Small Mesh Gill Net Rule Modification

Decision Document for MFC Advisory Committees

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Decisions

Provide input and or recommendations for the small mesh gill net rules modifications options to advise the Marine Fisheries Commission on further development toward rulemaking.

Purpose and Needs

The purpose of the Small Mesh Gill Net Rule Modifications Information Paper is to review the current rules and the available fisheries data for the small mesh gill net fishery and to develop potential options for rulemaking. The potential options address regulatory complexity, the reduction of bycatch in the small mesh gill net fishery, and to the greatest extent practical, the reduction of conflict between gill net users and other stakeholders. Gill nets are one of the most controversial fishing gears fished in North Carolina waters. Although gill net fishing effort is down significantly over the last two decades, this gear continues to be the subject of differing debate and opinion concerning the impact on our fisheries.

Background

Because of the history and complexity of issues surrounding the gill net fishery in North Carolina, the Secretary of the Department of Environmental Quality directed the Division to conduct a thorough review of the small mesh gill net fishery to simplify regulatory complexity, to reduce bycatch, and to sustain stocks important to recreational and commercial fishermen. As a result, the Division, with the endorsement of the MFC, implemented a two-part plan.

1) The DMF Director issued a proclamation limiting the allowable yardage and modifying attendance requirements in portions of the state.

2) The DMF established an internal Gill Net Work Group to review current rules, fisheries data and develop options addressing regulatory complexity and bycatch reduction for consideration by the MFC.

The MFC has the authority to adopt rules for management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction (G.S. 143B-289.52). In recent years, modifications to gill net management resulting from the adoption of FMPs or other circumstances have largely been implemented through the DMF director’s existing proclamation authority, not through rulemaking. This has resulted in a patchwork of small mesh gill net restrictions spanning many rules and proclamations, contributing to stakeholder confusion and administrative burden.

Bycatch is a concern in all fisheries managed by the MFC and small mesh gill nets, under certain configurations and times of the year, have the potential to be a large source of this unintended catch. Regulations such as minimum mesh size, attendance requirements, and seasonal or permanent area and set time restrictions have the potential to reduce the incidence of bycatch and ultimately dead discards. Additionally, these regulatory measures can aid fishery managers in constraining harvest of state and federal quota managed stocks by focusing effort and harvest in areas or times where the target species is more available, and effort is better characterized. Lastly, these regulatory measures in combination with one another can more discretely define how and where small mesh gill nets can be utilized to maximize efficiency of the gear and reduce competition and conflicts with other gear types and user groups.
The Division’s Gill Net Work Group produced an information paper that includes an overview of the current small mesh gill net fishery and proposed management options. Information papers are developed by DMF staff to provide an overview of any topic the MFC requests for rulemaking consideration. The work group reviewed and summarized available data on the characteristics of the small mesh fishery including typical gear configurations, species targeted, seasonality of catch, bycatch concerns with the gear, and identified four potential issues to address the aforementioned concerns.

Issues identified by the DMF Gillnet Work Group include:

- Implement yardage limits for the small mesh gillnet fishery;
- Adjust ‘attendance’ time and area requirements;
- Implement set and retrieval time and setback/area restrictions;
- Increase the minimum mesh size.

A range of proposed management options were developed for each of these issues that attempt to address some or all of the concerns identified by the Department and the Commission.

At their November 2020 business meeting, the MFC reviewed the Small Mesh Gill Net Rule Modification Information Paper and selected several options for further development. In addition, the MFC requested a review of the full document, including their selected option, by the appropriate advisory committees.

Objectives for this Meeting

- Review the Small Mesh Gill Net Rules Modification Information Paper
- Provide input on the options for consideration by the MFC to help in their final decision making.
- Consider recommending options for further consideration by the MFC.
- Consider recommending any additional options for consideration by the MFC.
- Suggest prioritization for any rulemaking to implement preferred option.

Overview of Current Regulations

Yardage Restrictions

Yardage restrictions under current rule:

- There are no small mesh gill net yardage limits currently in rule.

Yardage restrictions currently in proclamation:

- Small mesh gill nets are currently restricted to 800 yards with an exception for drift gill nets in Pamlico Sound of 1500 yards from May 1 – October 31.

Attendance Requirements

Attendance requirements under current rule:

- “Attended” is currently defined in Rule 15A NCAC 03I .0101 as being in a vessel, in the water, or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
• Within 100 feet of the Intercostal Waterway from start of Alligator River canal to South Carolina line
• For gill nets with a stretched mesh less than five inches and within 200 yards of shore, in any areas designated in Rule 15A NCAC 03R.0112(a)
• For gill nets with a stretched mesh less than five inches and within 200 yards of shore, from May 1 to November 30 in any areas designated in Rule 15A NCAC 03R.0112(b) including primary nursery areas, permanent secondary nursery areas, and no trawl areas

Attendance requirements currently in proclamation:
• Deer and School House creeks in Bogue Sound
• Newport River and its tributaries from 7:00 am to 7:00 pm
• Year round within 200 yards of shore in Bay and Pungo rivers and lower portions of the Pamlico and Neuse rivers

Set Time and Area Restrictions
Prohibition on setting gill nets in current rule:
• Within 150 or 300 yards of bridge crossings in numerous river systems statewide
• Use of gill nets within various set distances from pound nets
• Numerous small embayments, basins, and areas described in Rule 15A NCAC 03J.0402
• In joint fishing waters of Lake Mattamuskeet and within 800 feet of Lock No. 1 on the Cape Fear River
• Adjacent to marked fishing piers

Prohibition on setting gill nets in current proclamations:
• Joint coastal fishing waters from midnight on Friday to midnight on Sunday except for portions of Albemarle and Currituck Sounds

Mesh size limits
• Current rule prohibits use of gill nets with mesh size less than 2.5 ISM

Proposed Management Options
The proposed management options below were identified by the DMF Gillnet Work Group. The preferred management selected or added by the MFC during their November 2020 business meeting are highlighted in grey. The options are organized by issue and listed numerically. A more thorough discussion of these options can be found in the Small Mesh Gill Net Rules Modification Information paper, including a list of the options with positive and negative impacts beginning on page 19 of the information paper.

Yardage Limits
Yardage limits can be used to constrain effort within a fishery to moderate removals over time. For example, a quota managed species can be managed in this way to ensure quota is available throughout the fishing season. Additionally, yardage limits have the potential to address concerns of user conflict.

Option 1: Status quo (See overview of current regulations above)
Option 2: Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 2,000 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved.

Option 3: Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 1,500 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved.

Option 4: Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved.

Option 5: Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individuals involved.

Option 6: Specify that the allowable yardage of gill nets, with stretched mesh less than four inches, shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved, except for drift gill nets from May 1 – October 31 shall not exceed 1,500 yards.

Option 7: Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individuals involved, except for drift gill nets from May 1 – October 31 shall not exceed 1,500 yards.

Option 8: Specify that the allowable yardage of gill nets, with stretched mesh less than four inches, shall not exceed 800 yards per vessel in Internal Coastal Waters regardless of the number of individuals involved. The DMF director may by proclamation allow up to 1,500 yards of drift gill net and specify the area and time it may be fished.

Option 9: Specify that the allowable yardage of gill nets with stretched mesh less than four inches shall not exceed 800 yards per vessel in Internal Coastal Waters north of Highway 58 and 500 yards south of Highway 58, regardless of the number of individuals involved. The DMF director may by proclamation allow up to 1,500 yards of drift gill net and specify the area and time it may be fished.

Option 10: Allow for an exemption up to 2,000 yards through proclamation from December 1st – April 30th. (Option added by MFC)

Attendance Requirements
The intent of the attendance requirement is to indirectly limit the amount of gear that can be fished and directly reduce mortality of discards and protected species. Small mesh gill net attendance requirements have been implemented as a strategy in species specific FMP’s, such as striped bass and red drum, to decrease dead discards of these species. Options for amending attendance requirements presented below were developed for areas south of Albemarle Sound. Attendance requirements in Albemarle sound and its tributaries are applicable to various ranges of mesh sizes and do not have distance from shore qualifiers. In addition to feedback on the proposed options, the MFC requested that the DMF provide input on the definition of “attendance” at their next meeting.

Option 1: Status quo (See overview of current regulations above)
**Option 2:** Codify restrictions currently in proclamation into rule.

**Option 3:** Require year-round statewide attendance within 200 yards of shore and/or within designated areas currently in rule, whichever is more restrictive.

**Option 4:** Require year-round statewide attendance for gill nets with mesh size less than four inches.

**Option 5:** Require year-round attendance within 200 yards of shore in all areas currently designated in Rule 15A NCAC 03R .0112.

**Option 6:** Require year-round attendance in all areas currently designated in Rule 15A NCAC 03R .0112.

**Option 7:** Require year-round attendance in all creeks and/or water bodies less than 200 yards wide. (Most areas that would be affected by this option already have a 200 yard requirement or are included in Rule 15A NCAC 03R .0112 and have seasonal attendance requirements. A year round 200 yards from shore attendance requirement would cover these areas.)

**Option 8:** Modify distance requirement in the definition of "attend" to allow person and/or vessel being occupied to be within 500 yards of gear being fished.

**Option 9:** Modify distance requirement in the definition of "attend" to allow person and/or vessel being occupied to be within 500 yards of gear being fished south of Highway 58.

**Option 10:** Remove distance requirement from the definition of "attend" to require a person to be physically in contact with the gear at all times.

**Option 11:** No attendance requirement statewide from December 1 – April 30th. (Option added by MFC)

### Set Time and Area Restrictions

Set time restrictions refer to when nets can be set in estuarine waters and how long they can be fished before being retrieved. Currently, set nets cannot be fished in joint coastal waters during weekends. Modifying when nets can be set and the duration they can be fished could reduce overall effort and alleviate conflicts between other fisheries and user groups. Area restrictions can be used to address concerns over bycatch in areas where the potential is high and used as a tool to reduce conflicts between other fisheries and users.

**Option 1:** Status quo (See overview of current regulations above)

**Option 2:** Codify restrictions currently in proclamation into rule.

**Option 3:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than one hour after sunrise statewide.

**Option 4:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than noon the following day statewide.

**Option 5:** Specify that nets may not be fished from midnight on Friday to midnight on Sunday statewide.
**Option 6:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than one hour after sunrise in areas or Management Units determined by the MFC.

**Option 7:** Specify that nets may be set no sooner than one hour before sunset and retrieved no later than noon the following day in areas or Management Units determined by the MFC.

**Option 8:** Specify that nets may not be set within 200 feet of docks and improved shorelines. Allow exemption for personal docks and docks where the fishing operation has written permission to fish within 200 feet of dock and/or improved shoreline.

**Option 9:** Prohibit use of small mesh nets in areas of high conflict determined by the MFC.

**Option 10:** No set time requirements from December 1st – April 30th. (Option added by MFC)

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**Mesh size limits**

Modifying the minimum mesh that can be used to directly address the selectivity of the net which can potentially reduce the incidence of capturing undersized fish, contributing to fewer discards, and increasing the efficiency of the gear.

**Option 1:** Status quo  (See overview of current regulations above)

**Option 2:** Increase the minimum mesh size to 2.625 inch Inside Stretched Mesh (ISM)

**Option 3:** Increase the minimum mesh size to 2.75 inch ISM

**Option 4:** Increase the minimum mesh size to 3.0 inch ISM

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**Next Steps**

- Advisory Committee input and/or recommendations will be presented to the MFC during their August 2021 business meeting. At that time, the MFC will review the document along with AC input and/or recommendations. Based on that information they will then decide how to proceed with the issue.
- If the MFC decides to move forward with further development of options, the DMF will begin drafting an issue paper. The issue paper will include further examination of each selected option and will include draft rule language for the commissions’ consideration.
- The rulemaking process would begin if the MFC approves rule language approved by the MFC following the review of the issue paper.