

**GUIDELINES FOR
NORTH CAROLINA
FISHERY MANAGEMENT PLANS
5/28/2009**

**NORTH CAROLINA MARINE FISHERIES COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**APPROVED MARCH 29, 2001
REVISED OCTOBER 2002
REVISED NOVEMBER 2005
REVISED NOVEMBER 2007
REVISED MAY 2009
DRAFT REVISION NOVEMBER 2010**

TABLE OF CONTENTS

I.	PURPOSE	4
II.	BACKGROUND INFORMATION	4
A.	INTRODUCTION TO THE FISHERIES MANAGEMENT PLAN PROCESS	4
B.	ROLE OF THE MFC	4
C.	ROLE OF THE DMF AND DENR	5
D.	ROLE OF THE ADVISORY COMMITTEES	6
	1. Fishery Management Plan Advisory Committees:	6
	2. Regional Advisory Committees:	6
	3. Standing Committees:	6
III.	THE FMP DEVELOPMENT PROCESS	7
A.	PLAN GUIDANCE	7
	1. Establishment of General Framework for Plan Development	7
	a. Establish a priority list to determine the order in which FMPs are developed.	7
	b. Establish guidance criteria as to the contents of FMPs.	7
	c. Establish a schedule for the development and adoption of each FMP.	9
	2. Establishment of Framework for Specific Plans	9
	a. DMF appoints Plan Development Team.	9
	b. DMF establishes a timeline for the development and adoption of each FMP.	9
	c. Set up FMP Advisory Committee	10
	3. General Considerations in Development of Fishery Management Plans	11
B.	DEVELOPMENT OF A DRAFT FMP	11
	1. DMF Preliminary Actions	11
	a. DMF initiation of the FMP process.	11
	b. Determination of sustainable harvest	11
	2. DMF Coordination with MFC	13
	3. Development of Management Options	13
	a. Considerations in the development and selection of management options.	13
	b. The Management Option Development Process	14
IV.	THE FMP APPROVAL AND IMPLEMENTATION PROCESS	15
A.	APPROVAL BY THE MFC	15
B.	REVIEW/COMMENT FROM DENR AND THE JLCSA	15
C.	ADOPTION OF FINAL PLAN	16
	1. Consideration of comments and final review of plan prior to adoption.	16

2.	Final FMP adoption.	16
D.	RULES DEVELOPMENT FOR IMPLEMENTATION OF FMP	17
V.	THE FMP REVIEW, <u>SUPPLEMENT</u> AND AMENDMENT PROCESS	17
A.	FMP Amendment	17
B.	Plan Review and Revision	18
C.	<u>FMP Supplements</u>	19
D.	FMP Amendment <u>and Supplement</u> Tracking	20
VI.	AMENDMENT OF THE REVISED GUIDELINES	21

APPENDICES

APPENDIX ONE	ANNUAL REQUIREMENTS RELATED TO FMPS	22
APPENDIX TWO	SEQUENCE OF EVENTS IN FMP DEVELOPMENT	23
APPENDIX THREE	MFC FISHERY MANAGEMENT PLAN AND RULEMAKING PROCESS	25
APPENDIX FOUR	MFC FMP REVIEW AND RULEMAKING PROCESS	26
<u>APPENDIX FIVE</u>	<u>MFC FMP SUPPLEMENT AND RULEMAKING PROCESS</u>	27

I. PURPOSE

The purpose of these Revised Guidelines for North Carolina Fishery Management Plans (FMP) is to better define the involvement of the Marine Fisheries Commission and its advisory committees in the development of fishery management plans and the process involved in reviewing and adopting such plans. The purpose of a fishery management plan is to provide direction for management of a particular fishery. The development of several plans has also provided insight into the process that was not available when the original guidelines were developed. In addition to defining the process for development of fishery management plans, for purposes of the statutory requirements, these revised guidelines shall constitute the guidance criteria for the contents of fishery management plans. These guidelines are limited to the preparation and development of state fishery management plans (including the Interjurisdictional FMP) and do not address the implementation of federal fishery management plans. These revised guidelines are effective upon adoption by the Marine Fisheries Commission and all previous Fishery Management Plan Guidelines are rescinded.

II. BACKGROUND INFORMATION

A. INTRODUCTION TO THE FISHERIES MANAGEMENT PLAN PROCESS

North Carolina General Statute § 113-182.1 sets out the statutory framework for the development of fishery management plans in North Carolina. The Department of Environment and Natural Resources (hereinafter “DENR” or “the department”) is required to prepare proposed FMPs for all commercially or recreationally significant species or fisheries that comprise North Carolina marine or estuarine resources. N.C.G.S. § 113-182.1 (a). Where statutory provisions related to fishery management plans refer to the department, the Division of Marine Fisheries (hereinafter “DMF” or “the division”) is the responsible agency of the department for issues related to marine and estuarine resources. The goal of the plans shall be “to ensure the long-term viability of the state’s commercially and recreationally significant species or fisheries.” N.C.G.S. § 113-182.1 (b). Each plan shall be reviewed at least once every five years. N.C.G.S. § 113-182.1 (d).

The statutory role of the Marine Fisheries Commission (hereinafter “MFC” or “the commission”) in developing fishery management plans is limited. But the division involves both the MFC and its advisory committees in all phases of development of the various FMPs. An FMP is not a rule of the commission. It sets the standards for determining the status of recovery of the particular species involved. The commission has a significant role in the implementation of FMPs due to their rule-making authority.

B. ROLE OF THE MFC

By statute, the MFC has the power and duty to:

establish a priority list to determine the order in which fishery management plans are developed, to establish a schedule for the development and adoption of each fishery management plan, and to establish guidance criteria as to the contents of fishery management plans. N.C.G.S. § 143B-289.52 (a)(10).

The commission may revise the priority list and guidance criteria as necessary to facilitate or improve the development of FMPs or to restore, conserve or protect the marine and estuarine resources of the state. N.C.G.S. § 113-182.1 (d). The commission may only revise the schedule with the approval of the secretary of DENR (hereinafter “secretary”). N.C.G.S. § 113-182.1(d).

While the division is responsible for development of the plans, the commission has the power and duty to adopt the fishery management plans proposed by DMF. N.C.G.S. § 113-182.1 (a); N.C.G.S. § 143B-289.52 (a)(10). Another significant role of the commission is to adopt rules to implement FMPs in accordance with Chapter 150B of the General Statutes. N.C.G.S. § 113-182.1 (f).

If temporary (interim) management measures are necessary to ensure the viability of the species or plan while the FMP is being developed, then the commission must consult with the regional advisory committees (hereinafter “regional committees”) regarding those temporary (interim) management measures, and must review any comment or recommendation that the regional committees submit to the commission prior to adopting such a temporary (interim) measure. N.C.G.S. § 113-182.1 (c1). A similar requirement exists for any management measures to actually implement the plan. N.C.G.S. § 113-182.1 (c1). The commission must consult with the regional committees regarding those management measures to implement the plan, and must review any comment or recommendation that the regional committees submit to the commission prior to adopting such measures. N.C.G.S. § 113-182.1 (c1). The MFC may also consult with the pertinent standing advisory committee regarding management measures, including those that are temporary (interim), that would implement the plan.

The chair of the Marine Fisheries Commission appoints a fishery management plan advisory committee for each fishery management plan, consisting of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the FMP is being developed. N.C.G.S. § 113-182.1 (c).

If the commission determines sustainable harvest can only be achieved under an FMP by limiting the number of fishermen authorized to participate in the fishery, then the commission may regulate participation in accordance with N.C.G.S. § 143B-289.52 (d1), or the commission must consider detailed criteria in the statute before making such a recommendation to the General Assembly, which must then enact legislation to further limit participation of fishermen in that fishery. N.C.G.S. § 113-182.1 (g).

C. ROLE OF THE DMF AND DENR

The fishery management plans are department plans. N.C.G.S. § 113-182.1 (a). The department, through the division, shall prepare each plan. In preparing the plans, DMF shall develop the plans in accordance with the priority list, schedule, and guidance criteria established by the MFC. N.C.G.S. § 113-182.1 (a); N.C.G.S. § 143B-289.52 (a)(10). The division must consult with the regional committees regarding the preparation of each plan. N.C.G.S. § 113-182.1 (c1).

Before the secretary, or the director as the secretary's designee, submits a fishery management plan to the Joint Legislative Commission on Seafood and Aquaculture (hereinafter "JLCSA"), the department must review any comments or recommendations from regional advisory committees regarding the plan that are submitted to the department with the timeframe established in the schedule for development and adoption of the plan. N.C.G.S. § 113-182.1 (c1). The secretary must monitor the progress of the development and adoption of fishery management plans in relation to the approved schedule. N.C.G.S. § 113-182.1 (e). The secretary must also report to the JLCSA on the progress in developing and implementing fishery management plans by September 1 of each year. N.C.G.S. § 113-182.1 (e).

D. ROLE OF THE ADVISORY COMMITTEES

1. **Fishery Management Plan Advisory Committees:** Although the fishery management plan advisory committees are appointed by the commission chair, their statutory role is to assist DMF in development of the plan. N.C.G.S. § 113-182.1 (a) and (c).
2. **Regional Advisory Committees:** The general function of the regional advisory committees is to assist the MFC in the performance of its duties. N.C.G.S. § 143B-289.57 (a). The only specific statutory functions of the regional advisory committees are to make comments and recommendations to the division regarding the preparation of each plan and, on proposed management measures, to comment to the commission. N.C.G.S. § 113-182.1 (c1). The following are the specific roles of appointed advisors in assisting DMF:
 - (a) Assist DMF staff in identifying and evaluating management issues and options,
 - (b) Evaluate the impacts of management options on the resource and user groups,
 - (c) Review and provide comments on all sections of the draft FMPs or other issue papers for completeness and accuracy,
 - (d) Assist DMF in informing the public on regional management issues,
 - (e) Attend public meetings held in advisors' regional area, and
 - (f) Solicit comments for peers and bring back to the advisory committee.
3. **Standing Committees:** The four standing committees of the commission

have no specific statutory role related to FMPs. The standing committees review all matters referred to the committee by the commission and must make findings and recommendations on these matters. N.C.G.S. § 143B-289.57 (d). Each committee may, on its own motion, make findings and recommendations as to any matter related to its subject matter. N.C.G.S. § 143B-289.57 (d). The commission may consult with pertinent standing committees regarding FMPs. These committees have been used extensively to comment on FMPs within their areas of expertise. The specific roles of appointed advisors are the same as listed in D. 2. above.

III. THE FMP DEVELOPMENT PROCESS

A. PLAN GUIDANCE

1. Establishment of General Framework for Plan Development

a. Establish a priority list to determine the order in which FMPs are developed.

- (1) At the first MFC business meeting after the adoption of the FMP Guidelines, the division shall provide a proposed priority list of fishery management plans to the commission for approval.
- (2) At the ~~last~~ first commission business meeting after July 1 each year, the division shall review the DMF Stock Status Report with the commission and make recommendations as to possible changes in the FMP Priority List.
- (3) At the ~~last~~ first commission business meeting ~~before~~-after July 1 each year, the commission, by a simple majority, shall either ratify or modify the FMP Priority List.
- (4) Where the stock condition status for a species or species population is designated by the division to be either depleted or concern, those species shall be given highest priority for FMP development.
- (5) The commission shall receive a report from the division on the status of completed and draft FMPs (FMP updates) by the division at the ~~last~~-first commission business meeting ~~before~~-after July 1 each year.

b. Establish guidance criteria as to the contents of FMPs.

- (1) As a minimum, the contents of an FMP shall include:
 - (a) title page;
 - (b) table of amendments;
 - (c) table of contents;
 - (d) introduction which should include, at a minimum, the applicability and scope of the plan (management unit), a statement of the problems addressed, the management goals and objectives, a description of current plans and regulatory measures, and the final adoption date of the plan;
 - (e) description of the management program being established by this plan which should include, at a minimum, the legal authority for management and any jurisdictional issues, an overview of the management strategy, a definition of the management unit, rebuilding time and measures to determine recovery, management actions and triggers (if appropriate), conflict identification and resolution, implementation strategy for the FMP, research needs, data collection programs, and enforcement strategy and measures;
 - (f) description and status of the stock to include, at a minimum, the general life history and biological considerations related to the species involved, stock status and distribution, and a determination of sustainable harvest as defined by N.C.G.S. § 113-129 (14a);
 - (g) description and status of the commercial and recreational fisheries related to this FMP;
 - (h) description of the economic status and characteristics of the commercial and recreational fisheries related to this FMP, including the harvesting sector, distribution and processing sector, marketing issues if applicable to the plan, and economic impacts of the commercial fishery;
 - (i) description of sociological issues that impact on the commercial and recreational fisheries;
 - (j) description of environmental factors related to this FMP, including, at a minimum, habitat and water quality issues;
 - (k) references utilized in preparation of this FMP; and
 - (l) appendices as appropriate.
- (2) The recommended minimum contents are a guide for the division and may be expanded without further authorization from the commission as long as the minimum requirements

are included.

- (3) The recommended minimum contents may be modified by the commission by a simple majority vote in compliance with the requirements for amendment of these revised guidelines.

c. Establish a schedule for the development and adoption of each FMP.

- (1) A plan development schedule shall be proposed by the division, in accord with the priority list, and based on division resources and capabilities. The division shall provide the commission at the ~~last~~ **first** business meeting ~~before~~ **after** July 1 each year with a proposed tentative schedule of projected FMPs for the following five years, based on the priority list. The commission shall approve or modify the proposed list annually, at this meeting, or after July 1 each year, by a simple majority vote. Once approved by the commission, any modifications to the schedule must be approved by the secretary.
- (2) In exceptional circumstances, the commission may, by a two-thirds majority, request that the division develop an FMP lower in priority than other pending plans due to unique conditions.

2. Establishment of Framework for Specific Plans

a. DMF appoints Plan Development Team.

- (1) The director of DMF or his designee shall appoint plan leaders for each FMP being developed by the division.
- (2) In accord with division policy, a Plan Development Team (hereinafter "PDT") shall be established for each FMP.
- (3) The plan leaders are responsible for the development of the particular FMP, with the assistance of the PDT.

b. DMF establishes a timeline for the development and adoption of each FMP (Internal Timeline).

- (1) In accord with the schedule of projected plans in III. A. 1. c. above, the division shall establish a detailed internal timeline for the development and adoption of each plan

initiated in a format determined by the division.

- (2) Information copies of the internal timeline shall be provided to the commission at the first meeting after issuance of the timeline by the division for comment, if any.
- (3) Information copies of the internal timeline shall be provided to the commission at the next meeting of the commission after any modifications are made to the timeline by the division, for comment.

c. Set up FMP Advisory Committee.

- (1) The director of DMF or his designee will request that the chair of the commission appoint an FMP advisory committee for each FMP, consisting of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the FMP is being developed. N.C.G.S. § 113-182.1 (c). The chair of the commission shall appoint two members of the FMP committee to be co-chairs. The MFC chair may remove members of FMP committees for cause.
- (2) The statutory role of the FMP advisory committee is to assist the DMF in development of the FMP. N.C.G.S. § 113-182.1 (c).
- (3) The DMF plan leaders for each plan shall coordinate the development of information papers with the assistance of the PDT for discussion with the FMP advisory committee.
- (4) The plan leaders, with the MFC liaison, shall coordinate a division orientation to the FMP advisory committee explaining the role of the FMP committee, the goals and objectives of the FMP, a definition of the FMP management unit, sustainable harvest determinations, and other introductory information as needed.
- (5) The following are the specific roles of appointed advisors in assisting DMF in the development of FMPs:
 - (a) Assist DMF staff in identifying and evaluating management issues and options to be addressed in the FMP,
 - (b) Evaluate the impacts of management options on the

- resource and user groups,
 - (c) Review and provide comments on all sections of the draft FMP for completeness and accuracy,
 - (d) Assist DMF in informing the public on the issues contained in the FMP,
 - (e) Attend public meetings held in advisors' regional area, and
 - (f) Solicit comments from peers and bring comments back to the FMP advisory committee.
- (6) Upon adoption of the final FMP by the MFC, the FMP advisory committee shall cease to function, unless called upon by the MFC chair due to FMP review or amendment.

3. General Considerations in Development of Fishery Management Plans

- (a) The director of the division should keep the commission informed of the status of each plan through the development process.
- (b) Public input should be maximized to the extent possible in the development of each plan.

B. DEVELOPMENT OF A DRAFT FMP

1. DMF Preliminary Actions

a. DMF initiation of the FMP process.

- (1) In accordance with the schedule of FMPs approved by the commission, the division shall initiate the development of the particular FMP by establishing the division PDT for that FMP.
- (2) In accordance with division procedures and policies regarding FMP development, preliminary actions will be taken by the division during this timeframe to develop a detailed internal timeline, determine sustainable harvest, develop goals and objectives, define the FMP management unit, identify issues, form a Rules Advisory Team subgroup to develop potential implementing rules for the FMP, and other necessary preliminary steps as determined by the division.

b. Determination of sustainable harvest

(1) **Definitions**

- (a) **Sustainable Harvest:** The amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished.

N.C.G.S. § 113-129 (14a).

- (b) **Overfished:** The condition of a fishery that occurs when the spawning stock biomass of the fishery is below the level adequate for the recruitment class of a fishery to replace the spawning class of the fishery.

N.C.G.S. § 113-129 (12c).

- (c) **Overfishing:** Fishing that causes a level of mortality that prevents a fishery from producing a sustainable harvest.

N.C.G.S. § 113-129 (12d).

(2) **Rebuilding time determination:**

- (a) Restoration programs shall include measurable objectives and recovery schedules.
- (b) When sufficient and sound data exist, the division will recommend a maximum rebuilding time projection for ending overfishing and achieving a sustainable harvest not to exceed 10 years from the date of the adoption of the plan, except for fisheries where the biology of the species or environmental conditions make a 10-year recovery period impracticable.

N.C.G.S. § 113-182.1 (b)(4)

- (c) If a rebuilding time determination cannot be made by the division, parameters shall be established to measure recovery of the particular stock.

(3) **Management measures:** Fisheries management measures will be developed and implemented in two stages for those species determined to be overfished:

(a) A provisional stage wherein the division will recommend, if deemed appropriate, temporary (interim) management measures necessary to maintain the well being of the stock while the FMP is being developed.

(b) In the plan development and implementation phase, the FMP shall contain those restoration measures necessary for rebuilding of the stock to sustainable harvest status.

2. **DMF Coordination with MFC**

Upon completion of the preliminary actions described in paragraph III A. 2. c. and III. B. 1 above, the division shall take the following actions at a business meeting of the commission:

- a. Provide the commission with an information copy of the detailed internal timeline.
- b. Obtain approval from the commission for the proposed goals and objectives for that FMP.
- c. Provide the commission with an informational presentation on the stock assessment

3. **Development of Management Options**

a. Considerations in the development and selection of management options.

(1) Conservation actions and management options shall be based upon sound scientific, statistical, and factual information and note those areas where data are insufficient for analysis.

(2) Management options that set quantifiable fishing restrictions must meet a minimum standard of 50 percent probability of achieving the management benchmark(s) (e.g. fishing mortality rate) necessary to achieve or maintain sustainable harvest. Management options subject to this requirement shall be identified as **express**

management options during FMP development and as **express** management measures upon FMP adoption or amendment. Quantifiable management options that do not meet the minimum standard shall be eliminated from consideration as soon as their deficiency is discovered. For those instances where there is insufficient information to quantify the effect of an action on a management benchmark(s) or where the action has no effect on a management benchmark(s), management options shall be precautionary and risk averse.

- (3) The division shall provide the MFC with all viable options for consideration and may select preferred options prior to submission of the final draft to the MFC. If the division selects preferred options, a summary of the other options considered and an explanation why they were not appropriate must be included in the draft plan.
- (4) Management options which create limited entry provisions under a state FMP must comply with the provisions of N.C.G.S. § 113-182.1 (g), or if applicable N.C.G.S. § 143B-289.52 (dl). The division shall develop, if necessary, a procedure for compliance with those statutory provisions.

b. The Management Option Development Process.

- (1) The division shall obtain input from the FMP advisory committee on proposed management options through the use of information papers.
- (2) Once input is obtained from the FMP advisory committee, the division shall compile the draft FMP.
- (3) The PDT and the FMP advisory committee shall develop positions on issues identified for the FMP to present to MRT and the DMF director. The DMF director will determine the division's position on management options and have the PDT leads modify the FMP to meet his approval.
- (4) The draft FMP, containing DMF and FMP advisory committee positions on the issues, shall be presented to the MFC at a business meeting for approval for public comment.
- (5) The division shall take the approved draft FMP and

proposed implementing rules to the four regional committees and the Habitat and Water Quality committee for review and comment. The division may also take the draft FMP to the applicable standing advisory committee(s) for review and comment. Public meetings to gather input on the draft FMP are also held at this time and may be held in conjunction with regional committee meetings.

- (6) Based on input from the four regional committees, the pertinent standing committee(s), if applicable, and the public, the division shall determine if modifications are appropriate to the draft FMP. N.C. § 113-182.1 (c1)
- (7) The division will then make additional modifications as appropriate and prepare the draft FMP for presentation to the commission.

IV. THE FMP APPROVAL AND IMPLEMENTATION PROCESS

A. APPROVAL BY THE MFC

1. The division will present the draft FMP to the commission for review and approval to continue the review process.
 - a. If the MFC is presented with a draft plan with multiple management options, prior to submission to the JLCSEA, the commission, at its discretion, must select a preferred option(s) so the corresponding proposed implementing rules can be tailored accordingly.
 - b. If the MFC approves the draft plan for further review, the DMF director then submits the FMP with the draft implementing rules to the secretary for review and submission to the JLCSEA.
 - c. If any management measures are significantly changed by the MFC during this review, the division will take those measures back to the four regional and pertinent standing committees for comment. Once this comment is obtained and reviewed, the division will resubmit the FMP to the MFC for approval.
2. If the commission does not approve the draft FMP for submission to the secretary, the division shall determine the level in the development process to which the division will return in redevelopment of the FMP in order to address the objections of the MFC, repeating such steps as are necessary to modify the FMP appropriately.

B. REVIEW AND COMMENT FROM DENR AND THE JLCSA

1. **Submission to Secretary.** The director of DMF submits the approved draft plan and draft implementing rules to the secretary for review, comment, and submission to the JLCSA.
2. **Submission to JLCSA.** The secretary of DENR submits the draft plan and draft implementing rules to the JLSCA for review and comment. The JLCSA may submit comments and recommendations on the contents of the draft plan within 30 days of the date the plan is submitted by the secretary. N.C.G.S. § 113.182.1 (e).
3. **Comments back to MFC.**
 - a. When the director receives substantive comments back from the secretary and the JLSCA that would require changes in management options, the division shall prepare recommendations to be submitted to the MFC at its next business meeting as to how those comments could be incorporated in the plan.
 - b. When the director receives no substantive comments back from the secretary and the JLSCA, the director shall return the FMP to the MFC at its next business meeting for initiation of the rule-making process (Notice of Text) for rules proposed to implement the plan.

C. ADOPTION OF FINAL PLAN

1. **Consideration of comments and final review of plan prior to adoption.**
 - a. If the only changes made to a draft plan after review by the secretary and the JLSCA are based on recommended changes from those reviewers, then resubmission to the secretary and the JLSCA is not necessary.
 - b. If the commission, after review by the secretary and the JLSCA, in adopting the final plan makes substantial changes to any management measures other than changes recommended by the secretary and the JLSCA, the director shall resubmit the FMP with the changes to the secretary and the JLSCA for further review and comment. The director, at his discretion, shall make the determination whether the changes are substantial.
2. **Final FMP adoption.**

Before final approval of the FMP, the MFC shall begin the rulemaking process for rules to implement the FMP. The FMP will be considered for final approval by the MFC at the same

business meeting the proposed rules to implement the FMP will be considered for adoption.

D. RULES DEVELOPMENT FOR IMPLEMENTATION OF FMP

1. While the FMP is being developed, the division, in accord with division procedures governing the development of rules, shall also develop the proposed rules to implement the proposed plan. If the division and the FMP advisory committee set forth preferred options, proposed rules will be developed to implement those preferred options, respectively. If the division and the FMP advisory committee set forth a selection of options, then proposed rules will be developed for each option, respectively.
2. The proposed rules shall be included in the draft plan at the time the draft plan is presented to the four regional committees and the Habitat and Water Quality Committee for review and comment due to the statutory requirement that the regional committees review management measures under the FMP.
3. At the time the FMP is presented to the commission for final approval and after public review of the proposed rules according to statutory requirements, the proposed rules to implement the FMP shall also be presented to the commission for adoption.
4. Any action taken by the commission to implement a properly adopted FMP must be consistent with the provisions of the FMP.

V. THE FMP REVIEW, SUPPLEMENT AND AMENDMENT PROCESS

A. FMP Amendment

1. The FMP Review Process (or Review Process) is the statutorily mandated examination by DMF staff of existing FMPs and their supporting data and associated studies at no more than five year intervals to determine if changes in management measures are necessary to prevent overfishing and maintain a sustainable harvest.
2. Amendment of an FMP is required when changes to any recommendations or management strategies contained in an FMP are deemed necessary by the MFC.
3. Amendment of an FMP outside of the required Review Process set out in V.B. below shall require written notice explaining the proposed amendment(s) to members of the commission, and to the director of DMF. When the amendment is not proposed by the division, the written notice

shall be received a minimum of 45 days prior to the MFC meeting in which the action would be taken. Amendment of an FMP outside of the Review Process requires a two-thirds majority vote of the commission for adoption.

4. Amendments proposed as part of the plan review process in V.B. below shall only require a majority vote of the MFC for adoption.
5. The amendment process independent of the required Review Process shall include steps included in V. B. 3, 4, 5, 6, 7, 8, 9, 10, and 11.
6. Revisions are defined as changes in factual and background data in FMPs excluding changes to FMP recommendations or management strategies. Revisions may be published periodically by DMF without formal review.

B. Plan Review and Revision

1. The FMP Review Process shall be conducted by the division at least once every five years, N.C.G.S. § 113-182.1 (d). An FMP advisory committee may be activated for the FMP review by the MFC chair.
2. At the appropriate time for review, as prescribed by statute, the division will activate the PDT for this particular plan. The time for initiation of the Review Process shall be no later than five years from the date of final adoption of the FMP by the MFC and at no more than five year intervals thereafter.
3. The division, through the PDT and other staff of the division, will revise the FMP, including performing a stock assessment for species with adequate data, and do an internal review of the FMP to determine any recommended amendment. The PDT will develop the amendment with the advice of the FMP advisory committee if one is activated. If there is no amendment, skip to step 6.
4. The PDT and FMP advisory committee shall develop positions on issues identified in the amendment of the FMP to present to MRT and the DMF director. The DMF director will determine the division's position on management options in the amendment and have the PDT leads modify the FMP amendment to meet his approval.
5. The draft FMP amendment containing DMF and, if activated, FMP advisory committee initial positions on the issues, shall be presented to the MFC at a business meeting for approval to proceed with the amendment process. Proposed rules for the respective positions will be developed and supplied as required in IV. D. above.

6. The division will present the recommended amendment, if any, and a copy of the revised FMP to each of the four regional committees, the Habitat and Water Quality Committee and any other pertinent standing committee(s) for review. Public meetings to gather input on the draft FMP amendment are also held at this time and may be held in conjunction with regional committee meetings.
7. After receiving input from the regional committees, the public and any pertinent standing committees, the division and FMP advisory committee shall develop final positions on the recommendations for amendment of the FMP to present to the commission at a scheduled business meeting. N.C.G.S. § 113-182.1 (c1).
8. At an MFC business meeting, the commission will review the revised/amended FMP. If the outcome of the FMP review is revision only with no amendments and the MFC agrees with this position, the process is complete. If amendment is proposed, the commission shall either approve the revised FMP for review by the secretary and JLCSA or shall select preferred management options for the amendment(s).
9. The ~~revised~~/amended FMP will be forwarded by the DMF director to the secretary and the JLCSA for review and comment. Once the ~~revised~~/amended FMP is reviewed and comments are received by the division from the secretary and the JLCSA, if any, the division shall present any recommended changes to the MFC. At an MFC business meeting, the ~~revised~~/amended FMP with appropriate changes will be submitted for procedural approval of the amended FMP and initiation of the rule making process, if rule changes are necessary, and final approval of the ~~revised~~/amended FMP, if no rule changes are necessary.
10. If rule changes are proposed, a 60-day comment period is observed, during which time the MFC will conduct public hearing(s) on the proposed rules.
11. Proposed rules to implement the amended FMP will be considered for adoption at the same business meeting where the amended FMP is proposed for final approval following the 60-day comment period.

C. FMP Supplements

1. The supplement process may be used to change management measures in an existing FMP when the Secretary determines it is in the interest of the long-term viability of the fishery and the urgency of the issue makes it impossible to address it the through the FMP amendment process.

2. DMF shall develop the draft supplement in issue paper format and deliver the draft to MFC members two weeks prior to the next regularly scheduled MFC business meeting or a called MFC meeting. The draft supplement shall contain analysis of the proposed management change including pertinent data with projected outcomes, and proposed rules or proclamation measures necessary to implement that position.
3. The MFC will review the draft supplement and reject (end of process), approve, or modify and approve it for public comment. The MFC will only consider a single management issue for each draft supplement.
4. DMF will advertise and observe a 30-day public comment period upon approval of a draft supplement. The draft supplement will be posted on the DMF website for review.
5. MFC advisory committees may review the draft supplement if committee meetings are scheduled during the public comment period. Public comment may be received in conjunction with advisory committee meetings.
6. DMF shall consider all public comments and update the draft supplement to include the final agency position on the management options, following the 30-day public comment period.
7. The MFC will review public comment and the DMF final position at the next scheduled business or called meeting and select the preferred management options or return the supplement to DMF for modifications.
8. If no rule changes are required, selection of the preferred management options is final approval of the supplement and the preferred management options become the selected management strategies.
9. If rule changes are required, the rule making process, except final rule approval, is completed prior to final approval of the supplement management strategies. Final approval of the supplement is accomplished during the same MFC meeting as final approval of any rules.
10. Supplement management measures are temporary (interim) and must be incorporated into the FMP at the time of the next review or they expire on the date the revised FMP is adopted. If supplement management measures are not incorporated into the revised FMP,

FMP management measures must be returned to those existing prior to the supplement or changed to those developed by amendment.

D. FMP Amendment and Supplement Tracking

1. Each amendment proposed shall be identified by a sequential number assigned to that proposed amendment by the division. A package of multiple amendments all proposed at the same time shall only be assigned a single number for the amendment package.
2. **Each proposed supplement shall be identified by a sequential letter assigned to that proposed supplement by the division. Sequential supplement lettering will start over each time an FMP is adopted or amended. As an example, titles should appear as: Supplement A to Amendment 2 to the NC Oyster Fishery Management Plan.**
3. A table of amendments **and supplements** shall be maintained for each FMP by the division and a copy distributed to holders of the FMP with copies of the amendments **and supplements** when adopted.

VI. AMENDMENT OF THE REVISED GUIDELINES

These Guidelines may be amended at any business meeting of the MFC by a simple majority vote of the members present, a quorum being required, provided a written copy of the proposed amendment must have been mailed to each commission member at least 10 days prior to the meeting or otherwise have been made available to each member at least five days prior to the meeting.

Appendix One - Annual Requirements Related to FMPs

~~Last~~ First MFC Business Meeting ~~before~~ after July 1:

Division shall present MFC with an updated Stock Status Report.

Division shall present MFC with recommendations for changes in FMP Priority List.

MFC shall ratify or modify FMP Priority List.

Division shall present MFC with 5-year schedule of FMPs.

MFC shall approve or modify 5-year schedule.

Division shall present report on status of completed and draft FMPs (FMP update).

By September 1:

The secretary must report to the JLCSA on the progress in developing and adopting FMPs in accordance with N.C.G.S. § 113-182.1 (e).

Appendix Two - Sequence of Events in FMP Development

MFC places species on priority list.

MFC approves schedule for FMP for that species.

Division initiates plan in accord with schedule.

Division forms PDT and establishes general framework for plan development.

Division brings goals and objectives along with information copies of timeline to MFC for approval and requests appointment of FMP advisory committee.

MFC chair appoints FMP advisory committee.

Division orients FMP advisory committee on role and preliminary details of plan.

Division forms a sub-group of the Rules Advisory Team to begin development of proposed implementing rules for FMP.

Division develops draft FMP and management options with FMP advisory committee.

Director of DMF or his designee keeps MFC advised of FMP status at regularly scheduled MFC business meetings.

Division modifies draft FMP based on FMP advisory committee input.

Division takes draft FMP with wording of draft implementing rules to regional committees, pertinent standing committee(s), and the public for review and comment.

Division incorporates appropriate recommendations from regional and standing committees and the public into revised draft FMP.

Division takes draft FMP back to FMP advisory committee for review and comment.

Division incorporates appropriate recommendations from FMP advisory committee into revised draft FMP.

Division brings draft FMP with wording of draft implementing rules to MFC for approval to forward to secretary and JLCSA.

MFC approves or disapproves draft FMP for legislative and DENR secretary review.

If disapproved, division returns to appropriate earlier stage of process and reinitiates process.

If approved, division forwards draft FMP along with the proposed implementing rules to secretary for review and submission to JLCSA for review and comment.

Division informs MFC of recommended changes by the secretary and JLCSA. (If substantial changes are made to the FMP by the MFC after review of the secretary and JLCSA, the FMP goes back for regional committee review, and the FMP process is reinitiated.)

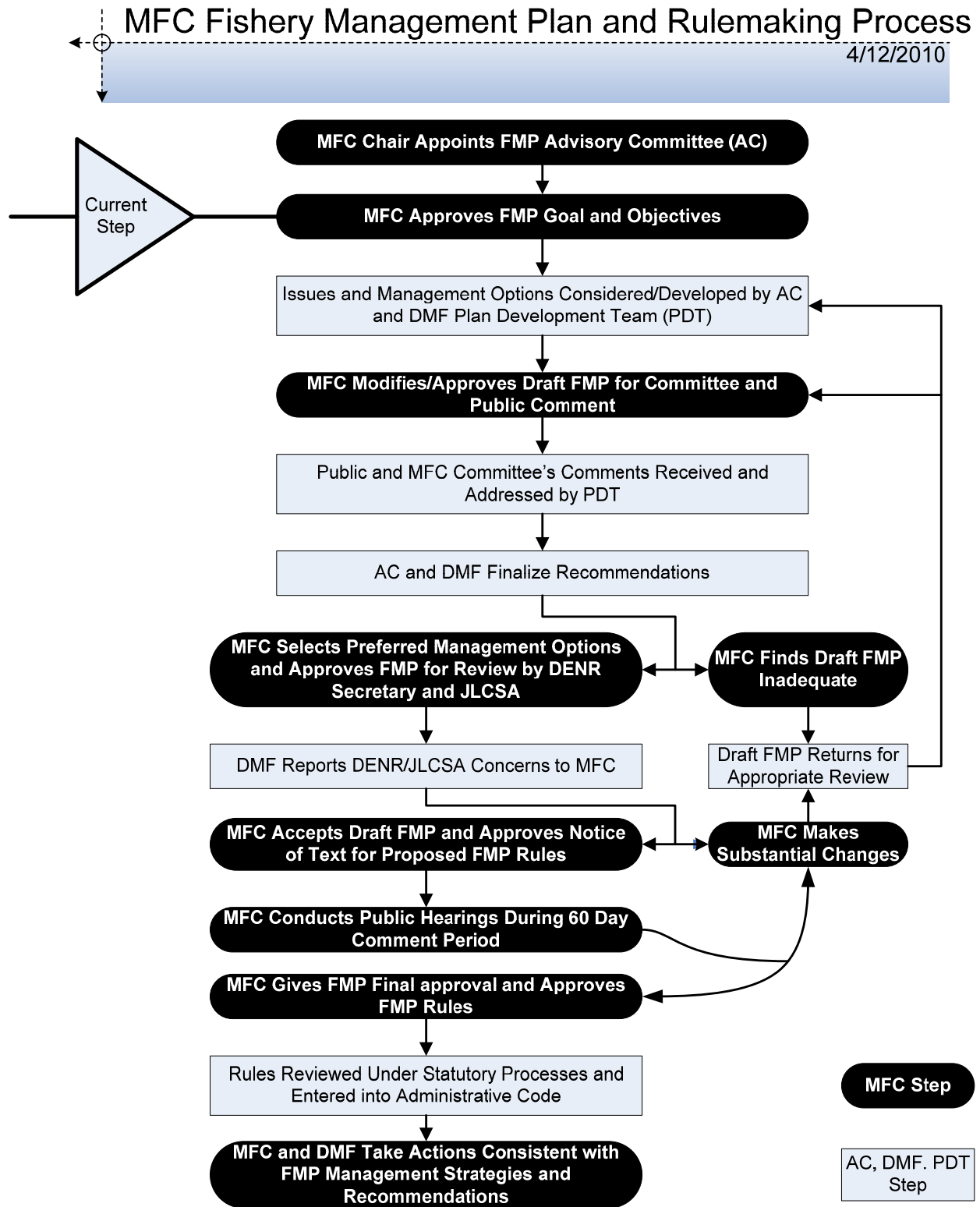
MFC approves or disapproves publication of Notice of Text for draft implementing rules.

MFC public hearing(s) held on proposed implementing rules.

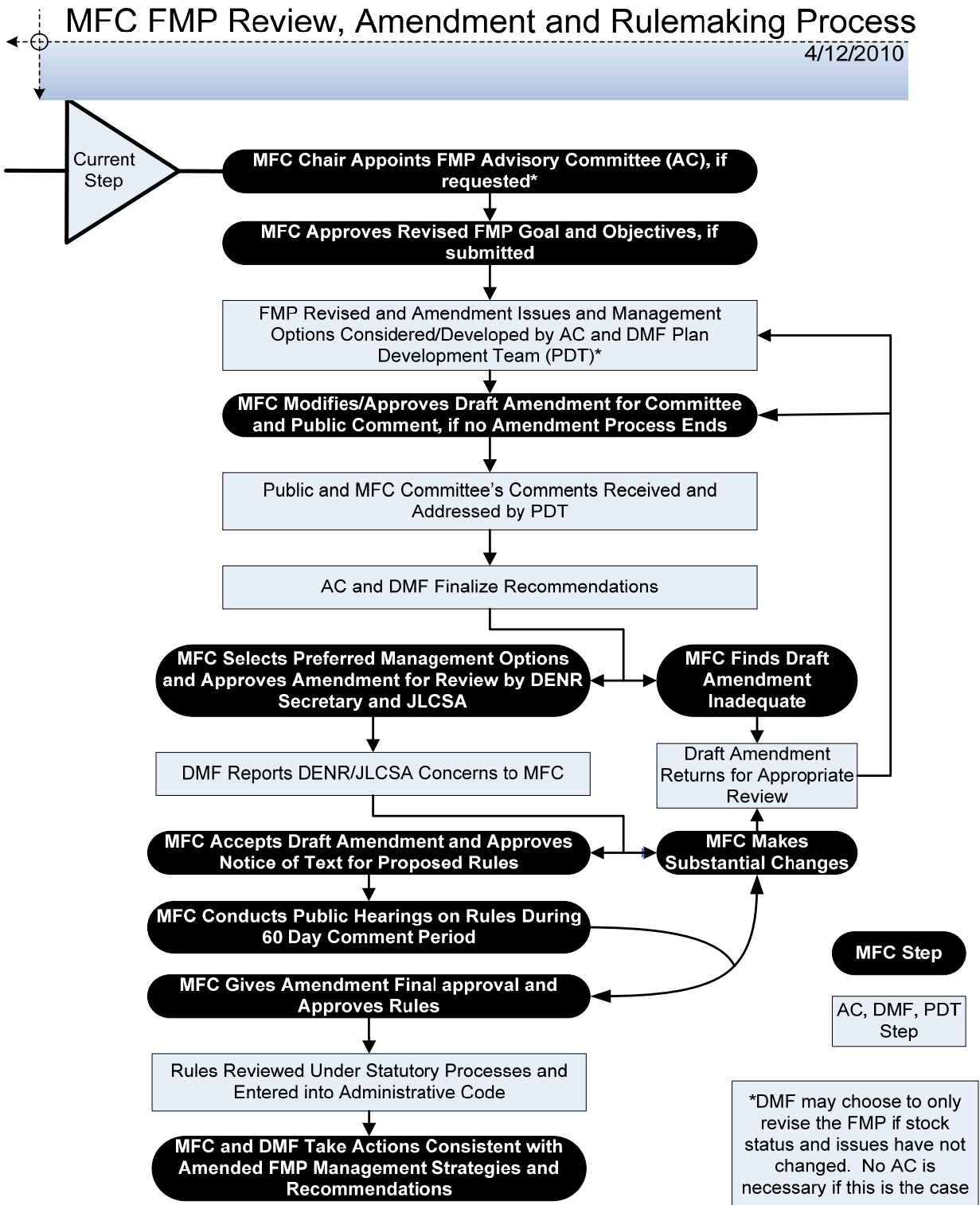
MFC approves FMP. (If MFC rejects, reinitiate FMP process.)

MFC adopts rules to implement the FMP. (Occurs at the same business meeting as FMP approval.)

APPENDIX THREE – MFC FISHERY MANAGEMENT PLAN AND RULEMAKING PROCESS



APPENDIX FOUR – MFC FMP REVIEW AND RULEMAKING PROCESS



APPENDIX FIVE – MFC FMP SUPPLEMENT AND RULEMAKING PROCESS

