

# **MARINE FISHERIES MEDIATION**

North Carolina Division of Marine Fisheries  
The ADR Center  
Mediation Center of Eastern Carolina



## **STANDARD OPERATING PROCEDURES**

**DRAFT 4**  
07 March 2008

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Dr. Steve Smutko, Dept. of Agricultural & Resource Economics, NC State University  
Dr. Barbara Garrity-Blake, Marine Fisheries Commission member (1999-2007)  
Sara Mirabilio, NC Sea Grant Program  
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## **1.0 INTRODUCTION**

The North Carolina Marine Fisheries Commission (NCMFC) is often called upon to manage user-conflicts that have little or no bearing on the health of fisheries resources. Conflicts range from simple gear disputes to space, resource allocation, or perceptual issues, and sometimes have historical, cultural, and/or political roots. The NCMFC adopted a policy endorsing the use of mediation for appropriate fisheries conflicts in October 2004, (Appendix A) and discussed the feasibility of accessing the North Carolina Mediation Network, comprised of nonprofit community mediation centers headquartered in coastal counties that provide low-cost dispute mediation services to people and organizations in conflict. A Fisheries Resource Grant (FRG) was submitted to Sea Grant and funded to demonstrate the effectiveness of collaboration between the North Carolina Division of Marine Fisheries (NCDMF) and two mediation centers – The ADR Center in Wilmington, and the Mediation Center of Eastern Carolina in Greenville – on selected, appropriate disputes.

### **1.1 Goal**

The goal of fisheries mediation is to manage disputes in a way that achieves lasting resolution amenable to all parties. The overall goal is to promote cooperation and understanding among user-groups, and strengthen North Carolina's commitment to maintaining user diversity and public access to fishing opportunities and fisheries resources

## **2.0 GENERAL INFORMATION**

### **2.1 What is Mediation?**

Mediation is a proven conflict resolution method that aims to achieve a lasting resolution amenable to all parties. Mediation requires an independent and neutral third party to manage the process: a mediator who can provide a fair, impartial, confidential, and safe structure with ground rules for dialogue. The mediator has no power to decide how a dispute will be resolved. Instead, the mediator guides the disputing parties through a structured problem-solving process in which all stakeholders learn about each others' interests challenge previously accepted assumptions, and develop strategies that are acceptable to all parties.

### **2.2 Which Conflicts Should be Mediated?**

Mediation works best when it is voluntary. Parties are inclined to participate when they understand that mediation is their best alternative to resolving a conflict in a way that meets mutual interests. This environment should encourage parties to move from opposing positions to common interests for a lasting, mutual agreement.

Mediation can be used to address specific types of conflicts that occur in a fisheries context and that appear before the North Carolina Marine Fisheries Commission. These conflicts include:

- Gear (*e.g. trawls/pots*) Conflicts between users of different fishing gear types

- Resource (*e.g. sport/commercial red drum*) Conflicts between users over allocation issues
- Space (*e.g. pots/sailboats, homeowners and nets, shellfish lease issues*) Conflicts between users vying for same area; sometimes a navigational, allocation, and/or public trust issue
- Perceptual/aesthetic (*menhaden/beach communities, piers/nets*) Conflict deriving from one party perceiving damaging qualities of another

Not all conflicts can be resolved through mediation. Certain key factors that determine the success of mediation include:

1. The disputing parties can be identified and involved in the mediation process, they have a vested interest in seeing the dispute resolved, and can benefit from a solution.
2. Parties are not too polarized and productive, face-to-face discussions are possible.
3. Parties don't view alternative procedures or outcomes to mediation as desirable or viable.
4. Deadlines or time constraints provide an incentive for a prompt solution.
5. Any agreement that is likely to be reached can be implemented within a time frame that makes it relevant and can be confined to a geographic scope that enables implementation and enforcement.
6. Implementation of any agreement that is likely to be reached is within the purview of the Marine Fisheries Commission and the Division of Marine Fisheries to enforce and regulate.
7. Any agreement that is likely to be reached does not negatively affect resource management actions of the DMF.
8. Implementation of any agreement that is likely to be reached does not violate other laws, rules or policies.

### Typology of Mediated Settlements

<b>No. Parties</b>	<b>Settlement</b>	
	<b>Unofficial</b>	<b>Official</b>
<b>Two</b>	<b>I</b>	<b>II</b>
<b>Multiple</b>	<b>III</b>	<b>IV</b>

The typology matrix can be used to describe types of mediated settlements with respect to the roles and expectations of the mediation centers and the NCDMF. Settlements can be either official or unofficial. Official settlements are promulgated by DMF proclamation or Marine Fisheries Commission policy. Unofficial settlements are considered agreements among the parties and do not require a proclamation or policy to implement them. Unofficial settlements are likely to be rare and will not involve a resource management decision. Two party disputes in which the settlement is unofficial requires the least amount of involvement by either the mediation center or the NCDMF. On the other hand, disputes involving

multiple parties in which a settlement will be implemented through proclamation or policy will require significant preparation by the mediators in the form of a conflict assessment or similar pre-mediation evaluation procedure, and direct participation (or at least active observation) by NCDMF personnel. Disputes in quadrant I require the least involvement by the mediation centers and NCDMF personnel, while disputes in quadrant IV require the most involvement.

### **3.0 MEDIATION AND MEDIATION CENTERS**

#### **3.0.1 Introduction to Mediation**

The mediation process can be described as a twelve-stage process of mediator moves and critical situations to be handled<sup>1</sup>. The twelve stages can be divided into two broad categories: work that the mediator performs prior to joining the parties in mediation, and moves made once the mediator has entered formal negotiations.

The twelve stages are listed below. The first five stages are pre-negotiation activities, while the remaining seven stages occur while the mediator is working with the parties in the negotiation setting.

1. Initial contacts with the disputing parties.
2. Selecting a strategy to resolve the conflict
3. Collecting and analyzing background information
4. Designing a detailed plan for mediation
5. Building trust and cooperation
6. Beginning the mediation session
7. Defining issues and setting an agenda
8. Uncovering hidden interests of the disputing parties
9. Generating options for settlement
10. Assessing options for settlement
11. Final bargaining
12. Achieving a formal settlement

#### **3.0.2 Prior to Mediation**

*Establishing Initial Contact and Selecting a Conflict Resolution Strategy.* Since the Division will be the principal referral agent for mediation of fisheries conflicts (see Section 3.1), this stage will be initiated by DMF personnel with possible inclusion by the mediation centers. The objectives at this stage should be to build personal, institutional, and procedural credibility, establish rapport with the disputants, educate the participants about various conflict resolution strategies including mediation, and gaining commitments to begin mediating. DMF personnel may assist the parties to assess various approaches to conflict management and resolution to determine if mediation is indeed the most effective approach. In doing so, DMF personnel may identify the interests or goals that must be satisfied in a

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<sup>1</sup> Christopher W. Moore. *The Mediation Process: Practical Strategies for Resolving Conflict*. Jossey-Bass Publishers, San Francisco. 1986.

potential settlement, consider the range of possible and acceptable dispute outcomes, identify the conflict approaches that may assist disputants in reaching individual, subgroup, or organizational goals, and guide the parties toward the most effective approach. After initial contact has been made, and mediation is identified as a potential means for resolving the conflict, the case is referred to the appropriate mediation center.

*Collecting and Analyzing Background Information.* In this stage the mediator begins to collect information about the issues, the parties, and the forum for resolution. This usually involves interviewing the parties involved or potentially involved in the dispute as well as gathering background information from DMF personnel and secondary parties. The mediator uses this information to generate a conflict assessment. A conflict assessment enables the mediator to understand the issues and interests that are important to the parties, and the relationships and dynamics that exist between them. Mediators can share the assessment with the DMF and the disputing parties to prepare them for the mediation process.

*Designing a Plan to Guide Mediation.* Based on the results of the conflict assessment, the mediator designs a mediation plan. A mediation plan is a sequence of procedural steps initiated by the mediator that will help disputing parties reach agreement. The plan's detail depends on the type and complexity of the conflict, how much the mediator knows about the dispute, and how much control over the process the disputants have delegated to the mediator.

### **3.0.3 The Mediation Session**

The mediation session spans the time between the mediator's opening remarks until the parties achieve a formal settlement. This can occur in one meeting or several. During this time, the disputants are engaged in active discussion and the mediator is there to guide and coach the parties toward settlement.

*Beginning the Mediation Session.* To begin the mediation session, the mediator typically works to establish a tone of trust and common purpose and assists the parties in developing a structure for full, open, truthful exchange of information about the issues under discussion. He does this by welcoming the parties and commending them for their willingness to cooperate and seek a solution to the problem at hand. Before turning the discussion over to the parties, he defines his role as an impartial third party, and describes the mediation procedures to be followed. He then defines and gets agreement on behavioral guidelines that will facilitate an orderly discussion. At this point he directs the parties to an opening strategy that he thinks will be most fruitful based on information he has gathered prior to the mediation session. Typical opening strategies include (1) each party describing the issues to be resolved; (2) each party describing his or her interests that need to be satisfied; and (3) the parties defining and agreeing on procedures to be used to resolve the dispute.

*Defining Issues and Setting an Agenda.* Once the parties have opened discussions, the next task is to define the content of the negotiations and establish an order in which the issues are to be discussed. Three critical tasks at this stage are (1) identification of broad topic areas of concern to the parties, (2) agreement on the subtopics or issues that should be discussed, and

(3) determination of the sequence for discussion. The mediator is focused on guiding the parties toward the delineation of a concrete list of issues and items that, if negotiated to the satisfaction of all parties, will lead to final settlement. The mediator does this by helping to frame and/or reframe the issues in language that leads to a jointly perceived problem that the parties are willing to solve. The mediator's use of facilitative language or syntax is of critical importance at this stage as he seeks to restate positional statements made by either party into words that invite critical thinking and problem solving, eventually moving the parties to the development of an agreed-upon list of issues to be settled.

*Uncovering Hidden Interests.* Once the parties have defined the issues and established a negotiation agenda, the next stage of the mediation is focused on uncovering hidden interests of the disputing parties. Interests, not conflicting positions, define the problem the parties are attempting to solve. Successful negotiation requires the discovery and application of options that satisfy the interests of both parties. The mediator assists the parties to reveal their interests, enabling them to create value in the negotiation. The mediator can use direct or indirect methods to induce the parties to reveal their interests. The most common direct methods are brainstorming and direct questioning. Indirect methods include active listening techniques such as paraphrasing, summarizing, and reframing.

*Generating Options for Settlement.* After interests have been clearly and exhaustively identified, the parties can then move toward finding ways to satisfy their own interests and those of the other parties. When they reach this stage the parties have defined the parameters of the dispute, clarified issues, developed an agenda, and through full and open communication, identified common and conflicting interests. The central task of the negotiators is to develop mutually acceptable settlement options or proposals. The mediator's role is to assist them to become aware of the need for generating options, present strategies for generating options, and assist the parties during the option generation process. A key activity for the mediator is to keep the parties from prematurely evaluating and eliminating options. The metaphor most often used to describe this stage is that of making the pie larger before dividing it.

*Assessing Options for Settlement.* Once the parties are satisfied that they have enlarged the pie, the next task is to assess options for settlement. In effect, decide how to divide the pie. The primary task for the parties at this stage is to assess how well their interests will be satisfied by any one or a combination of options that they generated. The mediator's role is to help the parties evaluate those options and assist them to assess the consequences of accepting or rejecting various settlement proposals. If options are within the zone of possible agreement or *ZOPA*, i.e., the range of potential solutions between what each party will minimally accept and what each aspires to, then an agreement is possible. The mediator may work with the parties to help them individually identify their acceptable limits of settlement. Through public and private discussions with the parties, the mediator often has the most accurate perception of the settlement range for all the parties. The key task for the mediator is to communicate to the parties when they may have reached the *ZOPA* without unduly influencing the precise outcome.



*Final Bargaining.* As the parties narrow the bargaining range within the ZOPA, they engage in a search for an agreeable distribution of the joint gains generated through the negotiation and work out the details for implementation. This is the objective of the final bargaining phase. The mediator may assist the parties to increase their joint gains, that is, not settle prematurely, if he feels that additional value can be gained by continuing to negotiate. In some cases, the parties may have found the ZOPA, but considerable differences remain in potential gains and losses to each party creating difficulties in reaching agreement. Each party may be reluctant to make subsequent offers out of fear of conceding too much, revealing their bottom line, or being perceived as being weak or overly compliant. The mediator may assist the parties in this case by creating a negotiation climate that allows the parties to explore offers without committing, framing offers so that they are seen as initiatives rather than concessions, or free the parties from public pressure or repercussions by serving as the negotiators' scapegoat.

Not all negotiations lead to an agreement. If the mediator believes that the parties have exhausted their search for possible options and still cannot reach a ZOPA, then the mediator may suggest that the parties act on their alternatives to negotiation and declare an impasse.

*Achieving a Formal Settlement.* In the final stage of mediation the parties agree on implementation and monitoring arrangements to ensure that the agreement is carried out. Factors that must be considered when crafting such arrangements include the specific steps and responsible parties necessary to carry out the agreement, methods and criteria used to measure compliance, organizational incentives and controls that affect compliance, and provisions for future talks if necessary. The mediator's role in fashioning formal settlements is largely one of keeping the parties focused on the implementation phase and thinking about contingencies once negotiations are over. The mediator will be responsible for writing a settlement agreement to be signed by the disputing parties and the mediator(s). The settlement agreement describes the substantive agreement and subsequent implementation, monitoring, and re-opening procedures (see Appendix D, Example Settlement Agreement). Copies of the settlement agreement are distributed to the parties and the Division Head. The Division Head reserves the right to take official action to carry out the terms of the mediated settlement.

### **3.1 North Carolina Mediation Centers**

Two nonprofit community mediation centers (hereinafter collectively referred to as the "Mediation Center") headquartered in coastal counties provide low-cost dispute mediation services to people and organizations in conflict. **The Mediation Center of Eastern Carolina**, located in Greenville mediates disputes in the Albemarle-Pamlico area. **The ADR Center** (formerly the Community Mediation Center of Cape Fear) is headquartered in Wilmington and handles fisheries cases south of Bogue Sound. Staff and volunteer mediators from these two centers will handle the fisheries mediation cases. All mediators are certified by the Mediation Network of North Carolina. Certification requires 20 hours of basic mediation training, an apprenticeship with a certified mediator for a minimum of ten sessions, and completion of ten additional hours of approved training. In addition, the

mediators handling fisheries cases have completed an 18-hour training program specifically focused on resolving fisheries disputes.

### **3.1.1 “Services” Provided by the Mediation Centers**

- Trained, neutral and detached third parties create a forum for equal voices at come to the table to resolve contentious issues.
- Clients are empowered to craft an agreement, within previously established parameters, that satisfy the needs of the parties, the community and the Division.
- Practitioners conduct an assessment of the conflict and design an appropriate process to achieve a durable resolution.
- In mediation the parties have an opportunity to air their concerns and opinions regarding the dispute.
- The mediation centers are committed to participating in this project as it moves forward.
- During the mediation process, the practitioners will draw out and clarify alternatives that may resolve the dispute for the clients.
- In concluding the mediation process the mediators will draft a memorandum of agreement that formalizes the agreement reached by the parties. A copy of the document will be provided to the Division of Marine Fisheries for consideration (Proclamation, Rule, etc.) by the Division.

## **4.0 THE MEDIATION REFERRAL PROCESS**

### **4.1 Mediation Program Awareness**

The general public, as well as the NCDMF staff, must be made aware of the Mediation Program and understand the basic tenets of mediation. NCDMF will play a key role in referring disputing parties to mediation. The mediation education materials will be made available on the NCDMF web site and incorporated into existing training and orientation programs within the Division.

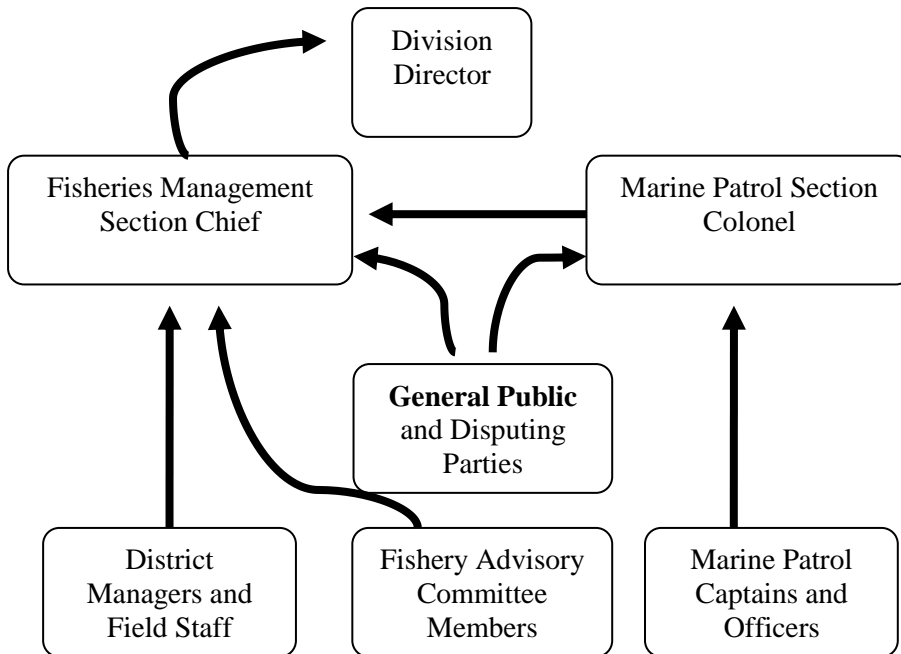
It is anticipated that conflicts will come to the attention of the Division through many sources. Among them are the general public, commercial and recreational fishermen, city, county and state government agency staff, elected officials, DMF biological and Marine Patrol staff, the Marine Fisheries Commission (MFC) and its Advisory Committees, and others.

### **4.2 NC Division of Marine Fisheries**

The North Carolina Division of Marine Fisheries (DMF) acts as the primary referral agency for mediation of marine fisheries disputes in North Carolina. The agency is also responsible for executing, where and when applicable, the terms of agreement reached through mediated settlements.

#### 4.2.1 Pathways to mediation

- Advisory committees (informally)
  - Formal petition to the Marine Fisheries Commission
  - Rules Advisory Team (RAT)
  - Field offices personnel
  - Headquarters personnel
  - \*District managers
  - \*Marine Patrol captains
  - \*Fisheries Management Section Chief
- \*Personnel most likely to be involved in referring disputes to mediation.



#### 4.2.2 Referral within DMF

The Fisheries Management (FM) Section Chief will serve as the NCDMF mediation liaison, and will work directly with the mediation centers. All referrals must ultimately be channeled through the FM Section Chief.

##### Step 1

When made aware of conflicts that appear amenable to the mediation process from any and all sources, DMF employees, at any level, should contact the District Manager (DM) or Marine Patrol (MP) Captain for the respective district. The staff member and District Manager or MP Captain should evaluate the conflict based on knowledge of the situation and parties involved and determine if the issue can be resolved without mediation or elevation to the FM Chief). If the issue appears to be a likely candidate for mediation the following information will be specified on the DMF Mediation Referral Form:

- Describe the aspects of the conflict,
- Identify the parties involved in the conflict with phone numbers and addresses if feasible, and
- Outline available or possible solutions to the conflict.

#### Step 2

The form will be submitted to the FM Chief and a date set to discuss the particulars.

The DMs or MP Captains will contact the FM Chief and describe the conflict, the parties involved and recommend any possible solutions to the conflict.

The FM Chief will perform a preliminary internal assessment using the Internal Assessment Score Sheet in Appendix A and make a decision to refer the issue for mediation.

#### Step 3

After the performing the internal assessment, the FM Chief will discuss the issues with the Fisheries Director to determine the potential of using proclamation authority to alleviate the situation or to insure that the suggested options for resolution are acceptable.

#### Step 4

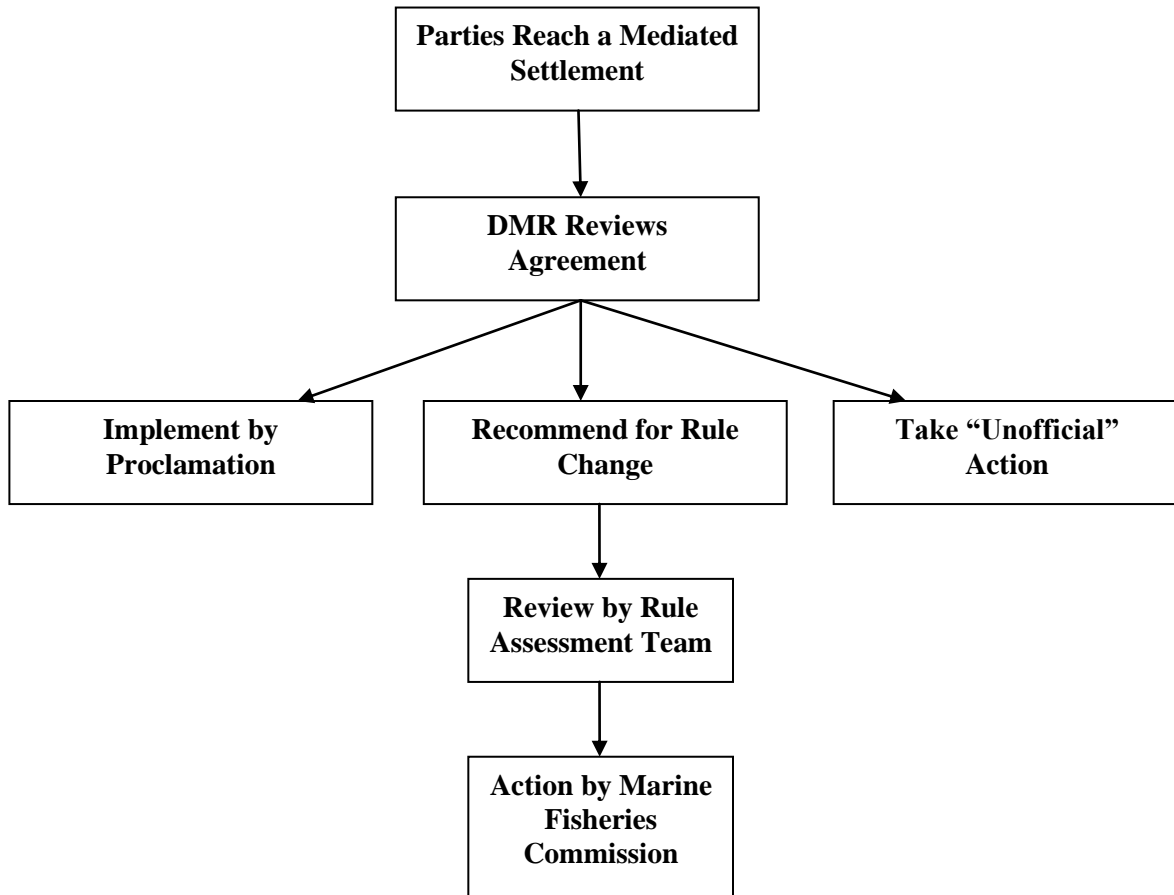
The FM Chief will record this information on the Mediation Center's referral form and relay it to the Mediation Center personnel.

#### Step 5

After accepting the referral, the Mediation Center will perform a detailed conflict assessment. Following the assessment, the Mediation Center will arrange an assessment conference with the FM Chief and recommend to mediate or not mediate. If mediation is recommended, the Mediation Center also will make recommendations on process, and identify potential outcomes for DMF to consider.

## 5.0 POST SETTLEMENT ACTIONS

### 5.1 Settlement Agreement Reached



### 5.2 Settlement Agreement not Reached, or Partial Settlement Reached

In cases where agreement by all parties is not reached, DMF will review the report of partial agreement or failed agreement and make a decision whether to act.

## 6.0 LEGAL CONSIDERATIONS

As a part of Mediation Center practice, both centers will have all parties execute a Consent to Mediate Form that frames the parameters of the mediation process. Consent forms will explicitly state “this agreement is not binding on the Division of Marine Fisheries but will be presented to Division of Marine Fisheries as an aid to reaching a just resolution of the matter.”

It is intended that Marine Patrol and or Division of Marine Fisheries personnel will serve as resource persons and not parties to the dispute or mediation. As such they are not bound by the privacy laws outlined in Appendix E, Consent to Mediate nor will they be asked to sign any Memorandum of Agreements that memorialize the specific agreements reached in the mediation session. Marine Patrol and Division of Marine Fisheries personnel are not compelled to act on information of past misdemeanors revealed by the parties during the mediation.

## **7.0 SOP REVISIONS**

This document outlines the operating procedures for the North Carolina Marine Fisheries Mediation Program. It is a working document that may be modified as the participating parties gain more experience with the process and determine needed changes or improvements. Such changes will be made only with the full consent of all parties. The document will be maintained by the NCDMF Fisheries Management Section Chief. Signatory approval for the SOP consists of the NCDMF Division Director, and the Directors of the Mediation Center of Eastern Carolina and the ADR Center.

## **APPENDICES**

**Appendix A:** Internal Screening Instrument

**Appendix B:** Policy for the Use of Mediation in the Management of Fisheries Conflicts

**Appendix C:** Mediation Referral Form

**Appendix D:** Mediation Request Form

**Appendix E:** Mediation Consent Form

**Appendix F:** Example Settlement Agreement

**Appendix G:** List of Contacts







**POLICY FOR THE USE OF MEDIATION IN THE MANAGEMENT OF FISHERIES CONFLICTS**

**Issue:** This document establishes the policy of the North Carolina Marine Fisheries Commission regarding the endorsement and use of mediation in the management of social conflicts in a fisheries context. This policy strengthens the commitment of the North Carolina Marine Fisheries Commission to maintain access to public trust waters and resources through the promotion of user-group cooperation.

**Background:** The North Carolina Marine Fisheries Commission is charged to “(m)anage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources” (N.C.G.S. 143B-289.51(b)(1)). In carrying out this mission, the North Carolina Marine Fisheries Commission is frequently called upon to manage user-conflicts that have little or no bearing on the health of fisheries resources. Such social conflicts range from simple gear disputes to space, resource allocation, or perceptual issues, and often have historical, cultural, and/or political roots.

The Commission recognizes its limitations in managing such complex conflicts. At times rules have been imposed to separate conflicting parties in space and time. Such action may alleviate complaints, but they can also serve to deepen hostilities between parties. They can also have the overall and cumulative effect of eroding access to public trust resources. As coastal areas become more populated and developed, the Commission will likely be called upon to manage an increasing number of such social conflicts.

**Discussion:** Although all conflicts are social in nature, it is important to define the types of conflicts that occur in a fisheries context and that appear before the North Carolina Marine Fisheries Commission.

Many conflicts are a combination of categories. Some are technically law-enforcement issues, but nonetheless come before the Commission. It is important for the Commission to evaluate what types of conflicts present themselves most often, which conflicts are most successfully dealt with by the Commission, and which are most difficult and/or beyond the Commission’s purview.

The Division of Marine Fisheries and the Commission should review and refine the process by which certain conflicts are addressed. Formal mediation concepts and methods should be endorsed and introduced into the process to better educate the parties, raise awareness as to the State’s commitment to maintaining the public trust, and most importantly, derive a resolution, preferably non-regulatory, amenable to all parties.

**Marine Fisheries Commission Conflict Management Policy:** It shall be the policy of the North Carolina Marine Fisheries Commission that the overall goal of managing social conflicts is to foster cooperation, fairness, and equity among groups while maintaining user-diversity and access to public trust resources.

To that end, the North Carolina Marine Fisheries Commission shall identify conflict type and, when appropriate, recommend and encourage parties to participate in a forum of mediation. Clearly defined, localized parties who can meet face to face are the best candidates for mediation, whereas conflicts involving attorneys, organizations, or far-reaching requests such as a statewide gear ban, are less appropriate.

Mediation works best when it is voluntary. Parties are inclined to participate when they understand that mediation is their best alternative to resolving a conflict in a way that meets mutual interests. Mediation requires an independent and neutral third party to manage the process: a mediator who can provide a fair, impartial, confidential, and safe structure with ground rules for dialogue. This environment should encourage parties to move from opposing positions to common interests for a lasting, mutual agreement.

Mediation will ideally result in a non-regulatory resolution of the conflict or a proposed regulatory action that is amenable to both parties. Recognizing mediation as an important step in the conflict management process promotes cooperation and understanding among groups, and strengthens North Carolina's commitment to maintaining user diversity and public access to fishing opportunities and fisheries resources.

**Resolution of the North Carolina Marine Fisheries Commission**

WHEREAS, the North Carolina Marine Fisheries Commission is concerned that its existing methods used to address user-conflicts incrementally reduce access to public trust waters, fishing opportunities, and fisheries resources for competing parties; and

WHEREAS, many user-conflicts brought to bear before the North Carolina Marine Fisheries Commission are social in nature with little or no bearing on the health of the fisheries resources, and

WHEREAS, just separating user-groups in space and time through rules may do little to resolve conflicts, and potentially may fuel future conflicts; and

WHEREAS, user-conflicts will only increase with a growing coastal population and the State is compelled to address conflicts in fisheries management plans; and

WHEREAS, no formal procedure currently exists within the North Carolina coastal fisheries management system to provide alternative methods, such as mediation, to manage social conflicts; and

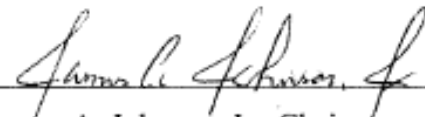
WHEREAS, mediation is a proven conflict resolution method that aims to achieve a lasting resolution amenable to all parties; and

WHEREAS, an extensive mediation network of trained professionals exists and operates in Eastern North Carolina;

NOW THEREFORE BE IT RESOLVED by the North Carolina Marine Fisheries Commission that State funding be provided during fiscal years 2005-06 and 2006-07 to conduct a pilot program utilizing trained mediators to manage fisheries conflicts selected by the North Carolina Marine Fisheries Commission;

BE IT FURTHER RESOLVED that funds for a pilot mediation program be separate from and in addition to existing funds to the Division of Marine Fisheries so as not to drain support for other programs;

BE IT FURTHER RESOLVED, that a report will be prepared before the end of FY 2006-07 evaluating the effectiveness of using mediation to resolve social conflicts in coastal fisheries management, including a recommendation as to whether or not to continue the program as an integral part of the Commission's fisheries management system.

  
\_\_\_\_\_  
James A. Johnson, Jr., Chairman

October 2004  
Date

**NORTH CAROLINA DIVISION OF MARINE FISHERIES  
FISHERIES MEDIATION REFERRAL FORM**

.....  
DMF STAFF ORIGINATOR

Date	Name	Title	Phone

DISTRICT DMF STAFF REVIEWER

Date	Name	Title	Phone

CONFLICT TYPE (Check all that apply)

Gear	Allocation	Space	Aesthetic

GEOGRAPHIC EXTENT AND LOCATION:

CONFLICT OVERVIEW:

SPECIFIC CONFLICT ATTRIBUTES:

Parties Characteristics (Include number, identify-name, address, phone, email, group represented):

Possible and Recommended Solutions:

FISHERIES MANAGEMENT CHIEF REVIEW:	Date:	
------------------------------------	-------	--

Review Comments:

DIVISION DIRECTOR REVIEW:	Date:	
---------------------------	-------	--

Review Comments:

Forward to Mediation Centers for Evaluation:

Approve		Disapprove		Date	
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Summary For Mediation Centers:

REQUEST FOR MEDIATION

Date: \_\_\_\_\_ DMF Log #: \_\_\_\_\_ Case to be completed by (date): \_\_\_\_/\_\_\_\_/\_\_\_\_
DMF Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Type of Dispute: [ ] Gear [ ] Allocation [ ] Space [ ] Perceptual

Table with 3 columns: Name, Role/Group, Phone #. Rows for Party 1 through Party 6.

Issue(s): \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

DMF's Goal for this Meeting: \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

Parameters for mediation? \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

Recent History: \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

Received at Mediation Ctr: Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_:\_\_\_\_ Initials: \_\_\_\_ File #: \_\_\_\_\_
Mediator(s): \_\_\_\_\_ Med. Held? Y/N | Case Closed? Y/N | MOA Prepared? Y/N | Follow Up? Y/N \_\_\_\_/\_\_\_\_
Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ | Time: [ ] 10:00 [ ] 1:00 | Location: [ ] CMC [ ] DMF [ ] Other \_\_\_\_\_



The ADR Center



Mediation Center  
of Eastern Carolina

***Consent to Mediate***  
**(Division of Marine Fisheries Referrals)**

1. I understand that the mediation process is voluntary and any agreements reached will be by mutual consent. The mediators are not judges and have no authority to render decisions for us.
2. I agree that communications during mediation sessions are intended to be confidential and may not be used for any other purpose such as prosecution regarding revealing information about misdemeanors, except that mediators are obligated by statute to disclose information regarding the abuse or neglect of a child or dependant adult. A mediator may also disclose information regarding threats of significant damage to real or personal property, serious bodily harm or death when the mediator has reason to believe that the party has the intent and ability to act on the threat.
3. I authorize the mediators to share any Memorandum of Understanding prepared in this matter with the Marine Fisheries Commission and/or the Division of Marine Fisheries in order to draft a Proclamation, Rule or other type of policy directive. I further authorize the mediators to share any Memorandum of Understanding with the participants of the workgroup overseeing this pilot program for assessment, funding and learning purposes.
4. All parties acknowledge that this agreement is not binding on the Division of Marine Fisheries but will be presented to Division of Marine Fisheries as an aid to reaching a just resolution of the matter.
5. I agree and grant that the mediators, per NC General Statute § 7A-38.1 (J), judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice. I further agree that I will not involve the mediators or their records in any way, in any claim or proceeding.
6. I acknowledge that mediators serve as neutral third parties and cannot provide any opinion or legal advice. I understand that if I require professional advice, the mediators recommend that I seek the advice of the appropriate professional and/or attorney.
7. I agree to turn off (place on silent mode) any mobile phones, pagers, etc. during the mediation sessions. I agree to abide by the policy that no weapons, recording devices or physical conflict are permitted.

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Signature

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Signature

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Signature

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Signature

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Signature

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Signature

\_\_\_\_\_  
Mediator

\_\_\_\_\_  
Mediator



EXAMPLE SETTLEMENT AGREEMENT

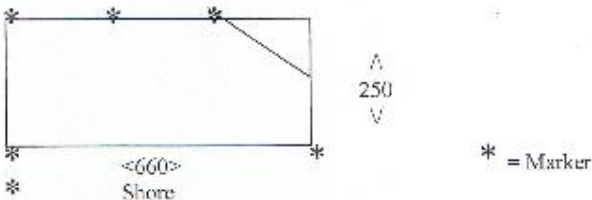
NORTH CAROLINA MARINE FISHERIES COMMISSION File No. 06-001

MEDIATED SETTLEMENT AGREEMENT

RE: STRIPPED MULLET ON BOGUE BANKS

At a Mediated Settlement Conference held on the 29th day of September, 2006 in Morehead City, N.C. (Carteret County), the parties hereby stipulate and agree to the following:

- 1. For the purpose of this mediation, Doug Guthrie, Jamie Frost and Joey Frost represent the Stop Netters; Shelton Cuthrell and Bill Hooper represent the Gill Netters. Herb Obama representing the NC Marine Patrol was present to offer guidance on enforceability of a potential Proclamation.
2. The parties agree to honor the following points of agreement within the area bounded by Raleigh Street west to the Bogue Inlet (all existing pier restrictions remaining in effect).
a. All agree not to set a gill net within 660 yards east of a deployed stop net, as measured from where the net connects with the shore. The buffer zone will create a box to include the area not to exceed 250 yards in width off shore (MHW) and not to exceed 660 yards in length along the beach.
b. The Stop Netters agree to properly mark the beach (2 posts to mark the line) and in the water marks at the 660 yard mark and the lead wing of the furthest offshore staff of the deployed Stop Net and at mid point between the 660 yard marker and the and end of the deployed Stop Net marker. All markers should have reflective tape affixed.



- c. All agree that any missing or unauthorized removal of boundary markers shall not serve to open the area to fishing and will remain subject to enforcement.
3. The parties agree to use the above parameters for the 2006 stripped mullet season (Oct 1 - Nov 30, 2006). In the event a need to revisit this agreement, all parties agree to reconvene and attempt to address the concerns in mediation.
4. The parties acknowledge that all material terms are included in this agreement, that it is fair and in the best interests of all parties and consent to the Division of Marine Fisheries and/or the Marine Fisheries Commission reviewing this Agreement and drafting a Proclamation, Rule or other directive based on the terms and conditions contained herein.

For Stop Netters:
Doug Guthrie
Jamie Frost
Joey Frost
Handwritten note: DOUG AGREED TO ALL COMPONENTS BUT HAD TO LEAVE PRIOR TO PRINTING

For Gill Net Netters:
Shelton Cuthrell
Bill Hooper
September 29, 2006
Date

## LIST OF CONTACTS

**Mediation Centers****The ADR Center**

140-C Cinema Drive  
 Wilmington, NC 28403  
 Phone: 910-362-8000  
 Fax: 910-362-8008  
<http://www.wemediate.net/>

**Mediation Center of Eastern Carolina**

400 W 5th St  
 P.O. Box 4428  
 Greenville, NC 27836  
 Phone: 252-758-0268  
 Fax: 252-758-8810  
<http://www.mceconline.org/>

**The Mediation Network of North Carolina**

Post Office Box 648  
 Siler City, NC 27344  
 Phone: 919-663-5650  
 Fax: 919-663-5650  
[mnnc@mnnc.org](mailto:mnnc@mnnc.org)  
<http://www.mnnc.org>

**Division of Marine Fisheries****Headquarters**

3441 Arendell Street  
 Morehead City, NC 28557  
 252-726-7021 or 800-682-2632  
<http://www.ncfisheries.net>

**Northern District**

1367 U.S. 17 South  
 Elizabeth City, NC 27909  
 Phone: 252-264-3911 or 800-338-7805

**Pamlico District**

942 Washington Square Mall  
 Washington, NC 27889  
 Phone: 252-946-6481 or 800-338-7804

**Southern District**

127 Cardinal Drive  
 Wilmington, NC 28405  
 910-796-7215 or 800-248-4536

**Marine Patrol Office**

1107 Highway 64 East  
 Columbia, NC 27925  
 252-796-1322  
 800-405-7774

**Wanchese Field Office**

P.O. Box 539  
 604 Harbor Road  
 Wanchese, NC 27981  
 Phone: 252-473-5734

**North Carolina Sea Grant****Headquarters**

North Carolina Sea Grant  
 NC State University  
 Campus Box 8605  
 Raleigh, NC 27695  
 Phone: 919-515-2454  
 Fax: 919-515-7095  
<http://www.ncseagrant.org>

**Manteo Office**

North Carolina Sea Grant  
 UNC Coastal Studies Institute  
 217 Budleigh Street  
 P.O. Box 699  
 Manteo, NC 27954  
 Phone: 252-475-3663  
 Fax: 252-475-3545

**Morehead City Office**

North Carolina Sea Grant  
NC State Center for Marine Sciences  
and Technology  
303 College Circle  
Morehead City, NC 28557  
Phone: 252-222-6307  
Fax: 252-222-6308

**Wilmington Office**

North Carolina Sea Grant  
UNC-W Center for Marine Science  
5600 Marvin K Moss Lane  
Wilmington, NC 28409  
Phone: 910-962-2490  
Fax: 910-962- 2410

**Natural Resources Leadership  
Institute**

NC State University  
Campus Box 8109  
Raleigh, NC 27695-8109  
Phone: 919-515-4683  
Fax: 919-515-1824  
<http://www.ncsu.edu/nrli>