effective at limiting the harvest of juvenile Atlantic croaker and spot. Once this analysis is complete, Petitioner recommends that the Commission re-evaluate the policy mechanisms to reduce harvest of juvenile Atlantic croaker and spot and to make adjustments to existing rules to reflect the best available data. This re-evaluation should take place no later than January 1, 2018.


Finally, if the Commission adopts the Petition, Petitioner recommends initiating rulemaking immediately, or no later than August 31, 2017, on all proposed rules. This would allow the Commission to choose the procedural mechanism it believes is most appropriate to effectuate Petitioner’s requests, while at the same time ensure that they are acted on in a timely manner. Petitioner does not anticipate that any of the proposed rules severely curtail the “usefulness or value of equipment in which fishermen have any substantial investment,” and therefore, the proposed rules, if adopted, should become effective immediately upon adoption or shortly thereafter. *See* N.C. Gen. Stat. § 113-221(d).

Please direct any questions regarding the Petition to Blakely Hildebrand at bhildebrand@selcnc.org or (919) 967-1450. Thank you for your consideration of the Petition.

Sincerely,



Tim Gestwicki
Chief Executive Officer
North Carolina Wildlife Federation
[signature page continues]



Blakely E. Hildebrand
Associate Attorney
Southern Environmental Law Center

Enclosure

CC:

Vice Chairman, Commissioner Joe Shute, N.C. Marine Fisheries Commission
Commissioner Rick Smith, N.C. Marine Fisheries Commission
Commissioner Janet Rose, N.C. Marine Fisheries Commission
Commissioner Mike Wicker, N.C. Marine Fisheries Commission
Commissioner Alison Willis, N.C. Marine Fisheries Commission
Commissioner Mark Gorges, N.C. Marine Fisheries Commission
Commissioner Chuck Laughridge, N.C. Marine Fisheries Commission
Commissioner Brad Koury, N.C. Marine Fisheries Commission
Braxton Davis, Director, N.C. Division of Marine Fisheries
Nancy Fish, N.C. Division of Marine Fisheries
Phillip Reynolds, Assistant Attorney General, N.C. Department of Justice

EXHIBIT A

MODIFICATIONS TO PROPOSED RULES

15A N.C. Admin. Code 3L .0103: Prohibited Nets, Mesh Lengths and Areas

(a) It is unlawful to take shrimp with nets with mesh lengths less than the following:

- (1) Trawl net--one and one-half inches;
- (2) Fixed nets, channel nets, float nets, butterfly nets, and hand seines--one and one-fourth inches; and
- (3) Cast net--no restriction.

(b) It is unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh length. Net material used as chafing gear shall be no less than four inches mesh length, except that chafing gear with smaller mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

~~(c) It is unlawful to take shrimp with trawls that have a combined headrope of greater than 90 feet in Internal Coastal Waters in the following areas:~~

- ~~(1) North of the 35| 46.3000' N latitude line;~~
- ~~(2) Core Sound south of a line beginning at a point 34| 59.7942' N -76| 14.6514' W on Camp Point; running easterly to a point 34| 58.7853' N -76| 9.8922' W on Core Banks; to the South Carolina State Line;~~
- ~~(3) Pamlico River upstream of a line from a point 35| 18.5882' N -76| 28.9625' W at Pamlico Point; running northerly to a point 35| 22.3741' N -76| 28.6905' W at Willow Point; and~~
- ~~(4) Neuse River southwest of a line from a point 34| 58.2000' N -76| 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35| 1.0744' N -76| 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.~~

~~(d) (c) Effective January 1, 2017~~ it is unlawful to take shrimp with trawls that have a combined headrope of greater than 90 feet in Internal Coastal Fishing Waters and 110 feet in Coastal Fishing Waters in the Atlantic Ocean. ~~220 feet in Internal Coastal Waters in the following areas:~~

- ~~(1) Pamlico Sound south of the 35| 46.3000' N latitude line and north of a line beginning at a point 34| 59.7942' N -76| 14.6514' W on Camp Point; running easterly to a point 34| 58.7853' N -76| 9.8922' W on Core Banks;~~
- ~~(2) Pamlico River downstream of a line from a point 35| 18.5882' N -76| 28.9625' W at Pamlico Point; running northerly to a point 35| 22.3741' N -76| 28.6905' W at Willow Point; and~~
- ~~(3) Neuse River northeast of a line from a point 34| 58.2000' N -76| 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35| 1.0744' N -76| 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.~~

~~(e)~~ (d) It is unlawful to use a shrimp trawl in the areas described in 15A NCAC 3R .0114.

~~(f)~~ (e) It is unlawful to use channel nets except as provided in 15A NCAC 3J .0106.

~~(g)~~ (f) It is unlawful to use shrimp pots except as provided in 15A NCAC 3J .0301.

~~(h)~~ (g) It is unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. These federal rules are incorporated by reference including subsequent amendments and editions. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

~~(i)~~ (h) It is unlawful to use a shrimp trawl without two (2) authorized North Carolina Division of Marine Fisheries bycatch reduction devices properly installed and operational in the cod end of each net in Coastal Fishing Waters.

15A N.C. Admin. Code 3N .0105: Prohibited Gear, Secondary Nursery Areas

(a) It is unlawful to use trawl nets for any purpose in any of the permanent secondary nursery areas designated in 15A NCAC 3R .0104.

(b) It is unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 3R .0105~~(1)-(12)~~, except that the Fisheries Director, may, by proclamation, open any or all of the special secondary nursery areas listed in 15A NCAC 3R .0105(1)-(12), or any portion thereof, ~~listed in 15A NCAC 3R .0105~~ to shrimp or crab trawling from August 16 through May 14 subject to the provisions of 15A NCAC 3L .0100 and .0200.

(c) It is unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 3R .0105(13), except that the Fisheries Director, may, by proclamation, open any special secondary nursery areas listed in 15A NCAC 3R .0105(13), or any portion thereof, to shrimp or crab trawling, subject to the provisions of 15A NCAC 3L. 0100 and .0200 and the restrictions described below:

- (1) Trawling may only occur during shrimp season;
- (2) Trawling is restricted to a total of three days per week in SSNAs located in Internal Coastal Fishing Waters;
- (3) Trawling is restricted to a total of four days per week in SSNAs located in Coastal Fishing Waters in the Atlantic Ocean;
- (4) Trawling is prohibited between sunset and sunrise; and
- (5) Tow time may not exceed 45 minutes. Tow time begins when the doors of the trawl enter the water and ends when the doors exit the water.