MARINE FISHERIES MEDIATION

North Carolina Division of Marine Fisheries
The ADR Center
Mediation Center of Eastern Carolina

STANDARD OPERATING PROCEDURES

DRAFT 4
07 March 2008
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>ii</td>
</tr>
<tr>
<td>1.0 Introduction</td>
<td>1</td>
</tr>
<tr>
<td>2.0 General Information</td>
<td>1</td>
</tr>
<tr>
<td>3.0 Mediation And Mediation Centers</td>
<td>3</td>
</tr>
<tr>
<td>4.0 The Mediation Referral Process</td>
<td>7</td>
</tr>
<tr>
<td>5.0 Post Settlement Actions</td>
<td>10</td>
</tr>
<tr>
<td>6.0 Legal Considerations</td>
<td>10</td>
</tr>
<tr>
<td>7.0 SOP Revisions</td>
<td>11</td>
</tr>
<tr>
<td>Appendix A: Internal Screening Instrument</td>
<td>13</td>
</tr>
<tr>
<td>Appendix B: NCMFC Fisheries Mediation Policy</td>
<td>15</td>
</tr>
<tr>
<td>Appendix C: Mediation Referral Form</td>
<td>18</td>
</tr>
<tr>
<td>Appendix D: Mediation Request Form</td>
<td>20</td>
</tr>
<tr>
<td>Appendix E: Mediation Consent Form</td>
<td>21</td>
</tr>
<tr>
<td>Appendix F: Example Settlement Agreement</td>
<td>22</td>
</tr>
<tr>
<td>Appendix G: List of Contacts</td>
<td>23</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

The North Carolina Marine Fisheries Mediation Program Standard Operating Procedures were developed by the following working group, lead by Steve Smutko:

- Dr. Steve Smutko, Dept. of Agricultural & Resource Economics, NC State University
- Dr. Barbara Garrity-Blake, Marine Fisheries Commission member (1999-2007)
- Sara Mirabilio, NC Sea Grant Program
- Dea Papajorgii, Mediation Center of Eastern Carolina
- John Murphy, The ADR Center
- David Taylor, NC Division of Marine Fisheries
- Katy West, NC Division of Marine Fisheries

The following individuals from the mediation centers are acknowledged for their participation in the training sessions offered under this program:

- Alan Berger
- Yolanda Burwell
- Mark Dowd
- Mia Edwards
- Kathryn Lennox
- Rob Setzer
- Murray Sherman
- Jim Smith

A special acknowledgement is given to Dr. Barbara Garrity-Blake whose dogged determination and vision for a better way of doing business is credited with seeing this initiative to completion.
1.0 INTRODUCTION

The North Carolina Marine Fisheries Commission (NCMFC) is often called upon to manage user-conflicts that have little or no bearing on the health of fisheries resources. Conflicts range from simple gear disputes to space, resource allocation, or perceptual issues, and sometimes have historical, cultural, and/or political roots. The NCMFC adopted a policy endorsing the use of mediation for appropriate fisheries conflicts in October 2004, (Appendix A) and discussed the feasibility of accessing the North Carolina Mediation Network, comprised of nonprofit community mediation centers headquartered in coastal counties that provide low-cost dispute mediation services to people and organizations in conflict. A Fisheries Resource Grant (FRG) was submitted to Sea Grant and funded to demonstrate the effectiveness of collaboration between the North Carolina Division of Marine Fisheries (NCDMF) and two mediation centers – The ADR Center in Wilmington, and the Mediation Center of Eastern Carolina in Greenville – on selected, appropriate disputes.

1.1 Goal
The goal of fisheries mediation is to manage disputes in a way that achieves lasting resolution amenable to all parties. The overall goal is to promote cooperation and understanding among user-groups, and strengthen North Carolina’s commitment to maintaining user diversity and public access to fishing opportunities and fisheries resources.

2.0 GENERAL INFORMATION

2.1 What is Mediation?
Mediation is a proven conflict resolution method that aims to achieve a lasting resolution amenable to all parties. Mediation requires an independent and neutral third party to manage the process: a mediator who can provide a fair, impartial, confidential, and safe structure with ground rules for dialogue. The mediator has no power to decide how a dispute will be resolved. Instead, the mediator guides the disputing parties through a structured problem-solving process in which all stakeholders learn about each others’ interests challenge previously accepted assumptions, and develop strategies that are acceptable to all parties.

2.2 Which Conflicts Should be Mediated?
Mediation works best when it is voluntary. Parties are inclined to participate when they understand that mediation is their best alternative to resolving a conflict in a way that meets mutual interests. This environment should encourage parties to move from opposing positions to common interests for a lasting, mutual agreement.

Mediation can be used to address specific types of conflicts that occur in a fisheries context and that appear before the North Carolina Marine Fisheries Commission. These conflicts include:

- Gear (e.g. trawls/pots) Conflicts between users of different fishing gear types
• Resource (e.g. sport/commercial red drum) Conflicts between users over allocation issues
• Space (e.g. pots/sailboats, homeowners and nets, shellfish lease issues) Conflicts between users vying for same area; sometimes a navigational, allocation, and/or public trust issue
• Perceptual/aesthetic (menhaden/beach communities, piers/nets) Conflict deriving from one party perceiving damaging qualities of another

Not all conflicts can be resolved through mediation. Certain key factors that determine the success of mediation include:

1. The disputing parties can be identified and involved in the mediation process, they have a vested interest in seeing the dispute resolved, and can benefit from a solution.
2. Parties are not too polarized and productive, face-to-face discussions are possible.
3. Parties don’t view alternative procedures or outcomes to mediation as desirable or viable.
4. Deadlines or time constraints provide an incentive for a prompt solution.
5. Any agreement that is likely to be reached can be implemented within a time frame that makes it relevant and can be confined to a geographic scope that enables implementation and enforcement.
6. Implementation of any agreement that is likely to be reached is within the purview of the Marine Fisheries Commission and the Division of Marine Fisheries to enforce and regulate.
7. Any agreement that is likely to be reached does not negatively affect resource management actions of the DMF.
8. Implementation of any agreement that is likely to be reached does not violate other laws, rules or policies.

<table>
<thead>
<tr>
<th>No. Parties</th>
<th>Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two</td>
<td>I</td>
</tr>
<tr>
<td>Multiple</td>
<td>III</td>
</tr>
</tbody>
</table>

The typology matrix can be used to describe types of mediated settlements with respect to the roles and expectations of the mediation centers and the NCDMF. Settlements can be either official or unofficial. Official settlements are promulgated by DMF proclamation or Marine Fisheries Commission policy. Unofficial settlements are considered agreements among the parties and do not require a proclamation or policy to implement them. Unofficial settlements are likely to be rare and will not involve a resource management decision. Two party disputes in which the settlement is unofficial requires the least amount of involvement by either the mediation center or the NCDMF. On the other hand, disputes involving
multiple parties in which a settlement will be implemented through proclamation or policy will require significant preparation by the mediators in the form of a conflict assessment or similar pre-mediation evaluation procedure, and direct participation (or at least active observation) by NCDMF personnel. Disputes in quadrant I require the least involvement by the mediation centers and NCDMF personnel, while disputes in quadrant IV require the most involvement.

3.0 MEDIATION AND MEDIATION CENTERS

3.0.1 Introduction to Mediation

The mediation process can be described as a twelve-stage process of mediator moves and critical situations to be handled\(^1\). The twelve stages can be divided into two broad categories: work that the mediator performs prior to joining the parties in mediation, and moves made once the mediator has entered formal negotiations.

The twelve stages are listed below. The first five stages are pre-negotiation activities, while the remaining seven stages occur while the mediator is working with the parties in the negotiation setting.

1. Initial contacts with the disputing parties.
2. Selecting a strategy to resolve the conflict
3. Collecting and analyzing background information
4. Designing a detailed plan for mediation
5. Building trust and cooperation
6. Beginning the mediation session
7. Defining issues and setting an agenda
8. Uncovering hidden interests of the disputing parties
9. Generating options for settlement
10. Assessing options for settlement
11. Final bargaining
12. Achieving a formal settlement

3.0.2 Prior to Mediation

*Establishing Initial Contact and Selecting a Conflict Resolution Strategy.* Since the Division will be the principal referral agent for mediation of fisheries conflicts (see Section 3.1), this stage will be initiated by DMF personnel with possible inclusion by the mediation centers. The objectives at this stage should be to build personal, institutional, and procedural credibility, establish rapport with the disputants, educate the participants about various conflict resolution strategies including mediation, and gaining commitments to begin mediating. DMF personnel may assist the parties to assess various approaches to conflict management and resolution to determine if mediation is indeed the most effective approach. In doing so, DMF personnel may identify the interests or goals that must be satisfied in a

potential settlement, consider the range of possible and acceptable dispute outcomes, identify
the conflict approaches that may assist disputants in reaching individual, subgroup, or
organizational goals, and guide the parties toward the most effective approach. After initial
contact has been made, and mediation is identified as a potential means for resolving the
conflict, the case is referred to the appropriate mediation center.

Collecting and Analyzing Background Information. In this stage the mediator begins to
collect information about the issues, the parties, and the forum for resolution. This usually
involves interviewing the parties involved or potentially involved in the dispute as well as
gathering background information from DMF personnel and secondary parties. The mediator
uses this information to generate a conflict assessment. A conflict assessment enables the
mediator to understand the issues and interests that are important to the parties, and the
relationships and dynamics that exist between them. Mediators can share the assessment
with the DMF and the disputing parties to prepare them for the mediation process.

Designing a Plan to Guide Mediation. Based on the results of the conflict assessment, the
mediator designs a mediation plan. A mediation plan is a sequence of procedural steps
initiated by the mediator that will help disputing parties reach agreement. The plan’s detail
depends on the type and complexity of the conflict, how much the mediator knows about the
dispute, and how much control over the process the disputants have delegated to the
mediator.

3.0.3 The Mediation Session
The mediation session spans the time between the mediator’s opening remarks until the
parties achieve a formal settlement. This can occur in one meeting or several. During this
time, the disputants are engaged in active discussion and the mediator is there to guide and
coach the parties toward settlement.

Beginning the Mediation Session. To begin the mediation session, the mediator typically
works to establish a tone of trust and common purpose and assists the parties in developing a
structure for full, open, truthful exchange of information about the issues under discussion.
He does this by welcoming the parties and commending them for their willingness to
cooperate and seek a solution to the problem at hand. Before turning the discussion over to
the parties, he defines his role as an impartial third party, and describes the mediation
procedures to be followed. He then defines and gets agreement on behavioral guidelines that
will facilitate an orderly discussion. At this point he directs the parties to an opening strategy
that he thinks will be most fruitful based on information he has gathered prior to the
mediation session. Typical opening strategies include (1) each party describing the issues to
be resolved; (2) each party describing his or her interests that need to be satisfied; and (3) the
parties defining and agreeing on procedures to be used to resolve the dispute.

Defining Issues and Setting an Agenda. Once the parties have opened discussions, the next
task is to define the content of the negotiations and establish an order in which the issues are
to be discussed. Three critical tasks at this stage are (1) identification of broad topic areas of
concern to the parties, (2) agreement on the subtopics or issues that should be discussed, and
(3) determination of the sequence for discussion. The mediator is focused on guiding the parties toward the delineation of a concrete list of issues and items that, if negotiated to the satisfaction of all parties, will lead to final settlement. The mediator does this by helping to frame and/or reframe the issues in language that leads to a jointly perceived problem that the parties are willing to solve. The mediator’s use of facilitative language or syntax is of critical importance at this stage as he seeks to restate positional statements made by either party into words that invite critical thinking and problem solving, eventually moving the parties to the development of an agreed-upon list of issues to be settled.

Uncovering Hidden Interests. Once the parties have defined the issues and established a negotiation agenda, the next stage of the mediation is focused on uncovering hidden interests of the disputing parties. Interests, not conflicting positions, define the problem the parties are attempting to solve. Successful negotiation requires the discovery and application of options that satisfy the interests of both parties. The mediator assists the parties to reveal their interests, enabling them to create value in the negotiation. The mediator can use direct or indirect methods to induce the parties to reveal their interests. The most common direct methods are brainstorming and direct questioning. Indirect methods include active listening techniques such as paraphrasing, summarizing, and reframing.

Generating Options for Settlement. After interests have been clearly and exhaustively identified, the parties can then move toward finding ways to satisfy their own interests and those of the other parties. When they reach this stage the parties have defined the parameters of the dispute, clarified issues, developed an agenda, and through full and open communication, identified common and conflicting interests. The central task of the negotiators is to develop mutually acceptable settlement options or proposals. The mediator’s role is to assist them to become aware of the need for generating options, present strategies for generating options, and assist the parties during the option generation process. A key activity for the mediator is to keep the parties from prematurely evaluating and eliminating options. The metaphor most often used to describe this stage is that of making the pie larger before dividing it.

Assessing Options for Settlement. Once the parties are satisfied that they have enlarged the pie, the next task is to assess options for settlement. In effect, decide how to divide the pie. The primary task for the parties at this stage is to assess how well their interests will be satisfied by any one or a combination of options that they generated. The mediator’s role is to help the parties evaluate those options and assist them to assess the consequences of accepting or rejecting various settlement proposals. If options are within the zone of possible agreement or ZOPA, i.e., the range of potential solutions between what each party will minimally accept and what each aspires to, then an agreement is possible. The mediator may work with the parties to help them individually identify their acceptable limits of settlement. Through public and private discussions with the parties, the mediator often has the most accurate perception of the settlement range for all the parties. The key task for the mediator is to communicate to the parties when they may have reached the ZOPA without unduly influencing the precise outcome.
Final Bargaining. As the parties narrow the bargaining range within the ZOPA, they engage in a search for an agreeable distribution of the joint gains generated through the negotiation and work out the details for implementation. This is the objective of the final bargaining phase. The mediator may assist the parties to increase their joint gains, that is, not settle prematurely, if he feels that additional value can be gained by continuing to negotiate. In some cases, the parties may have found the ZOPA, but considerable differences remain in potential gains and losses to each party creating difficulties in reaching agreement. Each party may be reluctant to make subsequent offers out of fear of conceding too much, revealing their bottom line, or being perceived as being weak or overly compliant. The mediator may assist the parties in this case by creating a negotiation climate that allows the parties to explore offers without committing, framing offers so that they are seen as initiatives rather than concessions, or free the parties from public pressure or repercussions by serving as the negotiators’ scapegoat.

Not all negotiations lead to an agreement. If the mediator believes that the parties have exhausted their search for possible options and still cannot reach a ZOPA, then the mediator may suggest that the parties act on their alternatives to negotiation and declare an impasse.

Achieving a Formal Settlement. In the final stage of mediation the parties agree on implementation and monitoring arrangements to ensure that the agreement is carried out. Factors that must be considered when crafting such arrangements include the specific steps and responsible parties necessary to carry out the agreement, methods and criteria used to measure compliance, organizational incentives and controls that affect compliance, and provisions for future talks if necessary. The mediator's role in fashioning formal settlements is largely one of keeping the parties focused on the implementation phase and thinking about contingencies once negotiations are over. The mediator will be responsible for writing a settlement agreement to be signed by the disputing parties and the mediator(s). The settlement agreement describes the substantive agreement and subsequent implementation, monitoring, and re-opening procedures (see Appendix D, Example Settlement Agreement). Copies of the settlement agreement are distributed to the parties and the Division Head. The Division Head reserves the right to take official action to carry out the terms of the mediated settlement.

3.1 North Carolina Mediation Centers
Two nonprofit community mediation centers (hereinafter collectively referred to as the “Mediation Center”) headquartered in coastal counties provide low-cost dispute mediation services to people and organizations in conflict. The Mediation Center of Eastern Carolina, located in Greenville mediates disputes in the Albemarle-Pamlico area. The ADR Center (formerly the Community Mediation Center of Cape Fear) is headquartered in Wilmington and handles fisheries cases south of Bogue Sound. Staff and volunteer mediators from these two centers will handle the fisheries mediation cases. All mediators are certified by the Mediation Network of North Carolina. Certification requires 20 hours of basic mediation training, an apprenticeship with a certified mediator for a minimum of ten sessions, and completion of ten additional hours of approved training. In addition, the
mediators handling fisheries cases have completed an 18-hour training program specifically focused on resolving fisheries disputes.

### 3.1.1 “Services” Provided by the Mediation Centers
- Trained, neutral and detached third parties create a forum for equal voices at come to the table to resolve contentious issues.
- Clients are empowered to craft an agreement, within previously established parameters, that satisfy the needs of the parties, the community and the Division.
- Practitioners conduct an assessment of the conflict and design an appropriate process to achieve a durable resolution.
- In mediation the parties have an opportunity to air their concerns and opinions regarding the dispute.
- The mediation centers are committed to participating in this project as it moves forward.
- During the mediation process, the practitioners will draw out and clarify alternatives that may resolve the dispute for the clients.
- In concluding the mediation process the mediators will draft a memorandum of agreement that formalizes the agreement reached by the parties. A copy of the document will be provided to the Division of Marine Fisheries for consideration (Proclamation, Rule, etc.) by the Division.

### 4.0 THE MEDIATION REFERRAL PROCESS

#### 4.1 Mediation Program Awareness
The general public, as well as the NCDMF staff, must be made aware of the Mediation Program and understand the basic tenets of mediation. NCDMF will play a key role in referring disputing parties to mediation. The mediation education materials will be made available on the NCDMF web site and incorporated into existing training and orientation programs within the Division.

It is anticipated that conflicts will come to the attention of the Division through many sources. Among them are the general public, commercial and recreational fishermen, city, county and state government agency staff, elected officials, DMF biological and Marine Patrol staff, the Marine Fisheries Commission (MFC) and its Advisory Committees, and others.

#### 4.2 NC Division of Marine Fisheries
The North Carolina Division of Marine Fisheries (DMF) acts as the primary referral agency for mediation of marine fisheries disputes in North Carolina. The agency is also responsible for executing, where and when applicable, the terms of agreement reached through mediated settlements.
4.2.1 Pathways to mediation

- Advisory committees (informally)
- Formal petition to the Marine Fisheries Commission
- Rules Advisory Team (RAT)
- Field offices personnel
- Headquarters personnel
- *District managers
- *Marine Patrol captains
- *Fisheries Management Section Chief
*Personnel most likely to be involved in referring disputes to mediation.

4.2.2 Referral within DMF

The Fisheries Management (FM) Section Chief will serve as the NCDMF mediation liaison, and will work directly with the mediation centers. All referrals must ultimately be channeled through the FM Section Chief.

Step 1
When made aware of conflicts that appear amenable to the mediation process from any and all sources, DMF employees, at any level, should contact the District Manager (DM) or Marine Patrol (MP) Captain for the respective district. The staff member and District Manager or MP Captain should evaluate the conflict based on knowledge of the situation and parties involved and determine if the issue can be resolved without mediation or elevation to the FM Chief. If the issue appears to be a likely candidate for mediation the following information will be specified on the DMF Mediation Referral Form:
• Describe the aspects of the conflict,
• Identify the parties involved in the conflict with phone numbers and addresses if feasible, and
• Outline available or possible solutions to the conflict.

Step 2
The form will be submitted to the FM Chief and a date set to discuss the particulars. The DMs or MP Captains will contact the FM Chief and describe the conflict, the parties involved and recommend any possible solutions to the conflict. The FM Chief will perform a preliminary internal assessment using the Internal Assessment Score Sheet in Appendix A and make a decision to refer the issue for mediation.

Step 3
After the performing the internal assessment, the FM Chief will discuss the issues with the Fisheries Director to determine the potential of using proclamation authority to alleviate the situation or to insure that the suggested options for resolution are acceptable.

Step 4
The FM Chief will record this information on the Mediation Center’s referral form and relay it to the Mediation Center personnel.

Step 5
After accepting the referral, the Mediation Center will perform a detailed conflict assessment. Following the assessment, the Mediation Center will arrange an assessment conference with the FM Chief and recommend to mediate or not mediate. If mediation is recommended, the Mediation Center also will make recommendations on process, and identify potential outcomes for DMF to consider.
5.0 POST SETTLEMENT ACTIONS

5.1 Settlement Agreement Reached

- Parties Reach a Mediated Settlement
  - DMR Reviews Agreement
    - Implement by Proclamation
    - Recommend for Rule Change
    - Take “Unofficial” Action
      - Review by Rule Assessment Team
        - Action by Marine Fisheries Commission

5.2 Settlement Agreement not Reached, or Partial Settlement Reached
In cases where agreement by all parties is not reached, DMF will review the report of partial agreement or failed agreement and make a decision whether to act.

6.0 LEGAL CONSIDERATIONS

As a part of Mediation Center practice, both centers will have all parties execute a Consent to Mediate Form that frames the parameters of the mediation process. Consent forms will explicitly state “this agreement is not binding on the Division of Marine Fisheries but will be presented to Division of Marine Fisheries as an aid to reaching a just resolution of the matter.”
It is intended that Marine Patrol and or Division of Marine Fisheries personnel will serve as resource persons and not parties to the dispute or mediation. As such they are not bound by the privacy laws outlined in Appendix E, Consent to Mediate nor will they be asked to sign any Memorandum of Agreements that memorialize the specific agreements reached in the mediation session. Marine Patrol and Division of Marine Fisheries personnel are not compelled to act on information of past misdemeanors revealed by the parties during the mediation.

7.0 SOP REVISIONS

This document outlines the operating procedures for the North Carolina Marine Fisheries Mediation Program. It is a working document that may be modified as the participating parties gain more experience with the process and determine needed changes or improvements. Such changes will be made only with the full consent of all parties. The document will be maintained by the NCDMF Fisheries Management Section Chief. Signatory approval for the SOP consists of the NCDMF Division Director, and the Directors of the Mediation Center of Eastern Carolina and the ADR Center.
APPENDICES

Appendix A: Internal Screening Instrument

Appendix B: Policy for the Use of Mediation in the Management of Fisheries Conflicts

Appendix C: Mediation Referral Form

Appendix D: Mediation Request Form

Appendix E: Mediation Consent Form

Appendix F: Example Settlement Agreement

Appendix G: List of Contacts
## INTERNAL SCREENING INSTRUMENT

Rate the situation on a scale of 1 to 5 according to the following criteria:

### A. Are the issues clear?
1. **Issues are clear**
2. **Issues are not clear**

### B. Is the timing appropriate?
1. Deadlines exist and are workable
2. Decision must be made quickly or there is no deadline at all

### C. Is the issue negotiable?
1. Issue outcome is neither precedent-setting or value-focused
2. Issue outcome is precedent-setting value-focused, or both

### D. Can the participants be identified?
1. Clearly identifiable
2. Not clearly identifiable

### E. What is the history of the situation?
1. Newly emerging
2. Long, volatile

### F. What is the level of trust among participants?
1. Reasonable
2. Little or none

### G. What is the level of contention?
1. Not controversial
2. Highly controversial

### H. Is there political support for resolution?
1. Favorable
2. Unfavorable
I. Are resources available to support collaboration?

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available</td>
<td>Not available</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

J. Are key decision makers willing to use the process?

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Willing and committed</td>
<td>Not willing or committed</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL SCORE**

If you scored above 40, this issue may not be amenable to a collaborative, consensus-based decision process. In your issue assessment, focus on those criteria that are the most problematic to determine whether they will indeed impose significant barriers to collaboration.

If you scored 25 or below, you have a good chance of achieving a successful outcome in a collaborative, consensus-based process.
POLICY FOR THE USE OF MEDIATION IN THE MANAGEMENT OF FISHERIES CONFLICTS

**Issue:** This document establishes the policy of the North Carolina Marine Fisheries Commission regarding the endorsement and use of mediation in the management of social conflicts in a fisheries context. This policy strengthens the commitment of the North Carolina Marine Fisheries Commission to maintain access to public trust waters and resources through the promotion of user-group cooperation.

**Background:** The North Carolina Marine Fisheries Commission is charged to “(m)anage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources” (N.C.G.S. 143B-289.51(b)(1)). In carrying out this mission, the North Carolina Marine Fisheries Commission is frequently called upon to manage user-conflicts that have little or no bearing on the health of fisheries resources. Such social conflicts range from simple gear disputes to space, resource allocation, or perceptual issues, and often have historical, cultural, and/or political roots.

The Commission recognizes its limitations in managing such complex conflicts. At times rules have been imposed to separate conflicting parties in space and time. Such action may alleviate complaints, but they can also serve to deepen hostilities between parties. They can also have the overall and cumulative effect of eroding access to public trust resources. As coastal areas become more populated and developed, the Commission will likely be called upon to manage an increasing number of such social conflicts.

**Discussion:** Although all conflicts are social in nature, it is important to define the types of conflicts that occur in a fisheries context and that appear before the North Carolina Marine Fisheries Commission.

Many conflicts are a combination of categories. Some are technically law-enforcement issues, but nonetheless come before the Commission. It is important for the Commission to evaluate what types of conflicts present themselves most often, which conflicts are most successfully dealt with by the Commission, and which are most difficult and/or beyond the Commission’s purview.

The Division of Marine Fisheries and the Commission should review and refine the process by which certain conflicts are addressed. Formal mediation concepts and methods should be endorsed and introduced into the process to better educate the parties, raise awareness as to the State’s commitment to maintaining the public trust, and most importantly, derive a resolution, preferably non-regulatory, amenable to all parties.

**Marine Fisheries Commission Conflict Management Policy:** It shall be the policy of the North Carolina Marine Fisheries Commission that the overall goal of managing social conflicts is to foster cooperation, fairness, and equity among groups while maintaining user-diversity and access to public trust resources.
To that end, the North Carolina Marine Fisheries Commission shall identify conflict type and, when appropriate, recommend and encourage parties to participate in a forum of mediation. Clearly defined, localized parties who can meet face to face are the best candidates for mediation, whereas conflicts involving attorneys, organizations, or far-reaching requests such as a statewide gear ban, are less appropriate.

Mediation works best when it is voluntary. Parties are inclined to participate when they understand that mediation is their best alternative to resolving a conflict in a way that meets mutual interests. Mediation requires an independent and neutral third party to manage the process: a mediator who can provide a fair, impartial, confidential, and safe structure with ground rules for dialogue. This environment should encourage parties to move from opposing positions to common interests for a lasting, mutual agreement.

Mediation will ideally result in a non-regulatory resolution of the conflict or a proposed regulatory action that is amenable to both parties. Recognizing mediation as an important step in the conflict management process promotes cooperation and understanding among groups, and strengthens North Carolina’s commitment to maintaining user diversity and public access to fishing opportunities and fisheries resources.
Resolution of the North Carolina Marine Fisheries Commission

WHEREAS, the North Carolina Marine Fisheries Commission is concerned that its existing methods used to address user-conflicts incrementally reduce access to public trust waters, fishing opportunities, and fisheries resources for competing parties; and

WHEREAS, many user-conflicts brought to bear before the North Carolina Marine Fisheries Commission are social in nature with little or no bearing on the health of the fisheries resources, and

WHEREAS, just separating user-groups in space and time through rules may do little to resolve conflicts, and potentially may fuel future conflicts; and

WHEREAS, user-conflicts will only increase with a growing coastal population and the State is compelled to address conflicts in fisheries management plans; and

WHEREAS, no formal procedure currently exists within the North Carolina coastal fisheries management system to provide alternative methods, such as mediation, to manage social conflicts; and

WHEREAS, mediation is a proven conflict resolution method that aims to achieve a lasting resolution amenable to all parties; and

WHEREAS, an extensive mediation network of trained professionals exists and operates in Eastern North Carolina;

NOW THEREFORE BE IT RESOLVED by the North Carolina Marine Fisheries Commission that State funding be provided during fiscal years 2005-06 and 2006-07 to conduct a pilot program utilizing trained mediators to manage fisheries conflicts selected by the North Carolina Marine Fisheries Commission;

BE IT FURTHER RESOLVED that funds for a pilot mediation program be separate from and in addition to existing funds to the Division of Marine Fisheries so as not to drain support for other programs;

BE IT FURTHER RESOLVED, that a report will be prepared before the end of FY 2006-07 evaluating the effectiveness of using mediation to resolve social conflicts in coastal fisheries management, including a recommendation as to whether or not to continue the program as an integral part of the Commission’s fisheries management system.

James A. Johnson, Jr., Chairman

October 2004

Date
NORTH CAROLINA DIVISION OF MARINE FISHERIES
FISHERIES MEDIATION REFERRAL FORM

DMF STAFF ORIGINATOR

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Title</th>
<th>Phone</th>
</tr>
</thead>
</table>

DISTRICT DMF STAFF REVIEWER

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Title</th>
<th>Phone</th>
</tr>
</thead>
</table>

CONFLICT TYPE (Check all that apply)

<table>
<thead>
<tr>
<th>Gear</th>
<th>Allocation</th>
<th>Space</th>
<th>Aesthetic</th>
</tr>
</thead>
</table>

GEOGRAPHIC EXTENT AND LOCATION:

CONFLICT OVERVIEW:

SPECIFIC CONFLICT ATTRIBUTES:
Parties Characteristics (Include number, identify-name, address, phone, email, group represented):

Possible and Recommended Solutions:
FISHERIES MANAGEMENT CHIEF REVIEW:  Date:  
Review Comments:

DIVISION DIRECTOR REVIEW:  Date:  
Review Comments:

Forward to Mediation Centers for Evaluation:

<table>
<thead>
<tr>
<th>Approve</th>
<th>Disapprove</th>
<th>Date</th>
</tr>
</thead>
</table>

Summary For Mediation Centers:
REQUEST FOR MEDIATION

Date: ___________ DMF Log #: ___________ Case to be completed by (date): ___/___/____
DMF Contact: ____________________________ Phone: ______________________

Type of Dispute: [ ] Gear [ ] Allocation [ ] Space [ ] Perceptual

<table>
<thead>
<tr>
<th>Name</th>
<th>Role/Group</th>
<th>Phone #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party 1: ___________________________</td>
<td>_________</td>
<td>_________</td>
</tr>
<tr>
<td>Party 2: ___________________________</td>
<td>_________</td>
<td>_________</td>
</tr>
<tr>
<td>Party 3: ___________________________</td>
<td>_________</td>
<td>_________</td>
</tr>
<tr>
<td>Party 4: ___________________________</td>
<td>_________</td>
<td>_________</td>
</tr>
<tr>
<td>Party 5: ___________________________</td>
<td>_________</td>
<td>_________</td>
</tr>
<tr>
<td>Party 6: ___________________________</td>
<td>_________</td>
<td>_________</td>
</tr>
</tbody>
</table>

Issue(s): ______________________________________
______________________________________________________________________________
______________________________________________________________________________
DMF’s Goal for this Meeting: ______________________________________
______________________________________________________________________________
______________________________________________________________________________
Parameters for mediation? ________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
Recent History:_________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Received at Mediation Ctr: Date: ___/___/____ Time: ___:___ Initials: ____ File #: ___________
Date: ___/___/____ | Time: [ ] 10:00 [ ] 1:00 | Location: [ ] CMC [ ] DMF [ ] Other __________
Consent to Mediate
(Division of Marine Fisheries Referrals)

1. I understand that the mediation process is voluntary and any agreements reached will be by mutual consent. The mediators are not judges and have no authority to render decisions for us.

2. I agree that communications during mediation sessions are intended to be confidential and may not be used for any other purpose such as prosecution regarding revealing information about misdemeanors, except that mediators are obligated by statute to disclose information regarding the abuse or neglect of a child or dependant adult. A mediator may also disclose information regarding threats of significant damage to real or personal property, serious bodily harm or death when the mediator has reason to believe that the party has the intent and ability to act on the threat.

3. I authorize the mediators to share any Memorandum of Understanding prepared in this matter with the Marine Fisheries Commission and/or the Division of Marine Fisheries in order to draft a Proclamation, Rule or other type of policy directive. I further authorize the mediators to share any Memorandum of Understanding with the participants of the workgroup overseeing this pilot program for assessment, funding and learning purposes.

4. All parties acknowledge that this agreement is not binding on the Division of Marine Fisheries but will be presented to Division of Marine Fisheries as an aid to reaching a just resolution of the matter.

5. I agree and grant that the mediators, per NC General Statute § 7A-38.1 (J), judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice. I further agree that I will not involve the mediators or their records in any way, in any claim or proceeding.

6. I acknowledge that mediators serve as neutral third parties and cannot provide any opinion or legal advice. I understand that if I require professional advice, the mediators recommend that I seek the advice of the appropriate professional and/or attorney.

7. I agree to turn off (place on silent mode) any mobile phones, pagers, etc. during the mediation sessions. I agree to abide by the policy that no weapons, recording devices or physical conflict are permitted.

Date: ______________________

_________________________  __________________________
Signature                  Signature

_________________________  __________________________
Signature                  Signature

_________________________  __________________________
Signature                  Signature

_________________________  __________________________
Mediator                   Mediator
EXAMPLE SETTLEMENT AGREEMENT

NORTH CAROLINA MARINE FISHERIES COMMISSION

MEDIATED SETTLEMENT AGREEMENT

RE: STRIPED MULLET ON BOGUS BANKS

At a Mediated Settlement Conference held on the 29th day of September, 2006 in Morehead City, N.C. (Carteret County), the parties hereby stipulate and agree to the following:

1. For the purpose of this mediation, Doug Guthrie, Jamie Frost and Joey frost represent the Stop Netters; Shalon Cullrell and Bill Hooper represent the Gill Netters. Herb Osborne representing the NC Marine Patrol was present to offer guidance on enforceability of a potential Proclamation.

2. The parties agree to honor the following points of agreement within the area bounded by Raleigh Street west to the Bogus Inlet (all existing pier restrictions remaining in effect).
   a. All agree not to set a gill net within 660 yards east of a deployed stop net, as measured from where the net connects with the shore. The buffer zone will create a box to include the area not to exceed 250 yards in width off shore (MHW) and not to exceed 660 yards in length along the beach.
   b. The Stop Netters agree to properly mark the beach (2 posts to mark the line) and in the water marks at the 660 yard mark and the lead wing of the furthest offshore shift of the deployed Stop Net net at mid point between the 660 yard marker and the mid point of the deployed Stop Net marker. All markers should have reflective tape affixed.

   *<660> 
   *<250> 
   *  Marker

   c. All agree that any missing or unauthorized removal of boundary markers shall not serve to open the area to fishing and will remain subject to enforcement.

3. The parties agree to use the above parameters in the 2006 striped mullet season (Oct 1 – Nov 30, 2006). In the event a need to revisit this agreement, all parties agree to reconvene and attempt to address the concerns in mediation.

4. The parties acknowledge that all material terms are included in this agreement, that it is fair and in the best interests of all parties and consent to the Division of Marine Fisheries and/or the Marine Fisheries Commission reviewing this Agreement and drafting a Proclamation, Rule or other directive based on the terms and conditions contained herein.

For Stop Netters:

[Signatures]

For Gill Netters:

[Signatures]

September 29, 2006
Date
LIST OF CONTACTS

Mediation Centers
The ADR Center
140-C Cinema Drive
Wilmington, NC 28403
Phone: 910-362-8000
Fax: 910-362-8008
http://www.wemediate.net/

Mediation Center of Eastern Carolina
400 W 5th St
P.O. Box 4428
Greenville, NC 27836
Phone: 252-758-0268
Fax: 252-758-8810
http://www.mceconline.org/

The Mediation Network of North Carolina
Post Office Box 648
Siler City, NC 27344
Phone: 919-663-5650
Fax: 919-663-5650
mnncc@mnc.org
http://www.mnncc.org

Division of Marine Fisheries
Headquarters
3441 Arendell Street
Morehead City, NC 28557
252-726-7021 or 800-682-2632
http://www.ncfisheries.net

Northern District
1367 U.S. 17 South
Elizabeth City, NC 27909
Phone: 252-264-3911 or 800-338-7805

Pamlico District
942 Washington Square Mall
Washington, NC 27889
Phone: 252-946-6481 or 800-338-7804

Southern District
127 Cardinal Drive
Wilmington, NC 28405
910-796-7215 or 800-248-4536

Marine Patrol Office
1107 Highway 64 East
Columbia, NC 27925
252-796-1322
800-405-7774

Wanchese Field Office
P.O. Box 539
604 Harbor Road
Wanchese, NC 27981
Phone: 252-473-5734

North Carolina Sea Grant
Headquarters
North Carolina Sea Grant
NC State University
Campus Box 8605
Raleigh, NC 27695
Phone: 919-515-2454
Fax: 919-515-7095
http://www.ncseagrant.org

Manteo Office
North Carolina Sea Grant
UNC Coastal Studies Institute
217 Budleigh Street
P.O. Box 699
Manteo, NC 27954
Phone: 252-475-3663
Fax: 252-475-3545
Morehead City Office
North Carolina Sea Grant
NC State Center for Marine Sciences
and Technology
303 College Circle
Morehead City, NC 28557
Phone: 252-222-6307
Fax: 252-222-6308

Wilmington Office
North Carolina Sea Grant
UNC-W Center for Marine Science
5600 Marvin K Moss Lane
Wilmington, NC 28409
Phone: 910-962-2490
Fax: 910-962-2410

Natural Resources Leadership Institute
NC State University
Campus Box 8109
Raleigh, NC 27695-8109
Phone: 919-515-4683
Fax: 919-515-1824
http://www.ncsu.edu/nrli