

## **Sacrifice in the Sound: The Cost of Killing Sea Turtles in North Carolina**

The North Carolina Division of Marine Fisheries (DMF) is currently applying to renew a federal Incidental Take Permit (ITP) that allows commercial gill net fishermen to injure or kill protected species, specifically, threatened and endangered sea turtles, and endangered Atlantic sturgeon, in our sounds and estuarine waters. The permit and its renewal for a 10-year period are highly controversial and being met with overwhelming objection from the public, including some in the commercial fishing industry.

The current 10-year ITP, originally granted in 2013 and set to expire on August 23 this year, has been an abject failure. The state's renewal application even acknowledges the public opposition but is moving forward anyway. This renewal effort must be rejected. It is one part of a critically important issue facing all North Carolinians: the chronic decline of our coastal fisheries due to mass overharvesting for profit and the "regulatory capture" of public trust resource management policy.

Coastal Conservation Association of North Carolina is currently engaged in legal action against the state, asserting that decades of resource mismanagement favoring maximum extraction for profit have infringed on the constitutional rights of the public anglers. See the Associated Press story [HERE](#), and check out [SaveOurFisheries.org](http://SaveOurFisheries.org) for additional information.

In rejecting the state's motion to dismiss the case on a claim of state sovereign immunity, the North Carolina Court of Appeals held in September 2022 that "the State's duty (under the N.C. Constitution) necessarily includes some concomitant duty to keep fisheries safe from injury, harm, or destruction for all time." ... "In sum, both the plain language and history of Article I, § 38 support the conclusion this provision imposes an affirmative duty on the State ... [that] includes some duty to preserve fisheries for the benefit of the public." Regarding that duty, the Court further held "Plaintiffs alleged 'the State's mismanagement of coastal fisheries resources... has eliminated or, at a minimum, severely curtailed the public's right to fish for [popular fish species].' Indeed, the complaint contains extensive data points documenting the stock status and the stock population trends of certain fish species. Thus, the alleged facts here support the contention the State did not protect the harvestable fish population 'for the benefit of all its citizenry.'" (Court of Appeals opinion: [HERE](#))

Despite that language from the Court, the state presses on with its quest to maximize commercial exploitation of the public's fisheries resources. North Carolina is the only state in the U.S. with a federal ITP of this type. The renewal process has proceeded without sufficient public notice or discussion. The National Marine Fisheries Service is the federal agency with the authority to issue the ITP. The permit application can be read at [THIS LINK](#). *Public comments, which are encouraged, can be made until February 22.* Public comments to date are overwhelmingly opposed to the renewal. That is unsurprising, since public comments were also overwhelmingly against issuance of the original permit. In light of that overwhelming sentiment, the question has to be asked: Why is the state so determined to go forward with the permit?

### **Regulatory Capture**

The destructive nature of gill nets is evidenced by the need for the ITP in the first place.

In 2013, prior to the current permit, sea turtles were being killed by commercial gill nets in such significant numbers that the Beasley Sea Turtle Rescue & Rehabilitation Center sued the state of North Carolina for violating the federal Endangered Species Act (ESA). The case was settled prior to trial, and the settlement agreement required the state – *if it wished to continue the large-mesh gillnet fishery* – to obtain an ITP from the NMFS under which the state would implement a gillnet fishing observer program to track and mitigate the mounting losses of Kemp’s ridley, leatherback, hawksbill, green and loggerhead sea turtles. The state’s response was to seek the original ITP from NMFS in order to keep large-mesh gillnet fishermen fishing.

The stated purpose for the permit was two-fold: to allow gill netters, primarily harvesting Southern flounder, to pursue their livelihood without penalty in the event of “interactions” with federally protected aquatic life, and to impose take limits to allow struggling species to recover. What has resulted however, is a textbook example of “regulatory capture,” meaning that government regulatory policies have been influenced by the industry that DMF was once charged with promoting but is now charged with controlling – the commercial fishing industry.

Given that background, North Carolina public officials must not only publicly state why DMF is applying for the permit on behalf of private industry, but why North Carolina is the only state in the country that has ever done so. Outlined below are the three main reasons the renewal of the ITP makes zero sense and is the wrong choice for North Carolina and its coastal fisheries.

#### **Noncompliance with Observer Requirements**

The ITP requires that all commercial fishermen using large-mesh gill nets for Southern flounder must allow on-board DMF observers if requested. A minimum of 7% of all trips are required to be directly observed. But since 2013 the state has failed – miserably – to enforce compliance, making DMF statistics related to observed interaction, injury and killing of protected species in gill nets essentially worthless.

In 2021, out of approximately 1500 calls to commercial fishermen to schedule observer trips the DMF was successful 14 times – barely one percent. To meet the minimum requirements, DMF created an alternative program where both Marine Patrol officers and observers watched fishermen from a distance. In addition, just 38% of licensed commercial fishermen filing trip tickets reported any actual landings. The numbers simply don’t add up.

The minutes from various N.C. Marine Fisheries Commission (MFC) quarterly meetings document a clear and consistent pattern of industry non-compliance with ITP observer requirements:

- August 2021 Director’s Report: *“Out of 312 calls or in-person contacts during spring, observers spoke with a fisherman 34% of the time and successfully scheduled an observed trip only three times.”*
- May 2021 Director’s Report: *“Out of 970 phone calls and in-person contacts across all seasons, observers spoke with a fisherman 30% of the time, but were only successful in scheduling a trip 2% of the time.”*
- February 2021 Director’s Report: *“During fall 2020, observers logged 465 contacts with only seven of them resulting in a booked trip.”*

Rather than address flagrant non-compliance, or closing stressed and depleted fisheries, the DMF prioritizes keeping gill net fishermen on the water. Refusing to allow an observer on a gill net trip should result in revocation of the fisherman's Estuarine Gill Net Permit. Yet, there is no record of a single fisherman having his or her permit revoked. Not one.

CCA NC possesses thousands of pages of emails and letters detailing not only the pattern of fisherman noncompliance with the ITP, but a costly and complex bureaucracy designed to help commercial fishermen avoid confrontation or license revocations.

### **Gill Nets Aren't Necessary**

Large-mesh gillnet fishermen almost exclusively harvest Southern flounder, and gill nets are simply not needed to harvest Southern flounder. As a result of overfishing and decline of the stock, the MFC has been forced to dramatically reduce Southern flounder harvest quotas so that the stock can recover. Since more than 60% of commercial license holders fail to report landings, the Southern flounder population, along with actual removals, is under-estimated, suggesting an even bleaker reality.

With the ongoing decline in the Southern flounder stock—from three decades of continued overfishing under state management—and the drastic decrease in the allowable commercial harvest, gill nets designed for mass harvest and unavoidable bycatch are completely unnecessary. Pound nets and gigs, both traditional commercial gears with proven records of minimal harm to protected species, can easily harvest the yearly commercial allotment. That is easily proven by reference to DMF's own data, which show that over the last five years, average annual pound net and gig harvest of Southern flounder in North Carolina has substantially exceeded the current commercial quota for that stock.

### **Gill Nets are Destructive**

Large-mesh gill nets are an extremely wasteful and lethal gear. While gill nets are selective as to size of finfish caught, they are entirely non-selective as to species of fish caught in the targeted size range, and to species of any kind that are larger than the mesh and swim into the net. In addition to federally protected sea turtles and Atlantic sturgeon, gill net interactions occur with marine mammals, alligators, and numerous species of aquatic birds, not to mention bycatch resulting in mortality and potential waste of fish stocks historically important to public anglers, such as striped bass, redfish and black drum.

DMF assessments of the actual numbers of protected species interactions with gill nets are clearly inaccurate, and likely significantly underestimated, because of the abysmal failure of DMF's gillnet observer program. That inaccuracy may mean that actual losses of protected species contribute to a slower rate of recovery for those imperiled species. Sea turtles and sturgeon are both long-lived and slow to mature, so any significant species mortality can be detrimental to recovery.

### **Conclusion**

For all the above reasons—and more for anyone who cares about the fate and management of public-trust, marine and estuarine resources—the state's decision to seek renewal of its

statewide gill net ITP is wrong. It is wrong for sea turtles, sturgeon and other protected species. It is wrong for depleted fisheries, like Southern flounder, that are the boon of a multibillion-dollar public angler fishery. And it is wrong for the overall public interest of the citizens of North Carolina, who should expect – and demand – more from their government.