



# Oyster and Hard Clam Fishery Management Plan Amendments

Marine Fisheries Commission

February 18, 2016

*Department of Environmental Quality*



## *Overview of the Issues*

- Handouts of the presentation and a companion document will be used to guide us through the presentation
- Thirteen issues across both plans
- Two issues had a lot of discussion and input with different recommendations from the advisory committee and the division
- Three issues only had minor differences between the advisory committee and division recommendations
- Eight issues had agreement

## *Oyster and Hard Clam Issue: Consider the elimination of the Shellfish License and require all shellfish harvesters to have a Standard/Retired Commercial Fishing License*

- 1994 - Moratorium on sale of commercial licenses
- New license system implemented in 1999 that is currently in place
- Shellfish License is restricted to N.C. residents and inexpensive
- The number of shellfish license holders with no commercial landings is higher than the number of shellfish license holders that commercially landed shellfish in the southern region
- Increased effort and participation in the oyster fishery, especially in the southern portion of the state by those who hold only a shellfish license
- Shellfish License is the most open access commercial fishing license available

*Oyster and Hard Clam Issue: Consider the elimination of the Shellfish License and require all shellfish harvesters to have a Standard/Retired Commercial Fishing License*

Division	Advisory Committee
<p>From <b>N.C. 58 Bridge</b> south to state line, maintain a daily trip limit of two bushels of oysters per person maximum four bushels of oysters per vessel off public bottom for holders of the Shellfish License. Maintain the daily trip limit at five bushels of oysters per person for Standard/Retired Commercial Fishing License holders in the southern region</p>	<p>From <b>Swan Point Marina</b> south to the state line, maintain a daily trip limit of two bushels of oysters per person maximum four bushels of oysters per vessel off public bottom for holders of the Shellfish License. Maintain the daily trip limit at five bushels of oysters per person for Standard/Retired Commercial Fishing License holders in the southern region</p>

*Oyster and Hard Clam Issue: Consider the elimination of the Shellfish License and require all shellfish harvesters to have a Standard/Retired Commercial Fishing License*

Division	Advisory Committee
<p>Maintain the cost of the shellfish license allowing for harvest of all shellfish <b>except oysters</b>; require Standard/Retired Commercial Fishing License with a shellfish endorsement to harvest oysters from public bottom (<b>requires statutory change</b>)</p>	<p>Allow Shellfish License holders to be eligible to acquire a Standard Commercial Fishing License after they show a history of sale of shellfish</p>

*Oyster and Hard Clam Issue: Consider the elimination of the Shellfish License and require all shellfish harvesters to have a Standard/Retired Commercial Fishing License*

## **Committee Recommendations**

- Shellfish/Crustacean : Same as the advisory committee
- Southern, Northern: Same as the division
- Habitat and Water Quality: Same as the advisory committee with this additional recommendation:
  - Require all shellfish harvest by shellfish license holders be reported through the Trip Ticket Program or some other reporting method provided by division or through Marine Fisheries Commission rulemaking

*Oyster and Hard Clam Issue: Consider the elimination of the Shellfish License and require all shellfish harvesters to have a Standard/Retired Commercial Fishing License*

## **Public Comments**

- Support to lower the commercial oyster harvest limit to two bushels per person for holders of the Shellfish License in the southern region (two separate comments)
- Discussion needs to be stressed on the \$50 license, which is not meant to be used as a full time license

## *Oyster Issue: Assessing and mitigating harvest effort impacts on oyster resources in the southern region*

- No estimates of abundance for oysters
- Primarily intertidal oysters in southern region and more vulnerable to hand harvest
- Shellfish License available to all N.C. residents
- Recreational harvest unknown
- From 1994 to 2013 the southern region produced 47 percent of the total oyster harvest
- Southern region encompasses just 5.7 percent of the total coastal water body area of the state, and only 4.5 percent of the area open to shellfishing



# *Oyster Issue: Assessing and mitigating harvest effort impacts on oyster resources in the southern region*

Division	Advisory Committee
<p>Increase efforts to plant and monitor available cultch material in the southern region and to <b>encourage</b> the review and approval by regulatory agencies of the use of alternative cultch material</p> <p>Explore a preliminary fishery independent index of oyster abundance to inform future management actions</p>	<p>Increase efforts to plant and monitor available cultch materials in the southern region <b>using lessons learned to maximize success in the cultch planting program</b> and to <b>emphasize</b> the review and approval by regulatory agencies of the use of alternative cultch material</p> <p>Explore <b>and attempt to develop</b> a preliminary fishery independent index of oyster abundance to inform future management actions.</p> <p>Decrease the culling tolerance to five percent statewide <b>(rule change required)</b></p>

# *Oyster Issue: Assessing and mitigating harvest effort impacts on oyster resources in the southern region*

## **Committee Recommendations**

- Shellfish/Crustacean: Same as the advisory committee
- Southern: Same as the division and this additional recommendation:
  - Clarify that southern region be defined as waterbodies located south of the N.C. 58 Bridge
- Northern, Habitat and Water Quality: Same as the division

# *Oyster Issue: Assessing and mitigating harvest effort impacts on oyster resources in the southern region*

## **Public Comments**

- Stock more oysters and clams to clean our waters and to enhance habitat and food supplies
- Aquaculture is the best way to supply oysters without damaging habitat and provides a superior product
- Some kind of action is necessary to prevent further damage and allow recovery
- Raise the minimum size of oysters to 3½ to 4 inches
- Consider a closure to oyster harvest for this area
- The oyster crop is devastated in the southern area, consider decreasing the culling tolerance to five percent

# *Select Preferred Management Options for These Two Issues*

Consider the elimination of the Shellfish License and require all shellfish harvesters to have a Standard/Retired Commercial Fishing License

Assessing and mitigating harvest effort impacts on oyster resources in the southern region

# *Oyster and Hard Clam Issue (Private Culture): Modify shellfish lease provisions*

## New issues and re-visiting old issues:

- Ease restrictions to encourage growth
- Increase acreage
- Easing production limits
- “Acts of God” extensions
- Transferring terminated leases

# *Oyster and Hard Clam Issue (Private Culture): Modify shellfish lease provisions*

## Division and Advisory Committee

Establish a rule to support extensions where “Acts of God” prevent a lease holder from making production, with a two year extension and only one extension allowed per term (**rule change required**)

Allow leases returned to the state to remain delineated for one year to allow the pre-existing leased bottom to be re-issued to other shellfish growers (**requires statutory change**)

Improve public notice of proposed lease applications on the physical lease, at fish houses, and/or through electronic notices

*Oyster and Hard Clam Issue (Private Culture):  
Modify shellfish lease provisions*

Division	Advisory Committee
Status quo (maintain five acres within a Mechanical Methods Prohibited Area and 10 acres within a Mechanical Methods Area, not to exceed 50 acres)	Allow a maximum of 10 acres in both Mechanical Methods Prohibited Areas and Mechanical Methods Areas <b>(rule change required)</b>

# *Oyster and Hard Clam Issue (Private Culture): Modify shellfish lease provisions*

## **Committee Recommendations**

- Shellfish/Crustacean, Habitat and Water Quality: Agreed with the division and advisory committee recommendation to support extension for “Acts of God”
- Shellfish/Crustacean, Southern: Agreed with the division for status quo to maintain five acres in the mechanical methods prohibited area and 10 acres within a mechanical methods area, not to exceed 50 acres
- Habitat and Water Quality: Agreed with the advisory committee to allow a maximum of 10 acres in both Mechanical Methods Prohibited Areas and Mechanical Methods Areas



# *Oyster and Hard Clam Issue (Private Culture): Modify shellfish lease provisions*

## **Committee Recommendations**

- Shellfish/Crustacean, Southern, Habitat and Water Quality: Agreed with the advisory committee to allow leases returned to the state to remain delineated for one year to be re-issued to other growers. They specified a time period
- Shellfish/Crustacean, Southern, Habitat and Water Quality: Agreed with the advisory committee to improve public notice of proposed lease applications
- Northern: No consensus

*Oyster and Hard Clam Issue (Private Culture):  
Modify shellfish lease provisions*

## **Public Comments**

- Better streamline the process for leases
- Use GPS to delineate the lease
- Improve outreach on seed sources for leaseholders

*Select Preferred Management  
Options for this Issue*

**Modify shellfish lease provisions**

## *Oyster Issue: Re-open the shallow bays (less than 6 feet) of Pamlico Sound to mechanical harvest*

- Mechanical gear is restricted to deeper portions of the sounds, rivers and bays north of Core Sound
- About 30,000 acres closed to mechanical harvest gear, in the upper portions of the bays around Pamlico Sound and part of Roanoke Sound
- Reduced the mechanical oyster harvest limit to match the hand harvest limit in the remaining portion of those areas in Amendment 2
- The bays around Pamlico Sound are opened for a six week season (mid November through December) with a daily 10 bushel per commercial fishing operation harvest limit and outside the bays allowed a daily 15 bushel per commercial fishing operation harvest limit

# *Oyster Issue: Re-open the shallow bays (less than 6 feet) of Pamlico Sound to mechanical harvest*

Division	Advisory Committee
<p>Status quo (maintain the shallow bays (&lt; 6 feet) as defined in 15A NCAC 03R .0108)</p>	<p>Status quo (maintain the shallow bays (&lt; 6 feet) as defined in 15A NCAC 03R .0108)</p>
<p>Status quo (maintain opening of deep bays (<math>\geq</math> 6ft) during the November-December timeframe)</p>	<p>Recommend a six week opening timeframe for deep bays to begin on the Monday of the week prior to Thanksgiving week through the Friday after Thanksgiving. Reopen two weeks before Christmas for the remainder of the six week season</p> <p>Recommend a controlled study of dredges impact on areas currently closed to mechanical harvest</p>

# *Oyster Issue: Re-open the shallow bays (less than six feet) of Pamlico Sound to mechanical harvest*

## **Committee Recommendations**

- Shellfish/Crustacean, Habitat and Water Quality:  
Same as the division

- Southern:

Status quo (maintain shallow bays (< 6 feet) as defined in 15A NCAC 03R .0108)

Change the time frame for opening the deep bays ( $\geq$  6 feet) from Nov. 15 – Nov. 30 and Dec. 15-until end of the 6 weeks

*Oyster Issue: Re-open the shallow bays (less than six feet) of Pamlico Sound to mechanical harvest*

## **Committee Recommendations and Public Comment**

- Northern: Change the time frame for opening the deep bays ( $\geq 6$  feet). Run the season to Thanksgiving and close that Friday. Open 10 days to two weeks before Christmas for the remainder of the six week season
- Public comment: Phase out oyster dredging and support hand harvest over dredging

# *Select Preferred Management Options for this Issue*

Re-open the shallow bays (less than 6 feet) of Pamlico Sound to mechanical harvest



## *Oyster Issue: Adopting Supplement A to Amendment 2 to the N.C. Oyster Fishery Management Plan*

- Established a trigger for closing mechanical-harvest oyster areas when oyster samples indicate the number of legal-sized oysters in the area has declined to 26 percent of the live oysters sampled
  - Field studies show that more habitat (shell) is disturbed (caught) when legal oyster percentages are low
  - Up to 10 times more shell when harvest is allowed to run for long periods on limited resources
- Allows the fisheries director to set harvest limits up to 20 bushels per commercial fishing operation
- Statutes require that the Supplement management measures be adopted as part of the next amendment or they expire

# *Oyster Issue: Adopting Supplement A to Amendment 2 to the N.C. Oyster Fishery Management Plan*

## Division and Advisory Committee

Adopt the provisions of Supplement A – a flexible harvest limit up to 20 bushels, a trigger of 26 percent legal-sized oysters for closing an area to mechanical harvest and set the upper harvest limit of 20 bushels in rule (**rule change required**)

### Division

**Attempt** to develop and **ground truth** a fishery dependent metric of effort to better inform management decisions in the future

### Advisory Committee

Develop a fishery dependent metric of effort to help **assist with management decisions**

# *Oyster Issue: Adopting Supplement A to Amendment 2 to the N.C. Oyster Fishery Management Plan*

## **Committee Recommendations and Public Comment**

- Shellfish/Crustacean, Southern: Same as the advisory committee
- Northern: Same as the division
- Habitat and Water Quality: Same as the advisory committee except removing the word help in the second recommendation:
- Public Comment: Support the monitoring if oyster dredging continues and if dredging were eliminated the expense of monitoring would be eliminated

# *Select Preferred Management Options for this Issue*

## Adopting Supplement A to Amendment 2 to the N.C. Oyster Fishery Management Plan

# *Issues with Advisory Committee and Division Recommendations in Agreement*

## *Oyster Issue: Differences in hand harvest limits statewide*

Division and Advisory Committee	Committees	Public Comments
<p>Status quo (maintain the 15 bushel hand/mechanical harvest limit in Pamlico Sound mechanical harvest areas outside the bays, 10 bushel hand/mechanical harvest limit in the bays and in the Mechanical Methods Prohibited Area along the Outer Banks of Pamlico Sound)</p>	<p>All committees agreed with the division and advisory committee recommendation</p>	<p>Increase the number of designated Seed Oyster Management Areas in the central and northern areas of the coast</p>

*Select Preferred Management  
Options for this Issue*

**Differences in hand harvest  
limits statewide**

*Hard Clam Issue: Consider increasing the recreational maximum daily harvest limit for hard clams*

Division and Advisory Committee	Committees
<p>Increase the daily vessel maximum recreational clam harvest limit to 400 clams and maintain the daily personal harvest limit of 100 clams per person per day for all recreational participants <b>(rule change required)</b></p>	<p><u>Shellfish/Crustacean, Southern, Northern:</u> Same as the division and the advisory committee</p> <p><u>Habitat and Water Quality:</u> Maintain status quo (100 clams per person per day, not to exceed 200 clams per vessel per day)</p>



# *Select Preferred Management Options for this Issue*

**Consider increasing the  
recreational maximum daily  
harvest limit for hard clams**

# *Hard Clam Issue: The use of power hauling equipment in the hand harvest of clams*

<b>Division and Advisory Committee</b>	<b>Committees and Public Comment</b>
Status quo (maintain current definitions and enforcement of hand harvest methods)	All committees agreed with the division and advisory committee recommendation  One public comment to deny this request

# *Select Preferred Management Options for this Issue*

The use of power hauling  
equipment in the hand harvest of  
clams

# *Hard Clam Issue: Management of public mechanical clam harvest*

## **Division and Advisory Committee**

Status quo (maintain management of the mechanical clam harvest in existing areas from Core Sound south to Topsail Sound, including modifications to the mechanical clam harvest lines to exclude areas where oyster habitat and SAV habitat exist based on all available information)

Remove the Pamlico Sound mechanical clam harvest area in rule no longer in use (**rule change required**)

Take latitude/longitude coordinates of the poles marking the open mechanical clam harvest area boundary in the New River, still with the flexibility to move a line to avoid critical habitats

## **Advisory Committee**

Allow mechanical clam harvesters to have access to the bottom before maintenance dredging occurs

# *Hard Clam Issue: Management of public mechanical clam harvest*

## **Committee Recommendations and Public Comment**

- Shellfish/Crustacean: Same as the advisory committee
- Southern: Same as the advisory committee **except they did not include** the recommendation to remove the Pamlico Sound mechanical clam harvest areas in rule no longer in use
- Northern: Same as the advisory committee with added language to the last recommendation shown underlined below:  
  
Allow mechanical clam harvesters to have access to the bottom before maintenance dredging occurs **and provide harvesters reasonable prior notification for access**
- Habitat and Water Quality: Same as the division
- Public Comment: Open mechanical clam harvest areas not fished should be closed

# *Select Preferred Management Options for this Issue*

## Management of public mechanical clam harvest

# *Oyster and Hard Clam Issue (Private Culture): Protection of shellfish lease and franchise rights*

## **Division and Advisory Committee**

Support modification of G.S. 113-208 and G.S. 113-269 to add minimum fines for violations on shellfish leases and franchises. With minimum fines set at \$500 for the first violation and \$1,000 for the second violation **(requires statutory change)**

Support modification of G.S. 113-269 to include protection to all shellfish leases and franchises, not just those with water column amendments **(requires statutory change)**

Modify Rule 15A NCAC 03O .0114, regardless whether statute changes occur, so that a first conviction under G.S. 113-208 or G.S. 113-269 the fisheries director shall revoke all licenses issued to the licensee **(rule change required)**

*Oyster and Hard Clam Issue (Private Culture):  
Protection of shellfish lease and franchise rights*

## **Committee Recommendations and Public Comment**

- Shellfish/Crustacean, Northern, Habitat and Water Quality: Same as the division and the advisory committee
- Southern: Support modification of G.S. 113-269 to include protection to all shellfish leases and franchises, not just those with water column amendments (**requires statutory change**)
- No public comment on this issue



# *Select Preferred Management Options for this Issue*

## Protection of shellfish lease and franchise rights

*Oyster and Hard Clam Issue (Private Culture): Defining adverse impacts to submerged aquatic vegetation from shellfish leases and franchises*

## Division and Advisory Committee

Status quo (adhere to regional conditions of U.S. Army Corps of Engineers Nationwide Permit 48 with no adverse effect to submerged aquatic vegetation from shellfish leases and follow measures identified in the interim)

- All committees were in agreement with the division and advisory committee recommendation
- No public comment was received on this issue

# *Select Preferred Management Options for this Issue*

Defining adverse impacts to  
submerged aquatic vegetation  
from shellfish leases and  
franchises

*Oyster and Hard Clam Issue (Private Culture):  
Brunswick County shellfish lease moratorium*

<b>Division</b>	<b>Advisory Committee</b>
Continue the moratorium of shellfish leases in Brunswick County	Same as division

- All committees were in agreement with the division and advisory committee recommendation
- No public comment was received on this issue

*Select Preferred Management  
Options for this Issue*

**Brunswick County shellfish lease  
moratorium**

# *Oyster and Hard Clam Issue: Requirements for shading Molluscan shellstock*

## Division and Advisory Committee

Implement shading requirements for clams on a vessel, during transport to a dealer, or storage on a dock during June through September. These requirements would be implemented as a public health protection measure under 15A NCAC 03K .0110 by proclamation annually

- Shellfish/Crustacean, Southern, Habitat and Water Quality: Agreed with the recommendation
- Northern: Continue with no shading requirements

*Select Preferred Management  
Options for this Issue*

**Requirements for shading  
Molluscan shellstock**

# Next Steps

MARINE FISHERIES COMMISSION MILESTONES	PROJECTED COMPLETION DATE
1. Present Timeline and Goal and Objectives to MFC; Solicit MFC Input on Issues	August 2014
2. Draft/Revise and Review Informational Sections and Issue Papers in the FMP and Establish Division/AC Positions	September 2014 – September 2015
3. Obtain MFC Approval for Public Review of FMP	November 2015
<b>4. MFC Selects Preferred Management Options</b>	<b>February 2016</b>
5. Department/Legislative Review	March 2016
6. MFC Procedural Approval for Notice of Text for Rules	<b>May 2016</b>
7. Direct Rules Through APA Process	August-October 2016
8. Final FMP and Rule Approval by MFC	<b>November 2016</b>
9. Selected Management Measures Effective Date	48 hrs. if proclamation; April 1, 2017 if rule



## *Next Steps*

Vote to send Amendment 4 of the Oyster Fishery Management Plan and Amendment 2 of the Hard Clam Fishery Management Plan for department and legislative review