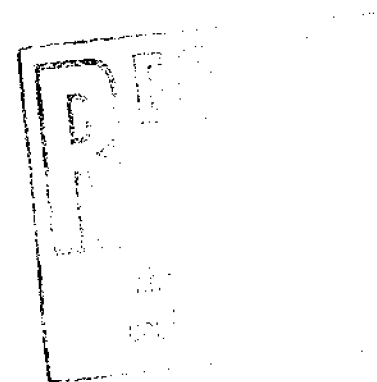


FINAL REPORT
OF THE
FISHERIES MORATORIUM STEERING COMMITTEE
TO THE
JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE
OF THE
NORTH CAROLINA GENERAL ASSEMBLY



NORTH CAROLINA SEA GRANT COLLEGE PROGRAM
UNC-SG-96-11



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AND AQUACULTURE
OF THE NORTH CAROLINA GENERAL ASSEMBLY

October 25, 1996

***Final Report of the Moratorium Steering Committee to the
"Joint Legislative Commission on Seafood and Aquaculture"
of the North Carolina General Assembly***

October 25, 1996

Moratorium Steering Committee Members:

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Sen. Charles Albertson

Thomas S. Bowmer

Dr. B. J. Copeland

Dr. Ford Cross

E. Murray Fulcher

Melba W. Edwards

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EXECUTIVE SUMMARY

Early in 1994, the North Carolina General Assembly enacted a moratorium on the sale of most state commercial fishing licenses, effective on July 1 of that year. That moratorium will expire on June 30, 1997. The legislation was based on a wide range of concerns voiced by the commercial and recreational fishing communities. It established the Moratorium Steering Committee ("Committee"), a body appointed to oversee study of North Carolina's entire coastal fisheries management process and to recommend changes to improve the system. The Committee met almost monthly during the period from November 1994 through October 1996. Five Subcommittees were established to examine coastal fisheries issues in the areas of licensing, gear use, habitat protection, fisheries agency organization and law enforcement. Draft recommendation packages were prepared by each Subcommittee, circulated for public comment, and revised several times between January and August of 1996, and a final draft Report was adopted by the Committee in July, 1996. Nineteen public meetings were held across the state during August and September, 1996, to solicit public comment on the Committee's draft recommendations. Based on extensive public input, final revisions were made to the Committee's proposals and a *Final Report* was adopted by the Committee on October 24-25, 1996. The major recommendations of each Subcommittee Report are described below.

License Subcommittee Report

The License Subcommittee is concerned that piecemeal fisheries regulation does not adequately conserve, protect or allocate North Carolina marine and estuarine resources. To fix that problem, the Subcommittee proposes adoption of a new, three-tiered coastal fisheries licensing system substantially different from the system currently in place in North Carolina. Objectives of the licensing proposal include documentation of the numbers of sport and commercial fishermen, establishment of a basis to better determine fisheries effort and harvest, support of healthy commercial and recreational fisheries and mariculture, preservation of traditional small family commercial fishing operations, generation of revenues to support fisheries resource improvement and management, and public education.

The preparation of Fishery Management Plans ("Plans") by the Division of Marine Fisheries ("Division") is central to the proposed new coastal fisheries management system. The Plans will provide goals, objectives and strategies for management of species, species groups, gears or geographic areas. The Marine Fisheries Commission ("Commission") will implement Plans through rulemaking changes. While Plans are being prepared, the Commission will use existing authorities to protect stressed and declining fish stocks, as necessary.

Under the proposed new licensing system, the individual is the basic unit licensed, rather than the vessel, which is the licensing unit under the current system. Three primary coastal fishing licenses will be issued: (1) the Standard Commercial Fishing License, (2) the Recreational Commercial Gear License, and (3) the Coastal Recreational Fishing License. Sale of fish will be limited to persons holding a state commercial fishing license. The Division will be required to develop a program to obtain adequate catch and effort data from all licensees. It will be unlawful to sell any fish taken recreationally, except that existing coastal fishing tournaments will be given a 5-year period during which sales are phased out. All license fees will be deposited in dedicated trust funds, one for recreational license receipts and the other for commercial license receipts. Each fund will have its own Board of Trustees to approve fund

monies disbursement. Use of the funds will be specified by law and restricted to uses to improve and enhance coastal fishery resources.

The License Subcommittee recommendations place a temporary cap on the number of Standard Commercial Fishing Licenses ("SCFLs") that may be issued. Under those recommendations, all persons who own vessels having a valid Endorsement-to-Sell-Fish license ("ETS") on January 1, 1996 will automatically qualify to receive one SCFL for each ETS held, at a cost of \$250.00 each. The Committee estimates that about 7,500 SCFLs will be established under this temporary cap. SCFL holders will be able to assign their license to another person so their fishing operation can continue if they become ill, go on vacation or the like. A pool of SCFLs will be created when persons eligible for SCFLs choose not to buy them. Pool licenses will be available for distribution through a process to be established by the Commission. The Commission will also establish rules providing for transfer of SCFLs. Vessel endorsements will be required for boats used for commercial harvest at the same fee currently existing. A non-assignable, "Retired Fisherman Commercial Fishing License" will be available at the cost of \$100.00 for licensed commercial fishermen age 65 and over.

Under the recommendations, creation of a Recreational Commercial Gear License ("RCGL") will allow the continued tradition of using commercial gear to take seafood for personal consumption, but not for sale. Gear types and amounts will initially be limited to a single 25-foot shrimp trawl, five crab or fish pots and one 100-yard gill net, and the Commission will be empowered to modify these limits as appropriate, including allowing different gear limits for different areas. Vessel endorsements will be required for vessels used to fish gear under the RCGL, according to the same fee schedule that now exists. The annual cost of the RCGL will be \$25.00 per year for residents and \$250.00 for nonresidents. State and federal recreational harvest limits will apply to persons holding this license.

Under the License Subcommittee proposal, a Coastal Recreational Fishing License ("CRFL") will be required for persons using traditional recreational fishing gears, such as rod-and-reel, gigs, "pea-digger" clam rakes, *etc.* The annual license fee will be \$15.00, with a one-week license available for \$5.00. Lifetime, senior citizen and other special types of licenses will also be sold. Blanket licenses will be available for commercial piers and charter/head/dive boats to cover their paying customers. As with the RCGL, state and federal recreational harvest limits will apply to persons holding the CRFL. Vessel endorsements will not be required for vessels used to fish recreational gears for non-commercial harvest.

Under the recommendations, the State will also sell a Fish Dealer License; a Coastal Mariculture License; a Land or Sell License; a \$25.00 Shellfish License that will allow qualifying residents to harvest and sell shellfish only; and a Nonresident Menhaden License.

Gear Subcommittee Report

The Gear Subcommittee is concerned over the lack of adequate effort data with which to intelligently regulate fishing gears and otherwise manage coastal fisheries. Its principal recommendations are that the State prepare and implement Fishery Management Plans and institute a comprehensive system to collect catch-per-unit-effort data. Both proposals are also integrated into the recommendations of the License Subcommittee.

Habitat Subcommittee Report

The Habitat Subcommittee proposals as a whole received more supportive comment from speakers at the Committee's public meetings than any other set of recommendations, because there is a widespread consensus that critical coastal fisheries habitats have been substantially degraded in North Carolina. To solve this problem, the Habitat Subcommittee proposes, as the linchpin of its recommendations, that Department of Environment, Health, and Natural Resources Divisions having habitat and water quality responsibilities prepare a joint Coastal Habitat Protection Plan ("HPP"), which must then be implemented, through rulemaking, by the State's principal environmental Commissions. HPP sections will delineate and establish restoration and protection strategies for critical coastal fisheries habitats, with a goal of "no net functional loss" of each habitat. In addition, under the recommendations a dedicated "Habitat Staff" will be established in the Division, processes will be implemented to provide for public and private protection of critical fisheries habitats, a statewide citizen water quality monitoring program will be established, and all state agencies will be required to ensure that agency rules and policies do not significantly contribute to the loss of habitats critical to coastal fisheries.

MFC/DMF Organization Subcommittee Report

The "Organization Subcommittee" recommendations address problems with the functional effectiveness of both the current Commission and Division. Under those recommendations, a 9-member Commission will replace the existing 17-member Commission. Commission membership will include three persons from the commercial fishing industry, three recreational fishermen, two scientists and one at-large member. Five of the nine Commission members must come from the State's coastal area. Proposed revisions of state law will establish conflict-of-interest and bias disclosure requirements for Commissioners. Further, under the proposal Standing Advisory Committees will be established to formalize the input of the regulated community into fisheries management decisions, and the Division will be "re-focused" to concentrate on Fishery Management Plan development and implementation.

Law Enforcement Subcommittee Report

The Law Enforcement Subcommittee is concerned that the law provides relatively little deterrence to activities that adversely impact the State's marine and estuarine resources, including critical fisheries habitats. Consequently, its recommendations require the Division to modify Marine Patrol policies to standardize and strengthen Division policy on officer use of existing seizure authority. In addition, the Commission will be required to develop and implement a "Violation Points System" similar to the North Carolina driver's license points system. Under that system, persons convicted of fisheries law violations will have points assessed against their licenses, and upon reaching a points threshold level will have their license privileges suspended or revoked. The Commission will also be authorized to assess monetary civil penalties against persons who commit serious violations of coastal fisheries laws, and a carefully designed volunteer enforcement program will be implemented on a pilot basis. In addition, to alleviate the data and market problems resulting from the illegal sale of seafood, the proposal makes the sale or purchase of seafood without a proper license a felony. Finally, under the recommendations, Marine Patrol officers will be required to receive specific training in environmental law enforcement, so that habitat protection can be improved.

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Preface

In its 1993 Session the North Carolina General Assembly established a two-year moratorium (later extended to three years), effective on July 1, 1994, on the issuance of North Carolina's principal commercial fishing licenses -- the Commercial Vessel License, the Shellfish License, the Crab License and the Non-vessel Endorsement to Sell Fish License. The license moratorium was expressly created in light of (1) the State's duty to preserve and protect its marine and estuarine resources; (2) significant environmental stresses on those resources; (3) the historical and cultural significance of coastal fishing; (4) economic turmoil in the commercial fishing industry; (5) potential federal takeover of management of certain state fishery resources; and (6) substantial shortcomings in the State's traditional, regulatory fisheries management system. As such, the moratorium was intended to preserve the *status quo*, thereby giving North Carolina coastal fisheries resource management agencies a chance to understand fisheries related problems and recommend solutions to them. These goals were to be accomplished through the opportunity afforded by the moratorium process "to conduct a comprehensive study of the fishery industry including: reviewing available measures to control fishing effort, gathering vital fisheries information, conducting necessary scientific research studying fisheries management measures taken by other states or resources management organizations, and obtaining public comments." Chapter 576, 1993 N.C. Sess. Laws.

The license moratorium legislation also created an appointed, nineteen-member "Steering Committee to oversee the study of the fishery resource." Chapter 576, 1993 N.C. Sess. Laws. Specified appointments to the Committee included (1) the Chair of the Marine Fisheries Commission, who was designated as chair of the "Moratorium Steering Committee"; (2) the Director of the North Carolina Division of Marine Fisheries; (3) the Director of the North Carolina Sea Grant College Program; (4) the Co-chairs of the Joint Legislative Commission on Seafood and Aquaculture (or their designees); (5) seven appointments by the President Pro Tempore of the Senate, including one representative of the commercial fishing industry, two representatives of the recreational fishing industry, one seafood processor, one fisheries scientist, one social scientist and one environmentalist; and (6) seven appointments by the Speaker of the House of Representatives, including one representative of the commercial fishing industry, one representative from the North Carolina Fisheries Association Auxiliary, one representative of the recreational fishing industry, one fisheries scientist, one ecologist, one economist and one aquaculture representative. Based on those qualifications, the appointed membership of the Moratorium Steering Committee is as follows:

MEMBERS OF THE FISHERIES MORATORIUM STEERING COMMITTEE	
<i>Specifically Designated Seats:</i>	
Bob Lucas	Chair of the North Carolina Marine Fisheries Commission
Bruce Freeman	Director of the North Carolina Division of Marine Fisheries
B.J. Copeland	Director of the North Carolina Sea Grant College Program
Jule Wheatley	Menhaden fisherman/processor from Beaufort (designee of Rep. Jean Preston, Co-chair of the Joint Legislative Commission on Seafood & Aquaculture
Melba Edwards	Commercial fisherman from Brunswick County (designee of Sen. Charles Albertson, Co-chair of the Joint Legislative Commission on Seafood &

Aquaculture	
<i>Appointments of the Speaker of the N.C. House of Representatives:</i>	
Tommy Bowmer	Recreational fisherman from Brunswick County
Joe Huber	Aquaculturist from Atlantic
Dr. Chuck Manooch	Fisheries scientist with the National Marine Fisheries Service in Beaufort
Arden Moore	Commercial fisherman from Shallotte
Dr. Steve Ross	Ecologist with the North Carolina Division of Coastal Management in Wilmington
Susan West	President of the Hatteras/Ocracoke Auxiliary of the North Carolina Fisheries Association
<i>Appointments of the President Pro Tempore of the N.C. Senate:</i>	
Dr. Ford Cross	Fisheries scientist with the National Marine Fisheries Service in Beaufort
Murray Fulcher	Commercial fisherman from Ocracoke
Dr. Barbara Garrity-Blake	Social scientist from Gloucester
Melvin Shepard	Environmentalist and commercial fisherman from Sneads Ferry
Sherrill Styron	Seafood processor from Oriental
Damon Tatem	Recreational fisherman from Kill Devil Hills
Pete West	Recreational fisherman from Greenville

It should be noted that each member of the Moratorium Steering Committee served in that capacity as an unpaid volunteer.

In accordance with its "moratorium oversight" directive, the Moratorium Steering Committee first met in Raleigh in November of 1994, where it unanimously adopted the "Goals and Objectives" that have served as the foundation for the Committee's deliberations since the beginning. Subsequently, for the sake of effectiveness and efficiency in completing its task, the Chairman of the Committee divided its membership into five Subcommittees and appointed a Chair for each, as follows:

SUBCOMMITTEES OF THE FISHERIES MORATORIUM STEERING COMMITTEE			
<i>Gear Subcommittee:</i>		<i>Habitat Subcommittee:</i>	
<i>Co-chair:</i>	Pete West	<i>Chair:</i>	Melvin Shepard
<i>Co-chair:</i>	Murray Fulcher	<i>Members:</i>	Tommy Bowmer
<i>Members:</i>	Jim Murray (designee of B.J. Copeland)		Ford Cross
	Steve Ross		Joe Huber
<i>Law Enforcement Subcommittee:</i>		<i>License Subcommittee:</i>	
<i>Chair:</i>	Damon Tatem	<i>Chair:</i>	Bob Lucas
<i>Members:</i>	Barbara Garrity-Blake	<i>Members:</i>	Melba Edwards
	Arden Moore		Murray Fulcher
	Sherrill Styron		Melvin Shepard
			Damon Tatem

	Jule Wheatly
<i>Subcommittee on Marine Fisheries Commission & Division of Marine Fisheries Organization:</i>	
<i>Chair:</i>	Chuck Manooch
<i>Members:</i>	B.J. Copeland
	Steve Ross
	Pete West
	Susan West

Each of these Subcommittees has for the most part met monthly since its creation, in addition to the monthly meetings of the full Moratorium Steering Committee over the last two years. During those various meetings, the Committee and its Subcommittees have listened to experts on various aspects of coastal fisheries regulation from North Carolina and other states, reviewed hundreds of pages related to the management of fisheries in other jurisdictions, and received substantial public comment in defining and discussing the many issues facing the Committee.

In addition, a substantial portion of that external input to the Moratorium Steering Committee has come from the Committee's review of studies it commissioned, as directed by the Legislature in enacting the license moratorium. The studies authorized and reviewed by the Committee are as follows:

1. Eggleston, David. B. & Sean McKenna. 1996. *Evaluation of Fisheries Resource Data Collection, Analysis and Availability: An Example Protocol Using the Blue Crab*. Fisheries Research Rpts. to the Fisheries Moratorium Steering Cmte., UNC-SG-96-01. 23 pp.
2. Garrity-Blake, Barbara J. 1996. *To Fish or Not to Fish: Occupational Transitions Within the Commercial Fishing Community, Carteret County, N.C.* Fisheries Research Rpts. to the Fisheries Moratorium Steering Cmte., UNC-SG-96-06. 24 pp.
3. Gordon, William G. & Bernard L. Griswold. 1996. *Assessment of the Functions and Organization of the North Carolina Division of Marine Fisheries and Marine Fisheries Commission*. Fisheries Research Rpts. to the Fisheries Moratorium Steering Cmte., UNC-SG-96-09. 43 pp.
4. Griffith, David. 1996. *Impacts of New Regulations on North Carolina Fishermen: A Classificatory Analysis*. Fisheries Research Rpts. to the Fisheries Moratorium Steering Cmte., UNC-SG-96-07. 110 pp.
5. Griffith, D. & Roger A. Rulifson. 1996. *Characterization of the North Carolina Recreational Shrimp Trawl Fishery: A Preliminary Analysis*. Fisheries Research Rpts. to the Fisheries Moratorium Steering Cmte., UNC-SG-96-05. 18 pp.
6. Johnson, Jeffrey C. & Michael K. Orbach. 1996. *Effort Management in North Carolina Fisheries: A Total Systems Approach*. Fisheries Research Rpts. to the Fisheries Moratorium Steering Cmte., UNC-SG-96-08. 155 pp.

Based on the many inputs received and sources of information available to the Committee, each Subcommittee produced its initial draft Report in January, 1996. The recommendations in those initial Reports were debated at great length over the spring and early summer of this year, and the Reports underwent substantial refinement during that period. When all of the key issues had been thoroughly discussed and the Committee had come to a preliminary consensus on its recommendations to the Legislature, the Committee decided to subject its draft Report to public comment at a series of public meetings. This was done to ensure that the nearly two years the Moratorium Steering Committee and its various Subcommittees have met and discussed potential changes to North Carolina's system of coastal fisheries management were not simply an academic exercise carried out in isolation from the persons that will be affected by such changes.

The Committee took the August 2, 1996 draft of its complete "Report of the Moratorium Steering Committee to the Joint Legislative Commission on Seafood and Aquaculture" through an ambitious series of nineteen widely advertised public meetings across the State. This process included public meetings in Asheboro, Asheville, Charlotte, Elizabeth City, Fayetteville, Goldsboro, Greenville, Hatteras, Hickory, Jacksonville, Manteo, Morehead City, New Bern, Raleigh, Rocky Mount, Supply, Williamston, Wilmington and Winston-Salem. Public meetings were not required by the legislation creating and charging the Moratorium Steering Committee. Instead, they were quite simply a product of the Committee's desire to give all State citizens a fair opportunity to have their say and to give their ideas about a resource owned by all North Carolinians, and to address proposed changes in the law that will affect any person seeking to take coastal fishery resources. The public meetings were attended by more than 1200 persons, of which 330 individuals made specific, oral recommendations to the Committee. In addition, more than 50 written comments were submitted to the Moratorium Steering Committee.

The extensive process set out above, initiated by legislative enactment of Chapter 576 of the 1993 Session Laws, culminated in the Moratorium Steering Committee's adoption of a *Final Report of the Moratorium Steering Committee to the "Joint Legislative Commission on Seafood and Aquaculture" of the North Carolina General Assembly* at its October 24-25, 1996 meeting in Morehead City. That *Final Report* contains some 127 recommendations to the General Assembly; the Governor; the Department of Environment, Health, and Natural Resources; the Division of Marine Fisheries; and the Marine Fisheries Commission, each aimed at improving the health and management of North Carolina's coastal fisheries. The Moratorium Steering Committee is confident that the adoption and implementation of its recommendations will achieve the goals and objectives the Committee set for itself at its first meeting, thereby resulting in the long-term conservation and protection of the State's marine and estuarine resources, and in the provision of fair and equitable public access to use of those resources.

REPORT
OF THE *LICENSE SUBCOMMITTEE*
TO THE
MORATORIUM STEERING COMMITTEE

*Adopted by the Moratorium Steering Committee
for Recommendation to the "Joint Legislative Commission on Seafood &
Aquaculture" on October 25, 1996*

SUMMARY OF RECOMMENDATIONS OF THE LICENSE SUBCOMMITTEE

1. The General Assembly should amend the North Carolina General Statutes to require that the Division of Marine Fisheries prepare, and the Marine Fisheries Commission adopt, Fishery Management Plans for all commercially and/or recreationally significant species or fisheries that comprise state marine and estuarine resources, according to the following conditions:
 - a. The term "Fishery Management Plan" shall (1) refer to a written state agency document prepared to guide management of coastal fishery stocks with the goal of ensuring the long-term viability of those stocks; (2) be defined broadly to ensure that it may pertain to a single species or group of species, gear, or geographic area; (3) include necessary information pertaining to management goals and objectives, status of the relevant fish stock(s) [including stock assessments for multi-year species], fishery habitat and water quality concerns and status, social and economic status of the fishery, user conflicts pertaining to the fishery; and (4) recommend management actions pertaining to the fishery.
 - b. The Marine Fisheries Commission shall be specifically authorized to develop and implement limited entry or access systems in North Carolina fisheries within the regulatory purview of the Commission as a management option within an applicable Fishery Management Plan, after considering the following factors: (1) the biological status of the fishery; (2) present participation in the fishery; (3) historical fishing practices in, and dependent on, the fishery; (4) the economics of the fishery; (5) the capability of fishing vessels used in the fishery to engage in other fisheries; (6) the social and cultural framework relevant to the fishery; (7) the Commission's ability to include effective anti-monopoly provisions within the proposed limited entry system; and (8) other relevant factors.
 - c. Initial Fishery Management Plan preparation by the Division of Marine Fisheries shall proceed according to a fishery priority list developed by the Marine Fisheries Commission, and the Division shall be required to complete preparation of and submit to the Commission all state coastal Fishery Management Plans on or before December 31, 1999.
 - d. The Marine Fisheries Commission shall adopt one or more model Fishery Management Plans that clearly outline the necessary, minimum components of such a Plan.
 - e. A "Fishery Management Plan Advisory Council" made up of commercial fishermen, recreational fishermen and scientists with expertise in the fishery for which the plan is being prepared shall be appointed by the Marine Fisheries Commission for each Fishery Management Plan, to assist with initial plan preparation, and subsequent plan updates or amendments.
 - f. Fishery Management Plans adopted shall be integrated as fully as possible with pre-existing, mandatory fishery management plans promulgated and adopted by the Atlantic States Marine Fisheries Commission, and the federal Mid- and South Atlantic Fisheries Management Councils, and shall set the standards for future fishery management plans or plan amendments promulgated by those agencies.
 - g. Within six (6) months of the submission of a Fishery Management Plan to the Commission by the Division of Marine Fisheries, the Commission shall make any changes to the Plan deemed necessary and adopt it through the exercise of the Commission's rulemaking authority. Such adoption shall be exempt from the legislative review, but not the public notice and comment, provisions of Chapter 150B of the North Carolina General Statutes.
 - h. Fishery Management Plans shall be updated by the Division of Marine Fisheries and reviewed and readopted by the Marine Fisheries Commission at least every three years, and may be amended as necessary at any time.
 - i. The Marine Fisheries Commission shall act appropriately to ensure that potentially stressed or declining North Carolina coastal fish stocks are adequately protected while state Fishery Management Plans are being prepared and implemented.

2. The General Assembly should amend Chapter 113 of the North Carolina General Statutes to establish a new licensing system for coastal fisheries, creating three new, individual user licenses -- (1) the Standard Commercial Fishing License, (2) the Recreational Commercial Gear License, and (3) the Coastal Recreational Fishing License -- that incorporate the following general features:
 - a. The basic licensing unit shall be the individual, and all licensees shall be assigned a permanent identification number.
 - b. Any person who seeks to take any marine or estuarine resource from state coastal fishing waters shall be required to hold a valid coastal fishing license, except:
 - (1) Unlicensed persons younger than sixteen (16) years of age may lawfully take coastal fishery resources if not using commercial fishing gear, or if using commercial gear, may do so while operating under the valid license of a parent or legal guardian.
 - (2) Persons holding a valid "Scientific Collecting Permit".
 - (3) Unlicensed persons fishing recreationally under a "blanket license" as provided elsewhere in this report.
 - (4) Unlicensed persons participating in a commercial fishing operation under the valid license of a commercial licensee, where the licensee is present.
 - c. Commercial fishing licenses shall be available for purchase only at the regional offices of the Division of Marine Fisheries.
 - d. Recreational fishing licenses shall be widely available for purchase through a network of private vendors, through automated electronic machines, and by mail and telephone.
 - e. All commercial fishing licenses shall be valid from July 1 of any given year until June 30 of the the following year, while all annual recreational fishing licenses shall be valid for a period of one calendar year from the date of license purchase. Both commercial and recreational fishing licenses shall be renewable by mail.
 - f. The privilege of sale of coastal fishery resources shall be limited to commercial licensees.
 - g. Full participation in and compliance with Division of Marine Fisheries mandatory, biological data reporting and sampling programs, including but not limited to the Division's Trip Ticket program, fishhouse sampling programs, on-board sampling programs (upon reasonable notice, and upon consideration of liability and related issues) and fishermen surveys, shall be a condition of licensing for all licensees.
 - h. Revenues derived from the sale of all coastal fishing licenses shall be deposited in one or more dedicated funds reserved for use in conserving, enhancing, and managing marine and estuarine resources.
3. The General Assembly should amend the North Carolina General Statutes to create a dedicated "Recreational License Marine and Estuarine Resources Enhancement Trust Fund" and provide that all recreational, coastal fishery licensing fees collected by the State be held separately in that fund and disbursed according to the following provisions:
 - a. The legislation creating the Fund shall provide that it is a continuing, interest bearing account, so that both the license fees and interest earned on those monies shall be dedicated for the purposes of the Fund, and funds not expended in any state fiscal year shall not revert to the General Fund.
 - b. The legislation creating the Fund shall specify that the base funding for the Division of Marine Fisheries will not be diminished or replaced with the revenues from the sale of coastal, recreational

fishing licenses, and shall provide adequate start-up funding to implement the new licensing program.

- c. Private license sales agents shall be allowed to retain up to \$1.00 of the license fee as compensation for the costs of license issuance, reporting and activities associated with the sale of each recreational license.
 - d. Expenditures from the Recreational License Marine and Estuarine Resources Enhancement Trust Fund shall be authorized by the Secretary of the Department of Environment, Health, and Natural Resources (Secretary) with the advice and consent of a Board of Trustees composed of persons with interest and expertise in recreational use of marine and estuarine resources, appointed by the Governor from a list submitted to him by the Marine Fisheries Commission.
 - e. Minimum and maximum percentages of the Fund to be used for specific purposes shall be as follows: (i) Resource and Habitat Enhancement - not less than 25%; (ii) Law Enforcement - not less than 20%, but no more than 25%; (iii) Marine Fisheries Research - not less than 25%; (iv) Grants for Coastal Fishing Programs, Projects and Scholarship Fund for Students - not more than 10%; (v) Administration - not more than 10%, exclusive of the license agent fee; and (vi) Public Education and Information - not less than 5%, but no more than 10%. These percentages shall be reviewed periodically by the Board of Trustees, which shall be authorized to appropriately adjust the allocation categories and/or percentage allocations.
 - f. The Secretary shall ensure that in approving expenditures from the respective funds governed by each body, the Board of Trustees for the Recreational License Marine and Estuarine Resources Enhancement Trust Fund and the Commercial License Marine and Estuarine Resources Enhancement Trust Fund do not unintentionally duplicate or undercut the efforts of the other Board.
 - g. The Secretary shall be required to report annually to the General Assembly regarding the performance of the Coastal Fisheries Licensing System and the use of monies from the Recreational License Marine and Estuarine Resources Enhancement Trust Fund.
 - h. The legislation creating the proposed North Carolina recreational fishing licenses shall contain a "sunset clause" that causes the state requirement for each coastal recreational fishing license to expire automatically if and at such future time as the General Assembly diverts monies contained in the Recreational License Marine and Estuarine Resources Enhancement Trust Fund to purposes other than the management of coastal fisheries, repeals the legislation creating the Fund or causes the Fund to cease to be a dedicated fund.
4. The General Assembly should amend the North Carolina General Statutes to create a dedicated "Commercial License Marine and Estuarine Resources Enhancement Trust Fund" and provide that all commercial, coastal fishery licensing fees collected by the State be held separately in that fund and disbursed according to the following provisions:
 - a. The legislation creating the Fund shall provide that it is a continuing, interest bearing account, so that both the license fees and interest earned on those monies shall be dedicated for the purposes of the Fund, and funds not expended in any state fiscal year shall not revert to the General Fund.
 - b. The legislation creating the Fund shall specify that the base funding for the Division of Marine Fisheries will not be diminished or replaced with the revenues from the sale of commercial fishing licenses, and shall provide adequate start-up funding to implement the new licensing program.
 - c. Expenditures from the Commercial License Marine and Estuarine Resources Enhancement Trust Fund shall be authorized by the Secretary of the Department of Environment, Health, and Natural Resources (Secretary) with the advice and consent Board of Trustees composed of persons with interest and expertise in commercial use of marine and estuarine resources, appointed by the Governor from a list submitted to him by the Marine Fisheries Commission.

- d. Minimum and maximum percentages of the Fund to be used for specific purposes shall be as follows: (i) Resource and Habitat Enhancement - not less than 25%; (ii) Law Enforcement - not less than 20%, but no more than 25%; (iii) Marine Fisheries Research - not less than 25%; (iv) Grants for Coastal Fishing Programs, Projects and Scholarship Fund for Students - not more than 10%; (v) Administration - not more than 10%, exclusive of the license agent fee; and (vi) Public Education and Information - not less than 5%, but no more than 10%. These percentages shall be reviewed periodically by the Board of Trustees, which shall be authorized to appropriately adjust the allocation categories and/or percentage allocations.
 - e. The Secretary shall ensure that in approving expenditures from the respective funds governed by each body, the Board of Trustees for the Commercial License Marine and Estuarine Resources Enhancement Trust Fund and the Recreational License Marine and Estuarine Resources Enhancement Trust Fund do not unintentionally duplicate or undercut the efforts of the other Board.
 - f. The Secretary shall be required to report annually to the General Assembly regarding the performance of the Coastal Fisheries Licensing System and the use of monies from the Commercial License Marine and Estuarine Resources Enhancement Commercial Trust Fund.
5. The General Assembly, in adopting the three category licensing system recommended by the Moratorium Steering Committee, should place a temporary cap on the number of Standard Commercial Fishing Licenses that may be issued by the Division of Marine Fisheries equal to the number of current, valid Endorsements to Sell Fish held by licensees on January 1, 1996, under the following conditions:
- a. The temporary cap on the number of commercial licenses shall expire one year after the completion and implementation by the State of Fishery Management Plans for all commercially and recreationally significant species, or on July 1, 2002, whichever comes first.
 - b. Within ninety (90) days of enactment of the recommended coastal licensing structure, persons who held a valid North Carolina Endorsement to Sell Fish license on January 1, 1996, or who were granted a hardship Commercial Vessel License after that date by the Moratorium License Appeals Panel and purchased an Endorsement to Sell Fish License for that vessel, shall be entitled to purchase the same number of Standard Commercial Fishing Licenses as eligible Endorsements to Sell Fish held.
 - c. The holder of a Standard Commercial Fishing License shall be entitled to assign the license held to any individual qualified to hold a North Carolina commercial fishing license (*i.e.*, whose license privileges have not been revoked), under the following terms and conditions:
 - (1) The assignment shall be effective upon receipt by the North Carolina Division of Marine Fisheries, either in writing or through oral communication, of notification of such assignment by the Standard Commercial Fishing License holder, accompanied by the name of the licensee making the assignment, the number of the license being assigned, the name and identification number of the vessel endorsed on the License that will be used by the assignee, the assignee's name and mailing address, and the assignee's social security number.
 - (2) The assignment shall only be valid while the assignee uses the vessel endorsed on the License assigned and specified in the oral or written notification of assignment to the Division of Marine Fisheries.
 - (3) The assignment shall remain effective until revoked by the Division of Marine Fisheries upon (1) notification by the assignor that the assignment has been terminated, or (2) determination by the Division that the assignee is ineligible to hold a Standard Commercial Fishing License or is operating beyond the terms and conditions applicable to any assignment, at which time all rights under the License shall revert to its owner.

- (4) Any civil penalties assessed by the Division for violations of law occurring as a result of fishing operations carried out by the vessel operated under a duly assigned Standard Commercial Fishing License shall apply to the assignee, and not the assignor, absent evidence that the assignor was in physical or constructive control of the vessel at the time the violation was committed.
- d. The General Assembly should authorize the continuation of the License Appeals Panel created under the current marine fishing license moratorium, and authorize and direct the Marine Fisheries Commission to develop rules setting out:
 - (1) a process whereby persons may apply for any Standard Commercial Fishing Licenses available from the license pool created under the temporary commercial license cap;
 - (2) eligibility criteria to be applied by the License Appeals Panel in determining whether new license applicants qualify to purchase a Standard Commercial Fishing License from the license pool;
 - (3) eligibility criteria to be applied by the License Appeals Panel in determining which persons who did not hold an Endorsement to Sell Fish license on January 1, 1996, but who held the Endorsement to Sell Fish license prior to that date, qualify to purchase a Standard Commercial Fishing License from the license pool; and
 - (4) limitations on the number of licenses that may be issued during any time period or other necessary restrictions on commercial license issuance by the Appeals Panel.
 - e. At the end of the temporary commercial license cap period, the Marine Fisheries Commission shall recommend to the General Assembly the level required for a permanent cap on the number of North Carolina Standard Commercial Fishing Licenses.
6. The General Assembly should amend Chapter 113 of the North Carolina General Statutes to create a Standard Commercial Fishing License, required for any individual who harvests, lands and/or sells fish from the coastal fishing waters of North Carolina, incorporating the specific features and conditions set forth below.
 - a. The Standard Commercial Fishing License shall be an individual license, and it shall be unlawful for any person not holding the Standard Commercial Fishing License, or its equivalent, to harvest marine or estuarine resources for commercial purposes without the use of a vessel, or for any vessel to participate in the commercial harvest of coastal fishery resources unless the holder of a valid Standard Commercial Fishing License, or its equivalent, is aboard the vessel.
 - b. The Standard Commercial Fishing License shall be valid for the period from July 1 of any given year until June 30 of the following year, and shall be renewable by mail.
 - c. The Standard Commercial Fishing License shall be transferable only as authorized by the Marine Fisheries Commission through rules promulgated to develop transferability criteria to be applied by the License Appeals Panel, according to the following terms and conditions:
 - (1) The Marine Fisheries Commission shall be authorized and directed to adopt license transferability rules within six (6) months of the date of adoption by the Legislature of the recommended coastal fisheries licensing system.
 - (2) In promulgating those rules, the Commission shall allow transferability of the commercial license in three specific situations – (1) from the license holder to a member of his/her immediate family; (2) by the State to a surviving family member, upon the death of the license holder; and (3) by a surviving family member to the third party purchaser of the decedent's fishing vessel, upon the death of the license holder.

- (3) The Marine Fisheries Commission shall be authorized to impose, by rule, a reasonable administrative fee to be charged for the transfer of the Standard Commercial Fishing License.
 - (4) The Standard Commercial Fishing License shall be non-transferable until license transferability rules are adopted.
 - (5) License transfer shall be valid only if accomplished on forms provided and administered by the Division of Marine Fisheries at its Morehead City Office.
- d. The Standard Commercial Fishing License holder shall be entitled to sell marine and estuarine fish lawfully taken from North Carolina coastal waters.
 - e. The mandatory reporting provisions of the Endorsement to Sell Fish license created by N.C.G.S. § 113-154.1 shall be incorporated verbatim into the statute creating the Standard Commercial Fishing License, with the following additions, and N.C.G.S. § 113-154.1 repealed:
 - (1) Trip ticket reporting shall be required for all fish landed in North Carolina, including those fish landed but not sold in North Carolina.
 - (2) Trip tickets shall be required to be completed at the time and location where harvested fish are sold, bartered or exchanged.
 - f. The Division of Marine Fisheries, utilizing as necessary non-state agency sources of fisheries management expertise, shall develop methodologies for obtaining adequate, accurate catch-per-unit-effort (CPUE) data for all commercial gear types and fisheries, and shall report regularly to the Marine Fisheries Commission on its progress towards achieving this objective.
 - g. Commercial harvest limits shall be established, as appropriate, by Marine Fisheries Commission rule as a component of Fishery Management Plan adoption.
 - h. Commercial gear restrictions shall be established, as appropriate, by Marine Fisheries Commission rule as a component of Fishery Management Plan adoption.
 - i. A Standard Commercial Fishing License holder shall be required to obtain a vessel endorsement on his/her license for each vessel that will harvest or sell under the license.
 - j. The current, "fee per foot" system of determining the cost of licensing vessels established in N.C.G.S. § 113-152 shall be retained and made to apply to vessel endorsements obtained by holders of the Standard Commercial Fishing License.
 - k. Vessel endorsement cost for nonresident, Standard Commercial Fishing License holders shall be the per foot charge applicable to residents or an amount equal to the nonresident fee charged by the nonresident's state for licensing vessels to fish in coastal waters, whichever is greater.
 - l. A Standard Commercial Fishing License holder shall be required to obtain a "Shellfish Endorsement", at no additional cost, to harvest and sell shellfish in North Carolina, and in order to qualify for such a license endorsement, the applicant must show that he/she is a resident of North Carolina.
 - m. A resident, Standard Commercial Fishing License holder shall be required to obtain a "Menhaden Endorsement" to harvest, land or sell menhaden in North Carolina taken by purse seine, under the terms set out below:
 - (1) the endorsement shall only be available to residents of North Carolina;
 - (2) the cost of the endorsement shall be \$2.00 per ton, gross tonnage, customhouse measurements, for the mother ship;

- (3) each purse boat carrying a purse seine used in conjunction with the mother ship shall require no license.
 - n. The annual cost of the resident Standard Commercial Fishing License shall be \$250.00.
 - o. The General Assembly should strengthen the "residency requirement" for obtaining a resident Standard Commercial Fishing License.
 - p. The annual cost of the nonresident Standard Commercial Fishing License shall be the cost charged North Carolina residents for a general commercial fishing license by the nonresident's state or \$250.00 plus an additional charge commensurate with the cost to the Division of Marine Fisheries of processing and issuing the nonresident license, whichever is greater.
 - q. There shall be created a "Retired Fisherman Commercial Fishing License, subject to the following terms and conditions: (1) the license shall be available only to holders of the Standard Commercial Fishing License who are sixty-five (65) years of age or older, (2) the license shall be non-assignable, and (3) the annual cost of the license shall be \$100.00.
 - r. A Standard Commercial Fishing License holder shall be allowed to sell fish only to a fish dealer licensed in North Carolina.
 - s. The holder of a Standard Commercial Fishing License shall not be entitled to the privileges of state recreational fishing licensees to the extent those privileges are not embodied in the commercial license privileges, without the separate purchase of a North Carolina recreational fishing license.
7. The General Assembly should amend Chapter 113 of the North Carolina General Statutes to create a Recreational Commercial Gear License, required for any recreational fisherman who wishes to use commercial gear to harvest fish from the coastal fishing waters of North Carolina, incorporating the specific features and conditions set forth below. .
- a. The Recreational Commercial Gear License shall be an individual license.
 - b. There shall be no immediate limitation on the class of persons eligible to hold the Recreational Commercial Gear License, but the Marine Fisheries Commission shall be specifically delegated the authority to place a future cap, under appropriate circumstances, on the number of Recreational Commercial Gear Licenses that may be issued by the State.
 - c. The Recreational Commercial Gear License shall be valid for one year from the date of its purchase, and shall be renewable by mail.
 - d. The Recreational Commercial Gear License shall be non-transferable.
 - e. The Recreational Commercial Gear License holder shall be prohibited from selling fish harvested under that license.
 - f. Recreational Commercial Gear License holders shall, as a condition of licensing, be required to comply with Commission requirements and with all Division of Marine Fisheries biological data sampling and survey programs and efforts.
 - g. The Division of Marine Fisheries, utilizing as necessary non-state agency sources of fisheries management expertise, shall develop methodologies for obtaining adequate, accurate catch-per-unit-effort (CPUE) data for persons holding and fishing under the Recreational Commercial Gear License, and shall report regularly to the Marine Fisheries Commission on its progress towards achieving this objective.

- h. The Marine Fisheries Commission shall adopt by rule as necessary, recreational harvest limits for all recreationally significant [or potentially significant] marine and/or estuarine species as a component of appropriate Fishery Management Plans, and Recreational Commercial Gear License holders shall be restricted to these recreational harvest limits.
- i. The Marine Fisheries Commission shall be authorized and directed to establish specific gear limits that will apply to Recreational Commercial Gear License holders under the following terms and conditions:
 - (1) Specific gear limits shall be developed with the assistance of the appropriate "Standing Advisory Committee(s)" established under the recommendations contained in the Report of the Subcommittee on Marine Fisheries Commission and Division of Marine Fisheries Organization.
 - (2) The gear limits developed may vary, within specific limits, by coastal geographic region.
 - (3) The Commission shall be authorized and required to re-examine and appropriately revise those gear limitations on a recurring basis.
 - (4) Holders of the Recreational Commercial Gear License shall be restricted to the use of the following specific types and amounts of commercial gear during the period while final gear limitation rules are being developed and implemented by the Marine Fisheries Commission, and these limits shall serve as the basis for the Commission's promulgation of such rules: (1) one-hundred (100) yards of gill net; (2) five (5) crab or fish pots; and (3) a single trawl employing a headrope not to exceed twenty-five (25) feet in length.
 - (5) The law establishing the interim gear limits applicable to the holders of the Recreational Commercial Gear License shall contain a clause causing those limits to "sunset" in two (2) years from the date of creation of the license or when the Marine Fisheries Commission adopts final rules establishing such limitations, whichever comes first.
- j. All recreationally used commercial gear shall be required to be identified by visible colored tags, or by similar means, as specified by the Marine Fisheries Commission.
- k. Recreational Commercial Gear License holders shall be required to hold a Coastal Recreational Fishing License in order to fish recreational gears in North Carolina coastal waters.
- l. A Recreational Commercial Gear License holder shall be required to obtain a vessel endorsement on his license for each vessel that will be used to fish commercial gear under the license.
- m. The current, "fee per foot" system of determining the cost of licensing vessels established in N.C.G.S. § 113-152 shall be retained and made to apply to vessel endorsements obtained by holders of the Recreational Commercial Gear License.
- n. Vessel endorsement cost for nonresident, Recreational Commercial Gear License holders shall be the per foot charge applicable to residents or an amount equal to the nonresident fee charged by the nonresident's state for licensing vessels to fish in coastal waters, whichever is greater.
- o. The vessel endorsement held by a charter boat operator under the Recreational Commercial Gear License shall entitle any person aboard the vessel to use gill nets to catch bait fish while paying, recreational fishing customers are aboard the vessel.
- p. It shall be unlawful for charter vessels that also operate under (are endorsed on) the license of a Standard Commercial Fishing License holder to sell fish caught by recreational fishermen who are customers of the charter service.
- q. The cost of the Recreational Commercial Gear License shall be \$25.00 for residents and \$250.00 for nonresidents.

- r. The General Assembly should strengthen the "residency requirement" for obtaining the resident Recreational Commercial Gear License.
8. The General Assembly should amend Chapter 113 of the North Carolina General Statutes to create a Coastal Recreational Fishing License, required for any recreational fisherman who wishes to use traditional recreational gears to harvest fish from the coastal fishing waters of North Carolina, incorporating the specific features and conditions set forth below.
- a. The Coastal Recreational Fishing License shall be an individual license, except that a Coastal Recreational Group Fishing License shall be available to the owners of commercial fishing piers or charter/head/dive boats for a set fee, to cover their paying, but unlicensed, customers.
 - b. There shall be no limitation on the class of persons eligible to hold the Coastal Recreational Fishing License.
 - c. The Coastal Recreational Fishing License shall be valid for one year from the date of its purchase, with the specific exceptions for one-week and lifetime licenses set out below, and shall be renewable by mail.
 - (1) A limited duration license, good for one week, shall be available.
 - (2) Permanent (lifetime) Coastal Recreational Fishing Licenses shall be available to the following groups:
 - (a) "Special users", which include: (1) elderly persons (those over 65 years of age), (2) handicapped or disabled persons, (3) disabled American veterans and (4) legally blind persons.
 - (b) Persons holding a "Lifetime Resident Comprehensive Fishing License" or a "Lifetime Sportsman Combination License" issued by the North Carolina Wildlife Resources Commission pursuant to N.C.G.S. §§ 113-271(d)(3) & 113-270.1D(b), respectively.
 - (c) Lifetime License Purchasers, including purchasers of (1) Lifetime Infant Licenses, (2) Implementation Period Lifetime Youth Licenses and (3) Lifetime Adult Licenses.
 - d. The Coastal Recreational Fishing License shall be non-transferable.
 - e. A Coastal Recreational Fishing License holder shall be prohibited from selling fish harvested under the license.
 - f. Coastal Recreational Fishing License holders shall, as a condition of licensing, be required to comply with Commission requirements and with all Division of Marine Fisheries biological data sampling and survey programs and efforts.
 - g. The Division of Marine Fisheries, utilizing as necessary non-state agency sources of fisheries management expertise, shall develop methodologies for obtaining adequate, accurate catch-per-unit-effort (CPUE) data for persons holding and fishing under the Coastal Recreational Fishing License, and shall report regularly to the Marine Fisheries Commission on its progress towards achieving this objective.
 - h. Fishing pier owners and charter/head/dive boat owners purchasing the blanket license in order to exempt their customers from the individual licensing requirement shall be required, on a monthly basis, to report to the Division of Marine Fisheries the number of angler trips per day provided by their professional, recreational facilities/services.

- i. The Marine Fisheries Commission shall adopt by rule as necessary, recreational harvest limits for all recreationally significant (or potentially significant) marine and/or estuarine species as a component of appropriate Fishery Management Plans, and Coastal Recreational Fishing License holders shall be restricted to these recreational harvest limits.
 - j. A Coastal Recreational Fishing License holder shall be restricted to the use of recreational (*i.e.*, fishing gears not defined by the Marine Fisheries Commission as "commercial gear") gears only.
 - k. A Coastal Recreational Fishing License holder shall not be required to obtain a vessel endorsement in order to harvest fish with recreational fishing gear used from or in conjunction with a vessel.
 - l. The cost of the annual Coastal Recreational Fishing License for both residents and nonresidents shall be \$15.00, except for licenses for "special user groups".
 - m. The categories and costs of "special user group" Coastal Recreational Fishing Licenses shall be as recommended by the North Carolina Department of Environment, Health, and Natural Resources Saltwater Sport Fishing License Advisory Committee in its December 1994, *Final Report to the Joint Legislative Commission on Seafood and Aquaculture*.
9. In enacting the proposed coastal fishery licensing system, the General Assembly should create a temporary exception to the general prohibition against the sale of fish caught by persons other than the holders of a state commercial fishing license, limited in scope and duration as follows:
- a. Recreational fishing tournaments authorized to sell fish by virtue of having held on January 1, 1996 a valid Non-vessel Endorsement to Sell Fish pursuant to N.C.G.S. § 113-154.1 and 15A N.C.A.C. 30.0102(e) shall be allowed to renew their current sale privilege annually, until January 1, 2001, by application to the Division of Marine Fisheries for issuance of a "Special Fisheries Sale Permit" and payment of a \$100.00 Permit fee.
 - b. Fishing tournaments not holding such a permit on January 1, 1996 or organized after the effective date of enactment of the recommended coastal fishery licensing package shall not be entitled to apply to the Division of Marine Fisheries for a "Special Fisheries Sale Permit", nor to sell fish taken during its tournament.
 - c. It shall be unlawful, after January 1, 2001, to sell fish taken in a recreational fishing tournament.
10. In enacting the proposed coastal fishery licensing system, the General Assembly should amend the North Carolina General Statutes to create a Coastal Mariculture License, required for any individual who conducts a mariculture operation in North Carolina coastal waters or who uses coastal waters to culture organisms (or their hybrids) that normally occur in such waters, incorporating the following features:
- a. The Coastal Mariculture License shall be issued in the name of the individual principally in charge of the mariculture operation.
 - b. The license applicant shall be required to provide a complete description of the mariculture operation being licensed, including location, size, species cultivated and other information determined by the Division of Marine Fisheries to be relevant, on forms provided by the Division of Marine Fisheries, in order to receive the Coastal Mariculture License.
 - c. The Coastal Mariculture License shall allow the licensee to lawfully participate in all mariculture operations.
 - d. The Coastal Mariculture License holder shall be exempt from the necessity of holding either a valid Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License for activities conducted on or directly related to his/her mariculture lease or franchise, but the Coastal Mariculture License shall not substitute for any other license or permit which may be required by other provision of law.

- e. A Coastal Mariculture License holder shall be required, as a condition of being licensed, to abide by reasonable conditions placed upon his mariculture operation by the Fisheries Director.
 - f. Possession of a valid North Carolina Mariculture License shall be a prerequisite to the States' granting a new public bottom mariculture lease or renewing an existing lease under N.C.G.S. § 113-202 or other provision of law.
 - g. The Marine Fisheries Commission shall be required to enact mariculture training requirements, through rulemaking, for participants in the State mariculture industry.
 - h. New entrants into the North Carolina mariculture industry shall be required to demonstrate their knowledge to effectively participate in that industry.
 - i. Persons holding a mariculture lease or franchise at the time of enactment of mariculture training rules are duly adopted by the Marine Fisheries Commission shall have one year from the effective date of such rules to satisfactorily complete the required mariculture training, unless exempted by rule of the Commission.
 - j. A Coastal Mariculture License holder shall be required to obtain a vessel endorsement, for the same fee charged a Standard Commercial Fishing License or Commercial Gear Recreational License holder, for any vessel used as part of the mariculture operation.
 - k. In the case of a person using a vessel under this license, the Coastal Mariculture License shall serve as the equivalent of the Standard Commercial Fishing License for purposes of the requirement that in order for a vessel to lawfully participate in the commercial harvest of coastal fishery resources, a Standard Commercial Fishing License holder shall be aboard the vessel.
 - l. The annual fee for the Coastal Mariculture License shall be \$250.00, and shall be in addition to the annual cost to the licensee of maintaining his/her lease or franchise.
 - m. Crab shedding shall be exempt from this license requirement.
11. The General Assembly should authorize the Marine Fisheries Commission to require a "Crew License" for persons working on vessels owned by a commercial licensee or otherwise working under the license of a commercial licensee, for a reasonable fee, if and at such time as limited entry into state fisheries or other occurrence may make a Crew License necessary and practicable.
12. The General Assembly should appropriately amend the North Carolina laws to establish a new North Carolina Nonresident Menhaden License, subject to the following terms and conditions:
- a. the Nonresident Menhaden License shall entitle its holder only to harvest and sell menhaden taken by purse seine in North Carolina waters;
 - b. sale of the license shall be limited to nonresidents;
 - c. upon the effective date of enactment of the recommended new coastal fishery licensing system, the license shall be required of any person who seeks to harvest and sell menhaden taken from North Carolina waters, other than the holder of a Standard Commercial Fishing License having a Menhaden Endorsement;
 - d. the licensee shall, as a condition of licensing, be subject to the reporting requirements applicable to holders of the Standard Commercial Fishing License;
 - e. the licensee shall be entitled to the number of Nonresident Menhaden Licenses equal to the number of vessels owned, leased or otherwise in the control of the licensee on January 1, 1996, which license shall be non-transferable and which shall serve as the equivalent of the Standard Commercial

Fishing License for purposes of the requirement that in order for a vessel to lawfully participate in the commercial harvest of North Carolina coastal fishery, a commercial licensee must be aboard the vessel;

- f. nonresidents obtaining the license shall certify that their conviction record in their state of residence is such that they would not be denied a license under the licensing standards applicable to North Carolina commercial licensees;
 - g. the cost of the Nonresident Menhaden License shall be \$2.00 per ton, gross tonnage, customhouse measurements, for the mother ship, and each purse boat carrying a purse seine used in conjunction with the mother ship shall require no license;
 - h. for vessels owned by persons who are not residents of North Carolina, there shall be an additional cost of \$200.00 or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater, in addition to the tonnage fee requirement applicable to the mother ship.
13. In enacting the proposed coastal fishery licensing system, the General Assembly should repeal N.C.G.S. § 113-156.1(c), which automatically extends Fish Dealer License privileges to licensed, commercial pier owners.
 14. Effective concurrently with legislative enactment of the three-tiered licensing system recommended by the License Subcommittee, the Commercial Vessel License requirement contained in N.C.G.S. § 113-152 should be repealed.
 15. Effective concurrently with legislative enactment of the three-tiered licensing system recommended by the License Subcommittee, the Crab License requirement contained in N.C.G.S. § 113-153.1 should be repealed.
 16. The Marine Fisheries Commission should be authorized to adopt temporary rules to establish an interim North Carolina Blue Crab Fishery Management Plan.
 17. In enacting the recommended coastal fishery licensing system recommended by the Moratorium Steering Committee, the General Assembly should generally retain the provisions of existing N.C.G.S. § 113-156, amending that section to incorporate the following features where they are different from existing law under that section:
 - a. A commercial fisherman who sells directly to the public or to businesses that do not hold a Fish Dealer License shall possess an appropriate Fish Dealer License.
 - b. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.
 - c. There shall be a single Fish Dealer License, regardless of the number of dealer categories licensed.
 - d. New Fish Dealer Licenses (not renewals) shall be issued only at those Division Offices wherein a trained and bonded, license staff person is located.
 - e. Each Fish Dealer License applicant shall be required to show, at a minimum, that he/she had an established location where (1) records are kept, (2) materials can be delivered, and (3) Division of Marine Fisheries personnel may perform reasonable inspections and data collection samplings.
 - f. Each licensed Fish Dealer shall be required, as a condition of licensing, to participate in the Division of Marine Fisheries' current Trip Ticket reporting program and to allow Marine Inspectors to conduct reasonable inspections or Division of Marine Fisheries staff to reasonably conduct biological sampling, at any time the licensed dealer is open for, or conducting, business.
 - g. In the case of business applicants for licensing under this section, each Fish Dealer License shall be required to identify an individual owner or agent.

- h. A Fish Dealer License shall only be issued to a North Carolina resident.
- i. Fish Dealer License categories and accompanying fees shall be established and implemented according to the following schedule:

<i>Fish Dealer Category</i>	<i>License Fee</i>
Oysters	\$100.00.
Clams	\$100.00.
Scallops	\$100.00.
Shrimp, including bait	\$100.00.
Finfish, including bait	\$100.00.
Crabs, including peelers and soft crabs	\$100.00.
Crab shedding	\$100.00.
Consolidated license (all categories)	\$600.00.

- j. New Fish Dealer license applicants shall pay an "application fee" of \$50.00 in addition to the basic dealer license fee.
18. The North Carolina Land or Sell License described in N.C.G.S. § 113-153, for nonresident vessels that harvest fish outside of state waters but wish to land their catch in North Carolina, should be retained in substantially its current form.
 19. The General Assembly should appropriately amend the North Carolina laws to establish a new North Carolina Shellfish License, subject to the following terms and conditions:
 - a. the Shellfish License shall entitle its holder only to harvest shellfish in North Carolina coastal waters;
 - b. upon the effective date of enactment of the recommended new coastal fishery licensing system, the license shall be required of any person who seeks to harvest and sell shellfish taken from North Carolina waters, other than the holder of either a Standard Commercial Fishing License having a Shellfish Endorsement or a Coastal Mariculture License;
 - c. sale of the license shall be limited to North Carolina residents;
 - d. during the pendency of the temporary cap on commercial fishing licenses, sale of the Shellfish License shall be limited to persons who hold both a valid Shellfish License and a Non-vessel Endorsement to Sell Fish License on the effective date of enactment of the new licensing system;
 - e. a vessel endorsement shall be required, for the same fee charged a Standard Commercial Fishing License or Commercial Gear Recreational License holder, for any vessel used by a Shellfish License holder to harvest shellfish;
 - f. in the case of a person using a vessel under this license, the Shellfish License shall serve as the equivalent of the Standard Commercial Fishing License for purposes of the requirement that in order for a vessel to lawfully participate in the commercial harvest of coastal fishery resources, a Standard Commercial Fishing License holder shall be aboard the vessel ;
 - g. the cost of the Shellfish License shall be \$25.00.

INTRODUCTION

North Carolina's marine and estuarine resources are owned by the citizens of the State as a whole. The navigable waters wherein the State's coastal fishery resources primarily reside are also owned by all North Carolinians. As such, they are forever imbued with the public's right to freely traverse those waters and to exercise incidental "public trust rights", which have been defined by our Legislature to include swimming, hunting, fishing and recreation. Nonetheless, an individual's ability to exercise public trust rights is clearly tempered by the government's need, as caretaker of publicly owned resources, to regulate those resources for the overall public good. As a result, the harvest of coastal fishery resources is a privilege of citizenship, and not a guaranteed legal right, just as the public right to access and use state parklands is tempered by the government's need to regulate those lands to protect the significant natural resources they contain.

The tension that exists between protecting the public's tradition of using coastal waters for fishing and other public purposes and fulfilling the government's duty to conserve and protect public fishery resources often places the State in the difficult position of trying to balance two competing public objectives. This balancing act occurs against a backdrop wherein, for generations, productive commercial and recreational fisheries have comprised a fundamental part of North Carolina's coastal economy and culture. Commercial fishing has long been the economic backbone of scores of coastal communities. Moreover, North Carolina's inland residents have traditionally journeyed to the coast to fish for themselves or to enjoy fresh, local seafood in hundreds of restaurants, and the contribution of recreational anglers to local coastal economies has exploded in recent decades.

In addition to managing access to North Carolina's marine and estuarine resources, the State must also manage the resources themselves. However, fisheries stocks are not static, but undergo natural changes in abundance in response to environmental variations. Those changes may be short-term, such as the natural events that were largely responsible for declines in North Carolina's bay scallop and oyster fisheries during the last decade. Other changes are more long term and may be cyclic, affecting species populations in ways that are not well understood by fisheries scientists. For example, there are many historical records of species virtually disappearing from a given area following a period of marked abundance, only to "inexplicably" reappear some years later.

Additionally, people exert an ever greater influence on the coastal environment and coastal fisheries through habitat degradation, pollution and excessive fishing effort. North Carolina's coastal economy and culture have changed greatly in recent years as the population has swelled by tens of thousands of new residents, including a rapidly growing retired population. As a result of this population shift towards the coast, productive coastal fisheries habitats have been lost and water quality has been degraded. Largely due to gear improvements, fishermen are more efficient harvesters than they have ever been, and intense harvest pressure has seriously reduced many important fish stocks. There can, for instance, be no real doubt that excessive fishing pressure has played a major role in recent declines of species such as striped bass and summer flounder. Consequently, the importance of human impacts in influencing stock abundance relative to natural environmental variation is changing. Given all of these variables, North Carolina's current coastal fisheries management system has been unable to adequately determine and respond to the needs of its fish stocks, critical fisheries habitats and people.

Historically the commercial fishing industry has been subject to a variety of state license fees, while recreational fishermen harvesting the same resources have not been subject to state licensing. There is also a long history of part-time commercial fishing in North Carolina, which intergrades with the use of commercial fishing gear and methods for recreational purposes. Citizens from all over North Carolina have traditionally come to the coast to catch substantial quantities of finfish or shellfish for personal consumption, using various kinds of commercial gear.

In recognition of the tension, problems, history and traditions noted above, the License Subcommittee intends the proposed coastal fisheries licensing system, taken as a whole, to provide a basis for improved long-term conservation and management of North Carolina's coastal fishery resources. The Subcommittee started with the basic premises that (1) a properly designed and implemented coastal fisheries licensing system will result in the long term conservation of North Carolina's coastal fishery resources through maintenance of healthy stocks, restoration of depleted stocks and wise use of resources available for harvest; (2) harvesting public coastal fishery resources is a privilege, and not a right; and (3) all persons who seek to harvest state coastal fishery resources should contribute directly to the management of those resources through payment of appropriate user (license) fees.

The License Subcommittee also discussed a number of important objectives that will be served by the adoption of a carefully thought out future state fisheries management system. Those objectives include, but are not limited to, the recognized needs to: (1) document the numbers of individuals fishing for commercial and recreational purposes in North Carolina's coastal waters; (2) determine the quantity and value of fisheries harvested from North Carolina's coastal fishing waters; (3) determine the fishing effort utilized to take that harvest; (4) appropriately manage fishing effort in order to prevent overfishing; (5) identify and categorize those persons who utilize coastal fishery resources; (6) encourage and support recreational and professional commercial fishing industries; (7) preserve the small, family fishing operations traditional to North Carolina's coastal region; (8) encourage and support mariculture development; (9) provide revenues dedicated to the conservation and management of coastal fisheries; and (10) promote public awareness of coastal fisheries issues.

Based on these goals and objectives, the License Subcommittee has, for over two years, debated potential revisions to North Carolina's coastal fisheries licensing system that will, first, provide a rational basis for future fisheries management, and second, resolve many of the problems that exist under the current licensing scheme. During those two years of deliberations, the Subcommittee has received extensive input from both the public, *i.e.*, the regulated community, and from the North Carolina Division of Marine Fisheries and the North Carolina Marine Fisheries Commission, the state agencies responsible for administration of the coastal fisheries licensing system.

Numerous ideas for modifications to the current licensing system have been placed on the table and thoroughly discussed. Adamant opposition has been expressed by one person or group to just about every revision that has been proposed. Regardless of what modification is put forward, it seems that someone else always has "a better mousetrap." In fact, during the early deliberations of the License Subcommittee, there was consensus on very little concerning this

topic other than that the present licensing system does not work very well and needs to be changed or replaced.

Nevertheless, while it is clear that restructuring of the State's coastal fisheries licensing system is by far and away the most difficult and controversial assignment of the Moratorium Steering Committee, the License Subcommittee believes that license system modification is the key to introducing a rational, structured basis for managing the State's marine and estuarine fishery resources. Toward that end, the License Subcommittee proposes the conceptual, coastal fisheries licensing system set out on the following pages as a fair and reasonable system for managing North Carolina's coastal fishery resources.

The proposed new system of licensing persons who seek to harvest marine and estuarine resources served as the Moratorium Steering Committee's vehicle for obtaining additional public comment on this issue. During the Committee's nineteen-town, statewide public meetings process, the License Subcommittee found broad, general support for its proposed three-tiered system of licensing persons who seek to take coastal fishery resources. At the same time, in responding to comments made during the public input process, the Subcommittee has significantly revised specific portions of its licensing recommendations. With that preface, the License Subcommittee recommends the implementation of the coastal fisheries licensing system described below.

RECOMMENDATIONS

I. OVERVIEW OF THE PROPOSED LICENSING SYSTEM.

A. FISHERY MANAGEMENT PLANS.

Fishery Management Plans are a central concept of the proposed new licensing system, and are intended to re-orient North Carolina coastal fisheries management efforts by (1) providing basic direction for the Division of Marine Fisheries and the Marine Fisheries Commission, (2) providing long-range certainty for the regulated fishing community, and (3) building accountability into North Carolina's coastal fisheries management system. Ultimately, the State's management of all coastal fisheries, including the imposition of gear restrictions, harvest restrictions or other fishing effort controls, will be tied directly to detailed, current Fishery Management Plans that thoroughly examine and consider the biological, social and economic aspects of each state fishery.

At the same time, the License Subcommittee is well aware that the single-species Fishery Management Plans common to modern fisheries management have often been unsuccessful at improving the plight of the coastal fish stocks to which they pertain. The License Subcommittee believes that one reason such traditional plans have seen limited success in managing many fish stocks is because they artificially separate a single species from the ecosystem or fishery of which it is an integral part. By so doing, such plans attempt to manage a species in a vacuum, giving little attention to either the effect the regulation of other species in the ecosystem or fishery may have on it, or the effect its regulation may have on those other species. For those reasons, the License Subcommittee intentionally takes a broader approach to defining "fishery" in implementing its Fishery Management Plan concept, and recommends the following:

- **The General Assembly should amend the North Carolina General Statutes to require that the Division of Marine Fisheries prepare, and the Marine Fisheries Commission adopt, Fishery Management Plans for all commercially and/or recreationally significant species or fisheries that comprise state marine and estuarine resources, according to the following conditions:**
 - **The term "Fishery Management Plan" shall (1) refer to a written state agency document prepared to guide management of coastal fishery stocks with the goal of ensuring the long-term viability of those stocks; (2) be defined broadly to ensure that it may pertain to a single species or group of species, gear, or geographic area; (3) include necessary information pertaining to management goals and objectives, status of the relevant fish stock(s) [including stock assessments for multi-year species], fishery habitat and water quality concerns and status, social and economic status of the fishery, user conflicts pertaining to the fishery; and (4) recommend management actions pertaining to the fishery.**

The above recommendation requires each Fishery Management Plan prepared to recommend management actions for that fishery. Harvest and/or gear restrictions are the traditional regulatory controls that have been placed on commercial and recreational fishing in North Carolina to manage coastal fish stocks. However, those limitations have been only partially successful in achieving the ultimate goal of state fisheries management agencies -- conserving and protecting managed fish stocks. As a consequence, the Moratorium Steering Committee has discussed a number of alternative regulatory approaches to fisheries management that might be included in a given Fishery Management Plan, including limiting the number of persons entitled to harvest fish for sale in North Carolina. Such "limited entry" into commercial fisheries is often a controversial issue and for that reason merits a word of explanation here.

"Limited entry" generally refers to a number of legal mechanisms whereby a state may control who has the right to harvest and sell its coastal fishery resources. As the number of fishers, and potential harvest effort, has exceeded the maximum sustainable yield of certain commercial fisheries in recent decades, state, federal and foreign government fisheries management agencies have increasingly looked to limited entry systems to manage their fishery resources.

A basic premise underlying state restrictions on who may "do a thing", such as fishing, is that the government must have a rational basis, *i.e.*, a good reason, for imposing those limitations. Thus, implementation of any sort of management system that limits participation in a publicly owned fishery requires an articulable, reasonable basis for doing so. This requirement was paramount to the deliberations of the License Subcommittee, and determinative of the Moratorium Steering Committee's treatment of the limited entry issue relative to future fisheries management in North Carolina.

Commercial fishers harvest the vast majority of coastal fishes taken in North Carolina. Thus, it would appear at first blush that a limit on the number of commercial fishermen, as has occurred under the current license moratorium and is recommended by the License Subcommittee under a temporary future cap, would be all that is required to reduce state

coastal fishing harvests. However, it is important to understand that a limitation on the number of commercial licenses the State may sell, and thus a limit on the number of fishermen who are allowed to harvest and sell fish, will not automatically translate into a limitation on effort directed towards North Carolina coastal fish stocks. In contrast, by simply letting fewer people do more of what they currently do, it is clearly possible to lessen the number of commercial fishers and at the same time increase the overall commercial harvest effort, thereby increasing the plight of coastal fishery resources. Consequently, it is imperative that in addition to considering any overall cap on the number of commercial fishermen, the State's long-term fisheries management strategy also include legal mechanisms that allow a restriction of the amount of effort directed at commercial harvest.

For those reasons, the License Subcommittee spent considerable time discussing means of limiting effort in the commercial fishing industry other than an overall license cap. Based on those discussions, the Subcommittee concluded that rather than adopting any specific mechanism whereby limited access to state fisheries might be imposed or required, vesting general authority in the Marine Fisheries Commission to appropriately limit entry into North Carolina fisheries on a case-by-case basis and as a part of a relevant Fishery Management Plan will best serve the State's long-term management needs. The specific provision recommended below is patterned after the Section 303(b)(6) requirements of the federal Magnuson Fishery Conservation and Management Act, and concerns the authority of federal Regional Fishery Management Councils to impose limited entry systems on fishermen harvesting marine species in federal waters:

- **The Marine Fisheries Commission shall be specifically authorized to develop and implement limited entry or access systems in North Carolina fisheries within the regulatory purview of the Commission as a management option within an applicable Fishery Management Plan, after considering the following factors: (1) the biological status of the fishery; (2) present participation in the fishery; (3) historical fishing practices in, and dependent on, the fishery; (4) the economics of the fishery; (5) the capability of fishing vessels used in the fishery to engage in other fisheries; (6) the social and cultural framework relevant to the fishery; (7) the Commission's ability to include effective anti-monopoly provisions within the proposed limited entry system; and (8) other relevant factors.** The License Subcommittee notes that unfortunately, limited entry is often popularly regarded as the "cure all" for fisheries conservation and allocation problems. Realistically, limited entry should be viewed as but one of a number of tools available to attempt to adequately conserve and manage public fishery resources. In the context of its proposed coastal licensing system, the License Subcommittee views limited entry as but one more option in the arsenal of regulatory tools available to the State to effectively manage its coastal fishery resources, generally to be used only as a measure of "last resort". Nevertheless, the ability to limit the number of participants in a fishery is an important future management option for North Carolina, and because it is not presently within the regulatory purview of the Marine Fisheries Commission, one that requires specific authorization by the Legislature.

- **Initial Fishery Management Plan preparation by the Division of Marine Fisheries shall proceed according to a fishery priority list developed by the Marine Fisheries Commission, and the Division shall be required to complete preparation of and submit to the Commission all state coastal Fishery Management Plans on or before December 31, 1999.** This recommendation was roundly criticized during the Moratorium Steering Committee's public hearings process as being totally unrealistic. Fishery Management Plan development and implementation is the linchpin of future North Carolina coastal fisheries management under the recommendations of the Moratorium Steering Committee. The License Subcommittee believes, and the above recommendation reflects, that time is of the essence in preparing and adopting these plans. Consequently, it is imperative that the short-term development of these plans be fully funded. While the License Subcommittee realizes that the proposed time frame is short, the Subcommittee feels it is only unrealistic given an assumption that the Legislature will appropriate no funds to implement this recommendation. The License Subcommittee urges the General Assembly to recognize the critical nature of this recommendation and take the appropriate budgetary actions to ensure that it can be carried out in a timely manner. In addition, for the reasons discussed in section II.E.3., below, the License Subcommittee urges the Marine Fisheries Commission to make the North Carolina Blue Crab Fishery Management Plan first on its Plan priority list.
- **The Marine Fisheries Commission shall adopt one or more model Fishery Management Plans that clearly outline the necessary, minimum components of such a Plan.** By setting the standards for an acceptable Fishery Management Plan "up front", the Commission can ensure the uniformity and professionalism of each future plan, and eliminate uncertainty about required Plan components among both those responsible for preparing the Plan and those fishermen who will be operating under it.
- **A "Fishery Management Plan Advisory Council" made up of commercial fishermen, recreational fishermen and scientists with expertise in the fishery for which the plan is being prepared shall be appointed by the Marine Fisheries Commission for each Fishery Management Plan, to assist with initial plan preparation, and subsequent plan updates or amendments.** This provision will ensure that the Division of Marine Fisheries and the Marine Fisheries Commission have access to and consider appropriate expertise and diverse public viewpoints regarding the management of various state fisheries.
- **Fishery Management Plans adopted shall be integrated as fully as possible with pre-existing, mandatory fishery management plans promulgated and adopted by the Atlantic States Marine Fisheries Commission, and the federal Mid- and South Atlantic Fisheries Management Councils, and shall set the standards for future fishery management plans or plan amendments promulgated by those agencies.** Adoption of this provision will ensure that North Carolina is consistent with pre-existing fishery management plans and that the State does not unnecessarily "re-invent the wheel" with respect to coastal fisheries management. However, and perhaps more significantly, the recommendation is also intended to convey the License Subcommittee's belief that the North Carolina Division of Marine Fisheries

and Marine Fisheries Commission must aspire to a position where they have the information and expertise to drive, rather than be driven by, the development of fishery management plans that significantly involve the State's coastal fishery resources and fishermen.

- **Within six (6) months of the submission of a Fishery Management Plan to the Commission by the Division of Marine Fisheries, the Commission shall make any changes to the Plan deemed necessary and adopt it through the exercise of the Commission's rulemaking authority. Such adoption shall be exempt from the legislative review, but not the public notice and comment, provisions of Chapter 150B of the North Carolina General Statutes.** This provision, like several of the others listed above, will help to ensure expediency in the preparation, consideration and adoption of Fishery Management Plans. It is intended to respond, in part, to the oft-voiced public criticism that moving to embrace Fishery Management Plans as a cornerstone of State coastal fisheries management is simply a delaying tactic that will perpetuate the status quo and result in inadequate protection of coastal fish stocks.
- **Fishery Management Plans shall be updated by the Division of Marine Fisheries and reviewed and readopted by the Marine Fisheries Commission at least every three years, and may be amended as necessary at any time.** This provision will ensure that once prepared, Fishery Management Plans are not simply "relegated to the shelf", but remain viable and useful fishery management tools.
- **The Marine Fisheries Commission shall act appropriately to ensure that potentially stressed or declining North Carolina coastal fish stocks are adequately protected while state Fishery Management Plans are being prepared and implemented.** A frequent concern expressed during the Moratorium Steering Committee's public meetings process was that some state coastal fish stocks may decline substantially while the proposed Fishery Management Plans are being developed and implemented. Consequently, "interim harvest controls", such as quota management for declining species or establishment of estuarine reserves, were widely requested. The License Subcommittee agrees that all fish stocks must be adequately protected from overfishing during the period while state Fishery Management Plans are being prepared, but notes that is the ongoing duty of the Marine Fisheries Commission to conserve and protect North Carolina marine and estuarine resources. The Subcommittee believes that the Commission has sufficient authority under existing law to impose necessary, interim harvest controls, including those measures requested, to ensure that potentially stressed or declining fish stocks are adequately conserved and protected.

B. GENERAL FEATURES OF THE PROPOSED LICENSING SYSTEM.

Based on its deliberations, the License Subcommittee believes that North Carolina's coastal fishery resources can best be conserved and managed by establishing a "three-tiered" licensing system under which virtually every adult seeking to take North Carolina coastal fishery resources will be required to hold an appropriate, valid state coastal fishing license. As set out fully below, the State will sell three basic types of

individual coastal fishing licenses, giving licensees potential access to all North Carolina coastal fisheries: (1) the Standard Commercial Fishing License, (2) the Recreational Commercial Gear License, and (3) the Coastal Recreational Fishing License.

The basic attributes of each proposed user license are discussed under the appropriate section of this Report. However, there are several general features of the proposed new licensing system common to each license, that merit mention and explanation "up front". Accordingly, the License Subcommittee recommends that:

- **The General Assembly should amend Chapter 113 of the North Carolina General Statutes to establish a new licensing system for coastal fisheries, creating three new, individual user licenses -- (1) the Standard Commercial Fishing License, (2) the Recreational Commercial Gear License, and (3) the Coastal Recreational Fishing License -- that incorporate the following general features:**
 - **The basic licensing unit shall be the individual, and all licensees shall be assigned a permanent identification number.** This is a substantial departure from the current practice of licensing each vessel using commercial gear in North Carolina waters, but is viewed by the License Subcommittee as the most efficient and effective structural basis upon which to manage fisheries and fishermen.
 - **Any person who seeks to take any marine or estuarine resource from state coastal fishing waters shall be required to hold a valid coastal fishing license, except:**
 - **Unlicensed persons younger than sixteen (16) years of age may lawfully take coastal fishery resources if not using commercial fishing gear, or if using commercial gear, may do so while operating under the valid license of a parent or legal guardian.** This provision will allow unlicensed juveniles to continue to fish with hook-and-line, to take crabs by hand line, and the like. In addition, it will allow unlicensed juveniles to use commercial gear under the license of a parent, much as children can currently fish in inland waters under a valid Wildlife Resources Commission issued fishing license held by a parent or guardian.
 - **Persons holding a valid "Scientific Collecting Permit".** "Scientific Collecting Permits" allowing the otherwise unlicensed taking of marine and estuarine species for scientific purposes are authorized by N.C.G.S. § 113-261(b) and the Marine Fisheries Commission rule codified at 15A N.C.A.C. 31 .0006. Under the recommendations of the License Subcommittee, Scientific Collecting Permits will continue to be issued by the Division of Marine Fisheries under appropriate circumstances.
 - **Unlicensed persons fishing recreationally under a "blanket license" as provided elsewhere in this report.** The recommendations of the License Subcommittee, under the section on the Coastal Recreational Fishing License, provide that the owners or operators of commercial piers and charter/dive/head boats may purchase a blanket license that allows the business' paying customers to

fish recreationally (*i.e.*, without the privilege of sale) without being individually licensed.

- **Unlicensed persons participating in a commercial fishing operation under the valid license of a commercial licensee, where the licensee is present.** This provision will allow commercial licensees to obtain the necessary assistance (*i.e.*, a "crew") to prosecute fishing operations, since under the new licensing system, adults harvesting fish for sale will be required to hold a valid commercial fishing license.
- **Commercial fishing licenses shall be available for purchase only at the regional offices of the Division of Marine Fisheries.** This provision is intended to ensure that the various restrictions and requirements applicable to commercial license issuance under the proposed licensing system are consistently and properly administered, and will ensure that commercial licensees are given proper information on lawful activities under their licenses. Division of Marine Fisheries regional offices are currently located in Columbia, Elizabeth City, Manteo, Morehead City, Washington and Wilmington.
- **Recreational fishing licenses shall be widely available for purchase through a network of private vendors, through automated electronic machines, and by mail and telephone.** Implementation of this provision will ensure that resident and nonresident fishermen, tourists and vacationers can relatively easily obtain a recreational fishing license, and that the new recreational fishing license requirements recommended by the License Subcommittee do not unreasonably hamper the public's opportunities to fish along the North Carolina coast.
- **All commercial fishing licenses shall be valid from July 1 of any given year until June 30 of the the following year, while all annual recreational fishing licenses shall be valid for a period of one calendar year from the date of license purchase. Both commercial and recreational fishing licenses shall be renewable by mail.** To allow sight verification of the validity of a commercial fishing license by enforcement officers "on the water", it is necessary that commercial fishing licenses be issued on a "12-month basis", as is done under current law. The Subcommittee considered changing the term of commercial licenses to reflect the calendar year but were told by commercial fishermen at public hearing that such a change would work a severe economic hardship on many fishermen, given the relative paucity of available fishing activities during the winter months. For that reason, the Subcommittee recommends that the term of the commercial license be maintained as it exists under present law. However, the License Subcommittee does propose to change the term of annual recreational fishing licenses from the State's fiscal year to a period extending one calendar year from the date of purchase of the license. This provision is recommended for several reasons: (1) the convenience of recreational licensees, (2) to relieve the burden on license agents created by the rush to renew licenses at the expiration of the license year and (3) in order to be consistent with recreational licensing policy recently adopted by the North Carolina Wildlife Resources Commission. Allowing license renewals by mail will also relieve commercial

licensees of the potential burden of having to travel to a regional Division of Marine Fisheries office to renew an existing license.

- **The privilege of sale of coastal fishery resources shall be limited to commercial licensees.** The License Subcommittee believes strongly that a significant limitation on the number of persons allowed to profit by harvesting and selling coastal fishery resources is essential to the future conservation and management of the public resource. Thus, under the recommended licensing system, only persons holding a state commercial fishing license will be allowed to sell their catches, even though certain recreational licensees will be allowed to use limited amounts of commercial fishing gear to harvest coastal fishery resources for personal consumption.
- **Full participation in and compliance with Division of Marine Fisheries mandatory, biological data reporting and sampling programs, including but not limited to the Division's Trip Ticket program, fishhouse sampling programs, on-board sampling programs (upon reasonable notice, and upon consideration of liability and related issues) and fishermen surveys, shall be a condition of licensing for all licensees.** The primary purpose for which the current coastal fisheries license moratorium was established was to allow state fisheries managers to step back and evaluate the current situation and future conservation and management needs of North Carolina's coastal fishery resources, and then to design a fisheries management structure that will accommodate those needs. It is abundantly clear both that good fishing effort data is essential to the conservation and management of the State's coastal fishery resources and that current data collection mechanisms, while excellent in some respects, are inadequate to provide the total data base needed by the State to protect and manage its coastal fisheries.
- **Revenues derived from the sale of all coastal fishing licenses shall be deposited in one or more dedicated funds reserved for use in conserving, enhancing, and managing marine and estuarine resources.** This provision is discussed in more detail in the next section.

C. DEDICATION OF COASTAL LICENSING FEES.

The License Subcommittee has found the concept that coastal fisheries license revenues should be paid into a dedicated state fund that can only be used for the purpose of protection and enhancement of coastal fishery resources meets with virtually universal approval. At the same time, it is equally clear that because of the substantial projected revenue from recreational licensing, state sports fishermen wish for license fees paid by recreational users to be held separately from license fees paid by commercial users, and wish to have a say in the expenditure of monies from that fund. In addition, such a separation of license revenues may be necessary to ensure that North Carolina remains eligible to receive substantial federal recreational fishing grant monies (Wallop-Breaux funds). Consequently, the License Subcommittee recommends the following:

- **The General Assembly should amend the North Carolina General Statutes to create a dedicated "Recreational License Marine and Estuarine Resources Enhancement Trust Fund" and provide that all recreational, coastal fishery licensing fees collected**

by the State be held separately in that fund and disbursed according to the following provisions:

- **The legislation creating the Fund shall provide that it is a continuing, interest bearing account, so that both the license fees and interest earned on those monies shall be dedicated for the purposes of the Fund, and funds not expended in any state fiscal year shall not revert to the General Fund. This provision is simply intended to ensure that there be no question that all funds generated by the licensing of coastal fisheries be permanently reserved for use in fisheries resource enhancement and management.**
- **The legislation creating the Fund shall specify that the base funding for the Division of Marine Fisheries will not be diminished or replaced with the revenues from the sale of coastal, recreational fishing licenses, and shall provide adequate start-up funding to implement the new licensing program.**
- **Private license sales agents shall be allowed to retain up to \$1.00 of the license fee as compensation for the costs of license issuance, reporting and activities associated with the sale of each recreational license.**
- **Expenditures from the Recreational License Marine and Estuarine Resources Enhancement Trust Fund shall be authorized by the Secretary of the Department of Environment, Health, and Natural Resources (Secretary) with the advice and consent of a Board of Trustees composed of persons with interest and expertise in recreational use of marine and estuarine resources, appointed by the Governor from a list submitted to him by the Marine Fisheries Commission. This specific recommendation, like the majority of other individual recommendations found in this section, mirrors that of the North Carolina Department of Environment, Health, and Natural Resources Saltwater Sport Fishing License Advisory Committee in its December 1994, *Final Report to the Joint Legislative Commission on Seafood and Aquaculture*. It was the single recommendation of the Moratorium Steering Committee that received the most specific public comment in support of the proposal.**
- **Minimum and maximum percentages of the Fund to be used for specific purposes shall be as follows: (i) Resource and Habitat Enhancement - not less than 25%; (ii) Law Enforcement - not less than 20%, but no more than 25%; (iii) Marine Fisheries Research - not less than 25%; (iv) Grants for Coastal Fishing Programs, Projects and Scholarship Fund for Students - not more than 10%; (v) Administration - not more than 10%, exclusive of the license agent fee; and (vi) Public Education and Information - not less than 5%, but no more than 10%. These percentages shall be reviewed periodically by the Board of Trustees, which shall be authorized to appropriately adjust the allocation categories and/or percentage allocations. As noted, this provision parallels the original disbursement recommendation of the North Carolina Department of Environment, Health, and Natural Resources Saltwater Sport Fishing License Advisory Committee in its December 1994, *Final Report to the Joint Legislative Commission on Seafood and Aquaculture*. While there was not a great deal of public comment regarding this**

recommendation, several speakers at the Moratorium Steering Committee's public meetings suggested that a greater percentage of the fund be allocated for the acquisition of wetlands and other critical coastal fisheries habitats.

- **The Secretary shall ensure that in approving expenditures from the respective funds governed by each body, the Board of Trustees for the Recreational License Marine and Estuarine Resources Enhancement Trust Fund and the Commercial License Marine and Estuarine Resources Enhancement Trust Fund do not unintentionally duplicate or undercut the efforts of the other Board.** The purpose of this recommendation is to ensure that the two Boards administering state coastal fisheries licensing funds reasonably communicate concerning expenditures so that they do not inadvertently end up working at cross purposes.
- **The Secretary shall be required to report annually to the General Assembly regarding the performance of the Coastal Fisheries Licensing System and the use of monies from the Recreational License Marine and Estuarine Resources Enhancement Trust Fund.** This recommendation is intended to ensure that the Legislature and the public are kept informed as to the effectiveness of coastal fishery resources enhancement brought about by the creation and administration of a fund dedicated to resource improvement.
- **The legislation creating the proposed North Carolina recreational fishing licenses shall contain a "sunset clause" that causes the state requirement for each coastal recreational fishing license to expire automatically if and at such future time as the General Assembly diverts monies contained in the Recreational License Marine and Estuarine Resources Enhancement Trust Fund to purposes other than the management of coastal fisheries, repeals the legislation creating the Fund or causes the Fund to cease to be a dedicated fund.** The Moratorium Steering Committee found widespread support for coastal recreational fishing licenses, but only so long as the entirety of the funds generated by those licenses are dedicated to coastal fishery resource enhancement. Based on that strong public sentiment, the License Subcommittee makes the "sunset clause" contained in the above recommendation an integral part of its license restructuring proposal.

The August 2, 1996 Public Meetings Draft "Report of the License Subcommittee" recommended that all licensing fees from the sale of state commercial fishing licenses should be deposited in the existing "Marine Fisheries Commission Conservation Fund" and disbursed by the Marine Fisheries Commission in keeping with legislative directives regarding that fund. However, based upon comments received at the public meetings recommending the need for equity in the treatment of recreational and commercial licensing fees, and upon further deliberations, the License Subcommittee instead recommends that insofar as is practicable, commercial license fees be treated substantially the same as recreational licensing fees, as set out below:

- **The General Assembly should amend the North Carolina General Statutes to create a dedicated "Commercial License Marine and Estuarine Resources Enhancement Trust Fund" and provide that all commercial, coastal fishery**

licensing fees collected by the State be held separately in that fund and disbursed according to the following provisions:

- The legislation creating the Fund shall provide that it is a continuing, interest bearing account, so that both the license fees and interest earned on those monies shall be dedicated for the purposes of the Fund, and funds not expended in any state fiscal year shall not revert to the General Fund.
- The legislation creating the Fund shall specify that the base funding for the Division of Marine Fisheries will not be diminished or replaced with the revenues from the sale of commercial fishing licenses, and shall provide adequate start-up funding to implement the new licensing program.
- Expenditures from the Commercial License Marine and Estuarine Resources Enhancement Trust Fund shall be authorized by the Secretary of the Department of Environment, Health, and Natural Resources (Secretary) with the advice and consent Board of Trustees composed of persons with interest and expertise in commercial use of marine and estuarine resources, appointed by the Governor from a list submitted to him by the Marine Fisheries Commission.
- Minimum and maximum percentages of the Fund to be used for specific purposes shall be as follows: (i) Resource and Habitat Enhancement - not less than 25%; (ii) Law Enforcement - not less than 20%, but no more than 25%; (iii) Marine Fisheries Research - not less than 25%; (iv) Grants for Coastal Fishing Programs, Projects and Scholarship Fund for Students - not more than 10%; (v) Administration - not more than 10%, exclusive of the license agent fee; and (vi) Public Education and Information - not less than 5%, but no more than 10%. These percentages shall be reviewed periodically by the Board of Trustees, which shall be authorized to appropriately adjust the allocation categories and/or percentage allocations.
- The Secretary shall ensure that in approving expenditures from the respective funds governed by each body, the Board of Trustees for the Commercial License Marine and Estuarine Resources Enhancement Trust Fund and the Recreational License Marine and Estuarine Resources Enhancement Trust Fund do not unintentionally duplicate or undercut the efforts of the other Board.
- The Secretary shall be required to report annually to the General Assembly regarding the performance of the Coastal Fisheries Licensing System and the use of monies from the Commercial License Marine and Estuarine Resources Enhancement Commercial Trust Fund.

II. LICENSE TYPES.

As previously noted, under the proposed new licensing system, almost every adult seeking to take North Carolina coastal fishery resources will be required to hold one of three basic

types of individual, general use, coastal fishing licenses: (1) the Standard Commercial Fishing License, (2) the Recreational Commercial Gear License, or (3) the Coastal Recreational Fishing License. In addition, new, "special purpose" coastal resource licenses will be established for mariculturists (the Coastal Mariculture License), certain shellfishermen (the Shellfish License) and nonresident menhaden fishermen (the Nonresident Menhaden License). The State will also continue to sell licenses in several other categories, required of persons who do not seek to take fishery resources from state coastal waters, but who undertake commercial transactions involving those resources. That latter category of licenses includes the North Carolina (1) Commercial Fishing Pier License, (2) Fish Dealer License and (3) Land or Sell License. Finally, adoption of the licensing package recommended by the License Subcommittee will result in the abolishment of several existing licenses, as they will no longer be necessary. Those licenses include the North Carolina (1) Commercial Vessel License, (2) Crab License and (3) Endorsement to Sell Fish License. Each of those various licenses is described below, in turn.

A. STANDARD COMMERCIAL FISHING LICENSE.

Based on the preceding discussion, as the first major category of individual coastal fishing licenses, the License Subcommittee recommends that:

- **The General Assembly should amend Chapter 113 of the North Carolina General Statutes to create a Standard Commercial Fishing License, required for any individual who harvests, lands and/or sells fish from the coastal fishing waters of North Carolina, incorporating the specific features and conditions set forth below.** The purpose of creating this license is to (1) protect the State's historic, cultural, commercial fishing heritage by creating a class of professional fishermen vested with the right to sell what they catch; (2) maintain that class, through Fishery Management Plan implementation, at a level commensurate with the State's duty to conserve and protect its marine and estuarine resources; (3) provide a means of gathering effort (gear) data critical to adequate fisheries management; and (4) implement the principle that all persons who harvest state public trust resources pay for that privilege by investing in coastal fisheries conservation and management.

1. LICENSE FEATURES.

a. Licensing Unit.

- **The Standard Commercial Fishing License shall be an individual license, and it shall be unlawful for any person not holding the Standard Commercial Fishing License, or its equivalent, to harvest marine or estuarine resources for commercial purposes without the use of a vessel, or for any vessel to participate in the commercial harvest of coastal fishery resources unless the holder of a valid Standard Commercial Fishing License, or its equivalent, is aboard the vessel.** Each license included under the proposed new licensing system is an individual license. "Individual" is interpreted broadly under this recommendation and includes individual persons, partnerships, associations, firms, corporations, or other groups of persons capable of suing or being sued as an entity. Under the proposed individual licensing system, a commercial licensee

must be present aboard any vessel seeking to harvest marine or estuarine resources for sale, since vessels will no longer be directly licensed and because commercial crew members will not be required to be licensed.

b. License Eligibility.

The License Subcommittee discussed at great length the potential options for determining who should be eligible to purchase the Standard Commercial Fishing License under the proposed new licensing system. Many Subcommittee members and others expressed a preference for substantially limiting the size of the class of persons who will be eligible for this license, *e.g.*, by limiting the potential size of the class to the current number of persons who hold a North Carolina Endorsement to Sell Fish. The License Subcommittee believes that the extremely diverse nature of North Carolina's commercial fisheries, resulting from the State's unique geographical location and physiography, makes fisheries management based on capping the number of participants in each individual fishery impractical and ineffective. Instead, the License Subcommittee believes that adequate North Carolina coastal fisheries management can most effectively and equitably be achieved by placing an overall cap on the number of commercial licenses issued by the State, while allowing individual fishermen the flexibility to move in and out of specific fisheries as needs and conditions dictate. For those reasons, the License Subcommittee recommends that:

- **The General Assembly, in adopting the three category licensing system recommended by the Moratorium Steering Committee, should place a temporary cap on the number of Standard Commercial Fishing Licenses that may be issued by the Division of Marine Fisheries equal to the number of current, valid Endorsements to Sell Fish held by licensees on January 1, 1996, under the following conditions:**
 - **The temporary cap on the number of commercial licenses shall expire one year after the completion and implementation by the State of Fishery Management Plans for all commercially and recreationally significant species, or on July 1, 2002, whichever comes first.** The information developed by state fisheries managers in completing coastal Fishery Management Plans during the license moratorium period will enable North Carolina to assess the overall status of state fish stocks and the amount of fishing effort directed at those stocks, thereby documenting the need for, likely effectiveness of, and required level of any permanent cap on the number of commercial licensees either higher or lower than the temporary cap on the number of commercial licenses recommended by the License Subcommittee.
 - **Within ninety (90) days of enactment of the recommended coastal licensing structure, persons who held a valid North Carolina Endorsement to Sell Fish license on January 1, 1996, or who were granted a hardship Commercial Vessel License after that date by the Moratorium License Appeals Panel and purchased an Endorsement to Sell Fish License for that vessel, shall be entitled to purchase the same number of**

Standard Commercial Fishing Licenses as eligible Endorsements to Sell Fish held. Implementation of this provision will ensure that the interests of persons who have invested substantial capital in commercial fishing equipment are protected under the State's new coastal licensing system. It will also create a pool of Standard Commercial Fishing Licenses available to persons not holding an eligible Endorsement to Sell Fish license when the new licensing structure goes into effect, since the "license privilege" of persons holding either single or multiple Endorsement to Sell Fish licenses, but who choose not to purchase a Standard Commercial Fishing License for each Endorsement to Sell Fish license held within the specified time period, will go into this available commercial license pool.

- **The holder of a Standard Commercial Fishing License shall be entitled to assign the license held to any individual qualified to hold a North Carolina commercial fishing license (i.e., whose license privileges have not been revoked), under the following terms and conditions:**
 - **The assignment shall be effective upon receipt by the North Carolina Division of Marine Fisheries, either in writing or through oral communication, of notification of such assignment by the Standard Commercial Fishing License holder, accompanied by the name of the licensee making the assignment, the number of the license being assigned, the name and identification number of the vessel endorsed on the License that will be used by the assignee, the assignee's name and mailing address, and the assignee's social security number.**
 - **The assignment shall only be valid while the assignee uses the vessel endorsed on the License assigned and specified in the oral or written notification of assignment to the Division of Marine Fisheries.**
 - **The assignment shall remain effective until revoked by the Division of Marine Fisheries upon (1) notification by the assignor that the assignment has been terminated, or (2) determination by the Division that the assignee is ineligible to hold a Standard Commercial Fishing License or is operating beyond the terms and conditions applicable to any assignment, at which time all rights under the License shall revert to its owner.**
 - **Any civil penalties assessed by the Division for violations of law occurring as a result of fishing operations carried out by the vessel operated under a duly assigned Standard Commercial Fishing License shall apply to the assignee, and not the assignor, absent evidence that the assignor was in physical or constructive control of the vessel at the time the violation was committed.**

This provision, which replaces the "Captain's Endorsement" proposal contained in the License Subcommittee's August 2, 1996 Public Hearings Draft Report, will protect the interests of commercial fishermen in a number

of ways. First, it will ensure that licensees, including corporations, partnerships or individual owning multiple commercial fishing vessels, will have the ability to continue fishing each vessel owned and properly licensed while complying with the requirement that a commercial licensee must be aboard the vessel at all times. Secondly, it will act as a "disability provision" -- something urged by many commercial fishermen during the Moratorium Steering Committee's public meeting process -- allowing fishermen to keep their vessels working, and producing income, when the licensee is either involuntarily unable to fish (e.g., sickness or injury) or voluntarily chooses not to fish for some reason. At the same time, the recommended provision will protect the State's interests in (1) being able to continuously determine to whom each commercial fishing license is assigned, (2) maintaining a mechanism whereby to appropriately assign civil penalties for fishery law violations as recommended by the Law Enforcement Subcommittee in its Report, and (3) maintain the "status quo" in ensuring that commercial licensees cannot unilaterally expand their fleets of fishing vessels during the pendency of the temporary cap on the number of North Carolina commercial fishing licenses.

The License Subcommittee, in its August 2, 1996 Public Meetings Draft Report presented for public comment alternative proposals concerning the manner in which persons not automatically eligible to hold a Standard Commercial Fishing License could receive a state commercial fishing license from the license pool created by the proposed coastal license restructuring. At its public meetings, the Moratorium Steering Committee received various comments both in favor of and opposed to an income requirement for license eligibility, but no comments concerning other potential eligibility criteria. Based on that input and after further discussion, the License Subcommittee recommends as the better approach the second of the alternatives carried to public hearing -- *i.e.*, that the Marine Fisheries Commission be authorized and directed to develop criteria governing the granting of commercial licenses to new applicants -- given its inherent flexibility and its involvement of the public in developing commercial license eligibility criteria through the administrative rulemaking process. Consequently, the License Subcommittee recommends that:

- **The General Assembly should authorize the continuation of the License Appeals Panel created under the current marine fishing license moratorium, and authorize and direct the Marine Fisheries Commission to develop rules setting out:**
 - **a process whereby persons may apply for any Standard Commercial Fishing Licenses available from the license pool created under the temporary commercial license cap;**
 - **eligibility criteria to be applied by the License Appeals Panel in determining whether new license applicants qualify to purchase a Standard Commercial Fishing License from the license pool;**

- ♦ **eligibility criteria to be applied by the License Appeals Panel in determining which persons who did not hold an Endorsement to Sell Fish license on January 1, 1996, but who held the Endorsement to Sell Fish license prior to that date, qualify to purchase a Standard Commercial Fishing License from the license pool; and**
- ♦ **limitations on the number of licenses that may be issued during any time period or other necessary restrictions on commercial license issuance by the Appeals Panel.**

The License Subcommittee believes that implementation of this recommendation will increase the State's flexibility to apportion available commercial licenses in a fair and consistent manner that benefits the users, the resource and fisheries management. The Subcommittee notes that although it rejected automatic application of an income requirement as the sole criterion for determining whether new commercial license applications should be granted, it encourages the Marine Fisheries Commission to use either an "income" or "history of recent participation in the industry" qualification as a primary criterion for the granting of commercial license applications.

- **At the end of the temporary commercial license cap period, the Marine Fisheries Commission shall recommend to the General Assembly the level required for a permanent cap on the number of North Carolina Standard Commercial Fishing Licenses.** This provision will allow the State, with the benefit of the knowledge gained from completed Fisheries Management Plans for all commercially and recreationally significant coastal fishes, and from effort data gained through implementation of the recommended licensing structure, to evaluate (1) the wisdom and viability of managing coastal fish stocks by placing a permanent cap on the number of commercial licenses available in North Carolina, and (2) the appropriate level for any permanent cap that may prove feasible and warranted.

It is extremely important to note that under the proposed new licensing system, even with the temporary cap on the number of Standard Commercial Fishing Licenses that may be issued, ***all persons who have lawfully taken and sold fish in North Carolina in the recent past will continue to have the privilege to do so.***

It is equally important to realize, as previously discussed, that a limitation on the number of fishermen who are allowed to harvest and sell fish will not necessarily result in a limitation on effort directed towards the State's coastal fish stocks. For that reason, the State's long-term fisheries management strategy must also include legal mechanisms that allow a restriction of the amount of effort directed at commercial harvest. Consequently, in addition to considering an overall cap on the potential number of state commercial fishers, the License Subcommittee also recommends authorizing the Marine Fisheries Commission to implement "limited entry" mechanisms in specific fisheries to restrict effort in the commercial fishing industry, as recommended for adoption in section I.A., above.

c. License Duration.

- **The Standard Commercial Fishing License shall be valid for the period from July 1 of any given year until June 30 of the following year, and shall be renewable by mail.** As previously discussed, during the public meetings process many commercial fishermen requested that for economic reasons the annual license period remain the State's fiscal year, rather than being changed to a calendar year basis as originally recommended by the License Subcommittee. Consequently, the Subcommittee has changed its recommendation to reflect the wishes of the regulated community, with the provision that commercial licensees will be able to renew their licenses by mail, rather than having to travel to the Morehead City office of the Division of Marine Fisheries for license renewal.

d. License Transferability.

Developing a state policy for commercial license transferability as a part of its licensing recommendations has proved to be one of the most difficult, complex issues faced by the Moratorium Steering Committee. Unrestricted license transferability appears to be strongly desired by several segments of the commercial fishing industry. Such a policy has been promoted by some other states as fostering stewardship of fishery resources by giving the licensee a stake in the long-term health of that resource, and as providing economic protection for those who have invested in a State's commercial fishing industry. On the other hand, some commercial fishermen have complained that creating a system of free license transferability will ultimately favor highly capitalized and corporate commercial fishermen over the "small timer" or family operations. In addition, many non-industry commentators have questioned the equitability of creating "instant wealth" for a few based on an exclusive interest in a public resource, and have pointed out the problems with administering a market license system.

After much discussion and debate of the license transferability issue over a period of many months, the Moratorium Steering Committee initially concluded that at least for the immediate future, commercial licenses should only be transferable in specific situations. The Committee takes especial note of the fact that adoption of its recommendations will create a *temporary* cap on the number of commercial license that may be issued in North Carolina, and is specifically concerned over the problems that free license marketability would potentially create by vesting commercial licensees under a restricted license system (which make the licenses more valuable) that could change to an open license system with the completion and implementation of Fishery Management Plans (which would make the licenses much less valuable). For all of those reasons, the Moratorium Steering Committee took to public hearing two alternatives embracing limited commercial license transferability.

As had previously been the case, public opinion on the license transferability issue expressed at those meetings was divided, with no clear consensus on the issue. After much additional discussion of the pluses and minuses of license

transferability, the License Subcommittee concluded that while there is a need for license transferability in limited, specific situations, free license marketability would likely have a number of undesirable consequences in addition to those previously discussed, by: (1) creating the inequity in the recommended licensing system of imposing qualification requirements upon new entrants seeking a commercial license from the State license pool, while allowing market purchasers to bypass those qualification requirements; (2) hastening the demise of the traditional, small family fishing operation in favor of larger fishing operations controlled by nonresident entrants into the industry; and (3) promoting an increase in commercial fishing effort in the State.

Consequently, the License Subcommittee believes strongly that the potential adverse consequences of license transferability merit much additional scrutiny, and that North Carolina marine fisheries agencies must move slowly and deliberately in implementing *any* system of license transferability. Toward that end, the Subcommittee makes the following recommendations concerning license transferability:

- **The Standard Commercial Fishing License shall be transferable only as authorized by the Marine Fisheries Commission through rules promulgated to develop transferability criteria to be applied by the License Appeals Panel, according to the following terms and conditions:**
 - **The Marine Fisheries Commission shall be authorized and directed to adopt license transferability rules within six (6) months of the date of adoption by the Legislature of the recommended coastal fisheries licensing system.** Giving general authority over commercial license transfer to the Marine Fisheries Commission will allow the State to handle unforeseen contingencies as they arise, and minimize the need for legislative action to correct problems and inadequacies inherent in a license transfer system.
 - **In promulgating those rules, the Commission shall allow transferability of the commercial license in three specific situations -- (1) from the license holder to a member of his/her immediate family; (2) by the State to a surviving family member, upon the death of the license holder; and (3) by a surviving family member to the third party purchaser of the decedent's fishing vessel, upon the death of the license holder.** As noted, the License Subcommittee originally proposed, and endorses the concept of, allowing a Standard Commercial Fishing License holder to transfer the license to a member of his or her immediate family who may not qualify to obtain a commercial license from the state license pool. Implementation of such a provision will promote the Moratorium Steering Committee's goal of protecting the cultural heritage aspect of the commercial fishing industry in promoting the traditional passage of fishing as a livelihood from generation to generation. Similarly, the Subcommittee originally proposed that upon the death of a Standard Commercial Fishing License holder without transfer of his/her

license, the decedent's license would revert to the commercial fishing license pool administered by the State, but that prior to its being made available for purchase by others, a member of the licensee's immediate family would automatically have the preference of acquiring the decedent's commercial fishing license by transfer from the State for an administrative fee. Adoption of such a provision will overcome the twofold problem created by the untimely or unforeseen death of a commercial licensee. First, it will negate the effect of the license not being inheritable, since the license confers an individual privilege rather than establishing a property right. And secondly, implementation of this provision will promote the Committee's goal of protecting the traditional commercial fishing family by preserving the family's ongoing ability to pursue its characteristic means of livelihood when a commercial licensee dies. Finally, if the commercial license is transferred by the State to a surviving family member upon the death of the original licensee, the License Subcommittee also endorses allowing the family member to transfer the license to a third party who purchases the fishing vessel of the decedent. This will ensure that the vessel and gear owned by the decedent are reasonably marketable where the surviving family does not wish to continue as a participant in the commercial fishing industry.

- **The Marine Fisheries Commission shall be authorized to impose, by rule, a reasonable administrative fee to be charged for the transfer of the Standard Commercial Fishing License.** This provision simply reflects the fact that license transfers typically involve the commitment of substantial staff resources within the Division of Marine Fisheries, and the License Subcommittee's feeling that such costs should be nominally reimbursable.
- **The Standard Commercial Fishing License shall be non-transferable until license transferability rules are adopted.** The period of "absolute" non-transferability of commercial licenses created by this recommendation will be minimal. The Marine Fisheries Commission will be authorized to adopt temporary rules for license transferability immediately upon adoption by the Legislature of the coastal fisheries licensing system recommended by the Moratorium Steering Committee, and will likely not wait the full six month time period available to it before taking such action.
- **License transfer shall be valid only if accomplished on forms provided and administered by the Division of Marine Fisheries at its Morehead City Office.** This provision will ensure that the State is able to track individual commercial licenses for management purposes.

e. Harvest Salability.

- **The Standard Commercial Fishing License holder shall be entitled to sell marine and estuarine fish lawfully taken from North Carolina coastal waters.**

Basically, this license will serve the same function as the current Endorsement to Sell Fish license. As such, it will entitle its holder to sell lawfully harvested finfish and shellfish taken or landed in North Carolina. The Endorsement to Sell statute will be repealed as a part of the adoption of the recommended licensing package.

f. Reporting Requirements.

With its current, mandatory Trip Ticket reporting program, North Carolina has among the best harvest data collection systems in the nation. Realizing the importance to good fisheries management of also having reliable effort data from which to draw, the License Subcommittee examined a number of options for effort data collection, including (1) implementation of a gear license system for all commercial gears, (2) expanding the required information on the fish dealer's "Trip Ticket Reports" currently received by the Division to include effort data, and (3) requiring commercial harvesters to fill out an "Effort Report" corresponding to a fish dealer's "Trip Ticket Report" currently received by the Division. After much discussion centered in part upon the expense, practicality and reliability of each option, the License Subcommittee determined that the best method to collect necessary effort data often depends on the status of the fisherman (commercial or recreational) and the status of the fishery, and is best accomplished through a combination of mandatory reporting (*e.g.*, trip tickets and log books), sampling (*e.g.*, fishhouse, on-board and point-of-landing sampling) and surveys (*e.g.*, telephone, mail and in-person surveys). Consequently, the Moratorium Steering Committee took to public hearing a recommendation embodying such an approach. At the public meetings, the Committee received many, many comments in support of a requirements that individual types of commercial gear be licensed, primarily as a means of identifying the universe of users of different gear types for future sampling initiatives aimed at collecting effort data. The License Subcommittee notes that the full Committee considered and rejected the option of gear licensing as a costly method of identifying persons using specific gears that gives state fisheries agencies no actual information concerning the quantity of gear used, its time of use or its place of use.

To incorporate the above concerns and to consolidate and streamline the law concerning coastal licensing with respect to reporting requirements, the License Subcommittee recommends that:

- **The mandatory reporting provisions of the Endorsement to Sell Fish license created by N.C.G.S. § 113-154.1 shall be incorporated verbatim into the statute creating the Standard Commercial Fishing License, with the following additions, and N.C.G.S. § 113-154.1 repealed:**
 - ♦ **Trip ticket reporting shall be required for all fish landed in North Carolina, including those fish landed but not sold in North Carolina.**
 - ♦ **Trip tickets shall be required to be completed at the time and location where harvested fish are sold, bartered or exchanged. This provision was**

recommended by the Division of Marine Fisheries to clarify the language of G.S. § 113-154.1 in ensuring that trip ticket reporting on landings is timely and accurate.

- **The Division of Marine Fisheries, utilizing as necessary non-state agency sources of fisheries management expertise, shall develop methodologies for obtaining adequate, accurate catch-per-unit-effort (CPUE) data for all commercial gear types and fisheries, and shall report regularly to the Marine Fisheries Commission on its progress towards achieving this objective.** This recommendation is in keeping with the specific recommendations of the Gear Subcommittee in its report and also responds to strong public comment on the subject. During the Moratorium Steering Committee's series of public meetings, commentators made it abundantly clear that whatever the measures ultimately recommended by the Committee, the public expects and demands that those recommendations shall result in the collection of the now lacking fishing effort data that are critical to proper fisheries management. The added recommendation is aimed at implementation of that demand. It recognizes that while mandatory compliance with data gathering efforts by the State must be a condition of licensing, it is still the state fisheries management agencies -- and not the fishermen -- who have the responsibility of determining what data are necessary for good fisheries management and need to be reported. Effort data obtained from licensees will be a fundamental component of the fishery Management Plans that are the cornerstone of the coastal fisheries management package recommended to the Legislature by the Moratorium Steering Committee.

g. Harvest Limits.

- **Commercial harvest limits shall be established, as appropriate, by Marine Fisheries Commission rule as a component of Fishery Management Plan adoption.** This recommendation simply emphasizes the key role that Fishery Management Plans will play in the future regulation and management of marine and estuarine resources.

h. Gear Restrictions.

- **Commercial gear restrictions shall be established, as appropriate, by Marine Fisheries Commission rule as a component of Fishery Management Plan adoption.** Under the proposed licensing system, specific gear licenses will not be required by statute, but the Marine Fisheries Commission will retain its current authority to require gear licenses as necessary. At the same time, the License Subcommittee is convinced that effort data is critical to general fisheries management, and specifically to the preparation of adequate Fishery Management Plans, and notes that the gear licensing concept rejection must be coupled with the implementation of effort reporting requirements, as recommended. Like harvest limits, gear restrictions will be established by Marine Fisheries Commission rule as a component of Fishery Management Plan adoption. Again, the License Subcommittee notes that at the public meetings, the Committee received substantial comment supporting individual gear licensing, and that the full

Committee considered and rejected the option of gear licensing as a costly method of identifying persons using specific gears that gives state fisheries agencies little or no useful effort data.

i. License Endorsements.

(1) Vessel Endorsements.

(a) Eligibility.

As noted previously, in order to adequately conserve and protect certain coastal fish stocks, state fishery resource management agencies must have the ability to control gears, and therefore effort, in those fisheries. For that reason, under the proposed new licensing system, vessels will in essence be regulated as gear, and the License Subcommittee recommends that:

- **A Standard Commercial Fishing License holder shall be required to obtain a vessel endorsement on his/her license for each vessel that will harvest or sell under the license.**

(b) Cost.

The License Subcommittee finds that the current system of determining the appropriate cost for licensing vessels established under N.C.G.S. § 113-152 has proven to be adequate and equitable. Consequently, the Subcommittee recommends that:

- **The current, "fee per foot" system of determining the cost of licensing vessels established in N.C.G.S. § 113-152 shall be retained and made to apply to vessel endorsements obtained by holders of the Standard Commercial Fishing License.** Applying the current system to the new license, vessel endorsement costs for resident Standard Commercial Fishing License holders will depend on the length of the vessel for which the endorsement is sought according to the following schedule of costs:

<i>Vessel Length</i>	<i>Endorsement Cost</i>
<18 ft.	\$1.00/ft.
>18 ft. < 38 ft.	\$1.50/ft.
>38 ft.	\$3.00/ft.

- **Vessel endorsement cost for nonresident, Standard Commercial Fishing License holders shall be the per foot charge applicable to residents or an amount equal to the nonresident fee charged by the nonresident's state for licensing vessels to fish in coastal waters, whichever is greater.** This provision simply ensures that fishermen from other states are treated, for purposes of vessel licensing, on par with the

manner in which their state of residence treats North Carolina fishermen seeking to fish in the waters of such other state.

(2) Shellfish Endorsement.

North Carolina commercial shellfish licenses have always been restricted to issuance to North Carolina residents since shellfish are essentially non-motile, permanent "fixtures" to publicly-owned submerged lands. At the same time, nonresidents, like state citizens, are currently free to harvest recreational quantities of shellfish -- so long as commercial gear is not used -- from public bottoms without a state Shellfish License. State shellfishermen have strongly indicated to the Moratorium Steering Committee, both before and during the Committee's public meetings, their desire to see the prohibition on the sale of commercial shellfish licenses to nonresidents remain in effect. To that end the License Subcommittee makes the following recommendation concerning the Standard Commercial Fishing License:

- **A Standard Commercial Fishing License holder shall be required to obtain a "Shellfish Endorsement", at no additional cost, to harvest and sell shellfish in North Carolina, and in order to qualify for such a license endorsement, the applicant must show that he/she is a resident of North Carolina.** The License Subcommittee notes that public opinion expressed during the Moratorium Steering Committee's statewide public meetings process indicates the further desire of North Carolina citizens to strengthen the State's test for residency in order to preclude nonresidents from obtaining any preference extended to state citizens by simply claiming residency. That issue is discussed under the "License Cost" subheading at section II.A.1.j., below. The License Subcommittee also notes that the public also criticized the recommended \$250.00 cost of the Standard Commercial Fishing License as unreasonable for those relatively impoverished fishermen whose commercial fishing activities are limited to the hand harvest of shellfish from public bottomlands. Consequently, these speakers requested that the recommended licensing system include a lower cost Shellfish License for shellfish hand harvesters. Such a license is discussed in section II.E.7., below.

(3) Menhaden Endorsement.

Persons fishing for menhaden in North Carolina waters are currently subject to a slightly different licensing scheme than are other commercial fishermen. Rather than paying for their licenses according to the length of the vessels used in the fishery, menhaden fishermen are assessed licensing costs based on the gross tonnage of the mother ship, and purse boats used in conjunction with the mother ship do not require commercial fishing licenses. The "Menhaden Endorsement" recommended by the License Subcommittee as a part of its proposed coastal fisheries licensing package will continue in effect the significant requirements for menhaden vessels under current law, while the "Nonresident Menhaden License", described in section II.D.5., below, will

apply those same requirements to nonresident menhaden vessels. Accordingly, the License Subcommittee recommends:

- **A resident, Standard Commercial Fishing License holder shall be required to obtain a "Menhaden Endorsement" to harvest, land or sell menhaden in North Carolina taken by purse seine, under the terms set out below:**
 - **the endorsement shall only be available to residents of North Carolina;**
 - **the cost of the endorsement shall be \$2.00 per ton, gross tonnage, customhouse measurements, for the mother ship;**
 - **each purse boat carrying a purse seine used in conjunction with the mother ship shall require no license.**

j. License Cost.

- **The annual cost of the resident Standard Commercial Fishing License shall be \$250.00.** The License Subcommittee recognizes that the recommended commercial licensing fee was criticized by some at the Moratorium Steering Committee's public meetings as being too high and by others as being too low, and that a number of alternative recommendations to the the \$250.00 flat licensing fee were put forward by members of the general public. Those recommendations included charging an "extraction fee" based on the quantity or value of the catch, or fees based on relative adverse impacts of the fishing gear used on coastal habitats. The Subcommittee notes that at some point during its extensive deliberations each of those alternative methodologies of establishing commercial license cost has been considered and discarded, generally as being unnecessary, of limited benefit, or impractical to develop and implement. In addition to the basic cost of the commercial license, the licensee will be required to obtain the appropriate number of vessel endorsements, as that cost is previously set out, at additional cost.
- **The General Assembly should strengthen the "residency requirement" for obtaining a resident Standard Commercial Fishing License.** The current standard for determining the residency of a commercial fishing license applicant is set out in N.C.G.S. § 113-130(4). It requires only that the applicant either (1) reside in North Carolina for six (6) months prior to the time of application, or (2) live in the State for more than sixty (60) days and certify the intent to live here permanently. At the public meetings of the Moratorium Steering Committee, public commentators expressed their collective belief that nonresident fishermen should not be able to fish in this State for the same fee applicable to North Carolina citizens whose taxes support the protection and management of coastal fisheries. This potential disparity to state taxpayers is exacerbated in the context of commercial licensees, who stand to make substantial profit from a tax supported, state-owned resource. To that end, the Division of Marine Fisheries

has pointed out that the current test for licensing residency is so minimal that without substantial expenditure of agency resources to investigate residency claims, it is practically impossible to deny resident licensing fees to any license applicant who claims to be a state citizen. For those reasons, the License Subcommittee recommends that the residency requirement for fishing licensees allowing the use of commercial fishing gears be separated from that for recreational hunting and fishing licensees contained in G.S. § 113-130(4), and substantially strengthened to place the reasonable burden of proving residency on the license applicant.

- **The annual cost of the nonresident Standard Commercial Fishing License shall be the cost charged North Carolina residents for a general commercial fishing license by the nonresident's state or \$250.00 plus an additional charge commensurate with the cost to the Division of Marine Fisheries of processing and issuing the nonresident license, whichever is greater.** Implementation of this provision will result in parity in the treatment of nonresident, commercial licensees by ensuring they are (1) treated in the manner in which the nonresident's state treats North Carolina fishermen for commercial licensing purposes, or (2) charged only reasonable fees over and above that assessed resident license applicants, where such additional fees are directly related to the difference in cost of issuing the nonresident license. The administrative cost to the Division of Marine Fisheries of verifying the eligibility of a nonresident license applicant in terms of the applicant's history of violating fishery laws in other states can sometimes be substantial. Those costs are expected to increase as the Division develops and implements standard policies pertaining to background checks on all license applicants. In addition, like resident licensees, the nonresident license holder will be required to obtain the appropriate number of vessel endorsements where a vessel is used to harvest fish, at additional cost as previously set out.

At public hearing, a number of persons in the commercial fishing community raised an additional issue related to commercial license cost. They noted the special user categories recommended by the License Subcommittee for recreational licensees and the lack of such special licenses for commercial users. In that vein, several commentators noted that older commercial fishermen often do not retire completely, but continue to fish on a part-time basis in order to supplement their Social Security benefits, and are substantially dependent upon the extra income generated from fishing. In response to those comments and to allow long-time commercial fishermen to supplement their retirement incomes, the License Subcommittee recommends the following special use commercial license:

- **There shall be created a "Retired Fisherman Commercial Fishing License, subject to the following terms and conditions: (1) the license shall be available only to holders of the Standard Commercial Fishing License who are sixty-five (65) years of age or older, (2) the license shall be non-assignable, and (3) the annual cost of the license shall be \$100.00.** The recommended special use commercial license is specifically made non-assignable to ensure that the license is used as intended, and not assigned to a younger or

otherwise full-time commercial fisherman who could exert more effort in the fishery and could use the assignment as a vehicle to avoid the cost normally attached to a commercial license. In addition, the "Retired Fisherman Commercial Fishing License will only be transferable as allowed by the License Appeals Panel under rules developed by the Marine Fisheries Commission, as set out in section II.A.1.d., above. The recommended licensing fee for older commercial fishermen is substantially less than the cost of a regular Standard Commercial Fishing License, but is still high enough to reflect the significant benefit conferred upon the licensee in being able to profit from private use of a public resource. Licensees will still have to obtain any required vessel endorsements, at additional cost.

(1) License Fee Use.

All commercial fishing license fees collected will be deposited in the "Commercial License Marine and Estuarine Resources Enhancement Trust Fund", and expended for the purposes allowed under that fund, as described in section I.C., above.

2. OTHER LICENSE RESTRICTIONS.

a. License Availability.

As previously explained, commercial licenses will be issued only by the Division of Marine Fisheries at its offices in Columbia, Elizabeth City, Manteo, Morehead City, Washington and Wilmington, and routine license renewals will ultimately be handled by mail.

b. Sale Restriction.

- **A Standard Commercial Fishing License holder shall be allowed to sell fish only to a fish dealer licensed in North Carolina.** The continuation of this current provision of law is essential to ensure the continued effectiveness of the trip ticket reporting program. The North Carolina Fish Dealer License is discussed at length in section II.E.5., below.

c. Recreational Licenses.

- **The holder of a Standard Commercial Fishing License shall not be entitled to the privileges of state recreational fishing licensees to the extent those privileges are not embodied in the commercial license privileges, without the separate purchase of a North Carolina recreational fishing license.** The License Subcommittee notes that if recreational licensing privileges are automatically included as an incident to commercial licensing, commercial licensees who fish recreationally will not be able to be counted as recreational fishermen for purposes of determining the amount of "Wallop-Breaux" funding to which North Carolina fisheries agencies are entitled, nor will they be eligible to serve on the Board of Directors overseeing expenditures from the Recreational

License Marine and Estuarine Resources Enhancement Trust Fund. Moreover, the Subcommittee feels that since the privileges conveyed by the commercial and recreational fishing licenses are fundamentally different in that commercial fishermen can profit from public resource harvest, it is not unreasonable to charge commercial fishermen for the additional privilege of using recreational fishing gears.

B. RECREATIONAL COMMERCIAL GEAR LICENSE.

As the second major category of individual coastal fishing licenses, the License Subcommittee recommends that:

- **The General Assembly should amend Chapter 113 of the North Carolina General Statutes to create a Recreational Commercial Gear License, required for any recreational fisherman who wishes to use commercial gear to harvest fish from the coastal fishing waters of North Carolina, incorporating the specific features and conditions set forth below.** The purpose of creating this license is to (1) allow individuals and families who have traditionally accessed the State's public trust fishery resources by fishing commercial gears to supply themselves with fresh seafood, to continue that tradition; (2) limit the effort that may be expended by this class of fishermen both individually and as a group; and (3) implement the principle that all persons who harvest state public trust resources pay for that privilege by investing in coastal fisheries conservation and management.

At its public meetings, the Moratorium Steering Committee heard support for the Recreational Commercial Gear License from many of the folks who have traditionally used nets, trawls and pots to catch fish for the family table. A substantial number of those persons have been displaced from that activity by the current commercial fishing license moratorium and were appreciative of the fact that under the Committee's draft recommendations they would once again be able to fish limited amounts of commercial gear to catch fish for personal consumption. At the same time, the Committee heard substantial opposition to this proposal by two groups. First, persons who have fished commercial gears and sold their catch -- unlawfully -- to friends and neighbors without possessing an Endorsement to Sell Fish, and who will therefore not be eligible to purchase a Standard Commercial Fishing License under the Committee's recommended licensing package, objected both to the gear limitations and to the "no sale" restriction placed on this class of licensee. Secondly, many recreational fishermen objected to any recreational use of commercial gears on the basis that allowing recreational harvest with gears designed to take large quantities of fish will in effect promote and institutionalize a "black market" for recreationally caught fish. The License Subcommittee can muster relatively little sympathy for those whose choice to ignore North Carolina coastal fisheries laws in the past will now result in their future loss of the ability to harvest and sell fish. In addition, while the Subcommittee recognizes that a limited market for illegally harvested fish may continue, it does not feel that establishment of the Recreational Commercial Gear License will either substantially increase that market or is reason to deny the efficiency and pleasure derived from the use of commercial gears by many North Carolina families in harvesting fresh seafood.

1. LICENSE FEATURES.

a. Licensing Unit.

- **The Recreational Commercial Gear License shall be an individual license.**

b. License Eligibility.

- **There shall be no immediate limitation on the class of persons eligible to hold the Recreational Commercial Gear License, but the Marine Fisheries Commission shall be specifically delegated the authority to place a future cap, under appropriate circumstances, on the number of Recreational Commercial Gear Licenses that may be issued by the State.** At its public meetings, many persons recommended to the Moratorium Steering Committee that establishment of this license include an immediate cap on the number of potential license holders, since the number of licensees in this class could "explode" without such a limitation. The License Subcommittee notes this possibility, but believes that even though the majority of persons who currently hold a North Carolina commercial vessel license appear to belong to this class, the restrictions limiting the types and amounts of commercial gear these licensees may use and those prohibiting sale of their harvest will remove the incentive to catch large numbers of fish, resulting in a substantial reduction in the overall fishing effort by this user group even if new users become licensed. In addition, the Subcommittee notes that if newly obtained effort data ultimately show the need for an overall cap on this class of fishermen, for limitations placed on commercial gear use by this class of licensee in specific fisheries, or for other restrictions, the Marine Fisheries Commission will be authorized to handle that eventuality by limiting the number of licensees in this class.

c. License Duration.

- **The Recreational Commercial Gear License shall be valid for one year from the date of its purchase, and shall be renewable by mail.** Based on comments received at the Moratorium Steering Committee's public meetings and after further discussion, the License Subcommittee believes that following the lead of the North Carolina Wildlife Resources Commission in making the term of recreational fishing licenses one year from the date of license purchase is fairest to the license purchaser. In addition, adoption of such a policy will relieve the license rush burden placed upon license agents where all recreational licenses expire uniformly on a given date.

d. License Transferability.

- **The Recreational Commercial Gear License shall be non-transferable.** Because there is no initial restriction on who may apply for and receive this license, there is no need to allow license transferability.

e. Harvest Salability.

- **The Recreational Commercial Gear License holder shall be prohibited from selling fish harvested under that license.** This provision embodies one of the principal differences between this license and the Standard Commercial Fishing License, and is one of the most important features of the recommended coastal fisheries licensing package. While all persons who have lawfully taken and sold fish in North Carolina in the recent past will continue to have the privilege to do so under the proposed new licensing system, it will no longer be possible for persons taking fish for personal use or other non-commercial uses to change their minds and decide to harvest more fish than can reasonably be used for personal consumption, in order to sell the surplus as a means of defraying the out-of-pocket costs of their efforts.

f. Reporting Requirements.

Recreational harvest of coastal fishery resources by commercial gear is substantial, although there is a relative dearth of hard data on that harvest in many fisheries. A number of commentators at the Moratorium Steering Committee's public meetings pointed out the importance of remedying this data deficiency and recommended that the License Subcommittee's Report be clarified to ensure that effort and landings data will be obtained for holders of the Recreational Commercial Gear License. In keeping with those concerns, the License Subcommittee recommends that:

- **Recreational Commercial Gear License holders shall, as a condition of licensing, be required to comply with Commission requirements and with all Division of Marine Fisheries biological data sampling and survey programs and efforts.**
- **The Division of Marine Fisheries, utilizing as necessary non-state agency sources of fisheries management expertise, shall develop methodologies for obtaining adequate, accurate catch-per-unit-effort (CPUE) data for persons holding and fishing under the Recreational Commercial Gear License, and shall report regularly to the Marine Fisheries Commission on its progress towards achieving this objective.** This recommendation is parallel to the provision recommended in reference to the Standard Commercial Fishing License, and its implementation will result in the State's obtaining critical fisheries management data for a class of fishermen for which no data presently exists.

g. Harvest Limits.

- **The Marine Fisheries Commission shall adopt by rule as necessary, recreational harvest limits for all recreationally significant [or potentially significant] marine and/or estuarine species as a component of appropriate Fishery Management Plans, and Recreational Commercial Gear License holders shall be restricted to these recreational harvest limits.** Existing and prospective recreational creel limits under state or federal law will apply to

Recreational Commercial Gear License holders under this recommendation. The License Subcommittee acknowledges the argument that such a requirement could result in substantial wastage of fish because a recreational fisherman using allowable amounts of commercial gear cannot know in advance the quantity of any species that he may encounter. While this may be true initially for some species and areas, the License Subcommittee believes that fishermen can and will learn how to fish gears to minimize wastage if rules are appropriately designed to force the modification of fishermen's behavior. It is also true that while recreational fishermen using commercial gear may encounter more fish than they can lawfully keep, many or all of the excess fish can be released unharmed if the nets being fished are reasonably attended. For that reason, the License Subcommittee would urge the Marine Fisheries Commission to consider requiring the attendance of gill nets in certain seasons, areas and fisheries as a part of Fishery Management Plans developed and adopted by that body.

Given North Carolina's likely inability to cap the number of licensees in this class based on current biological and other data, recreational harvest limits may be the only reasonable means available to the State to control fishing effort by Recreational Commercial Gear License holders. In that vein, the License Subcommittee reiterates that the primary purpose of creating this specially privileged class of recreational fishermen is to allow a long-standing, *recreational* fishing tradition in North Carolina to continue. Potential harvest limits do not detract from that purpose, but will clearly still allow persons employing limited quantities of commercial gear to adequately stock their tables and freezers. The License Subcommittee believes that many of those who oppose harvest and gear limits under this license do so simply for the purpose of ensuring their continued ability to catch, and unlawfully sell or barter, large quantities of coastal fish stocks. That motive must not be allowed to determine the fate of proposed recreational harvest restrictions.

h. Gear Restrictions.

One of the premises upon which the legislative coastal fishing license moratorium was based was the realization by most persons that there may be significantly more potential fishing effort in coastal waters than, if unregulated, would be required to harvest the maximum sustainable yield in most, if not all, coastal fisheries. This has generally been expressed by the public as finding that "there is too much gear in the water." While much of that potential gear use is by commercial fishers, there has been an increasing acknowledgment that because of the large number of persons who have traditionally used commercial gear for recreational harvest of coastal fishes (*i.e.*, harvest not intended for sale), in some areas, fisheries and seasons, recreational use of commercial gear surpasses commercial use of that same gear. Unfortunately, recreational users of commercial gear may possess significantly less expertise about the most appropriate way to employ their chosen gears than do commercial fishers, resulting in excess harvest and fish wastage.

Appropriately addressing the issue of recreational use of commercial gear has proved to be a daunting task for the Moratorium Steering Committee. The License Subcommittee has considered the issue of specific gear limits at length, and with each discussion discovers additional complexities involved in such regulation. Much of the basic problem derives from the fact that the North Carolina coast is so diverse from north to south in terms of physiography, biology and socioeconomics, that what may work well in one area in terms of reasonable gear limits may be totally impractical in another area for a host of varied reasons. As a result, there probably is no "universal" gear allowance that can be applied coastwide, in all seasons, to adequately conserve marine and estuarine resources while allowing Recreational Commercial Gear License holders to make reasonable harvests for personal use. The comments made at the Moratorium Steering Committee's public meetings largely reflected that opinion. At the same time, as discussed immediately above, the License Subcommittee would again point out its belief that self-interest in promoting the unlawful harvest and sale of fish underlies much of the opposition to gear restrictions for Recreational Commercial Gear License holders.

For all of those reasons, and based on the comments concerning this topic received at the public meetings of the Moratorium Steering Committee, the License Subcommittee recommends a two-fold approach to establishing gear limits for Recreational Commercial Gear License holders that (1) vests the Marine Fisheries Commission with the authority and duty of establishing appropriate gear limits for this recreational license and (2) establishes interim gear limits that will apply to holders of this license while final Commission rules are developed and implemented. To that end, the License Subcommittee recommends that:

- **The Marine Fisheries Commission shall be authorized and directed to establish specific gear limits that will apply to Recreational Commercial Gear License holders under the following terms and conditions:**
 - **Specific gear limits shall be developed with the assistance of the appropriate "Standing Advisory Committee(s)" established under the recommendations contained in the Report of the Subcommittee on Marine Fisheries Commission and Division of Marine Fisheries Organization.** This provision derives from the principle embodied in the Moratorium Steering Committee's recommended state fisheries management package that the fairest and most efficient regulations will grow out of a process wherein rules are developed with substantial involvement of the regulated community. That does not mean, of course, that the regulated community should be allowed to dictate those rules, since the ultimate purpose of coastal fisheries management actions must be -- and the charge of state fisheries management agencies is -- to conserve and protect the publicly owned resource.
 - **The gear limits developed may vary, within specific limits, by coastal geographic region.** This provision is included in recognition of the facts that fish and fisheries differ by geographic region and that the amounts of gear

suitable to catch recreational harvest limits may differ substantially from region to region.

- **The Commission shall be authorized and required to re-examine and appropriately revise those gear limitations on a recurring basis.** Implementation of this provision will help to ensure that the gear limits developed by the Marine Fisheries Commission are re-visited on a regular basis to ascertain that they (1) adequately conserve and protect the State's marine and estuarine resources, and (2) reasonably allow Recreational Commercial Gear License holders to catch quantities of fish commensurate with provision for personal consumption.
- **Holders of the Recreational Commercial Gear License shall be restricted to the use of the following specific types and amounts of commercial gear during the period while final gear limitation rules are being developed and implemented by the Marine Fisheries Commission, and these limits shall serve as the basis for the Commission's promulgation of such rules: (1) one-hundred (100) yards of gill net; (2) five (5) crab or fish pots; and (3) a single trawl employing a headrope not to exceed twenty-five (25) feet in length.** Implementation of this provision will help to ensure that during the interim period when final gear limitations are being established, fishing effort by Recreational Commercial Gear License holders does not proliferate to unacceptable levels. The listed gear amounts, while not the final word on appropriate commercial gear limits for recreational users, are the product of extensive public input and deliberation by the License Subcommittee and the full Moratorium Steering Committee, and as such should be the starting point from which the Marine Fisheries Commission's gear restriction rules for this license are developed. The License Subcommittee recommends these limits with the belief that even without adjustment, they will allow recreational users of commercial gear to harvest reasonable quantities of fish for personal use the majority of the time and in the majority of state fisheries. The License Subcommittee would also specifically note that under this recommendation, Recreational Commercial Gear License holders, each with his or her own individual gear limits, will be able to "team up" in a single vessel in order to increase the allowable amount of commercial gear that may lawfully be fished by persons in that vessel. This ability clearly extends a great deal of seasonal and area fishing flexibility to licensees in this class. At the same time, even with this inherent flexibility the Subcommittee recognizes the potential need to adjust these general limitations for specific North Carolina areas, seasons and fisheries.
- **The law establishing the interim gear limits applicable to the holders of the Recreational Commercial Gear License shall contain a clause causing those limits to "sunset" in two (2) years from the date of creation of the license or when the Marine Fisheries Commission adopts final rules establishing such limitations, whichever comes first.** Inclusion of this provision as a condition of vesting the Marine Fisheries Commission with the authority and duty to establish final limitations pertaining to the recreational

use of commercial gears will help to ensure that final rules are promulgated on a timely basis.

- **All recreationally used commercial gear shall be required to be identified by visible colored tags, or by similar means, as specified by the Marine Fisheries Commission.** Adoption and implementation of this provision will help to make restrictions on recreational use of commercial gears reasonably enforceable, and will aid the Division of Marine Fisheries in its effort data collection programs.
- **Recreational Commercial Gear License holders shall be required to hold a Coastal Recreational Fishing License in order to fish recreational gears in North Carolina coastal waters.** This provision emphasizes the concept that this is a special use license that, for an additional fee, permits its holder to fish limited types and quantities of commercial gears -- with their inherent ability to potentially take greatly increased harvests as compared to recreational gears -- for recreational purposes. While such a policy was criticized by a number of commentators during the public meetings process held by the Moratorium Steering Committee, the License Subcommittee reiterates that the special privileges conveyed to holders of this license are substantial, and that the license should be more costly than the general license allowing the use of only recreational gears to harvest fishery resources. The \$25.00 resident fee is quite simply the cost of the privilege of fishing commercial gears. Additionally, the License Subcommittee would note that its recommendations also require the holder of a Standard Commercial Fishing License to obtain a Coastal Recreational Fishing License in order to fish recreational gears, and that as a matter of equity all persons privileged to use commercial gears should be treated equally for purposes of recreational gear licensing.

i. License Endorsements.

(1) Vessel Endorsements.

(a) Eligibility.

- **A Recreational Commercial Gear License holder shall be required to obtain a vessel endorsement on his license for each vessel that will be used to fish commercial gear under the license.** While this provision was criticized as unfair or unnecessary by a few individuals during the public meetings held by the Moratorium Steering Committee, given the ability of Recreational Commercial Gear License holders to "combine" individual gear limits in a single vessel, the License Subcommittee believes that the information supplied by vessel licensing of this class of licensees is necessary and the requirement fair.

(b) Cost.

As was recommended in the case of commercial licensees, the License Subcommittee recommends that:

- The current, "fee per foot" system of determining the cost of licensing vessels established in N.C.G.S. § 113-152 shall be retained and made to apply to vessel endorsements obtained by holders of the **Recreational Commercial Gear License**. Applying the current system to the new license, vessel endorsement costs for resident Recreational Commercial Gear License holders will depend on the length of the vessel for which the endorsement is sought according to the same schedule of costs applicable to commercial licensees:

<i>Vessel Length</i>	<i>Endorsement Cost</i>
<18 ft.	\$1.00/ft.
>18 ft. < 38 ft.	\$1.50/ft.
>38 ft. .	\$3.00/ft.

- **Vessel endorsement cost for nonresident, Recreational Commercial Gear License holders shall be the per foot charge applicable to residents or an amount equal to the nonresident fee charged by the nonresident's state for licensing vessels to fish in coastal waters, whichever is greater.** As in the case of commercial licensees, this provision simply ensures that fishermen from other states are treated, for purposes of vessel licensing, on par with the manner in which their state of residence treats North Carolina fishermen seeking to fish in the waters of such other state.

(c) Charter vessels.

At the Moratorium Steering Committee's public meetings, charter boat operators brought to the attention of the Committee the potential licensing problem created by their characteristic use of gill nets (a commercial fishing gear) to catch bait-fish en route to offshore fishing grounds. Commercial gear use will not be allowed under the charter vessel's Coastal Recreational Group Fishing License, discussed in section II.C.1.a., below, and many charter vessels will not automatically be eligible to purchase a Standard Commercial Fishing License under the recommendations of the Moratorium Steering Committee. As a result of that consequence, the Committee makes the following recommendation to remedy this potential problem:

- **The vessel endorsement held by a charter boat operator under the Recreational Commercial Gear License shall entitle any person aboard the vessel to use gill nets to catch bait fish while paying, recreational fishing customers are aboard the vessel.** This provision will allow charter boat operators, by purchasing the Recreational Commercial Gear License and required vessel endorsement, to continue their current practice of using gill nets to catch bait-fish for on board customers. Charter vessels holding a Standard Commercial Fishing

License and the vessel endorsement required under that license will, of course, not be required to purchase the Recreational Commercial Gear License and the vessel endorsement under that license in order to fish gill nets for bait for their paying customers.

- **It shall be unlawful for charter vessels that also operate under (are endorsed on) the license of a Standard Commercial Fishing License holder to sell fish caught by recreational fishermen who are customers of the charter service.** This provision reflects the strongly held principle of the License Subcommittee that recreationally caught fish should under no circumstances be marketable.

j. License Cost.

- **The cost of the Recreational Commercial Gear License shall be \$25.00 for residents and \$250.00 for nonresidents.** With respect to this provision, the License Subcommittee would note two facts. First, there was widespread support voiced at the public meetings of the Moratorium Steering Committee for substantially higher licensing fees for nonresidents as compared to residents. Second, it must be stressed that this is a *recreational* license, and thus the proscriptions contained in the "Privileges and Immunity Clause" of the United States Constitution against unreasonable, disparate treatment of nonresidents for purposes of commercial licensing do not preclude the State from establishing a higher licensing cost for nonresidents seeking to recreationally harvest North Carolina fishery resources. In addition to the basic license cost, licensees will be required to obtain appropriate vessel endorsements, at the additional cost set out previously.

As noted in the discussion of the recommended cost of the Standard Commercial Fishing License, the general public feels that current law makes it too easy for nonresidents to obtain resident licensing privileges. Consequently, the License Subcommittee makes the following recommendation concerning recreational fishing licenses:

- **The General Assembly should strengthen the "residency requirement" for obtaining the resident Recreational Commercial Gear License.**

(1) License Fee Use.

As previously discussed, all monies collected from the sale of the Recreational Commercial Gear License will be deposited in the Recreational License Marine and Estuarine Resources Enhancement Trust Fund for disbursement under one of the options set out in Section I.C, above, except that private license sales agents will be allowed to retain up to \$1.00 of the license fee as compensation for the cost of license issuance.

C. COASTAL RECREATIONAL FISHING LICENSE.

As the third major category of individual coastal fishing licenses, the License Subcommittee recommends that:

- **The General Assembly should amend Chapter 113 of the North Carolina General Statutes to create a Coastal Recreational Fishing License, required for any recreational fisherman who wishes to use traditional recreational gears to harvest fish from the coastal fishing waters of North Carolina, incorporating the specific features and conditions set forth below.** The purpose of creating this license is to (1) document the number of recreational users who take state marine and estuarine resources, (2) obtain harvest and effort data from those fishermen, and (3) implement the principle that all persons who harvest state public trust resources pay for that privilege by investing in coastal fisheries conservation and management. Traditional recreational gears include, but are not limited to, "hook-and-line", gigs, clam rakes, cast nets, *etc.* At the public meetings on its recommended coastal fisheries management package, although some segments of the public opposed the proposed Coastal Recreational Fishing License as unfair or unnecessary, the Moratorium Steering Committee generally heard widespread support for this license *so long as the funds its generates are reserved for use to improve the State's coastal fishery resources.*

1. LICENSE FEATURES.

a. Licensing Unit.

- **The Coastal Recreational Fishing License shall be an individual license, except that a Coastal Recreational Group Fishing License shall be available to the owners of commercial fishing piers or charter/head/dive boats for a set fee, to cover their paying, but unlicensed, customers.** As with all other licenses under the proposed new licensing system, the Coastal Recreational Fishing License will generally be an individual license. However, the "blanket license" exception recommended will ensure that the new recreational license requirement does not unduly interfere with existing businesses that depend upon use by recreational fisheries, by allowing a professional, recreational fishing business to exempt its customers from the individual licensing requirements when the blanket license holder agrees to provide the Division of Marine Fisheries with specific data concerning the number of anglers using its services. Potential blanket license holders will also have the option of not purchasing the blanket license, whereupon each fishing customer will be required to obtain an individual Coastal Recreational Fishing License.

At the public meetings held by the Moratorium Steering Committee, the blanket license issue was probably the most controversial of the recommendations associated with the Coastal Recreational Fishing License, with widely disparate opinions being expressed concerning its necessity, usefulness or fairness. Many commentators supported the idea of blanket licensing as a practical method of allowing commercial piers and charter/head/dive boats to operate without undue regulatory interference. On the other hand, some opposed the option of blanket

licensing altogether, fearing that its implementation will result in "large holes" in the data set derived for recreational resource users and thereby hamper good fisheries management decisions. Others opposed the license as giving an unfair advantage to commercial pier owners and charter/head/dive boat services. The businesses that would themselves be affected by implementation of the recommendation were split on the issue.

Additionally, several commentators not only supported the proposed blanket licenses, but recommended that the concept be substantially expanded to offer blanket licenses for recreational vessel owners, the owners of private (non-commercial) docks and piers, and coastal riparian owners in general. Given all of the public input and after additional consideration, the License Subcommittee continues to believe that provision for limited blanket licenses is a necessary and practical part of the revised licensing system recommended in its report. However, the License Subcommittee has considered all of those recommendations made calling on the Committee to expand the reach of the blanket licenses offered under the Coastal Recreational Fishing License, and rejects further expansion in the belief that creating additional exceptions would quickly overwhelm the purposes for which this license is recommended.

b. License Eligibility.

- **There shall be no limitation on the class of persons eligible to hold the Coastal Recreational Fishing License.** There is little, if any, evidence that recreational harvest of marine and estuarine resources by use of recreational gears presents a significant threat to the continued health of coastal fish stocks. Until such a risk is indicated, there is no need to consider restrictions on the number of persons who may purchase the Coastal Recreational Fishing License.

c. License Duration.

- **The Coastal Recreational Fishing License shall be valid for one year from the date of its purchase, with the specific exceptions for one-week and lifetime licenses set out below, and shall be renewable by mail.** The License Subcommittee makes the recommendation modifying its original proposal as to the term of this license for the reasons previously set out in discussing the duration of the Recreational Commercial Gear License in section II.B.1.c., above. Upon expiration, the Coastal Recreational Fishing License will be renewable upon payment of the annual licensing fee.

The "exceptions" to the general applicability of the Coastal Recreational Fishing License requirement elicited substantial comment at the Moratorium Steering Committee's public meetings on its recommended coastal fisheries management package. A number of commentators proposed additional exemptions from the license requirement for either resident surf and pier fishermen, or all surf and pier fishermen. Others suggested that any coastal fishing license requirement be combined with the inland fishing license requirements administered by the Wildlife Resources Commission. While the License Subcommittee believes that

some of these modifications are attractive at least at first blush, they were rejected as impractical or contrary to the purposes of creating the license in the first place. The Subcommittee would also note that in December 1994, the North Carolina Department of Environment, Health, and Natural Resources Saltwater Sport Fishing License Advisory Committee published its *Final Report to the Joint Legislative Commission on Seafood and Aquaculture*. The Report was the culmination of a two-year deliberative process, including a number of public hearings, by that Committee. The License Subcommittee thoroughly re-examined and discussed the recommendations in that Report in the context of the Coastal Recreational Fishing License, and believes that those recommendations are both sound and have continued viability. For those reasons, the Subcommittee has endorsed the license categories recommended by that Committee, as set out below:

- ♦ **A limited duration license, good for one week, shall be available.** This limited duration license is intended for purchase primarily by vacationers or others not wanting, or needing, to purchase an annual license.
- ♦ **Permanent (lifetime) Coastal Recreational Fishing Licenses shall be available to the following groups:**
 - ▶ **"Special users", which include: (1) elderly persons (those over 65 years of age), (2) handicapped or disabled persons, (3) disabled American veterans and (4) legally blind persons.** Any citizen who is a member of a "special user" class will be entitled to obtain a lifetime Coastal Recreational Fishing License for a reduced fee (see section II.C.1.j., below) upon providing documentation that the applicant fits the special user category. Holders of all lifetime licenses will, of course, be exempt from the annual license renewal requirement.
 - ▶ **Persons holding a "Lifetime Resident Comprehensive Fishing License" or a "Lifetime Sportsman Combination License" issued by the North Carolina Wildlife Resources Commission pursuant to N.C.G.S. §§ 113-271(d)(3) & 113-270.1D(b), respectively.** The Coastal Recreational Fishing License requirement will apply only in state Coastal Fishing Waters, while the Wildlife Resources Commission fishing license requirement will apply to state Inland Fishing Waters. However, the situation is complicated by the fact that both license requirements pertain in state "Joint Fishing Waters. Wildlife Resource Commission Lifetime Fishing License holders clearly believe that they have purchased the permanent right to fish in North Carolina waters without additional charge by the State. In fact, such license holders were among the most vocal members of the public who made comments at the Moratorium Steering Committee's public meetings. Those persons were clearly of the opinion that the State has a "moral" duty at least, to honor their lifetime licenses for purposes of coastal fisheries licensing. The Subcommittee believes that the expectation of Lifetime Wildlife Fishing License holders that they are "vested users" is a reasonable one, and thus recommends the listed

provision allowing holders of the Wildlife Resources Commission Lifetime Comprehensive Fishing or Sportsman Licenses as of the date of ratification of the Coastal Recreational Fishing License to apply for a Lifetime Coastal Recreational Fishing License at nominal cost. The license will be issued for an administrative fee if the application is submitted within six months of the date of implementation of the new license. Most persons commenting at the public meetings did not object to a one-time, nominal cost for the issuance of such a license. The License Subcommittee considered the option of simply honoring the lifetime fishing license issued by the Wildlife Resources Commission, but rejected that possibility on the belief that in order for the "Violation Points System" recommended by the Law Enforcement Subcommittee to operate fairly and effectively, all recreational licenses must have a license issued by the Division of Marine Fisheries. Following the six-month "grace period, all Wildlife Resources Commission Lifetime Fishing License holders will be required to purchase a Coastal Recreational Fishing License at the fee generally applicable to the class of license applied for in order to lawfully fish in state Coastal Fishing Waters.

- **Lifetime License Purchasers, including purchasers of (1) Lifetime Infant Licenses, (2) Implementation Period Lifetime Youth Licenses and (3) Lifetime Adult Licenses.** Implementation of this provision will establish as an ongoing option the allowance for an adult (> 16 years of age) or an infant (< 1 year of age) to purchase a lifetime Coastal Recreational Fishing License. In addition, during a six-month period following the effective date of implementation of the Coastal Recreational Fishing License requirement, age-specific youth lifetime licenses will be available for the fees set out in section II.C.1.j., below.

d. License Transferability.

- **The Coastal Recreational Fishing License shall be non-transferable.** As with the Recreational Commercial Gear License, since there is no restriction on who may apply for and receive this license, there is no need to allow license transferability.

e. Harvest Salability.

- **A Coastal Recreational Fishing License holder shall be prohibited from selling fish harvested under the license.** Again, this provision simply reflects a major tenet of the Moratorium Steering Committee's recommendations for future coastal fisheries management: only professional, commercial fishermen who depend on fishing for their livelihoods should be permitted to sell the fish they harvest. This recommended policy was supported by the vast majority of recreational fishermen making comments to the Committee.

f. Reporting Requirements.

Although the harvest of any one recreational fisherman is relatively insignificant, the sheer number of recreational anglers makes the total harvest by that group substantial, and therefore, makes data on recreational harvest extremely significant. Currently, there is little good data on the overall recreational harvest of marine and estuarine resources in the State. In addition, commentators at the Moratorium Steering Committee's public meetings made it clear that one of the public priorities is for the State to obtain adequate, accurate data on *all* coastal fishing activities, in order to make good fisheries management decisions. For those reasons, the License Subcommittee makes the following recommendations, which parallel those for other recreational and commercial licensees:

- **Coastal Recreational Fishing License holders shall, as a condition of licensing, be required to comply with Commission requirements and with all Division of Marine Fisheries biological data sampling and survey programs and efforts.**
- **The Division of Marine Fisheries, utilizing as necessary non-state agency sources of fisheries management expertise, shall develop methodologies for obtaining adequate, accurate catch-per-unit-effort (CPUE) data for persons holding and fishing under the Coastal Recreational Fishing License, and shall report regularly to the Marine Fisheries Commission on its progress towards achieving this objective.**

Similarly, because the fishing effort from commercial piers and charter, head or dive boats is potentially very significant, the License Subcommittee further recommends that:

- **Fishing pier owners and charter/head/dive boat owners purchasing the blanket license in order to exempt their customers from the individual licensing requirement shall be required, on a monthly basis, to report to the Division of Marine Fisheries the number of angler trips per day provided by their professional, recreational facilities/services.**

g. Harvest Limits.

- **The Marine Fisheries Commission shall adopt by rule as necessary, recreational harvest limits for all recreationally significant (or potentially significant) marine and/or estuarine species as a component of appropriate Fishery Management Plans, and Coastal Recreational Fishing License holders shall be restricted to these recreational harvest limits. This provision reflects the current law applicable to coastal, hook-and-line fishermen, and is identical to the harvest limit requirement recommended for holders of the Recreational Commercial Gear License, as set out in section II.B.g., above.**

h. Gear Restrictions.

- **A Coastal Recreational Fishing License holder shall be restricted to the use of recreational (*i.e.*, fishing gears not defined by the Marine Fisheries**

Commission as "commercial gear") gears only. This is the major provision separating the Commercial Gear Recreational License from the Coastal Recreational Fishing License. At the Moratorium Steering Committee's public meetings, several charter boat owners and operators questioned whether this provision would prevent them from using gill nets under their blanket Coastal Recreational Fishing License to harvest bait fish en route to fishing offshore, and whether they would thus be required to also hold a Standard Commercial Fishing License in order to operate a charter vessel. The answer to that question is that while implementation of this provision will prevent them from using a gill net under their blanket recreational license to harvest bait-fish, they will not have to qualify for or hold a Standard Commercial Fishing License in order to use such gear. Instead, the vessel captain will be required to purchase a Recreational Commercial Gear License, as described in section II.B.1.i.(1)(c), above.

i. License Endorsements.

(1) Vessel Endorsements.

- **A Coastal Recreational Fishing License holder shall not be required to obtain a vessel endorsement in order to harvest fish with recreational fishing gear used from or in conjunction with a vessel.** The failure of the License Subcommittee to treat holders of the Coastal Recreational Fishing License exactly the same as holders of the Standard Commercial Fishing and Recreational Commercial Gear Licenses for purposes of vessel licensing was criticized by some commercial fishermen at the public meetings as unfair. However, the Subcommittee believes that their criticism is not valid in light of the rationale for licensing vessels where commercial gear use is authorized -- to be able to reasonably ascertain the potential level of harvest effort that a licensee may exhibit based on the size of the vessel licensed. That same rationale is simply not applicable to persons licensed only to use recreational harvest gears, and requiring vessel licensing of such users would serve no useful fisheries management purpose.

j. License Cost.

(1) Basic License Cost.

- **The cost of the annual Coastal Recreational Fishing License for both residents and nonresidents shall be \$15.00, except for licenses for "special user groups".** Many folks at the Moratorium Steering Committee's public meetings expressed opposition to charging resident and nonresident recreational license applicants the same fee, primarily because only North Carolina residents pay state taxes in support of coastal fishery resources. At the same time, representatives for coastal leisure tourism are adamant in their opposition to a higher fee for nonresident fishermen, largely because of the perceived adverse impacts on the nonresident tourist trade that such a disparity could cause. The License Subcommittee has looked to other states that charge higher nonresident recreational fishing fees to determine what the negative

tourism impacts might be, and is aware of no data that indicate such adverse effects. Nevertheless, on balance, the License Subcommittee believes that given the enormous amounts of money that nonresident tourists add to the State and local coastal economies, the potential negative impacts to tourism of a higher nonresident license fee outweigh the need to protect state citizens from undue benefits to nonresident from North Carolina tax expenditures.

(2) Special License Costs.

As previously noted, in its December 1994, *Final Report to the Joint Legislative Commission on Seafood and Aquaculture*, the North Carolina Department of Environment, Health, and Natural Resources Saltwater Sport Fishing License Advisory Committee recommended a schedule of costs for all special license categories considered by that body. The License Subcommittee endorses both the license categories recommended by that Committee and its recommended schedule of costs. Most of those licensing recommendations have been appropriately incorporated into previous sections of the License Subcommittee Report.

As a result of adopting the recommendations of the Saltwater Sport Fishing Advisory Committee, the License Subcommittee recommends the following:

- **The categories and costs of "special user group" Coastal Recreational Fishing Licenses shall be as recommended by the North Carolina Department of Environment, Health, and Natural Resources Saltwater Sport Fishing License Advisory Committee in its December 1994, *Final Report to the Joint Legislative Commission on Seafood and Aquaculture*. That schedule is reproduced below, in consolidated form:**

<i>Special License Category</i>	<i>License Cost</i>
One Week License	\$ 5.00.
Special User Lifetime (all permanent licenses)	
Elderly	\$ 10.00.
Handicapped or Disabled	\$ 10.00.
Disabled American Veteran	\$ 10.00.
Legally Blind	No Charge
Subsistence	No Charge
WRC Lifetime Fishing Licensees (if applied for during 6-mo. period following requirement of CRFL)	\$ 10.00
Lifetime Adult	\$250.00.
Personalized Lifetime Adult	\$255.00.
Lifetime Infant	\$100.00.
Personalized Lifetime Infant	\$105.00.
Implementation Period Youth (if	

applied for during 6-mo. period
following requirement of CRFL)

0 - 5 years	\$100.00.
6 - 10 years	\$150.00.
11 - 15 years	\$200.00.
Charter/Head/Dive Boat Owner	
"Blanket" License	\$1.00/ft. for vessels 0-18' in length;
	\$1.50/ft. for vessels >18' < 38' in length; and
	\$3.00/ft. for vessels > 38' in length.
Commercial Pier Owner	
"Blanket" License	\$3.00/ft., in addition to the cost of the current fishing pier license
	required under N.C.G.S. § 113-156.1.

The License Subcommittee would specifically note, as set out in the chart immediately above, that the Saltwater Sport Fishing License Advisory Committee recommended that the State make available (1) a lower cost, one-week license for persons vacationing at the beach; (2) low (or no) cost, permanent licenses for the elderly and disabled; (3) lifetime licenses similar to the ones offered for inland fishermen by the Wildlife Resources Commission; (4) an annual "Subsistence Coastal Recreational Fishing License", administered by the Division of Marine Fisheries in conjunction with the appropriate county social service agency that will allow those producing proof of eligibility for low-income assistance programs to have the basic, annual license fee waived; and (5) blanket licenses for commercial pier and charter boat owners.

(3) License Fee Use.

As previously discussed, all monies collected from the sale of the Coastal Recreational Fishing License will be deposited in the "Recreational License Marine and Estuarine Resources Enhancement Trust Fund", for disbursement under one of the options set out in Section I.C., above, except that private license sales agents will be allowed to retain up to \$1.00 of the Coastal Recreational Fishing License fee as compensation for the cost of license issuance.

D. OTHER NEW COASTAL FISHING LICENSES CONSIDERED.

1. COASTAL FISHING TOURNAMENT LICENSE.

Fishing tournaments result in intense fishing pressure on target species for a few days at a time. Some tournaments draw hundreds of boats, potentially resulting in a large catch, although actual harvest levels may be less than expected because of releases.

Consequently, tournaments can be a useful source of biological data on certain species, and there is a need to obtain better data from recreational tournament fishers. In addition, many tournaments take possession of the fish entered and sell them to raise funds to operate the tournament, thereby competing in the market with commercial fishermen.

After substantial discussion of these factors, the License Subcommittee reached a general consensus that the principal incorporated into the recommended statutory revisions -- that recreational fishermen not be allowed to sell coastal fishes -- is necessary to conserve and protect state coastal fish stocks, and should therefore apply across the board. For that reason the License Subcommittee rejected establishment of a North Carolina Coastal Fishing Tournament License, and instead recommends that:

- **In enacting the proposed coastal fishery licensing system, the General Assembly should create a temporary exception to the general prohibition against the sale of fish caught by persons other than the holders of a state commercial fishing license, limited in scope and duration as follows:**
 - **Recreational fishing tournaments authorized to sell fish by virtue of having held on January 1, 1996 a valid Non-vessel Endorsement to Sell Fish pursuant to N.C.G.S. § 113-154.1 and 15A N.C.A.C. 30.0102(e) shall be allowed to renew their current sale privilege annually, until January 1, 2001, by application to the Division of Marine Fisheries for issuance of a "Special Fisheries Sale Permit" and payment of a \$100.00 Permit fee. Implementation of this provision will ensure that those ongoing fishing tournaments that have substantial capital invested in promoting and administering the tournament with the idea that tournament costs will be defrayed by the sale of fish taken during the tournament are protected by allowing a five year period during which tournament dependency on such sale will be phased out.**
 - **Fishing tournaments not holding such a permit on January 1, 1996 or organized after the effective date of enactment of the recommended coastal fishery licensing package shall not be entitled to apply to the Division of Marine Fisheries for a "Special Fisheries Sale Permit", nor to sell fish taken during its tournament.**
 - **It shall be unlawful, after January 1, 2001, to sell fish taken in a recreational fishing tournament. The five-year phase out period of the sale of recreationally caught fish for existing tournaments and the prohibition against fish sale for new tournaments will encourage that recreational tournaments quickly move to "catch-and-release" rules.**

The recommended phase out for the allowance of tournament sale of recreationally taken fish garnered significant comment at the Moratorium Steering Committee's public meetings, both in favor of and against the proposal. In reconsidering the issue, the License Subcommittee felt that the long-term, continued allowance of such a practice is simply contrary to one of the overriding principles of the Moratorium Steering Committee -- that recreational fishermen should not be permitted to sell what

they catch -- and chose not to alter its recommendation. License fees from the sale of the "Special Fisheries Sale Permit" will be handled in the same manner as revenues from the sale of the Standard Commercial Fishing License.

2. COASTAL MARICULTURE LICENSE.

There continues to be strong interest in North Carolina in the promotion of private mariculture in public waters, along with a realization that the current commercial fishing licensing and permitting system is inadequate to meet the needs of serious mariculturists. For those reasons, the License Subcommittee recommended in its August 2, 1994 draft of the License Subcommittee Report the establishment of a Coastal Mariculture License under the terms and conditions set out below. The recommendation spurred notably little public comment at the public meetings held statewide by the Moratorium Steering Committee. Those few comments received are treated in discussing each appropriate section, below:

- **In enacting the proposed coastal fishery licensing system, the General Assembly should amend the North Carolina General Statutes to create a Coastal Mariculture License, required for any individual who conducts a mariculture operation in North Carolina coastal waters or who uses coastal waters to culture organisms (or their hybrids) that normally occur in such waters, incorporating the following features:**
 - **The Coastal Mariculture License shall be issued in the name of the individual principally in charge of the mariculture operation.**
 - **The license applicant shall be required to provide a complete description of the mariculture operation being licensed, including location, size, species cultivated and other information determined by the Division of Marine Fisheries to be relevant, on forms provided by the Division of Marine Fisheries, in order to receive the Coastal Mariculture License.**
 - **The Coastal Mariculture License shall allow the licensee to lawfully participate in all mariculture operations. Such operations include: planting, relaying, use of cages, culture, harvest, sale to a licensed fish dealer, and use of related vessels and gear, and the right to employ others to participate in those operations. Employees working exclusively on the mariculture operation and carrying proof of such employment will not be required to separately hold an individual Standard Commercial Fishing License or Mariculture License.**
 - **The Coastal Mariculture License holder shall be exempt from the necessity of holding either a valid Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License for activities conducted on or directly related to his/her mariculture lease or franchise, but the Coastal Mariculture License shall not substitute for any other license or permit which may be required by other provision of law.**

- **A Coastal Mariculture License holder shall be required, as a condition of being licensed, to abide by reasonable conditions placed upon his mariculture operation by the Fisheries Director.**
- **Possession of a valid North Carolina Mariculture License shall be a prerequisite to the States' granting a new public bottom mariculture lease or renewing an existing lease under N.C.G.S. § 113-202 or other provision of law.**
- **The Marine Fisheries Commission shall be required to enact mariculture training requirements, through rulemaking, for participants in the State mariculture industry.**
- **New entrants into the North Carolina mariculture industry shall be required to demonstrate their knowledge to effectively participate in that industry.** Persons applying for a new public bottom mariculture lease or whose shellfish franchise is recognized after the effective date of this license requirement will be required, prior to receiving lease or franchise management plan approval from the Division of Marine Fisheries, to satisfactorily complete a training curriculum in mariculture as provided for in rules promulgated by the Marine Fisheries Commission. Persons who obtain a mariculture lease or franchise from another individual after the effective date of this license requirement and Marine Fisheries Commission implementing rules will be required to satisfactorily complete the required mariculture training prior to such lease transfer.
- **Persons holding a mariculture lease or franchise at the time of enactment of mariculture training rules are duly adopted by the Marine Fisheries Commission shall have one year from the effective date of such rules to satisfactorily complete the required mariculture training, unless exempted by rule of the Commission.**
- **A Coastal Mariculture License holder shall be required to obtain a vessel endorsement, for the same fee charged a Standard Commercial Fishing License or Commercial Gear Recreational License holder, for any vessel used as part of the mariculture operation.** A few persons at the Moratorium Steering Committee's public meetings criticized this provision as an unfair burden on mariculturists. However, in reconsidering the recommendation, the License Subcommittee is convinced that the equities lie with treating the mariculturist equally to other operations involving either commercial gear or the privilege of being able to sell what you harvest.
- **In the case of a person using a vessel under this license, the Coastal Mariculture License shall serve as the equivalent of the Standard Commercial Fishing License for purposes of the requirement that in order for a vessel to lawfully participate in the commercial harvest of coastal fishery resources, a Standard Commercial Fishing License holder shall be aboard the vessel.**

- **The annual fee for the Coastal Mariculture License shall be \$250.00, and shall be in addition to the annual cost to the licensee of maintaining his/her lease or franchise.** At the Moratorium Steering Committee's public meetings, a few mariculturists criticized the cost of the license as unfairly high. Again, in reconsidering this recommendation, the License Subcommittee is convinced that the equities lie with treating the mariculturist like other commercial fishermen, who must pay \$250.00 for the substantial privilege extended to them in being able to use a public resource to make a living. Mariculturists also obtain substantial privilege from the Coastal Mariculture License in being able to exclusively use public lands for personal profit. The same commentators also complained that this license should include Fish Dealer License privileges. Similarly, the License Subcommittee notes that the holder of the Standard Commercial Fishing License is not entitled to the additional privileges conveyed by the Fish Dealer License without its separate purchase.
- **Crab shedding shall be exempt from this license requirement.**

License fees from the sale of the Coastal Mariculture License will be handled in the same manner as revenues from the sale of the Standard Commercial Fishing License.

3. CRAB SHEDDING LICENSE.

The License Subcommittee spent a significant amount of time discussing the potential need for licensing crab shedding operations. Because the soft crab fishery is highly seasonal and of short duration in any given area, data on the fishery are difficult to obtain. Crab shedding operations may utilize smaller mesh pots than hard crab fishermen, fished without escape rings, and the size of individual crabs harvested generally is much smaller than the minimum legal size for hard crabs. Nevertheless, the License Subcommittee does not believe that a separate Crab Shedding License is necessary at present, and recommends that crab shedding operations be licensed under the Fish Dealer License, as set out in section II.E.5., below.

There were a number of questions concerning licensing from crab shedders at the Moratorium Steering Committee's public meetings. Many were concerned that under the proposed revisions to the existing North Carolina Fish Dealer License, discussed at section II.E.5., below, persons shedding crabs will be required not only to hold a Standard Commercial Fishing License, but will also have to purchase "Crab" and "Crab Shedding" Fish Dealer Licenses. While there has been some confusion on that issue, under the License Subcommittee's recommendations, persons shedding crabs will be required to purchase a Fish Dealer License only if they choose to shed crabs *and* sell them directly to the public. In that case, the shedder will have to hold a "Crab Shedding" category Fish Dealer License, but not a "Crab" category Fish Dealer License, and will only have the duty of reporting (filling out trip tickets for) soft crab sales to the Division of Marine Fisheries. Persons who do not sell crabs directly to the public will not be required to hold a North Carolina Fish Dealer License.

4. CREW LICENSE.

The License Subcommittee also spent a significant amount of time discussing the practicality and necessity of requiring persons who serve as crew under the commercial fishing license of a vessel owner to hold a North Carolina Crew License. Based on those discussions, the License Subcommittee concluded the following:

- **The General Assembly should authorize the Marine Fisheries Commission to require a "Crew License" for persons working on vessels owned by a commercial licensee or otherwise working under the license of a commercial licensee, for a reasonable fee, if and at such time as limited entry into state fisheries or other occurrence may make a Crew License necessary and practicable.**

5. NONRESIDENT MENHADEN LICENSE.

Current North Carolina law provides for the licensing of commercial menhaden boats separately from other commercial vessels, according to the terms of N.C.G.S. § 113-152(d). Under the proposed new licensing system, N.C.G.S. § 113-152 will be repealed in its entirety, and the licensing of menhaden boats will be handled as an endorsement on the license of a Standard Commercial Fishing License holder (see section II.A.i., above). However, there are a number of out-of-State menhaden vessels, principally from Virginia and the Gulf Coast states, that fish in North Carolina waters but do not land their catches in North Carolina. As a result of landing and selling their catches elsewhere, even though those out-of-State vessels are licensed under current state vessel licensing laws, they have not been required to hold a North Carolina Endorsement to Sell Fish for their vessels. As a result, such nonresident menhaden boats will not automatically be entitled to obtain a Standard Commercial Fishing License under the licensing package recommended by the License Subcommittee, and so will no longer be able to lawfully fish in North Carolina waters.

The Moratorium Steering Committee realizes that the exclusion of non-resident boats from the State's waters, no matter how unintended, raises serious legal issues and, perhaps more importantly, may result in a hardship to North Carolina fishermen if other states act reciprocally to exclude our fishermen from their waters. For those reasons, to rectify these potential problems the Moratorium Steering Committee recommends the creation of a "Non-resident Menhaden License", under the terms and conditions set out below:

- **The General Assembly should appropriately amend the North Carolina laws to establish a new North Carolina Nonresident Menhaden License, subject to the following terms and conditions:**
 - **the Nonresident Menhaden License shall entitle its holder only to harvest and sell menhaden taken by purse seine in North Carolina waters;**
 - **sale of the license shall be limited to nonresidents;**

- upon the effective date of enactment of the recommended new coastal fishery licensing system, the license shall be required of any person who seeks to harvest and sell menhaden taken from North Carolina waters, other than the holder of a Standard Commercial Fishing License having a Menhaden Endorsement;
- the licensee shall, as a condition of licensing, be subject to the reporting requirements applicable to holders of the Standard Commercial Fishing License;
- the licensee shall be entitled to the number of Nonresident Menhaden Licenses equal to the number of vessels owned, leased or otherwise in the control of the licensee on January 1, 1996, which license shall be non-transferable and which shall serve as the equivalent of the Standard Commercial Fishing License for purposes of the requirement that in order for a vessel to lawfully participate in the commercial harvest of North Carolina coastal fishery, a commercial licensee must be aboard the vessel;
- nonresidents obtaining the license shall certify that their conviction record in their state of residence is such that they would not be denied a license under the licensing standards applicable to North Carolina commercial licensees;
- the cost of the Nonresident Menhaden License shall be \$2.00 per ton, gross tonnage, customhouse measurements, for the mother ship, and each purse boat carrying a purse seine used in conjunction with the mother ship shall require no license;
- for vessels owned by persons who are not residents of North Carolina, there shall be an additional cost of \$200.00 or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater, in addition to the tonnage fee requirement applicable to the mother ship.

Proceeds from the sale of the Nonresident Menhaden License will be handled in the same manner as revenues from the sale of the Standard Commercial Fishing License.

E. EXISTING LICENSES.

Public comments at the Moratorium Steering Committee's statewide public meetings concerning the proposed revision or deletion of the existing coastal fisheries licenses discussed in this section were virtually nonexistent. The few comments that were made are appropriately noted and discussed in conjunction with explanation of each recommended change, below.

1. COMMERCIAL FISHING PIER LICENSE.

Under the License Subcommittee's proposed license restructuring, the requirement described in N.C.G.S. § 113-156.1 -- that all fishing piers which extend into state

coastal fishing waters of the Atlantic Ocean and charge the public a fee to fish in any manner from the pier must be licensed -- will be retained, with one significant change. While the commercial pier licensing fee under this section will continue to be \$0.50 per lineal foot measured from the mean high-water line and including all extensions of the pier, the Fish Dealer License privileges currently extended to pier owners by virtue of their holding a pier license will be discontinued. The revision of current law is recommended for two primary reasons. First, while the dealer license privilege was originally given to pier owners to allow them to sell bait on their piers, a number of piers now have restaurants and fish-houses, which allow them to make full use of the dealer license privileges at substantially less cost than that charged other fish dealers. Secondly, since fish dealers are the source of the Division of Marine Fisheries' Trip Ticket information, it is extremely important that the reporting and other data gathering requirements that attach to other fish dealers under the proposed new licensing system also attach to pier owners. For those reasons, the License Subcommittee recommends that:

- **In enacting the proposed coastal fishery licensing system, the General Assembly should repeal N.C.G.S. § 113-156.1(c), which automatically extends Fish Dealer License privileges to licensed, commercial pier owners.**

As previously discussed, the Commercial Pier License fee will not include the cost of the Coastal Recreational Group Fishing License described in section II.C.1.j., above.

2. COMMERCIAL VESSEL LICENSE.

- **Effective concurrently with legislative enactment of the three-tiered licensing system recommended by the License Subcommittee, the Commercial Vessel License requirement contained in N.C.G.S. § 113-152 should be repealed.** Adoption of the new licensing system recommended by the License Subcommittee incorporates those provisions of N.C.G.S. § 113-152 that have continued utility, rendering this section superfluous.

3. CRAB LICENSE.

- **Effective concurrently with legislative enactment of the three-tiered licensing system recommended by the License Subcommittee, the Crab License requirement contained in N.C.G.S. § 113-153.1 should be repealed.** Following adoption of the licensing system recommended by the Moratorium Steering Committee, the privilege of participating in the North Carolina crab fishery will be licensed separately, if at all, by way of an endorsement on the Standard Commercial Fishing License of the crab fisherman. Consequently, the separate Crab License requirement contained in N.C.G.S. § 113-153.1 should be repealed as unnecessary. In making this recommendation, the License Subcommittee recognizes that North Carolina crab fishermen were one of the principal groups initially responsible for the current fishing license moratorium in the State, and supported the freeze in order to safeguard crab fishermen against an anticipated influx of new entrants into that fishery that could prove economically devastating to persons who currently make a living as crab fishermen. After much discussion of this issue by the full Moratorium

Steering Committee, the Committee decided not to recommend the immediate imposition of limited entry in the North Carolina crab fishery for three reasons. First, the Committee is committed to the idea that the management of each state fishery must be based on Fishery Management Plans that develop and collect those data necessary for adequate management of the resource under consideration, and that then make management decisions based on those data. To that end, the Committee believes that the North Carolina Blue Crab Fishery Management Plan should be the first Plan developed and implemented by the Marine Fisheries Commission. Secondly, the Committee concludes that there is a lack of information indicating that the increase in effort in the crab fishery anticipated by crab fishermen will indeed occur if the present prohibition on new entrants into that fishery is lifted. As the License Subcommittee states earlier in this Report, limited entry should only be used as an option of last resort. And lastly, the Committee thinks that it is basically unfair to separate out crab fishermen -- who are also free to participate in all other North Carolina commercial fisheries -- and protect them against competition from new entrants, while not giving other commercial fishermen the same competitive advantage. Nevertheless, the Committee recognizes that the potential for a rapid increase in effort in the state crab fishery exists and for that reason recommends that the Marine Fisheries Commission be authorized to adopt temporary rules, under its existing regulatory authority, to effect an interim Blue Crab Fishery Management Plan if such action proves necessary:

- **The Marine Fisheries Commission should be authorized to adopt temporary rules to establish an interim North Carolina Blue Crab Fishery Management Plan.**

4. ENDORSEMENT TO SELL FISH LICENSE.

As previously discussed, compliance with state reporting requirements will be a condition of licensing, and the privilege of selling fish will be included in the issuance of a Standard Commercial Fishing License, making retention of the Endorsement to Sell Fish license unnecessary. For that reason, N.C.G.S. § 113-154.1 should be repealed, as recommended previously in section II.A.1.f., above.

5. FISH DEALER LICENSES.

The weight of opinion heard by the License Subcommittee was that the current statute establishing the North Carolina Fish Dealer's License, N.C.G.S. § 113-156, is generally adequate, needing only some relatively minor modifications. Consequently, the License Subcommittee recommends that the North Carolina Fish Dealer License, as is currently provided for under N.C.G.S. § 113-156, should continue to be required for all persons (including businesses) who purchase fish at the point of landing and/or directly from a licensed commercial fisherman, and recommends the following:

- **In enacting the recommended coastal fishery licensing system recommended by the Moratorium Steering Committee, the General Assembly should generally retain the provisions of existing N.C.G.S. § 113-156, amending that section to**

incorporate the following features where they are different from existing law under that section:

- A commercial fisherman who sells directly to the public or to businesses that do not hold a Fish Dealer License shall possess an appropriate Fish Dealer License.
- Bait operations shall be licensed under either the finfish or shrimp dealer license categories.
- There shall be a single Fish Dealer License, regardless of the number of dealer categories licensed.
- New Fish Dealer Licenses (not renewals) shall be issued only at those Division Offices wherein a trained and bonded, license staff person is located. This provision is necessary because the Division of Marine Fisheries must initially train dealers concerning how to properly complete trip tickets.
- Each Fish Dealer License applicant shall be required to show, at a minimum, that he/she had an established location where (1) records are kept, (2) materials can be delivered, and (3) Division of Marine Fisheries personnel may perform reasonable inspections and data collection samplings.
- Each licensed Fish Dealer shall be required, as a condition of licensing, to participate in the Division of Marine Fisheries' current Trip Ticket reporting program and to allow Marine Inspectors to conduct reasonable inspections or Division of Marine Fisheries staff to reasonably conduct biological sampling, at any time the licensed dealer is open for, or conducting, business.
- In the case of business applicants for licensing under this section, each Fish Dealer License shall be required to identify an individual owner or agent.
- A Fish Dealer License shall only be issued to a North Carolina resident.
- Fish Dealer License categories and accompanying fees shall be established and implemented according to the following schedule:

<i>Fish Dealer Category</i>	<i>License Fee</i>
Oysters	\$100.00.
Clams	\$100.00.
Scallops	\$100.00.
Shrimp, including bait	\$100.00.
Finfish, including bait	\$100.00.
Crabs, including peelers and soft crabs	\$100.00.
Crab shedding	\$100.00.
Consolidated license (all categories)	\$600.00.

The "Crab Shedding" category for the Fish Dealer License recommended above caused some public confusion, as discussed in reference to the "Crab Shedding License" in section II.D.3., above. That category was added by the License Subcommittee in order to ensure that the Division of Marine Fisheries had a mechanism for obtaining biological and landings data for soft crabs. Such data is significant to management of the North Carolina crab fishery, but is extremely limited at present.

- **New Fish Dealer license applicants shall pay an "application fee" of \$50.00 in addition to the basic dealer license fee.** Implementation of this provision will allow the Division of Marine Fisheries to defray training costs for new license applicants, encourage license renewal by existing dealers, thereby saving the expense of setting up new files.

Proceeds from the sale of the Fish Dealer License will be handled in the same manner as revenues from the sale of the Standard Commercial Fishing License.

6. LAND OR SELL LICENSE.

- **The North Carolina Land or Sell License described in N.C.G.S. § 113-153, for nonresident vessels that harvest fish outside of state waters but wish to land their catch in North Carolina, should be retained in substantially its current form.** Under the recommended new licensing system there will remain the need to afford nonresident vessels not licensed in North Carolina the opportunity to come to port here, and land and sell their catch. Such a provision works to the clear advantage of North Carolina seafood dealers, and also to the advantage of nonresident fishermen who may be forced to port in North Carolina by weather, mechanical problems, landings regulations or other factors. License fees from the sale of the Land or Sell License will be handled in the same manner as revenues from the sale of the Standard Commercial Fishing License.

7. SHELLFISH LICENSE.

The License Subcommittee became aware through its deliberations of a significant number of fishermen in the central and southern coastal areas of North Carolina who exclusively harvest shellfish and therefore do not need a general Standard Commercial Fishing License that will entitle them to harvest all coastal fishes. As a result of implementation of the recommended new licensing structure, the cost to these fishermen of being licensed to harvest only shellfish would increase from the current cost of an individual shellfish license and non-vessel endorsement to sell fish, \$22.50, to the \$250.00 cost of the Standard Commercial Fishing License. In order to avoid unjustly penalizing this segment of the commercial fishing industry through unintended effect, the Moratorium Steering Committee believes that the current Shellfish License should be retained, as modified below, and recommends:

- **The General Assembly should appropriately amend the North Carolina laws to establish a new North Carolina Shellfish License, subject to the following terms and conditions:**

- the Shellfish License shall entitle its holder only to harvest shellfish in North Carolina coastal waters;
- upon the effective date of enactment of the recommended new coastal fishery licensing system, the license shall be required of any person who seeks to harvest and sell shellfish taken from North Carolina waters, other than the holder of either a Standard Commercial Fishing License having a Shellfish Endorsement or a Coastal Mariculture License;
- sale of the license shall be limited to North Carolina residents;
- during the pendency of the temporary cap on commercial fishing licenses, sale of the Shellfish License shall be limited to persons who hold both a valid Shellfish License and a Non-vessel Endorsement to Sell Fish License on the effective date of enactment of the new licensing system;
- a vessel endorsement shall be required, for the same fee charged a Standard Commercial Fishing License or Commercial Gear Recreational License holder, for any vessel used by a Shellfish License holder to harvest shellfish;
- in the case of a person using a vessel under this license, the Shellfish License shall serve as the equivalent of the Standard Commercial Fishing License for purposes of the requirement that in order for a vessel to lawfully participate in the commercial harvest of coastal fishery resources, a Standard Commercial Fishing License holder shall be aboard the vessel ;
- the cost of the Shellfish License shall be \$25.00. License fees from the sale of the Shellfish License will be handled in the same manner as revenues from the sale of the Standard Commercial Fishing License.

At the Moratorium Steering Committee's public meetings, a number of persons complained that the cost of the revised Shellfish License is disproportionately low as compared to the Standard Commercial Fishing License. However, given the limited number of persons that will be qualified to hold this license, the limited privilege that it conveys and the fact that many North Carolina shellfishermen are more or less "subsistence" fishermen, the Subcommittee decided to retain the recommended \$25.00 cost for the license. In addition, several shellfishermen requested that the Shellfish License contain a provision placing trip limits for hard clams as a condition of licensing. While such limitation may be necessary and beneficial to fishermen in some areas of the State, it is appropriately considered under the full recommendations of the Moratorium Steering Committee not as a license limitation, but as an integral recommendation in the Fishery Management Plan for Hard Clams that will derive from the adoption of the coastal fishery management system recommended by the Committee.

APPENDIX I

**SUMMARY OF PRINCIPAL COMPONENTS OF NEW LICENSING SYSTEM FOR NORTH CAROLINA
MARINE &/OR ESTUARINE RESOURCES PROPOSED BY
THE LICENSE SUBCOMMITTEE OF THE MORATORIUM STEERING COMMITTEE**

<i>LICENSE ATTRIBUTE</i>	COMMERCIAL LICENSE			RECREATIONAL LICENSES	
	STANDARD COMMERCIAL FISHING LICENSE	RECREATIONAL COMMERCIAL GEAR LICENSE	COASTAL RECREATIONAL FISHING LICENSE		
<i>1. Licensing Unit</i>	1. Individual.	1. Individual.	1. Individual.	1. Individual.	
<i>2. License Eligibility</i>	2a. Holders of ETS on 1/1/96 eligible to purchase same number of licenses as ETSs held; 2b. New licensees must meet eligibility qualifications imposed by MFC rule.	2. No limitations, but MFC authorized to cap number of licenses if necessary.	2. No limitations.	2. No limitations.	
<i>3. License Duration</i>	3. July 1 - June 30, renewable annually.	3. Purchase year, renewable annually.	3. Purchase year, renewable annually, except for "special user" licenses.	3. Purchase year, renewable annually, except for "special user" licenses.	
<i>4. Transferability</i>	4. Limited transferability as established by MFC rule, but license assignable.	4. Non-transferable & non-assignable.	4. Non-transferable & non-assignable.	4. Non-transferable & non-assignable.	
<i>5. Harvest Salability</i>	5. Sale privilege.	5. No sale privilege.	5. No sale privilege.	5. No sale privilege.	
<i>6. Reporting</i>	6. Requires trip-ticket reporting & participation in other DMF data collection efforts.	6. Requires participation in DMF data collection efforts.	6. Requires participation in DMF data collection efforts.	6. Requires participation in DMF data collection efforts.	
<i>7. Harvest limits</i>	7. Harvest limits as imposed by MFC rule in individual FMPs.	7. Recreational harvest limits imposed by MFC or "federal" regulatory agencies.	7. Recreational harvest limits imposed by MFC or "federal" regulatory agencies.	7. Recreational harvest limits imposed by MFC or "federal" regulatory agencies.	
<i>8. Gear restrictions</i>	8. Can use all lawful commercial gears, except as gear restrictions are imposed by MFC rule in individual FMPs.	8. Restricted to use of non-commercial gear and specified types and quantities of commercial gear.	8. Restricted to use of non-commercial gears only.	8. Restricted to use of non-commercial gears only.	
<i>9. License endorsements:</i> <i>a. Vessel endorsements</i> <i>b. Other endorsements</i>	9a. Vessel endorsement required if harvest will involve use of vessel; 9b. Shellfish, Menhaden Endorsements required to harvest those resources.	9a. Vessel endorsement required if harvest will involve use of vessel; 9b. None required.	9a. Vessel endorsement not required; 9b. None required.	9a. Vessel endorsement not required; 9b. None required.	
<i>10. Basic License Cost¹</i>	10. \$250.00 for residents; \$250.00 + administrative fee or reciprocal cost for nonresidents.	10. \$25.00 for residents; \$250.00 for nonresidents.	10. \$15.00 for resident & nonresident "basic" license; differential costs for special licenses.	10. \$15.00 for resident & nonresident "basic" license; differential costs for special licenses.	

¹ Basic license cost is the cost of an annual, non-special category, individual license. It excludes the cost of required license endorsements.

APPENDIX II

LICENSE SYSTEM DEFINITIONS

During its deliberations, the License Subcommittee spent a substantial amount of time discussing problems in the administration of the current North Carolina coastal fisheries licensing scheme that derive from the lack of legally defined terms, or from the imprecision of currently adopted terms, related to coastal fishing and fishermen. As a result of those discussions, the License Subcommittee has produced a list of licensing terms along with their proposed definitions. The License Subcommittee strongly recommends that the Marine Fisheries Commission timely move to consider the adoption of each listed term definition, as set out below.

Bait: A substance, natural or artificial, used to attract fish so they may be captured.

Charter boat: A vessel engaged in recreational fishing for monetary gain, which is hired on a per-trip basis and generally carries six or fewer recreational fishermen.

Commercial fisherman: Any individual who takes aquatic organisms and sells, barter or receives compensation for any part of the catch.

Commercial fishing: Taking or attempting to take aquatic organisms for sale or other compensation, or resulting in sale, barter or receipt of any kind of compensation for the catch.

Commercial fishing gear: Various kinds of nets, lines, traps, and other devices used to harvest fish for monetary compensation and designated as commercial fishing gear by statute or rule.

Commercial fishing pier: An artificial structure extending from the shoreline into Coastal Fishing Waters of the Atlantic Ocean, from which individuals may fish upon payment of a fee.

Commercial fishing vessel: A self-propelled watercraft from which any fishing gear is deployed to take or attempt to take fish for sale or other compensation.

Control date: A specific calendar date declared by statute or rule to be the final date after which any person or business entity receiving a North Carolina fishing license, endorsement or permit does not have a right to continue to exercise any or all of the privileges originally associated with that license, endorsement or permit.

Crab shedding: A commercial fishing operation in which peeler crabs are placed in holding facilities on shore or in Coastal Fishing Waters until they shed their shells and become soft crabs.

Crew member: A person who is part of a group of two or more persons participating in a commercial fishing operation, but who does not have constructive or actual control of the operation.

Fish dealer: Any individual or business that buys fish from a licensed commercial fishermen, or a licensed commercial fishermen who also sells fish to any individual or business other than a licensed fish dealer.

Fisherman: Any individual who takes or attempts to take aquatic organisms from North Carolina waters.

Fishing tournament: A sporting event in which recreational fishermen compete against each other in attempting to take the largest or greatest number of designated species of fish within a specified time period, using rod and reel or other recreational fishing gear.

Headboat: A vessel engaged in recreational fishing for monetary gain, which is hired on a per-person basis and generally carries more than six recreational fishermen.

Landing: Bringing to shore and unloading marine or estuarine resources from commercial fishing gear or from a commercial fishing vessel.

Mariculture: The process of raising, for the purpose of sale, aquatic organisms that live in North Carolina coastal waters, under conditions that are at least partially manipulated.

Processing: Any action that alters the landed form of aquatic organisms, including adding other substances to the landed form.

Recreational fisherman: Any individual who takes or attempts to take aquatic organisms without deriving any earned income or other compensation for the catch.

Recreational fishing: Attempting to take or taking aquatic organisms for personal use, with no expectation or receipt of compensation of any kind for the catch.

Recreational fishing vessel: A self-propelled watercraft from which fishing gear is deployed to take or attempt to take aquatic organisms for personal use, rather than for sale, barter or other compensation.

Shell fisherman: Any individual resident of North Carolina who derives at least part of his or her annual earned income from commercial fishing through harvest and sale of molluscan shellfish.

Spotter airplane: An aircraft used for aerial identification of the location of fish in Coastal Fishing Waters and which aids in the capture of such fish.

REPORT
OF THE *GEAR SUBCOMMITTEE*
TO THE
MORATORIUM STEERING COMMITTEE

*Adopted by the Moratorium Steering Committee
for Recommendation to the "Joint Legislative Commission on Seafood &
Aquaculture" on October 25, 1996*

SUMMARY OF RECOMMENDATIONS OF THE GEAR SUBCOMMITTEE

1. The State should better incorporate into its framework of coastal fisheries management a mechanism for collecting adequate, accurate "catch-per-unit of effort" (CPUE) data for all coastal fisheries.
2. North Carolina should, as a condition of licensing, require all licensed fishermen, including fish dealers and mariculturists, to provide the Division of Marine Fisheries adequate harvest data, effort data and other information necessary to making and evaluating coastal fishery management decisions.
3. The Division of Marine Fisheries should implement the additional procedures necessary to collect adequate, accurate effort data, and should take the necessary steps to verify that the harvest and effort data submitted to it by fishermen are reasonably accurate.
4. The State should make a substantial investment of resources into developing appropriate content requirements for state Fishery Management Plans for each important coastal species and fishery.
5. Fishery Management Plan content should include, at a minimum:
 - a. the gathering of data on life history characteristics (age structure, growth, mortality, reproduction, diet, migrations), habitat usage at all life stages, population (or stock) structure, and socioeconomics of the fishery, so that the status of each of North Carolina's fishery resources may be properly characterized;
 - b. the establishment of long-term goals and objectives for each fishery;
 - c. an examination of all fishing operations (methods and gears) used in that fishery for incidental bycatch, definition of acceptable bycatch levels for operations in that fishery, and requirement or solicitation of operation modifications that minimize unacceptable levels of bycatch;
 - d. an examination and assessment of the effects of fishing operations employed in that fishery on coastal habitats, and requirement or solicitation of operation modifications that minimize those adverse impacts or maximize those beneficial impacts.
6. North Carolina should also develop an appropriate and adequate process for preparing and implementing state Fishery Management Plans, including:
 - a. establishment of a process whereby members of the public have a significant role in preparation of the Fishery Management Plans; and
 - b. establishment of means to achieve the goals set out in the plan and methods to assess progress in achieving those goals.
 - c. initially using 100% of allowable funding from the "Marine and Estuarine Resources Enhancement Trust Funds" for Fishery Management Plan development.
7. The State should provide that it is unlawful to use fishing gears in North Carolina coastal waters not specifically defined and approved by the Marine Fisheries Commission, and should require that fishing gear use is controlled through appropriate rules adopted as a part of state Fishery Management Plans.
8. The Marine Fisheries Commission should establish a formal process through which new fishing gears may be developed and approved.

INTRODUCTION

The gears used by fishermen to pursue North Carolina's coastal fishery resources are as diverse as the State's marine and estuarine resources themselves. The Division of Marine Fisheries recognizes over fifty (50) different gears in its statistics program. This great variety of gears employed in the State to catch fish reflects the variety of species harvested, the varied purposes of that harvest, variations in fishing conditions and the fishermen themselves. Historically, coastal North Carolina fishermen have been very innovative, developing and modifying fishing gears and methods as conditions, including rules regulating those fisheries, have changed. In addition, gear use diversity is likely enhanced by the fact that North Carolina is among the few jurisdictions that allows recreational use of commercial fishing gears.

Most fishing gears used in North Carolina coastal waters are more or less designed to harvest certain species or sizes of fish, but gear selectivity varies greatly. Some gears target their catches very specifically, while others aim at a group of species generally associated together. A few gears, unless modified in design or by use, can take virtually any fish that they encounter.

In its statistical reporting programs, the Division of Marine Fisheries collects commercial harvest data on the species landed, their weights, the location of the harvest and the general type of gear used to make the harvest, through "trip tickets". Trip tickets are required by statute to be filled out and submitted to the Division by fish dealers for all fish sold. Commercial "fishing effort" data -- the amount of gear used, details of the gear's configuration, and time of gear use -- have, unfortunately, not been collected historically and are not collected at present. However, the Division of Marine Fisheries' recreational fishing statistics program does generally collect recreational gear use data for "hook-and-line" fishermen, including amount of gear used and time of use. No data of any kind are collected by the Division concerning the harvest of the State's marine and estuarine resources by recreational fishermen using commercial gear or taking North Carolina shellfish.

The task of the Moratorium Steering Committee's Gear Subcommittee must be viewed against this backdrop of traditional, widespread use of a diverse array of fishing gears by a diverse group of North Carolina commercial and recreational fishermen. Given this background, there is a general public perception that there "is too much gear in the water in North Carolina", and that immediate and substantial gear reductions are a must if the State's coastal fisheries are to remain viable for future generations. For those reasons, the Gear Subcommittee spent large amounts of time considering potential future gear restrictions and attempting to determine the relative adverse impacts of different gears on North Carolina fish stocks and coastal fisheries habitats. These deliberations were, however, clearly hampered by the lack of good data on fishing effort in North Carolina fisheries and waters, and by the lack of an overall, objectively defined state conservation goal for coastal fisheries upon which the Gear Subcommittee could target its recommendations.

ASSUMPTIONS & FINDINGS

Assumptions

The Gear Subcommittee first sets out the general assumptions under which it operated in developing the findings and recommendations contained in this Report:

- (1) There will be a viable professional commercial fishery and a viable recreational fishery in North Carolina.
- (2) All fishing gears will be defined and allowed by the Marine Fisheries Commission prior to use.
- (3) Use of all fishing gears will be controlled by a variety of means, as necessary to sustain viable, long-term coastal fisheries.
- (4) Both recreational and commercial users of all fishing gears will be licensed by the State.
- (5) The State will develop Fishery Management Plans for all recreationally and/or commercially significant species.
- (6) Implementation of the type of coastal fisheries licensing system recommended by the Moratorium Steering Committee's License Subcommittee in its Final Report will result in at least an initial, short-term reduction in the amount of fishing gear used in the State.
- (7) Long-term reduction in the amount of fishing gear used in North Carolina will be dependent upon the development and implementation of appropriate Fishery Management Plans.

Findings

Taking into account the assumptions listed above and after considerable discussion of general gear use issues, including detailed discussions of the effects of many gears on stocks and habitat, the Gear Subcommittee makes the general findings shown below:

- (1) There is a general perception that there is too much fishing gear in use in some areas and fisheries in coastal North Carolina, and that the excess gear is responsible for biological, social and economic problems. This perception is not, however, based on any objective or extensive data analysis.
- (2) Conflicts, both real and perceived, among users of various fishing gears, and between users of fishing gears and persons using public waters for other activities, are increasing and threaten the long-term existence of some fisheries in some areas.
- (3) Fishing gears vary widely in their impact on coastal habitat, but unwise use of some fishing gears excessively impacts important fisheries habitat.
- (4) Some fishing gears and methods used in North Carolina continue to take excessive levels of incidental bycatch.

- (5) Despite the progress that has been made by the State in coastal fisheries data collection, incomplete and inadequate data remains a major limiting factor in the State's ability to make objective and effective fisheries management decisions.

RECOMMENDATIONS

I. MANAGEMENT CONSIDERATIONS.

A. Gear Management.

Many of the problems now existing within North Carolina's coastal fisheries involve problems centered on the use of fishing gears. Use of movable fishing gear conflicts with fixed gear use. Locations of fixed gears may interfere with other activities on the water, including fishing, boating, swimming and water sports. Non-selective fishing gears may have considerable bycatch, possibly affecting non-target populations. Depending on how they are used, various commercial fishing gears may have significant effects on the habitat in which they are used, sometimes destroying or greatly modifying that habitat. Increasing use of the coastal waters alone creates problems, as more and more boats and people compete for space in already crowded waters.

These problems were clearly reflected in the public comments received by the Moratorium Steering Committee during its series of nineteen statewide public meetings on its draft recommendations. A great number and variety of persons, including both recreational and commercial fishermen, called for immediate gear restrictions aimed at specific gears or specific areas of the coast. Other commentators requested a system for identifying and licensing all commercial gears used in North Carolina coastal waters. As noted in the Report of the License Subcommittee, gear licensing was examined as an option by the Moratorium Steering Committee and rejected in favor of fairer and more practical regulatory methods. Still other speakers at the public meetings called for the restriction of recreational uses of public waters that may conflict with the use of fishing gears.

Under the Public Trust Doctrine, all citizens have the right to use North Carolina's navigable waters for a variety of purposes, including fishing. As sovereign, the State is the owner and manager of the marine and estuarine resources that reside in North Carolina, and is vested with all necessary authority to regulate fishing practices in order to conserve and perpetuate those fisheries. The Marine Fisheries Commission and Division of Marine Fisheries are specifically charged with conserving and protecting the State's coastal fishery resources. Such a charge includes the duty to appropriately control the use of fishing gears to minimize their adverse effects on fish stocks and fishery habitats, ensuring that coastal fisheries remain productive and viable for future generations. As sovereign, the State also has the responsibility to manage conflicts between citizens using its public waters and is vested with the general police power necessary to resolve such user conflicts. In furtherance of the State's responsibility and authority to control fishing gears in order to adequately conserve and manage North Carolina's marine and estuarine resources, and to resolve user conflicts, the Gear Committee makes the following recommendation:

- **The State should provide that it is unlawful to use fishing gears in North Carolina coastal waters not specifically defined and approved by the Marine Fisheries Commission, and should require that fishing gear use is controlled through appropriate rules adopted as a part of state Fishery Management Plans.**

At the same time, the Gear Subcommittee realizes that fishermen are often in the best position to develop the gear modifications necessary to make their gears more selective to fish, less destructive to coastal fishery habitats, or to otherwise better conserve and protect the State's marine and estuarine resources, and that fishermen have historically done so. For those reasons, the Subcommittee believes it is important for fishermen to maintain the flexibility to appropriately modify their gears to make them more efficient and effective, and recommends that:

- **The Marine Fisheries Commission should establish a formal process through which new fishing gears may be developed and approved.**

B. Data Management.

The goal of perpetuating a sustainable fishery resource, *i.e.*, one economically viable into the distant future, requires that fisheries managers know the status of the resource, the quantities being taken from the resource, the effort being applied to make that harvest and the nature of the users. This basic knowledge provides the tools for fisheries managers to make objective management decisions. Unfortunately, natural resources are too often managed under conditions where good intentions, biased opinions, political influence or simply "seat of the pants" guesses, prevail. This situation is exacerbated where necessary management data are lacking, and is especially perplexing since the techniques for managing fishery populations (or stocks) based on objective criteria have been available for years.

Some of the recommendations are made by the Moratorium Steering Committee may suffer from these traditional pitfalls in fisheries management. Because managers and the public want immediate answers, they are often willing to accept "best available data" as being adequate to address most issues. Managing habitats, fishery gears or the fishery resources themselves without adequate data collection and analysis implies a willingness to have a subjective management system. As long as resources are managed in this way, North Carolina can expect that many fisheries management decisions will not have their intended effects.

For all of these reasons, to properly manage North Carolina's fisheries the Gear Subcommittee strongly recommends that:

- **The State should better incorporate into its framework of coastal fisheries management a mechanism for collecting adequate, accurate "catch-per-unit of effort" (CPUE) data for all coastal fisheries.**
- **North Carolina should, as a condition of licensing, require all licensed fishermen, including fish dealers and mariculturists, to provide the Division of Marine**

Fisheries adequate harvest data, effort data and other information necessary to making and evaluating coastal fishery management decisions.

- **The Division of Marine Fisheries should implement the additional procedures necessary to collect adequate, accurate effort data, and should take the necessary steps to verify that the harvest and effort data submitted to it by fishermen are reasonably accurate.**

Better data collection will be achieved through implementation of the coastal fishery licensing system recommended for adoption by the Moratorium Steering Committee in the Final Report of the License Subcommittee, and through well designed data sampling programs run by the Division of Marine Fisheries. Once these data are collected, they can then be incorporated into various types of population dynamics models to determine what kind of fishing pressure a stock can endure. Such models are not perfect, but they provide a logical starting point from which fishery allocations can be derived.

Fisheries data should be collected in a logical, organized manner that sets goals and milestones for accomplishing tasks. In that vein, the Gear Subcommittee also strongly believes that appropriate steps must be taken to ensure the gathering of those data that will result in adequate characterization of the status of each of North Carolina's fishery resources. Both of these aims can be accomplished through the development and implementation by state fisheries management agencies of adequate Fishery Management Plans, as also recommended by the Moratorium Steering Committee in the Final Report of the License Subcommittee. To achieve that end, the Gear Subcommittee recommends that:

- **The State should make a substantial investment of resources into developing appropriate content requirements for state Fishery Management Plans for each important coastal species and fishery.**
- **Fishery Management Plan content should include, at a minimum:**
 - **the gathering of data on life history characteristics (age structure, growth, mortality, reproduction, diet, migrations), habitat usage at all life stages, population (or stock) structure, and socioeconomics of the fishery, so that the status of each of North Carolina's fishery resources may be properly characterized;**
 - **the establishment of long-term goals and objectives for each fishery;**
 - **an examination of all fishing operations (methods and gears) used in that fishery for incidental bycatch, definition of acceptable bycatch levels for operations in that fishery, and requirement or solicitation of operation modifications that minimize unacceptable levels of bycatch;**
 - **an examination and assessment of the effects of fishing operations employed in that fishery on coastal habitats, and requirement or solicitation of operation**

modifications that minimize those adverse impacts or maximize those beneficial impacts.

- **North Carolina should also develop an appropriate and adequate process for preparing and implementing state Fishery Management Plans, including:**
 - **establishment of a process whereby members of the public have a significant role in preparation of the Fishery Management Plans; and**
 - **establishment of means to achieve the goals set out in the plan and methods to assess progress in achieving those goals.**
 - **initially using 100% of allowable funding from the "Marine and Estuarine Resources Enhancement Trust Fund" for Fishery Management Plan development.** The Report of the Moratorium Steering Committee's License Subcommittee recommends the creation of two parallel, dedicated state funds wherein all revenues from the State's sale of coastal commercial and recreational fishing licenses will be deposited. Under the proposal, disbursement of monies from those two funds will be controlled by an appointed Board of Trustees for each fund, composed of commercial and recreational fishermen, respectively. Under the License Subcommittee recommendations, up to 75% of the monies from those funds could be disbursed for "Resources Enhancement" and "Marine Fisheries Research". The Gear Subcommittee feels strongly that until all state coastal Fishery Management Plans are completed and implemented, the best use of the funds allocated to those two categories will be to spend them to collect necessary effort data or other similar uses directly connected to the development of state Fishery Management Plans.

Collection and analysis of adequate fisheries management data are necessarily ongoing processes. As a result of data collection and analysis efforts carried out as a part of Fishery Management Plan development, state fisheries managers will at some point in the relatively near future be able to project the long-term level of exploitation that can be sustained by coastal fish stocks. When that occurs, management decisions that properly allocate all or some predetermined portion of this quantity to the various gears and users in the fishery can be made. By default then, management of the amounts and users of various gears in the water where gear management is based on a defensible process aimed at the best interests of the resource, will result from management of fish stock by development and implementation of state Fishery Management Plans.

REPORT
OF THE *HABITAT SUBCOMMITTEE*
TO THE
MORATORIUM STEERING COMMITTEE

*Adopted by the Moratorium Steering Committee
for Recommendation to the "Joint Legislative Commission on Seafood &
Aquaculture" on October 24, 1996*

SUMMARY OF HABITAT SUBCOMMITTEE RECOMMENDATIONS

1. The Marine Fisheries Commission and the Division Of Marine Fisheries should aggressively use their existing statutory authorities and powers to protect marine and estuarine resources and the habitats upon which they depend, and the General Assembly should act to enhance those powers.
 - a. The Marine Fisheries Commission and the Division of Marine Fisheries should examine their respective operating policies and procedures to ensure that each agency is using its existing statutory authorities to protect coastal fishery habitats to the fullest extent possible.
 - b. The General Assembly should amend N.C.G.S. § 113-131(b) to require that any permit that is approved by any state agency over the objection of the Division of Marine Fisheries or Marine Fisheries Commission must, prior to permit issuance:
 - (1) be elevated to the Secretary for resolution of the matter if the permit is one issued by a state agency under the direction of the Secretary or for which the Department of Environment, Health, and Natural Resources provides staffing, in which case the Secretary shall be empowered to resolve the differences between the disagreeing state agencies; or
 - (2) be elevated to the Governor for resolution of the matter if the permit is not one issued by a state agency under the direction of the Secretary or for which the Department of Environment, Health, and Natural Resources provides staffing, in which case the Governor shall be empowered to resolve the differences between the disagreeing state agencies.
 - c. The Secretary of the Department of Environment, Health, and Natural Resources should establish and the General Assembly should fund a "Fisheries Habitat Protection and Enhancement Section" within the North Carolina Division of Marine Fisheries, dedicated to using the Division's existing and future habitat protection authorities, and to providing staff to assist the Marine Fisheries Commission in using its existing and future habitat protection authorities, to the fullest possible extent.
2. The State should establish an effective, institutional habitat protection program.
 - a. The General Assembly should require the Secretary of the Department of Environment, Health, and Natural Resources to prepare; and the Coastal Resources, Environmental Management and Marine Fisheries Commissions to adopt a Habitat Protection Plan (HPP) for critical, coastal fisheries habitats as soon as possible, and no later than July 1, 1999.
 - (1) The General Assembly should establish the overall goal of the Coastal HPP as *no net functional loss* of each critical fishery habitat.
 - b. The General Assembly should establish and fund a comprehensive state program to acquire, preserve, and restore habitats critical to marine and/or estuarine fisheries.
 - (1) The General Assembly should establish a program within the Department of Environment, Health, and Natural Resources to acquire and/or restore and manage critical fisheries habitat that cannot be adequately protected through regulation and voluntary measures, funded by a substantial, on-going source of revenues dedicated to that purpose.
 - (a) The General Assembly should study the creation of an "Environmental Bond Authority" vested with the power to issue bonds for critical, coastal habitat acquisition.
 - (2) The General Assembly should increase public awareness of the significance of, and need and means to protect, coastal fisheries habitats through funded environmental education.
 - (3) The General Assembly should expand incentives for voluntary preservation of privately held lands critical to coastal fisheries habitats.

3. The State should act through its appropriate agencies to protect coastal fisheries habitat from litter and from adverse impacts from recreational and commercial vessel use.
 - a. The Governor should issue an Executive Order requiring each state agency to examine its policies, procedures and authorities to ensure that the agency is adequately protecting marine and estuarine fisheries habitats.
 - (1) The Marine Fisheries Commission and the Division of Marine Fisheries should sponsor or formally support and participate in cleanup efforts aimed at the coastal environment.
 - b. The General Assembly should require that the Marine Fisheries Commission utilize its rulemaking authority to ensure, based on the best available scientific information, that fishing practices do not cause unacceptable damage to marine and estuarine fisheries habitats.
 - c. The Marine Fisheries Commission and the Division of Marine Fisheries should examine their administration of state laws pertaining to coastal fisheries to ensure that administrative policies do not allow or result in significant damage to marine and estuarine fisheries habitats.
4. The State should enhance enforcement of fisheries habitat protection laws.
 - a. The General Assembly should amend the North Carolina General Statutes to expand the scope of the Marine Patrol's jurisdictional authority to enforce environmental laws essential to the protection of critical, coastal fisheries habitats to the fullest possible extent, and the Division of Marine Fisheries should expand officer training accordingly.
 - b. The General Assembly should establish and fund an environmental violations reporting and response system.
5. The State should promote effective public involvement in the protection of habitats critical to marine and estuarine resources.
 - a. The General Assembly should establish and fund a coastwide, citizen water quality monitoring program.
 - b. The General Assembly should create in state law a citizen's suit provision that allows North Carolina citizens to bring suit to enforce specific environmental laws.

INTRODUCTION

The State of North Carolina ranks as one of the premier states in the United States relative to its wealth of living marine resources. Bounded on the east by warm Gulf Stream waters and on the west by a mosaic of highly productive estuarine habitats (*e.g.*, salt, brackish and freshwater marshes; mudflats; submerged aquatic vegetation beds; *etc.*), North Carolina coastal waters possess both the thermal and nutrient qualities to support a myriad of economically important commercial and recreational fisheries. These fisheries range from offshore -- marlin, tuna, dolphin, wahoo, amberjack, sharks, snapper, grouper, grunts, *etc.* -- to coastal and estuarine -- king and Spanish mackerel, bluefish, flounder, cobia, menhaden, drum, tarpon, blue crab, hard clams, oysters, bay scallops, *etc.* -- and include diadromous species that traverse from the salty ocean to the fresh riverine waters -- striped bass, shad, river herring, sturgeon, eels, *etc.* The high biological productivity of this region is further illustrated by the presence of significant quantities of marine mammals, sea turtles and fish-eating birds.

Maintaining the biological richness of North Carolina's coastal waters as the State continues to experience high rates of human population growth, particularly in coastal areas, is a never-ending challenge. Although industrial growth is not a significant issue at the present time, degradation and loss of coastal habitat from an ever increasing human population has had major impacts on the State's coastal fishery resources. Therefore, any effort to improve the protection and use of fishery resources must address the need to conserve the quality and quantity of habitat essential for the reproduction, growth and survival of these resources.

The Habitat Subcommittee has for two years met as a group and has also met in conjunction with the full Moratorium Steering Committee, generally on a monthly basis. In connection with those meetings and in other marine fisheries forums, the Habitat Subcommittee has received, discussed and considered numerous comments from members of the general public concerning coastal habitat protection. In addition, the Habitat Subcommittee has met with representatives of various local, state and federal governmental agencies having the duty and authority to regulate and protect North Carolina coastal habitats critical to the conservation of marine and estuarine resources.

At the Moratorium Steering Committee's statewide public meetings, the recommendations of the Habitat Subcommittee received very vocal and virtually unanimous support from both recreational and commercial fishermen, and from otherwise interested state citizens. The only complaint that the public had about the Subcommittee's draft Report was that it "didn't go far enough" in protecting coastal habitats and water quality. At those meetings, public speakers clearly indicated that they have little confidence in the current state institutions and system for protecting state wetlands and water quality, often referring to state regulation of hog farm wastes and municipal treatment plant discharges as examples of failures by the State to control water pollution. From all of those inputs, the Habitat Subcommittee makes a number of findings, as set out below.

FINDINGS

- (1) "Habitat" is the total physical, chemical and biological surroundings of an organism.

- (2) North Carolina's vast system of coastal estuaries, encompassing about 2.3 million acres of open waters and bordering wetlands, and ranking behind only Alaska and Louisiana in terms of coastal wetlands area, is the "primary engine" driving the State's coastal fisheries production.
- (3) Estuarine-dependent fishery resources occupy estuarine waters at some time in their life histories, and are dependent upon the estuarine environment for such critical functions as spawning, feeding, migration and growth.
- (4) Approximately 90% of North Carolina's commercial fisheries harvest and two-thirds of the State's recreational harvest, by weight, consists of estuarine-dependent species.
- (5) Without healthy, productive estuarine systems, many coastal fisheries will simply not continue to exist in numbers sufficient to support commercial or recreational fisheries.
- (6) While primary marine and estuarine fisheries habitat is found in the ocean and in the tidal creeks, rivers, sounds and bays that make up North Carolina's estuaries and coastal waters, inland wetlands habitats are also essential to conserving and protecting these critical, coastal fisheries habitats.
- (7) Maintaining the quantity, quality, and productivity of coastal waters and other fisheries habitat is essential to the fishery resources in North Carolina.
- (8) Habitat protection requires reasonably maintaining not only the immediate habitat of an organism, but also, all other habitats that significantly influence the habitat in which that organism lives.
- (9) North Carolina estuarine systems are basically dependent on surrounding and upstream wetlands for their essential energy inputs, and degradation of those wetlands through dredging, filling, alterations of area water tables and deforestation have resulted in a substantial loss of critical wetland functions, and thus of estuarine productivity.
- (10) Optimally productive conditions of habitat (*i.e.*, the places where fish live) and water quality (*i.e.*, the ability of the water to support fishery resources) are dependent on a wide variety of natural conditions (*e.g.*, temperature, salinity, rate of flow, bottom type, *etc.*), which may be substantially degraded by human activities, thereby lowering fishery resource productivity.
- (11) Human activities are responsible for estuarine sedimentation, nutrient enrichment and bacterial contamination, resulting in algae blooms, fishery diseases and fish kills.
- (12) Pollution of coastal waters occurs both from specific industrial and municipal discharges, and from agricultural, suburban and urban non-point source pollutant inputs from runoff, and resulting pollutants include vast arrays of chemical substances, bacteria and nutrients.

- (13) The cumulative pollution resulting from land and water uses is having an adverse impact on coastal fisheries habitat. Chemical pollutants may have varying degrees of toxicity to both aquatic organisms and humans; bacterial pollutants may contaminate shellfish, causing illness in persons consuming them; and nutrient inputs from pollutants, especially phosphorus and nitrogen, may cause algae blooms that are either directly toxic to fish or that result in oxygen depletion of the water and fish kills.
- (14) Public health may be threatened because polluted waters where people swim are not posted and publicized.
- (15) Meaningful efforts to restore and enhance wetlands and other habitats critical to coastal fishery resources are extremely limited.
- (16) The quality of North Carolina's coastal waters, and therefore the productivity of North Carolina's coastal fisheries habitat, is not adequately protected or managed through existing, relevant regulatory standards and programs.
- (17) State and federal permits issued for land based activities often allow for the degradation and destruction of fisheries habitat due to increased non-point source pollution, wetland losses, and increased nutrient loadings. Moreover, compliance with existing permit conditions is not adequately monitored or enforced.
- (18) Coordination and cooperation among governmental agencies with the legal authority to protect critical, coastal fisheries habitat is inadequate.
- (19) The North Carolina Marine Fisheries Commission and the North Carolina Division of Marine Fisheries, the state agencies having the primary responsibility for managing coastal fishery stocks, have little authority to protect fisheries habitat beyond regulating fisheries practices. Moreover, neither agency has fully utilized its existing statutory authorities to protect state coastal fisheries habitats.
- (20) New institutional procedures and methods of accountability must be developed and implemented if critical North Carolina coastal fisheries habitat and water quality are to be protected.
- (21) Public involvement in implementing and enforcing environmental laws is critical to their success. Citizen complaints are generally not responded to adequately, and there are currently no reliable mechanisms in place through which the public can voice environmental concerns or report environmental crimes.

The above findings are consistent with those found in the Reports of the Albemarle-Pamlico Estuary Study (APES), the Coastal Futures Committee and The Hunt Coastal Agenda, each which identified habitat protection as critical to the restoration and maintenance of the health of coastal fishery resources and made numerous suggestions for achieving such protection. Unfortunately, in the years and months since these Reports were released, they have largely "sat on the shelf," and little progress has been made in protecting essential coastal habitats.

RECOMMENDATIONS

Based on its findings and deliberations, the Habitat Subcommittee makes a series of recommendations to the Moratorium Steering Committee, with the belief that their implementation will greatly improve protection of critical coastal fisheries habitats and that the recommendations are largely attainable without great additional expenditure by the State. Those recommendations are summarized at the beginning of the Habitat Subcommittee Report, and are considered at length below.

I. AUTHORITIES OF COASTAL FISHERIES MANAGEMENT AGENCIES.

The North Carolina Marine Fisheries Commission and the North Carolina Division of Marine Fisheries have traditionally focused on managing and allocating fish stocks, while relying upon other state agencies and commissions to protect estuarine habitat and water quality. This approach has not been effective and must change if the long-term health of our marine and estuarine resources is to be ensured. The Habitat Subcommittee recommends that a number of key changes be implemented by the State to rectify this problem. First, the Habitat Subcommittee recommends that:

- **The Marine Fisheries Commission and the Division of Marine Fisheries should aggressively use their existing statutory authorities and powers to protect marine and estuarine resources and the habitats upon which they depend, and the general assembly should act to enhance those powers.**

A. USE OF EXISTING AUTHORITIES.

The authorities of each agency are discussed below. However, as a first step towards achieving the goal of increased coastal fishery habitat protection, the Subcommittee recommends that:

- **The Marine Fisheries Commission and the Division of Marine Fisheries should examine their respective operating policies and procedures to ensure that each agency is using its existing statutory authorities to protect coastal fishery habitats to the fullest extent possible.** Existing statutory authorities of the Marine Fisheries Commission important to coastal fisheries habitat protection include N.C.G.S. §§ 143B-289.4 and 143B-289.4(1)(h). N.C.G.S. § 134B-289.4 generally authorizes the Marine Fisheries Commission to adopt rules for "the management, protection, preservation, and enhancement of the marine and estuarine resources of the State". The North Carolina General Statutes define "marine and estuarine resources" to include not only coastal fish and other wild animals, but also "the entire ecology supporting such fish, fisheries, and plant and animal life." See N.C.G.S. 113-129(11). Consequently, the Marine Fisheries Commission is arguably empowered to enact rules to manage, protect, preserve and enhance coastal fisheries habitats. To date, the Commission has adopted no such rules. In addition, N.C.G.S. § 143B-289.4(1)(h) authorizes the Marine Fisheries Commission to "comment on and otherwise participate in the determination of permit applications" to state agencies that may affect state marine and estuarine resources. Because the Marine Fisheries Commission has no full-time staff, its ability to effectively

utilize this authority is extremely limited. Implementation of the "Organization Subcommittee" recommendation creating and funding two full-time Commission staff persons and adoption of the recommendation below to create and staff a "Habitat Section" within the Division of Marine Fisheries will allow the Commission to effectively use its permit commenting authority.

The primary existing statutory authority of the Division of Marine Fisheries important to coastal fisheries habitat protection is found in N.C.G.S. § 113-131. This provision authorizes the Secretary of the Department of Environment, Health, and Natural Resources (Secretary) to (1) comment on and object to applications for state agency permits that may affect coastal water public trust resources, (2) investigate actions alleged to impact coastal water public trust rights, (3) initiate contested case proceedings in the Office of Administrative Hearings for review of permit decisions by other state agencies that adversely affect coastal water public trust rights, and (4) seek injunctive relief against activities occurring in coastal waters that adversely impact public trust resources. Secretarial authorities under this provision have been delegated to the Director of the Division of Marine Fisheries.

B. ENHANCEMENT OF HABITAT PROTECTION AUTHORITIES.

The Habitat Subcommittee believes that the impact of the Marine Fisheries Commission's and the Secretary's respective abilities under existing statutes to comment on projects affecting state public trust waters could be significantly strengthened by requiring state permitting agencies to more seriously consider comments made pursuant to those authorities. Too often the comments of state coastal fisheries agencies are simply "lost in the mix" and not given the objective consideration that they must be afforded if critical coastal fisheries habitats are to be reasonably protected. Consequently, the Habitat Subcommittee recommends the following:

- **The General Assembly should amend N.C.G.S. § 113-131(b) to require that any permit that is approved by any state agency over the objection of the Division of Marine Fisheries or Marine Fisheries Commission must, prior to permit issuance:**
 - ♦ **be elevated to the Secretary for resolution of the matter if the permit is one issued by a state agency under the direction of the Secretary or for which the Department of Environment, Health, and Natural Resources provides staffing, in which case the Secretary shall be empowered to resolve the differences between the disagreeing state agencies; or**
 - ♦ **be elevated to the Governor for resolution of the matter if the permit is not one issued by a state agency under the direction of the Secretary or for which the Department of Environment, Health, and Natural Resources provides staffing, in which case the Governor shall be empowered to resolve the differences between the disagreeing state agencies.** Of course, for this provision to have any significant effect, state coastal fisheries agencies must comment on permits that may affect marine and estuarine resources in the first place. That has, unfortunately, not happened on a consistent basis in the past. Much of the reason for the failure of the Division of Marine Fisheries and the Marine Fisheries Commission to use their

existing habitat protection authorities derives from the lack of staff resources. Currently, those agencies do not have sufficient staffs to comment on all federal, state and local permit applications that may adversely impact fisheries habitat. Consequently, implementation of this initial recommendation will, at a minimum, require dedication of Division of Marine Fisheries staff resources to the broad task of habitat/resource protection and enhancement. Attaining that goal will likely also require additional funds for new Division of Marine Fisheries staff positions. A significant portion of that funding may potentially be derived from the dedicated "Marine & Estuarine Resource Enhancement Funds" containing the proceeds of coastal fisheries license sales if those funds are created as recommended in the Final Report of the License Subcommittee. To that end, the Habitat Subcommittee recommends that:

- **The Secretary of the Department of Environment, Health, and Natural Resources should establish and the General Assembly should fund a "Fisheries Habitat Protection and Enhancement Section" within the North Carolina Division of Marine Fisheries, dedicated to using the Division's existing and future habitat protection authorities, and to providing staff to assist the Marine Fisheries Commission in using its existing and future habitat protection authorities, to the fullest possible extent.** The Fisheries Habitat Protection and Enhancement Section created under this recommendation will represent the Division of Marine Fisheries in the joint Department of Environment, Health, and Natural Resources agency development of a Coastal Habitat Protection Plan as described in Recommendation Number 1.b., below. The "Habitat Section" will thereafter be responsible for the implementation of that plan by the Division of Marine Fisheries and for quarterly reports made to the Marine Fisheries Commission on agency compliance with the Coastal Habitat Protection Plan, as discussed below. In addition, the Division of Marine Fisheries' "Fisheries Habitat Protection and Enhancement Section" will be required to prepare an annual report to the Governor and the General Assembly on the status of Critical Fisheries Habitat conservation, setting out the State's progress in protecting and enhancing coastal fisheries habitats, to first be submitted to and approved by the Marine Fisheries Commission. While implementation of this provision will require continuing funding by the Legislature, a significant portion of the expense implementing this recommendation could be borne by drawing from monies contained in the dedicated licensing funds proposed by the Moratorium Steering Committee in the License Subcommittee Final Report.

II. STATE COASTAL HABITAT PROTECTION PROGRAM.

While the Habitat Subcommittee believes this shift in state agency policy to be critical, the Subcommittee at the same time realizes that the existing habitat protection authorities of the Marine Fisheries Commission and the Division of Marine Fisheries are limited, and that their more aggressive use will inevitably lead to conflicts over coastal habitat issues and "turf battles" with the other state environmental, regulatory agencies more commonly perceived to be the lead agencies in marine and estuarine resource habitat protection (e.g., the Division of Environmental Management, the Environmental Management Commission, the Division of Coastal Management, and the Coastal Resources Commission). Such interagency conflict is often counterproductive. For those reasons, the Habitat Subcommittee has determined it to

be even more critical that the State implement a second, more comprehensive mechanism to conserve and protect critical fisheries habitats, as set out below:

- **The State should establish an effective, institutional habitat protection program.** In order to successfully implement this recommendation, the Habitat Subcommittee makes the following additional recommendations:

A. ESTABLISHMENT OF A COASTAL HABITAT PROTECTION PLAN.

- **The General Assembly should require the Secretary of the Department of Environment, Health, and Natural Resources to prepare; and require the Coastal Resources, Environmental Management and Marine Fisheries Commissions to adopt a Habitat Protection Plan (HPP) for critical, coastal fisheries habitats as soon as possible, and no later than July 1, 1999.** The Coastal HPP recommended under this provision will contain the following key features:

- (1) The Coastal HPP will include, at a minimum, sections on the following biological systems and legally defined areas critical to coastal fisheries -

- (a) Coastal Wetlands;
- (b) Critical Fish Spawning Grounds (e.g., Crab Spawning Sanctuaries and Anadromous Fish Spawning Areas);
- (c) Critical Habitats of Estuarine or Aquatic Endangered and/or Threatened Species.
- (d) Freshwater Wetlands Contiguous to Surface Waters;
- (e) Primary and Secondary Nursery Areas (PNAs & SNAs);
- (f) Shellfish Beds;
- (g) Submerged Aquatic Vegetation (SAV) Beds; and
- (h) Vegetated Stream Buffers;

- (2) Each section of the HPP will be capable of standing alone, and will be adopted and subject to revision independent of other sections of the HPP;

- **The goal of the Coastal HPP will be *no net functional loss* of each critical fishery habitat.**

- (3) For each habitat covered in the Coastal HPP, the plan will include, but not be limited to -

- (a) Description and delineation of the habitat,
- (b) A description of the habitat's function & fisheries value,
- (c) A discussion of habitat status and trends,
- (d) A discussion of existing and potential threats to the habitat,
- (e) Specific habitat protection measures and mechanisms,
- (f) A plan for habitat restoration, and
- (g) Future state agency implementation actions designed to protect the habitat.

- (4) The Coastal HPP will be jointly developed by each Department of Environment, Health, and Natural Resources agency having duties and authorities critical to coastal

habitat protection, including the Division of Air Quality, the Division of Coastal Management, the Division of Water Quality and the Division of Marine Fisheries -- as well as the North Carolina Wildlife Resources Commission, the Division of Health Services or any other necessary Departmental agencies -- and approved by the Secretary.

- (5) Following Secretarial approval, the Coastal HPP will be required to be submitted to the North Carolina Coastal Resources Commission, the North Carolina Environmental Management Commission and the North Carolina Marine Fisheries Commission, for review and adoption.
- (6) Differences between final plan versions adopted by each Commission, if any, will be resolved in a Conference Committee consisting of two members of each Commission appointed by the Commission chair, yielding a final state Coastal HPP.
- (7) Following adoption of the final Coastal HPP, each state agency adopting the plan (*i.e.*, the three Commissions and Department of Environment, Health, and Natural Resources agencies) will be required to ensure that each of its actions is consistent with the Coastal HPP, and in issuing any state permit or enacting any rule that may affect marine and estuarine habitats, make a written finding as to how permit issuance or rule adoption is consistent with the Coastal HPP.
- (8) The Coastal HPP will be updated, reviewed and readopted every five years.

The Habitat Subcommittee's recommendation requiring a jointly prepared and adopted Departmental Coastal HPP was received with great support and enthusiasm by the public at the meetings of the Moratorium Steering Committee for comment on its draft Report. The affected non-fisheries, environmental state agencies within the Department of Environment, Health, and Natural Resources have been invited to participate in the meetings of the Habitat Subcommittee and to comment on the Subcommittee's draft Report, which underwent little revision in the months prior to its being taken to public hearing. However, those agencies have largely remained silent on these recommendations, including the proposed joint Coastal HPP, although the Secretary was regularly represented at the meetings of the Moratorium Steering Committee and its Subcommittees.

B. CRITICAL HABITAT ACQUISITION AND PROTECTION.

The Habitat Subcommittee also strongly believes that in order for North Carolina to establish an effective, institutional habitat protection program, the State must develop, fund and implement a program designed to manage certain public lands, and acquire legal interests in and manage certain private lands that comprise or protect critical marine and estuarine fisheries habitats. Therefore, as an additional, key component towards accomplishing this goal, the Habitat Subcommittee recommends the following:

- **The General Assembly should establish a comprehensive state program to acquire, preserve, and restore habitats critical to marine and/or estuarine fisheries.** Such a goal can be achieved by a number of means. However, the Habitat Subcommittee

believes that to be successful, such a state program will have to include, at a minimum, establishment of a continuing, dedicated source of revenue for such acquisition and management, and increased tax incentives for donation to the State of interests in land that will result in the protection or enhancement of critical coastal fisheries habitats. The Legislature's action creating and funding the "Clean Water Management Trust Fund" as set out in N.C.G.S. §§ 113-145.1 *et seq.*, which took place while the Habitat Subcommittee was still deliberating on potential actions under this recommendation, will go a long way towards achieving the purposes to which this recommendation is directed. However, to the extent that the Clean Water Management Trust Fund cannot be used to purchase, restore and manage critical coastal fisheries habitats, the Subcommittee recommends the following:

- **The General Assembly should establish a program within the Department of Environment, Health, and Natural Resources to acquire and/or restore and manage critical fisheries habitat that cannot be adequately protected through regulation and voluntary measures, funded by a substantial, on-going source of revenues dedicated to that purpose.** This fund could be used both to purchase large tracts of freshwater or coastal wetlands and forests to protect and restore watersheds that drain to estuaries, or to acquire stream buffers that in their natural states ameliorate nonpoint source runoff. Funding could come, in part, from the dedicated "Marine & Estuarine Resource Enhancement Funds" containing the proceeds of coastal fisheries license sales, if those funds are created as recommended in the Final Report of the License Subcommittee.

However, other substantial revenues will be required to fund a successful habitat protection program, and the Habitat Subcommittee urges the General Assembly to study innovative, unconventional methods of funding environmental protection. One such methodology may be for the Legislature to create an "Environmental Protection Bond Authority", vested with the power to issue bonds for specific environmental projects, such as critical habitat protection. Given the overwhelming public support for the general concept of environmental/habitat protection in the face of increased demand on shrinking tax revenues, the time for such innovation may be at hand. Toward that end, the Habitat Subcommittee recommends that:

- ▶ **The General Assembly should study the creation of an "Environmental Bond Authority" vested with the power to issue bonds for critical, coastal habitat acquisition.**

In addition to the above provisions, the Habitat Subcommittee specifically recommends that:

- **The General Assembly should increase public awareness of the significance of, and need and means to protect, critical coastal fisheries habitats through funded environmental education.** To implement this recommendation, the Legislature could fund a major educational campaign, through a number of state agencies that should, at a minimum, include the Department of Environment, Health, and Natural Resource's Environmental Education Office, the North Carolina Community College System and the North Carolina Public School System, directed at educating

individual and corporate citizens, and governmental agencies, to employ responsible conservation practices in their everyday lives around their homes and workplaces.

- **The General Assembly should expand incentives for voluntary preservation of privately held lands critical to coastal fisheries habitats.** Implementation of this provision could be accomplished in part by amending the state conservation tax credit program contained in N.C.G.S. §§ 105-130.34 & 105-151.12 to raise the credit cap for certain real property donations (*e.g.*, stream buffer conservation easements, wetlands, *etc.*) from its current \$25,000 maximum for individuals and corporations to \$100,000 for individuals and \$250,000 for corporations.

III. "ADMINISTRATIVE PROTECTION" OF COASTAL FISHERIES HABITATS.

In addition to the foregoing recommendations, the Habitat Subcommittee believes that in order for the State to fully protect critical coastal fisheries habitats, North Carolina must protect marine and estuarine fisheries habitats from the vessels that use state coastal waters and from the equipment and practices characteristically used by those vessels. To that end, the Habitat Subcommittee recommends that:

- **The State should act through its appropriate agencies to protect coastal fisheries habitat from litter and from adverse impacts from recreational and commercial vessel use.** Litter and marine debris remains a visible and increasing problem in North Carolina waterways. Data from the North Carolina "Big Sweep Program", initiated by the North Carolina Sea Grant College Program in 1987, indicates that over 12,000 citizens are actively removing approximately 195 tons of litter from North Carolina waterways and adjacent shorelines during the fall clean-up. There is some indication that the littering that ends up in our waterways is abating, although tons of debris continue to be tossed into, or end up in, state waters each year. Along the coast, the high tide line in marshlands and on beaches is often delineated by a "debris line". Much of that debris is plastic, metal, glass or other man-made materials that are not readily biodegradable, and includes bottles, cans, ice bags, oil bottles, cigarette butts, sandwich wrappers, tackle packages, used monofilament fishing line, pieces of netting and the like. Each piece of litter may have an individual impact on estuarine habitats or species, and cumulatively, that debris may seriously degrade coastal habitats.

The vessels that ply state coastal waters are another significant source of adverse impacts to coastal fisheries habitats. Commercial and recreational boats adversely impact coastal fisheries habitat by releasing substantial fuel and oil residues into the water through the underwater exhaust systems of their engines; from bottom paints containing lead or tri-butyl-tin; release of raw sewage into coastal waters from on-board, vessel sanitary facilities; and through the wave action they create in confined channels. Boat propellers and hulls of vessels operating in shallow water may impact beds of submerged aquatic vegetation, oyster beds and the bottom in general. Hover craft, air boats, jet skis and similar vessels physically impact the tidal marshlands over which they travel. To counter these trends, the Habitat Subcommittee recommends that:

- **The Governor should issue an Executive Order requiring each state agency to examine its policies, procedures and authorities to ensure that the agency is**

adequately protecting marine and estuarine fisheries habitats. State agency policies and procedures should be examined for their potential contribution to a number of specific problems, including, but not limited to, contributions to the following specific problems in state waterways: (1) non-point source pollution, including toxic substances; (2) wetlands destruction; (3) littering; (4) sanitary facility dumping; and (5) shoreline erosion. With respect to state fisheries agencies, the Habitat Subcommittee recommends the following:

- **The Marine Fisheries Commission and the Division of Marine Fisheries should sponsor or formally support and participate in cleanup efforts aimed at the coastal environment.** In implementing this recommendation, the Habitat Subcommittee believes that the Commission should consider some type of annual award for cleanup efforts. In the same vein, the Marine Fisheries Commission must be called upon to ensure that fishing practices currently employed in North Carolina do not result in irreparable or significant, long-term damage to public trust bottoms or critical fisheries habitats. To that end the Habitat Subcommittee recommends that:
- **The General Assembly should require that the Marine Fisheries Commission utilize its rulemaking authority to ensure, based on the best available scientific information, that fishing practices do not cause unacceptable damage to marine and estuarine fisheries habitats.** Obviously, many different types of fishing gear are used by commercial and recreational fishermen. The Marine Fisheries Commission should evaluate each type of gear for its impact on coastal fisheries habitat based on the best available scientific information. To conduct this evaluation, a list of all types of gear should be developed by the Division of Marine Fisheries and approved by the Marine Fisheries Commission, and a schedule for reviewing habitat impacts of each gear type established by the Marine Fisheries Commission. The Commission should direct the Division of Marine Fisheries, as staff to the Commission, to produce data on habitat impacts of specific gears if such information is now lacking. To assist the Division of Marine Fisheries and the Marine Fisheries Commission in that task, the Habitat Subcommittee spent a substantial amount of time over the last two years reviewing and discussing known information about the impact of fishing gears used in North Carolina on coastal fisheries habitat and species. The Subcommittee's findings and recommendations as to each gear considered are attached as *Appendix I*.

In addition, there are a number of state policies on fisheries practices that merit examination to ensure that they are consistent with the goal of adequately protecting critical coastal fisheries habitats. One area of specific concern is state policy on the bedding of shellfish. Shellfish have been ravaged in recent years by, among other things, diseases (e.g., Dermo and MSX). Because of their role as filter feeders in estuarine ecosystems, the Habitat Subcommittee believes that the demise of shellfish in North Carolina has played a significant part in the general decline in coastal water quality. For those reasons, the Habitat Subcommittee recommends that:

- **The Marine Fisheries Commission and the Division of Marine Fisheries should examine their administration of state laws pertaining to coastal fisheries to ensure that administrative policies do not allow or result in significant damage to marine and estuarine fisheries habitats.**

IV. ENFORCEMENT OF COASTAL FISHERIES HABITAT PROTECTION LAWS.

It is clear that even the soundest of legal protections for the environment are only as good as the enforcement of those protections. Nowhere is that more true than in the case of marine and estuarine resources and habitats. Because those resources and habitats cover vast expanses of North Carolina's coastal lands and waters, physical enforcement presence is difficult to achieve. The Division of Marine Fisheries' Marine Patrol Section is clearly a critical link in establishing that coastal environmental enforcement presence. Nevertheless, the subject matter jurisdiction of the Division's officers is limited and the scope of officer enforcement does not even extend to the full breadth of existing jurisdiction. The Habitat Subcommittee realizes that the bulk of the Moratorium Steering Committee's recommendations on needed changes regarding the enforcement of fisheries laws will come from the Law Enforcement Subcommittee. Nevertheless, the Habitat Subcommittee makes recommendations below related to enforcement that, if implemented, will enhance the enforcement changes recommended in the Final Report of the Law Enforcement Subcommittee:

- **The State should enhance enforcement of fisheries habitat protection laws.** This enhancement can be achieved with respect to habitat protection by the adoption of the proposals recommended below, as well as those of the Law Enforcement Subcommittee.

A. MARINE INSPECTOR JURISDICTIONAL AUTHORITY.

- **The General Assembly should amend the North Carolina General Statutes to expand the scope of the Marine Patrol's jurisdictional authority to enforce environmental laws essential to the protection of critical, coastal fisheries habitats to the fullest possible extent, and the Division of Marine Fisheries should expand officer training accordingly.** The Division of Marine Fisheries' Marine Patrol is the only state agency with enforcement staff regularly patrolling the coast from the air, land and water. Consequently, it makes sense to fully utilize the Marine Patrol to enforce environmental laws critical to the conservation of coastal fisheries habitats. To accomplish that use, the Secretary needs to ensure, first, that Marine Fisheries Inspectors are authorized by the Department of Environment, Health, and Natural Resources to enforce environmental laws (such as the state litter law set out in N.C.G.S. § 14-399) critical to fisheries habitat protection and within their potential enforcement jurisdiction. Secondly, the Secretary and the Division of Marine Fisheries should examine existing state environmental laws to determine which of those provisions are critical to habitat protection and can best be enforced with assistance from the Marine Patrol. Thirdly, the Secretary and the Division should request that the Legislature enact any statutory changes necessary to allow Marine Patrol Officers to effectively enforce those environmental laws. And lastly, the Secretary and the Fisheries Director should ensure that Marine Patrol training includes instruction on investigation and enforcement of environmental crimes.

B. VIOLATION REPORTING SYSTEM.

In addition, as set out previously, it is clear that a proper level of monitoring of compliance with existing environmental laws requires citizen assistance. The Division of Marine Fisheries currently maintains a 24-hour, toll-free telephone number at its Morehead City Office. However, during normal operating hours that number is used primarily for routine, non-emergency business. In addition, Division operators have no special training to respond to environmental crimes. Thus, while citizen assistance is critical to protecting coastal fisheries habitats, the State provides citizens no established, uniform system for reporting environmental law violations. Consequently, the Habitat Subcommittee recommends the following:

- **The General Assembly should establish and fund an environmental violations reporting and response system.** The system should first include establishment of an easily remembered (*e.g.*, 1-800-HABITAT), toll free telephone line, manned 24-hours per day, within the Department of Environment, Health, and Natural Resources. When violations are called into the State at present, a clerical person, understandably with no training in responding to the inquiry, generally ends up with the call, and the calling citizen ends up going away frustrated. Hot-line operators must be trained to respond to reports of environmental violations in a timely manner, and must be familiar with the training and responsibilities of coastal environmental and law enforcement agencies. The State could consider using and training citizen volunteers to maintain the service for at least a portion of the time. Once operable, the hot-line's availability should be widely advertised in the broadcast media as a way to encourage both public assistance and environmental compliance.

V. PUBLIC INVOLVEMENT IN COASTAL HABITAT PROTECTION.

Effective public involvement in the protection of critical, coastal fisheries habitats will begin in large part with public education related to that topic, as previously discussed. However, it is clear that in an era of "smaller government" and shrinking budgets, but increased agency responsibility, the State is in great need of additional "hands, eyes and ears." For those reasons, the Habitat Subcommittee believes that effective protection of critical, coastal fisheries habitats will require increased private citizen assistance to the State in ensuring compliance with state environmental laws. As a result, the Habitat Subcommittee recommends the following:

- **The State should promote effective public involvement in the protection of habitats critical to marine and estuarine resources.** Implementation of this recommendation will be achieved by the adoption of actions, such as those recommended below, that provide increased opportunities for North Carolina citizens to become involved in protecting the State's natural environment. Because fisheries resources and the waters in which they are found are publicly owned resources, each state citizen has a personal stake in conserving and protecting critical resource habitats.

A. WATER QUALITY MONITORING PROGRAM.

- **The General Assembly should establish and fund a coastwide, citizen water quality monitoring program.** The citizen monitoring program recommended under this provision should focus on training and equipping persons who live and work in or on coastal waters, such as commercial fishermen, to monitor water quality on a regular, continuing basis. Results would regularly be reported to an appropriate Department of Environment, Health, and Natural Resources agency for use in developing long-range, coastal water quality policies and for establishing follow-up sampling for determining permitting compliance. Citizen sampling results should be used to develop a coastal water quality index, whose results will be released to the public on a monthly basis, or more often.

B. ENVIRONMENTAL CITIZEN SUIT PROVISION.

In addition to serving as additional "hands, eyes and ears" of government, it is clearly sometimes necessary for citizens to also be the "conscience" of a democratic government. That is especially true in cases where because of economic and other vested interests, politics interfere either purposefully or unintentionally with unbiased governmental agency decisions on environmental compliance and enforcement. For that reason, the Habitat Subcommittee strongly recommends that:

- **The General Assembly should create in state law a "citizen suit" provision that allows North Carolina citizens to bring suit to enforce specific environmental laws.** The Habitat Subcommittee specifically has in mind in this instance amendment of Chapter 143B, Article 21, of the North Carolina General Statutes to include a "citizen suit" provision modeled after the citizen suit provision in Section 505 of the federal Clean Water Act. 33 U.S.C. § 1365. Such a provision will allow a North Carolina citizen to (1) sue any private person or governmental agency alleged to be in violation of a state water quality or other specified standard, or the Secretary of the Department of Environment, Health, and Natural Resources where there is alleged a failure of the Secretary to perform a statutory duty, in a state Superior Court; or (2) intervene as a matter of right in any relevant enforcement action being prosecuted by the State. Prior to filing suit, the citizen seeking enforcement of the state law will be required to give sixty days notice of the alleged violation to the violator and to the State -- in effect, provide a chance for the alleged violator to fix the problem. In its final judgment in an action brought under this provision, the Superior Court will be authorized to award costs of litigation to any party. Such a provision will make it feasible for state citizens affected by water quality degradation to seek enforcement of state environmental laws related to protection of critical, coastal fisheries habitats, by allowing average citizens to recover legal fees necessary to bring the enforcement action.

Appendix I: Habitat Subcommittee Recommendations to the North Carolina Marine Fisheries Commission Concerning the Habitat Impacts of Specific Commercial and Recreational Gears Used in North Carolina.

DESCRIPTION OF GEAR	RECOMMENDATIONS		
	<i>Habitat Impact & Recommendations</i>	<i>Bycatch Impact & Recommendations</i>	<i>Protected Species Impact & Recommendations</i>
Hook and Line: The customary "rod and reel" method of fishing, used as the "up and down" bottom rig in the reef fish fishery. "Electro-mate" reels are customarily used for rapid line retrieval.	Virtually no habitat impacts, but see comments at right on monofilament fishing line and other relevant equipment. No recommendations at present.	Some bycatch impacts. A fishhook cannot be attuned to a size limit or a prohibited species, but generally, a catch-and-release policy works fairly well. Some species do not respond well to being caught, and some deep-water species do not survive being taken. Commercial and recreational fishermen tend to leave an area where the catch is predominately undersized. No recommendations at this time.	Some impacts. In 1995, one stranded turtle had a fishhook that had entered its body through the eye socket. Mammals and turtles will from time-to-time take a bait and are damaged somewhat in the release process. There is some entanglement with discarded monofilament line. Recommend promoting education and regulation on disposal of fishing line.
Trolling Gear: Fishing lines attached to a reels or directly to a boat and "trolled" through the water. Used when fishing for king mackerel, tuna, etc.	No known habitat impacts. No recommendations at this time.	Slight bycatch impacts. The problems that exist are generally caused by a prohibited species or an undersized fish taking the bait. Usually these can be released successfully. No recommendations at this time.	Some impacts, as from discarded fishing line. The biggest potential problem is perhaps from boat propellers. Recommend promoting education and implementing regulations on the discarding of monofilament fishing line.
Long-line System: Fishing lines used for top-water, underwater or bottom fishing.	Virtually no habitat impacts when used as a top-water gear. Impact of bottom gear can range from minor on sand bottoms to significant when used in live rock (coral) formations. Recommend that bottom gear should be prohibited in coral formations.	Same problem as with any "hooking" system (no selectivity). Since this gear holds captured catch in place for attack by predators, timeliness in checking the long-line can decrease bycatch. No recommendations at this time.	Little is known about the impacts of this gear on sea turtles and marine mammals, but sea turtles are more prone to be attracted to the bait (or captured fish) from surface longlines than are other protected species. No recommendations at this time.
Trot Line: Lines used in estuarine waters to catch crabs and fish, consisting of a long multi- or monofilament line baited at intervals, with or without hooks, used much like an ocean long-line.	No known habitat impacts. No recommendations at this time.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Cast Net:	No known habitat impacts. No	No known bycatch impacts. No	No known impacts. No recommen-

Small net thrown by hand and used to catch "schooled fish", such as mullet, and used by bait-fish dealers and individual fishermen to net bait-fish and shrimp.	recommendations at this time.	recommendations at this time.	datations at this time.
<p>Long haul seine: Usually a long seine, heavily leaded (weighted) and dragged by boats in estuarine waters to catch fish.</p>	<p>Some damage to SAV beds may occur from the heavily leaded bottom line being dragged through the grass beds. Damage to SAV beds by the boat motor propellers may be significant in shallow waters. There is concern over the use of this gear in PNAs (where use is currently prohibited) and near oyster rocks. Recommend: (1) a study be implemented to determine the actual bottom damage and whether the damage is short-term or long-lasting; (2) all oyster grounds, PNAs, and SAV beds be permanently marked; and (3) a study be conducted into the effects of long haul seine activities in these areas.</p>	<p>No bycatch impacts when catch is culled immediately. Recommend that immediate culling of the catch be required.</p>	<p>No impacts when catch is culled immediately. Recommend that immediate culling of the catch be required.</p>
<p>Hand Seine: Small mesh net used to catch bait. Usually pulled by hand, but sometimes a boat is used to spread the seine.</p>	<p>No known habitat impacts. Recommend increasing allowable hand seine sizes to thirty (30) feet.</p>	<p>Some bycatch impacts, in that virtually all of the directed and incidental catch from hand seines would be considered bycatch in other fisheries. "Fingerlings" and juvenile foodfish are retained for use as bait. There is typically an intense hand seining effort made in the winter and early spring targeting juvenile mullet for crab bait and bait for red drum fishermen. Recommend a study to demonstrate: (1) how to make use of "scrap" fish for bait, (2) which juvenile fish are reasonable to use as bait, and (3) how to make better use of artificial bait.</p>	<p>No known impacts. No recommendations at this time.</p>
<p>Beach Seine: Net generally used to corral mullets. A beach seine can also be used on such fish as striped bass and spot. Sometimes a beach seine is used in conjunction with a "stop"</p>	<p>No known habitat impacts. No recommendations at this time.</p>	<p>No known bycatch impacts. No recommendations at this time.</p>	<p>No known impacts. No recommendations at this time.</p>

net. Net usually spread around fish with a boat and then pulled to the shore. Pulling power can be by hand or by vehicle. This is one of the most historic methods of fishing.				
Fish Pot: A wire trap having directed (one-way) openings whereby fish may enter to get to bait. Fish pots are generally used in the ocean harvesting of black sea bass. Fish pots are also used to harvest catfish in the Albemarle Sound area.	Very little habitat impact. Impact can increase in coral formations. "Lost" pots become habitat when used correctly with biodegradable panels. Pots in estuarine waters do not adversely affect oyster grounds or SAV beds. Recommend that biodegradable escape panels be required for all fish pots.	Very little bycatch impact when used for a targeted species such as black sea bass. Either the mesh size of the pot or proper size culling rings or panels can insure proper size catch. Recommend mesh size or culling ring consistent with fish size requirements.	No known impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Eel Pot: A wire trap that looks like a crab pot, but has smaller wire mesh.	No known habitat impacts. If escape panels are used, the lost pots become habitat. Okay to use in SAV beds or oyster grounds. Recommend that biodegradable escape panels be required for eel pots.	No known bycatch impacts. No recommendations at this time.	No known bycatch impacts. No recommendations at this time.	Some concern over the diamondback terrapin as a species of special concern. A study is underway by the N.C. Wildlife Resources Commission to address these concerns. No recommendations at this time.
Crab Pot: A wire trap similar to a fish pot. This is the usual method for catching crabs in North Carolina.	Very little habitat impact. Main habitat impact is from discarded bait cartons. It is generally okay to use crab pots in SAV beds, PNAs or oyster grounds. Anecdotal reports indicate the use of anti-fouling solution or "cleansing" solutions aboard boats or near the waters edge to treat crab pots. Also anecdotal evidence exists to indicate that zinc used in crab pots to minimize rusting may contribute to heavy metal pollution in estuarine systems. Recommend: (1) a requirement that bait boxes be returned to shore; (2) a requirement that biodegradable escape panels be used in crab pots [Note: There is work being done that indicates that "tagged" crabs left in a crab pot with no food subsequently appear in other baited pots]; (3) prohibition of the use of any	There is a small bycatch, usually small flounders that become food for crabs. No recommendations at this time.	No known bycatch impacts. No recommendations at this time.	Some concern for impacts to diamondback terrapin as a species of concern. No recommendations while study being conducted by the N.C. Wildlife Resources Commission is ongoing.

	anti-fouling solution aboard a vessel or within seventy-five (75) feet of the shoreline; and (4) a study of the effects of zinc used to coat crab pots in terms of estuarine pollution.		
Shrimp Pot: A wire trap used as a special type of underwater trap or pot to catch shrimp.	No known habitat impacts. Okay to use in SAV beds, PNAs or oyster grounds. No recommendations at this time.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Ocean Sink Gill Net: These are offshore gill nets that may be heavily anchored or not, as is appropriate to the area and fishery.	Sink nets have very little habitat impact unless gear becomes entangled with live rock formations. Lost or discarded webbing can become a danger for continued fishing until webbing becomes encrusted. Recommend better, more positive identification of net owners.	Gill nets are very selective as to size. Problems arise when a fishery is pursued near striped bass stocks, such as the dogfish shark and weakfish fisheries. Recommend mandatory attendance of nets when there is a significant potential for bycatch and size limits are not compatible, or when an incidental catch quota is not available.	Some impact from contacts with marine mammals and sea turtles. No recommendations at this time.
Ocean Drift Net: Usually a monofilament gill net constructed so as to be tended from the top down. Ocean drift nets generally utilize a larger mesh size than bottom fishing nets. There is very little, if any, use of this gear in the ocean off North Carolina.	No known habitat impacts. No recommendations at this time.	Very little bycatch impact. Recommend mandatory attendance of nets when there is a significant potential for bycatch, such as in the dogfish shark and weakfish fisheries.	Surface fishing and usually larger mesh sizes make these nets subject to problems with marine mammals and sea turtles. Recommend that attendance be required at all times.
Fyke Net: A usually round net having a series of throats. Fyke nets are primarily used in the upper reaches of estuaries.	No known habitat impacts. No recommendations at this time.	Fyke nets are not a very selective net, but have little or no bycatch impact if culling at the scene is required. Recommend that immediate culling of nets be required.	There are some concerns with diamondback terrapins being taken in fyke nets. No recommendations at this time.
Trammel Net: A multi-walled net usually made with two outer walls of large mesh (6" to 12" stretch or more) made of heavy gauge monofilament, and an inner wall of small mesh monofilament. A fish "pockets" itself between the walls.	Only impact is from lost or discarded nets. Recommend that better, more positive identification of net owner be required.	Trammel nets are not a very selective net, but have little or no bycatch impact if culling at the scene is required. Recommend that immediate culling of nets be required.	No known impacts if on-scene culling is required. Recommend that immediate culling of nets be required.
Pound Net: A passive gear using netting "leads", which	No known habitat impacts. The poles used to support the pound net leads	Mesh size in pound nets can be changed to select different sized fish	There is some contact of pound nets with sea turtles, but they are easy to

the fish travel along to a net "pound", where they are captured. Captured fish can be culled alive. Mesh size in the pound can be fish size selective. This gear known also as "weirs", and is one of the oldest methods of fishing. Some states have specific laws protecting weirs.	and pound are permanent structures that can themselves become habitat, but abandoned or broken-off poles can become a hazard to navigation. No recommendations at this time.	and there should be no bycatch impacts from pound nets. Any bycatch can be culled live as the pound is emptied. Culling panels are required in flounder pounds. Recommend that pound net catches be required to be immediately culled and that flounder cull panels remain required.	release unharmed. No recommendations at this time.
Channel Net: A passive gear built like a shrimp trawl that is anchored in a specific area. Channel nets are used to catch shrimp in areas with strong tidal flow, which is required to hold the net open.	No known habitat impacts. No recommendations at this time.	There should be very little bycatch impact from channel nets. Recommend that catch should be culled frequently at the catch site. Culling at the dock should not be allowed.	There may be some contact of channel nets with protected species, but marine mammals and sea turtles can either swim back out of the net or can be easily released. No recommendations at this time.
Hand Clam Rake: A tool that usually has nine (9) teeth or less, and looks a lot like a garden rake. Most rakes have a handle, but they can consist merely of "metal fingers" that rest at the wrist and extend over the fingers. Clam rakes can be utilized to "scratch" for clams under water or for "signing" on tidal flats at low tide.	Very little habitat impact in most areas, but slight impacts occur in SAV beds. Clam rakes are difficult to use on most oyster rocks, but impact can be great when used to pull oysters into piles in order to get at the clams beneath. Recommend that: (1) no rakes be allowed in marked oyster rocks/beds [these oyster areas would be designated "clam seed management areas"]; and (2) during the normal oyster season, clams should be allowed as an unlimited, approved, incidental catch when harvesting oysters.	No known impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Hand Clamming: Refers to the clamming method wherein clambers are in the water on their hands and knees feeling for clams. Clammers typically use latex gloves as protection for their hands, but can use the "metal hands" noted under "Clam Rake", above.	Very little known habitat impact. Hand clamming is generally okay in SAV beds. Recommend that hand clamming on marked oyster grounds be prohibited except as part of the normal oyster season.	No known impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Bull Rake: A large, heavy clam rake, usually having eighteen (18) to twenty-eight (28) teeth. Handles range from ten (10) feet to forty (40) feet long.	Bull rakes have severe habitat impacts when used on oyster rocks, and can damage SAV beds. Recommend that bull rake clamming on marked oyster grounds and SAV beds be prohibited.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.

Gig: A spear with or without barbed points at its tip, used mostly to spear flounder at night, using underwater lights.	No known habitat impacts. No recommendations at this time.	No bycatch impacts unless intentional. No impact should be tolerated. No recommendations at this time.	No impacts unless intentional. No impact should be tolerated. No recommendations at this time.
Spear: Similar to a gig, but usually single pronged, used by underwater divers using scuba gear.	No known habitat impacts. No recommendations at this time.	No bycatch impacts unless intentional. No impact should be tolerated. No recommendations at this time.	No impacts unless intentional. No impact should be tolerated. No recommendations at this time.
Oyster Tongs: Hand held steel "forceps", typically used while standing in a boat to recover oysters from water ranging in depth from that barely deep enough to float a boat to ten (10) to twelve (12) feet.	No known habitat impacts. No recommendations at this time.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Clam tongs: Hand held steel "forceps", used to recover clams from any and all types of bottom. Clam tong teeth tend to be longer and more closely spaced than the teeth on oyster tongs.	Some habitat impact in SAV beds. Impacts on oyster beds may be negated if clam and oyster seasons are combined at some future point. Recommend that clam tongs be prohibited on marked oyster rocks except during oyster harvest season.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Oyster Dredge: Usually heavy, large-toothed cages towed by a vessel to recover oysters from deeper waters. Oyster dredges are currently allowed only in Pamlico Sound, with a one-hundred (100) pound weight limit.	Habitat impacts of oyster dredges can be significant. Historically, such dredges have been used only on bottoms that were oyster beds. Dredges can plow down any mounds of shellfish and should not be allowed for use in SAV beds. Recommend maintaining present limits on usage and that steps be taken to ensure that the gear is used with adequate consideration of its habitat impacts.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Sea Scallop Dredge: An extremely heavy steel cage similar to an oyster dredge, that drags the bottom and is used in the ocean. These dredges are intended for use only on beds of scallops at sea.	These dredges have severe habitat impacts. Recommend that dredges continue to be prohibited in estuaries and on live bottom formations offshore [Note: This fishery is regulated under a federal FMP, and its impacts are not presently an issue in NC].	Flounder bycatch possible. No recommendations at this time.	No known impacts. No recommendations at this time.
Bay Scallop Dredge: A fairly light-weight (not >50 lbs.) steel	Very little habitat impact. It is generally okay to use these dredges in SAV	Small bycatch of "conchs" and pink shrimp. No recommendations at this	No known impacts. No recommendations at this time.

frame, without teeth, used in estuarine waters, and that has an attached, nylon webbing bag to accumulate the catch.	beds over a short scallop season. No recommendations at this time.	time.	
Patent Tongs: Very large steel "forceps" typically used to recover oysters from deep water.	The use of patent tongs is thought to have a major effect on shellfish beds and the bottom generally. Recommend collection of information on this gear, e.g., the habitat impact experiences of other states which have or are presently allowing use of patent tongs.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Clam Kickers: Generally refers to the use of the propeller of a boat to blow the mud/silt off the clams and into a trawl having a heavy steel cage or bag made of rings. The gear is chained so that it plows up the clams as it is towed behind the vessel. Often the stern of the vessel is loaded so that the propeller "wash" is directed at a downwards angle.	The use of clam kicking has severe habitat impact on all bottoms. The gear causes severe damage to SAV beds and to oyster rocks. Recommend that gear continue to be prohibited in SAV beds and over marked oyster grounds.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Hydraulic Clam Dredge: Gear generally used to harvest clams, that employs a conveyor system that can be lowered to the bottom where jets of water uncover the clams. These dredges are allowed only in "mechanical clamming" areas. The gear is also used by mariculturists to harvest shellfish crops from their public bottom leases.	The use of this gear has severe impacts upon SAV beds and oyster grounds. Recommend that areas that may be used by these dredges not be expanded in public trust areas. However, employment in mariculture operations to recover shellfish crops should be considered a viable use of the gear if leases are located in an areas where the gear is already allowed, if adjacent leases would not be affected. Permits should be issued by the Division of Marine Fisheries on a case-by-case basis. During the oyster season, legal size oysters caught incidental to clamming should be allowed to be retained.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.
Purse Seine: Large net used to catch menhaden. A menhaden school is surrounded by the purse net and a large weight is then dropped to close, or "purse", the bottom of the net.	The use of purse seines has no habitat impacts as the net is fished entirely within the water column. No recommendations at this time.	Studies have shown that bycatch in the menhaden industry from the use of purse seines is extremely minimal. No recommendations at this time.	Purse seines have minimal impacts on threatened and endangered species. No recommendations at this time.

<p>Estuarine Gill Net: A major gear used in North Carolina's internal coastal waters that captures fish by entangling them when they swim into the net. The net is often anchored to the bottom or attached to stakes. In some fisheries, gill nets are fished by drifting with the current. A variety of mesh sizes are used to take spot, flounder, American shad, river herring, mullet, striped bass and many other species. This gear is often used by recreational fishermen.</p>	<p>Estuarine gill nets have negligible habitat impacts. Such gear can be safely used in PNAs, SNAs and SAV beds. Proper identification of gear owners should be emphasized, along with regular tending of the gear to avoid wastage of fish. No recommendations at this time.</p>	<p>This gear is very size-selective, but there can be problems in capture of non-targeted species of similar sizes to the target species. Large catches can occasionally occur in gill nets used to fish recreationally, resulting in waste of part of the catch. Attendance of such recreationally fished nets may be appropriate under some conditions to minimize bycatch. No recommendations at this time.</p>	<p>There is a potential for this gear to impact marine mammals, principally bottlenose dolphins, and sea turtles. As more information becomes available on the distribution and movements of protected species, management actions may be needed to alter traditional fishing practices to avoid interactions between such species and estuarine gill nets. No actions are needed, or recommended, at the present time.</p>
<p>Otter Trawl: A cone-shaped net fashioned in one of the many patterns of "Otter Trawls", used primarily in North Carolina to catch shrimp. The gear is pulled from behind or alongside a vessel using "doors" or "gates" to keep the trawl open. The doors are sized (18" x 36" to 40" x 120") and weighted (50 lb. to 500 lb.) in direct ratio to the size of the trawl. Trawls skim the bottom, and shrimp are made to "pop" up into the net by a "tickler" chain pulled just ahead of the bottom line. Trawl doors ride along the bottom.</p>	<p>For all bottoms, the severity of habitat impacts from the use of shrimp trawls is related to the size of the doors. Damage to oyster grounds is generally moderate to high. Studies are inconclusive on the question of whether trawling in other areas has significant habitat impacts. Recommend continuation of prohibition of trawling in marked oyster grounds. A study of the impact of trawling on different types of habitat should also be conducted.</p>	<p>Fish bycatch is the major issue related to trawling for shrimp in the State. The Division of Marine Fisheries, the N.C. Sea Grant Program and the National Marine Fisheries Service, in a cooperative effort with fishermen, have been addressing the bycatch issue for several years, by studying shrimp trawl bycatch under actual shrimping conditions. Since October 1992, North Carolina has required some sort of "finfish excluder" in all shrimp trawls. One study has demonstrated bycatch reduction rates averaging better than 50%. Experiments continue and currently indicate an even better reduction rate is possible. Recommend continued prohibition of trawling in PNAs, SAV beds, and, generally, in Special Secondary Nursery Areas. Also recommend that the State continues to fund and study excluder devices and require their use.</p>	<p>North Carolina shrimpers fishing in the Atlantic Ocean are required to equip each trawl with a Turtle Excluder Devices (TED). Compliance with this provision appears to be total. The only exemption in the United States to TED requirements is the area between Rich's and Brown's inlets in Pender County, North Carolina. Shrimpers in this area must adhere to seasonally adjusted "tow times" set by the NMFS. All other inside water shrimpers must use TEDs, unless they adhere to a thirty (30) minute tow time and have no form of mechanical advantage to retrieve their nets. No recommendations at this time.</p>
<p>Crab Trawl: A trawl consisting of larger mesh nets made like a shrimp trawl. The basic equipment is the same as a shrimp trawl except that the bottom leading edge of the trawl is laced with several loops of heavy chain so that the crabs are "plowed" out of the bottom where</p>	<p>The use of crab trawls has severe impacts on all bottoms, causing great damage to oyster grounds and moderate to severe damage in SAV beds. Crab trawling results in substantial sedimentation in the trawled area. Recommend that crab</p>	<p>Present tailbag size causes a high percentage of undersized flounder to be killed and catch of a high percentage of undersized crabs. Recommend the DMF adopt a 4 1/2" tailbag for use in this gear [Note that South Carolina uses a 4" bag].</p>	<p>This trawl is used inshore in the winter, where waters are cold. For that reason, there is no known impact of this gear on sea turtles. No recommendations at this time.</p>

they have embedded themselves.	trawls be prohibited in marked oyster grounds. Because of heavy chain at the mouth of these trawls, there was much concern over potential damage to SAV beds. For that reason, also recommend a study of the effects of crab trawling on SAV beds.		
Skimmer Trawl: A trawl nets that utilizes a solid frame and a flat offshore "foot" in order to push a trawl through the water without using doors. Use of this gear is limited to areas where the depth of the water is no more than the size of the metal frame. Its use is highly successful in the "white shrimp" fishery.	Little known habitat impact. Skimmer trawls are generally okay to use in SAV beds, but should not be used in oyster grounds. Recommend that trawls be prohibited in marked oyster grounds and that the more widespread use of this gear be promoted in estuarine waters.	No recorded bycatch problems, but potential remains. Recommend implementation of requirement that a tailbag be dumped and culled every thirty (30) minutes.	No recorded problems. The tailbag of this gear can be dumped at any time, which eliminates most of the concern over bycatch or endangered species. Recommend implementation of requirement that a tailbag be dumped and culled every thirty (30) minutes.
Butterfly Trawl: In this gear, a solid frame holds a modified trawl in the top of the water column, acting like a channel net. Its use generally requires a good tidal flow and it is normally used only at night.	No known habitat impacts, but there have been complaints that these netters have failed to yield to boat traffic when working the Atlantic Intracoastal Waterway and marked channels. Recommend that the use of butterfly trawls be promoted, with a requirement that netters must yield to all boat traffic when utilizing navigation channels.	This gear should have no bycatch impacts if the tailbag is dumped and culled at least every thirty (30) minutes. Recommend implementation of the requirement that trawls be culled every thirty (30) minutes.	No known impacts if frequent culling occurs. Recommend implementation of requirement of culling every thirty (30) minutes.
Float Netting: This is done when a shrimp trawler "floats" its doors so that it can act as a butterfly or channel net, usually occurring in ebb tidal flow and at night.	No known habitat impacts, but complaints have been received of float nets being used in a manner that blocks navigation channels, and of failure to yield to boat traffic. Recommend that float netters be required to yield to boat traffic.	There should be no bycatch impacts if the tailbag is dumped and culled frequently. However, the nets cannot be checked until the tow is completed, so concerns about bycatch and endangered species impacts still remain. Recommend further study of bycatch of float nets and imposition of appropriate tow times.	None if frequent culling occurs. Recommend further study of bycatch of float nets and imposition of appropriate tow times.
Fish Trawls/Flynets: Usually large trawl nets, generally fished in ocean waters. Fish trawls may drag on the bottom, but also may utilize "mid-water technology." Fish trawling is not allowed in inside waters in North Carolina.	Use of this gear can seriously damage live rock formations. Recommend the continued prohibition of use in inside (internal) coastal waters. Federal rules should address the use of flynets in the EEZ.	Historically, flynets have landed large amounts of small, juvenile fish, too small to be marketed as seafood. This catch was sold for a variety of uses, such as animal food, and such harvests may have a long-term, adverse impact on fish stocks. Recommend a	Federal rules require TEDs in the ocean flounder trawl fishery. No recommendations for state action at this time.

		prohibition on the targeting, retaining and selling of food fish that are below a size marketable for human consumption.	
<p>Stop Net: [See "Beach Seine", above] A term used for large mesh nets that are set out or "run" perpendicular to the beach. Stop nets are not intended to catch anything themselves, given that the mesh size in these nets is from six (6) to ten (10) inches. During the night, migrating mullet (or other fishes) gather against the stop net, which they perceive as an obstruction to travel. Other species may either swim through the stop net or go around it. A beach seine is used to gather the fish "encamped" at the stop net site. A recent DMF study showed that ninety-five percent (95%) of the fish "encamped" at the stop net are mullet.</p>	No known habitat impacts. No recommendations at this time.	No known bycatch impacts. No recommendations at this time.	No known impacts, except that marine mammals can become entangled in stop nets. No recommendations at this time.
<p>Explosives: Pyrotechnic devices, such as dynamite, used to create a concussion, which causes the stunned or dead fish to rise to the surface where they are gathered. The use of explosives to fish is not legal in North Carolina.</p>	Habitat effects of this practice are unknown, but would seem to potentially be significant. Recommend that this practice continue to be prohibited in North Carolina.	Any fish within the area of influence of the concussion will be affected. Recommend that practice continue to be banned in North Carolina.	No known impacts, but the potential impacts would appear to be significant. Recommend that the practice continue to be banned in North Carolina.
<p>Electric Shocking: Refers to the use of mechanical devices that generate an electric current into coastal fishing waters, which stun the fish and cause them to rise to the surface. The practice of electric shocking is currently allowed only in a portion of the Cape Fear River, where it is used to catch catfish.</p>	No known habitat impacts. No recommendations at this time.	Any fish within the area of influence of the charge will be shocked and stunned. Recommend that such a fishing practice be restricted by area and only allowed by special permit.	No known impacts. No recommendations at this time.
<p>Dip Nets/Pier Net: Hand nets that are not usually used to catch fish by themselves, but rather, are used as tools in conjunction with other fishing gears. For example, a flounder fisherman may use a dip net to scoop up a flounder that is in his</p>	No known habitat impacts. No recommendations at this time.	No known bycatch impacts. No recommendations at this time.	No known impacts. No recommendations at this time.

<p>net but appears ready to fall out, or a fisherman may use a pier net to bring up catches of mullet too large to lift without danger of splitting his cast net, or to lift other species to keep from breaking the line on his fishing rod. However, large dip nets are used to catch river herring and shad in coastal streams.</p>			
<p>Crab Dredges: A crab dredge is much like an oyster dredge, except perhaps with longer teeth, and is used to dredge crabs from the bottom sediments during the winter months. Crab dredges are used in northern North Carolina waters from Long Shoal north.</p>	<p>Habitat impacts from the use of crab dredges can be significant, and the gear causes severe damage on oyster grounds or in SAV beds. Recommend that the current restrictions on the use of this gear be maintained, and that steps be taken to ensure that crab dredges are used with adequate regard to their effects on coastal fishery habitats.</p>	<p>Oysters and clams taken incidentally by this gear can be returned to the water if appropriate. No recommendations at this time.</p>	<p>No known impacts. No recommendations at this time.</p>

REPORT
OF THE *SUBCOMMITTEE ON*
MARINE FISHERIES COMMISSION AND
DIVISION OF MARINE FISHERIES
ORGANIZATION
TO THE
MORATORIUM STEERING COMMITTEE

*Adopted by the Moratorium Steering Committee
for Recommendation to the "Joint Legislative Commission on Seafood &
Aquaculture" on October 25, 1996*

SUMMARY OF MFC-DMF ORGANIZATION SUBCOMMITTEE RECOMMENDATIONS

Recommendations on North Carolina Marine Fisheries Commission:

1. The General Assembly should amend the North Carolina General Statutes to reduce the size of the Marine Fisheries Commission from its current size of seventeen (17) members to nine (9) members.
 - a. If the size of the Commission is reduced in size to nine members, N.C.G.S. § 221(e)(1) should be revised to reduce the number of Commission members required to call an emergency meeting on the use of proclamation authority by the Fisheries Director from five (5) to four (4).
2. The General Assembly should amend the North Carolina General Statutes to provide that members of the Marine Fisheries Commission shall be appointed under the following terms and conditions:
 - a. Each member of the Marine Fisheries Commission shall be appointed by the Governor,
 - b. Each member of the Marine Fisheries Commission shall serve for a three-year term,
 - c. Terms of Commission members shall be staggered,
 - d. Commission members may be re-appointed and there shall be no limit on the number of re-appointments, and
 - e. Commission members shall continue to serve on the Marine Fisheries Commission until their successors have been appointed.
3. Appointments to the nine-member Commission should be made in the following manner:
 - a. Two persons, who at the time of appointing, are engaged in, or recently retired from, commercial fishing and who derive(d) at least fifty percent (50%) of earned income from taking and selling fishery resources living in the coastal fishing waters of North Carolina. Spouses from qualifying families and who are actively involved in the business may be appointed.
 - b. One person, who at the time of appointment, is actively connected with and has experience as a licensed fish dealer, or in seafood processing or distribution, as demonstrated by deriving at least fifty percent (50%) of earned income from activities involving the buying, selling, processing or distribution of seafood landed in North Carolina. A spouse from a qualifying family and who is actively involved in the business may be appointed.
 - c. Two persons, who at the time of appointment, are active sport fishermen who have interests and experience with sport fishing in the coastal waters of North Carolina. Neither of the two appointees may derive more than 10% of his/her earned annual income from sport fishing activities, such as providing recreational guide services.
 - d. One person, who at the time of appointment, is actively engaged in the sport fishing industry as demonstrated by selling goods and/or services that generate at least fifty percent (50%) of earned income. A spouse from a qualifying family and who is actively involved in the business may be appointed.
 - e. One person "at-large", who at the time of appointment, has knowledge of and experience related to subjects and persons regulated by the Commission, and who may not receive more than 10% of his/her earned annual income from the commercial or sport fishing industries, including the processing and distribution of seafood.
 - f. One fisheries scientist, who at the time of appointment has special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics or similar knowledge, and who may not

receive more than 10% of his/her earned annual income from the commercial or sport fishing industries, including the processing and distribution of seafood.

- g. One social scientist, who at the time of appointment has special training and expertise in the social or economic issues affecting marine and estuarine resources and person regulated by the Commission, and who may not receive more than 10% of his/her earned annual income from the commercial or sport fishing industries, including the processing and distribution of seafood.
4. The General Assembly should amend N.C.G.S. § 143B-289.5 to include the following statement: "The Marine Fisheries Commission shall never have a membership where a majority of its members has a financial interest in the regulated resources. 'Financial interest' shall be defined as ten percent (10%) or more of earned annual income from fishing activities."
5. Each member of the Marine Fisheries Commission shall be a resident of North Carolina.
6. In appointing members to the Commission, the Governor shall appoint:
 - a. one member from each of the following coastal regions in filling the three seats on the Commission designated for representatives of the commercial fishing industry: (1) Northeast - Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington counties; (2) Central - Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico counties; and (3) Southeast - Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender counties;
 - b. a member from one of the coastal counties listed above to fill one of the three seats on the Commission designated for representatives of the recreational fishing industry; and
 - c. a member from one of the coastal counties listed above to fill one of the three seats on the Commission not designated for representatives of the commercial and recreational fishing industries.
7. The General Assembly should amend the North Carolina General Statutes to require that those under consideration for appointment to the Marine Fisheries Commission provide both a financial disclosure statement and a potential bias disclosure statement to the Governor, Secretary or other appropriate authority (currently the Board of Ethics). Disclosures should be available to the public and should include statements of the nominee's financial interests in and related to state fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which he/she has a financial interest, uses made by the nominee or by any business in which he/she has a financial interest of the regulated resources, and the nominee's membership or other affiliation with, including offices held, in societies, organizations or advocacy groups pertaining to the management and use of North Carolina coastal fishery resources. Disclosure statements should be required to be updated annually.
8. The General Assembly should amend the North Carolina General Statutes to provide that each member of the Commission, before assuming the duties of his office, shall take an oath for the faithful performance of his duties.
9. The General Assembly should amend N.C.G.S. § 143B-289.5 to include the following statement: "Commission members must recuse themselves from voting on Commission decisions that would have a 'significant and predictable effect' on their financial interests. A Commission decision shall be considered to have a 'significant and predictable effect' if there is a 'close causal link between the Commission decision and an expected disproportionate benefit shared only by a minority of persons within the same industry sector or gear group to the financial interest of the Commission member'."
10. The General Assembly should amend N.C.G.S. § 143B-289.5 to provide that "Commission members shall abstain from voting on petitions submitted by advocacy groups of which they are officers or sit as members of the advocacy group's 'Board of Directors', shall not use their official positions as

Commissioners to secure unwarranted privileges or exemptions of substantial value for any person, and shall not create the appearance that any person can improperly influence them or unduly enjoy their favor in the performance of official duties."

11. The General Assembly should amend the North Carolina General Statutes to provide that the enforcement vehicle concerning voting on any coastal fisheries issue shall be by majority vote of the Commission members, and that the Governor, as the appointing authority for the Commission, shall be required to cause the State to investigate any report of a Commission member who refuses to abide by a Commission vote, and if the allegations prove true, to dismiss the non-complying Commissioner.
12. The General Assembly should amend the North Carolina General Statutes to provide for strengthened attendance requirements for Commissioners as provided below:
 - a. A Marine Fisheries Commission member shall not miss more than one regularly scheduled business meeting per annum without "just cause", where the validity of "just cause" absences is determined by the Marine Fisheries Commission Chair.
 - b. Unexcused absences from business meetings shall result in a recommendation for dismissal, by the Governor, from the Commission.
 - c. A Commission member shall not miss more than one public hearing per year without just cause.
 - d. A Commissioner's failure to comply with these attendance standards shall result in forfeiture of the right to later vote on matters presented at the public hearings.
 - e. "Attendance" shall mean that a Commissioner must remain present for the duration of a specific meeting or hearing, unless dismissed early at the discretion of the Commission Chair.
13. The General Assembly should amend N.C.G.S. § 143B-289.1 *et seq.* to establish a Standing Advisory Committee system under the following terms and conditions:
 - a. Three committees shall be appointed in the manner provided in subsection (d), below: (1) a Habitat/Water Quality Committee, (2) a Fisheries Assessment Committee, and (3) a Fisheries Resources/Users Committee.
 - b. Two of the Committees, the Habitat/Water Quality and the Fisheries Assessment Committees, shall be technical and comprised of scientists or other experts in fisheries biology, ecology, water quality, sociology, and economics, as deemed appropriate by the Marine Fisheries Commission.
 - c. The Fisheries Resources/Users Committee shall be comprised of members of the fishing public, including the chairpersons of five ad hoc regional committees also created by legislation and appointed by action of the Marine Fisheries Commission.
 - d. The regional, ad hoc committees shall include in their memberships those with knowledge and experience pertaining to North Carolina's rich and diverse fishing heritage.
 - e. Each Standing Advisory Committee shall have coastal geographic balance in its membership to ensure regional representation on the committees.
 - f. Terms of Committee members shall be staggered, and members shall serve for a period of three years.
 - g. The Marine Fisheries Commission shall be required to consider each item brought before it by a Standing Advisory Committee after it has been thoroughly discussed and reviewed by the Committee.

- h. **Members of the Marine Fisheries Commission and the Division of Marine Fisheries staff shall serve as non-voting members on each Standing Advisory Committee.**
 - i. **The Director of the Division of Marine Fisheries and the Chair of the Marine Fisheries Commission shall work jointly to make appointments to the Standing Advisory Committees.**
 - j. **Each Standing Advisory Committee shall select its respective chair by majority vote of Committee members.**
 - k. **A mechanism shall be developed to maximize interactions between the members of the Standing Advisory Committees, Division of Marine Fisheries staff and Marine Fisheries Commissioners.**
 - l. **Standing Advisory Committee members shall be reimbursed by the State for subsistence and travel costs incurred as result of attending official Standing Advisory Committee meetings.**
 - m. **The Chair of the Marine Fisheries Commission shall also have the authority to appoint additional, ad hoc committees as needed.**
14. **The Marine Fisheries Commission should immediately assume full responsibility for using its current statutory authorities to protect vital coastal fisheries habitats.**
 15. **The jurisdiction of the Marine Fisheries Commission should be extended to include a more active, protective role in habitat and water quality matters.**
 16. **The General Assembly should amend the North Carolina General Statutes to clarify that the Governor shall represent the State regarding ocean and marine fisheries in the Exclusive Economic Zone upon the advice and after consultation with the Marine Fisheries Commission.**
 17. **The General Assembly should create and fund as a continuing budget item two new state government positions for persons to serve as Marine Fisheries Commission staff: a Commission Liaison position to be filled by a person with a background in fisheries management, and a Clerical Support position. Commission staff should, to the extent permitted by state personnel law, be under the direction and supervision of the Chair of the Marine Fisheries Commission.**
 18. **The Governor shall appoint the Chair of the Marine Fisheries Commission from the Commission membership, and the Chair shall serve at the pleasure of the Governor. A Vice Chair shall be elected annually by Commission members.**
 19. **Vote by proxy shall not be allowed.**
 20. **A quorum of members shall be present to conduct business. A quorum is defined as a simple majority.**

Recommendations on North Carolina Division of Marine Fisheries:

1. **The Division should be required to develop and implement a written Strategic Plan that clearly establishes the agency's mission, includes both long range and short range goals of each section of the Division, and sets out a "yardstick" for measuring successful achievement of the Plan. The Fisheries Director should prepare an annual, written report jointly to the Secretary of the Department of Environment, Health, and Natural Resources, and the Marine Fisheries Commission, setting out the Division's progress in implementing the Strategic Plan.**
2. **The Division should be (re-)structured to maximize the effectiveness of its employees and to ensure agency accountability.**
3. **The Division of Marine Fisheries should be (re-)structured as necessary to use its current statutory authorities to protect vital coastal fisheries habitats to the fullest possible extent.**

4. The Division should be (re-)structured to expand its current assessment and analytical capabilities, both internally and by its external association with the North Carolina and regional scientific communities.
5. The current Deputy Director position in the Division of Marine Fisheries, charged with running Division day-to-day operations, should be permanently maintained within the Division organization.
6. Division salaries for scientific and technical positions should be upgraded to be more reflective of market salaries for similar positions in the private sector.
7. The Fisheries Director and the Deputy Director should be reasonably accessible to Division staff.
8. An adequate Conference Room should be maintained at the Division's headquarters and at each of its regional offices, and regularly used both for internal and external communication functions.
9. An adequate Division Employee Handbook should be developed, updated and maintained to (1) inform Division employees and provide guidance on available benefits, opportunities and policies; (2) more clearly establish what behaviors will or will not be tolerated from employees; and (3) clearly inform employees of the "chain-of-command" for decision-making and Division grievance procedures.
10. The Division should establish an affirmative program of idea and/or research exchange with the academic community, and with private and governmental research or conservation agencies, via an ongoing intern program, participation in seminar programs, a grant program, or similar mechanisms, and should provide increased opportunities for Division employees to participate in activities related to professional development and education.
11. The Division should take immediate steps to strengthen its "Information & Education Section".
12. The Division should annually publish and distribute a summary of the "Status of North Carolina Marine Fisheries", setting forth not only summaries of landings and other data taken from Trip Tickets and effort surveys, but also summaries of ongoing Division research efforts and needs, and opportunities for public involvement in the conservation of the State's marine and estuarine resources.
13. Marine Patrol organization and policies should be reviewed and revised to make law enforcement a more integral part of the Division, and officer training should include instruction not only in law enforcement techniques, but also in public education and in public relations.

INTRODUCTION

The Report of the Habitat Subcommittee to the Moratorium Steering Committee correctly proclaims that "North Carolina ranks as one of the premier states in the United States relative to its wealth of living marine resources" and that "any effort to improve the protection and use of fishery resources must address the need to conserve the quality and quantity of habitat essential for the reproduction, growth and survival of these resources." Similarly, the Report of the License Subcommittee also correctly denotes that the revised coastal fisheries licensing system recommended in that Report, along with implementation of fisheries management based on well documented Fishery Management Plans, are key to "introducing a rational, structured basis for managing the State's marine and estuarine fishery resources."

Each of those recommendations must be central to institutional revisions to coastal fisheries management if North Carolina is to be successful in maintaining viable commercial and recreational fisheries in the face of a rapidly changing landscape and population. At the same time, the Subcommittee on Marine Fisheries Commission and Division of Marine Fisheries Organization (Organization Subcommittee) is certain that organizational and functional changes in the North Carolina Marine Fisheries Commission and the North Carolina Division of Marine Fisheries, the two state agencies directly responsible for protecting and managing the State's coastal fishery resources, are equally critical to future fisheries management in North Carolina. Toward that end and in keeping with the Moratorium Steering Committee's original goal to strive for efficient and effective regulation and management of North Carolina's coastal fishery resources, the Organization Subcommittee has developed recommendations intended to improve the functional capabilities of the Marine Fisheries Commission and Division of Marine Fisheries, as set out below.

Like the other Subcommittees of the Moratorium Steering Committee, the recommendations are the product of extensive materials review, and were formulated following protracted discussion and debate of the issues they involve. The Organization Subcommittee's initial, draft recommendations were submitted to the full Committee on January 25, 1996. Since that date, they have undergone much public discussion and suggested revision, including those modifications proposed at the statewide public meetings held by the Moratorium Steering Committee. The more significant of those suggested revisions to the Subcommittee's recommendations are discussed below under the pertinent section of the Report. In addition, the consultant's "Report to the Fisheries Moratorium Steering Committee" by investigators William G. "Bill" Gordon and Bernard L. "Bud" Griswold, entitled *Assessment of the Functions and Organization of the North Carolina Division of Marine Fisheries and the North Carolina Marine Fisheries Commission*, was reviewed and thoroughly discussed by the Organization Subcommittee. Based on all of those inputs, the Organization Subcommittee brings forward its final recommendations to the Moratorium Steering Committee.

RECOMMENDATIONS

The recommendations of the Organization Subcommittee are divided into two sections. The first contains those recommendations that pertain to the North Carolina Marine Fisheries Commission. The second section contains those Subcommittee recommendations pertaining to the organization and functioning of the North Carolina Division of Marine Fisheries. Each is

revised from earlier drafts of the Subcommittee Report in light of the Gordon and Griswold report, the Moratorium Steering Committee's public meetings and Subcommittee discussions.

I. NORTH CAROLINA MARINE FISHERIES COMMISSION.

The Organization Subcommittee makes the following specific recommendations to the Moratorium Steering Committee concerning the structure and functioning of the North Carolina Marine Fisheries Commission. Within each section below, the Subcommittee's preferred recommendations are set out in bold print, while alternative recommendations discussed by the Subcommittee and explanatory text are set out below the recommendation to which they pertain.

A. Commission Size.

- **The General Assembly should amend the North Carolina General Statutes to reduce the size of the Marine Fisheries Commission from its current size of seventeen (17) members to nine (9) members.** The Subcommittee believes strongly that a smaller Commission will operate with significantly greater efficiency and effectiveness. In addition, this recommendation received full and widespread public support at the public meetings of the Moratorium Steering Committee.
- **If the size of the Commission is reduced in size to nine members, N.C.G.S. § 221(e)(1) should be revised to reduce the number of Commission members required to call an emergency meeting on the use of proclamation authority by the Fisheries Director from five (5) to four (4).** Current law provides that the Marine Fisheries Commission chair may call an emergency meeting concerning the Fisheries Director's use of proclamation authority delegated to him by the Marine Fisheries Commission when five of seventeen Commissioners request such a meeting. The above provision is recommended to ensure that under the proposed reduction in the size of the Commission, it will not require a majority of Commission members to call such an emergency meeting.

B. Appointment Terms.

After examining the current law in North Carolina and other options for appointment terms, the Organization Subcommittee makes the following recommendations concerning the term of service for Marine Fisheries Commission members:

- **The General Assembly should amend the North Carolina General Statutes to provide that members of the Marine Fisheries Commission shall be appointed under the following terms and conditions:**
 - **Each member of the Marine Fisheries Commission shall be appointed by the Governor,**
 - **Each member of the Marine Fisheries Commission shall serve for a three-year term,**

- **Terms of Commission members shall be staggered,**
- **Commission members may be re-appointed and there shall be no limit on the number of re-appointments, and**
- **Commission members shall continue to serve on the Marine Fisheries Commission until their successors have been appointed.**

Many of the recommended conditions for serving on the Commission are similar to or the same as those currently in place. However, a number of non-Committee members and other public commentators suggested alternative proposals to the above recommendation, including (1) three members of the Marine Fisheries Commission shall be appointed by the Governor, three members shall be appointed by the President Pro Tempore of the Senate and three members shall be appointed by the Speaker of the House; (2) members of the Marine Fisheries Commission shall be limited to two consecutive three-year terms, and then must be replaced for three years before serving again; and (3) members of the Marine Fisheries Commission shall be appointed by the Governor through a formal nomination and selection process, and prospective appointees must be confirmed by the North Carolina Senate. Each of those alternatives was discussed and rejected by the Organization Subcommittee as, at best, offering no distinct advantage to the recommendation made above.

C. Qualification Requirements.

More stringent qualification requirements for members of the Marine Fisheries Commission will benefit the appointment and service process. As set out below, those requirements pertain both to the background and experience of prospective appointees to the Commission, and to their place of residence in North Carolina.

1. Membership Qualifications.

Under current state law set out in N.C.G.S. § 143B-289.5, fourteen of the seventeen seats on the Marine Fisheries Commission are designated in terms of who is qualified to fill each of those seats. The Organization Subcommittee proposes to continue the policy of membership qualifications for appointment to the Commission, as set out below:

- **Appointments to the nine-member Commission should be made in the following manner:**
 - **Two persons, who at the time of appointing, are engaged in, or recently retired from, commercial fishing and who derive(d) at least fifty percent (50%) of earned income from taking and selling fishery resources living in the coastal fishing waters of North Carolina. Spouses from qualifying families and who are actively involved in the business may be appointed. A number of persons commented that there should be a greater number of dedicated, "commercial seats" on the Commission, but others called for fewer or no commercial seats.**

- **One person, who at the time of appointment, is actively connected with and has experience as a licensed fish dealer, or in seafood processing or distribution, as demonstrated by deriving at least fifty percent (50%) of earned income from activities involving the buying, selling, processing or distribution of seafood landed in North Carolina. A spouse from a qualifying family and who is actively involved in the business may be appointed.**
- **Two persons, who at the time of appointment, are active sport fishermen who have interests and experience with sport fishing in the coastal waters of North Carolina. Neither of the two appointees may derive more than 10% of his/her earned annual income from sport fishing activities, such as providing recreational guide services. Without this limitation, a "financially interested" person could be appointed to this slot, thereby violating the standard presented under recommendation 5 above, which precludes a majority of Commission members from having financial interests in the regulated resource. A number of persons commented that there should be a greater number of dedicated, "recreational seats" on the Commission. This "slot" would include persons holding either the Recreational Commercial Gear License or the Coastal Recreational Fishing License as recommended in the Report of the License Subcommittee.**
- **One person, who at the time of appointment, is actively engaged in the sport fishing industry as demonstrated by selling goods and/or services that generate at least fifty percent (50%) of earned income. A spouse from a qualifying family and who is actively involved in the business may be appointed.** There was substantial public comment at the public meetings held by the Moratorium Steering Committee to the effect that there was no provision for representation of the state charter boat industry on the Marine Fisheries Commission. However, this slot could clearly be filled by such a representative. Some persons expressed concern that under the language of this recommendation, the slot could be filled by a charter boat captain who fishes commercially in the "off season", thus making this a "commercial seat" in effect.

The Organization recommended in its August 2, 1996 Public Meetings Draft Report that each of the three Commission seats not designated for occupation by members of the commercial and recreational fishing communities be "at-large". That recommendation was supported by some and criticized by others during the public meetings process. In addition, several alternative recommendations have been proposed with respect to Commission membership qualifications. At some point in its deliberations, each alternative has been discussed by the Subcommittee and rejected as less workable, or desirable, than the recommended alternative. Alternatives include: (1) all three "non-fishing" seats should be designated for three scientists (fisheries, economics, sociology, *etc.*), who at the time of appointing, have knowledge of and experience related to subjects and persons regulated by the Commission; (2) the three "non-fishing" seats should be designated for the Chair of the North Carolina Coastal Resources Commission (CRC), the Chair of the North Carolina Environmental Management Commission (EMC), and one person "at-large",

who at the time of appointing, has knowledge of and experience related to subjects and persons regulated by the Commission; and (3) the three non-fishing seats should be designated for an environmentalist (someone with experience and expertise in matters relating to water quality/habitat), a scientist, and a person experienced in natural resource law enforcement. This last alternative recommendation was put forth by the Division of Marine Fisheries.

In addition, a number of speakers at the Moratorium Steering Committee's public meetings and other public commentators throughout the meetings process have recommended that all appointees shall consist of persons having no financial interest in fisheries. This alternative recommendation was also put forth by Gordon and Griswold in their report, *Assessment of the Functions and Organization of the North Carolina Division of Marine Fisheries and the North Carolina Marine Fisheries Commission*. While placing decisions about a publicly owned resource entirely in the hands of persons who have no immediate stake in the outcome of their decisions is appealing in theory, the Organization Subcommittee rejected this suggestion in the belief that coastal fisheries issues are simply too complex to be rationally decided by those without prior knowledge of the subjects and person being regulated. Instead, the Subcommittee makes the following recommendation concerning membership for the three "non-fishing" seats on the Commission:

- **One person "at-large", who at the time of appointment, has knowledge of and experience related to subjects and persons regulated by the Commission, and who may not receive more than 10% of his/her earned annual income from the commercial or sport fishing industries, including the processing and distribution of seafood.**
- **One fisheries scientist, who at the time of appointment has special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics or similar knowledge, and who may not receive more than 10% of his/her earned annual income from the commercial or sport fishing industries, including the processing and distribution of seafood.**
- **One social scientist, who at the time of appointment has special training and expertise in the social or economic issues affecting marine and estuarine resources and person regulated by the Commission, and who may not receive more than 10% of his/her earned annual income from the commercial or sport fishing industries, including the processing and distribution of seafood.**

The income limitation on the at-large and scientist seats will ensure that a "financially interested" person is not appointed to these slots in violation of the standard recommended for inclusion in N.C.G.S. § 143B-289.5, which precludes a majority of Commission members from having financial interests in the regulated resource. In addition, to assist the process of determining who may be qualified to serve in each of the eight designated seats proposed above, the Organization Subcommittee has attached as Appendix I an updated document prepared by Division of Marine Fisheries staff, entitled "Definitions of Membership Categories of N.C. Marine Fisheries Commission".

- **The General Assembly should amend N.C.G.S. § 143B-289.5 to include the following statement: "The Marine Fisheries Commission shall never have a membership where a majority of its members has a financial interest in the regulated resources. 'Financial interest' shall be defined as ten percent (10%) or more of earned annual income from fishing activities."** It is the Organization Subcommittee's intent to ensure that the designated commercial industry and at-large seats on the Commission cannot constitute a majority of the Commission's membership. Adoption of this provision will preclude the proverbial problem created, at least in the minds of the public, by allowing "the fox to guard the hen-house", which was pointed out as necessary by a number of speakers at the Moratorium Steering Committee's public meetings. However, it is not the intent of the Subcommittee to exclude experts on fisheries research and management who are employed by academic institutions or State and Federal conservation agencies, and who could be appointed to at-large seats. In this latter case, salaries would be excluded as "financial interest", but income derived from fishing activities would not be excluded.

2. Residential Qualifications.

The first necessary qualification for members of the Marine Fisheries Commission is that each prospective Commissioner must be a resident of the State of North Carolina. This is, of course, a common sense provision since the jurisdiction of the Commission is over a publicly owned state resource. Accordingly, the Organization Subcommittee recommends the following initial residency qualification:

- **Each member of the Marine Fisheries Commission shall be a resident of North Carolina.**

In addition, under the current North Carolina law controlling the appointment of Marine Fisheries Commission members, set out in N.C.G.S. § 143B-289.5(e), there is an additional residency requirement. According to that provision, one of the seventeen Commission members is required to come from each of the three coastal regions listed in that statute. However, as a practical matter, each of the seven "commercial fishing" seats on the current Commission is likely to be filled by a coastal resident. In its August 2, 1996 Public Meetings Draft Report the Organization Subcommittee recommended that six of the nine Marine Fisheries Commission members should be required to come from the coastal area of North Carolina. Strong opposition to that recommendation was voiced at the Moratorium Steering Committee's public meetings, especially in inland meeting localities, because of the fact that North Carolina's marine and estuarine resources belong to the citizens of the State as a whole. After reconsidering the issue in light of those public comments, the Moratorium Steering Committee, as a whole, is still of the opinion that coastal residents will likely be more knowledgeable about coastal fisheries issues than persons living inland and will therefore likely make better management decisions about those issues. Nevertheless, the final recommendation concerning residency qualifications for Commission membership is aimed at more balanced geographic

representation on the Commission, and requires that five, rather than six, of the members must reside in the North Carolina coastal region, as follows:

- **In appointing members to the Commission, the Governor shall appoint:**
 - **one member from each of the following coastal regions in filling the three seats on the Commission designated for representatives of the commercial fishing industry: (1) Northeast - Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington counties; (2) Central - Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico counties; and (3) Southeast - Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender counties;**
 - **a member from one of the coastal counties listed above to fill one of the three seats on the Commission designated for representatives of the recreational fishing industry; and**
 - **a member from one of the coastal counties listed above to fill one of the three seats on the Commission not designated for representatives of the commercial and recreational fishing industries.**

D. Ethical Standards.

The public perception of many governmental boards and commissions is, unfortunately, that they are simply made of representatives of special interest groups appointed to safeguard their own particular needs and advance their own specific agendas. The adoption of ethical standards applicable to Marine Fisheries Commission members will go a long way towards dispelling this perception in the regulation and management of publicly owned coastal fishery resources. The Organization Subcommittee also believes that the strengthening of ethical standards for the discharge of Commission member duties will improve the fairness and effectiveness with which the Marine Fisheries Commission operates. However, while ethical standards, particularly as pertaining to Commission member "conflicts of interest", must be addressed, it is not the intent of the Organization Subcommittee to eliminate the participation of those most knowledgeable about fisheries in the process. The Subcommittee's recommendations are that:

- **The General Assembly should amend the North Carolina General Statutes to require that those under consideration for appointment to the Marine Fisheries Commission provide both a financial disclosure statement and a potential bias disclosure statement to the Governor, Secretary or other appropriate authority (currently the Board of Ethics). Disclosures should be available to the public and should include statements of the nominee's financial interests in and related to state fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which he/she has a financial interest, uses made by the nominee or by any business in which he/she has a financial interest of the regulated resources, and the nominee's membership or other affiliation with, including offices held, in societies, organizations or advocacy groups pertaining to the management and use of North Carolina coastal fishery resources. Disclosure statements should**

be required to be updated annually. This provision reflects the Organization Subcommittee's belief that "open government" and full disclosure are important by serving to strengthen public confidence in governmental regulatory agencies.

- **The General Assembly should amend the North Carolina General Statutes to provide that each member of the Commission, before assuming the duties of his office, shall take an oath for the faithful performance of his duties. The Organization Subcommittee has attached an example of such an oath as Appendix II, below.**
- **The General Assembly should amend N.C.G.S. § 143B-289.5 to include the following statement: "Commission members must recuse themselves from voting on Commission decisions that would have a 'significant and predictable effect' on their financial interests. A Commission decision shall be considered to have a 'significant and predictable effect' if there is a 'close causal link between the Commission decision and an expected disproportionate benefit shared only by a minority of persons within the same industry sector or gear group to the financial interest of the Commission member'." Inclusion of this language in the General Statutes will prevent Commission members from "voting on decisions that give a disproportionate benefit only to themselves or a minority in their gear group, but will not prevent them from expressing views or voting on most matters on which they have expertise" (the quote referencing the cited language in the recommendation above is from dialogue made in reference to the re-authorization of the "Magnuson Fisheries Conservation and Management Act", as contained in the *Congressional Record*, 141(1):174, Jan. 4, 1995).**
- **The General Assembly should amend N.C.G.S. § 143B-289.5 to provide that "Commission members shall abstain from voting on petitions submitted by advocacy groups of which they are officers or sit as members of the advocacy group's 'Board of Directors', shall not use their official positions as Commissioners to secure unwarranted privileges or exemptions of substantial value for any person, and shall not create the appearance that any person can improperly influence them or unduly enjoy their favor in the performance of official duties." Again, implementation of this provision will help to instill public confidence in the actions of the Marine Fisheries Commission as not being biased or self-interested.**
- **The General Assembly should amend the North Carolina General Statutes to provide that the enforcement vehicle concerning voting on any coastal fisheries issue shall be by majority vote of the Commission members, and that the Governor, as the appointing authority for the Commission, shall be required to cause the State to investigate any report of a Commission member who refuses to abide by a Commission vote, and if the allegations prove true, to dismiss the non-complying Commissioner. The Organization Subcommittee feels that one weakness with existing ethical standard is that compliance with them is largely voluntary. In order to work effectively, even the best ethical standards must have an adequate enforcement mechanism. Implementation of this recommendation will help to provide such an enforcement mechanism.**

E. Meeting Attendance Requirements.

The Organization Subcommittee has heard, during the course of its deliberations, a concern among Moratorium Steering Committee members and the general public over "uninformed voting" by Marine Fisheries Commission members who fail to attend Commission public hearings on rules proposed for adoption, or who are perennially absent from substantial or critical parts of Commission meetings. The recommendation below is intended to address that concern:

- **The General Assembly should amend the North Carolina General Statutes to provide for strengthened attendance requirements for Commissioners as provided below:**
 - **A Marine Fisheries Commission member shall not miss more than one regularly scheduled business meeting per annum without "just cause", where the validity of "just cause" absences is determined by the Marine Fisheries Commission Chair.**
 - **Unexcused absences from business meetings shall result in a recommendation for dismissal, by the Governor, from the Commission.**
 - **A Commission member shall not miss more than one public hearing per year without just cause.**
 - **A Commissioner's failure to comply with these attendance standards shall result in forfeiture of the right to later vote on matters presented at the public hearings.**
 - **"Attendance" shall mean that a Commissioner must remain present for the duration of a specific meeting or hearing, unless dismissed early at the discretion of the Commission Chair.**

F. Advisory Committees.

The Organization Subcommittee believes that the State has generally been well served by the Committee system currently in place within the Marine Fisheries Commission, but also believes that the functioning of the committee system can be substantially improved by establishing a Standing Advisory Committee structure that will entail even greater formal public involvement. Consequently, the Subcommittee recommends that:

- **The General Assembly should amend N.C.G.S. § 143B-289.1 *et seq.* to establish a Standing Advisory Committee system under the following terms and conditions:**
 - **Three committees shall be appointed in the manner provided in subsection (d), below: (1) a Habitat/Water Quality Committee, (2) a Fisheries Assessment Committee, and (3) a Fisheries Resources/Users Committee.**
 - **Two of the Committees, the Habitat/Water Quality and the Fisheries Assessment Committees, shall be technical and comprised of scientists or other experts in**

fisheries biology, ecology, water quality, sociology, and economics, as deemed appropriate by the Marine Fisheries Commission.

- **The Fisheries Resources/Users Committee shall be comprised of members of the fishing public, including the chairpersons of five ad hoc regional committees also created by legislation and appointed by action of the Marine Fisheries Commission.**
- **The regional, ad hoc committees shall include in their memberships those with knowledge and experience pertaining to North Carolina's rich and diverse fishing heritage.**
- **Each Standing Advisory Committee shall have coastal geographic balance in its membership to ensure regional representation on the committees.**
- **Terms of Committee members shall be staggered, and members shall serve for a period of three years.**

While public commentators have generally been enthusiastic about this recommendation's formalization of public involvement in the regulatory process, several persons suggested modification to the above recommendations. Those alternative proposals were discussed by the Organization Subcommittee, but not adopted. One such proposal was that a formal mechanism be established to ensure that user diversity pertaining to geographical area and fishing techniques is adequately represented on the Fisheries Resources /Users Committee. The Division of Marine Fisheries also proposed an alternative recommendation in lieu of the Regional Committee system recommended by the Subcommittee. The alternative recommendation was derived in large part from the Division's concerns that (1) North Carolina fisheries issues are too complex for the public to be adequately represented by a single user committee, and (2) the public is better served because there is a synergistic effect when fishermen and non-fishermen, *e.g.*, scientists, having expertise and experience in fisheries related matters serve together on the same committee. For those reasons, the Division proposed that a permanent Marine Fisheries Commission Finfish Committee, Crustacean Committee and Shellfish Committee be established by the same authorization that creates the Marine Fisheries Commission. Each proposed Committee would be comprised of members of the fishing public, persons with expertise and experience in fisheries habitat and water quality related matters, and persons having law enforcement experience.

The Standing Advisory Committee system, once established as set out above, would operate in the following manner:

- **The Marine Fisheries Commission shall be required to consider each item brought before it by a Standing Advisory Committee after it has been thoroughly discussed and reviewed by the Committee.**
- **Members of the Marine Fisheries Commission and the Division of Marine Fisheries staff shall serve as non-voting members on each Standing Advisory Committee.**

- **The Director of the Division of Marine Fisheries and the Chair of the Marine Fisheries Commission shall work jointly to make appointments to the Standing Advisory Committees.**
- **Each Standing Advisory Committee shall select its respective chair by majority vote of Committee members.**
- **A mechanism shall be developed to maximize interactions between the members of the Standing Advisory Committees, Division of Marine Fisheries staff and Marine Fisheries Commissioners.**
- **Standing Advisory Committee members shall be reimbursed by the State for subsistence and travel costs incurred as result of attending official Standing Advisory Committee meetings.** Implementation of this provision will help to relieve the substantial financial burden placed on volunteers who agree to assist the State by serving on these Standing Advisory Committees. At least one commentator at the Moratorium Steering Committee's public meetings suggested that Standing Advisory Committee members should be paid daily compensation and reimbursed for subsistence and travel expenses at the same increased compensation rate recommended in the Public Meetings Draft Report for payment to members of the Marine Fisheries Commission.
- **The Chair of the Marine Fisheries Commission shall also have the authority to appoint additional, ad hoc committees as needed.** This provision will simply ensure that the Marine Fisheries Commission Chair retains the inherent flexibility in this traditional appointment authority to deal with specific issues and problems as they arise.

G. Commission Jurisdiction.

1. Environmental Decision-making Authority.

It is clear to the Organization Subcommittee and likely to everyone else significantly involved with coastal fisheries that North Carolina fisheries management agencies must have reasonable ability to affect state permitting and policy decisions that impact critical coastal fisheries habitats if they are to carry out their statutory mandates to conserve and protect the State's marine and estuarine resources. While recommendations dealing with fisheries habitat protection are primarily within the purview of the Habitat Subcommittee, because of their importance, the Organization Subcommittee also makes the following specific recommendations:

- **The Marine Fisheries Commission should immediately assume full responsibility for using its current statutory authorities to protect vital coastal fisheries habitats.**
- **The jurisdiction of the Marine Fisheries Commission should be extended to include a more active, protective role in habitat and water quality matters.**

Relative to this recommendation, a number of alternative methods of expanding the Commission's regulatory authority in matters related to habitat protection were examined by the Organization Subcommittee. They include the following proposals: (1) the Marine Fisheries Commission (and the Division of Marine Fisheries) shall be authorized not only to comment on relevant environmental permits, but also to appeal, and perhaps veto, the decision made by the permitting agency or commission; (2) the Marine Fisheries Commission shall be designated as the primary state permitting authority for specific areas of great concern, such as Primary Nursery Areas, Outstanding Resource Waters and Submerged Aquatic Vegetation areas; (3) the Marine Fisheries Commission (and the Division of Marine Fisheries) shall be empowered to play a key role in establishing a new (or improved) water classification and standards for coastal fishery resources; (4) the Marine Fisheries Commission shall be given additional authority pertaining to water quality and water quantity factors that determine year class strength of anadromous species (striped bass, sturgeon, shad, alewife and herring), in conjunction with the Wildlife Resources Commission; and (5) the Marine Fisheries Commission (and the Division of Marine Fisheries) shall implement policies that will improve knowledge critical to improved habitat/water quality management decisions including, but not limited to, the following areas -- (a) better knowledge and management of the impacts of fishing gear on habitats, (b) more precise definitions and mapping of coastal habitats, and (c) more solid, defensible definitions of PNAs, based on scientific analysis. While all of the alternative recommendations have merit, the Organization Subcommittee defers to and supports the specific recommendations of the Habitat Subcommittee concerning the jurisdictional authority of the Marine Fisheries Commission and the Division of Marine Fisheries in habitat related matters.

2. Extra-territorial Jurisdiction.

In addition to concern over the scope of the Marine Fisheries Commission's authority related to habitat issues, the Organization Subcommittee was also concerned with the exercise to its fullest breadth of the Commission's authority over fish and fishermen. In that context, the Subcommittee makes the following additional recommendation:

- **The General Assembly should amend the North Carolina General Statutes to clarify that the Governor shall represent the State regarding ocean and marine fisheries in the Exclusive Economic Zone upon the advice and after consultation with the Marine Fisheries Commission.** The United States Exclusive Economic Zone, or "EEZ" as it is commonly referred to, extends offshore of North Carolina from three to two-hundred nautical miles. The EEZ is within the respective regulatory jurisdictions of the Atlantic States Marine Fisheries Commission, the South Atlantic Fishery Management Council, the Mid-Atlantic Fisheries Management Council and similar organizations established to manage or regulate fishing in the Atlantic Ocean. The decisions of those agencies have great effect on North Carolina fishery resources and fishermen. In addition, the Marine Fisheries Commission has potential rulemaking authority within the EEZ as far as permitted by federal law. Implementation of the recommended provision will clarify confusion that currently exists over who should make decisions pertaining to fishery resource matters occurring outside of North Carolina waters, by vesting litigation power for all

fisheries matters concerning the EEZ in the Governor after consultation with the Marine Fisheries Commission.

H. Commission Structure & Function.

There are a number of miscellaneous, but significant, provisions related to the organizational structure and function of the Marine Fisheries Commission that were considered at length by the Organization Subcommittee. The following recommendations result from those deliberations:

1. Commission Support Staff.

A significant shortcoming of the current system is that the General Statutes simply direct the Division of Marine Fisheries to "serve as staff" to the Marine Fisheries Commission. The reality is that directive simply results in an additional task being placed on the already full plate of the Division, with the end result being that the Division is forced to overextend its existing personnel, and the Commission is provided with inadequate staffing. For that reason, the Organization Subcommittee recommends that:

- **The General Assembly should create and fund as a continuing budget item two new state government positions for persons to serve as Marine Fisheries Commission staff: a Commission Liaison position to be filled by a person with a background in fisheries management, and a Clerical Support position. Commission staff should, to the extent permitted by state personnel law, be under the direction and supervision of the Chair of the Marine Fisheries Commission.** In the alternative to this recommendation, the Division of Marine Fisheries proposed that two new positions, identical to those recommended above, within the Division be created and permanently funded by the General Assembly for persons to serve as Marine Fisheries Commission staff. The Commission staff positions would be dedicated to providing support services required by the Chair of the Marine Fisheries Commission, but would be supervised by the Fisheries Director.

2. Commission Officers.

- **The Governor shall appoint the Chair of the Marine Fisheries Commission from the Commission membership, and the Chair shall serve at the pleasure of the Governor. A Vice Chair shall be elected annually by Commission members.** Alternative recommendations to this provision brought forward, considered and rejected by the Organization Subcommittee include the following suggestions: (1) the Chair of the Commission shall be appointed by the Governor for a specific term of years, and (2) the Chair shall be elected for a specified term by majority vote of the Commission.

3. Commission Business.

- **Vote by proxy shall not be allowed.** In this context, "vote by proxy" refers to one Commission member conferring authority upon a second Commission member to cast

his or her vote in the absence of the first Commissioner. The Organization Subcommittee concluded that the use of the power of proxy is not only subject to abuse, but serves as incentive for Commissioners not to attend each Commission meeting. Implementation of this prohibition will not, however, prevent a Commissioner from participating in a Commission meeting, including voting on issues, through telephone hookup or other electronic medium, as is allowed under current law.

- **A quorum of members shall be present to conduct business. A quorum is defined as a simple majority.** This provision simply reflects current law regarding the Marine Fisheries Commission.

I. Compensation.

The August 2, 1996 Public Meetings Draft Report of the Organization Subcommittee contained a recommendation concerning increased compensation for members of the Marine Fisheries Commission. The Moratorium Steering Committee has received comments from other state environmental agencies questioning the necessity of such increased compensation and raising equity issues in relation to other state environmental Commissions. For those reasons, the Committee has decided to delete any recommendation concerning compensation from its Final Report.

II. NORTH CAROLINA DIVISION OF MARINE FISHERIES.

The Organization Subcommittee also considered at length the organizational and functional effectiveness and efficiency of the North Carolina Division of Marine Fisheries. As a result of those deliberations, the Subcommittee makes the following specific recommendations to the Moratorium Steering Committee concerning the structure and functioning of the Division. As with the previous section of the Report, the Organization Subcommittee's recommendations are set out in bold print within each section.

A. Division Function.

The Organization Subcommittee believes that the Division of Marine Fisheries currently suffers from lack of identity and credibility, brought on in part by the failure of the Division to universally identify with, understand or subscribe to a common agency mission. The Subcommittee believes that if the Division is to improve its functional capabilities and regain public credibility that an identity must be established and the Division's mission clearly set forth. In keeping with that goal, the Subcommittee makes the following specific recommendations:

- **The Division should be required to develop and implement a written Strategic Plan that clearly establishes the agency's mission, includes both long range and short range goals of each section of the Division, and sets out a "yardstick" for measuring successful achievement of the Plan. The Fisheries Director should prepare an annual, written report jointly to the Secretary of the Department of Environment, Health, and Natural Resources, and the Marine Fisheries Commission, setting out the Division's progress in implementing the Strategic Plan. As envisioned by the**

Subcommittee, the Plan will be required to initially be developed with input from Division employees, other state agencies and the public, and would be required to be updated every five years. Each Division employee will be required to be provided a copy of, and be familiar with, the Division Strategic Plan.

- **The Division should be (re-)structured to maximize the effectiveness of its employees and to ensure agency accountability.** The Division must, through its internal organization and policies, ensure that there is accountability among its employees from the top down, if the Division's mission and statutory responsibilities are to be achieved. If Division employees are to be members of a unified team, then political hiring must be minimized or done away with altogether, and there must be equity in expectations, workloads, salaries and employee evaluations. The Subcommittee believes that review of Division organization with an eye to efficiency and effectiveness, and according structural modification, will go a long way towards achieving those goals.
- **The Division of Marine Fisheries should be (re-)structured as necessary to use its current statutory authorities to protect vital coastal fisheries habitats to the fullest possible extent.** Under current state law found in N.C.G.S. § 113-131, the Division of Marine Fisheries has, under authority delegated to it by the Secretary of the Department of Environment, Health, and Natural Resources, the ability to potentially influence or even halt issuance of State agency permits that may adversely affect coastal public trust resources and uses, and the ability to investigate and initiate legal action to halt private usurpations of public trust rights. For a variety of likely reasons, including manpower and political constraints, the Division has been unable or unwilling to effectively utilize this authority in many instances in the past. This policy must change if coastal fisheries habitats are to be protected in the future.
- **The Division should be (re-)structured to expand its current assessment and analytical capabilities, both internally and by its external association with the North Carolina and regional scientific communities.** The Division currently carries out effective roles in monitoring and managing the State's coastal fisheries, and those functions must be maintained. However, the Organization Subcommittee believes that the recommended expansion in assessment and analytical capabilities will be required for the Division to effectively prepare and administer Fishery Management Plans, which is recommended by the License Subcommittee as a basic premise upon which to base state license restructuring.
- **The current Deputy Director position in the Division of Marine Fisheries, charged with running Division day-to-day operations, should be permanently maintained within the Division organization.** This recommendation is included to ensure that the recently created Deputy Director position within the Division remains as a permanent position. It is simply impossible for one person to attend to all of the administrative, political and regulatory duties required of the North Carolina Fisheries Director.
- **Division salaries for scientific and technical positions should be upgraded to be more reflective of market salaries for similar positions in the private sector.** The salary levels of many Division technical positions are unrealistically low, placing the State at a great disadvantage in seeking to hire "top-notch" scientific and technical experts

who can best assist the Division and State in achieving coastal fisheries management and conservation goals. Low salaries are also a factor in employee dissatisfaction and the high attrition rate among Division biological staff.

In addition, it should be noted here that the Organization Subcommittee's August 2, 1996 Public Meetings Draft Report contained a recommendation that the Director of the Division of Marine Fisheries and Division Executive Staff positions should be moved to Raleigh. That recommendation was identical to the recommendation made by Gordon and Griswold in their Fisheries Research Report to the Moratorium Steering Committee. However, at the public meetings held by the Moratorium Steering Committee, comment ran three to one against this recommendation. Persons from the coastal area and commercial fishermen comprised the group primarily opposed to such a move. The discussions of the full Moratorium Steering Committee with input from the Division of Marine Fisheries and representatives of the Department of Environment, Health, and Natural Resources make it clear that the Fisheries Director has important roles to play both in Raleigh and in the coastal area, and that the Director's presence will accordingly be required in each area on a recurring basis. As a result of those discussions, the Committee concluded that its draft recommendation to move the Fisheries Director and his Executive Staff to Raleigh is not warranted at this time.

B. Division Communications.

Anyone who interacts with the Division of Marine Fisheries for any significant period of time quickly realizes the extent and depth of the morale problem among Division employees. While neither legislative action nor executive fiat can immediately correct the problems that have led the Division to its current situation, the Organization Subcommittee feels strongly that improved communication both among Division employees, and between the Division and the public, is a key to ultimately improving the situation. To that end the Subcommittee makes the following specific recommendations:

- **The Fisheries Director and the Deputy Director should be reasonably accessible to Division staff.** Implementation of this recommendation will likely require organizational changes that establish, at the minimum, a limited "open door" policy for Division staff.
- **An adequate Conference Room should be maintained at the Division's headquarters and at each of its regional offices, and regularly used both for internal and external communication functions.** This recommendation was proposed for deletion from the Organization Subcommittee's Report by some commentators at the Moratorium Steering Committee's public meetings, as being "too minor" for inclusion in the Report. However, the Subcommittee believes that the "little things" often end up causing major problems in any sort of organization. Lack of a central Division of Marine Fisheries meeting facility is one of those "little things" because it results in less opportunity for interaction among and between Division employees and between Division staff and the regulated public.
- **An adequate Division Employee Handbook should be developed, updated and maintained to (1) inform Division employees and provide guidance on available benefits, opportunities and policies; (2) more clearly establish what behaviors will or**

will not be tolerated from employees; and (3) clearly inform employees of the "chain-of-command" for decision-making and Division grievance procedures.

- **The Division should establish an affirmative program of idea and/or research exchange with the academic community, and with private and governmental research or conservation agencies, via an ongoing intern program, participation in seminar programs, a grant program, or similar mechanisms, and should provide increased opportunities for Division employees to participate in activities related to professional development and education.** The Subcommittee believes that the perceived institutional and/or policy barriers that have isolated the Division of Marine Fisheries from the academic community and from governmental and private research, educational and conservation agencies must be removed through the intentional efforts of the Division. A closer working relationship between the Division and those groups will undoubtedly lead to more efficient use of Division financial and manpower resources, and ultimately to better agency decision-making in relation to the use of state coastal fishery resources.
- **The Division should take immediate steps to strengthen its "Information & Education Section".** The Subcommittee strongly believes that the Division's "Information & Education Section" must be one of the major organizational components of the Division, and that the Section's future prominence is critical to removing the negative image, deserved or not, that the Division currently holds in the minds of much of the public. The Subcommittee specifically recommends that (1) the Division "newsletter" be re-established, upgraded and circulated on a monthly basis, including the solicitation of contributions from outside, non-staff writers; (2) the Division Library at Morehead City be revamped and strengthened to improve its utility for staff and its availability to the public; (3) the Division immediately examine the viability of a program of increased, proactive contacts between Division staff and the public, especially the public schools, e.g., offering "Teacher Training Workshops"; and (4) the Division explore and develop other ways of increasing positive agency interactions with the general public. It should be clear that this is a major undertaking and will undoubtedly require an additional investment of personnel and funds.
- **The Division should annually publish and distribute a summary of the "Status of North Carolina Marine Fisheries", setting forth not only summaries of landings and other data taken from Trip Tickets and effort surveys, but also summaries of ongoing Division research efforts and needs, and opportunities for public involvement in the conservation of the State's marine and estuarine resources.** Again, the Organization Subcommittee believes that full reporting by state agencies to the public is a key to strengthening the relationship between governmental agencies and the regulated community, to establishing agency credibility and to bolstering public confidence in government.
- **Marine Patrol organization and policies should be reviewed and revised to make law enforcement a more integral part of the Division, and officer training should include instruction not only in law enforcement techniques, but also in public education and in public relations.** This recommendation is consistent with the recommendations of the Law Enforcement Subcommittee. The Subcommittee notes that there is an increasing

perception that the Marine Patrol has grown apart from the rest of the Division from a communications standpoint in the last several years, and in some respects is like a separate agency that is simply housed within the Division of Marine Fisheries. This trend must be reversed if Marine Inspectors are to be effective in accomplishing the Division's statutory mandate to conserve and protect the State's marine and estuarine resources. The Subcommittee also notes that Marine Inspectors are the most visible of all of the Division's employees to the public, and as such, must necessarily be the good will ambassadors of the State, who educate and inspire members of the regulated community to conserve and protect our common public resource.

*APPENDIX I**Definitions of Membership Categories of
North Carolina Marine Fisheries Commission*

Commercial Fisherman: A person who, at the time of appointment, possesses in his/her name a current North Carolina Standard Commercial Fishing License, and derives at least 50% of his/her annual earned income from harvest of coastal fishery resources.

Fish Dealer: A person who, at the time of appointment, possesses in his/her name or in the name of his/her business a current North Carolina Fish Dealer License, and derives at least 50% of his/her annual earned income from buying and selling coastal fishery resources harvested by North Carolina commercial fishermen.

Recreational Fisherman: A person who, at the time of appointment, possesses in his/her name a current North Carolina Coastal Recreational Fishing License or Recreational Commercial Gear License, and fishes for coastal fishery resources without deriving any earned income from sale of his/her catch.

Fisheries Scientist: A person who, at the time of appointment, possess a degree beyond the baccalaureate level and is actively engaged in research on North Carolina's coastal fishery resources or estuarine/marine ecology.

Social Scientist: A person who, at the time of appointment, possess a degree beyond a baccalaureate level and is actively engaged in research on social, anthropological, or economic aspects of North Carolina's coastal area.

*APPENDIX II**PROPOSED OATH FOR SWEARING IN OF
NEW MARINE FISHERIES COMMISSION MEMBERS*

"I, _____, as a duly appointed member of the North Carolina Marine Fisheries Commission, hereby promise to conserve and manage the coastal fishery resources of North Carolina by carrying out the business of the Commission for the greatest overall benefit of the State of North Carolina without regard for my own personal benefit. I recognize my responsibility to serve as a knowledgeable and experienced trustee of North Carolina's coastal fishery resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions of all statutes, rules, standards, and guidelines which apply to activities of the Commission, and shall conduct myself at all times in a manner which will reflect honorably on the Commission. I fully understand that my failure to disclose properly my financial interests and applicable biases, and to recuse myself from Commission actions in accordance with applicable statutes and rules could result in my dismissal from the Commission. This oath is freely given and without mental reservation or purpose of evasion."

REPORT
OF THE *LAW ENFORCEMENT SUBCOMMITTEE*
TO THE
MORATORIUM STEERING COMMITTEE

*Adopted by the Moratorium Steering Committee
for Recommendation to the "Joint Legislative Commission on Seafood &
Aquaculture" on October 25, 1996*

***SUMMARY OF THE RECOMMENDATIONS OF THE LAW ENFORCEMENT
SUBCOMMITTEE***

1. The Marine Fisheries Commission and the Division of Marine Fisheries should establish procedures to ensure that enforceability of each proposed new rule is adequately considered in the rulemaking process.
2. The General Assembly should amend N.C.G.S. § 113-221(b) to allow the Marine Fisheries Commission to appropriately publish and distribute rule summaries and/or partial rule texts to marine fishery licensees.
3. The Division of Marine Fisheries should post all Marine Fisheries Commission rules and all Division proclamations currently in effect on the Division's existing "Internet" website.
4. The General Assembly should amend, as necessary, N.C.G.S. §§ 113-135 & 113-187 and the "North Carolina Structured Sentencing Act", N.C.G.S. §§ 15A-1340.10 *et seq.*, to reinstate the minimum penalties for coastal fisheries violations existing prior to the adoption of that Act.
5. The General Assembly should amend the North Carolina General Statutes to make the unlawful sale or purchase of marine or estuarine resources a "Class J felony" under the North Carolina Structured Sentencing Act.
6. The General Assembly should amend N.C.G.S. § 113-137 to set out the entire process of criminal seizures, including the process for notice, public auction of seized vessels and gear, and the ability to buy back the seized items prior to auction.
7. The North Carolina Division of Marine Fisheries should modify its Law Enforcement Policies and Procedures Manual, as necessary, to include adequate policy guidance for Marine Fisheries Inspectors in the exercise of their existing seizure authority, giving priority and emphasis to those offenses considered most serious by the Moratorium Steering Committee, and such policies should be updated at least every three years.
8. The General Assembly should amend N.C.G.S. § 113-136(d)(1) to provide expanded jurisdictional authority for Marine Patrol officers equivalent to that of Wildlife Resources Commission enforcement officers, and the Division of Marine Fisheries should develop and implement policies and procedures regulating the appropriate use of those additional authorities by individual Marine Fisheries Inspectors.
9. The General Assembly should appropriately amend the North Carolina General Statutes to allow Marine Fisheries Inspectors, with prior approval of the Fisheries Director, to use regular or fictitious vehicle license tags on Department of Administration motor vehicles during undercover operations.
10. The Department of Environment, Health, and Natural Resources should contract with the North Carolina Attorney General's Office to fund a "police attorney" position, dedicated to: (1) advising Departmental law enforcement agencies personnel, including officers of the Division of Marine Fisheries, on matters related to the enforcement and administration of criminal laws; (2) assisting in the training of Departmental law enforcement officers; (3) acting as a liaison between Departmental law enforcement agencies and the state judicial system; and (4) assisting in the prosecution of environmental, criminal enforcement cases when requested by the District Attorney of a local judicial district.
11. The Division of Marine Fisheries should immediately construct, and adequately equip and maintain, an oceangoing patrol vessel in order to provide an ongoing, visible State conservation presence in offshore waters and to act as a further deterrent to the violation of fisheries laws.
12. The Division of Marine Fisheries should develop a "Coastal Fisheries Crimes Prosecution Manual", seek to send representatives to annual conferences of State Judges and District Attorneys, and take other appropriate actions in developing and implementing an education program for the state judicial system concerning the significance of fair and consistent prosecution and application of the laws in conserving the State's marine and estuarine resources.

13. The General Assembly should amend N.C.G.S. § 113-166 to authorize, and require the North Carolina Marine Fisheries Commission to develop and implement, a "Violation Points System" similar to the system described below (which is patterned after the North Carolina Department of Motor Vehicles' Driver's License Points System), applicable to the fishing licenses of all persons who violate marine fisheries statutes and rules.
14. The General Assembly should appropriately amend the North Carolina General Statutes to vest the North Carolina Marine Fisheries Commission with the authority to assess monetary, civil penalties against persons who commit major violations of coastal fisheries laws.
15. The General Assembly should authorize and fund, initially on a limited basis [*i.e.*, in a pilot program], a highly structured law enforcement assistance program using carefully selected and fully trained volunteers, with the goal of improving the scope and effectiveness of Marine Patrol field activities through the use of citizen volunteers, based on a pilot program plan prepared by the Division of Marine Fisheries and approved by the Marine Fisheries Commission.
16. The Division of Marine Fisheries should examine the feasibility and advantages offered by increasing opportunities for officer training by, or in cooperation with, the State Highway Patrol, the Wildlife Resources Commission, and other state and federal law enforcement agencies.
17. As a part of their annual, in-service training, Marine Fisheries Inspectors should receive instruction on recognizing, investigating and responding to violations of state environmental laws; if the Marine Fisheries Commission receives additional, specific rule-making authority relating to habitat and/or water quality protection, the Secretary of the Department of Environment, Health, and Natural Resources should establish an "environmental crimes unit" within the Marine Patrol.
18. The Division of Marine Fisheries should provide specific training for its Marine Fisheries Inspectors in interacting with and educating the public in the use and protection of marine and estuarine resources, and the focus of the Marine Patrol's "Policies and Procedures Manual" should be broadened to specifically enumerate appropriate policies governing interaction with the regulated community.
19. The Marine Fisheries Commission and the Division of Marine Fisheries should work cooperatively with the North Carolina Wildlife Resources Commission to resolve existing or potential enforcement problems in: (a) evaluating and adjusting Inland Waters--Coastal Waters boundaries; and (b) evaluating and adjusting rules relating to size and creel limits and harvest seasons for migratory fish occurring both in Coastal and Inland Waters.
20. The Division of Marine Fisheries should closely monitor implementation of the recommendations of the Moratorium Steering Committee by the Legislature and the Marine Fisheries Commission, and the Division should prepare appropriate expansion budget documents necessary to ensure that enforcement does not lag behind modifications to the institutional structure and agency management of marine and estuarine resources.

INTRODUCTION

No matter how sound the State institutions and agency policies administered to manage North Carolina's marine and estuarine resources, and no matter how good North Carolina's system of laws and regulations enacted to conserve and protect those public resources, their preservation is simply not possible without adequate enforcement of those laws and policies. The North Carolina Division of Marine Fisheries' Marine Patrol Section has the primary responsibility for the enforcement of state laws intended to protect North Carolina's coastal fishery resources. For those reasons, implementation of the recommendations for better law enforcement proposed by the Law Enforcement Subcommittee are crucial to the future conservation and management of our public coastal fishery resources.

Where natural resources protection is at issue, enforcement must deter fishermen from ignoring the need to conserve and protect coastal fish stocks, a publicly owned resource. However, in its broadest sense, enforcement of fisheries laws means not just investigating violations and issuing citations, but also, developing and implementing policies and programs that educate the regulated community about the necessity of conserving public fishery resources and about the laws enacted to achieve that protection. It is in that total sense that the Moratorium Steering Committee Law Enforcement Subcommittee has discussed and evaluated the law enforcement effort required to conserve and manage North Carolina's coastal fishery resources.

One of the consultant studies commissioned by the full Moratorium Steering Committee, *"An In-Depth Administrative Review of the North Carolina Division of Marine Fisheries and the North Carolina Marine Fisheries Commission,"* by W. G. Gordon and B. L. Griswold, examines the organization and functioning of the Division of Marine Fisheries, including Division law enforcement. The Law Enforcement Subcommittee reviewed and evaluated the conclusions of the consultants that specifically pertain to marine fisheries law enforcement. Gordon and Griswold found Division law enforcement to be publicly regarded "as inconsistent and influenced by special interests (including political) and conflict of interest. Regulations are a nightmare for both clientele and officers. There is a perception that the general qualification of officers could be upgraded." In response to those public "perceptions", Gordon and Griswold make four general recommendations concerning enforcement by the Marine Patrol. The Subcommittee fully discussed and either adopted verbatim, appropriately modified or rejected each of the major Gordon and Griswold recommendations on law enforcement, as set out under the appropriate topic below.

In addition to examining the Gordon and Griswold Report as a part of its extensive deliberations over the last two years, the Law Enforcement Subcommittee has received substantial input at its meetings from non-Committee members and heard extensive public comment on its draft Report at the Moratorium Steering Committee's statewide public meetings. Based on those discussions and inputs, the Subcommittee makes a series of specific recommendations below that are intended to improve the efficiency and effectiveness of the State in enforcing laws related to the conservation and management of North Carolina marine and estuarine resources.

RECOMMENDATIONS

I. DETERRENCE OF UNLAWFUL FISHING ACTIVITIES.

At the statewide public meetings of the Moratorium Steering Committee, there was widespread, general support for: (1) stronger penalties for persons convicted of violating coastal fisheries laws and (2) a stronger law enforcement presence by Division of Marine Fisheries officers. Many speakers expressed a belief that until there is significant additional incentive to obey coastal fisheries laws relative both to being caught breaking the law and to the potential consequences of such an act, violations of fisheries laws will continue to have a substantial, adverse impact on the health and status of coastal fishery resources. After much deliberation, the Law Enforcement Subcommittee concluded that deterrence of activities having adverse impacts on coastal fishery resources can best be achieved through an approach that first seeks to educate the regulated public as to the current law regarding marine fisheries, and secondly, subjects a violator to potential criminal and civil liability for his or her acts. That approach is reflected in the recommendations set out in bold print below.

A. PUBLIC EDUCATION REGARDING FISHERIES LAWS.

Many commentators at the Moratorium Steering Committee's public meetings expressed their frustration with the laws regulating coastal fishing activities as being too complex and subject to too rapid change without adequate public notice. The Marine Fisheries Commission's "thick" Rulebook was ridiculed, and several persons complained that changes in the rules were not well advertised. According to those speakers, it is impossible for even the most law abiding citizen to avoid breaking coastal fishing laws. While the Law Enforcement Subcommittee believes that this criticism is overstated, the Subcommittee acknowledges that those complaints do, at least on occasion, have some validity.

While proposals regarding the Division of Marine Fisheries' role in educating the public regarding coastal fishing laws are for the most part more appropriate to the "Report of the Subcommittee on Marine Fisheries Commission and Division of Marine Fisheries Organization", the Law Enforcement Subcommittee makes two specific recommendations in this area. Their implementation should substantially improve the State's current performance in informing the general public of laws pertaining to coastal fisheries harvest. Those recommendations are as follows:

- **The Marine Fisheries Commission and the Division of Marine Fisheries should establish procedures to ensure that enforceability of each proposed new rule is adequately considered in the rulemaking process.** The Law Enforcement Subcommittee believes that Commission rules that, though well intended, are unenforceable as a practical matter serve no useful purpose in conserving the State's coastal fishery resources. Instead, they simply place officers in the difficult position of having no real means of carrying out a portion of their duties. Early and substantial involvement of the Marine Patrol in the Marine Fisheries Commission's rulemaking process will help to ensure that each new rule can be practically enforced, and thus will

serve as a deterrent to activities that adversely impact North Carolina marine and estuarine resources.

- **The General Assembly should amend N.C.G.S. § 113-221(b) to allow the Marine Fisheries Commission to appropriately publish and distribute rule summaries and/or partial rule texts to marine fishery licensees.** Current statutory law requires that upon purchasing a North Carolina coastal fishing license, "each licensee shall be given a copy of the rules concerning the activities authorized by the license." N.C.G.S. § 113-221(b). Under that provision, the Marine Fisheries Commission Rulebook must, as a practical matter, include virtually all Commission rules, even though most rules will in actuality never have any consequence to a particular licensee. The above recommendation was specifically requested by the Division of Marine Fisheries to resolve this problem and is fully in agreement with comments expressed at the Moratorium Steering Committee's public meetings. It also follows the Gordon and Griswold recommendation that the State "[s]treamline, clarify, and simplify the book of regulations."
- **The Division of Marine Fisheries should post all Marine Fisheries Commission rules and all Division proclamations currently in effect on the Division's existing "Internet" website.** This recommendation was brought forward at the public meetings of the Moratorium Steering Committee and is endorsed by the Law Enforcement Subcommittee. It will ensure that any person -- especially those who do not live immediately adjacent to the coast -- with access to the Internet, now widely available at public libraries, will have the ability to read and understand state regulations concerning the harvest of marine and estuarine resources before undertaking such activities.

B. CRIMINAL LAW DETERRENCE.

The second key to making the regulatory system more effective in protecting fishery resources is to ensure that the potential penalties for violations of fishery laws are harsh enough to have significant deterrent effect against subsequent violations. During the Moratorium Steering Committee's public meetings and throughout its deliberations, the Committee has been told that the penalties for a convicted offender of coastal fisheries laws are so minimal that many persons view it simply as a "cost of doing business". It is self-evident that a \$50.00 fine and the costs of court (~\$65.00) are insufficient to put a stop to violations where the value of the catch is substantial.

1. CRIMINAL PENALTIES FOR VIOLATING COASTAL FISHING LAWS.

The "minimal penalties" problem for coastal fishing law violations was unintentionally exacerbated by the 1994 legislative enactment of the "Structured Sentencing Act", codified at N.C.G.S. §§ 15A-1340.10 *et seq.* The effect of that legislation was to reduce, in most cases, the previously existing penalties for coastal fisheries law violations, as set out in N.C.G.S. §§ 113-135 & 113-187. For that reason, the Law Enforcement Subcommittee recommends as a first step toward resolving this problem that:

- **The General Assembly should amend, as necessary, N.C.G.S. §§ 113-135 & 113-187 and the "North Carolina Structured Sentencing Act", N.C.G.S. §§ 15A-1340.10 *et seq.*, to reinstate the minimum penalties for coastal fisheries violations existing prior to the adoption of that Act.**

In addition, partly as a result of comment made at the Moratorium Steering Committee's public meetings, the Law Enforcement Subcommittee recognizes the need to amend its Report to deal with the problem of persons who simply "go around" the coastal fisheries regulatory system by harvesting and selling fish without being licensed. They apparently do so because they have no fear of being caught or of the consequences if they are caught. The Committee has been apprised of unlawful sale of fish by hook-and-line recreational fishermen, and by both recreational and commercial fishermen using commercial gears. Illegal sale of fish simply means that the landings and effort information that resulted in the salable fish is ignored, which results in the underestimation of harvest by fisheries managers. Such "non-reporting" and harvest underestimation may result in both the passage of regulatory measures inadequate to protect the resource from actual harvest pressures and in the non-allocation of potential harvest that could be sustained by the resource.

With the adoption of the requirement that Fishery Management Plans be developed as the cornerstone of future state coastal fisheries management under the recommendations of the Moratorium Steering Committee, and given the dependence of those plans on accurate, adequate data collection, it is essential that the State deal with the issue of non-reporting. After much discussion of that issue, the Law Enforcement Subcommittee finds that non-reporting looms as a substantial roadblock to equitable, future decisions on questions related to resource status and allocation. For those reasons, the Subcommittee concludes that non-reporting is one of the most potentially serious, if not *the* potentially most serious, threat to adequate future resource management, and recommends the following:

- **The General Assembly should amend the North Carolina General Statutes to make the unlawful sale or purchase of marine or estuarine resources a "Class J felony" under the North Carolina Structured Sentencing Act.** Adoption of this recommendation will underscore the seriousness of the threat that unlawful sale of coastal fishery resources poses to management of a public resource. Consequently, it will help to ensure that potential violators think twice before selling or buying unlawfully harvested fish. By drying up the market for fish taken by those not licensed to sell, implementation of this recommendation will also serve to greatly reduce potential overharvest by persons not licensed in North Carolina as commercial fishermen. It will also protect legitimate commercial fishermen from unfair competition from persons not licensed to sell fish, and from market disruption and other adverse consequences that could result from tainted fish, caused by improper handling, entering the market.

2. MARINE PATROL OFFICER AUTHORITY AND JURISDICTION.

Early on the Law Enforcement Subcommittee determined that there are a number of specific areas pertaining to the authority and jurisdiction of Marine Patrol officers

that, if strengthened and enhanced, will add substantially to the deterrent effect of law enforcement against violation of coastal fishing laws. One of those areas concerns the more regular use against violators of the seizure authority possessed by law enforcement officers. Another centers on the limiting effect existing restrictions on the enforcement authority of Division of Marine Fisheries' Inspectors may have on the officer's ability to conserve and protect marine and estuarine resources. Each of those areas is discussed below, in turn.

a. Seizure of Catch and Equipment.

The Law Enforcement Subcommittee believes that existing seizure statutes and policies are not strong enough to provide a sufficient deterrent to certain serious fisheries law violations. For that reason, as an additional step in rectifying the "minimal penalty" problem, the Subcommittee recommended in its August 2, 1996 Public Meetings Draft Report that seizure of the equipment and vessels of offenders be mandatory for certain violations, and that the seizure process be spelled out in statute. South Carolina General Statute § 50-17-650, regarding shrimping, was proposed as the model for implementation of this recommendation. However, after listening to public comment on the seizure issue, talking with South Carolina law enforcement personnel about their experience with a mandatory seizure law, and then fully reconsidering the "pros" and "cons" of such a recommendation, the Law Enforcement Subcommittee has concluded that while mandatory seizure of vessels and equipment would serve as a strong deterrent to coastal fishing law violations, implementing such a policy would be logistically impractical. The greatest concerns are that such seizures would: (1) require an investment of officer manpower disproportionate to the deterrence value of the policy, diverting Marine Patrol efforts from other enforcement activities; and (2) expose the State to significant potential civil liability for damage to privately owned vessels and other seized property held in state custody.

Recognizing that Marine Patrol officers currently possess the discretionary authority under N.C.G.S. § 113-136 to seize the "evidence, fruits and instrumentalities" of any crime and for the reasons discussed above, the Subcommittee instead recommends the following:

- **The General Assembly should amend N.C.G.S. § 113-137 to set out the entire process of criminal seizures, including the process for notice, public auction of seized vessels and gear, and the ability to buy back the seized items prior to auction.** Implementation of this provision would help to ensure uniformity in the application of seizure authority by Division of Marine Fisheries officers and certainty among those potentially subject to such authority.
- **The North Carolina Division of Marine Fisheries should modify its Law Enforcement Policies and Procedures Manual, as necessary, to include adequate policy guidance for Marine Fisheries Inspectors in the exercise of their existing seizure authority, giving priority and emphasis to those offenses considered most serious by the Moratorium Steering Committee,**

and such policies should be updated at least every three years. While the Law Enforcement Subcommittee withdraws its recommendation that seizures automatically be mandatory for certain crimes related to North Carolina's coastal fisheries, the Subcommittee believes that in order for officers' existing seizure authority to serve as a significant deterrent to future violations, the Marine Patrol must more fully develop its seizure policies. In doing so, the Division of Marine Fisheries should use the seizure priority list developed by the Law Enforcement Subcommittee as the basis for developing such policies and, insofar as is practical, should make the seizure of vessels and equipment mandatory or probable for those violations. The list of the most serious fishery law offenses developed by the Law Enforcement Subcommittee is as follows: (a) trawling in a Primary Nursery Area (PNA); (b) trawling in a Permanent Secondary Nursery Area (SNA); (c) taking Shellfish from a prohibited area at night; (d) taking shellfish from a permanently closed area; (e) taking fish by unlawful use of poisons, drugs, explosives, or electricity; (f) willfully harming federally protected threatened or endangered species, such as sea turtles or marine mammals; and (g) robbing or willfully injuring fishing equipment.

b. Expanded Officer Authority.

In addition to recommendations concerning use of Marine Patrol officer seizure authority as a deterrent to coastal fishing law criminal violations, the Law Enforcement Subcommittee also has concluded that the deterrent effect of law enforcement can be enhanced by implementing the following recommendations concerning officer jurisdiction and authority:

- **The General Assembly should amend N.C.G.S. § 113-136(d)(1) to provide expanded jurisdictional authority for Marine Patrol officers equivalent to that of Wildlife Resources Commission enforcement officers, and the Division of Marine Fisheries should develop and implement policies and procedures regulating the appropriate use of those additional authorities by individual Marine Fisheries Inspectors.** Currently, Division of Marine Fisheries Inspectors possess the subject matter jurisdiction only to enforce specific laws as enumerated in N.C.G.S. § 113-136. This can be a problem, especially in remote areas, where Marine Patrol officers are often the only regular law enforcement presence. Implementation of this provision will authorize a Marine Patrol officer to respond to any crime, including any misdemeanor committed in the officer's presence. At the same time, the primary mission of Marine Patrol officers must be to enforce the laws pertaining to the conservation and protection of marine and estuarine resources, and expanded jurisdictional authority into other areas has the potential to distract Inspectors from that task. In recognition of that danger, the Law Enforcement Subcommittee believes it incumbent upon the Division of Marine Fisheries to develop internal policies governing the exercise of officer authority in non-conservation related matters.
- **The General Assembly should appropriately amend the North Carolina General Statutes to allow Marine Fisheries Inspectors, with prior approval of the Fisheries Director, to use regular or fictitious vehicle license tags on**

Department of Administration motor vehicles during undercover operations. As persons who commit serious violations of coastal fishing laws have become more organized and sophisticated in their efforts to circumvent the laws, the need has arisen for the Marine Patrol to counter that change by also becoming more organized and sophisticated in its enforcement response. One such response has been the increased use by the Marine Patrol of undercover operations in investigating ongoing fisheries law violations. Adoption of this provision will simply facilitate the execution of such undercover enforcement efforts.

3. OTHER CRIMINAL ENFORCEMENT PROVISIONS.

The Law Enforcement Subcommittee also discussed a wide range of other topics related to criminal law enforcement in the context of the conservation and protection of marine and estuarine resources. As a result of those discussions, the Subcommittee makes the following additional recommendations targeted at increasing the deterrent effect of criminal law enforcement in preventing fishing law violations:

- **The Department of Environment, Health, and Natural Resources should contract with the North Carolina Attorney General's Office to fund a "police attorney" position, dedicated to: (1) advising Departmental law enforcement agencies personnel, including officers of the Division of Marine Fisheries, on matters related to the enforcement and administration of criminal laws; (2) assisting in the training of Departmental law enforcement officers; (3) acting as a liaison between Departmental law enforcement agencies and the state judicial system; and (4) assisting in the prosecution of environmental, criminal enforcement cases when requested by the District Attorney of a local judicial district.** Implementation of this provision will serve a number of essential purposes. First, it will help to ensure that the Marine Patrol receives the ongoing legal guidance necessary to the fair and efficient enforcement of coastal fisheries laws by the State. Second, it will lessen the degree to which state agencies and agents are unnecessarily exposed to potential civil liability, which is borne at the expense of the taxpayer, and citizens are exposed to inappropriate detention, resulting from the improper exercise of the powers of search, seizure and arrest by law enforcement personnel. And third, it will help to ensure that fishery resource violations are taken seriously within the judicial system and that such laws serve as a reasonable deterrent against actions that adversely impact coastal fishery resources.
- **The Division of Marine Fisheries should immediately construct, and adequately equip and maintain, an oceangoing patrol vessel in order to provide an ongoing, visible State conservation presence in offshore waters and to act as a further deterrent to the violation of fisheries laws.** This recommendation is made largely to ensure that the State maintains an adequate enforcement presence in offshore waters and in the larger sounds and bays comprising internal North Carolina coastal waters, by replacing the Division's current oceangoing vessel, the *Royal Shoal*.
- **The Division of Marine Fisheries should develop a "Coastal Fisheries Crimes Prosecution Manual", seek to send representatives to annual conferences of State Judges and District Attorneys, and take other appropriate actions in**

developing and implementing an education program for the state judicial system concerning the significance of fair and consistent prosecution and application of the laws in conserving the State's marine and estuarine resources. This provision is in keeping with the similar recommendation of Gordon and Griswold, which the Subcommittee fully supports. In conjunction with implementation of the above recommendation for a Departmental "police attorney", its adoption will serve to increase the knowledge of the North Carolina judicial system about fishery law violations, and thus will help to ensure that such violations are treated with the seriousness they deserve.

C. CIVIL DETERRENCE REMEDIES.

The Law Enforcement Subcommittee believes that every violation of a law regarding marine and/or estuarine resources must be taken seriously. Further, equity in penalizing commercial and sport fishermen for fisheries violations is an important consideration [*i.e.*, "the time should fit the crime"]. However, the relative harshness of penalties imposed upon criminal defendants is within the province of the State's criminal justice system, and entirely out of the hands of state resource agencies. For those reasons, the Law Enforcement Subcommittee believes that the General Statutes should be amended to create civil penalty authority in the case of marine fisheries violations. Such legislative action would be entirely consistent with North Carolina's treatment of most other environmental violations, for which both criminal and civil sanctions exist. The Subcommittee sets out a number of recommendations below directly related to that aim.

1. VIOLATION POINTS SYSTEM.

- **The General Assembly should amend N.C.G.S. § 113-166 to authorize, and require the North Carolina Marine Fisheries Commission to develop and implement, a "Violation Points System" similar to the system described below (which is patterned after the North Carolina Department of Motor Vehicles' Driver's License Points System), applicable to the fishing licenses of all persons who violate marine fisheries statutes and rules.** This recommendation, of course, goes hand-in-hand with the three-tiered coastal fishing licensing system recommended by the License Subcommittee, under which almost all persons harvesting marine and estuarine resources will be individually licensed. Specifics of this general recommendation for development of a Violation Points System are set out below. It must be stressed at the outset, however, that the provisions discussed below are simply a recommendation to the Marine Fisheries Commission, which will have the authority and duty to develop the State's Violation Points System for coastal fishing law offenses. These specifics are intended to give the Commission the insight of the Law Enforcement Subcommittee's extensive, two-year deliberations on the issue, and to serve as a basis for the Commission's development of a final rule establishing the State's civil points system. They *are not*, and are not intended to be, the final word on the issue, as was commonly assumed at many of the public meetings held by the Moratorium Steering Committee. Establishment of such a system by rule will require the Marine Fisheries Commission to take its proposed system through the public rulemaking process, at which time the entire matter will

receive a thorough re-airing. Provisions of the recommended civil "Violation Points System" are as follows:

- a. A point value will be assigned by the Marine Fisheries Commission to every violation of a statute or rule within its purview, *i.e.*, for every violation of a statute or rule related to marine or estuarine fisheries.
- b. The Violation Points System structure is based on assessment of from zero (0) to eighteen (18) points for each conviction for a fisheries law violation, depending upon the relative seriousness of the offense committed with respect to its adverse effect upon publicly owned fishery resources. No points will be assigned for administrative violations, *i.e.*, those having negligible potential resource impacts. Eighteen points will be assessed only in the case of very serious resource violations. A table of violations and their suggested point values, derived from extensive deliberation of the Subcommittee, is attached as Appendix I. At the public meetings of the Moratorium Steering Committee, a number of speakers criticized specific "points" recommendations of the Law Enforcement Subcommittee as set out in that Appendix. Those specific comments are discussed at the appropriate section in Appendix I.
- c. Points will be assessed against the violator upon conviction, retroactive to the date of the violation, according to the Commission's adopted point schedule. At the Moratorium Steering Committee's public meetings, several speakers criticized what they viewed as inequities in application of the recommended Violation Points System. For instance, several persons pointed out that under the recommended system, an individually licensed surf fisherman who commits and is convicted of a size limit violation would have points assessed against his license, while an adjacent, unlicensed pier fisherman fishing under the blanket license of the pier can be convicted of the exact same violation without any ability by the State to assess points against his/her license. The Law Enforcement Subcommittee is aware of these anticipated inequities and is convinced that each such problem can be resolved. However, the Subcommittee would again emphasize that the Violation Points System recommended in this Report is a tentative one, and that the proper forum for working out these issues is in the Marine Fisheries Commission rulemaking process that will result from implementation of this recommendation.
- d. The term "conviction", for the purposes of this statute, is defined broadly, as it currently is under N.C.G.S. § 113-166, to include "no contest" pleas, "prayers for judgment continued" and similar resolutions of criminal charges against a violator. This broad interpretation of the term "conviction" for purposes of the Violation Points System was strongly supported by speakers during the Moratorium Steering Committee's public meetings process.
- e. For multiple offenses deriving from a single incident, points will be assessed only for the single violation carrying the greatest number of points.

- f. Suspensions will be implemented by the Secretary of the Department of Environment, Health, and Natural Resources (or the Fisheries Director as the Secretary's designee) immediately upon receiving notice of a conviction against a fisheries law violator.
 - g. Suspensions and revocation decisions will be based on the following schedule of accumulated point totals:
 - (1) Accumulation of from 18 - 25 points within a 3-year period will result in a 30-day suspension of licenses,
 - (2) Accumulation of from 26 - 35 points within a 3-year period will result in a 6-month suspension of licenses, and
 - (3) Accumulation of ≥ 36 points in a 3-year period will result in license revocation for a minimum period of 1-year.
 - h. The individual whose license privileges are suspended or revoked will have the same right of appeal of the action as currently exists under N.C.G.S. § 113-166.
 - i. At the expiration of a suspension or revocation period, the points assessed against that license will decrease by half.
 - j. For each year without a conviction for a coastal fisheries law violation, accumulated points will decrease by half.
 - k. A balance of 2 points or less against an individual will be dropped entirely.
 - l. In the case of license revocation, the violator can apply for a new license after the year is over provided the violator's point total has fallen below the suspension threshold.
 - m. As is currently the case under N.C.G.S. § 113-166, in order to receive reinstatement of one or more license privileges, the violator will be required to show "that he will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules...".
 - n. The Marine Fisheries Commission will be authorized to adjust point system values by rule, and each new rule adopted by the Commission will be required to contain a concomitant point value to be incorporated into the Commission's then existing Violations Points System schedule.
 - o. In any other and all respects not set out above, N.C.G.S. § 113-166 will remain as presently codified.
- **The General Assembly should appropriately amend the North Carolina General Statutes to vest the North Carolina Marine Fisheries Commission with the authority to assess monetary, civil penalties against persons who commit major**

violations of coastal fisheries laws. The intent of the Law Enforcement Subcommittee in making this recommendation is to ensure that violations pertaining to coastal fisheries laws are treated similarly to other environmental violations occurring in the State. The result of implementation of this provision will be that the Marine Fisheries Commission, like the North Carolina Environmental Management Commission and the North Carolina Coastal Resources Commission, is authorized to assess civil, monetary penalties against persons violating the laws the Commission administers, either in lieu of, or in addition to, any criminal sanctions sought by the agency. The granting of such authority is not only consistent with the authority of other environmental agencies with jurisdiction over coastal areas, but will also have a substantial deterrent effect against the violation of coastal fisheries laws.

D. ENFORCEMENT VOLUNTEERS PROGRAM.

It is widely acknowledged that enforcement of coastal fisheries conservation rules and statutes is an extremely difficult assignment. Variable conditions, such as weather, seasonal migrations, night fishing and the vast area to be patrolled combine to greatly complicate the task. Even with several additional officer positions in recent years, the North Carolina Division of Marine Fisheries' Marine Patrol cannot fully cover all coastal water areas in which fishing and other regulated activities occur.

The Law Enforcement Subcommittee notes that several Atlantic coast states utilize volunteers to augment their patrol capabilities. Investigation shows that these programs work quite well, have excellent public support, and are relatively inexpensive to operate. Consequently, the Law Enforcement Subcommittee proposed in its August 2, 1996 Public Meetings Draft Report that the State initiate a Marine Patrol volunteer officer program as described below. That recommendation elicited a great deal of public comment at the public meetings held by the Moratorium Steering Committee. The majority of that comment came from the commercial fishing community and was negative, deriving from the fear of the speakers that persons participating in the Volunteer Enforcement Program would primarily be those with a bent against commercial fishing. This suspicion was no doubt augmented by the fact that recreational fishermen at the public meetings universally supported this recommendation. After listening to those public comments and reconsidering the issues, the Law Enforcement Subcommittee has concluded that there is a great deal of misunderstanding on the part of the public concerning the scope and nature of the recommended program. As recommended here, the Enforcement Volunteers Program will initially consist of a small, carefully controlled pilot program, that after its initial run will be thoroughly evaluated to determine whether it should be continued. In that context, the Subcommittee believes that the recommendation has substantial merit, and thus re-affirms its initial recommendation set out below:

- **The General Assembly should authorize and fund, initially on a limited basis [i.e., in a pilot program], a highly structured law enforcement assistance program using carefully selected and fully trained volunteers, with the goal of improving the scope and effectiveness of Marine Patrol field activities through the use of citizen volunteers, based on a pilot program plan prepared by the Division of Marine Fisheries and approved by the Marine Fisheries Commission.**

The Enforcement Volunteers Program recommended here must, at a minimum, adhere to the following general principles:

- a. The program will be designed with assistance from the North Carolina Law Enforcement Training and Standards Commission, North Carolina Criminal Justice Academy and the North Carolina Department of Justice, to consider such critical issues as the scope of duties and authority of volunteers, the use of firearms and operation of state equipment by volunteers [the Law Enforcement Subcommittee suggests that the appropriate, initial step in development of a Marine Patrol volunteer officer program might be to issue a design contract to the North Carolina Criminal Justice Academy or to some other qualified group or agency];
- b. Program design will establish volunteer selection, training, operation, evaluation and other necessary policies, standards and guidelines;
- c.. Following its initial implementation as a pilot program and its evaluation, expansion of the program will only be authorized if the "trial run" is successful;
- d. The State will provide, through an insurance policy or other means, volunteer indemnification for injuries incurred while acting as an agent of the State; and
- e.. The program will be adequately funded to ensure sufficient staff support for coordination, training, record-keeping, scheduling and evaluation.

II. MARINE PATROL OFFICER TRAINING.

Regardless of the authorities and other "tools" possessed by Division of Marine Fisheries officers, the efficacy with which those tools are employed will likely be only as good as the training officers receive to enable them to use their powers. Gordon and Griswold recognized that probability and made a number of recommendations to the Moratorium Steering Committee to improve Marine Patrol Officer training. Accordingly, the Law Enforcement Subcommittee makes the following recommendations for improved officer training:

- **The Division of Marine Fisheries should examine the feasibility and advantages offered by increasing opportunities for officer training by, or in cooperation with, the State Highway Patrol, the Wildlife Resources Commission, and other state and federal law enforcement agencies.** In recommending this provision, the Subcommittee rejects the specific recommendation of Griswold and Gordon that the administrative responsibility for hiring and training of Marine Fisheries Inspectors be moved to the State Highway Patrol, as being unnecessary and potentially counterproductive. In addition, at the Moratorium Steering Committee's public meetings, a number of persons commented that the law enforcement sections of the Division of Marine Fisheries and the Wildlife Resources Commission should be consolidated for efficiency and uniformity of enforcement of fish and game laws. However, the Law Enforcement Subcommittee also rejects that proposal in the belief that the administration and enforcement of game and inland fishing laws are fundamentally different from the administration and enforcement of coastal fishing laws.

This difference derives in large part from the simple fact that there is no longer any commercial side to the taking of game animals (including gamefish), whereas coastal North Carolina supports a thriving commercial fishing industry. Nevertheless, the Subcommittee believes that cooperative training with other appropriate law enforcement agencies can potentially decrease Division training costs, increase the overall effectiveness of the Marine Patrol and improve Marine Patrol credibility.

- **As a part of their annual, in-service training, Marine Fisheries Inspectors should receive instruction on recognizing, investigating and responding to violations of state environmental laws; if the Marine Fisheries Commission receives additional, specific rule-making authority relating to habitat and/or water quality protection, the Secretary of the Department of Environment, Health, and Natural Resources should establish an "environmental crimes unit" within the Marine Patrol.** This provision corresponds with the recommendations in the "Report of the Habitat Subcommittee" that the Division of Marine Fisheries and Marine Fisheries Commission be given greater authority in the province of coastal habitat conservation and protection. At the public meetings of the Moratorium Steering Committee, such expanded authority received overwhelming public support.
- **The Division of Marine Fisheries should provide specific training for its Marine Fisheries Inspectors in interacting with and educating the public in the use and protection of marine and estuarine resources, and the focus of the Marine Patrol's "Policies and Procedures Manual" should be broadened to specifically enumerate appropriate policies governing interaction with the regulated community.** This recommendation is essentially the same as that of Gordon and Griswold that the Division "[p]rovide administrative support for more deterrence programs (education and public outreach) among law enforcement officers ..., " which the Subcommittee fully supports.

III. OTHER RECOMMENDATIONS RELATED TO ENFORCEMENT.

In addition to the specific changes already recommended in its Report, the Law Enforcement Subcommittee discussed a number of other, miscellaneous changes to the current administration of coastal fisheries regulations that would enhance the ability of the Division of Marine Fisheries' officers to enforce the laws. Recommendations resulting from those discussions are set out below:

- **The Marine Fisheries Commission and the Division of Marine Fisheries should work cooperatively with the North Carolina Wildlife Resources Commission to resolve existing or potential enforcement problems in: (a) evaluating and adjusting Inland Waters--Coastal Waters boundaries; and (b) evaluating and adjusting rules relating to size and creel limits and harvest seasons for migratory fish occurring both in Coastal and Inland Waters.** This recommendation is made as a result of problems caused by the overlap of the respective regulatory authorities of the Marine Fisheries and Wildlife Resources Commissions in North Carolina "joint waters", where rules and policies of the two Commissions may differ significantly. The recommendation was supported by the public at the Moratorium Steering Committee statewide public meetings.

Finally, the Law Enforcement Subcommittee anticipates that changes in the coastal fisheries management system resulting from the Moratorium Steering Committee's full set of recommendations, such as increased types and numbers of licenses, greater cooperation with federal enforcement agencies, and responsibility for some aspects of habitat and water quality protection, will place an increased enforcement burden on the Marine Patrol. For that reason, the Law Enforcement Subcommittee believes it is essential that Division law enforcement remain abreast of and respond to changes as they occur in terms of structure, resource allocation, and policy development and implementation. To that end, the Subcommittee makes the following recommendation:

- **The Division of Marine Fisheries should closely monitor implementation of the recommendations of the Moratorium Steering Committee by the Legislature and the Marine Fisheries Commission, and the Division should prepare appropriate expansion budget documents necessary to ensure that enforcement does not lag behind modifications to the institutional structure and agency management of marine and estuarine resources.**

Appendix I: Law Enforcement Subcommittee Recommendations to the North Carolina Marine Fisheries Commission Concerning Establishment of a Violation Points System.

ADMINISTRATIVE VIOLATIONS	
<i>VIOLATION</i>	<i>POINTS</i>
<i>STATUTES</i>	
Injuring notices or advertisements	0
Failure to use vessel navigation lights when underway at night	0
Interference with artificial reef buoys	0
Failure to display or have ready at hand a required license or permit	0
Failure to have ready at hand a bill of lading when transporting seafood	0
Failure of retail outlet selling fish to have ready at hand a receipt or bill of lading	0
<i>RULES</i>	
Failure to display or have ready at hand a required license or permit	0
Unloading shellfish during prohibited period	0
Possession, sale or production of swelled bay scallops	0
Failure to properly mark or identify shellfish leases or franchises	0
Failure to properly mark fishing gear, excepting pound nets [The Law Enforcement Subcommittee's treatment of this particular offense elicited substantial public comment because it would allow persons illegally fishing gears to avoid being caught simply by not identifying themselves as the owner of the gear, or by mis-identifying himself/herself as to class of licensee. At the same time, the Subcommittee does not intend for a person who violates this provision through no fault of his own, e.g., when a storm blows down a required identification marker, to accrue points against his license. In weighing the two opposing aims, the Moratorium Steering Committee decided to make this offense a "no points" Administrative Violation if it involves pound nets or simply failure to mark gear in some way, and a "six point" Gear Violation in the case where the owner fails to identify himself as the owner of the gear.]	0
Failure to report fish spill or file spill report	0
LICENSE VIOLATIONS	
<i>VIOLATION</i>	<i>POINTS</i>
<i>STATUTES</i>	
Fraud or deception in obtaining or using a license	18
Failure to possess a required license or permit	12
Failure to surrender a license or permit when required	16
<i>RULES</i>	
Failure to possess a required license or permit	12
Failure of seller to possess an Endorsement-to-Sell (ETS) (or a "Commercial Fishing License" under License Subcommittee's Draft Recommended Licensing Structure) [Following additional discussion and based on comments made at the Moratorium Steering Committee's public meetings, the Law Enforcement Subcommittee concluded that due to its seriousness, a conviction for violation of this rule should result in the automatic loss of the violator's license privileges. For that reason, the point value of such a violation has been increased from 12 points to 18 points.]	18

Purchase by a dealer from a fisherman who does not possess an ETS (or a "Commercial Fishing License" under License Subcommittee's Draft Recommended Licensing Structure) [Following additional discussion and based on comments made at the Moratorium Steering Committee's public meetings, the Law Enforcement Subcommittee concluded that due to its seriousness, a conviction for violation of this rule should result in the automatic loss of the violator's license privileges. For that reason, the point value of such a violation has been increased from 12 points to 18 points.]	18
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RESOURCE VIOLATIONS	
<i>VIOLATION</i>	<i>POINTS</i>
<i>STATUTES</i>	
Robbing from or injuring an aquaculture operation	18
Willfully harming Federally-protected species (sea turtles, marine mammals)	18
Taking polluted shellfish from permanently closed areas	18
Taking polluted shellfish from conditionally closed areas	10
Taking polluted shellfish at night	18
Taking fish by poisons, drugs, explosives or electricity	18
Clamming on marked oyster bed	14
Taking or attempting to take shrimp in closed area	14
Failure to keep required records	12
Littering	6
<i>RULES</i>	
Failure to complete and provide information through trip tickets	12
Failure of any licensee to allow biological sampling	12
Length limit violation (possession of undersized fish)	12
Creel limit violation	12
Possession of prohibited fish	14
Taking or possession of fish during closed season	14
Exceeding scrapfish limit	12
Mutilating finfish that have length limits	14
Taking fish in closed area	14
Possession of egg-bearing or scrubbed parts of northern lobster	6
Taking or possessing shellfish during prohibited period	14
Disposal of fish upon approach or signal by Marine Fisheries Inspector	14

GEAR VIOLATIONS	
<i>VIOLATION</i>	<i>POINTS</i>
<i>STATUTES</i>	
Use of prohibited gear in a Primary Nursery Area (PNA)	18

Use of trawl in closed areas	14
Possession on a vessel of prohibited oyster gear during closed season	8
Use of unregistered gear	10
Robbing or willfully injuring nets, seines, buoys, pots, <i>etc.</i>	18
Fishing within prohibited, marked area adjacent to ocean fishing pier	8
<i>RULES</i>	
Taking fish by illegal means/methods	8
Leaving fishing devices unattended	12
Failure to remove stakes, signs, markers, gear and equipment from abandoned pound nets, leases or franchises	14
Use of pots or gill nets in prohibited areas	8
Use of prohibited gear in a PNA	18
Use of trawl in closed area	14
Use of trawl during weekend closure	14
Possession on board a vessel of mechanical shellfish harvest gear during closed season	8
Abandoning fishing gear	14
Failure to properly identify fishing gear, excepting pound nets	6
OFFICER SAFETY VIOLATIONS	
<i>VIOLATION</i>	<i>POINTS</i>
<i>STATUTES</i>	
Refusal to obey or allow inspection by officer	16
Failure to surrender a license or permit when required	16
OTHER VIOLATIONS	
<i>VIOLATION</i>	<i>POINTS</i>
<i>STATUTES</i>	
Violation of any coastal fisheries statute for which a specific point total is not set out above	8
<i>RULES</i>	
Violation of any coastal fisheries rule for which a specific point total is not set out above	8