

# **SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

## **HABITAT & ENVIRONMENTAL PROTECTION COMMITTEE**

**Doubletree by Hilton New Bern/Riverfront  
New Bern, North Carolina**

**December 1, 2014**

### **SUMMARY MINUTES**

#### **Habitat & Environmental Protection Committee**

Dr. Wilson Laney, Chair  
Chris Conklin  
Doug Haymans

Anna Beckwith  
Lt. Morgan Fowler  
Charlie Phillips

#### **Council Members:**

Ben Hartig  
Zack Bowen  
Dr. Roy Crabtree  
Dr. Michelle Duval  
Chester Brewer

Mel Bell  
Jack Cox  
Mark Brown  
Jessica McCawley

#### **Council Staff:**

Bob Mahood  
Roger Pugliese  
Dr. Brian Chevront  
Dr. Mike Errigo  
Myra Brouwer  
Julie O'Dell

Gregg Waugh  
Mike Collins  
Dr. Kari MacLauchlin  
Amber Von Harten  
John Carmichael  
Chip Collier

#### **Observers/Participants:**

Monica Smit-Brunello  
Dr. Bonnie Ponwith  
Pres Pate  
Dr. Jack McGovern

Kevin Anson  
Phil Steele  
Dr. George Sedberry

Additional Attendees Attached

The Habitat and Environmental Protection Committee of the South Atlantic Fishery Management Council convened in the Grand Ballroom of the Doubletree by Hilton New Bern/Riverfront, New Bern, North Carolina, December 1, 2014, and was called to order at 2:30 o'clock p.m. by Chairman Wilson Laney

DR. LANEY: We will convene the Habitat Committee; and the first item is approval of the agenda. Does anybody have any changes or additions to the agenda? I did have one. I was going to ask Dr. Wilber, who I thought was going to be at the meeting here, to give us an update on the Miami Harbor dredging and associated coral impacts down there. Maybe, Jessica, do you know what the current status of that is? Pace kind of gave us an update at our last meeting. If we could just add that under other business; that would be good if you know anything additional or maybe you want to go ahead and address it now.

MS. McCAWLEY: What was the question?

DR. LANEY: Pace had talked to us about Miami Harbor dredging during the last meeting and about the silt impacts to a considerably larger area of coral than I guess had been projected in the DEIS by the Corps of Engineers. I was just wondering if there was any update on that.

MS. McCAWLEY: I don't have any; but I will check with staff and see if there is something I can get for you guys.

DR. LANEY: Okay, thank you, and maybe we can then talk about that at the end of the meeting. Are there any other additions or modifications to the agenda? Seeing none; we will move on then to the first item on the agenda, which is the status of Coral Amendment 8. I believe that Jack is going to do that.

DR. DUVAL: Approval of minutes?

DR. LANEY: Yes, I skipped that. I'm looking at the short version of the agenda. Yes, we do need to approve the minutes from the last meeting. Does anybody have any objection to approval of the minutes? Seeing none; we will consider the minutes approved. Then we'll move on to the status of Coral Amendment 8 and Dr. McGovern.

DR. McGOVERN: Coral Amendment 8 includes actions to expand the northern western boundaries to the Oculina HAPC, expand the Stetson-Miami Terrace and Cape Lookout HAPCs, and establish a transit position through the Oculina Bank HAPC for vessels with rock shrimp aboard. The Notice of Availability for the amendment published on May 20th and the comment period ended on July 21st.

The proposed rule published on June 3rd and the comment period ended on July 3rd. The final rule is under review. The amendment was approved as well. One thing that we're waiting on for the final rule is the rule would say that the ping rate would need to be increased on vessels that are transiting through the Oculina HAPC. The rule for Coral 8 states that vessels with older VMS units not capable of producing the required ping rate would have to purchase a newer unit in order to be able to transit.

Law enforcement at headquarters indicates that they can increase the reporting rate on those older units via satellite surveillance software in coordination with the VMS communications provider. The estimated 22 vessels that do not have VMS units capable of increased ping rate, they won't have to buy new units; but there will be a small cost associated with increasing the ping rate, and we don't know what that cost is yet. We are waiting for law enforcement to tell us what that cost will be; and then we'll update the classification section of the rule. Hopefully, that will be soon.

DR. LANEY: Thank you, Jack. Are there any questions for Dr. McGovern?

MR. BOWEN: Dr. McGovern, do we know what the ping rate increase would be – and you said it, I didn't hear it – and why the increased ping rate?

DR. McGOVERN: The increased ping rate is once every five minutes; and it is just so that we are able to keep track of that vessel better going through the Oculina HAPC.

MR. BOWEN: What is the current ping rate?

DR. McGOVERN: I don't know what the current ping rate is; do you?

MS. SMIT-BRUNELLO: There is a discussion here as to whether it is once every 30 minutes or once every hour. We can find that out for you.

DR. LANEY: Just a follow up to that question; Jack, if you were computing vessel speed to determine whether or not a vessel is fishing; wouldn't you have to do it more often than once every 30 minutes, anyway?

DR. McGOVERN: That is the idea with the increased ping rate.

DR. LANEY: Are there any other questions for Dr. McGovern? Okay, seeing none; let's move on to Agenda Item 4, which is the updated rock shrimp VMS and bycatch analysis. You have Attachments 1 and 2 in your package. Roger did Attachment 1, but he is obviously not here with us because he is still doing rehab from his surgery. We all wish him well and a speedy recovery in that. I hope the rehab is going well. Chip Collier is here from staff to go over these items with us.

MR. COLLIER: This is actually a map of all the VMS points and the area that is being closed in the northern extension for Coral Amendment 8. You can see all the pings; those go from 2003 all the way to 2014. The dates actually on that map are a little bit incorrect. In the second line down for the 2008, it says 2008 to 2014. What we wanted to do with this map was actually keep it the exact same as far as the numbers that were in Coral 8.

That date is actually 2008 to 2013; and then the total is also 2003 through 2013. Then we have separated out 2013 and 2014. Overall, there has been about three million ping points from the VMS data; and the last few years there has been fewer and fewer ping points, especially in the rock shrimp fishery. In 2014 we only have data through September, so it is not the entire season, but it is a good majority of the season.

Prior to 2014, the average number of pings that were rock shrimp fishing in that closed area was around 4 percent. In 2014 that rate increased all the way up to around 17 percent. The fishery changed in 2014; and prior to that it was a very low rate in the area. Continuing on; do you guys have any questions on Attachment 1?

MR. HARTIG: Before you leave the percentages, obviously that 16.95 is going to change when you get the rest of the data. How much rock shrimping occurs after September; do you remember? I know they fish in October. October is usually a pretty big month.

MR. COLLIER: Right; it usually changes after the inshore shrimping season ends, so some of the guys will move offshore. But it also slows down after – I can't remember the exact month when it slows down, but it is in the late fall.

MR. HARTIG: I was just wondering – we're going to get some more points for 2014. It was just very interesting. I really appreciate Roger and you going and doing this, because '13 was the year that we heard there was so much interaction in that northern zone and yet it is less than 4.77 percent of the points show in that area for that year. Then '14, although it is not finished, and we get the extra points – I know October is big and into November, although their year, they have not had a very productive rock shrimp season this year, so I don't know how many trips continued. That number is liable to change is what I'm getting at.

DR. LANEY: Any other questions for Chip? Certainly, Ben's observation is a good one for 2014 and also for 2013. If you look at those previous years, the number of points in that area was much lower than 2014 thus far; and it isn't even complete yet. It appears that effort in that area has increased for whatever reason. Any other questions? Okay seeing no hands; Chip, do you want to go ahead and address Attachment 2 for us?

MR. COLLIER: Attachment 2 was just a continuation of the presentation I had given in September. You guys had asked for a better breakdown of the catches east and west of the closed area from Amendment 8 in that northern extension. There is very little difference as far as the overall percentages of rock shrimp. It was 38 percent east and west of the closed area.

There is a slight change in the percent of fish and also the percent of crustaceans. Other than that, it didn't really show that big of a difference between the two different areas. If you guys have any questions on that, I also attached the overall document that Southeast Fisheries Science Center had given me in September. That is reattached for this one, so you guys didn't have to search for it.

Once again, this was only based on ten trips. It was about 200 tows, so it is very minimal information, but it is all the information that we have. I did contact University of Georgia, Mr. Lindsey Parker, and he was not aware of any observers that they had on rock shrimp boats. He had mentioned maybe contact Gulf and South Atlantic Fisheries Foundation. I then contacted Frank Heil with Gulf and South Atlantic Fisheries Foundation; and he said they had no additional data to add to this. We have searched for extra data and we have not been able to find it.

MR. HARTIG: Out of those ten trips, only one of them occurred within the northern extension; is that my recollection of the data?

MR. COLLIER: Of the 200 tows that they observed, only one occurred in that northern extension.

MR. HARTIG: Of the total tows only one occurred; okay.

MR. COLLIER: It ended up in that extension; it didn't start off there.

MR. HARTIG: Do you know how long these tows – well, I think I remember it is a range of timing; but do you know how much area they cover in that time that they tow?

MR. COLLIER: The average speed; what we are looking for in the ping rate was two to four knots, and I think the average tow time is around an hour.

DR. LANEY: Okay, other questions? I don't know what else we could do on this point since we've contacted everybody we know to contact and we have no additional information. Once again, looking at the report we see about 36 percent rock shrimp and the rest is bycatch of one sort or another and very little difference between the two areas in question. Council members, is there anything else you want to pursue with regard to this topic? Doug.

MR. HAYMANS: No, sir. To follow up on that; that was sort of a short – there is nothing else I would like to pursue. I was prepared to make a motion, if needed, to not pursue an amendment to the coral plan to look at any of this specifically because it is such a low effort in '13 when we were told otherwise; and '14 to me is kind of like the horse is already out of the barn. Maybe in the future when we start looking at areas, we need to set a control date for that type of data as well, because it looks like they have just intensified the effort this year to prove a point. I am not interested in pursuing anything else at this time.

DR. LANEY: Okay, thank you, Doug. Anybody else?

MR. HARTIG: Wilson, that is a pretty significant increase in this past year. I would like to see at least a full suite of data before we make the decision on whether or not to pursue this or not. I would like to see what the percentage in that area was this year.

DR. LANEY: I certainly think that is reasonable, Ben, and I think we can ask staff to just give us an update I guess at the March meeting; or maybe I will ask Chip and/or Phil and Jack whether or not the VMS data would be available early enough for us to have an update at the March meeting. Do you all have a sense for that?

MR. COLLIER: I don't really work with too much VMS data, so Phil could answer that.

MR. STEELE: I seriously doubt it would be ready by March. I would guess probably more like June.

DR. LANEY: I guess that would be appropriate for us to ask for an update by next year's June meeting. We should have a complete dataset by then.

MR. PHILLIPS: I agree with Ben; we were told how important it was in 2013. I am not going to say productivity because I don't know, but effort has jumped a lot. Those guys; I don't think

they can go dragging there to prove a point. I think it is too expensive to go drag, unless there is shrimp there. I am like Ben; I would like to see the rest of the numbers and then go about this in a methodical and thoughtful way and make sure if we do something we are doing the right thing.

MR. BELL: Mr. Chairman, I am not on your committee, but I was at the June meeting and I remember the industry's rather impassioned plea and explanation of what they thought was going on and asking us to look at observer-based data, which I guess we did. They seemed very convincing that there was something that we need to look at by making sure we have the most recent data would help with that.

I remember that being a very memorable part of the meeting in terms of their presentation of their case. But given that we've looked at the observer data we can find, there may be some observer data with somebody on these boats that we still haven't found; but think we owe it to them to just make sure we've got all the data before we commit to something. They were very convincing, I thought.

DR. LANEY: Yes, and I agree with that. Michelle.

DR. DUVAL: Mr. Chairman, I am not on your committee. I guess, yes, it is a greater proportion of the total VMS points that are within that northern extension closed area, but the absolute number is still much less. It looks to me like there is just less at least through September or as far as these data go. It looks to me like there is less overall rock shrimp effort this year, just a greater proportion of it being in that area, which obviously may change.

DR. LANEY: Okay, good observation.

MR. WAUGH: Just to be clear what you all are asking for; I think as far as the bycatch data, we've done everything we can to track down any of that. There is no more bycatch data to be found. For June what you want is to have an update of the VMS point analysis with a complete dataset for 2014; is that correct?

DR. LANEY: That is my understanding of what Chairman Hartig and Charlie Phillips were asking for; correct, Ben and Charlie?

MR. HARTIG: Yes.

DR. LANEY: They are both nodding in affirmation, so right. Chip and I had discussed the bycatch situation briefly. The only question I asked him was, was it possible that somehow we missed somebody's MS thesis or PhD dissertation where there were a bunch of trips that were stuck in gray lit somewhere.

But I think he's talked to University of Georgia folks; surely, they would have been aware of that if it existed and then going on and following up with other sources as well. I think you are right; I think we have gotten hold of all the bycatch data that exists to this point in time. The only thing I think we need is just to complete calendar year 2014 to look at the points. We'll have a final number then in June that we can say; okay, here is what percentage of the effort took place within that closed area. I still think we need to go back and look at the time series, too, and look

at the amount of effort that was taking place there in 2013 and prior years as well. I think that is an important point to make.

MR. PHILLIPS: Just because you caught something in one year does not necessarily mean you are going to catch it the next year or the year after. Part of this increase in effort; maybe they were trying to catch the shrimp that were caught the year before. Maybe that is why they are in there. Maybe they are catching some shrimp in there, maybe they're not.

Maybe the productivity is no better this year, maybe it is. Maybe it is next year or the year after when the productivity might or might not go up. We just don't know. I shrimped a lot of years; a little bit of it was rock shrimping. We keep accurate records in our books. We will go back to the same moon phase, the same time of year, water temperatures even, and we would go look.

If you caught shrimp at certain conditions and time, then we have a tendency to go back and look in those same times again the following year to see if they have come back. That might be part of the effort. But you go back once; you don't keep going back if they are not there. You just don't stay there. You can't afford to.

But, yes, I think whenever we can get the rest of the dataset, and maybe the rock shrimp industry can tell us, update us, too, on what was going on in there. Is it still as important as they think it is? If they can help us from their point of view, that would be good, too.

DR. LANEY: Okay, thank you, Charlie; I think that is definitely true. The other thing that I would like to hear an update on from Mike is the water quality issue that they were concerned about with regard to algae that they were finding in certain parts of the area as well. Is there a hand down here? Chris.

MR. CONKLIN: I just wanted to point out that back in June the rock shrimpers are saying that they didn't catch any deepwater snapper grouper species. I think the bycatch report kind of proves that for the most part. It is looking pretty good for them there on the bright side.

MR. HARTIG: Wilson, to your question about what is happening down south this year is that the algae is not there, but there is no production either. It is just not any production of rock shrimp; there aren't any crustaceans in the trawls either. It goes to point to this area in flux. With the dynamic water conditions we're having and with the amount of cold water influx we're having, it may be having impacts on that fishery as well as some of the inshore fisheries like mackerel.

It is impacting my fishing on Push Button Hill, which was one of these places we talked a lot about. The jacks just weren't there this year in any concentrations. Some of the other species aren't showing up in numbers as well. Well, vermilion haven't filled back in that area since we had the cold water of 2003. There are some things going on, and it may even get to the point where we are looking at Oculina and seeing why that area isn't responding to being closed for over 20 years.

It may be because of the water conditions that are occurring in that area. I've got a response to Grant Gilmore. He did some work in 2014, submersible work there on Chapman's, and what is the other reef; I can't remember. There are two specific reef systems that he has looked at

throughout the entire series since the early seventies when they first went down there, before any fishing occurred, and didn't really see any groupers at all of any kind in those areas that had been closed for 20-plus years.

I am not saying that it is just poaching that is causing that problem there. I think there is more to it than that. The environmental changes that are occurring in that area over the last 20 years in particular have been drastic. Without any monitoring, we do not have a long-term monitoring of the water conditions in those areas.

But certainly from the anecdotal information from the fishermen and looking at rock shrimp and my bottom fishing and the king mackerel things in that area; the dynamics of that area has substantially changed and may be impacting the ability of some of those deepwater areas to respond to at least the Oculina to that long-term closure. There is a lot going on in those areas. I just wanted to mention it.

The other thing I will bring to you is that Mike mentioned that he could get some more economic information, may be able to look at trip tickets for this year and put together some economic information of how much shrimp was produced. Now it is not going to be exact; those numbers are confidential and hard to deal with. He said he is willing to work to give you some more economic information as well to look at. We'll have at least two pieces of information to look at possibly in June.

MR. HAYMANS: I am going to channel my inner-Wilson here, okay. Wilson, this whole amendment came about because of habitat, habitat, habitat; we are trying to protect the habitat. Eleven years' worth of data shows us that only 4 percent or less of the data points were within those habitats; and all of a sudden now we are at 17 for one year.

I guess I would ask when we get to next June and we see something that shows us between 15 and 20 percent for the year of 2014; are we going to go back and reverse one of the most thoroughly vetted plans that we've done in the last several years? They were happy the day – maybe that is overreaching.

The day which we approved Coral 8, there were a lot of folks saying thank you for this compromise. I would just ask what are we going to change if we see 15 or 20 percent inside? I will hold my motion until we see the next data, but I just don't think we need to adjust it based on what essentially becomes one data point.

DR. LANEY: I know what my response to your question would be. I would be interested to hear any responses from other council members since I guess the chairman is supposed to maintain a certain amount of neutrality. That was in my ASMFC committee chair training, I think.

MR. HARTIG: I missed that training. Let's just look at the data and make the decision later. I think that is the most prudent way to move forward. We can have that discussion and I will be happy to have it.

DR. LANEY: Any other comments or questions?



MR. PHILLIPS: I don't know if a lot of those points are inside, points outside. I would like to just make sure that of all of the rock shrimp fleet; all of them are capable of dragging in that offshore depth of water. I don't know that they are, which could skew the amount of effort that is out there. Mike can tell us that when he comes back.

I would like to make sure that when we consider the effort, that everybody has got that equal access and the gear to fish in that depth of water. I would like for Mike to just clarify that for me; because I know at one point in time early on that a lot of the boats would just go rock shrimping when they couldn't catch shrimp or when the rock shrimp were good; but they may not necessarily have the winches to fish in that depth of water.

DR. LANEY: Okay, good point. I may be missing something here, but wouldn't that show up in the VMS data? If those vessels are not fishing there, they won't be generating any points out there; so is that an issue?

MR. PHILLIPS: Well, the point is the percentage of points; that is the question. If 25 percent of the fleet don't have the gear to fish out there and we say 15 percent of the points are out there, but it is 15 percent of the points for only a portion of the fleet. Maybe everybody has the gear to fish out there now, I don't know, but I would like to know that answer.

DR. LANEY: Basically you are asking that we adjust the data that we see in June to also add a parameter for the percent of the fleet that is represented by those points that are falling within the area?

MR. PHILLIPS: No; I just want Mike to tell me if everybody can fish there. I don't want the council to say there is 15 percent of the effort out there when not 100 percent of the boats could fish out there if they wanted to.

DR. LANEY: Okay, I think I understand that. Does anybody else have any comments on this particular issue? Seeing no hands; then we will move on to the next item, assuming everybody is clear on what we're asking for there. I think I will look for a head nod from Gregg on that point, but I think we're all clear on that, right? Okay, thumbs up from Gregg.

Moving on to Item Number 5, the proposal for an Oculina National Marine Sanctuary; I think Dr. Sedberry is going to give us a presentation on that. .

DR. SEDBERRY: Thank you Mr. Chairman, and thank you for having me. I am going to talk about this sanctuary nomination process and one of the nominations that has been received so far; the Eubalaena Oculina National Marine Sanctuary. As you probably know, there are 14 national marine sanctuaries managed by NOAA's Office of National Marine Sanctuaries.

There are several here in the southeast, including in the council's jurisdiction Monitor, Grays Reef, and Florida Keys National Marine Sanctuaries. The idea behind national marine sanctuaries is to protect special areas of the marine environment, whether they be natural resources or cultural resources like shipwrecks that are special places and deserve special protection.

The National Marine Sanctuaries Act mandates that the National Marine Sanctuary Program will maintain, restore, and enhance these living resources, but also to facilitate uses that are compatible with the primary objective of resource protection. All national marine sanctuaries focus on resource protection as a primary objective.

They support compatible uses or uses that are compatible with that primary objective. They have community-based focus through the national system, and they use a public participatory process to develop management plans and to deal with management issues. The management plans are developed for each individual site.

The multiple compatible uses include research and education but also recreational use of the sanctuaries and even commercial use. As in Biscayne Bay, we saw in Biscayne Bay this can sometimes make things a little bit difficult to help protect the resource while allowing people to use it.

The National Marine Sanctuaries Act makes it unlawful to destroy, cause a loss of or injure any sanctuary resource that is managed under the management plan for that sanctuary and also makes it unlawful to interfere with enforcement of the management regulations. Those are the two basic prohibited activities within the National Marine Sanctuaries Act.

There are also regulations that have been approved by the Secretary of Commerce. What is generating a lot of interest lately in new sanctuaries is the ones in red there. Prohibited activities include exploring for, developing, or producing oil and gas. There is a lot of interest lately in producing oil and gas from offshore in the South Atlantic.

There are a lot of people that are concerned about this and are looking at the National Marine Sanctuaries Act or the idea of a national marine sanctuary to protect parts of the ocean from oil and gas exploration. It is also prohibited to drill into the bottom, dredge, or otherwise alter the seabed; and people are looking at that to help provide protection from offshore oil and gas production.

In summary, the National Marine Sanctuaries Act, designation of sanctuaries are based on conservation, recreational, esthetic, ecological, historical, scientific value of the site. The primary objective is to protect those resources, but also with again compatible use that facilitates all public and private uses of the resources that are compatible with that primary objective of resource protection.

Again, each sanctuary that is in place and that would be developed is managed according to their own site-specific management plan. There is flexibility in how sites are managed. As an example, I show here spearfishing bans in all 14 national marine sanctuaries. Some of them ban spearfishing completely. Some of them have partial bans or they have zoned areas where spearfishing is allowed and other areas where spearfishing is not allowed; and then some are completely open to spearfishing.

The fishing regulations and other types of specific regulations can be developed for each individual site. The Florida Keys National Marine Sanctuary is another example. It uses zoning to zone for certain activities where research can be conducted or research only can be conducted where diving and fishing occur, where boats and ships are allowed, and those kinds of things.

Generally the National Marine Sanctuary System is aimed at the ecosystem level protection. It looks at all species, not just the fishery or otherwise managed species, but all species that occur within that sanctuary would be afforded protection by that sanctuary. Again, coupled with the interest in oil and gas is what has people interested in new national marine sanctuaries.

Again, the compatible use issue makes some places difficult to manage like the Florida Keys, but there is a provision for multiple compatible uses within a national marine sanctuary. Those compatible uses also include commercial fishing. We heard a lot earlier about the lobstering in the Florida Keys and in Biscayne Bay; that lobstering also occurs in the Florida Keys National Marine Sanctuary.

We achieve the mandate of the protection by establishing management plans that deal with resource protection. We conduct research in the sanctuaries to help support those management plans to determine what kind of management might be needed. We also look at the cultural and maritime heritage, artifacts that might occur in the sanctuaries such as shipwrecks.

We conduct extensive education and outreach programs to let people know what is going on at every step of the way during management. We involve the community in developing those management plans through a Sanctuary Advisory Council that each site has. We have assets we can bring to the table for national marine sanctuaries, we have staff, we have facilities, and we have boats.

We have an appropriation to help fund the work that we do. In the southeast region there has been some interest in new national marine sanctuary sites. The red dots on this map show where that interest is right now. The one that is of concern here is the one off northeast Florida. It is labeled northeast Florida, but there is also some interest in the Gulf of Mexico and Puerto Rico as well in new national marine sanctuary sites.

The interest is coming from individuals, it is coming from some local governments, from citizen groups, from the sanctuary advisory councils themselves that are interested in expanding current sanctuaries, and from conservation NGOs. For the first time in 20 years, there is a new process in place that was vetted this past summer. We had 18,000 comments on the process, most of which were positive.

There is a new process in place that establishes a process whereby people can nominate national marine sanctuary sites. Nominations; this is a bottom-up process where citizens' groups or individuals are nominating national marine sanctuaries through a process system that you can find at the website that is listed there on the lower left.

There are criteria that have to be met; and the idea is for stakeholders and people that are interested in this national marine sanctuary to work together to build a nomination that will pass muster, to form partnerships that would help develop management plans and help actually manage the sanctuary.

Then the sanctuary nominations are being reviewed by NOAA against several criteria and considerations to make sure that they meet the specifications of the National Marine Sanctuaries Act. There are four criteria that a nomination has to meet. It has to have natural and ecological significance, historical or cultural significance.

It has to have economic value and economic use and it has to have publically derived benefits. There has to be some benefit from it being a sanctuary that wasn't there before. There are also seven considerations that are being considered in considering these nominations. Sites need to enhance research opportunities or educational opportunities.

They need to address certain threats. There needs to be something that is threatening that particular resource and that is the reason that you want it in a national marine sanctuary. The national marine sanctuary designation would have to add conservation and management value over and above what is already there.

The national marine sanctuary would complement existing management that might be there. There would have to be partnership commitments from those nominating the sanctuary that they would work together to help develop it. Finally, it has to have broad-based support; this one is particularly important.

We have a lot of interest from conservation groups, but it is not just conservation groups that can nominate and support a national marine sanctuary. There has to be broad interest and support from the entire community that would be affected. All the nominations are made public on the nomination website, including any supporting materials that come with the nomination and including NOAA's response to the nomination.

New nominations that make it through the process; that does not mean that they would automatically become a national marine sanctuary. That would start a whole new public process. There is a roadmap and this roadmap is available on the nominate website. The first step that happens when NOAA receives a nomination, it goes through a sufficiency review to make sure it meets the four criteria and seven considerations.

From then it will go to a national significance review to make sure that it is of national significance; and then a management review to make sure that it can be managed if it is put in place. On September 2nd of this year, NOAA received a nomination from the Friends of Matanzas, an NGO in St. Augustine area in northeast Florida. It had 20 supporting letters for a Eubalaena Oculina National Marine Sanctuary, as they are calling it.

As you can see on the map – and I believe this was in your briefing book as well – it is quite a large area. The focus of it is Eubalaena, which is the North Atlantic right whale and oculina, the ivory tree coral. Those are the two primary areas that they are focusing on; those two species that are of concern; but there are other things that this group of people is concerned about as well. This shows the yellow outline is the proposed national marine sanctuary.

The purple area close to the coast is the North Atlantic right whale critical habitat where they go in the winter to give birth. A lot of it is included in the sanctuary. Then the existing Oculina HAPCs are shown on the map as well, and it includes a significant portion of those as well as the proposed HAPCs.

This map was in your briefing book and indicates how the proposed area overlaps with a number of South Atlantic Fishery Management Council MPAs and protected areas. It includes other federal protected areas; it goes into state waters and includes estuarine areas as well. There are a lot of jurisdictions that would be involved in this nomination if it goes forward.

The nomination particularly mentions critical habitats for North Atlantic right whales and sea turtles. It mentions Oculina is an important spawning area for reef fish, as well as including some very rare species like Warsaw grouper and speckled hind, but an important spawning habitat for other reef species as well; and the shelf-edge reef that occurs in that area is an important spawning habitat, too.

The nomination is also interested in protecting the Indian River Lagoon, which is a documented hot spot for biodiversity. It is where tropical and subtropical mangrove swamps transition into salt marshes, so it is an important ecotone and supports a very high biodiversity for that reason. Then there are some unique features that they are interested in protecting, too, offshore springs, springs that boil up offshore off Crescent Beach, Florida, that are unique habitats with unique fauna and may contain artifacts from American Indians as well.

They are also interested in protecting shipwrecks. There are hundreds of shipwrecks, colonial era, Spanish and English and French shipwrecks in this area that are in danger of being looted or harmed by fishing gear; and they are interested in protecting those cultural resources as well. Then they are interested in providing additional protection for kind of the coastal lifestyle of the area, to support recreational fishing, outdoor water sports, and maintaining the culture of that coastal area that has been in place there for a long time.

The primary concern of this community that is making the nomination is offshore oil exploration. The seismic surveys as indicated in the photo in the upper left is of great concern because of the sound affecting communication in North Atlantic right whale and other marine mammals and also affecting communication in sound-producing fish that spawn in this area.

There is a lot of concern about exploring for oil; and there is a lot of concern about drilling and production of oil as well. That is kind of what has gotten people excited in this area about the possibility of a national marine sanctuary because those activities would be prohibited. The nomination started out in circle one there at the beginning and has been received by NOAA. It has undergone the initial review, the consistency review, and it has been declined.

The nomination has been sent back to the nominators for not meeting the criteria. It was found to be insufficient, particularly in the broad community of support. They have several supporting letters from Friends groups but they are missing things. The existing nomination covers nine coastal counties; and they don't have letters from the local governments in all the coastal counties, for example.

They are missing local chambers of commerce in all of those coastal counties. They have some of them but not all of them. They have a lot of support from NGO groups but not much support from fishing groups. They need to go back and work with the local community down there to get broader-based political and community support for this nomination if it is going to go forward.

The other concern that NOAA had was this is kind of big. It is 200 miles of coast with a lot of jurisdictions involved that need to be consulted and brought into this process. It needs support from all the local jurisdictions and the state, because it extends into state waters. NOAA has suggested that they consider a smaller area that is focused on the specific resources that they are interested in conserving.

Right now they are saying the right whale and oculina, but there is a lot of other things they are interested in, too; so they need to focus in on what they are really trying to protect. They need to work with other management authorities that have jurisdiction and marine protection areas that already exist in the area. They are working on revising this.

They have made one small step and that is narrowing the latitudinal extent of it, anyway. They have moved it up a little bit to 28 degrees north, the southern boundary; but they are really just getting started and kind of getting organized, starting to work with the fishermen and getting their thoughts together about what they want to focus on and how they might revise this.

They will be working more closely with me and with the National Marine Sanctuary Program to make this more palatable and to get more support for it in all members of the community that would be affected by this nomination. That is all I really had to present. If you want more information, I know you have the nomination in your packet, it is downloadable at the website [nominate.noaa.gov](http://nominate.noaa.gov), and you can look at other nominations that have been put forth. I think there is only one on the website right now, but there might be some others soon. I would be happy to answer any questions about this.

DR. LANEY: Okay thank you, George, for that excellent presentation. I have one question that I think may inform the rest of us somewhat. In terms of the process, you reviewed the process; is there a time certain by which they have to have a response back to you? How much time do you anticipate things will take from this point on? In other words, what I'm looking for is I think the council would have an interest in knowing when are they going to have a revised product back to you for further consideration?

DR. SEDBERRY: There is really no timeline on this. There is no deadline for nominations; they can come in anytime. This was the first one that was received, and they had no context to look at. It is a little rough and so it needs quite a bit of work. The only thing that is sort of somewhat certain is NOAA's reviewing time.

When it comes back, it would be probably 60 days that NOAA would review it again. Then if it is found to be sufficient, then they would start to look at the significance and the management part, which would be another 60 to 90 days. This is several months out after they submit another revised nomination. I am guessing they will probably have that revised nomination ready sometime in the spring.

DR. LANEY: Questions and comments from council members. Ben.

MR. HARTIG: George, thank you; we probably should have had this before. That is very helpful to look at this process. I wasn't aware that they went through this whole new process where groups can bring these before the Sanctuary. The thing that I was interested in is, you know, the coconut telegraph; this thing comes out; it hasn't been through you guys yet. We're looking at it.

The first thing we hear is that fishing is going to be prohibited in this area. Okay, I guess Bob Jones went back and asked the Eubalaena crowd if they were trying to prohibit fishing; and their answer was, no, they were not trying to prohibit commercial fishing even in the Sanctuary. Some of this heartburn we had over this could have been probably alleviated if we had known a

little bit more about it. But even so, like you say, it has to go through this process. That is something that I would like to know when we know – we wouldn't be involved in when it was submitted – when would we know about a sanctuary in our area that was up for nomination?

DR. SEDBERRY: When would you know that maybe down where you are there would be a sanctuary up for nomination? I don't think that NOAA is sending out notices when nominations come in; they are just posting them on the website. That might be something that NOAA would want to look at is sending out notices to potential constituents or at least in the kind of newsletters that the sanctuary program sends out letting people know that there is a new nomination, because right now they are not doing that. They are just posting them.

MR. HARTIG: Just to follow up on that; it is not really necessary for the sanctuary to notify us. If they are posted on that website and we have staff make sure they peruse that website on a timely basis; we don't have to ask you to be able to do that. If you post them on the website, that should be enough. We should be able to get the information from staff about potential nominations that may affect fishing in our jurisdiction.

DR. SEDBERRY: I, of course, would be in touch with the council if something comes in within the council's area of jurisdiction. You had also mentioned the rumors that are out there; and there are a lot of rumors out there about this is going to be a huge area that is going to be completely closed to fishing. I don't know where that came from.

It is not in the nomination document; it is not in the response letter from NOAA. It is just not mentioned. These folks are primarily interested in habitat and right whales. If fishing is going to be a problem, they would just rather not touch it. I think whatever they do to help protect these habitats would actually enhance fishing, my opinion; but right now they are not interested in completely shutting down fishing in a huge area of the ocean.

MS. McCAWLEY: I'm sorry, I was out of the room, and I might have missed this. Once a nomination goes up on this site, then whether it is a state agency or the council; if someone wants to formally comment, who do the comments go to? Do they get submitted back to that website or how does that work?

DR. SEDBERRY: Right now this isn't a public comment kind of process. That would happen if the sanctuary has been found to be sufficient to move forward by NOAA. Then there would be public scoping to look at the actual boundaries, get input on how the objectives should be refined. That would come later after NOAA says, yes, this is a good idea; we're going to move this nomination forward.

MR. BELL: This is the first I've heard of this. As far as why the public reacts the way they do to things, it is a box on a chart. Folks are just suspicious of any box on a chart. Like you said, it is a rather large box. But I think in stepping back and just looking at how things work; there is the council, the council's jurisdiction, what the council does in terms of managing fisheries; so let's say the whole box did become a sanctuary.

Then what sort of the regulatory or governance process for that box, and in the future if things change, could it operate sort of independently of what the council might do? There is a separate process; and that is what people might not understand. Certainly, right now there is no desire on

anybody's part to fiddle with fisheries. But in the future should they want to in little pieces; is that a separate process from what we would currently be involved in? That may be why people are just a little fidgety about it.

DR. SEDBERRY: You are right. This process has been out since last spring. It is just like you say when boxes start to get drawn on a map; that is when people start to hear about it. But to answer the other part of that question; the National Marine Sanctuaries Act contains specific language that defers fishery management to the Magnuson-Stevens Act and the fishery management councils.

If you have been around this for a while, we had some fishing regulations at Grays Reef National Marine Sanctuary not too long ago, a ban on spearfishing and a closure of eight square miles as a research area. What we did then is we went to the South Atlantic Fishery Management Council and said here is what we want to do; here is what the Sanctuary Advisory Council of Grays Reef has proposed that we do. We are willing to write the regulations; but according to the Act, we have to defer to you to write the regulations.

The South Atlantic Council chose to hand that back to the sanctuary program to write the regulations, which the sanctuary program did. That is the way it would work. When fishing regulations are proposed through any kind of public process, whether it is the sanctuary advisory council or other kind of public hearing, the sanctuary superintendant would go to whatever fishery management council has jurisdiction and say we have received this request for these regulations. We think it is a good idea, but we're deferring to you to come up with the regulations if you so choose.

MR. BELL: That would be good for the public to hear and to understand; and that might help deal with some of the fear just as long as they understand the process of how that works.

DR. SEDBERRY: That is one comment we have gotten from Bob Jones and others down in Florida is that we want to make sure that Magnuson-Stevens trumps the National Marine Sanctuaries Act when it comes to fishing regulations, and it does. The fishery management councils have the right to write the regulations. I am not speaking as a legal scholar on that at all. That is just the way I know how it has worked in the past.

MR. HAYMANS: In a similar vein to the misinterpretation of no-fishing zones; in our state we just sat through a nice presentation from Spectrum, the oil and gas exploration company that is going to be doing the work from the northeast down to the Georgia/Florida Line. They indicated there is no exploration, even seismic testing going on for Florida, because of such and such – and I forget the reason. Is there another company that is going to be down there?

DR. SEDBERRY: There is about – I don't know the exact number. I think there have been 10 permits that are out there that are undergoing environmental assessments. Most of the interest is off North Carolina. They have actually done seismic surveys last month and this month – no, October/November they were doing seismic surveys off of North Carolina.

There is not a lot of interest in Georgia or northeast Florida. But I don't think we really know; I am just letting you know what I hear. I haven't gotten that from any of the exploration companies and the oil companies; but the primary interest is off of North Carolina. But they do



have permits and they do have lines on maps where they are permitted to conduct the surveys, and that includes the entire coast down to at least Canaveral.

MR. HAYMANS: Right; and the presentation that they gave us basically stopped at Georgia/Florida Line, 20 kilometer grids up to North Carolina where it was either 4 or 7; it was pretty tight up off of there. But they also; I mean, Grays Reef for instance, they are talking about 20 meters of depth minimum. They are going to stay well offshore at least Georgia and northeast Florida, just in their testing.

But the other thing that I thought about for us, Wilson, as we move forward – and I really wanted to try to get Roger together with those guys. They are talking about throwing an additional towed ray in throughout the South Atlantic to try to get additional bathymetric data for us. I was hoping that Roger would get together with them. I gave them all the contact information to try to get that additional data for us.

DR. LANEY: Thank you, Doug; that is good to know. Maybe we can make sure we capture that in the minutes; that it is a staff follow-up item is to see if we couldn't collaborate with them on getting additional bathymetric data. That would be very good.

MR. BREWER: You mentioned sort of the interaction between the councils or in this case the South Atlantic Council and the Sanctuaries Act. I'm kind of curious about the interaction between the Fish and Wildlife Commission and the Sanctuaries Act, because by my calculations you've got about 600 square miles of ocean there that is within state jurisdiction. How is that interaction going to work?

DR. SEDBERRY: That is a very good question. They have the same issue in the Florida Keys National Marine Sanctuary. The sanctuary does extend into state waters there, and they do work with the Florida Fish and Wildlife Commission on joint regulations and joint managed areas down there.

I am not as familiar with the Florida Keys exactly how it works; I just know that they have worked something out down there; and not just with the fish but also with the state archaeologist, because there are a lot of archaeological resources in state waters and federal waters down there as well. The sanctuary programs works with the state archaeologist and the Fish and Wildlife Service; but there are wildlife management areas down there.

MR. BREWER: Let me just ask you a follow up; what if the state decides, no, we don't want this?

DR. SEDBERRY: If the state decides, no, we don't want this; that nomination is going to have difficulty getting through. I know the one that has made it through this first cut – the one for northeast Florida has been sent back to the nominators to be worked on. There is another nomination that was written by the governor of the state of Maryland.

The cover letter from that one is from the governor of the state, so that one is obviously going to be approved. The state has signed onto that one, so that is not an issue for that one; but I think it will be for this one in northeast Florida. I think they are going to have an issue getting the governor of Florida and the Fish and Wildlife Commission to go along with this. If it is going to

be in state waters, which the first proposal was, I think they are going to have issues with that. That may be something that they will want to look at and not include state waters.

MR. HARTIG: This one is a little off topic, George, but it is pertinent to what you're doing at Grays Reef. You have that eight square mile closed area. I am assuming you're doing some monitoring there. How long has it been closed? How much monitoring do you have and when can you give us a presentation?

DR. SEDBERRY: It has been closed for three years, I think; it will be four maybe early next year. Monitoring has been done inside and outside of the closed area every year. Every summer there are fish counts, MARMAP surveys, and invertebrate counts done inside and outside every year at about 39 stations, 18 inside the closed area and 18 outside the closed area.

You will have to talk to the new superintendant of Grays Reef about presenting that; but I know they do have data. For the first couple of years when I was the superintendant of Grays Reef, we didn't see any difference between the two areas; but we didn't see any difference from the very beginning indicating that the closed area was representative of what was going on in the entire sanctuary. I don't know if differences have accumulated over time or not but Sarah Fangman probably has that information. I would be happy to talk to her about speaking to you.

DR. LANEY: Okay, thanks for that suggestion, Ben. Yes, George, if you would take that as a request from council to get an update on the monitoring at Grays Reef, both inside and outside of the closed area; that would be a good thing I think. Are there other comments, questions, suggestions from anyone? I don't see any other hands.

Do I presume correctly that given that MSA trumps the National Marines Sanctuaries Act and given that this is not by any stretch of the imagination a final proposal at this stage of the game because the ball has been bounced back to the applicants in this case, and it sounds like it will be maybe next spring before a response is forthcoming, at which time then NMFS would have an opportunity to further respond. Then it seems like it is quite a ways off before the council would have something of substance to respond to. Am I reading that correctly, George?

DR. SEDBERRY: I think you are right about that is the bottom line. Right now there is nothing actionable.

DR. LANEY: Okay, however, in the meantime, we have a presentation from Chip I think, just additional information for the council's consideration about how the proposed area does relate to the South Atlantic Fishery Management Council management area, although George did touch on that; but, Chip, things to add in that regard?

MR. COLLIER: I really have nothing more to add. He did a great job; I like it.

MR. HARTIG: Yes, Wilson, I think we talked about it and I don't know if we still need to do it or not; but we talked about, after this proposal came out, that we actually put together a public document about what we've accomplished in this area in particular; how many HAPCs we have; how many closed areas we have; how many fishing regulations we have; the deepwater reef closures we have; all these different things that we've done in this area to at least inform the people who ask for this and others about what we've accomplished in that area.

It has been a lot. There is a lot of protection within that area that we've done already. I was just wondering about the council – I was pretty strong on this initially, maybe not so much now; but I still think if you all think it is productive to go ahead and do that even from just a public relations standpoint. I think it is nice to know if we could put all this information together for that area. I think it would help the public know what we've done as far as fishery regulations over the years. It is not unsubstantial. I didn't know how the rest of the committee felt.

DR. LANEY: The rest of the committee; how do you guys feel about that? It sounds like a good idea to me, a good thing for us to do just to document what we've done as a council and what past councils have done. Jessica.

MS. McCAWLEY: I am not on your committee, but I would completely agree with that. I would love to see something like that prepared so that we can go ahead and send it in.

DR. LANEY: By send it in there, I presume you mean send it into the National Marine Sanctuary folks that are in the process of reviewing this application?

MS. McCAWLEY: Sure; but I'm also okay if staff wants to bring it back to the council so that we can review the content of that document before it is sent to the sanctuary.

DR. LANEY: Okay, anybody else? I see heads nodding; at least one head nodding. Are there any other comments on that?

MR. HARTIG: I am not just looking to send this to the sanctuary. I am looking to send it to every one of the 20 people who sent in letters, informing them of what we've been able to do so far. Having watched this presentation, George brings some good points to the table. There are assets that the sanctuary can bring to the area that could probably substantially improve our management for some things within that area.

This is kind of an eye-opener for me. It could be productive to be able to continue down this road in some fashion since we control the fishing regulations. Once the smoke clears, I think possibly this may be something the council may actually want to get on board with; just thinking out loud.

MR. COLLIER: For this document, it is just regulations that have been passed for habitat, to protect habitat, or what kind of information are you looking for? Do you want it just for the area off Florida or do you want it for the entire Atlantic coast or South Atlantic?

MR. HARTIG: That is a good point. Really, I was just having it pertinent to the area that they had asked for. I think if we keep it at that, that is enough; because that goes to those 20 groups who wanted it there. Gregg asked about the timing. The time is not critical at the moment. When you guys have time to do this, we'll get it done.

I don't see this as something we have to absolutely jump up and down up right now. This is not over. We're going to get another proposal from Eubalaena; there isn't any doubt in my mind about that. When that comes, I don't know. They have got a lot of work to do now; they know that. To me, how we evolve into this process may be a very interesting thing that comes out of this.

MR. HAYMANS: The first thing that came to mind when Ben talks about things that the sanctuary may be able to bring to bear is appropriations. I guess my thought there is for George. Is the sanctuary a separate congressional line item or is it part of the greater NOAA budget? Eventually we'll all be competing for the same dollars.

DR. SEDBERRY: It is part of the National Ocean Service, which is part of NOAA. The National Ocean Service gets a separate line item in the NOAA budget, so it is not really competing directly with fisheries, with NMFS; but it is part of the NOAA budget. I think that's right.

DR. LANEY: Good questions, Doug. Charlie.

MR. PHILLIPS: I am guessing the letter is informational. We're not going to take a stand on yes or no toward the seismic testing; it is just an informational letter on what we've done, I suppose.

DR. LANEY: I will look to Ben and Jessica on that; but that is my understanding. It would just be a compilation of the management measures that the council has undertaken in all of its amendments to date that affect – I guess we would say that affect both habitat and fisheries within the area proposed for the new National Marine Sanctuary. I see the entire Florida delegation nodding in strong assent with that comment.

Okay, any other questions or comments at this point in time? Seeing none; thank you for a very productive discussion. The last thing I had under other business was I will look to Ms. McCawley and see if we have any update on the coral impacts resulting from the Miami Harbor dredging.

MS. McCAWLEY: I think that Phil Steele has an update for us.

MR. STEELE: I communicated with our lead attorney, Michael McLemore at SERO, who worked on this. Although the lawsuit is still pending, there is not a lot we can say. What I can tell you is that the plaintiff sued the Army Corps, not NOAA, because of alleged harm to corals and sought a preliminary injunction.

The Corps found more listed corals than previously thought. They worked with NOAA to get an agreement to fund the NOAA Restoration Center's relocation of these corals. The plaintiff dropped the motion for a preliminary injunction. What happened after that is that the Southeast Fisheries Science Center divers and the Restoration Center divers and some folks from AMOL worked diligently to remove these colonies to the University of Miami nursery, where they are today. They will be out-planted later on at the Corps expense. That is where we stand now, Mr. Chairman.

DR. LANEY: Are there any other questions for Phil on that particular issue? I see no hands so at this point in time, unless somebody has some other business, I will presume that we adjourn, and, Mr. Chairman, I yield the floor.

(Whereupon, the meeting was adjourned at 3:40 o'clock p.m., December 1, 2014.)

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# South Atlantic Fishery Management Council

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Mid-Atlantic Liaison, Pres Pate  
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Mel Bell  
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Roy Crabtree  
Doug Haymans  
Wilson Laney  
Staff contact: John Carmichael

(Continued)

# South Atlantic Fishery Management Council 2014 Council Membership

## COUNCIL CHAIRMAN:

### Ben Hartig

9277 Sharon Street  
Hobe Sound, FL 33455  
772/546-1541 (ph)  
mackattackben@att.net

## VICE-CHAIRMAN

### Dr. Michelle Duval

NC Division of Marine Fisheries  
3441 Arendell St.  
(PO Box 769)  
Morehead City, NC 28557  
252/808-8011 (ph); 252/726-0254 (f)  
michelle.duval@ncdenr.gov

### Robert E. Beal

Executive Director  
Atlantic States Marine Fisheries  
Commission  
1050 N. Highland St., Suite 200 A-N  
Arlington, VA 20001  
703/842-0740 (ph); 703/842-0741 (f)  
rbeal@asmfc.org

### Mel Bell

S.C. Dept. of Natural Resources  
Marine Resources Division  
P.O. Box 12559  
(217 Ft. Johnson Road)  
Charleston, SC 29422-2559  
843/953-9007 (ph)  
843/953-9159 (fax)  
bellm@dnr.sc.gov

### Anna Beckwith

1907 Paulette Road  
Morehead City, NC 28557  
252/671-3474 (ph)  
AnnaBarriosBeckwith@gmail.com

### Zack Bowen

P.O. Box 30825  
Savannah, GA 31410  
912/398-3733 (ph)  
fishzack@comcast.net

### W. Chester Brewer

250 Australian Ave. South  
Suite 1400  
West Palm Beach, FL 33408  
561/655-4777 (ph)  
WCBLAW@aol.com

### Mark Brown

3642 Pandora Drive  
Mt. Pleasant, SC 29466  
843/881-9735 (ph); 843/881-4446 (f)  
capt.markbrown@comcast.net

### Chris Conklin

P.O. Box 972  
Murrells Inlet, SC 29576  
843/543-3833  
conklinco@gmail.com

### Jack Cox

2010 Bridges Street  
Morehead City, NC 28557  
252/728-9548  
Dayboat1965@gmail.com

### Dr. Roy Crabtree

Regional Administrator  
NOAA Fisheries, Southeast Region  
263 13<sup>th</sup> Avenue South  
St. Petersburg, FL 33701  
727/824-5301 (ph); 727/824-5320 (f)  
roy.crabtree@noaa.gov

### LT Morgan Fowler

U.S. Coast Guard  
510 SW 11<sup>th</sup> Court  
Fort Lauderdale FL 33315  
morgan.m.fowler@uscg.mil

### Doug Haymans

Coastal Resources Division  
GA Dept. of Natural Resources  
One Conservation Way, Suite 300  
Brunswick, GA 31520-8687  
912/264-7218 (ph); 912/262-2318 (f)  
doughaymans@gmail.com

### Deirdre Warner-Kramer

Office of Marine Conservation  
OES/OMC  
2201 C Street, N.W.  
Department of State, Room 5806  
Washington, DC 20520  
202/647-3228 (ph); 202/736-7350 (f)  
Warner-KramerDM@state.gov

### Dr. Wilson Laney

U.S. Fish and Wildlife Service  
South Atlantic Fisheries Coordinator  
P.O. Box 33683  
Raleigh, NC 27695-7617  
(110 Brooks Ave  
237 David Clark Laboratories,  
NCSU Campus  
Raleigh, NC 27695-7617)  
919/515-5019 (ph)  
919/515-4415 (f)  
Wilson\_Laney@fws.gov

### Jessica McCawley

Florida Fish and Wildlife  
Conservation Commission  
2590 Executive Center Circle E.,  
Suite 201  
Tallahassee, FL 32301  
850/487-0554 (ph); 850/487-4847(f)  
jessica.mccawley@myfwc.com

### Charles Phillips

Phillips Seafood / Sapelo Sea Farms  
1418 Sapelo Avenue, N.E.  
Townsend, GA 31331  
912/832-4423 (ph); 912/832-6228 (f)  
Ga\_capt@yahoo.com

PHIL STEELE  
BONNIE POWERS  
JACK MCGOVERN  
MONICA SMET-BRUNELLO  
PRES PATE  
GEORGE SENBERRY  
KEYKO ANSON

# South Atlantic Fishery Management Council Staff

## Executive Director

✓ Robert K. Mahood  
robert.mahood@safmc.net

## Deputy Executive Director

✓ Gregg T. Waugh  
gregg.waugh@safmc.net

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## Public Information Officer

✓ Kim Iverson  
kim.iverson@safmc.net

## Fishery Outreach Specialist

✓ Amber Von Harten  
amber.vonharten@safmc.net

## Senior Fishery Biologist

Roger Pugliese  
roger.pugliese@safmc.net

## Fishery Scientist

✓ Myra Brouwer  
myra.brouwer@safmc.net

## Fishery Biologist

✓ Dr. Mike Errigo  
mike.errigo@safmc.net

## Fisheries Social Scientist

✓ Dr. Kari MacLauchlin  
kari.maclauchlin@safmc.net

## Fishery Scientist

✓ Chip Collier  
Chip.Collier@safmc.net

## Staff Economist

✓ Dr. Brian Chevront  
brian.chevront@safmc.net

## Science and Statistics Program Manager

✓ John Carmichael  
john.carmichael@safmc.net

## SEDAR Coordinators

Dr. Julie Neer - julie.neer@safmc.net  
Julia Byrd - julia.byrd@safmc.net

## Administrative Officer

✓ Mike Collins  
mike.collins@safmc.net

## Financial Secretary

Debra Buscher  
deb.buscher@safmc.net

## Admin. Secretary /Travel Coordinator

Cindy Chaya  
cindy.chaya@safmc.net

## Purchasing & Grants

✓ Julie O'Dell  
julie.odell@safmc.net



# PLEASE SIGN IN

In order to have a record of your attendance at each meeting and your name included in the minutes, we ask that you sign this sheet for the meeting shown below.

## South Atlantic Fishery Management Council Habitat Committee Meeting

Monday, December 1, 2014

NAME & SECTOR/ORGANIZATION:	AREA CODE & PHONE NUMBER:	EMAIL ADDRESS:	MAILING ADDRESS:
Gary Zurn Big Rock Sports	252-808-8306	gzurn@bigrocksports.com	158 Little Nine Road, Morehead City, NC
Erinly Helmick	Pew	ehelmick@pewtrusts.org	
Dick Brame	CCA	dbrame55@gmail.com	
Barb Zoodsma/NOAA		BARB.ZOODS@NOAA.GOV	
Frank Rohde	NMFS		
J.P. BROOKER	OCEAN CONSERVANCY	jbrooker@oceanconservancy.org	
Susan Shipman	912-222-9206	susan@shipman@att.net	SSI, GA
DICK BRAME	CCA	dbrame55@gmail.com	

South Atlantic Fishery Management Council  
4055 Faber Place Drive, Suite 201  
North Charleston, SC 29405  
843-571-4366 or Toll Free 866/SAFMC-10