



State of North Carolina

Department of Justice

ROY COOPER
Attorney General

114 W. Edenton Street
9001 Mail Service Center
Raleigh, NC 27699-9001

ajern@ncdoj.gov
Phone: (919) 716-6600
Fax: (919) 716-6767

February 8, 2010

VIA email and U.S.P.S.

Michelle Nowlin
Supervising Attorney
Duke Environmental Law & Policy Clinic
P.O. Box 90360
Durham, NC 27708-0360

RE: Follow-up to Conference Call on January 26, 2010

Dear Michelle:

This letter follows up our conference call of January 26, 2010. During the call, you and Patrick Duggan expressed concerns regarding the Division of Marine Fisheries' (DMF) letter to the National Marine Fisheries Service (NMFS), dated January 11, 2010. That letter proposes a comprehensive gill net fishery management plan to address interactions with endangered and threatened sea turtles (hereinafter "turtles") while the Division develops a statewide Section 10 permit. We understood from the call that you would be forwarding those concerns to us in writing, so that we could fully discuss them with our clients, and consider modifying their proposal to NMFS. We also requested data which supported your concerns. Having received neither to date, we are requesting the data you have to support your various assertions during the call, in particular:

- Evidence that strike nets used in smaller creeks are being left unattended. Our clients have no evidence of entanglements with sea turtles occurring in strike nets. Moreover, by definition, strike nets are attended, actively fished and immediately retrieved by the fishermen.
- Data supporting a spring sea turtle migration. Specifically, you were concerned about allowing large mesh gill nets in internal coastal waters from December 16 to May 14, because you have evidence that is an important time for sea turtles to migrate. DMF's spring data from commercial observer coverage and gill net sampling shows no turtle interactions during the month of April. On May 7, 2008, there was a direct commercial observation of an interaction in Core Sound, but the turtle was moderately decomposed, indicative of the turtle mortality occurring before

interaction with the net.¹ Regardless, our clients are willing to review your concerns regarding the time period of the closure, and any evidence you have of a spring sea turtle migration.

- Additional restrictions in the Pamlico Sound Gill Net Restricted Area (PSGNRA). You stated that you would like to see additional restrictions added to the existing Section 10 permit, such as enhanced observer coverage, additional attendance requirements and reduced length of nets in the PSGNRA. As to observer coverage, in 2005, there was 12% coverage of the total effort;² in 2006, there was 9.6% coverage of the total effort;³ in 2007, there was 7.7% coverage of the total effort;⁴ in 2008, there was 11.3 % coverage of the total effort.⁵ Even if there is a decrease in coverage this actually results in increased protection for the turtles due to established thresholds being reached more quickly (direct takes are extrapolated based on the percent observed coverage to the total effort as required by DMF's Incidental Take Permit #1528).⁶ Therefore, reduced coverage equates to an increase in the number of extrapolated turtles to be subtracted from the thresholds authorized under the current permit. Furthermore, to require full-time attendance in some of the areas would be not only impractical, but a safety liability. However, after speaking with our clients, they are receptive to discussing reducing total allowable net length and additional requirements in the PSGNRA.
- Funding for enhanced observer coverage. As to your concern regarding the availability of the funds to pay for the proposed enhanced observer coverage, the Division is seeking additional funds from the General Assembly and other sources. The Division recognizes that under the parameters of a Section 10 permit, coverage must be conducted by the permittee to authorize the opening of the regulated fisheries.
- Data supporting expanded closures in the northern sounds. You asserted that the

¹ Price, Blake. Estuarine Bycatch Assessment in NC Commercial Fisheries, page 12 (November 2009)

² Price, Blake. Sea Turtle Bycatch Monitoring of the 2005 Fall Gillnet Fisheries in Southeastern Pamlico Sound, North Carolina, page 16 (April 2006).

³ Price, Blake. Sea Turtle Bycatch Monitoring of the 2006 Fall Gillnet Fisheries in Southeastern Pamlico Sound, North Carolina, page 9 (April 2007).

⁴ Price, Blake. Sea Turtle Bycatch Monitoring of the 2007 Fall Gillnet Fisheries in Southeastern Pamlico Sound, North Carolina, page 13 (April 2008).

⁵ Price, Blake. Sea Turtle Bycatch Monitoring of the 2008 Fall Gillnet Fisheries in Southeastern Pamlico Sound, North Carolina, page 9 (March 2009).

⁶ Price, Blake. Sea Turtle Bycatch Monitoring of the 2007 Fall Gillnet Fisheries in Southeastern Pamlico Sound, North Carolina, page 10 (April 2008).

closure area needs to include Albemarle Sound, Currituck Sound, Croatan Sound and Roanoke Sound due to presence of a number of gill nets and turtles. Our clients acknowledge that gill net fisheries are conducted in those areas; however, their observation data shows no documented interactions in these areas. If you have data showing otherwise, please provide such documentation. Observer coverage will be maintained in the exempted areas, which can be closed by proclamation if interactions occur, as provided in the Director's letter.

Also, as you know, Marine Fisheries Commission has scheduled a Special Meeting in New Bern on Thursday, February 18, 2010 at 1 p.m. to discuss the measures proposed in the January 11, 2010 letter to NMFS. This confirms the Commission's invitation for you to appear and express your concerns.

We look forward to your response and can discuss these issues further during our next conference call scheduled for Monday, February 8, 2010 at 10:30 a.m.

Sincerely,



Francis W. Crawley
Special Deputy Attorney General



J. Allen Jernigan
Special Deputy Attorney General



Amanda P. Little
Assistant Attorney General

cc: Dr. Louis B. Daniel, III, Director
N.C. Division of Marine Fisheries

Robert Bizzell, Chairman,
N.C. Marine Fisheries Commission