

Report to the General Assembly of North Carolina under Senate Bill 821, Section 2, Session Law 2012-190

October 1, 2012



SUBMITTED BY:

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

NORTH CAROLINA DIVISION OF MARINE FISHERIES &

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

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Appendix A - Session Law 2012-190

EXECUTIVE SUMMARY

Senate Bill 821 tasked the executive director of the Wildlife Resources Commission, the director of the Division of Marine Fisheries, and the Commissioner of the Department of Agriculture and Consumer Services to jointly study the state's fisheries management agencies and consider whether these agencies could be reorganized to provide for more efficient, productive, and enjoyable uses of the state's fisheries resources. The agencies were also directed to solicit public comment on these issues.

The agencies met several times to examine their respective missions and look for areas where efficiencies could be achieved through enhanced collaboration and to consider if reorganization would achieve the directive of providing more efficient, productive and enjoyable uses of the state's fisheries resources. Public input was received through a series of meetings and through an on-line commenting site.

Public comment offered no clear consensus position. User groups have diverse opinions and needs, and any agency balancing those interests will face the challenges of those competing interests. Conflicts between user groups are inherent in competing interests for limited public trust resources.

It was determined that while the mechanics of legislating reorganization could be fairly simple, the impacts of reorganization would be both complex and uncertain. In light of these factors, any reorganization should be studied in more detail with sufficient time to conduct alternatives analyses and incorporate extensive stakeholder input.

In the process of conducting this study, it was determined a high level of cooperation among the agencies is already in place; yet there are areas identified that provide the potential to further enhance that level of cooperation to provide for the most efficient, productive, and enjoyable uses of the state's fisheries resources.

LEGISLATION

Session Law 2012-190 (Appendix A) places certain consultative, analytical and reporting requirements on the named agencies. Under Section 2(a) “The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and the Commissioner of Agriculture shall, in consultation with various user groups, study the current organization of the State’s fisheries management agencies and consider whether these agencies might be reorganized to provide for more efficient, productive, and enjoyable uses of the State’s fisheries resources.”

Section 2(b) instructs “[i]n conducting this study, the Executive Director, the Director, and the Commissioner shall specifically consider all of the following:

- (1) The efficient and effective transfer of statutory authority, powers, duties, and functions, including, but not limited to, rule making, licensing, and the rendering of findings, orders, and adjudications.
- (2) The efficient and effective transfer and consolidation of records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. This component of the study shall specifically identify any areas of overlap between agency programs or personnel.
- (3) The uninterrupted and unimpaired continuation of all services provided by the agencies, rules adopted or implemented by the agencies, contracts or other obligations entered into by the agencies, and proceedings to which any agency is a party.
- (4) All statutory, rule, and policy changes that would be necessary to reorganize fisheries management in the State.
- (5) Positions or duties regarding fisheries resource management currently carried out by the Marine Fisheries Commission or the Division of Marine Fisheries of the Department of Environment and Natural Resources that are within the scope of the overall mission of the Department of Agriculture and Consumer Services.
- (6) Any other issues necessary for the potential reorganization of fisheries management in the State.”

Section 2(c) requires a joint report be filed no later than October 1, 2012.

CURRENT ORGANIZATION

North Carolina fisheries are governed by a mix of state and federal laws, regulations and rules, as well as interstate compacts and agreements. Two state entities have primary enforcement and oversight responsibility at the state level. These are the Division of Marine Fisheries (DMF) and the Wildlife Resources Commission (WRC). The DMF is a division within the N.C. Department of Environment and Natural Resources (DENR) and headed by a division director with a related commission - the Marine Fisheries Commission (MFC). The MFC is appointed by the Governor with each member representing a specific interest. The WRC is an independent commission created by statute, headed by an executive director who reports to the WRC. Members of the WRC are appointed by the Speaker of the House of Representatives, President Pro Tempore of the Senate and the Governor. Appointees are to have a general understanding of fish and wildlife management with no segment of the population specifically represented. Although the North Carolina Department of Agriculture and Consumer Services (NCDA&CS), headed by the statewide elected Commissioner of Agriculture, has a limited role in fisheries management, it is the lead agency on freshwater aquaculture, working with WRC on non-native freshwater species.

The jurisdictions of these three governmental entities are set forth in statute. Broadly speaking, the MFC and DMF have jurisdiction over marine and estuarine resources. WRC has jurisdiction over all wildlife resources, including inland fisheries. NCDA&CS jurisdiction is limited to 22 native species in freshwater aquaculture production, as well as jurisdiction over all seafood inspection, with the exception of shellfish. To the extent that the grant of jurisdiction to the MFC and the WRC may overlap, the MFC and the WRC are granted concurrent jurisdiction. In cases of conflict between actions taken or regulations promulgated by either agency, as respects the activities of the other, pursuant to the dominant purpose of such jurisdiction, the two commissions are empowered to make agreements concerning the harmonious settlement of such conflict in the best interests of the conservation of the marine and estuarine and wildlife resources of the state. In the event the two commissions cannot agree, the governor is empowered to resolve the differences. G.S. 113-132(d).

Pursuant to this statutory division of authority, WRC and DMF have agreed upon jurisdictional thresholds and on the delineation of certain waters as joint fishing waters. That agreement is codified in rules jointly adopted by MFC and WRC in 15A NCAC Chapter 03Q.¹ The jurisdictional boundaries and joint waters delineations are also available in map form. Of the waters overseen by DMF, 92 percent are in DMF's jurisdiction, and eight percent are joint waters where jurisdiction is shared with WRC. These jurisdictional boundaries are represented in Illustration 1.

¹<http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environment%20and%20natural%20resources/chapter%2003%20-%20marine%20fisheries/subchapter%20q/subchapter%20q%20rules.html>

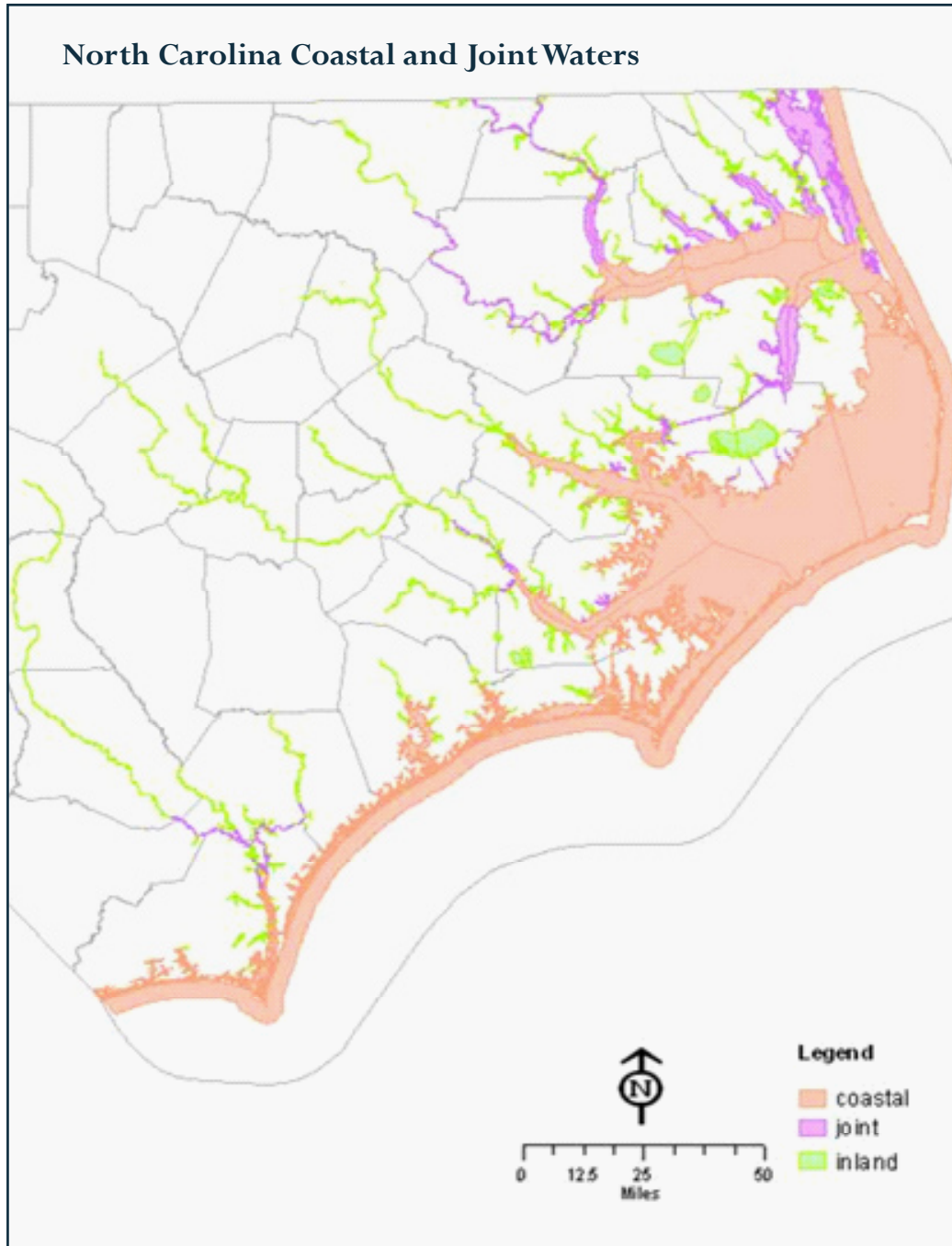


Illustration 1. Map coastal, joint, and inland fishing waters on the coast of North Carolina.

SCOPE OF AGENCIES NAMED IN SENATE BILL 821

Department of Environment and Natural Resources

DENR was created by statute. G.S. 143B-279.1 et. seq. The duty of the department is, by statute:

- “(1) To provide for the protection of the environment; . . .
- (3) To provide for the management of the State’s natural resources.” G.S. 143B-279.2.

As a department, DENR is led by a secretary who serves as part of the governor’s cabinet. The secretary represents the agency as a whole, with its interrelated goals and concerns.

The department structure provides certain centralized services to all of its divisions such as legislative services, legal services, central HR, purchasing services, accounting, budget and finance, IT, and public affairs. Efficiencies are achieved by eliminating or greatly reducing the duplication of these services in each division.

Division of Marine Fisheries

The DMF is a division within DENR and is authorized by G.S. 113-181 to administer and enforce the provisions of Subchapter IV of Chapter 113 of the General Statutes, Conservation of Marine and Estuarine and Wildlife Resources.² Pursuant to G.S. 143B-289.52(f), the department, through the DMF, enforces all rules adopted by the MFC and, pursuant to G.S. 113-181, the DMF also conducts research and collects data and statistics necessary or useful for managing the state’s marine and estuarine resources and associated habitats.

The DMF is comprised of 10 sections, which includes 325 permanent and temporary employees, working together to accomplish the agency mission of achieving sustainable fisheries and protecting habitats. The primary way DMF does this is through development of fishery management plans and implementation of the Coastal Habitat Protection Plan, as mandated by the Fisheries Reform Act of 1997. The goal of these plans is to ensure there are enough mature fish in a population to produce the offspring needed to perpetuate the population and that healthy habitats are there to support them. These plans are based on sound science and set out long-term management strategies for all of the state’s significant coastal fisheries. Developing fishery management plans requires scientists to perform stock assessments that use information collected by biologists and technicians, who conduct fish-house and on-the-water sampling. Plan development also relies heavily on other staff, who gather statistics for the amount of seafood harvested, gear used, and the number of fishermen participating in a fishery.

² G.S. 143B-279.1 and G.S. 143B-179.3.

Fisheries Management:

The Fisheries Management Section conducts stock assessments, fisheries and gear research, resource monitoring, and collection of biological information. The primary purpose is to collect and analyze data for the sustainable management of North Carolina's economically important fish and shellfish species. The section produces fishery management plans which are compilations of the latest landings, biological information, stock assessment that determines the health of the subject species and the management measures that may be necessary to end overfishing and maintain a sustainable yield. Staff serve on technical, science and statistical committees of the Atlantic States Marine Fisheries Commission and the South Atlantic and Mid-Atlantic fishery management councils to represent North Carolina's interests in regional fisheries management.

Resource Enhancement:

The Resource Enhancement Section manages shellfish resource development, habitat enhancement, shellfish mapping, shellfish leasing, shellfish disease work, and artificial reefs. North Carolina has one of the most active habitat enhancement programs in the country. The Shellfish Rehabilitation Program enhances oyster habitat annually. The section initiated an Oyster Shell Recycling Program that collects post consumer oyster shells statewide which would otherwise be lost. The Oyster Sanctuary Program has developed 119 acres of 218 permitted acres of oyster habitat where harvest is not allowed. Oyster disease monitoring, sampling and monitoring of constructed and natural shellfish habitat for recruitment, survival and growth is also conducted by this Shellfish Rehabilitation group.

The section also administers other programs that include the Shellfish Lease Program that consists of 237 active shellfish leases and franchises, Aquaculture Operation Permits, Shellfish and Habitat Mapping Program, and Artificial Reef Program with 39 ocean and seven estuarine sites.

License and Statistics:

The License and Statistics Section collects, processes, and conducts economic analyses on commercial and recreational fisheries catch statistics, and is responsible for the sale of fishing licenses and issuance of agency permits at all DMF offices. This section also administers the MFC's commercial license eligibility process.

The section collects and processes catch and effort statistics from commercial and recreational fisheries, conducts socio-economic research and analyses on the states fishing industries on commercial and recreational fisheries catch statistics, and is responsible for the sale and issuance of commercial fishing licenses and issuance of agency permits at all DMF offices.

Protected Resources:

Protected Resources is responsible for coordinating obtaining protected resources species permits, reporting interactions, and coordination/administration of the at-sea observer program. This section analyzes data to determine interactions and information that may be used to reduce interactions.

Habitat Protection:

The section is responsible for the planning, development, and implementation of the Coastal Habitat Protection Plan, mandated by the Fisheries Reform Act of 1997 and updated on five-year cycles. Section staff works on implementing Coastal Habitat Protection Plan recommendations tasked to DMF, such as conducting regional habitat assessments. Implementation of Coastal Habitat Protection Plan recommendations, including cross-cutting environmental issues are addressed by the Coastal Habitat Protection Plan Steering Committee, which relies on the collaboration and cooperation of a subset of commissioners from Marine Fisheries, Coastal Management, Environmental Management, and Wildlife Resources commissions.

Marine Patrol:

Marine Patrol patrols over 4,000 miles of coastline and covers over 2.5 million acres of water related to marine fisheries rules and regulations. Its jurisdiction includes all coastal and joint waters, extends to three miles offshore, and ranges to 200 miles offshore for some federally regulated species.

The North Carolina General Statutes, MFC rules relating to coastal fishing, and the proclamation authority of DMF's director provide the authority for Marine Patrol. Their duties include: monitoring all activities related to fisheries statutes and rules pertaining to commercial and recreational activities; patrolling closed shellfish areas which are mandated by the Food and Drug Administration ("FDA"); conducting seafood dealer inspections; monitoring Trip Ticket Program data; and inspecting seafood retail establishments and vehicles transporting seafood. Their tasks protect both the North Carolina's marine resources and the public health. For example, closed shellfish area enforcement protects the public from serious health risks from contaminated shellfish. The FDA audits these polluted patrols each year for compliance. If these patrols have not met FDA standards, the state's interstate commerce for shellfish would be closed.

Shellfish Sanitation and Recreational Water Quality:

The Shellfish Sanitation and Recreational Water Quality Section monitors, surveys and evaluates the quality of coastal shellfishing and recreational waters to protect the public health of shellfish consumers and recreational bathers.

The program operates in compliance with the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish Model Ordinance administered by USFDA with guidelines established by the Interstate Shellfish Sanitation Conference of which NC is a voting member. The program establishes sanitary controls on all phases of shellfish production and distribution including sampling and classification of growing waters, surveys of pollution sources, harvesting controls, and processing including shucking, packing, storage, and transportation and distribution of raw molluscan shellfish.

Management of public trust resources by assuring the shellfish are harvested in clean waters requires monitoring of pollution sources, naturally occurring pathogens and biotoxins at the level required by the NSSP. Shellfish must be processed in a sanitary manner, labeled and tagged for traceability back to the original growing area for illness investigation. The current structure allows DMF to investigate illnesses and trace-back the shellfish to the source of the growing area. The advantage of having both the inspection and growing area program within one section allows better public health protection of shellfish consumers of our state. The response time of a trace-back to closing waters to harvest could potentially reduce the number of possible illnesses if the shellfish were to come from NC waters. Separation of the plant inspection element and the harvest area classification and monitoring would introduce an unnecessary layer of regulation of this product by having harvest area management by one agency and plant inspection by another.

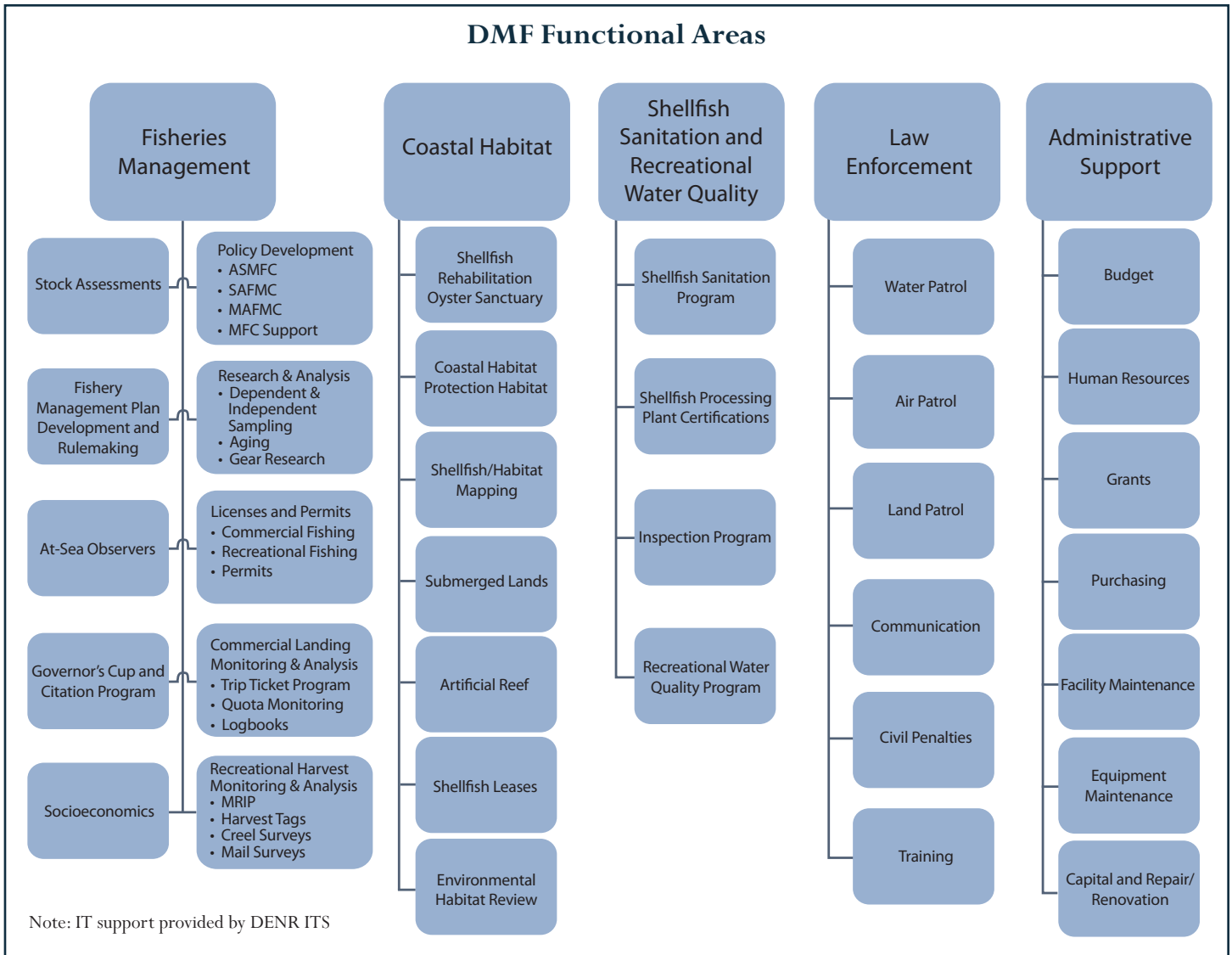


Figure 1. DMF’s Functional Areas Chart graphically simplifies its areas of responsibility and is not an organizational chart for the agency.

The Marine Fisheries Commission

The MFC also exists pursuant to statute and has been placed within DENR, G.S. 143B-289.51. The MFC is a nine-member citizen commission with specific functions, purposes and duties authorized by the N.C. General Assembly. Most all of the work of the DMF is done in conjunction with the Marine Fisheries Commission which establishes the rules, and is supported by numerous DMF clerks, accountants, mechanics and other staff that manage budget, personnel, purchasing, facilities, equipment maintenance and grants administration.

Wildlife Resources Commission

The WRC is the state agency created to conserve and sustain the state's fish and wildlife resources through research, scientific management, wise use, and public input. The WRC is responsible for the enforcement of N.C. fishing, hunting, trapping and boating laws. To provide opportunities for public access and use of these resources, the WRC maintains an extensive statewide network of game lands, boating and fishing access areas, education centers, and wildlife conservation areas.

Fisheries Management:

The WRC manages, conserves, and enhances the state's diverse aquatic wildlife and their habitats, and ensures public use opportunities through science-based management and a statewide public access infrastructure. These actions are guided by fisheries surveys, assessments, research projects, and evaluation of public access needs. In the state's major coastal rivers, WRC biologists conduct annual assessments of anadromous species including striped bass, American shad, hickory shad, and river herring. Creel surveys are conducted on coastal rivers for anadromous species in collaboration with DMF. The WRC uses biological and creel survey data to develop management plans and strategies collaboratively with DMF.

Hatcheries:

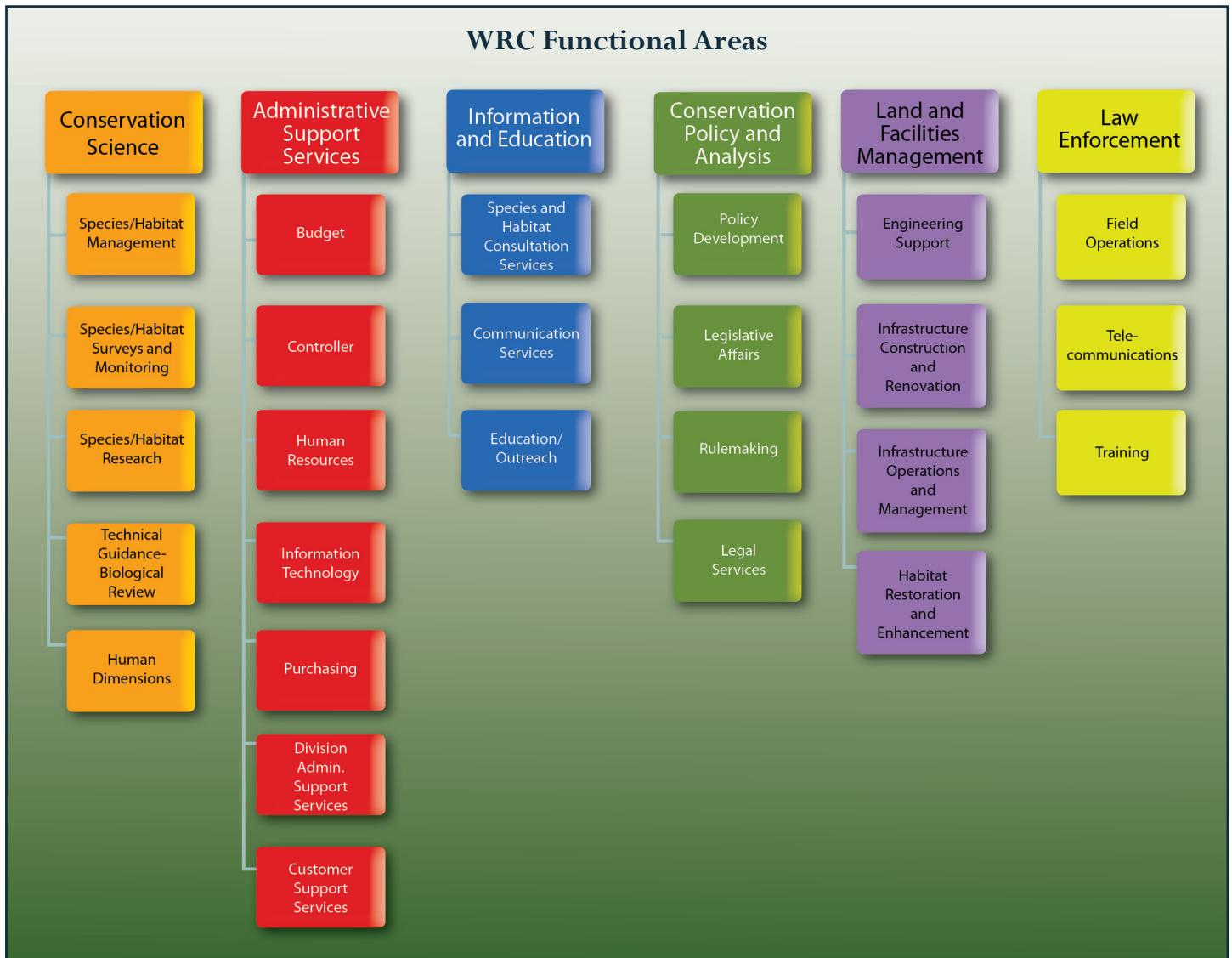
The WRC's hatchery system currently raises both game and non-game species for stocking primarily in inland waters of North Carolina. Two of these species, striped bass and American shad, are anadromous and are stocked in both inland and joint waters. Through a cooperative agreement with the U.S. Fish and Wildlife Service (USFWS) and DMF, the Edenton National Fish Hatchery provides striped bass for stocking in the Tar-Pamlico and Neuse rivers.

Technical Guidance:

Inland fishery resources are also conserved by providing technical guidance on planning efforts, development project permits, and environmental documents to avoid or minimize impacts, assist in local and regional planning efforts, and working with partners to enhance and restore degraded habitats. Technical guidance comments and reviews for aquatic and terrestrial resources are often provided in collaboration with DMF.

Law Enforcement:

Wildlife enforcement officers (WEO) are sworn, full-time state law enforcement officers with full arrest authority for state and federal violations. In particular, WEOs enforce the hunting, trapping and inland fishing laws on all lands and waters of the state to protect the resources of the state and the safety of its citizens. Under G.S. 75A, the WRC is the sole agency charged with enforcing the boating laws and regulations on all waters of the state, up to three miles offshore in the Atlantic Ocean.



Department of Agriculture and Consumer Services

The NCDA&CS was created and established by statute in G.S. 106-2 under the control of the Commissioner of Agriculture with the consent and advice of the Board of Agriculture. The Commissioner of Agriculture is a statewide elected official, and as such is a member of the Council of State. Duties of the Commissioner, and thus the NCDA&CS include many regulatory and consumer service activities, including the promotion and inspection of agriculture commodities.

NCDA&CS states the following as its mission, vision and goals:

Mission:

To provide services that promote and improve agriculture and agribusiness, protect consumers and businesses, and preserve farmland and natural resources for the prosperity of all North Carolinians.

The NCDA&CS is involved in fisheries management in three areas: aquaculture, marketing and food inspection.

Aquaculture:

The Aquaculture Development Act (G.S. 106, Article 63) designates NCDA&CS as the lead agency in providing assistance and information to obtain permits, promote investment in aquaculture facilities to expand production and processing, and work with state and federal agencies to develop and implement policies and procedures to facilitate aquacultural development. NCDA&CS' authority under this statute covers freshwater species and the regulation and licensing of commercial facilities rearing freshwater fish. NCDA&CS must be consistent with rules of WRC with respect to wild freshwater populations. WRC and NCDA&CS work together to ensure operations are compliant with the rules. Currently there are 345 active aquaculture licensed facilities, with 139 farms actively involved in commercial aquaculture.

Marketing:

The Seafood Marketing Program in the Division of Marketing has three primary goals: 1) promote NC's wild-caught and farm-raised seafood, 2) increase consumer awareness of the availability and quality of NC seafood, and 3) enhance the value and demand for NC seafood. To achieve the goals, the Program partners with local catch programs, engages in advertising in trade publications, consumer guide books, billboard, trade shows, and various other media markets, and provides point of sales materials for consumers. Further, the Program hosts a seafood wholesaler database (www.nc-seafood.org), and provides area seafood wholesaler and aquaculture farm tours for buyers.

Food Inspection:

The North Carolina Food and Drug & Cosmetic Act in G.S. 106-139 delegates to the Commissioner of Agriculture the authority to regulate the food supply in North Carolina. This authority is delegated to the Food and Drug Protection Division, which has the authority over all food products and food manufacturing facilities with the exception of shellfish sanitation, as explained above under Shellfish Sanitation and Recreational Water Quality.

FEDERAL AND INTERSTATE MARINE FISHERIES MANAGEMENT AGENCIES

Federal Fisheries Management

The U.S. Department of Commerce is the federal agency primarily charged with marine fisheries management through the National Oceanic and Atmospheric Administration ("NOAA"), which is a division of Commerce. NOAA, in turn, has the National Marine Fisheries Service, which is responsible for "the management, conservation and protection of living marine resources within the United States' Exclusive Economic Zone."³ NOAA shares enforcement and legal authority over certain species with the US Fish and Wildlife Service, which is a division of the Department of the Interior. Pursuant to a memorandum of agreement between these two agencies, species are divided up for primary responsibility. The federal division of responsibility and planned cooperation is reflected in the current division of responsibility between WRC and DMF, with DMF administering the marine resources, WRC administering inland fish, and shared responsibility for anadromous fish species.

³ <http://www.nmfs.noaa.gov/aboutus/aboutus.html>

Atlantic States Marine Fisheries Commission

In addition to direct federal laws that apply to North Carolina, the state is also a participant in the Atlantic States Marine Fisheries Commission and is obligated to certain rules through interstate compacts. In 1993 Congress passed the Atlantic Coastal Fisheries Cooperative Management Act.⁴ This act provides for the orderly use of regulated fisheries in the several states, and provides significant penalties for non-compliance by states.

Through the Atlantic States Marine Fisheries Commission, fisheries management plans are adopted, which apply to the states and are enforced by the states. If a state fails to enforce the fishery management plan in question, the U.S. Secretary of Commerce “shall declare a moratorium on fishing in the fishery in question within the waters of the non-complying state.”⁵ Severe civil and criminal penalties, as well as vessel and harvest forfeiture, apply to anyone violating a declared moratorium.

North Carolina is represented on the Atlantic states Marine Fisheries Commission by the DMF Director, A Governor’s appointee, and a legislative appointee appointed by the Governor. The three commissioners vote as a state, casting one vote for any issue affecting North Carolina.

CURRENT COOPERATIVE EFFORTS

Existing Areas of Coordination Among WRC, DMF and NCDA&CS

WRC, DMF and NCDA&CS currently collaborate on a multitude of issues and programs. Some of these areas of collaboration are mandated by rule or statute, while others were developed internally to improve the delivery of services to customers.

Marine Resources Fund and Marine Resources Endowment Fund:

In 2005, the N.C. General Assembly enacted G.S. 113-175 which requires those who harvest finfish recreationally in state coastal waters to purchase a fishing license. Revenues from Coastal Recreational Fishing License sales are deposited into two funds depending upon the type of license: the N.C. Marine Resources Fund and the N.C. Marine Resources Endowment Fund. The Coastal Recreational Fishing Licenses are sold through WRC’s Automated License and Vessel Information Network (ALVIN) system – a system that was enhanced through the funding from the Marine Resources Fund. The legislation directs that the funds will be used “to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.” Furthermore, the state treasurer will disburse these revenues “only upon written direction of both the Marine Fisheries Commission and the Wildlife Resources Commission.”

⁴ 16 USC Chapter 71

⁵ 16 USC § 5106 (c)

The Coastal Recreational Fishing License Grant Program was established in 2007 to fund projects that will meet the aforementioned objective. In June of each year, DMF and WRC receive request for proposals for consideration of funding from the N.C. Marine Resources Fund. Eligible applicants include universities, local N.C. government entities, DMF and WRC.

The agencies adhere to the legislation that states that the funds will be used “to manage, protect, restore, develop, cultivate, conserve and enhance the marine resources of the State”.

Recreational Fishing License Sales:

Recreational fishing licenses for both inland and coastal fishing can be purchased utilizing one of many sales outlets. The WRC provides sales services through more than 900 license agents statewide, including its Customer Services Support section, DMF offices, by telephone and online via mobile and traditional websites. DMF and WRC have cross-linked their websites so that consumers can more easily navigate between the two. WRC’s ALVIN interface provides this unified platform for license sales. DMF and WRC staff meet at least quarterly to discuss the cooperative efforts surrounding this cooperative arrangement.

Aquaculture

Although NCDA&CS is the lead agency on freshwater aquaculture, they work closely with and must be consistent with rules of WRC with respect to wild freshwater aquatic animal populations, including obtaining sign-off on non-native freshwater species. Not only does this collaboration ensure operations are compliant with the rules, but it allows for a better tracking of freshwater aquaculture facilities. WRC staff also provides technical guidance to reduce the risk of the introduction of exotic species into public trust waters.

The Aquaculture Development Act does not provide NCDA&CS authority over the culture of estuarine and marine species. The management authority for the culture of estuarine and marine species is provided to DMF in G.S. Chapter 113, Article 13.

Endangered Species:

By statute, most of the authority over N.C.’s endangered species is given to WRC in G.S. 113-331-337. In addition, WRC maintains a cooperative agreement with NOAA under which it receives certain federal funds for the oversight of endangered species in North Carolina.⁶ By rule and agreement, some of that authority is shared with DMF in 15A NCAC 03I .0107. This rule provides:

- (a) Pursuant to a cooperative agreement entered into on February 5, 1979, by the Department of Environment and Natural Resources, the Marine Fisheries Commission, and the Wildlife Resources Commission, the Wildlife Resources Commission will exercise regulatory jurisdiction over any species of sea turtle, and their eggs and nests, consistent with designation of such species as endangered or threatened by the U.S. Fish and Wildlife Service. As provided by said agreement, the law enforcement officers of both the Marine Fisheries Division and the

⁶ <http://www.nmfs.noaa.gov/pr/pdfs/conservation/NC.pdf>

Wildlife Resources Commission have jurisdiction to enforce any State laws and rules, including those contained in 15A NCAC 10I, relating to endangered or threatened species of sea turtles and their eggs and nests.

(b) The Fisheries Director may close or restrict by proclamation any coastal waters with respect to taking or attempting to take any or all kinds of marine resources when the method (equipment) used is a serious threat to an endangered or threatened species listed pursuant to 16 USC 1533(c). . . .

WRC is the state agency authorized to respond to endangered marine species strandings or entanglements through authorization from NOAA's Office of Protected Resources.

Other Examples of Inter-Agency Cooperation

Fishery Management Plans:

- River Herring Fishery Management Plan
- Estuarine Striped Bass Fishery Management Plan
- Striped Bass Cooperative Unit with WRC, DMF and USFWS, to determine annual stocking plan for hatchery fish, etc.

Fishery Data Collection and Analyses:

- Production of aging document to standardize methods, including:
 - o Estuarine Striped Bass in North Carolina
 - o Scale Aging Methods 2011
 - o WRC and DMF (revised June 2012)
- Collection of striped bass fin clips by DMF staff for DNA analysis by WRC
- Electroshock sampling for striped bass in the Neuse and Pamlico rivers
- Shared equipment such as fish scale press to process scales for aging and other equipment needed to process samples
- Striped bass tagging projects, including:
 - o Tagging of striped bass at the Edenton hatchery prior to release
 - o Coastal Recreational Fishing License Grant tagging of striped bass in the Cape Fear River to estimate population size
- Collection of aging/genetics samples for river herring, striped bass and American shad
- Coordination on fish kill and algae bloom investigations
- Sturgeon sampling
- Telemetry tagging of American shad this past winter by WRC staff to assist DMF staff
- Cooperative work on the Cape Fear Migratory Fish Group to develop an action plan for the Cape Fear River focusing on rebuilding anadromous fishes
- DMF assistance to WRC staff during sea turtle investigations

Habitat Protection:

- Collaboration on permit Collection of water quality data for Division of Water Quality
- Albemarle/Domtar-Plymouth (formerly Weyerhaeuser) Natural Resource Damage Assessment and Restoration
- Welch Creek Environment Protection Agency Superfund Site Remediation/Cleanup by Domtar-Plymouth
- Army Corps Currituck Sound Ecosystem Restoration Feasibility Study

Interstate Fisheries Management:

- DMF was instrumental in getting WRC seats at the Atlantic States Marine Fisheries Commission technical committee on shad/river herring and striped bass
- Inter-Jurisdictional Agencies Cooperative Work Plan
- Atlantic States Marine Fisheries Commission American Shad Fishing Plan

Customer Service:

- Coastal Recreational Fishing Licenses and Recreational Commercial Gear License sales
- Administration of grants from the Marine Resources Fund
- Regular exchange of communication referencing questions from public that pertain to WRC or DMF jurisdictions and rules
- Coordination on Recreational Guide and website presentation for the public when DMF size and bag limits on spotted seatrout, flounder, red drum and weakfish are mirrored by WRC
- Enhancement of waterfront access for the public through administration and development of property purchased through the Waterfront Access and Marine Industry funds

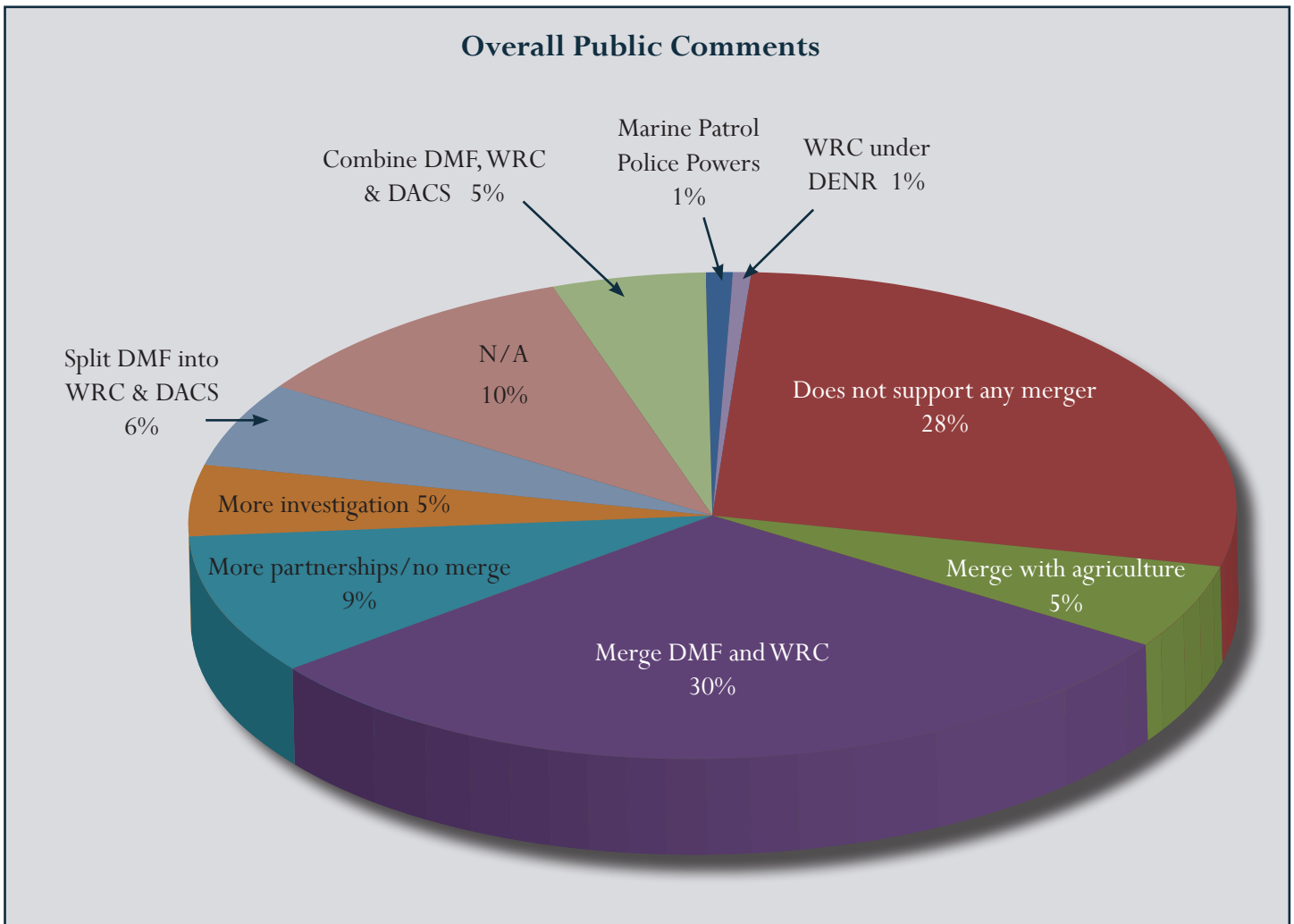
RESPONSE TO SENATE BILL 821

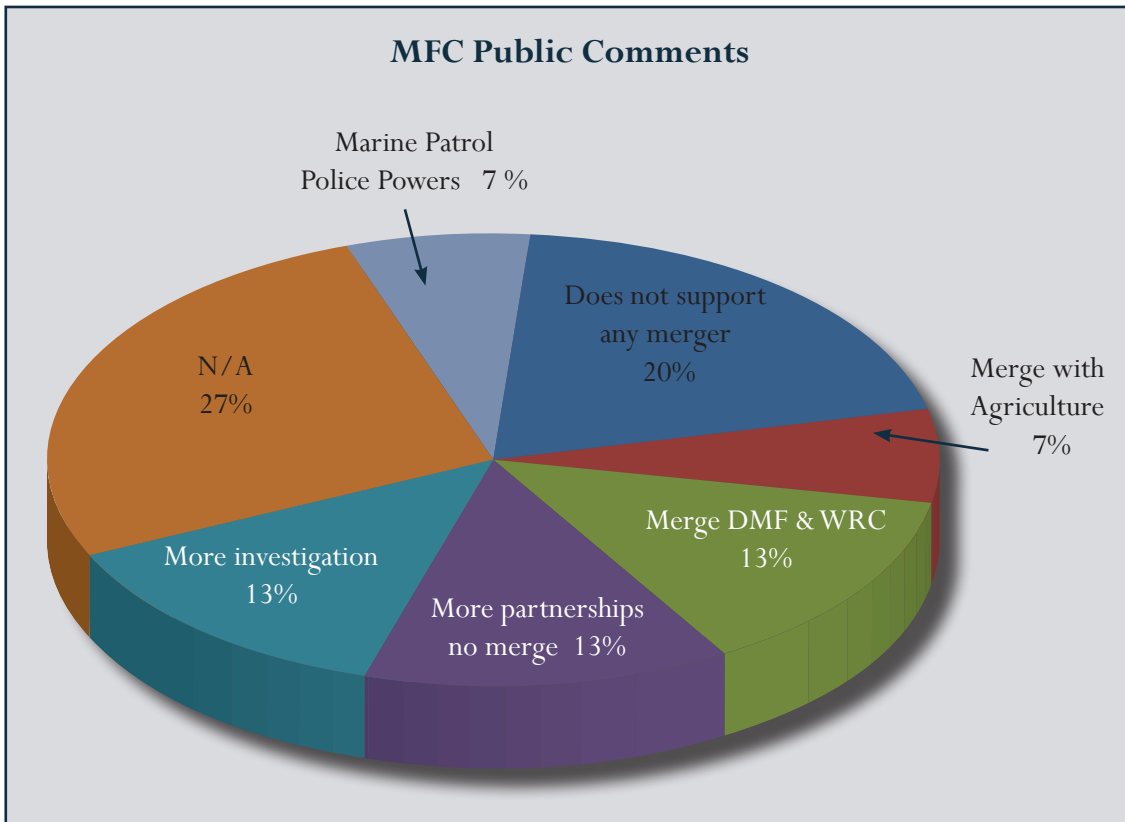
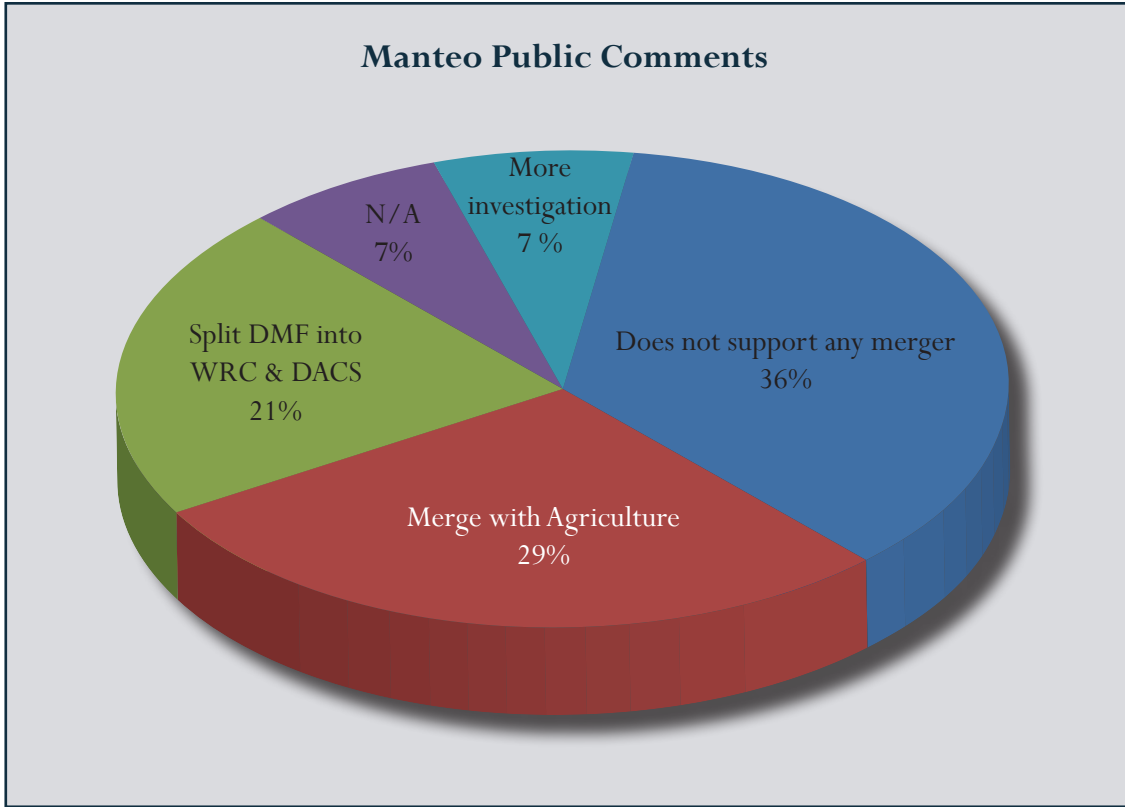
Pursuant to Senate Bill 821, DMF, WRC and NCDA&CS engaged in a joint public outreach effort to get specific input on the subject matter of this legislation. These efforts included the following:

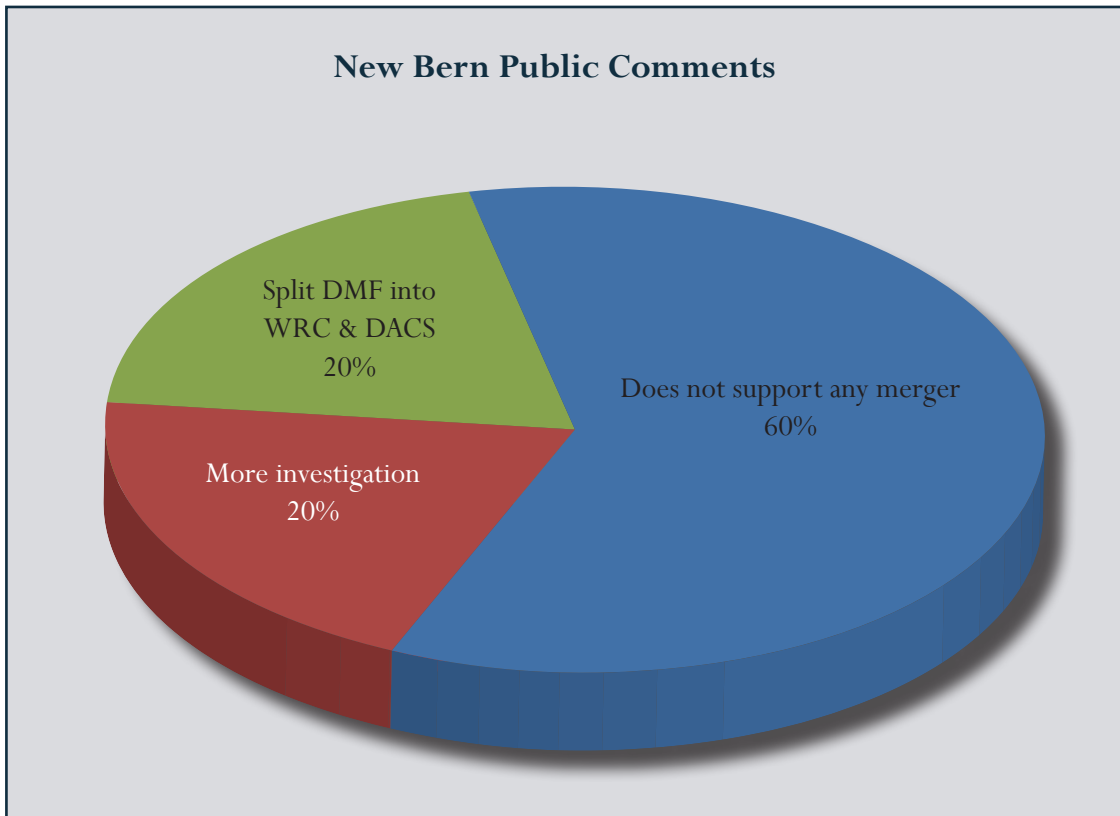
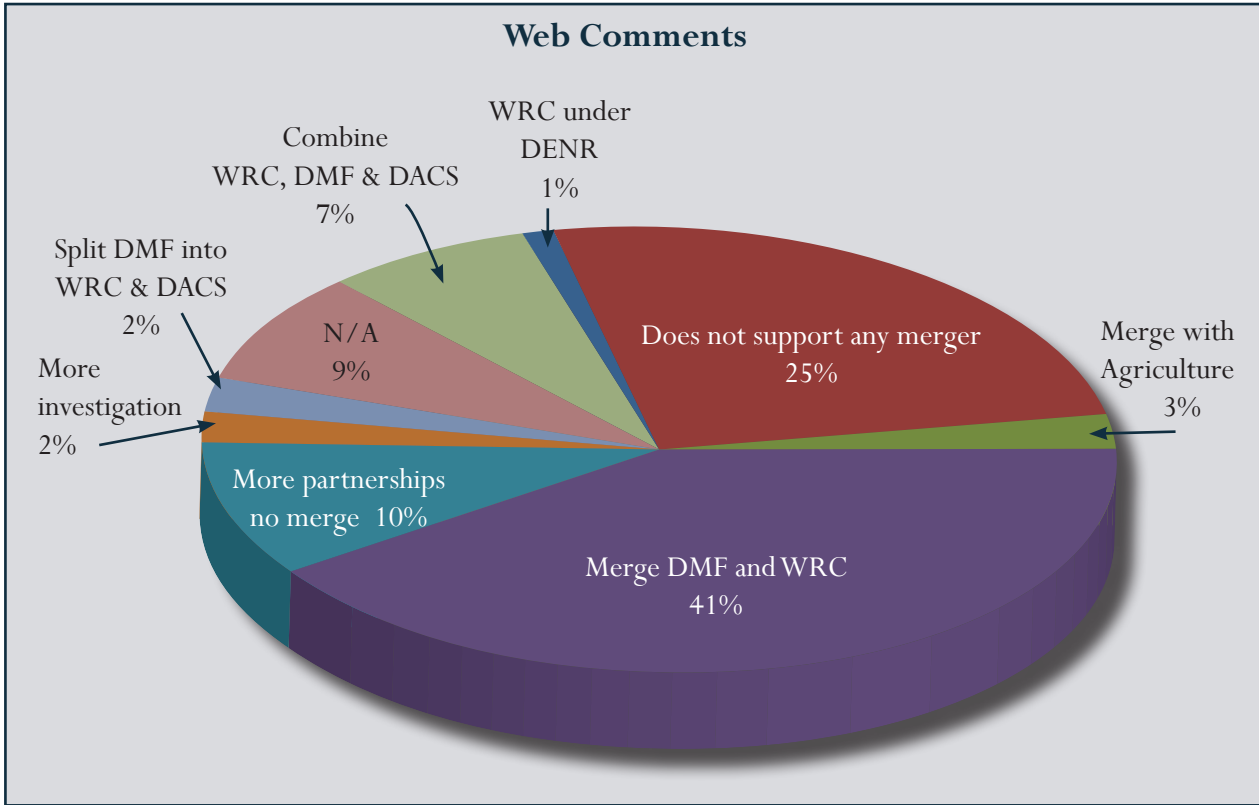
1. A public, non-agency specific email portal for the public to provide electronic comments, with those comments shared to all three responsible entities. The comment period closed on September 7.
2. Notice that the MFC and WRC would each respectively accept public comments on the subject matter of the legislation at their public meetings, which the MFC held on August 22 and 23 in Raleigh and WRC held on August 29 in Raleigh. Each entity shared the content of those comments received with the other participating entities.

3. Two public meetings with the sole purpose of gathering public input held in New Bern on September 5, and in Dare County on September 6. Those meetings were hosted by NCDA&CS and attended by all three participating entities.

The public comments from each of these outreach efforts received consideration by all of the entities charged with responsibility under Senate Bill 821. The comments covered a wide range of views. Most of the comments focused on responding to the idea of some kind of merger (both for and against), with only a few comments addressing other fishery matters. These comments are presented below in graphical format.







In soliciting comments, DMF, WRC and NCDA&CS posed the question as phrased in Senate Bill 821. This broad question elicited responses from various interested citizens and constituent organizations. Because of the diversity of opinions expressed, not every comment can be completely captured in a chart or graph. Where comments were difficult to characterize WRC, DMF and NCDA&CS made a careful effort to reach consensus on characterization. All comments, including those not amenable to being graphed, were carefully considered by all entities. In addition to the positions summarized in the charts above, 21% of commenters expressed opposition to further involving Agriculture in regulation of marine or inland fisheries and 6% of commenters opposed involving WRC in the regulation of marine fisheries

SUMMARY OF FINDINGS

At the close of the public comment period, representatives of WRC, DMF and NCDA&CS reviewed all of the comments submitted, including mailed written comments, comments received through the web portal, and all of the testimony given at the public hearings. These entities also engaged in an active dialog regarding the issues presented to them under Senate Bill 821. The conclusion reached after full consideration is that insufficient information exists to make a recommendation on wholesale reorganization of North Carolina's fisheries management structures.

Any reorganization of fisheries management should not proceed without caution. At this point, there has been no formal examination of the organizational cultures of DMF, NCDA&CS and WRC staff. Each of these entities provides numerous public services and products, and the potential for disruption should be understood before proceeding. A detailed analysis should be utilized to determine whether or not a reorganization would create efficiencies in the longer term, as well as to examine up-front costs to effectuating a reorganization. Public comments articulated concerns about service disruptions and reorganization costs, and the agencies agree that those concerns would require much more time to perform meaningful analysis.

At the close of public comment, considering the opinions offered by the public DMF, WRC and NCDA&CS do not see a clear public consensus on whether the state's fisheries management agencies might be reorganized to provide for more efficient, productive, and enjoyable uses of the state's fisheries resources. However, through the public comment process and internal agency examinations, certain areas have been identified as potential opportunities for further collaboration.

POTENTIAL EFFICIENCIES FROM ENHANCED INTERAGENCY COOPERATION

Efficiencies Between WRC and DMF

Endangered Species Response:

As noted above, WRC and DMF already have formal, extensive cooperation in this area. However, the increased demands on DMF under the Federal Endangered Species Act warrant a further look to see whether more interagency efficiency can be achieved.

N.C. fisheries, both commercial and recreational, have regular interactions with species listed as threatened or endangered under the federal Endangered Species Act. Principal among those listed species are threatened and endangered sea turtles and the endangered Atlantic sturgeon. Various fisheries, including N.C. gill net fisheries, are of concern to National Marine Fisheries Service as a result of their level of interaction with these species in the inside coastal and joint waters of the state. In order to allow these fisheries to operate, DMF has applied for permits under Section 10 of the Endangered Species Act to cover these gill net fisheries interactions.

DMF and WRC communicate closely, exchanging information about sea turtle strandings and entanglements. A WRC staff member sits on the Sea Turtle Advisory Committee, which advises the MFC on sea turtle issues.

DMF and WRC will continue further discussion of joint responsibilities and responses under the Endangered Species Act to determine whether deployment efficiencies can be achieved.

Marine Patrol-Wildlife Enforcement Officers:

Public comments suggested overlap of WRC and DMF law enforcement in coastal waters. Although overlaps occur in territorial jurisdictions, subject matter jurisdictions for each agency are uniquely defined by the General Assembly. DMF and WRC senior law enforcement staff and directors will conduct a careful detailed analysis to determine if increased effectiveness and efficiencies can be realized.

Public Outreach:

Several public comments addressed a desire for the inland and coastal fishing rules to be available through one unified rulebook and one unified guidebook. As a first step, cross-links to the existing rules will be highlighted on both WRC's and DMF's websites. Also, both agencies will provide copies of inland and coastal fishing regulations to any customer who requests them.

Efficiencies Between DMF and NCDA&CS

Aquaculture:

Commercial marine and freshwater aquaculture are both important industries in food production, having a \$52.9 million assessed value in 2011. Interagency cooperation is essential for the support and promotion of both industries. Currently, the NCDA&CS works with WRC to license and track freshwater production facilities. DMF could work with NCDA&CS to provide a complete listing of marine aquaculture licenses. A central database of aquaculture operations, both fresh water and saltwater, maintained through the NCDA&CS, would result in enhanced marketing and disaster assistance programs managed by the NCDA&CS. Further, a means of identifying all aquaculture operations is also needed for food production data, food safety, and resource management.

Marketing of Local Seafood:

Many potential opportunities exist in further collaboration of marketing local seafood, including enhanced cooperation of publicizing special events and activities, and the sharing of educational materials for consumer promotions. As mentioned earlier, a complete and comprehensive database of all aquaculture facilities would increase NCDA&CS ability to connect buyers to local product.

DMF and NCDA&CS will explore whether there are avenues where North Carolina's seafood could be promoted as a local commodity, along with North Carolina produce.

CONCLUSION

Through the Senate Bill 821 process, the DMF, WRC, and NCDA&CS have listened to feedback from constituent groups and have carefully considered those comments in the context of each agency's mission. Given only three months to study this complex and controversial issue, further analysis and study are needed. However, all three agencies support seeking efficiencies that can be achieved through enhanced interagency cooperation. Where the agencies have been cooperating well, they will continue to do so. Where improvements can be realized, the agencies will strive to recognize those opportunities and foster communication for enhanced service to the public. This will allow the agencies to provide for the most efficient, productive, and enjoyable uses of the state's fisheries resources

APPENDICES

APPENDIX A - Session Law 2012-190

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-190
SENATE BILL 821

AN ACT TO (1) DIRECT THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, AND THE DEPUTY SECRETARY FOR TRANSIT OF THE DEPARTMENT OF TRANSPORTATION TO JOINTLY STUDY FEES ASSOCIATED WITH THE ISSUANCE OF COASTAL FISHING LICENSES AND THE NUMBERING AND TITLING OF VESSELS; (2) DIRECT THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE COMMISSIONER OF AGRICULTURE TO JOINTLY STUDY THE REORGANIZATION OF FISHERIES MANAGEMENT IN THE STATE; (3) MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET DEPLOYED BY A MOTHER SHIP AND ONE OR MORE RUNNER BOATS IN COASTAL FISHING WATERS; (4) AMEND THE MARINE FISHERIES COMMISSION ADVISORY COMMITTEES; AND (5) PROVIDE THAT A SUPERMAJORITY OF THE MARINE FISHERIES COMMISSION IS REQUIRED TO OVERRIDE A RECOMMENDATION OF THE DIVISION OF MARINE FISHERIES REGARDING OVERFISHING OR REBUILDING OF FISH STOCKS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) It is the intent of the General Assembly to provide funding for the dredging and maintenance of the State's coastal inlets from fees charged to those who make use of the inlets.

SECTION 1.(b) In order to identify possible sources of funds for the purposes set out in subsection (a) of this section, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Executive Director of the Wildlife Resources Commission, and the Deputy Secretary for Transit of the Department of Transportation shall jointly study the fees associated with the issuance of coastal fishing licenses pursuant to Chapter 113 of the General Statutes and the numbering and titling of vessels pursuant to Chapter 75A of the General Statutes.

- (1) For coastal fishing licenses, the Director and Executive Director shall specifically:
 - a. Identify all types of fishing licenses issued for the purpose of taking fish in coastal fishing waters, both recreational and commercial.
 - b. Identify the fees associated with these licenses.
 - c. Identify the analogous licenses issued and fees charged by states with fisheries profiles similar to those of North Carolina, including at least South Carolina and Virginia.
 - d. Recommend several levels of increases in the license fees and calculate the amount of revenue that would be generated by the different levels of increase.
 - e. Identify any limitations under State or federal law on the use of license fees for purposes not related to the management of marine fisheries.
- (2) For the numbering and titling of vessels, the Executive Director shall specifically:



- a. Identify all requirements for the numbering and titling of vessels.
 - b. Determine whether there is a method for differentiating between vessels that are used predominantly in coastal fishing waters versus those that are used predominantly in inland fishing waters.
 - c. Identify the fees associated with the numbering and titling of vessels.
 - d. Identify the analogous vessel numbering and titling requirements and fees charged by states with coastal boating profiles similar to those of North Carolina, including at least South Carolina and Virginia.
 - e. Recommend several levels of increases in the fees associated with the numbering and titling of vessels and calculate the amount of revenue that would be generated by the different levels of increase.
 - f. Identify any limitations under State or federal law on the use of fees associated with the numbering and titling of vessels.
- (3) The Director and the Executive Director shall examine all other sources of funding, including the gas tax.

SECTION 1.(c) The Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Executive Director of the Wildlife Resources Commission, and the Deputy Secretary for Transit of the Department of Transportation shall jointly submit a report on the study required by subsection (b) of this section to the Legislative Research Commission's Committee on Marine Fisheries no later than September 1, 2012.

SECTION 2.(a) The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and the Commissioner of Agriculture shall, in consultation with various user groups, study the current organization of the State's fisheries management agencies and consider whether these agencies might be reorganized to provide for more efficient, productive, and enjoyable uses of the State's fisheries resources.

SECTION 2.(b) In conducting this study, the Executive Director, the Director, and the Commissioner shall specifically consider all of the following:

- (1) The efficient and effective transfer of statutory authority, powers, duties, and functions, including, but not limited to, rule making, licensing, and the rendering of findings, orders, and adjudications.
- (2) The efficient and effective transfer and consolidation of records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. This component of the study shall specifically identify any areas of overlap between agency programs or personnel.
- (3) The uninterrupted and unimpaired continuation of all services provided by the agencies, rules adopted or implemented by the agencies, contracts or other obligations entered into by the agencies, and proceedings to which any agency is a party.
- (4) All statutory, rule, and policy changes that would be necessary to reorganize fisheries management in the State.
- (5) Positions or duties regarding fisheries resource management currently carried out by the Marine Fisheries Commission or the Division of Marine Fisheries of the Department of Environment and Natural Resources that are within the scope of the overall mission of the Department of Agriculture and Consumer Services.
- (6) Any other issues necessary for the potential reorganization of fisheries management in the State.

SECTION 2.(c) The Executive Director, the Director, and the Commissioner shall jointly report on the study conducted pursuant to subsections (a) and (b) of this section to the Legislative Research Commission's Committee on Marine Fisheries no later than October 1, 2012.

SECTION 3.(a) G.S. 113-187 reads as rewritten:

"§ 113-187. Penalties for violations of Subchapter and rules.

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

- (1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.
- (4) Violating the provisions of a special permit or gear license issued by the Department.
- (5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas.

(e) Any person who takes menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters is guilty of a Class A1 misdemeanor."

SECTION 3.(b) S.L. 2007-320 is repealed.

SECTION 4.(a) G.S. 143B-289.57 reads as rewritten:

"§ 143B-289.57. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

...

(b) The Chair of the Commission shall appoint the following standing advisory committees:

- (1) The Finfish Committee, which shall consider matters concerning finfish.
- (2) ~~The Crustacean Committee, which shall consider matters concerning shrimp and crabs.~~
- (3) ~~The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.~~
- (3a) The Shellfish/Crustacean Advisory Committee, which shall consider matters concerning oysters, clams, scallops, other molluscan shellfish, shrimp, and crabs.
- (4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

...

(e) ~~The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.54(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions: Northern Regional Advisory Committee, encompassing areas from the Virginia line south through Hyde and Pamlico Counties and any counties to the west, and a Southern Regional Advisory Committee, encompassing areas from Carteret County south to the South Carolina line and any counties to the west. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented."~~

SECTION 4.(b) G.S. 113-200 reads as rewritten:

"§ 113-200. Fishery Resource Grant Program.

...

(e1) Grants Committee. – The Grants Committee shall consist of eleven members as follows:

- (1) Three employees of the Sea Grant College Program, appointed by the Director of the Sea Grant College Program.
- (2) Two employees of the Division of Marine Fisheries, appointed by the Fisheries Director.
- (3) Two members of the Marine Fisheries Commission, appointed by the Chair of the Marine Fisheries Commission.
- (4) ~~One member~~Two members of the ~~Northeast-Northern~~ Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the ~~Northeast-Northern~~ Regional Advisory Committee.
- (5) ~~One member of the Central Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the Central Regional Advisory Committee.~~
- (6) ~~One member~~Two members of the ~~Southeast-Southern~~ Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the ~~Southeast-Southern~~ Regional Advisory Committee.
- (7) ~~One member of the Inland Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the Inland Regional Advisory Committee.~~

...."

SECTION 4.(c) The terms of the members currently serving on the Crustacean, Shellfish, and the four regional advisory committees (Northeast, Southeast, Central, and Inland) shall expire on June 30, 2012. Effective July 1, 2012, the Chair of the Marine Fisheries Advisory Commission shall appoint no more than 11 members to the Northern Regional Advisory Committee and the Southern Regional Advisory Committee, established pursuant to subsection (e) of G.S. 143B-289.57, as amended by this section.

SECTION 5. G.S. 143B-289.52 reads as rewritten:

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

...

(e1) A supermajority of the Commission shall be six members. A supermajority shall be necessary to override recommendations from the Division of Marine Fisheries regarding measures needed to end overfishing or to rebuild overfished stocks."

SECTION 6. Sections 4(a) and 4(b) of this act become effective July 1, 2012. Sections 3(a) and 3(b) of this act become effective January 1, 2013, and Section 3(a) applies to offenses committed on or after that date. The remaining sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:54 p.m. this 16th day of July, 2012