

**BYLAWS OF THE
N.C. MARINE FISHERIES COMMISSION**

ARTICLE I

Authority

These procedures are adopted pursuant to the authority contained in N.C.G.S.143B-289.54.

ARTICLE II

Purpose

The purpose of the commission shall be to fulfill the duties prescribed for it in N.C. General Statutes, particularly N.C.G.S. 113-127, et. seq. (Including Articles 12 through 20, 23A, 23B and 23C), and N.C.G.S. 143B-279.8 and N.C.G.S. 143B-289.50 et. seq.

ARTICLE III

Membership

The membership of the commission shall be as prescribed N.C.G.S. 143B-289.54; each member, however, regardless of the category of interest in which appointed, shall undertake to represent all interests fully, fairly and without prejudice.

ARTICLE IV

Officers and Staff

Section 1.

Officers of the commission shall be a chairman and a vice chairman.

(a) The chairman shall be designated by the governor of North Carolina from among the members pursuant to N.C.G.S. 143B-298.55 and shall serve at the pleasure of the governor. Duties of the chairman shall be to guide and coordinate the activities of the commission; preside over meetings of the commission; report and advise the governor and secretary on activities of the commission on marine and estuarine conservation matters; to make appointments and designations as set out in these procedures and in the General Statutes; to participate in and vote if desired on business of the commission; to rule, consistent with these procedures, on matters of procedure; to function as a member of all other committees; and to perform such other duties as are appropriate to the chairmanship.

(b) The vice chairman shall be selected by majority vote of the members of the commission from among its membership at its closest scheduled meeting after July 1. The vice chairman shall serve a one year term beginning July 1 and ending June 30 the following year and may serve any

number of consecutive terms. Duties of the vice chairman shall be to function in place of the chairman in the event of his absence or incapacity; and to perform such other duties as are appropriate to the vice-chairmanship or to membership on the commission.

Section 2.

The staff of the commission shall be supplied by the director of the Division of Marine Fisheries and Department of Environment and Natural Resources as provided by N.C.G.S. 143B-289.54 (k). The main staff to assist the commission shall be a commission liaison and an office assistant.

ARTICLE V

Meetings

Section 1.

The commission shall meet at least once in each quarter, at such time and place as it may determine, except that at least three of the four quarterly meetings shall be held in one of the coastal regions as defined in N.C.G.S. 143B-289.54, as provided by N.C.G.S. 143B-289.56.

Section 2.

The commission may hold additional meetings at anytime and place within the state upon call of the chairman, or upon the written request of at least four members, provided timely notice in advance of all additional meetings shall be given to each member and to the public as provided by N.C.G.S. 143-318.12. Emergency meetings of the commission may be called by the chairman. In response to the request of at least five members of the commission to review proclamation decisions pursuant to N.C.G.S. 113-221 (e) (1), the chairman may call an emergency meeting. In addition, work sessions may be scheduled by the commission chairman, as needed.

Section 3.

Six members of the commission shall constitute a quorum for the transaction of business. A quorum of the commission may transact business only if one member, other than the chair, appointed pursuant to subdivision (1), (2), or (3) of N.C.G.S. 143B-289.54(a) and one member, other than the chair, appointed pursuant to subdivision (4), (5), or (6) of N.C.G.S. 143B-289.54(a) are present.

If the commission is unable to transact business because the membership requirements of this section are not met, the chair shall call another meeting of the commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the commission was unable to transact business. Five members of the commission shall constitute a quorum for the transaction of business at a meeting called under this procedure and the membership requirements for a six member quorum shall not apply to such a meeting.

In accordance with N.C.G.S. 143B-289.52 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 4.

Meetings of the commission shall be open to the public but the commission may hold executive session where allowed by N.C.G.S. 143-318.11.

Section 5.

Meetings of the commission may be held through phone conference provided timely notice shall be given to each member and the public as provided by N.C.G.S. 143-318.12 and 143-318.13.

ARTICLE VI

Record

Section 1.

Minutes and other records of all meetings and hearings of the commission shall be kept by its staff, under direction of the director of the Division of Marine Fisheries, and such minutes and records shall be supplemented, where possible, by electronic recording. Summary minutes will be provided to the commission, except that minutes will reflect exact wording on motions. The full minutes will be provided upon request.

Section 2.

Minutes of all meetings and hearings, and other records of the commission, shall be collected under direction of the director of the Division of Marine Fisheries, and maintained in accordance with the Division of Marine Fisheries' records retention policy.

Section 3.

An Administrative Procedures Act Coordinator designated by the director of the Division of Marine Fisheries shall be responsible for filing all rules of the commission in the form and manner prescribed by applicable N.C. Statutes.

ARTICLE VII

Standard Order of Business

Section 1.

The commission adopts the following as its standard order of business provided that the order of business may be altered by the chairman in his discretion or upon affirmative action of a majority of the commission.

1. Preliminary Matters

- a. Call to Order
 - b. Roll Call
 - c. Conflict of Interest Reminder
 - d. Approval of Agenda and Minutes
 - e. Opening Remarks, Ceremonies
2. Public Comments
 3. Chairman's Report
 4. Committee Reports
 5. Action Items
 6. Information Items and Reports
 7. Director's Report
 8. Concluding Remarks
 - a. Members
 - b. Chairman
 9. Adjournment

Section 2.

Except as provided for in this or other sections of the bylaws, the commission shall take no actions on rule making issues that have not been acted on by the appropriate committee at a scheduled meeting of the committee which was held prior to a previous commission meeting. Exceptions to this section include the adoption of emergency or temporary rules and the adoption of revised rules to resolve objections to rules by the Rules Review Commission or its staff. The commission may suspend this bylaw by the affirmative vote of at least two-thirds majority of those present and voting.

ARTICLE VIII

Notice Requirements

Section 1.

In accordance with N.C.G.S. Chapters 143, 143B and 150B, the secretary of the Department of Environment and Natural Resources, or his designee, shall be responsible for timely issuance of any applicable notice to those parties upon whom the right of legal notice of commission hearings, meetings, decisions, and official actions is conferred.

Section 2.

The commission may adopt special notice procedures as it deems necessary, subject to the requirements of the General Statutes.

ARTICLE IX

Committees

Section 1.

The chairman shall appoint such committees as he or the commission shall from time to time deem necessary. The chairman shall designate the chairman or co-chairmen of each committee from among its members and shall be an ex-officio member of each committee. As an ex-officio member, the chairman has the same rights, powers and duties as other committee members. A majority of the duly appointed members of each committee shall constitute a quorum.

Section 2.

The Marine Fisheries Commission shall adopt internal procedures necessary to the discharge of committee business; provided, no procedures so adopted shall be inconsistent with these procedures or any other rules adopted by the commission or with any applicable statutes.

Section 3.

The following committees of the commission are established pursuant to N.C. G.S. 143B-289.57; however, as provided in Section 1 of this Article, the chairman or the commission may deem it necessary to establish additional committees:

Standing Committees

Finfish Advisory Committee

Shellfish/Crustacean Advisory Committee

Habitat and Water Quality Advisory Committee

Regional Committees

Northern Advisory Committee

Southern Advisory Committee

Each standing committee shall consist of no more than 11 members as prescribed in N.C. G.S. 143B-289.57 and shall be comprised of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. Each regional committee shall consist of no more than 11 members as prescribed in N.C.G.S. 143B-289.57 and shall include commercial and recreational fishermen. Members shall serve staggered three year terms as determined by the commission.

Section 4.

Each standing advisory committee shall review and make findings and recommendations on all matters referred to the committee by the commission. Each standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The commission shall consider all findings and recommendations submitted by standing advisory

committees.

Section 5.

The chairman of the commission shall appoint advisory committee members for each of the standing and regional committees of the commission and designate a chairman or co-chairmen for each committee from among its membership. Advisory committee members shall have full voting authority for matters discussed and brought to a vote during committee meetings. Attendance requirements for advisory committee members are outlined in Article XII. The chairman of the commission may appoint commission members as ex-officio members of standing and regional advisory committees to serve as liaisons between the commission and the committee. Ex-officio members of advisory committees have the same rights, powers, and duties as other committee members.

Section 6.

The chairman of the commission shall appoint an advisory committee to assist in the development of each fishery management plan. The committee shall be composed of commercial and recreational fishermen and scientists with expertise in the fishery for which the fishery management plan is being developed. In addition to advising the department in the development of the fishery management plan, the committee shall report its findings and recommendations to the appropriate standing committee. The chairman of the commission may appoint commission members as ex-officio members of fishery management plan advisory committees. Ex-officio members of advisory committees have the same rights, powers, and duties as other committee members.

Section 7.

No person who has a history of significant noncompliance with state or federal laws, regulations, or rules for the protection of marine and estuarine resources in any state or jurisdiction shall be eligible for appointment to a commission committee.

Individuals appointed by the chairman to an advisory committee, who are charged with significant violation(s) of the state or federal laws, regulations, or rules for the protection of marine and estuarine resources in any state or jurisdiction, may be suspended by the chairman from membership until final disposition of the violations charged. During a suspension, the adviser shall not deliberate, vote, or participate as a member of the respective committee. If the charged violations are not sustained or the individual is found not guilty, the suspension will be lifted and the advisory committee membership will be reinstated. If the charge is sustained or if the individual is found guilty, the committee member shall be removed by the chairman from the committee.

ARTICLE X

Parliamentary Procedures

Section 1.

The rules contained in the current edition of Robert's Rules of Order shall govern the commission in all meetings, where applicable and not inconsistent with these procedures and any special rules or order the commission may adopt, or with any statutes applicable to the commission.

Section 2.

The chairman may appoint a member of the commission to serve as parliamentarian. If so appointed, his duty shall be to interpret the intent of these procedures or, where these procedures do not provide the necessary guidance, to interpret the procedures set out in the current edition of Robert's Rules of Order as guidance to the conduct of meetings of the commission.

Section 3.

The chairman or co-chairman of any committee may or may not vote on any issue before the body over which that person is presiding. If a tie vote occurs, the motion fails.

ARTICLE XI

Resolutions

All resolutions prepared by the committees of the Marine Fisheries Commission must be reviewed and signed by the chairman of the committee that originated such resolutions before submission to the commission. In no event shall committee resolutions be forwarded without review and signature by the committee chairman. Any resolutions prepared by the commission as a whole shall be reviewed and signed by the commission chairman.

ARTICLE XII

Attendance

Regular attendance at meetings and public hearings of the commission is a duty of each member. Individual members may attend meetings of the commission through phone conference. Commission members recognize that, pursuant to N.C.G.S. 143B-13 (b) (iv), their membership becomes vacant by their ceasing to discharge the duties of their office over a period of three consecutive months, except when prevented by illness. Excused absences must be approved by the chairman and shall be reflected in the minutes. Pursuant to Executive Order No. 34, issued by Gov. Bev Perdue on Dec. 9, 2009, commissioners are required to attend at least 75 percent of the commission's regularly scheduled meetings on an annual basis. Failure to meet this standard constitutes grounds for removal from the commission. The commission's liaison is required to provide an annual report of commission members' attendance to the governor's Boards and Commissions Office.

Attendance at advisory committee meetings is a duty of each member of the commission and public appointed to such committees. The chairman of the commission, as an ex-officio member of all committees, is not subject to the attendance requirement for members appointed to committees as ex-officio members. Committee members are required to attend at least 75 percent of the committee's regularly scheduled meetings on an annual basis. Failure to meet this standard constitutes grounds for removal from the committee by the commission chairman. Excused absences must be approved by the committee's staff lead and shall be reflected in the minutes. The staff lead is required to provide an annual report of committee members' attendance to the Marine Fisheries Commission Office.

ARTICLE XIII

Ethics and Conflict of Interest

Section 1.

The commission is subject to the State Government Ethics Act, N.C.G.S. 138A-1, et. Seq., establishing the State Ethics Commission, as amended and as it may later be amended. The members of the commission, regardless of appointing authority, are bound by the standards enunciated in the State Government Ethics Act and the interpretations of the standards as developed through promulgations and advisory opinions of the State Ethics Commission. In addition, commission members shall abide by ethical standards, set forth in N.C.G.S. 143B-289.54 (g). To the extent that these two sets of standards conflict, the ethical standards in N.C.G.S. 143B-289.54 (g) shall control.

Section 2.

Members of the Marine Fisheries Commission shall not vote or otherwise participate in any matter when the participation will violate N.C.G.S. 143B-289.54 (g) (2) which states: "Voting/conflict of interest - A member of the Commission shall not vote on any issue before the Commission that would have a "significant and predictable effect" on the member's financial interest. For purposes of this subdivision, "significant and predictable effect" means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector of gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties."

Section 3.

Members of the Marine Fisheries Commission must police themselves against actual and potential conflicts in the discharge of their statutory duties. Members may disclose a potential conflict of interest in front of commission members. In circumstances involving actual conflict of interest, the member must immediately discontinue any involvement in the matter including discussions of it with other members of the commission or staff to the commission. Members who disqualify themselves for actual conflict of interest must file a statement with the chairman of the commission or announce their decision in the next meeting of the commission. Members of the commission may appear to defend themselves if regulatory actions are initiated against them by the department or the commission.

Section 4.

Unless a member of the Marine Fisheries Commission with a potential conflict of interest places it in the public record, the member must withdraw from participation in the matter. When a member withdraws from a matter due to a potential conflict of interest, no further explanation is

required. Should the potential conflict of interest be disclosed in a written document, it must be read into the minutes of the commission before deliberation or discussion of the matter begins. A member with a potential conflict of interest who decides to participate in the pending matter must disclose, in the commission meeting when the matter is called as an agenda item, the nature of the potential conflict of interest and the reason it does not cause them to withdraw from further participation in the matter.

ARTICLE XIV

Gift Ban

Pursuant to Executive Order No. 34, issued by Gov. Bev Perdue on Dec. 9, 2009, commissioners are prohibited from accepting gifts from any contractors of the appointee's board. But allows for exception for gifts that would otherwise be allowed under the State Ethics Act, regardless of whether the appointee is covered by the Ethics Act. Commissioners should seek assistance from the commission's ethics commission liaison if they have concerns about accepting any gift.

ARTICLE XV

Removal for Indictment or Failure to Cooperate

Executive Order No. 34, issued by Gov. Bev Perdue on Dec. 9, 2009, provides that indictment for a felony or failure to cooperate in a state or federal investigation constitutes grounds for removal of an appointee from a board or commission.

ARTICLE XVI

Ethics Education

Pursuant to N.C.G.S.138A-14 every public servant and ethics liaison is required to complete an ethics and lobbying education presentation within six months of the person's appointment or employment and complete a refresher presentation at least every two years thereafter.

The willful failure of a public servant serving on a board or commission to comply with the education requirements may subject the person to removal from the board or commission.

ARTICLE XVII

Exercise of Authority

Section 1.

Rules, standards, authorizations, licenses, prohibitions, prescriptions or restrictions proposed for adoption, establishment, modification, amendment, deletion or repeal, pursuant to N.C. G.S. 143B-289.52, shall be acted upon by the commission in conformity with the provisions of applicable statutes, particularly N.C.G.S. Chapter 150B.

Section 2.

Hearings conducted by the commission on the adoption, amendment or repeal of a rule, or on other proposed exercise of the commission's authority, shall be before the commission, a panel of commissioners, a single commissioner or qualified employee or employees of the Department of Environment and Natural Resources, as designated by the chairman, and the chairman shall designate who shall preside. Those designated by the chairman to preside over hearings, or the chairman, as the case may be, shall determine how much time is allocated for each individual's comments based on the complexity of the matter being considered, the public interest in the matter and the necessity for fair and impartial hearing.

Section 3.

In determining who shall be qualified to hear matters on behalf of the commission at a public hearing, the chairman shall consider the geographic location of the hearing, the complexity of the matter being considered, the public interest in the matter and the necessity for fair and impartial hearing.

Section 4.

Those designated to hear any matter for the commission shall report their recommendations, together with the evidence and record of the hearing, to the full commission for decision and action, and may move adoption thereof. No further or additional evidence or information should be received by the commission, the hearing being closed, except as allowed by Section 8 of this Article.

Section 5.

With respect to any individual contested case pending before the commission, all members of the commission and hearing officers shall refrain from directly or indirectly communicating outside of formal hearing procedures with any person, party or their representative regarding issues of fact or law pertaining to the pending matter unless all parties are provided notice of the communication and given an opportunity to participate therein. This section shall not be deemed to limit discussion of such pending matters among commission members.

Section 6.

Contested case hearings, or administrative hearings, conducted pursuant to N.C.G.S. 113-171(f) are governed by Article 3 of Chapter 150B of the N.C. General Statutes, and require a final decision by the commission. It is each member's responsibility to review and become familiar with the hearing record and proposals for a decision prior to the meeting at which the decision is to be made. Parties to the proceeding, but not the general public, will be given the opportunity to address the commission, after the recommendation of the staff hearing officer or panel is received. Oral presentations are limited to issues of record, and shall not exceed 15 minutes in length, unless the chairman rules otherwise. After all presentations, discussion and voting shall proceed. Pursuant to N.C.G.S. 143-318, executive sessions may be called for discussion of legal questions.

Section 7.

Remission hearings are allowed by the Committee on Civil Penalty Remissions in situations in which the party assessed a civil penalty by the department agreed that an evidentiary hearing is unnecessary, that all facts alleged by the Department of Environmental and Natural Resources are

stipulated, and that the only issue for resolution is the reasonableness of the penalty imposed. The amount of the penalty will be determined in accordance with N.C.G.S. 143B-289.53 and the internal operating procedures of the Marine Fisheries Commission. The recommendation by the secretary or his designee on the remission request shall be the final agency decision unless it is modified by the Committee on Civil Penalty Remissions through a motion and vote of a majority of the committee in attendance. The committee may order the full penalty, accept the recommendation of the secretary or his designee or reduce the penalty in accordance with N.C.G.S. 143B-289.53. Upon submission of a written request, parties to the proceeding, but not the general public, will be given the opportunity to address the committee, after the recommendation of the staff is received. Oral presentations are limited to issues of record and should not exceed 10 minutes unless the chairman rules otherwise. Pursuant to N.C.G.S. 143-318, executive sessions may be called for discussion of legal questions.

Section 8.

The commission at its regularly scheduled meetings, or at meetings called by the chairman, will frequently hear reports and recommendations for the adoption of rules which have been subjected to public notice, comment period and hearings. The commission will refrain from allowing additional public comment at the meeting, since the matter is not then in public hearing; but the commission may allow limited public discussion if the circumstances warrant.

Section 9.

The commission, in granting proclamation authority to the director of the Division of Marine Fisheries under N.C.G.S. 113-221 (e), shall include the variable conditions supporting the delegation of such authority.

ARTICLE XVIII

Suspension of Bylaws

The commission may suspend the operation of any provision of the bylaws which establishes a procedural requirement for the conduct of the commission's business by the affirmative vote of at least two-thirds majority of those present and voting for the duration of the meeting at which the vote is taken or for a shorter interval. Suspension of a bylaw procedural requirement does not excuse the commission from complying with statutory procedural requirements applicable to the conduct of commission business.

ARTICLE XIX

Amendments

These procedures may be amended at any regular or additional meeting of the commission by a two-thirds vote of the members present, a quorum being required, provided that a written copy of the proposed amendment must have been mailed to each commission member at least 10 days prior to the meeting or otherwise have been made available to each member at least five days prior to the meeting.

This procedure adopted by the
Commission effective June 25, 1998,

amended effective Jan. 22, 1999,
amended effective Nov. 16, 2000,
amended effective Feb. 28, 2013.

A handwritten signature in black ink, appearing to read "W. Robert Bizzell". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

W. Robert Bizzell, Chairman
N.C. Marine Fisheries Commission