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From: Wade, Hope
Sent: Tuesday, July 30, 2024 4:35 PM
To: rrc.comments
Cc: Bizzell, Rob; RYAN, CHRISTINE M; Maier, Shawn; Lane, Bill F; Bryant, Stephen; Englert, Jessica M; Fletcher, Eric F; Ruhlman, Carrie A
Subject: DMF Comments on WRC Proposed Temporary Flounder Rule (15A NCAC 10C .0307)
Attachments: DMF Comments to RRC_2024-07-30-WRC Proposed Temp Flounder Rule_FINAL.pdf

Good Afternoon,

Attached you will find comments from N.C. Division of Marine Fisheries.

Hope Wade

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Governor

ELIZABETH S. BISER
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KATHY B. RAWLS
Director

July 30, 2024

N.C. Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609
rrc.comments@oah.nc.gov

RE: Comments on N.C. Wildlife Resources Commission proposed temporary flounder rule (15A NCAC 10C .0307) as published June 11, 2024, on the N.C. Office of Administrative Hearings website

The North Carolina Division of Marine Fisheries ("DMF") appreciates the opportunity to comment on the North Carolina Wildlife Resources Commission ("WRC") proposed temporary flounder rule, 15A NCAC 10C .0307, as published June 11, 2024, on the N.C. Office of Administrative Hearings website and as amended and adopted by the WRC July 25, 2024, in particular, regarding compliance with the statutory grounds for the Rules Review Commission's review set out in G.S. § 150B-21.9(a)(1). This rule, proposed by the WRC, relates to the taking of flounder, which are designated as a marine and estuarine species of commercial and recreational significance. As such, flounder are regulated through the N.C. Southern Flounder Fishery Management Plan ("FMP") adopted by the N.C. Marine Fisheries Commission ("MFC") and implemented by the DMF pursuant to G.S. § 113-182.1 and the 1997 Fisheries Reform Act ("Act").

The Act guides the management of marine and estuarine resources in North Carolina. It established a framework aimed at maintaining the long-term health of our marine and estuarine ecosystems through balanced and science-based management practices. This Act underscores the need for equitable resource allocation while ensuring that our fisheries can thrive for future generations. Conservation is at the heart of this mandate, requiring difficult decisions to be made that may not be immediately popular but are essential for the preservation of our fish stocks.

Southern flounder are currently overfished and undergoing overfishing, meaning the population is too small to be sustainable and too many flounder are being caught for the population to grow. N.C. law specifically mandates the Southern Flounder FMP include measures to end overfishing within two years and rebuild the stock to achieve a sustainable harvest within 10 years. To accomplish this, the MFC adopted Amendment 2 to the FMP in 2019 and Amendment 3 in 2022 with measures designed to reduce the total removals of southern flounder by 72%. This included implementation of separate annual quotas for the commercial and recreational southern flounder fisheries. If either sector exceeds its quota, the FMP requires the excess catch be subtracted from that sector's quota the following year. In 2023, the recreational catch significantly exceeded the allowed recreational quota. Consistent with the FMP, the excess recreational catch in 2023 (overage) was subtracted from the quota available for the 2024 recreational season. Because insufficient recreational quota was left after deducting the overage, DMF announced that the recreational flounder season in 2024 would remain closed. This payback mechanism was discussed thoroughly during the development of the FMP and is an essential part of rebuilding the population of southern flounder and ensuring a sustainable harvest for future generations, as required by the Act.

As published on June 11, 2024, the WRC proposed temporary rule would not open the recreational flounder season in 2024. This is consistent with management contained in the Southern Flounder FMP Amendment 3 and, because of this, the DMF submitted public comments in support of the rule on July 2, 2024, to the WRC. However, the final version that the WRC approved on July 25, 2024, would open recreational harvest


for two, two-day periods with a one-fish daily bag limit, in contradiction to the MFC and DMF's regulations. If approved, the anticipated harvest is expected to exceed the available quota for the recreational sector. In short, the WRC's proposed rule would knowingly permit the recreational sector to harvest flounder above and beyond their quota, further exacerbating the recreational overage and potentially impacting the 2025 recreational season. While the WRC's proposed temporary rule allowing four days of recreational harvest in 2024 would be less detrimental to the flounder resource than the WRC's permanent flounder rule (as of August 1, 2024), which would allow recreational harvest for 14 days, the WRC's actions call into question their authority to manage this important marine and estuarine species, as the WRC chose to not approve the published temporary rule to protect the southern flounder stock and remain consistent with the FMP and the principles of the Act.

WRC and the MFC have concurrent jurisdiction over hook and line fishing in joint fishing waters. Because both agencies' rules apply to hook and line fishing in joint fishing waters, any discrepancy creates an enormous amount of confusion for the regulated public and jeopardizes the long-term viability of the species at issue. Prior to WRC's adoption of species-specific rules in 2022, WRC's rule for flounder, spotted seatrout, and red drum incorporated by reference MFC's regulations for these species. This approach ensured that any changes in management by the MFC necessary to adapt to variable conditions (including FMPs) would also apply in inland fishing waters, and that a single regulation applied to hook and line fishing in joint fishing waters. WRC severed that direct connection between MFC and WRC regulation for joint fishing waters and, in doing so, not only introduced a significant lag time between management changes, but also created contradictory regulations for the fall 2023 recreational flounder season that likely impacted the rebuilding of the southern flounder stock in accordance with requirements under the Act. The WRC's permanent flounder rule and to a lesser degree the proposed temporary flounder rule are expected to further confound the MFC and DMF's efforts to meet those requirements.

It is vital to recognize that opening a recreational season now is contrary to the Southern Flounder FMP and could undermine any progress made in rebuilding the southern flounder population since Amendment 3 was adopted in May 2022. The ultimate goal is to achieve a balanced and sustainable fishery, which sometimes necessitates short-term sacrifices for long-term gains. Although the proposed temporary rule is preferable to the status quo, it fails to adequately protect a scarce resource by allowing harvest above what is sustainable.

Again, DMF is appreciative of this opportunity to comment on WRC's proposed temporary flounder rule, 15A NCAC 10C .0307, as published June 11, 2024, on the N.C. Office of Administrative Hearings website and as amended and adopted by the WRC July 25, 2024. The DMF believes the proposed temporary rule exceeds the WRC's authority with respect to the management of coastal fisheries and is contrary to the statutorily required Southern Flounder FMP Amendment 3.

Sincerely,



Kathy B. Rawls
Director, N.C. Division of Marine Fisheries

Cc: Rob Bizzell, N.C. Marine Fisheries Commission Chair
Christine Ryan, Environmental Division Commissions Assistant Attorney General
Shawn Maier, N. C. Department of Environmental Quality, Assistant General Counsel
Bill Lane, N.C. Department of Environmental Quality Deputy Secretary and General Counsel
Stephen Bryant, Office of Governor Roy Cooper, Deputy Chief of Staff
Jessica Englert, Office of Governor Roy Cooper, Policy Director
Eric Fletcher, Office of Governor Roy Cooper, General Counsel
Carrie Ruhlman, N.C. Wildlife Resources Commission Policy Manager