

Mid-Atlantic Fishery Management Council's
Report to Congress on
COUNCIL MANAGEMENT COORDINATION



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Table of Contents

I. Lists of Tables and Figures.....	4
II. Executive Summary	5
III. Introduction	6
IV. The role of Council liaisons between the MAFMC and the NEFMC, including an explanation of Council policies regarding the liaison’s role in Council decision-making since 1996.	8
V. How management actions are taken regarding the operational aspects of current joint fishery management plans, and how such joint plans may undergo changes through amendment or framework processes.	11
VI. The role of the NEFMC and the MAFMC liaisons in the development and approval of fishery management plans for fisheries in which the liaisons or members of the non-controlling Council have a demonstrated interest and significant current and historical landings of species managed by either Council.....	19
VII. The effectiveness of the various approaches developed by the Councils to improve representation for affected members of the non-controlling Council in Council decision-making, such as use of liaisons, joint fishery management plans, and other policies, taking into account both the procedural and conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act.	20
VIII. The characteristics of North Carolina and Florida that supported their inclusion as voting members of more than one Council and the extent to which those characteristics support Rhode Island’s inclusion on a second Council (the MAFMC).....	24
IX. Conclusion.....	40
X. References.....	41
XI. Appendix A.....	42

I. List of Figures and Tables

A. Figures

Figure 1. FL landings (weight) by coast 1960-1975.....	25
Figure 2. FL landings (value) by coast 1960-1975.....	25
Figure 3. FL landings (weight) by coast 1976-2006.....	25
Figure 4. FL landings (value) by coast 1976-2006.....	26
Figure 5. Saltwater recreational fishing trips in Florida, Atlantic and Gulf coasts.	26
Figure 6. 1990-1995 NC landings (weight) split by who managed the species	29
Figure 7. 2000-2006 NC landings (weight) split by who managed the species	29
Figure 8. 1982-2006 NC landings (weight) split by who managed the species	29
Figure 9. 1990-1995 NC landings (value) split by who managed the species.....	30
Figure 10. 2000-2006 NC landings (value) split by who managed the species.....	30
Figure 11. 1982-2006 NC landings (value) split by who managed the species.....	30
Figure 12. Proportions of NC recreationally-caught saltwater fish by management authority, 1990-1995.....	32
Figure 13. Proportions of NC recreationally-caught saltwater fish by management authority, 2000-2006.....	32
Figure 14. Proportions of NC recreationally-caught saltwater fish by management authority, 1982-2006.....	32
Figure 15. 2000-2006 RI landings (weight) split by who managed the species	35
Figure 16. 1982-2006 RI landings (weight) split by who managed the species	36
Figure 17. 2000-2006 RI landings (value) split by who managed the species	36
Figure 18. 1982-2006 RI landings (value) split by who managed the species	36
Figure 19. Proportions of RI recreationally-caught saltwater fish by management authority, 2000-2006.....	38
Figure 20. Proportions of RI recreationally-caught saltwater fish by management authority, 1982-2006.....	38

B. Tables

Table 1. Proportion of landings managed by MAFMC and caught by NC.....	31
Table 2. Proportion of landings managed by MAFMC and caught by RI.....	37

II. Executive Summary

The 7 key findings of this report:

***The New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) have used and are using a variety of mechanisms to enhance communication and coordination.**

***Joint fishery management plans enhance coordination but are cumbersome to administer. The Councils have discussed ceding joint management responsibilities so that the lead Council would have sole management authority. The MAFMC has voted that joint planning be terminated. The NEFMC has voted that the NEFMC have sole jurisdiction of monkfish and that the NEFMC and MAFMC share jurisdiction over dogfish.**

***Liaisons, committee appointments by the NEFMC to the MAFMC (and vice versa), advisory panel appointments, and Council staff to Council staff communication are critical for keeping the NEFMC and MAFMC informed about each other.**

***Council liaisons have excellent opportunities to observe and present viewpoints to the hosting Council, but as they have no voting rights they do not provide direct representation for their home Council.**

***A higher percentage of Rhode Island's commercial landings (by weight and/or value) come from species that are managed by the MAFMC as compared to species that are managed by the NEFMC.**

***A higher percentage of Rhode Island's recreational catch (by numbers) come from species that are managed by the MAFMC as compared to species that are managed by the NEFMC.**

***Rhode Island is in a similar situation to North Carolina and Florida in that Rhode Island has significant landings that are managed by two different Councils.**

III. Introduction

This report is in response to P.L. 109-479 sec. 216 (Magnuson-Stevens Reauthorization Act of 2006), which required the Mid-Atlantic Fishery Management Council (MAFMC), in consultation with the New England Fishery Management Council (NEFMC), to submit a "Report on Council Management Coordination" to the U.S. Senate Committee on Commerce, Science, and Transportation by October 12, 2007.

Given the characteristics of the Atlantic Coast, the mobility of both fish and fishermen, and the overlapping distribution of many species between the two Councils, it is not surprising that actions taken by one Council often affect fishermen operating in another Council's geographic jurisdiction. This is especially true between the MAFMC and the NEFMC due to their shared zoogeography. In addition, both Councils receive guidance, direction, technical support, and administrative support from the same NOAA Fisheries Service (NMFS) Region (Northeast). Thus, both Councils consult, coordinate, and interact with the same Regional Administrator and the same Science Center Director, and their respective staffs (policy analysts, stock assessment scientists, etc.). Another management authority - the Atlantic States Marine Fisheries Commission - exists and it governs many of the same constituents and fisheries as the two Councils. This management complexity will be highlighted in Section V.B. of this report.

The jurisdiction of the Councils is established by Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The MSA describes the makeup of the two Councils as:

NEW ENGLAND COUNCIL.--The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)).

MID-ATLANTIC COUNCIL.--The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). [paragraph 3 refers to highly migratory species (HMS) which are managed by NMFS]

The MSA also states that "Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority." Voting Council members include the principal State officials (one per state) responsible for marine fishery management in those States and so designated by their governors, the NMFS Regional Administrator (or designee), and individuals appointed by the Secretary of Commerce "who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned" (MSA 2006).

Issues arise when overlapping species are managed exclusively by one Council. For example, New Jersey fishermen are subject to herring management measures developed solely by the NEFMC, and Rhode Island fishermen are subject to squid management measures developed solely by the MAFMC. These examples serve to illustrate the reality of "regulation without representation" as there are no voting representatives from New Jersey on the NEFMC, just as there are no voting representatives from Rhode Island on the MAFMC.

The NEFMC and MAFMC have developed and use a number of mechanisms to address such circumstances. Examples include joint fishery management plans, liaisons, and the inclusion of interested parties from the non-controlling Council on committees and advisory panels of the controlling Council. This document evaluates these and other practices used to facilitate cooperation and communication between the NEFMC and the MAFMC. The establishment and participation of North Carolina and Florida on two Councils are highlighted and discussed to facilitate the comparison with Rhode Island in terms of it having membership on two Councils.

This report was prepared by the MAFMC staff at the direction of the MAFMC, and in consultation with the NEFMC. Source materials for this report included: Literature reviews, searches of Council records, personal communication with Fishery Management Council staff and NMFS staff, personal communication with past and current Council members (including liaisons), and personal communication with other experts in fisheries biology, zoogeography, and management.

The data sources for landings analyzed in this document include NE Dealer Weighout data, General Canvass data, and the Marine Recreational Fisheries Statistics Survey (MRFSS). A good description of the NE Dealer Weighout and General Canvass data may be found at: <http://www.sefsc.noaa.gov/sedar/download/SEDAR13-DW-02.pdf?id=DOCUMENT>. A description of MRFSS may be found at: <http://www.st.nmfs.noaa.gov/st1/recreational/overview/overview.html>. Data gathered via NMFS' on-line data query tool is referenced as: "from personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD." These datasets likely contain biases and outright errors, and there are ongoing efforts to improve the quality of the data. That said, they are the best available information, and are adequate for the purpose of generally illustrating catch and landings trends, which is how the datasets are used in this report.

IV. The role of Council liaisons between the MAFMC and the NEFMC, including an explanation of Council policies regarding the liaison's role in Council decision-making since 1996.

Because the MAFMC and NEFMC have used and continue to use Council liaisons somewhat differently, the role of the liaison will be discussed separately for each Council.

A. MAFMC Liaison to the NEFMC

1. General

The MAFMC's Statement of Organization Practices and Procedures includes coordination with other Councils as a duty/function of the Executive Director. One strategy to address the need to coordinate with other Councils is that the MAFMC designates a Council member to be the liaison to the NEFMC and has done so since as early as 1979 according to MAFMC records. Liaisons are appointed by the Council Chair, who works with the liaison to determine the liaison's role based on Council priorities and the liaison's areas of expertise. The MAFMC pays compensation, travel, and per diem expenses for its liaison to attend NEFMC meetings.

2. Principal Roles

MAFMC liaisons to the NEFMC have principally had three roles. First, MAFMC liaisons attend NEFMC meetings to gather information on NEFMC programs and activities. The liaisons report their findings at each MAFMC Council meeting. The reports vary in extensiveness based on the topics involved, and focus on NEFMC actions that affect MAFMC constituents so MAFMC members can determine the need to provide comment to the NEFMC. Nearly all MAFMC meetings have had an agenda item for a liaison report on the NEFMC since as early as 1984. Liaisons present their reports to the entire Council verbally and/or in writing. Given the impact that NEFMC actions can have on fishermen from the Mid-Atlantic Region, it is critical that the MAFMC keep updated on NEFMC actions. Once alerted, the MAFMC may provide written comment or notify constituents of opportunities to make public comments on pending NEFMC actions.

Second, liaisons explain the MAFMC's viewpoint to the NEFMC regarding NEFMC actions. Such explanations may take the form of presenting positions formally adopted by the MAFMC or spontaneous commentary on issues being discussed during NEFMC meetings. Content can range from simple descriptive information to discussion of the potential impacts of complex NEFMC actions on MAFMC interests. The liaison from the MAFMC is limited to only providing information to the NEFMC. The liaison cannot vote to determine an outcome concerning fisheries that may have a high level of participation from the Mid-Atlantic region.

Third, liaisons explain the rationale behind MAFMC actions to the NEFMC. Since members of the NEFMC can not be present at every MAFMC related meeting, the MAFMC liaisons serve to help the NEFMC understand what actions the MAFMC is taking and the rationale for such actions (personal communication D. Furlong and others (for others see Acknowledgements)).

B. NEFMC Liaison to the MAFMC

1. General

There is a written requirement in the position description for the NEFMC Executive Director that stipulates that the Executive Director coordinate with other agencies in developing FMPs. Part of the coordination process with the MAFMC is the annual designation of a liaison by the NEFMC Council Chair. There also are written policies regarding compensation and reimbursement for travel expenses for the liaison. The liaison is funded from the Council's administrative budget. To the extent that the liaison's responsibilities and activities are increased, less funding will be available for other Council obligations. Although there are no written guidelines for how liaisons should carry out their duties, certain aspects of their responsibilities have become well-established over time (discussed further under "principal roles" below).

The NEFMC did not formally designate a liaison to the MAFMC until about 1985. Before then, the NEFMC assigned a staff member to attend MAFMC meetings to follow MAFMC management issues affecting New England fishermen. At that time, the main MAFMC issues followed by the NEFMC staff were related to the development of an ITQ program for the Surf Clam and Ocean Quahog FMP. Later the NEFMC recognized a greater need for two-way communication on a variety of issues and decided it should formally establish a liaison who was a Council member to meet this need.

2. Principal Roles

The responsibilities of the liaison from the NEFMC to the MAFMC are: 1) Primarily to provide the NEFMC information on MAFMC fishery management issues with respect to MAFMC FMPs, actions, and concerns; and 2) to help answer questions about NEFMC decisions and policies.

In terms of his/her primary responsibility, the liaison from the NEFMC gives an oral and/or written report at each NEFMC meeting on MAFMC actions and issues of concern to the NEFMC. The liaison from the Mid-Atlantic may add to the information provided by the liaison from the NEFMC or answer questions about MAFMC issues, but does not provide a formal report to the NEFMC. Additionally the liaisons may provide a substantial amount of information about issues informally, outside of the official Council meeting sessions.

Given the impact that MAFMC actions can have on fishermen from the New England Region, it is critical that the NEFMC keep updated on MAFMC actions. Once alerted, the NEFMC may provide written comment or notify constituents of opportunities to make public comments on pending MAFMC actions.

The liaison from the NEFMC is limited to only providing information to the MAFMC. The liaison cannot officially register NEFMC positions or vote to determine an outcome concerning fisheries that may have a high level of participation from the New England region (personal communication C. Kellogg and others (for others see Acknowledgements)).

V. How management actions are taken regarding the operational aspects of current joint fishery management plans, and how such joint plans may undergo changes through amendment or framework processes.

A. MAFMC & NEFMC

There are currently two joint fishery management plans requiring the approval by both the MAFMC and the NEFMC: Spiny dogfish (dogfish) and monkfish. The dogfish Fishery Management Plan (FMP) was finalized in 1999 and the monkfish FMP was finalized in 1998. The MAFMC is the lead Council for dogfish and the NEFMC is the lead Council for monkfish. While not documented as a quid-pro-quo arrangement, the near simultaneous development of these two joint FMPs with one Council as lead for each was not likely to have been entirely coincidental.

FMPs and Amendments

The MSA establishes that jointly prepared FMPs and amendments must be approved by a majority of the voting members, present and voting, of each Council. Processes to create new FMPs and formal amendments to existing FMPs are labor-intensive endeavors that often take several years to complete. FMP creation and amendments involve extensive staff research, Council deliberations, public involvement, and NMFS reviews. These efforts are undertaken to satisfy myriad legal requirements; FMP and amendment documents are often in excess of several hundred pages. Although actions and associated documents are prepared primarily in response to the requirements of the MSA and the National Environmental Policy Act (NEPA), they also address the requirements of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). When preparing an FMP, amendment, or implementing regulations, the Council and NMFS must also comply with the requirements of the Regulatory Flexibility Act (RFA), the Administrative Procedure Act (APA), the Paperwork Reduction Act (PRA), the Coastal Zone Management Act (CZMA), the Information Quality Act (IQA), and Executive Orders 13132 (Federalism), 12898 (Environmental Justice), 12866 (Regulatory Planning), and 13158 (Marine Protected Areas). These other applicable laws and Executive Orders help ensure that Councils consider the full range of alternatives and their expected impacts on the marine environment, living marine resources, and the affected human environment. The lead Council is responsible for creating the FMP and subsequent amendment or framework documents. For dogfish and monkfish, the non-controlling Council has seats on the lead Council's species committee and the non-controlling Council can provide input through its members at the committee level. Committee participation by non-controlling Councils will be discussed in detail later.

Frameworks

Framework actions are management measures designated in an FMP that can be implemented through an expedited review process (compared to amendments). The dogfish and monkfish implementing regulations both state that framework actions require the approval of both Councils. The Councils can initiate frameworks at any time for management actions that an FMP specifies are authorized to be executed via frameworks (called "framework-able measures"). The amendment process often takes several years and the magnitude of effort required to change management strategies can be an impediment to effective fishery management. The availability and use of framework actions is a testament to the ever-changing nature of fisheries management. Procedures for setting annual specifications and for initiating framework adjustments diverge somewhat for dogfish and monkfish and are addressed separately below.

Dogfish

Dogfish management commenced after NMFS notified the MAFMC and NEFMC that the stock was overfished. The MSA requires the Councils to prepare measures within 1 year of notification to end overfishing and to rebuild the overfished stock. The FMP was developed jointly by the Councils, with the MAFMC having the administrative lead (Federal Register 2000).

Annual dogfish specifications are determined every 1-5 years through a lengthy review process that begins with the Spiny Dogfish Monitoring Committee (the Monitoring Committee), which is composed of MAFMC staff, NEFMC staff, NMFS NE Regional Office and Fisheries Science Center staff, designated state representatives, and one non-voting industry representative from each Council geographic area. The MAFMC Executive Director or his designee chairs the committee. The NMFS NE Fisheries Science Center annually reviews stock status, though review by the Monitoring Committee is not necessarily an annual event. The Monitoring Committee reviews the data at least every 5 years. Based on review of the data, the Monitoring Committee recommends to the Councils' Joint Spiny Dogfish Committee a commercial quota and possibly other management measures that will assure the target fishing mortality is not exceeded in the appropriate year.

The Joint Spiny Dogfish Committee consists of four MAFMC members and three NEFMC members. The Chair is from the MAFMC and the Vice-Chair is from the NEFMC. The Joint Spiny Dogfish Committee reviews the Monitoring Committee's recommendations and public comments and then recommends management measures for the next 1-5 fishing years to the Councils. The measures must assure that the specified target fishing mortality will not be exceeded. Following public comment, the Councils then make recommendations to NMFS NE Regional Administrator. The NE Regional Administrator then publishes a proposed and final rule based on his or her review of the Councils' recommendations and any related public comments received. To assure that the specified fishing mortality rate will not be exceeded, the NMFS NE Regional

Administrator may modify the Council's recommendations using any of the measures that were not rejected by both Councils.

The Councils can initiate frameworks at any time for management actions that the Dogfish FMP specifies are authorized to be executed via frameworks. After initiation, the Councils develop and analyze management measures over the span of at least two Council meetings (two for each Council). The public is given advance notice of the availability of both the proposed measures and the analysis for comment prior to, and at, the second Council meeting. Both Councils must approve identical motions as framework recommendations to the NMFS NE Regional Administrator. Depending on the circumstances, the NMFS NE Regional Administrator can issue a proposed rule, issue a final rule, or reject the measures by not concurring (50 CFR PART 648-FISHERIES OF THE NORTHEASTERN UNITED STATES, personal communication (see Acknowledgements)).

Monkfish

Monkfish management commenced after industry concerns were made known to the NEFMC and MAFMC in 1991 about the increasing amount of smaller monkfish tails being landed, frequent gear conflicts between monkfish boats and other fishermen, and the expanding directed trawl fishery. The NEFMC and the MAFMC both requested approval from the NMFS Regional Administrator to develop an FMP for monkfish. The Regional Administrator suggested a joint committee and ultimately the NEFMC was given the lead role (Monkfish FMP).

Monkfish specifications are determined through a lengthy review process that begins with the Monkfish Monitoring Committee (the Monitoring Committee), which is composed of NEFMC staff, MAFMC staff, NMFS NE Regional Office and Fishery Science Center staff, the United States Coast Guard (USCG), two fishing industry representatives (one selected by each Council with at least one of the two representing either the Atlantic sea scallop or the NE multispecies fishery), and state staff appointed by the Atlantic States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC. The Monitoring Committee reviews data on or before November 15 to recommend target Total Allowable Catches (TACs) for the upcoming year and to develop options for other management measures necessary to achieve the Monkfish FMP's goals and objectives (or to determine that existing measures are acceptable).

The Monitoring Committee submits the target TACs to the Councils and the NMFS NE Regional Administrator. The Regional Administrator then promulgates specifications for TACs, trip limits, and Days at Sea, largely from deterministic control rules based on comparison of *biomass estimates* versus *biomass targets*.

The Monitoring Committee may also develop and recommend other management measure options that are necessary to achieve Monkfish FMP goals and objectives. The

options may include management measures included in the Monkfish FMP and management measures designated as framework-able in the Sea Scallop and NE Multispecies FMPs. The Joint Monkfish Oversight Committee conducts an initial review and makes a recommendation to the Councils. The Joint Monkfish Oversight Committee consists of three NEFMC members and two MAFMC members. The Chair is from the NEFMC and the Vice-Chair is from the MAFMC.

The Councils, after reviewing the options recommended by the Joint Monkfish Oversight Committee and related public comment, submit management measure recommendations that meet Monkfish FMP objectives to the NMFS Regional Administrator. Management adjustments made to the monkfish FMP require majority approval by each Council. If the Councils do not submit a recommendation that meets the Monkfish FMP's goals and objectives, the Regional Administrator may select and publish as a proposed rule any appropriate option developed by the Monitoring Committee, as long as the option was not rejected by either Council. If either the NEFMC or the MAFMC rejected all options, then the Regional Administrator may select any measure that was not rejected by both Councils. If the Councils do not submit a recommendation that meets the goals and objectives of the Monkfish FMP by February 1, the Regional Administrator may publish as a proposed rule one of the appropriate Monitoring Committee options reviewed and not rejected by either Council. Details depend on the submission date, but generally the Regional Administrator can issue the measures as a final rule, issue a proposed rule, or reject the measures by not concurring.

The Councils can initiate frameworks at any time for management actions that the Monkfish FMP specifies are authorized to be executed via frameworks. Monkfish framework adjustments require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification that there will be a proposal for a framework adjustment) and two Council meetings, one at each Council. The public must be given advance notice of the availability of both the proposed measures and the analysis for comment prior to the first of the two final Council meetings. Both Councils must approve identical motions as recommendations to the NMFS NE Regional Administrator. Depending on the circumstances, the NMFS NE Regional Administrator can issue a proposed rule, issue a final rule, or reject the measures by not concurring (50 CFR Part 648-FISHERIES OF THE NORTHEASTERN UNITED STATES, personal communication (see Acknowledgements)).

B. MAFMC & Atlantic States Marine Fisheries Commission

In addition to coordination with the NEFMC, the MAFMC also has a very significant coordination role with the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC includes all Atlantic coastal states from Maine to Florida (including the Commonwealth of Pennsylvania) and was created by Public Law 77-539 in 1942. The Commission was formed as a Compact to assist in managing and conserving shared coastal fishery resources. The original concept was that the states would coordinate their efforts to “promote the better utilization of the fisheries...by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause.” The Commission was established to be a “fact finding and deliberative body with the power to make recommendations to the member States and to the Congress of the United States.” From its inception in 1942 until 1984, the Commission was primarily a planning and coordinating entity for inter-jurisdictional stocks, (any fishery or stock of fish that moves among the waters of two or more states, or a state and Federal waters).

In 1984 the Atlantic Striped Bass Conservation Act was signed into law, granting the Commission new responsibility as a management authority to rebuild Atlantic striped bass stocks. As a result of the Commission’s success with striped bass, Congress granted the Commission broader management authority through the enactment of the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (ACFCMA). This Act provided the Commission the authority to develop, implement, and enforce interstate conservation management plans to conserve and manage all Atlantic coastal fishery management resources. With the passage of ACFCMA, the role of the Commission was significantly changed, in part because of a mechanism requiring member states' compliance with Commission-approved FMPs. ACFCMA stipulates that if a member-state is found out of compliance by the Commission, it may recommend to the Secretary of Commerce a moratorium on fishing for, possessing, or landing the species in question within that state’s waters. As a result, the Atlantic States Marine Fisheries Commission, unlike its two sister Coastal Commissions (Gulf of Mexico and Pacific), became a true management authority.

The MAFMC and ASMFC have coordinated the management of summer flounder, scup, black sea bass, and bluefish since 1993, and dogfish since 2000. These species cross the boundary between state waters (waters adjacent to the states' coastlines out to 3 nautical miles) and Federal waters (from 3 nautical miles out to 200 nautical miles). As these stocks of fish are resident in both state and Federal waters, it follows that the Commission and the Council should manage them under complementary regulations.

When these two management authorities adopt an FMP, the implementing regulations should at least be complementary, and at best identical. When regulations are substantially different, e.g., the quotas for both scup and black sea bass are different in 2007, federally permitted participants tend to be disadvantaged because Federal rules have historically been more restrictive than state rules. Although undesirable, such a disconnect has become increasingly likely as Federal rules have become more and more

restrictive as the result of statutorily imposed rebuilding deadlines, while the Commission and its member states maintain a greater degree of flexibility in meeting the conservation goals of ACFCMA (the Act).

The Act's language charges the Secretary of Commerce, in cooperation with the Secretary of the Interior, to develop and implement a program to support the Atlantic States Marine Fisheries Commission in interstate fishery management. The program must include: Activities to support state cooperation in collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research; and fishery management planning. While the Act places a significant burden on the Federal agencies to support the activities of the ASMFC, the Act also requires the Commission to consult with the Councils to determine opportunities for complimentary management. This is an emerging issue and, absent an effective means to deal with it, state management will likely be the controlling management in the future, particularly for those stocks and fisheries that occur predominantly in state jurisdictions.

The Commission is not bound to statutory rebuilding deadlines or as many procedural obstacles as is the Council. Thus the Commission has more discretion in setting management goals and can react faster and with more flexibility to management needs. As a result, uneven management and uncertain analyses can occur across the range of the species and fisheries when the Council and Commission take different approaches to management problems.

The following table highlights the different laws and rules that apply to the Council and the Commission. It helps illustrate why the Federal process is more complicated and therefore more time consuming in its rule-making process than the Commission's and its member states' process.

<u>Laws / Executive Orders</u>	<u>Council</u>	<u>Commission</u>
Magnuson-Stevens Act	Yes	No
National Environmental Policy Act	Yes	No
Administrative Procedure Act	Yes	No
Regulatory Flexibility Act	Yes	No
Paperwork Reduction Act	Yes	No
Coastal Zone Management Act	Yes	Yes
Endangered Species Act	Yes	Yes
Marine Mammal Protection Act	Yes	Yes
Information Quality Act	Yes	No
E.O. 12866 (Regulatory Planning and Review)	Yes	No
E.O. 12630 (Takings)	Yes	No
E.O. 13132 (Federalism)	Yes	No
Essential Fish Habitat	Yes	Yes
Atlantic States Marine Fisheries Compact	No	Yes
Atlantic Coastal Fisheries Cooperative Management Act	No	Yes
Coastal / Member State Management Authorities*	No	Yes

- * State legislature
- * State regulatory commission / council
- * State executive / administrative agency

To illustrate the added time burden that the Council deals with owing to Federal statutes (NEPA, MSA, and APA), consider the statutory timelines for various Council actions. When the Council makes a determination that a fishery is in need of management, under NEPA and Council of Environmental Quality implementing regulations, it must file a Notice of Intent (NOI) that it is considering the development of a Draft Environmental Impact Statement (DEIS). The NOI has a minimum 30 day comment period. There is no such Commission requirement. Depending on the significance of the action, the Council may have to develop a full EIS, an Environment Assessment (EA), or may be exempted from further document development requirements through a categorical exclusion (CE). Hence, depending on significance, different clocks are triggered. If the Council must develop an EIS, then it is filed with NEPA and following its publication, there is a required 45 day minimum comment period. In addition, before the underlying proposed action can be implemented, at least 90 days must lapse before NMFS can take final action in terms of approving the EIS. Again, this document processing activity does not apply to the Commission as it does not have to conform to NEPA requirements.

Once a Council FMP is accepted by the Secretary, he must within five days publish a Notice of Availability (NOA) regarding the FMP and that starts a 90 day clock. Of those 90 days, 60 must be open for comment and 30 can be used to make his approval decision. Concurrent with this process is the Federal rule making process that requires an open comment period on the proposed implementing rules anywhere from 15 to 60 days. Following the Secretary's decision, the final rule process uses an additional 30 days for comment. These comment periods established under NEPA, the MSA, and the Administrative Procedure Act apply to all Council actions, but have little bearing on Commission actions other than to serve as a template for Commission policy as it applies to public notice and comment on its actions. Moreover, even when a Federal rule goes final there is an additional 30 day cooling off period before it actually takes effect. Hence, if a Council's action is determined to be a major one under NEPA criteria, then the shortest time period from the Council's decision to take an action to the Secretary's decision to approve and codify it takes no less than ten months (320 days) (NOAA 2005).

Nonetheless, despite the potential for differing timelines and management programs, the Council and the Commission generally meet jointly at least twice a year. In addition, the Commission Executive Director sits as a non-voting member on both the MAFMC and the NEFMC, and is provided an opportunity at all Council meetings to report on Commission activities so as to coordinate Commission actions and their impacts on Council programs and activities. When joint meetings occur during the Council's specification setting meetings for summer flounder, scup, black sea bass, and bluefish (in August and December), both entities then have the opportunity to work together on mutual management actions that impact their common constituents. The Council and Commission may also meet in October if specifications are on the agenda for the Council's October meeting. During these meetings, both the Council and Commission

hear an update on the species for which annual specifications are being considered, as well as staff recommendations, Monitoring Committee recommendations, and public input. Identical motions are made by each management authority, but if – for whatever reason – the identical motions fail to be adopted, then a disconnect can occur. For example, the current year’s fishing quota for dogfish is: Council - 4,000,000 pounds; Commission - 6,000,000 pounds. This difference in authorized quota (total allowable landings) adversely impacts federally permitted fishermen and dealers inasmuch as they must stop landing and buying dogfish when the Federal quota is reached, but non-federally permitted fishermen and dealers can land an additional 2,000,000 pounds of dogfish. The lack of identical quotas exposes the fishery management process to severe criticism that questions the value of the current fishery management process.

VI. The role of the NEFMC and the MAFMC liaisons in the development and approval of fishery management plans for fisheries in which the liaisons or members of the non-controlling Council have a demonstrated interest and significant current and historical landings of species managed by either Council.

During the development of FMPs for species in which the liaisons or members of the non-controlling Council have a demonstrated interest and significant current and historical landings, liaisons primarily participate in two ways. First, during full Council meetings, they have the ability to be recognized and engage in discussions. They can not make motions or vote, however. Their role at a Council meeting is limited to presenting and advocating positions on behalf of the non-controlling Council to ensure that the non-controlling Council's interests and ideas are known and understood.

Second, liaisons often serve on committees for fisheries in which the liaisons or members of the non-controlling Council have a demonstrated interest and significant current and historical landings. For example, the current MAFMC liaison to the NEFMC sits on the NEFMC Multispecies Committee (Groundfish/Monkfish/Skates) and the NEFMC Pelagics Committee (Herring/Whiting/Dogfish/Mackerel). Until recently the NEFMC member serving as the NEFMC liaison to the MAFMC belonged to the Squid, Mackerel, Butterfish Committee as a voting member. This may become the case again as roles for new Council members are finalized. As a committee member, the liaisons can make motions and vote on committee motions in addition to engaging in discussions. Committees often recommend preferred alternatives to the Councils and, in this way, the liaison can affect FMP development through his/her work on a Committee. If the liaison is on the Committee before creation of the FMP, then he/she can have an impact on development of the original FMP. If the liaison joins the committee subsequent to the approval of the original FMP, then he/she can have an impact on development of the FMP during amendments and frameworks (personal communication - see Acknowledgements).

VII. The effectiveness of the various approaches developed by the Councils to improve representation for affected members of the non-controlling Council in Council decision-making, such as use of liaisons, joint fishery management plans, and other policies, taking into account both the procedural and conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

Each year the MAFMC makes decisions that impact NEFMC interests and the NEFMC makes decisions that impact MAFMC interests. Given this ongoing interaction and the institutional memory of participants, there is a certain amount of incentive for the Councils to seek win-win solutions, as opposed to engaging in “tit-for-tat” actions that disadvantage the other Council. Examples include the MAFMC working out a process in the Surf Clam – Ocean Quahog FMP to accommodate Maine harvesters who were initially shut out of quota distribution, and the NEFMC working out a way to extend limited access permits to several North Carolina fishermen who were initially shut out of the Monkfish limited access system (various personal communication - see Acknowledgements). There are four main approaches used by the Councils to improve representation for affected members of a non-controlling Council: Council liaisons, joint FMPs, cross-Council committee appointments, and cross-Council advisory panel appointments. The effectiveness of each approach is described next.

Council Liaisons

The general role of Council liaisons has already been discussed. Liaisons' effectiveness in improving representation for affected members of the non-controlling Council is largely a subjective question and depends on the definition of representation. In one sense Council liaisons do not improve representation because liaisons can not make motions or vote on motions during a Council meeting. Since the liaison only provides information, there is no direct representation when the controlling Council votes on a motion. In another sense liaisons do improve representation, as they provide a mechanism for the non-controlling Council to present arguments to, and engage in discussions with, the controlling Council. The critical factors that likely determine a Council liaison's effectiveness are his or her personality and his or her ability to develop interpersonal relationships. Articulateness, willingness to engage, commitment to cross-Council communication, fishery knowledge, and Council process knowledge vary by individual, which means liaison effectiveness varies by individual. The nature of the liaison's relationships with his or her own Council's leadership and Council members, with the other Council's leadership and Council members, and with Council staff, also factor heavily in the effectiveness of the liaison. Current and past Council members state there have been periods where the liaison had better or worse relationships with the key parties. As the quality of the relationship fluctuates, so too does the willingness of one Council to incorporate the other Council's liaison into the decision-making process. Current Council liaisons state that, overall, they feel the liaison approach currently

functions well in terms of keeping the Councils informed about what the other is doing and allowing one Council's viewpoint to be at least heard by the other Council (various personal communication - see Acknowledgements).

Joint Fishery Management Plans

The procedures for joint FMPs have already been discussed. Joint FMPs ensure non-controlling Council interests are considered because both Councils must provide majority support for joint FMPs, amendments, and frameworks. Also, in terms of annual specifications, the non-lead Council can provide input at the Joint Oversight Committee. Non-lead Council staff can also participate on the relevant Monitoring Committee, although currently such participation is minimal due to staff workloads. By design, joint FMPs enhance representation and coordination but are cumbersome to administer. The Councils have discussed ceding joint management responsibilities so that the lead Council would have sole management authority. The MAFMC has voted that joint planning be terminated. The NEFMC has voted that the NEFMC have sole jurisdiction over monkfish and that the NEFMC and MAFMC continue to share jurisdiction over dogfish (Council records, personal communication - see Acknowledgements). Given these votes it seems likely that the status quo of joint management will continue for the time being at least.

Committee Appointments

In addition to joint committees, both the MAFMC and the NEFMC allow the other Council's members to participate on certain committees. Generally committee membership from non-controlling Councils is related to the non-controlling Council having significant landings of a species managed by the other Council. The non-controlling Council committee members are full members of the committee, with the ability to make motions and vote at the committee level. While the non-controlling Council members constitute a minority, the power to make motions and vote allows them to cause items to be included in the official record of motions that have been passed or rejected. Currently, most NEFMC species committees (groundfish, herring, scallops, skates, small-mesh multispecies), one MAFMC species committee (dogfish), and one NEFMC functional committee (Habitat/MPA/Ecosystems Oversight Committee) include one or more non-controlling committee members. Until recently a Rhode Island-nominated NEFMC member serving as the NEFMC liaison to the MAFMC belonged to the Squid, Mackerel, Butterfish Committee as a voting member. NEFMC representation on the Squid, Mackerel, Butterfish Committee could become the case again as roles for new Council members are finalized.

Prior to North Carolina becoming a member of the MAFMC, the NEFMC Sea Scallop Committee allowed one member from each the SAFMC and the MAFMC a seat on the Committee. After North Carolina became a member of the MAFMC, the MAFMC was provided the two seats. Presently a MAFMC member is the Vice-Chairman of the

NEFMC Sea Scallop Committee (Council records, personal communication - see Acknowledgements).

While the non-controlling committee members constitute a voting minority, current Council members state this approach effectively keeps the non-controlling Council informed of management decisions, and provides a way for the non-controlling Council to make its viewpoint known at the committee level. In cases where the controlling Council's opinion is split, the member(s) of the committee from the non-controlling Council could determine the outcome of a committee vote.

Advisory Panels

MAFMC and NEFMC species committees have advisory panels to provide input from commercial, recreational, and/or environmental interests. In most cases, and when appropriate, the controlling Council includes individuals (less than a majority) from the other Council's area as members of its advisory panel. While Advisory Panel members are not allowed to make motions or vote, they are given significant time to be recognized and discuss issues at Committee meetings. In this role they are able to present viewpoints and arguments that represent the interests of stakeholders from the area of the non-controlling Council. The Advisory Panel members also help get the word out to the broader public about upcoming issues, so that the public knows when it is critical to attend Council meetings and give public testimony.

As an example, the MAFMC has been very involved in the NEFMC Sea Scallop Advisory Panel. An ex MAFMC member has served as Chairman of that Advisory Panel. It is up to the Advisory Panels as to whether they want to take a vote on issues and the Scallop Advisory Panel often does. These, of course, are non binding but do give guidance to the Committee on directions the industry would like to see things go (Council records, personal communication - see Acknowledgements).

Council Staff to Council Staff Communication

The Executive Directors of the MAFMC and NEFMC have both formal and informal opportunities to interact. The Northeast Regional Coordinating Council (NRCC), which is composed of the leadership of NMFS Northeast Regional Office (NERO), NMFS Northeast Fisheries Science Center (NEFSC), MAFMC, NEFMC, and the ASMFC, meets twice a year to discuss issues and priorities. All Council Chairs, Vice-Chairs, and Executive Directors have the opportunity to interact at the Council Coordination Committee (CCC) meetings, which are held several times per year (members of the CCC include the Chairs, Vice-Chairs, and Executive Directors of each of the eight Councils). In addition, often the Executive Directors of the MAFMC and NEFSC both attend ad hoc NMFS meetings that concern both Councils. Informally, the two Executive Directors contact each other via telephone roughly weekly and there are near daily e-mail

exchanges of some sort (Council records, personal communication - see Acknowledgements).

Council technical staffs are encouraged to contact each other as often as necessary, and NEFMC and MAFMC staff are often both on teams/groups/committees that examine the science used to develop Council alternatives. The extent of communication depends on the issues and timelines of individual projects. Current staff from both Councils report that there is a generally good working relationship between MAFMC and NEFMC staff.

Summary of Coordination Approach Effectiveness

The less formal coordination methods that focus on communication of information (e.g. liaisons, advisory panels) effectively keep the Councils updated on the other's actions. However, without a vote in the Council voting process, direct representation is a debatable issue.

The more formal coordination methods that involve voting (e.g. committee meetings, joint FMPs) do a better job of ensuring direct representation. However, the reader likely noted the complexity involved in the Monkfish and Spiny Dogfish joint management discussion. In joint FMPs, instances can also occur when the Councils can not agree on management options, effectively placing decision making with the NMFS NE Regional Administrator.

VIII. The characteristics of North Carolina and Florida that supported their inclusion as voting members of more than one Council and the extent to which those characteristics support Rhode Island's inclusion on a second Council (the MAFMC).

1. Florida's characteristics supporting inclusion as voting member on two Councils

Florida has representatives on two Councils, the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council. Florida was granted representation on both Councils by the Fishery Conservation and Management Act of 1976. The South Atlantic Council's management area extends through the Florida Keys to 83 Degrees W Longitude.

Florida's peninsular geography translates into approximately 1,350 miles of coastline, split 43% along the Atlantic Ocean and 57% along the Gulf of Mexico, giving Florida a significant amount of coastline along both water bodies. Zoogeographically, there is varied mixing of species stocks between the two Florida coasts (especially when recruitment is considered), but most stocks besides king mackerel and spiny lobster are considered independent from a stock management perspective. Thus there can be different stock conditions and different regulations between the Atlantic and Gulf of Mexico, i.e. between the different Councils. With significant coastline on both water bodies, Florida therefore has an interest in both Councils, as its fisheries are affected by decisions made by both Councils (personal communication with Cody, R., Kennedy, S.).

Analyses show that even prior to the original Fishery Conservation and Management Act of 1976, Florida's fisheries had strong Atlantic and Gulf components. Between 1960 and 1975, Florida's commercial landings, by weight, were split, ranging from 27%-42% for the Atlantic Coast (34% overall - Figure 1) and 58%-73% (66% overall - Figure 1) for the Gulf Coast. Over the same time period, Florida's commercial landings by value were split, ranging from 18%-29% for the Atlantic Coast (24% overall - Figure 2) and 71%-82% for the Gulf Coast (76% overall - Figure 2) (personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD).

Figure 1. FL landings (weight) by coast 1960-1975.

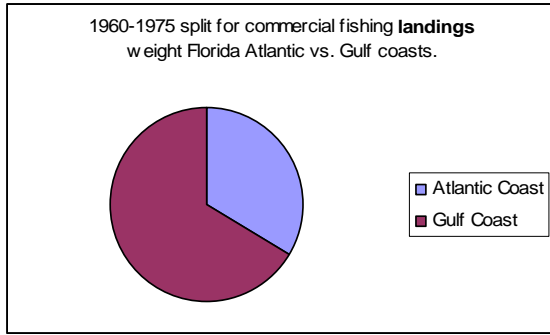
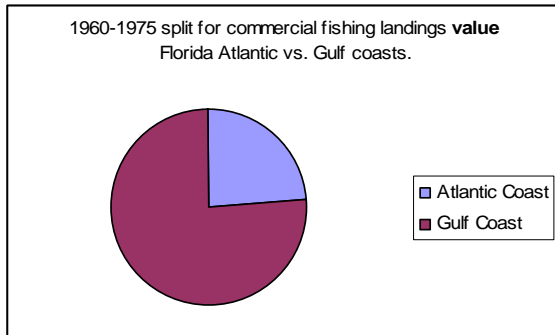


Figure 2. FL landings (value) by coast 1960-1975.



More recently, between 1976 and 2006, Florida's commercial landings, by weight, were split, ranging from 22%-41% for the Atlantic Coast (29% overall - Figure 3) and 59%-78% for the Gulf Coast (71% overall - Figure 3). Over the same time period, Florida's commercial landings by value were split, ranging from 14%-33% (26% overall - Figure 4) for the Atlantic Coast and 67%-86% for the Gulf Coast (74% overall - Figure 4) (personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD).

Figure 3. FL landings (weight) by coast 1976-2006.

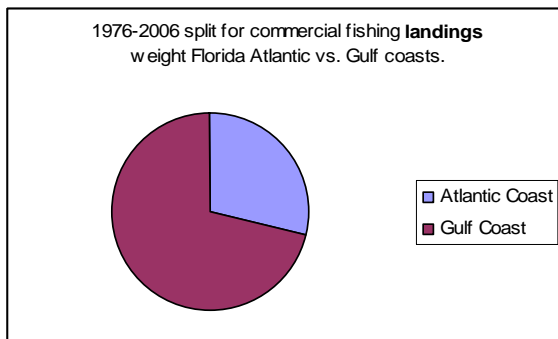
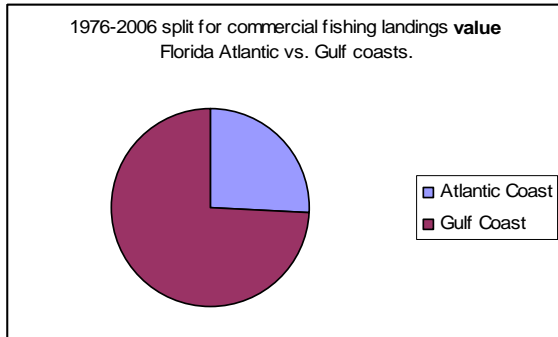
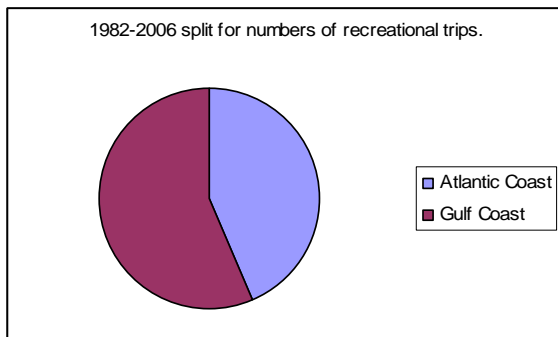


Figure 4. FL landings (value) by coast 1976-2006.



Recreationally, many Florida residents and tourists are within reach of both coasts. For recreational fishing between 1982 and 2006, participation estimates show that, in terms of numbers of angler trips, participation was divided pretty evenly between Florida's Atlantic and Gulf coasts. The proportion of trips ranged from 35%-48% for the Atlantic Coast (44% overall - Figure 5) and 52%-65% for the Gulf Coast (56% overall - Figure 5) (personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD).

Figure 5. Saltwater recreational fishing trips in Florida, Atlantic and Gulf coasts.



2. North Carolina's characteristics supporting inclusion as voting member on two Councils

North Carolina was originally included in only the South Atlantic Fishery Management Council (SAFMC). In 1996, amendments to the MSA added North Carolina to the MAFMC. North Carolina was given two voting seats, one obligatory appointed seat and one for the designated State official. North Carolina also currently holds an at-large seat. The process to add North Carolina to the MAFMC was largely driven by politics (by the early 1990s, North Carolina fishermen, who prosecute fisheries north of the North Carolina/Virginia border, wanted more participation in the MAFMC's decision-making process as they were acutely aware that MAFMC decisions could impact them significantly). In addition to political considerations, oceanographic and marine ecological characteristics off North Carolina played a determining role in the inclusion of North Carolina on the MAFMC (i.e. the ecological distribution of fish and resulting

historical fishing clashed with the Council management boundaries, and in doing so created a political problem).

The ocean area near Cape Hatteras, NC is the southern terminus of the Mid-Atlantic Bight (the continental shelf region between Cape Cod, MA and Cape Hatteras, NC), and the northern terminus of the South Atlantic Bight (the continental shelf region between Cape Hatteras, NC and West Palm Beach, FL). A bight is a "long, gradual bend or recess in the coastline that forms a large, open bay" (NOAA 2007a). North Carolina has approximately 93 miles of shoreline north of Cape Hatteras and 227 miles of shoreline south of Cape Hatteras (Platt et al. 2002, MMS 2007). However, given seasonal and other cycles, the ocean off North Carolina may be better viewed as a unique mixing or transition area between the Mid-Atlantic Bight to the north and the South Atlantic Bight to the south. This is significantly due to the proximity of the Gulf Stream, which brings warm water and warm-water species to the ocean off North Carolina.

Zoogeographically, off of North Carolina's coast there is an amalgamation of species whose ranges exist to the north or south. For example, cold water or northern fishes (like tautog, spotted hake, spiny dogfish) and warm water or southern fishes (like snowy grouper, red snapper, butterflyfishes) can be found on reefs and other habitats off North Carolina. There are also species whose ranges extend well north and south of North Carolina, but they have separate stocks that are largely independent north and south of Cape Hatteras (e.g., black sea bass). In addition, there are species that are found north of Cape Hatteras but generally not south of it (American lobster, monkfish, scup, cod, haddock, winter flounder), and species that are found south of Cape Hatteras but generally not north of it (red porgy, moray eels, star drum). While North Carolina is usually considered part of the Carolinian zoogeographic province, a warm temperate system, it is clearly a mixing zone. Even though Cape Hatteras is usually given as the border between zones, the mixing of northern and southern fishes takes place across most of the state's marine waters, depending on seasons and oceanographic conditions (Briggs 1974, NOAA 2007a, personal communication with Ross, S., Ruhle, J.). With its proximity to both Mid-Atlantic and South Atlantic fisheries, North Carolina landings are a mixture of MAFMC-managed species and SAFMC-managed species. Analysis of how North Carolina's landings are divided between the MAFMC and the SAFMC follows.

2a. Fishery Participation - Commercial

The data used are the Southeast General Canvass Data and the NE Dealer Weighout Data (note: black sea bass caught north of Cape Hatteras, NC are managed by the MAFMC and black sea bass caught south of Cape Hatteras are managed by the SAFMC). To facilitate comparison with Rhode Island, three time periods were analyzed for North Carolina's perspective. First, 1990-1995 was used since this was the period immediately before North Carolina was included on the MAFMC. Second, 2000-2006 was included in the analysis to compare current catches. Third, 1982-2006 provides the broadest analytical perspective in terms of time (but earlier data may be less complete). The percentages seem low but this is because species that are not under either the MAFMC or

SAFMC jurisdiction make up much of North Carolina's landings (top four were menhaden, blue crabs, croaker, and sea trout, none of which are managed by the Councils).

2a1. From North Carolina's Perspective

Proportion of North Carolina's landings regulated by SAFMC (unpublished General Canvass data)

For the years between 1990 and 1995, **SAFMC**-managed species accounted for between 6%-8% of North Carolina's landings by weight (7% overall - Figure 6). Over the same time period, **SAFMC**-managed species accounted for between 24%-37% of North Carolina's landings by value (29% overall - Figure 9).

For the years between 2000 and 2006, **SAFMC**-managed species accounted for between 6%-14% of North Carolina's landings by weight (8% overall - Figure 7). Over the same time period, **SAFMC**-managed species accounted for between 17%-29% of North Carolina's landings by value (23% overall - Figure 10).

For the years between 1982 and 2006, **SAFMC**-managed species accounted for between 3%-14% of North Carolina's landings by weight (6% overall - Figure 8). Over the same time period, **SAFMC**-managed species accounted for between 16%-40% of North Carolina's landings by value (26% overall - Figure 11).

Proportion of North Carolina's landings regulated by MAFMC (unpublished General Canvass data)

For the years between 1990 and 1995, **MAFMC**-managed species accounted for between 4%-9% of North Carolina's landings by weight (5% overall - Figure 6). Over the same time period, **MAFMC**-managed species accounted for between 7%-10% of North Carolina's landings by value (9% overall - Figure 9).

For the years between 2000 and 2006, **MAFMC**-managed species accounted for between 4%-12% of North Carolina's landings by weight (7% overall - Figure 7). Over the same time period, **MAFMC**-managed species accounted for between 6%-14% of North Carolina's landings by value (10% overall - Figure 10).

For the years between 1982 and 2006, **MAFMC**-managed species accounted for between 4%-12% of North Carolina's landings by weight (6% overall - Figure 8). Over the same time period, **MAFMC**-managed species accounted for between 5%-14% of North Carolina's landings by value (10% overall - Figure 11).

(Adding the respective SAFMC and MAFMC percentages do not equal 100% because not all species landed in North Carolina are regulated by the SAFMC or MAFMC. Of the proportion not managed by SAFMC or MAFMC, some species may be unmanaged or managed by NMFS (HMS), States, or the ASMFC. Again, much of North Carolina's landings are not managed by either Council).

Figure 6. 1990-1995 NC landings (weight) split by who managed the species

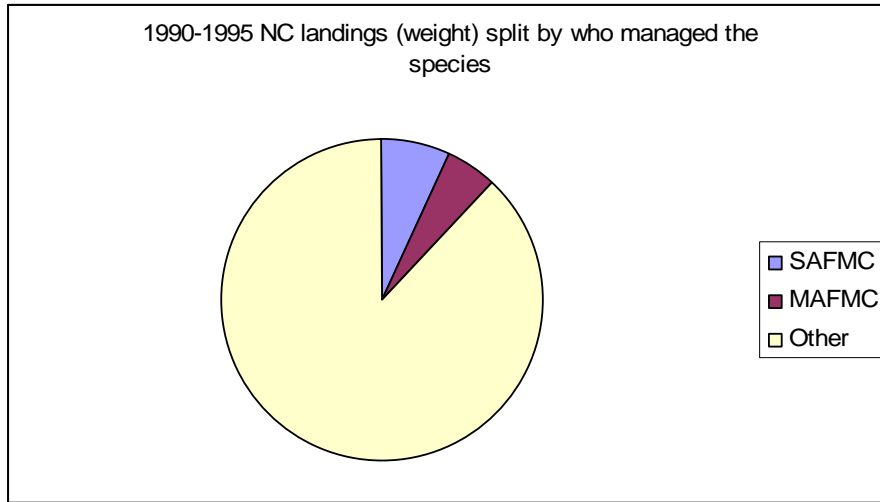


Figure 7. 2000-2006 NC landings (weight) split by who managed the species

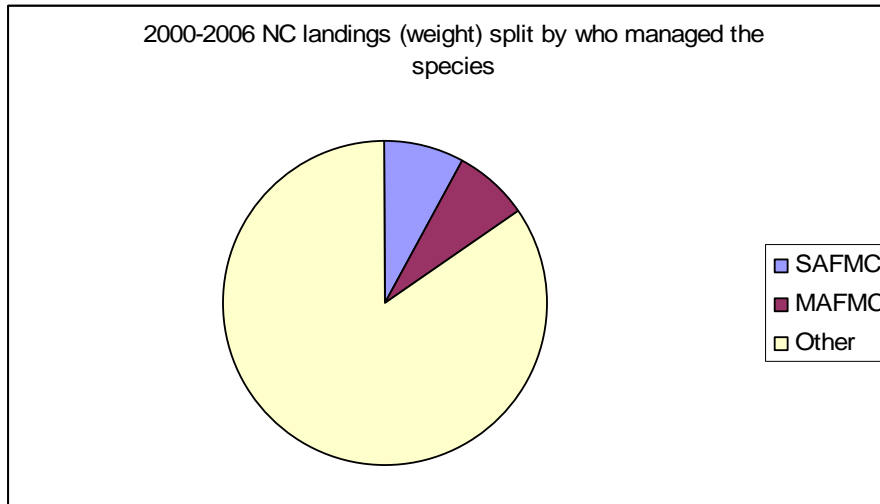


Figure 8. 1982-2006 NC landings (weight) split by who managed the species

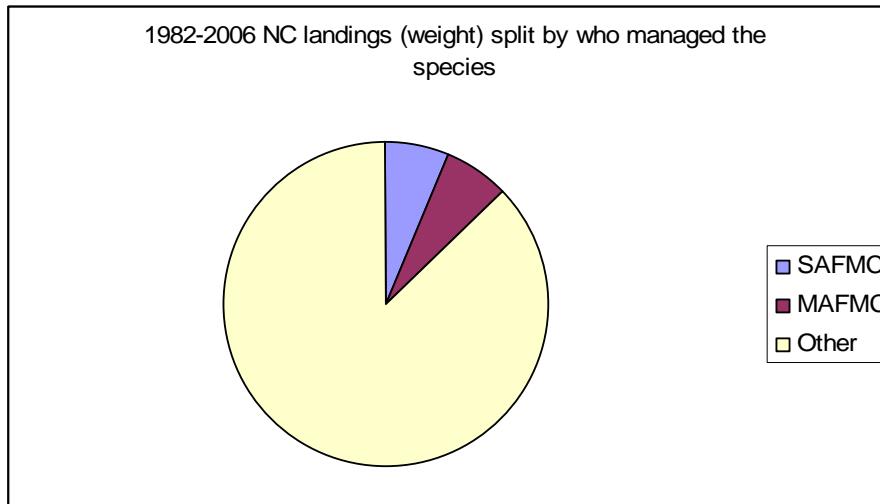


Figure 9. 1990-1995 NC landings (value) split by who managed the species

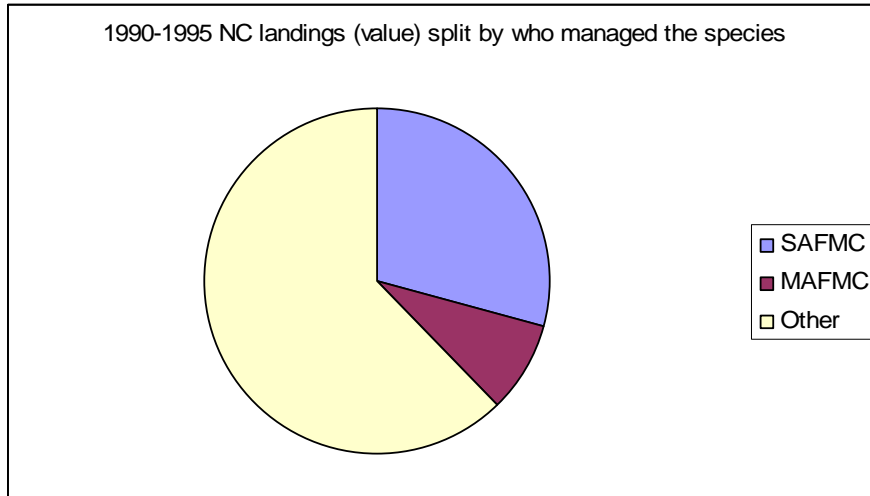


Figure 10. 2000-2006 NC landings (value) split by who managed the species

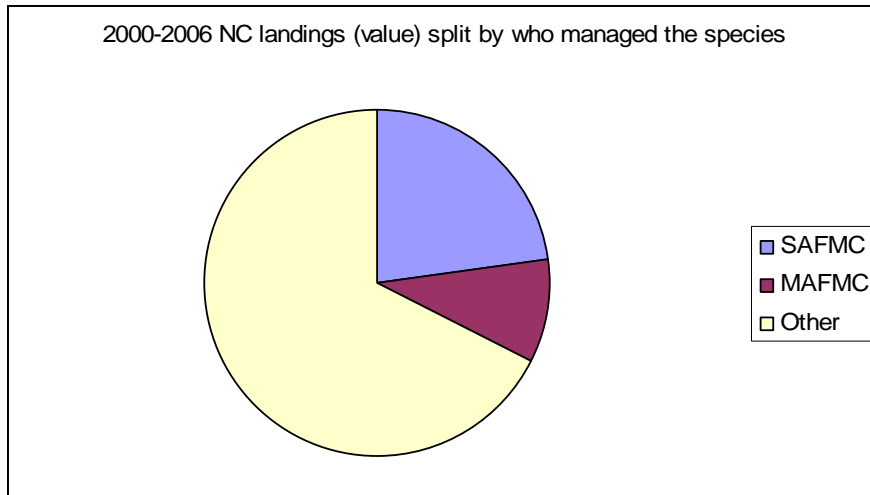
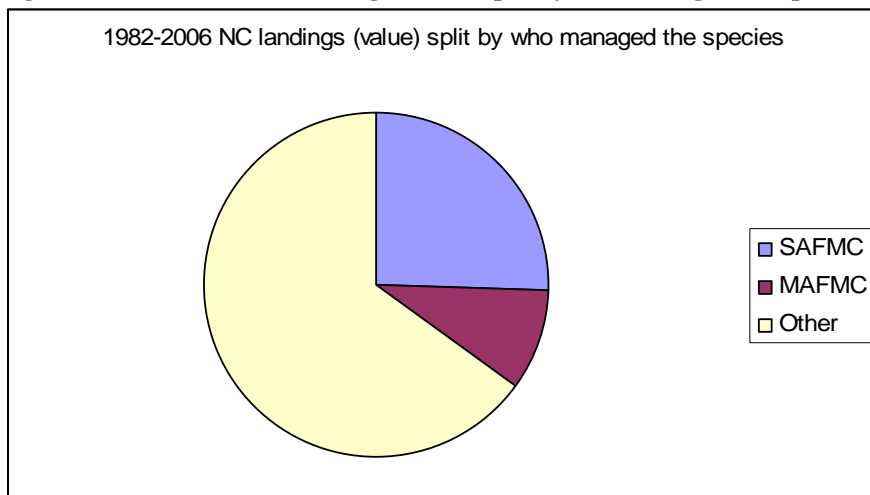


Figure 11. 1982-2006 NC landings (value) split by who managed the species



2a2. From the MAFMC's Perspective

Proportion of MAFMC-managed landings taken by North Carolina (unpublished NE Dealer Weighout data)

North Carolina was not added to the NE dealer weighout data collection program until 1997 so only the years 1997-2006 have been included.

Between 2000 and 2006, for the stocks managed by the MAFMC, North Carolina's share of the catch varied between 2% and 4% by weight (3% overall - Table 1) and between 5%-7% by value (6% overall - Table 1).

Between 1997 and 2006, for the stocks managed by the MAFMC, North Carolina's share of the catch varied between 2% and 4% by weight (3% overall - Table 1) and between 3%-7% by value (5% overall - Table 1).

Table 1. Proportion of landings managed by MAFMC and caught by NC.

	By weight	By value
2000-2006	3%	6%
1997-2006	3%	5%

2b. Fishery Participation - Recreational (from personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD).

2b1. From North Carolina's Perspective

Based on MRFSS estimates, for the time periods 1990-1995, 2000-2006, and 1982-2006, the approximate percentages of the total number of fish caught in North Carolina by recreational anglers and managed by the **MAFMC** were 14%, 12%, and 15% (Figure 12, Figure 13, and Figure 14). Based on MRFSS estimates, for the time periods 1990-1995, 2000-2005, and 1982-2005, the approximate percentages of the total number of fish caught in North Carolina by recreational anglers and managed by the **SAFMC** were 12%, 10%, and 11% (Figure 12, Figure 13, and Figure 14). The largest three recreational catches (in terms of numbers) in North Carolina 1982-2005 were spot, bluefish, and pinfishes. Spot are managed by the Atlantic States Marine Fisheries Commission and bluefish are managed by the MAFMC.

Figure 12. Proportions of NC recreationally-caught saltwater fish by management authority, 1990-1995

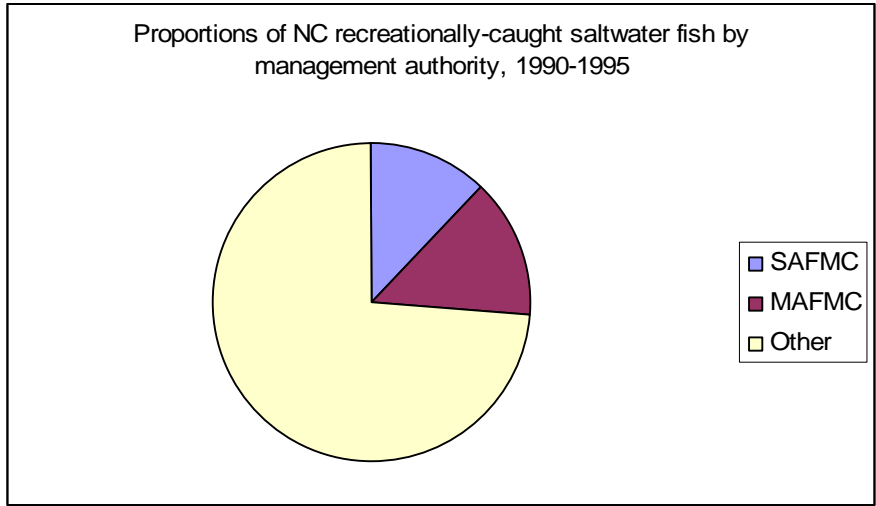


Figure 13. Proportions of NC recreationally-caught saltwater fish by management authority, 2000-2006

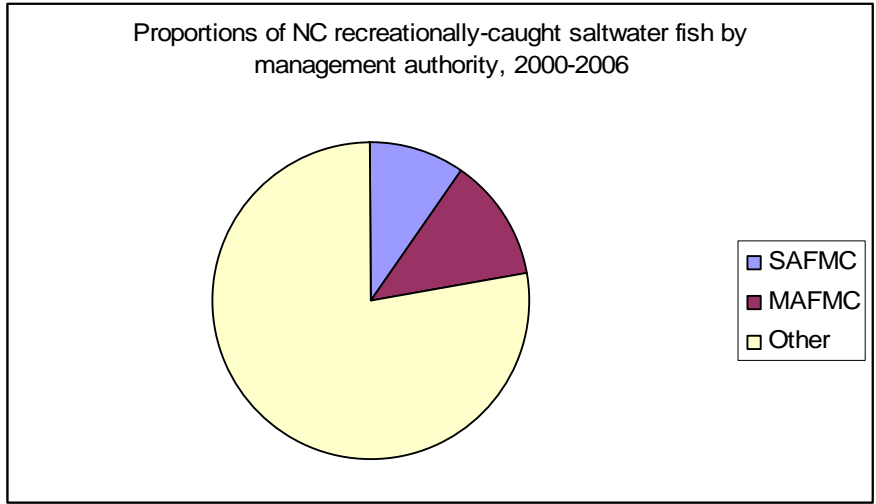
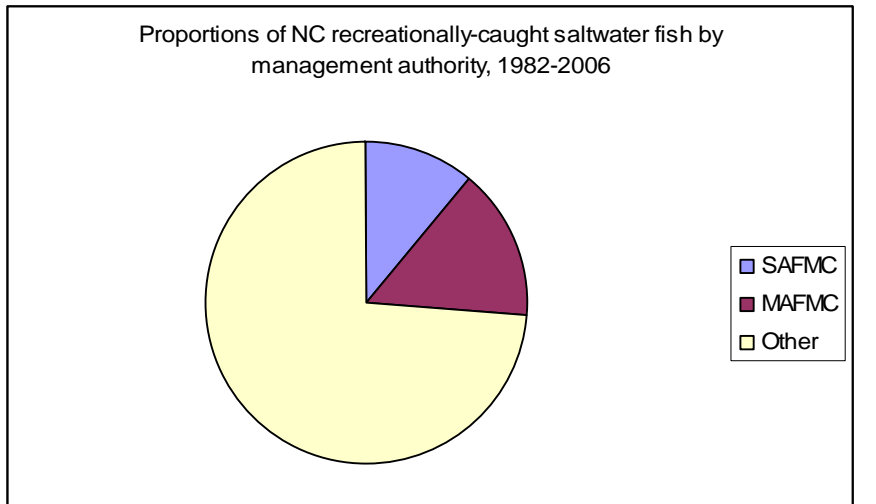


Figure 14. Proportions of NC recreationally-caught saltwater fish by management authority, 1982-2006



2b2. From the MAFMC's Perspective (from personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD).

The most recreationally important species managed by the MAFMC are bluefish, summer flounder, scup, black sea bass, and Atlantic mackerel. Based on MRFSS estimates, in 2006, North Carolina's proportion of recreational catch (numbers of fish) for these species' stocks managed by the MAFMC were: bluefish: 15%; summer flounder: 1%; scup: less than 1%; black sea bass: 2%; and mackerel: 0%.

2c. Historical Documentation

In April of 1991, North Carolina's Governor wrote to members of North Carolina's Congressional Delegation to recommend they attempt to make North Carolina a full member of the MAFMC due to the impact of MAFMC decisions on North Carolina's fisheries. The Governor cited North Carolina's Division of Marine Fisheries' participation in MAFMC meetings, technical work, and data sharing. He also noted that, for some species managed by the MAFMC, North Carolina landed more fish (e.g. bluefish and summer flounder) than any other state commercially, and had major recreational landings as well. The Governor also stated that the North Carolina Fisheries Association supported his position. (Exhibit 1, Appendix A) Current MAFMC members state that North Carolina's fishermen were also concerned with the MAFMC's potential decisions involving scup, black sea bass, and dogfish.

The Director of North Carolina's Division of Marine Fisheries wrote MAFMC in May 1991 saying: "...it would be of considerable assistance and would certainly be appreciated if the MAFMC expressed their support for an amendment which would establish membership for North Carolina..." The Director cited North Carolina's participation in the summer flounder, scup, black sea bass, bluefish, weakfish, shark, and joint venture fisheries. He also noted North Carolina's participation and assistance with MAFMC FMP development. (Exhibit 2, Appendix A)

In May 1991, the MAFMC unanimously passed a motion supporting the addition to the MAFMC of the area north of Cape Hatteras, North Carolina. The May 1991 meeting included testimony by the Director of North Carolina's Division of Marine Fisheries and significant discussion of adding North Carolina to the MAFMC. Key issues raised included the large catches of MAFMC-regulated species by North Carolina, the precedent set by Florida, using Cape Hatteras as a dividing line, North Carolina's policy of planning to have one commercial and one recreational appointee, that North Carolina did not want to be a member of the MAFMC unless the MAFMC wanted it to be a member, fiscal implications, North Carolina's longstanding role in MAFMC meetings, and the strong similarity between Virginia and North Carolina. The motion's wording was: "**I move that the Mid-Atlantic Council support legislation to include the area of North Carolina from Hatteras Inlet north in the Mid-Atlantic Council, and that the area south of the Inlet remain with the South Atlantic Council, with the understanding**

that legislation would have to establish appropriate funding and membership requirements." The MAFMC unanimously passed a motion in April 1993 supporting adding North Carolina to the MAFMC. (Exhibits 3-5, Appendix A)

In February 1994, the Counsel for the U.S. House of Representatives Subcommittee on Fisheries Management requested comments from the MAFMC on proposed legislation to add North Carolina to the MAFMC. A Council memorandum indicated that the Chairman and Executive Director of the MAFMC discussed the proposed legislation and had "no problem with it," ostensibly indicating support. (Exhibit 6, Appendix A)

In October 1995, the *Virginian-Pilot* reported that North Carolina's U.S. Representative Walter B. Jones Sr. (then Chairman of the U.S. House Merchant Marine Committee) successfully introduced an amendment to the MSA that added North Carolina as a voting member to the MAFMC. The article stated that "Because of the state's location on the Atlantic Coast at the confluence of northern and southern fish species, fishermen and fisheries managers argued North Carolina should be allowed representation on both Councils." Representative Jones was quoted as stating "I am glad that North Carolina's significant role in Atlantic fisheries has at last been recognized with voting representation on the Mid-Atlantic Fisheries Council" (Gray 1995).

3. Rhode Island's characteristics in terms of the extent to which they support Rhode Island's inclusion as a voting member on two Councils

Several thematic characteristics emerge from the available material on the cases of Florida's and North Carolina's inclusion on two Fishery Management Councils and those characteristics may facilitate evaluation of the case for Rhode Island's inclusion on the MAFMC. The characteristics include fishery participation (3a, 3b), fish stock biogeography (3c), history with the second Council (3d), and political support (3e).

3a. Fishery Participation - Commercial

3a1. From Rhode Island's Perspective

Proportion of Rhode Island's landings regulated by NEFMC (unpublished NE Dealer Weighout data)

Like Florida and North Carolina, Rhode Island participates in fisheries regulated by multiple Councils. NE dealer weigh-out data show that, for the years between 2000 and 2006, NEFMC-managed species accounted for between 32%-62% of Rhode Island's landings by weight (44% overall - Figure 15). Over the same time period, NEFMC-managed species accounted for between 16%-35% of Rhode Island's landings by value (25% overall - Figure 17).

Looking at a longer time series, NE dealer weigh-out data show that, for the years between 1982 and 2006, **NEFMC**-managed species accounted for between 24%-62% of Rhode Island's landings by weight (43% overall - Figure 16). Over the same time period, **NEFMC**-managed species accounted for between 15%-61% of Rhode Island's landings by value (29% overall - Figure 18) .

Proportion of Rhode Island's landings regulated by MAFMC (unpublished NE Dealer Weighout data)

NE dealer weigh-out data show that, for the years between 2000 and 2006, **MAFMC**-managed species accounted for between 28%-61% of Rhode Island's landings by weight (48% overall - Figure 15). Over the same time period, **MAFMC**-managed species accounted for between 25%-51% of Rhode Island's landings by value (37% overall - Figure 17).

Looking at a longer time series, NE dealer weigh-out data show that, for the years between 1982 and 2006, **MAFMC**-managed species accounted for between 28%-70% of Rhode Island's landings by weight (51% overall - Figure 16). Over the same time period, **MAFMC**-managed species accounted for between 25%-69% of Rhode Island's landings by value (45% overall - Figure 18).

(Adding the respective weight or value NEFMC and MAFMC averages do not equal 100% because not all species landed in Rhode Island are regulated by the NEFMC and/or MAFMC. Of the proportion not managed by NEFMC or MAFMC, some species may be unmanaged, or managed by NMFS (HMS), states, or the ASMFC).

Figure 15. 2000-2006 RI landings (weight) split by who managed the species

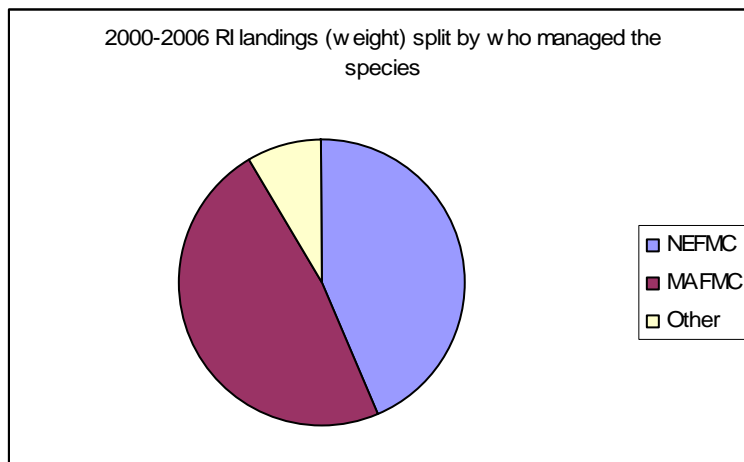


Figure 16. 1982-2006 RI landings (weight) split by who managed the species

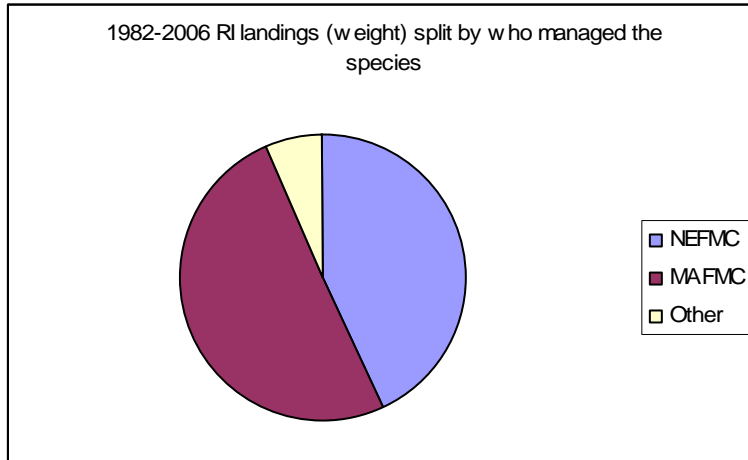


Figure 17. 2000-2006 RI landings (value) split by who managed the species

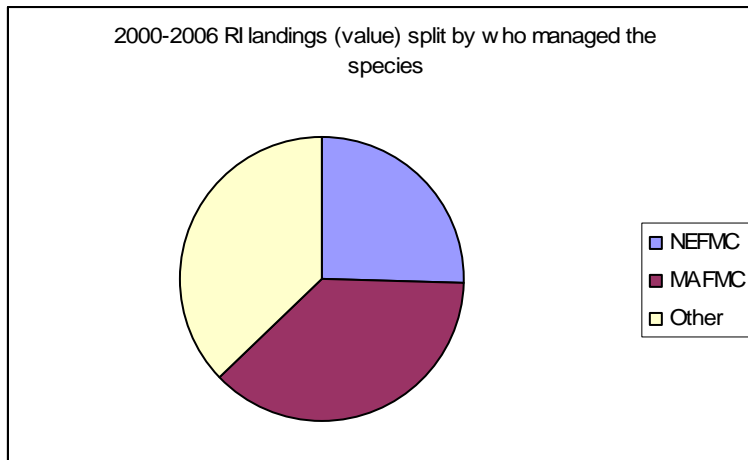
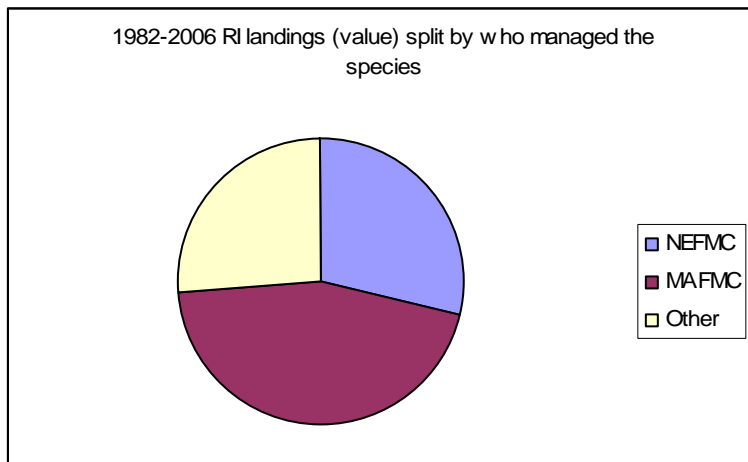


Figure 18. 1982-2006 RI landings (value) split by who managed the species



3a2. From the MAFMC's Perspective

Proportion of MAFMC-managed landings taken by Rhode Island (unpublished NE Dealer Weighout data)

Between 2000 and 2006, for the stocks managed by the MAFMC, Rhode Island's share of the catch varied between 15% and 22% by weight (18% overall - Table 2) and between 17%-25% by value (21% overall - Table 2).

Looking at a longer time series, between 1982 and 2006, for the stocks managed by the MAFMC, Rhode Island's share of the catch varied between 15% and 43% by weight (25% overall - Table 2) and between 17%-46% by value (26% overall - Table 2).

Table 2. Proportion of landings managed by MAFMC and caught by RI

	By weight	By value
2000-2006	18%	21%
1982-2006	25%	26%

3b. Fishery Participation - Recreational (from personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD).

3b1. From Rhode Island's Perspective

Based on MRFSS estimates, for the time periods 2000-2006 and 1982-2006, the approximate percentages of the total number of fish caught in Rhode Island by recreational anglers and managed by the MAFMC were 71% and 59% (Figure 19, Figure 20). Based on MRFSS estimates, for the time periods 2000-2006 and 1982-2006, the approximate percentages of the total number of fish caught in Rhode Island by recreational anglers and managed by the NEFMC were 5% and 15% (Figure 19, Figure 20). The largest three recreational catches (in terms of numbers) in Rhode Island for both time periods were scup, bluefish, and summer flounder, all of which are managed by the MAFMC (in cooperation with the ASMFC).

Figure 19. Proportions of RI recreationally-caught saltwater fish by management authority, 2000-2006

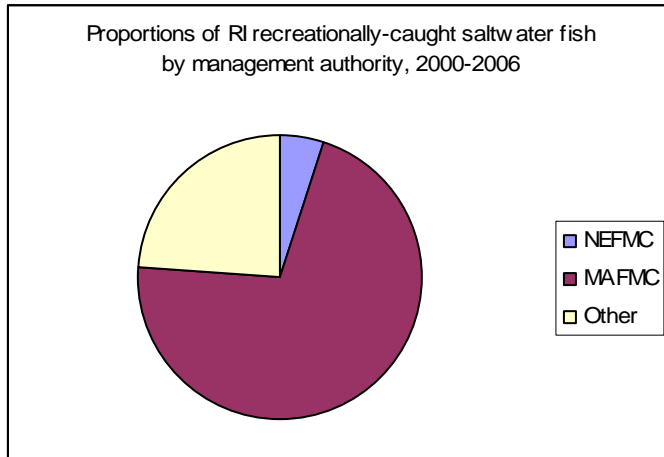
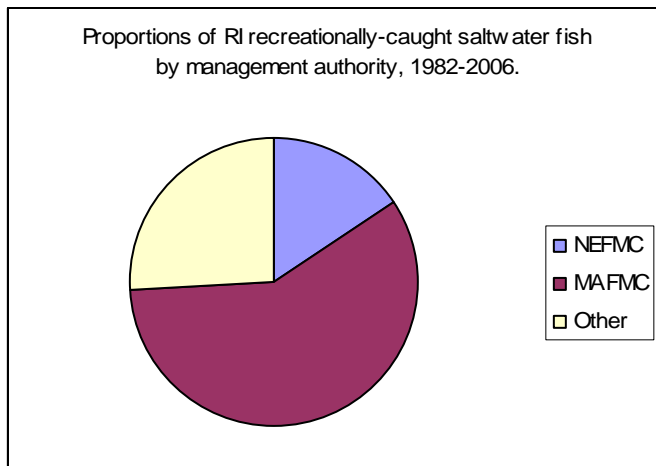


Figure 20. Proportions of RI recreationally-caught saltwater fish by management authority, 1982-2006.



3b2. From the MAFMC's Perspective (from personal communication from the National Marine Fisheries Service, Fisheries Statistics Division, Silver Spring, MD).

The most recreationally important species managed by the MAFMC are bluefish, summer flounder, scup, black sea bass, and Atlantic mackerel. Based on MRFSS estimates, in 2006, Rhode Island's proportion of recreational catch in terms of numbers of fish for these species' stocks managed by the MAFMC were: bluefish: 5%; summer flounder: 6%; scup: 15%; black sea bass: 4%; and mackerel: less than 1%.

3c. Fish Stock Biogeography

Florida's geography, and the species and fisheries off its coasts, clearly tie it to both the South Atlantic and Gulf Councils. North Carolina also straddles two Council Regions in terms of fish zoogeography. Rhode Island is not a clear zoogeographic dividing line between the MAFMC and the NEFMC. However, many fish found in the Mid-Atlantic region have ranges that extend into or beyond both North Carolina and Rhode Island. Examples of the most important commercially and recreationally caught fish that at least seasonally inhabit waters off both states include: Striped bass, bluefish*, butterfish*, summer flounder (fluke)*, monkfish, Atlantic mackerel*, scup*, black sea bass*, tilefish*, certain tunas, weakfish (squeteague), dogfish sharks*, herring, and tautog (species with asterisks are managed by the MAFMC or jointly with the MAFMC as lead Council) (Fishbase 2007).

3d. History with the Second Council

Florida has been represented on two Councils since the initial passage of the original Fishery Conservation and Management Act of 1976. Before being added to the MAFMC, North Carolina State agencies regularly attended MAFMC meetings and provided significant technical and data-related support to the MAFMC. Rhode Island State agencies do not usually attend MAFMC meetings, but Rhode Island State agencies are very involved in technical work on fluke, scup, black sea bass, and bluefish through the Atlantic States Marine Fisheries Commission (ASMFC) (various personal communications). The ASFMC and the MAFMC cooperatively manage these four species. So while Rhode Island State agencies do not have much direct interaction with the MAFMC, it is involved in significant technical and data-related support to MAFMC-managed species through the ASMFC. See discussion at V.B.

3e. Political Support

Two political factors apparently played key roles in North Carolina's inclusion in the MAFMC. First, there was not significant opposition to adding North Carolina to the MAFMC. In fact, the MAFMC twice voted in support of including North Carolina. There have been no MAFMC votes taken regarding adding Rhode Island to the MAFMC. Second, North Carolina Congressman Walter B. Jones, Sr. was Chairman of the Committee on Merchant Marine and Fisheries when North Carolina was added to the MAFMC (various personal communications). Congressman Nick J. Rahall II of West Virginia is the current Chairman of the House Committee on Natural Resources, which now has House jurisdiction over the MSA (the law that specifies which states are on which Councils). Senator Daniel Inouye of Hawaii is the current Chairman of the Senate Commerce Committee, which now has Senate jurisdiction over the MSA.

IX. Conclusion

The MAFMC and NEFMC use an array of communication and coordination mechanisms. These mechanisms, including liaisons, likely do a good job at keeping one Council informed of the other's activities and concerns. By design, joint FMPs are coordinated but are also complex to administer. Whether the results of communication and coordination efforts amount to true representation of non-controlling Council interests when the controlling Council makes a decision is probably open to debate. Also, based on analysis of catch data, it appears that Rhode Island is in a similar situation to North Carolina and Florida, in that Rhode Island has significant landings from stocks that are managed by two Councils.

While communicating with knowledgeable individuals (see acknowledgements) for information for this report, several options were voiced repeatedly and may warrant further consideration (options 1-4 do not preclude continued use of liaisons or other additional communication and coordination mechanisms by the Councils):

Option 1: No Action (i.e. maintain status-quo).

Option 2: Add Rhode Island to the MAFMC (along with some number of voting representatives).

Option 3: Add Rhode Island and Connecticut to the MAFMC (along with some number of voting representatives).

Option 4: Add New York to the NEFMC if Rhode Island is added to the MAFMC (along with some number of voting representatives for each).

Option 5: Require the continued use of liaisons and provide liaisons with absolute voting rights and motion-making privileges.

Option 6: Require the continued use of liaisons and provide liaisons with limited voting and motion-making privileges that apply only when decisions with significant impacts to the non-controlling Council are involved.

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XI. Appendix A

Exhibit 1:



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES G. MARTIN
GOVERNOR

April 15, 1991

The Honorable Walter B. Jones
United States House of Representatives
241 Cannon House Office Building
Washington, D.C. 20515

Dear Walter:

Under the Magnuson Fishery Conservation and Management Act of 1976 (MFCMA), the Congress created the existing system for management of fisheries in the United States' Exclusive Economic Zone (EEZ), the ocean area from 3 to 200 nautical miles offshore North Carolina and most other coastal states. Section 302 of the Act created eight Regional Fishery Management Councils, and included North Carolina as a member of the South Atlantic Fishery Management Council (SAFMC).

Over the years, North Carolina's representatives on the SAFMC have participated actively in the Council. In addition, our State marine fisheries management agency, the North Carolina Division of Marine Fisheries (DMF), has contributed greatly to the accomplishments of the SAFMC. Of great importance to the success of the Council has been research and statistical data provided by the DMF, especially for king and Spanish mackerels and reef fish (snappers, groupers and sea bass).

Since the early 1980s, the DMF has increasingly participated in activities of the Mid-Atlantic Fishery Management Council (MAFMC). Our agency member of the SAFMC generally attends MAFMC meetings as well. In recent years, the DMF has been a major participant in technical work for the MAFMC, providing large databases for development of fishery management plans for summer flounder, bluefish, and other species.

North Carolina's commercial and sport fishermen are major harvesters of many of the species for which the MAFMC has management responsibility. Commercially, North Carolina's fishermen land more bluefish, summer flounder, and weakfish (gray trout) than any other state. We were third in 1989 in recreational landings of bluefish, fifth for summer flounder, and fifth for weakfish. The MAFMC is responsible for these and other species important to North Carolina. North Carolina makes great contributions to the MAFMC and the fisheries for which it is responsible, but since we are not a member of the Council, we cannot vote on Council decisions concerning these species and affecting North Carolinians.

Exhibit 1 continued:

The Honorable Walter B. Jones
April 15, 1991
Page Two

Because of the importance of MAFMC decisions to North Carolina's commercial and recreational fisheries and the importance of North Carolina's contributions to the Council, I ask that you take the necessary steps to amend the MFCMA, Section 302, to make North Carolina a full member of the Mid-Atlantic Fishery Management Council. This position is also supported by the North Carolina Fisheries Association.

Sincerely,



James G. Martin

JGM:ngb

cc: William T. Hogarth, Director
Division of Marine Fisheries

Jerry Schill, Executive Director
North Carolina Fisheries Association

Exhibit 2:



RECEIVED *sdw*

MAY 28 1991

MID ATLANTIC COUNCIL

State of North Carolina
Department of Environment, Health, and Natural Resources

Division of Marine Fisheries
P.O. Box 769 • Morehead City, North Carolina 28557-0769

James G. Martin, Governor
William W. Cobey, Jr., Secretary

May 21, 1991

William T. Hogarth, Director
(919) 726-7021

Mr. Axel B. Carlson, Jr.
Mid-Atlantic Fisheries Management Council
Federal Bldg. Room 2115
Dover, Delaware 19901

Dear Axel:

A recent review of activities of the Mid-Atlantic Fisheries Management Council (MAFMC) indicates that many of the present plans and amendments address fisheries of considerable importance to North Carolina.

North Carolina commercial and recreational fishermen are major participants in most of the fisheries which the MAFMC is lead council including summer flounder, scup, black seabass, bluefish, weakfish and sharks. North Carolina is also the only state in the South Atlantic with fishermen involved in joint ventures. The North Carolina Division of Marine also provides considerable fisheries data and technical support on S&S committees to assist in development of MAFMC management plans.

Attached is a copy of a letter dated April 15, 1991 from North Carolina Governor James G. Martin to members of North Carolina's Congressional Delegation outlining the state's position and providing justification for amending the Magnuson Fisheries Conservation and Management Act to include a North Carolina delegation as voting members of the MAFMC. A precedent for membership on two councils has been established with Florida being represented on both the Gulf and South Atlantic Councils and to a lesser degree with Washington and Oregon serving on both the Pacific and North Pacific Councils.

As Director of the agency responsible for management of marine fisheries in North Carolina, I feel it would be of considerable assistance and would certainly be appreciated if the MAFMC expressed their support for an amendment which would establish membership for North Carolina on the council either through a resolution or other appropriate means.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill Hogarth".

William T. Hogarth, Ph.D

WTH/bsm

An Equal Opportunity Affirmative Action Employer

Exhibit 3:

Handwritten initials and date: DJK 2/15

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL
ROOM 2115 FEDERAL BUILDING
300 South New Street
Dover, Delaware 19901-6790
302-674-2331
FAX 302-674-5399

Dr. Lee G. Anderson
Chairman

Anthony D. DiLernia
Vice Chairman

David R. Keifer
Executive Director

DATE: 15 FEBRUARY 1994

ORIGINATOR: DAVE KEIFER

TELEPHONE: 302-674-2331 FAX 302-674-5399

ADDRESSEE: ED WELCH

ADDRESSEE FAX TELEPHONE: 202-225-0666

NO. OF PAGES FOLLOWING: 0

COMMENTS:

At its May 1991 meeting the Council passed the following: "I move that the Mid-Atlantic Council support legislation to include the area of North Carolina from Hatteras Inlet north in the Mid-Atlantic Council, and that the area south of the Inlet remain with the South Atlantic Council, with the understanding that legislation provide the appropriate financial support and membership requirements.

By its April 1993 meeting the Council had somewhat expanded its thinking. As part of a series of motions dealing with Magnuson Act reauthorization it voted that North Carolina should join the Mid-Atlantic Council.

Exhibit 4:

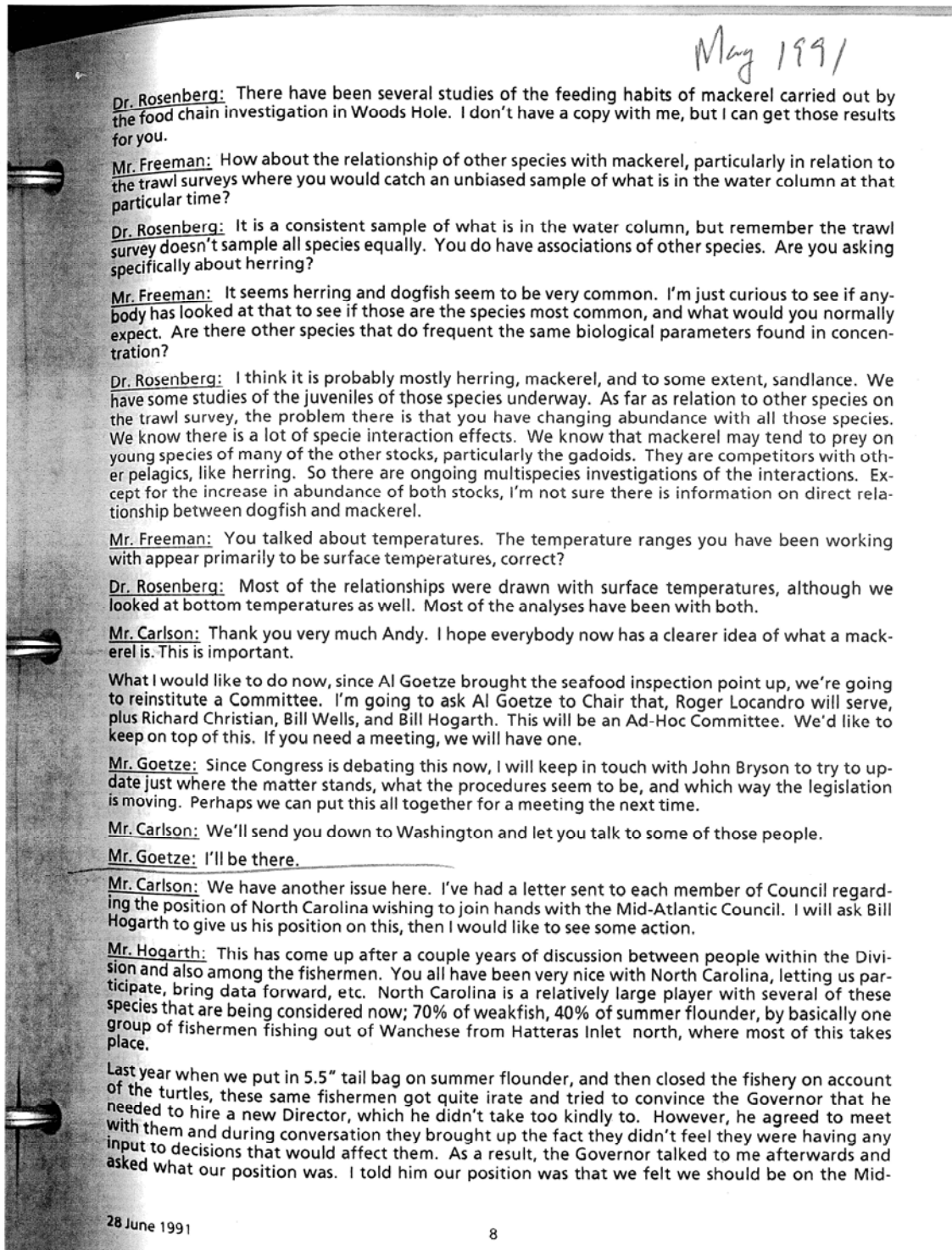


Exhibit 4 continued:

Atlantic Council, but I didn't feel we should come out of the South Atlantic. If you look at the data, commercially we are probably affected more by the Mid-Atlantic Council, but if you look at some of the recreational species (red drum, Spanish and king mackerel), we are greatly affected by the South Atlantic Council.

The precedent has already been set by Florida to have membership on two different Councils. Florida is a member of the South Atlantic and Gulf Councils. We recommended to the Governor that we be members of both Councils, the Mid-Atlantic and South Atlantic. As a result, the Governor wrote to all our Congressional delegation, which you all have a copy of. Congressman Jones has agreed to introduce the Bill. The Bill has been drafted and basically what it calls for is that North Carolina be a member and the line to be Hatteras Inlet north. There would be the State Director, one obligatory member, and one at-large member.

What has happened in North Carolina as far as membership is concerned, the members are chosen by the Marine Fisheries Commission. We submit those to the Governor and he sends them in. In the South Atlantic we made the commitment that if we got the at-large and obligatory, that we would have one recreational and one commercial. It's set up that way for equal membership. Also, Jim McCallum has said that the Bill is introduced that way also with additional funds to take care of the travel and additional expenses that would be associated with us being members of this Council. Outside of the Director, we would probably have two different members because there are different parts of the state with totally different issues. So we would probably have different members that we have on the South Atlantic.

It looks like there will be couple technical amendments on the Magnuson Act rather quickly. That's how it would be introduced. If there are not technical amendments made at the present time, we would probably wait until next year when it is reauthorized. We would like to see it done now. Jim said this morning that Congressman Jones is committed to doing it immediately and I feel like it would go forward. We did not want to do anything unless we talked to you all about it. We don't want to be a member if we are not wanted. So therefore, we discussed this briefly with the Chairman earlier, and as a result, we wrote to him and showed him the attachment that you have from the Governor for the justification, in addition to my reasons why I feel we should be part.

We would like some type of endorsement that you all feel this is a good idea. I see for the future more and more working relationships between our two Councils. In North Carolina we are trying to make strides in managing better than we have in the past. When I came we had a reputation of not wanting to abide by any type of regulations; to just do what North Carolina wanted. We are trying our best to change that image. I think basically we are going in the right direction. As I said earlier, the two issues coming up right now will greatly impact North Carolina. Weakfish will have a tremendous impact. Summer flounder we've pretty much implemented, except for the quota. You must look at this from a fishermen's standpoint. If your livelihood is being affected, you would like to have an input. You would at least like to think you had a vote. We've been treated extremely kindly by the Mid-Atlantic Council. You've welcomed us, you've looked at our data, you've let us take part in discussions, and we appreciate that. I would like to see it formalized more if we could.

Mr. Johnson: Does this have any financial implications as far as this Council is concerned?

Mr. Bryson: Yes. Bill mentioned that the legislation would carry appropriate funding to accommodate the additional area. What you would actually be doing is putting the area from Hatteras north in the Mid-Atlantic. The area Hatteras south would remain in the South Atlantic. Funds and appropriate members would be put in the legislation to cover that end of it. We would have to have meetings in North Carolina if this goes into effect. We would have to pay their members whatever it may be to attend the meeting, and possibly even some funds through the state. I will be talking to Jim in the next day or two. Frankly, I have absolutely no problem supporting it. I would rather have someone working within the system than outside criticizing it.

Mr. Hogarth: I talked to Jim McCallum about 45 minutes ago. He knows if you all pass a motion that John will be getting in touch with him. He's agreeable to working the funds out as part of the deal. He realizes this will be an additional burden on the Council and the funds should go with it.

Mr. Freeman: Just for clarification, you indicate that the selection of the North Carolina members, as far as your policy, would be to recommend to the Commission to nominate one of the new members to be representing the commercial and one recreational. This makes a lot of sense. That

28 June 1991

Exhibit 4 continued:

would be a policy that North Carolina would follow and would not be indicated in the law that the Secretary would have to follow.

Mr. Hogarth: I wanted that known because some people were concerned about the balance on the Council. We decided a while back to have two members, one recreational and one commercial. It would not be part of the Bill, that's just the policy within North Carolina to get input.

Mr. Freeman: As I understand this, there would be three members from North Carolina that would be represented on the southeast and three members from Hatteras north would be represented on the Mid-Atlantic. You indicated they would probably be different members but there may be a situation when you would want those members to be the same. Is that something you would require to be different, or is that something that is under consideration at the present time?

Mr. Hogarth: It is under consideration. At first we thought about not putting a dividing line. Then they would probably have been the same members. However, usually the fisheries we're dealing with in the South Atlantic, we feel like they are a different group of fishermen. We just want you all to be comfortable with this. We would put people on who we felt would be familiar with the fishery in that area.

Mr. Bryson: Bruce, if you split the area the way we are talking about now, North Carolina has become a split area in the two Councils, so there would logically be two memberships. Regarding your question about three members, I would assume what they would do is simply add an at-large member to the Mid-Atlantic Council and an obligatory to North Carolina as well as the other.

Mr. Hogarth: That is correct. There would only be two from North Carolina and the third would be at-large.

Mr. Freeman: Bill mentioned this to me personally prior to this meeting. Personally, I think it makes a lot of sense. We're dealing with fisheries now, particularly ones coming up, that it would be very helpful and productive to have North Carolina an active participant. I would certainly support this, but some minor technical issues to be worked out among the staff.

Mr. Travelstead: I would like to speak in favor of this as well. Having served on the Coastal Migratory Committee and Demersal Committee for a number of years now, I could say that North Carolina has participated virtually in every meeting we've had for a number of years now, either representing their own state or the South Atlantic Council as an official voting member. It seems entirely appropriate now that we extend that voting privilege to the full Council. In terms of the fisheries that occur north of Cape Hatteras, they are virtually identical to what you see off Virginia; same species, gear, people, etc.

I move that the Mid-Atlantic Council support legislation to include the area of North Carolina from Hatteras Inlet north in the Mid-Atlantic Council, and that the area south of the Inlet remain with the South Atlantic Council, with the understanding that legislation would have to establish appropriate funding and membership requirements (Seconded by Goetze)

Mr. Keene: I certainly support the motion. What kind of support would your scallop people have ... I see this as a major help to the scallop industry. If we could pull the North Carolina fleet in with ours, it would give us a little more clout. We've talked about this for years.

Mr. Spurr: I too would like to speak in support of the motion. Having been around since the beginning, at one time there was only two Atlantic coast Councils, which then went into being four. When there were only two, Cape Hatteras was the dividing line. I'm sure the New England Council would vote to support this.

Mr. Keifer: Should we be saying "support legislation?" We're supporting the efforts of North Carolina to become part of the Mid-Atlantic.

Mr. Freeman: I was thinking the same thing. Should we modify the motion to "write a letter in support of legislation?"

Mr. MacDonald: We're not really expending any Council funds here. We're showing support for North Carolina's legislative proposal. I have no problem with it.

Motion carried unanimously.

28 June 1991

Exhibit 5:

April 1993

Dr. Anderson: I am going to move ahead to "Time frame for Secretarial action on regulatory amendments." The proposal is to put in a time frame for Secretarial action and regulatory frameworks.

All in favor, unanimous support, 1 abstention.

The next item is "Support any effort by North Carolina to joining the Mid-Atlantic Council." We voted on this at one time and said that if North Carolina wanted to join the Mid-Atlantic Council, the Council would not show any opposition. We are not running out and saying, please join us, but if for reasons that they would want to get into this Council, this Council would support the effort. Since this was one of the specific questions that was raised at the hearing by Congress, we thought this was fair to bring this up again for the Council to see if they wanted to reaffirm this position.

Mr. Freeman: Dennis, this was an issue several years ago, and it is my understanding that there was to be a bill submitted to Congress by Mr. Jones. Was that put forth and was there any action taken or any resistance to it or was it a time problem?

Mr. Spitsbergen: My understanding was that there was never a bill put forward that they knew reauthorization was coming up and they figured the time frame within which it would take to get it in, that we would be just as well off and wait until Magnuson Act was reauthorized and introduce it at that time. That is my understanding of it. I don't know of any resistance on the east coast. I have heard rumors of resistance on the west coast because of the precedent in setting. Although some of the precedents have been set for joint Council membership on the west coast, I think Washington and Oregon at least have some members on two different Councils. Of course Florida has full membership on two different Councils. But I don't think there was ever anything introduced because the Magnuson Act reauthorization was coming up within a year or so.

All in favor of reaffirming our previous Council position to support North Carolina joining the Mid-Atlantic Council. Unanimous support.

Dr. Anderson: The next item is "Strengthened protection for fisheries habitat." Strengthening the protection for fisheries habitat is giving NMFS regulatory authority and legislative requirements.

Dr. Locandro: We have asked for this each time I have been involved in the process and it obviously never happens. One comment that is listed under the NMFS recommendations in their draft proposal is consultation position, which is probably something closer to happening, which is covered in the Endangered Species Act where they have to be consulted. I believe reference has to be made to impact statements if appropriate. That was one of the ways that could have probably come close to maybe stopping the dioxin dumping problem if, in fact, everything fell into place. I think I am realistic, personally, enough to think that it is just not going to happen to continue to hammer away to ask for regulatory authority, but to go with the consultation request similar to what is in the NMFS draft page 2-3.

The first statement that is made "Majority of US fisheries under the NMFS proposal are estuarine dependant." In very simplistic terms, that should be changed around to say that fisheries species are "habitat" dependent. The word estuarine ties us up because that would not include the toxic waste dumping at the mud site. I agree with Carl's statement that he put in, and I think it is an important consideration. We had the situation where we were confronted with fisheries practices that were at least obvious to some that were detrimental to fishery habitat without any ability to be able to do anything about it. I think that some careful attention should be made to direct some wording in there that when a new fishery practice is born in that is obviously detrimental, that some sort of an assessment be made as rapidly as possible so that something can be done to stop the process.

Mr. Colvin: I agree with Roger. I believe that it is more realistic to approach this along the lines of the NMFS staff recommendations as an endangered species type consultation rather than a regulatory process. It is certainly not realistic nor do I support the concept of adding the third federal regulatory agency to the permit processors that already are in place above and beyond that which exist at other levels of government. As written here on the pink sheets, I couldn't support it. I could support something along

5/18/93

Exhibit 6:

Dist. 30

Dr. Lee G. Anderson
Chairman

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL
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David R. Keifer
Executive Director

Anthony D. DiLernia
Vice Chairman

DATE: 2/9/94

ORIGINATOR: Joanna Davis

TELEPHONE: 302-674-2331 FAX 302-674-5399

ADDRESSEE: Tony DiLernia

ADDRESSEE TELEPHONE:

NO. OF PAGES FOLLOWING: 1

COMMENTS:

Greg Lambert fax'd David the bill re adding NC to the Mid-Atlantic Council on Monday and they discussed the issue via telephone. He and Lee discussed this yesterday and have no problem with it. We will also be needing money for this and Dave will get Carol working on it.

We (staff) will try to be here tomorrow. We don't have any snow but it's a real winter wonderland as far as ice is concerned. If you need to talk to David you may call him at home, 302-678-2712.

Talk to you soon.

*Done!
pm DKL 2/12*