



PAT MCCRORY  
Governor

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Secretary

## MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION  
The Honorable Jimmy Dixon, Co-Chairman  
The Honorable Chuck McGrady, Co-Chairman  
The Honorable Trudy Wade, Co-Chairman

FROM: Mollie Young, Director of Legislative Affairs, NCDEQ

SUBJECT: Joint-Enforcement Agreement Study Report

*Pursuant to S.L. 2015-201, section 4, “The Division of Marine Fisheries of the Department of Environment and Natural Resources shall conduct a 12-month process to seek input from stakeholders on the impacts, costs, and benefits of a joint enforcement agreement with the National Marine Fisheries Service of the United States Department of Commerce and whether the authorization to enter into such an agreement should be reenacted. The study shall also include the establishment of and consultation with a stakeholder advisory group that shall only include persons who are for-hire license holders representing all major recreational fishing areas on the North Carolina coast, commercial fishing license holders on the North Carolina coast, and relevant staff to the Division. The Division shall submit its report to the Environmental Review Commission no later than October 15, 2016.”*

If you have any questions or need additional information, please contact me by phone at (919) 339-9433 or via e-mail at [mollie.young@ncdenr.gov](mailto:mollie.young@ncdenr.gov).

Cc: Don Van der Vaart, Secretary, NCDEQ  
Tom Reeder, Assistant Secretary for Environment, NCDEQ  
Braxton Davis, Director of Marine Fisheries, NCDEQ  
Lanier McRee, Fiscal Research Division, NCGA



**Report to the North Carolina General Assembly Environmental Review Commission  
under Senate Bill 374, Session Law 2015-201**

**September 2016**

**Submitted By:**

**North Carolina Department of Environmental Quality**

**Division of Marine Fisheries**



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## **Executive Summary**

The North Carolina Division of Marine Fisheries is statutorily prohibited from entering into a joint enforcement agreement with the National Marine Fisheries Service of the U.S. Department of Commerce (now the National Oceanic and Atmospheric Administration Office of Law Enforcement). Session Law 2015-201 directed the Division of Marine Fisheries to study the impacts, costs, and benefits of entering into a joint enforcement agreement and whether the state should authorize such an agreement.

In conducting this study, division staff reviewed current Marine Patrol activity documentation that closely matched those that would be expected under a joint enforcement agreement. Staff anticipate that many patrol activities and related documentation would be similar; however, annual federal priorities negotiated with the state may vary and may not always align with state operations and priorities. Staff contacted fisheries law enforcement agencies in states that currently hold such an agreement and discussed their experiences. The primary concerns expressed were that the reporting and accountability requirements of the agreement were time-consuming.

The law required the division to establish a stakeholder advisory group to aid in the study and specified the advisory group members “shall only include persons who are for-hire license holders representing all major recreational fishing areas on the North Carolina coast, commercial fishing license holders on the North Carolina coast, and relevant staff to the Division.” Staff established and met with a stakeholder group on June 1, 2016 at the Craven County Agricultural Center. The members came from different geographic regions of the North Carolina coast as required and included full-time commercial fishermen, several of whom also held a for-hire license, as well as fishermen who only held a for-hire license. Staff accepted public comment during the meeting and via e-mail.

Based on the information and comments gathered during the study period, the division does not recommend establishing a joint enforcement agreement with the National Oceanic and Atmospheric Administration Office of Law Enforcement at this time.

## **Background**

The National Oceanic and Atmospheric Administration Office of Law Enforcement (NOAA OLE) has offered a joint enforcement agreement to North Carolina since the 1990's. A joint enforcement agreement (JEA) is a formal operations plan that provides federal funding to a state fisheries law enforcement agency for man-power and equipment to perform various enforcement duties in support of federal fisheries enforcement priorities. Some of these priorities are similar to those of the North Carolina Department of Environmental Quality's Division of Marine Fisheries (NCDMF).

The responsibilities and the amount of funding provided through a federal agreement is based on an annually negotiated agreement of common fisheries enforcement priorities between the director of the NCDMF and the director of the NOAA OLE. Estimates of potential funding available to North Carolina have decreased over the years as more states entered into these agreements and as federal budgets have decreased. In the late 1990s, North Carolina may have been able to receive as much as \$750,000 annually. More recently, estimates have decreased to approximately \$310,000 annually.

The division currently lacks statutory authority to enter into a joint enforcement agreement and support for doing so has varied over time. Recent Marine Fisheries Commissions (North Carolina's rule making authority for marine fisheries) have supported entering into a federal JEA while earlier commissions did not. In 2014, the governor signed legislation (Session Law 2014-1000) that amended North Carolina General Statute 113-224 to allow the fisheries director to enter into a JEA. It was during that time that the division developed a Draft JEA that may have provided funding in the amount of \$311,612. However, in 2015, legislation (Session Law 2015-201) was passed prohibiting the fisheries director or designee from entering into such an agreement.

Over the course of years of debate, DMF prepared various documents describing the potential benefits and concerns of entering into an agreement. Some of these points remain valid today, including:

### Benefits:

- Can be used to purchase new equipment such as:
  - Night vision equipment
  - Other specialized optical equipment – rangefinders / binoculars
  - Radios
  - Computers – hardware / software
  - Vessels, vehicles, and fuel
- Can be used to support overtime compensation for Marine Patrol officers.
- Would authorize Marine Patrol officers to enforce fishery laws for all fishing vessels operating in the Exclusive Economic Zone (3-200 miles offshore), not just North Carolina-licensed vessels.
- Can provide an avenue for the state to acquire non-enforcement funds. For example, if a JEA had been in place several years ago, NCDMF would have been eligible to receive funds to assist the Marine Mammal Stranding Network during an unusual event involving bottlenose dolphin mortalities.

Concerns:

- North Carolina’s sovereignty, and in particular NCDMF’s marine fisheries management and enforcement priorities, may be impacted if federal funds are received for enforcement, especially if the state begins to rely upon JEA funds for key Marine Patrol operations.
- Public relations are perceived to have been impacted in some parts of the country due to interactions with the National Marine Fisheries Service. Federal fines and penalties for violations are perceived to have been costly to fishermen.
- Some perceive that the joint enforcement agreement program only or primarily affects commercial fishermen.

As required by (Session Law 2015-201), the division evaluated the costs, benefits, and stakeholder input associated with a potential JEA by reviewing the JEA process and potential funding, consulting with other state fishery law enforcement agencies that have a joint enforcement agreement, and forming a stakeholder advisory committee.

**NOAA’s Cooperative Enforcement Program**

The goal of the NOAA Cooperative Enforcement Program is “to increase living marine resource conservation, endangered species protection, and critical habitat enforcement while simultaneously strengthening state and territorial enforcement resources” (NOAA website). The Director of the National Oceanic and Atmospheric Administration Office of Law Enforcement is authorized to enter into Cooperative Enforcement Agreements and Joint Enforcement Agreements based upon the authority granted under the following Federal Laws:

- The Magnuson-Stevens Fishery Conservation and Management Act
- The Endangered Species Act of 1973
- The Lacey Act Amendments of 1981
- The National Marine Sanctuaries Act
- The Marine Mammal Protection Act

Before entering a Joint Enforcement Agreement, a state has to enter into a “Cooperative Enforcement Agreement” which is a formal document that would set forth the authority and responsibilities of the state and the NOAA OLE. At that point, the NOAA OLE would determine funding allowances per state, dependent upon available federal funding, previous funding amounts, and any changes in federal fishery priorities. Once a state receives its notice of funding availability, it would draft a “Joint Enforcement Agreement” which is a formal document setting forth the funding that would be provided to the state along with the parties’ agreement as to their common fishery priorities. In this case, those parties would be the director of the NC Division of Marine Fisheries and the director of the NOAA OLE. Shared fishery priorities would be negotiated between the two agencies on an annual basis.

Current National Oceanic and Atmospheric Administration Office of Law Enforcement priorities for the Southeast Division (including North Carolina) are classified as high, medium, or low. For example, some current priorities are:



1) Magnuson-Stevens Act:

High Priority:

- Snapper-grouper / tilefish catch share program
- Red snapper recreational catch
- Fishery closures – closed areas and closed seasons, highly migratory species
- Observer harassment

Medium Priority:

- Dealer non-reporting on overfished species
- Enforce gear and permit sanctions / restrictions
- Vessel Monitoring System violations
- Commercial vessel incursions into closure areas and other Marine Protected Areas

Low Priority:

- Investigate minor permit violations
- Monitor, patrol commercial / charter fishery

2) Endangered Species Act and Marine Mammal Protection Act

High Priority:

- Turtle Excluder Device (TED) Compliance

Medium Priority:

- Noncompliance with conditions of incidental take permits

Low Priority:

- Response to non-human interaction-related strandings (not involving fishing gear, ship strike, or other human causation)

Included in a joint enforcement agreement are specific law enforcement activities along with the estimated work hours Marine Patrol officers would be required to perform in order to meet their obligations in support of the agreed upon enforcement priorities.

Table 1 shows some example priorities and the estimated work hours proposed by division staff to meet the fisheries enforcement priority. These data were taken from a 2015 Draft JEA which was developed by NCDMF, reviewed by the NOAA OLE, but not formally approved because the division’s authorization to enter into a JEA was rescinded by the NC General Assembly. Although the draft JEA document was not formally approved, it was generally in line with JEAs approved for use in other states. Table 1 also lists actual hours Marine Patrol officers worked in support of these priorities during the 2015 calendar year.

Table 1. Estimated Marine Patrol Work Hours

<b>Draft Agreement Priority</b>	<b>Draft Agreement Estimated Work Hours Proposed by the Division</b>	<b>Actual 2015 Work Hours</b>
Endangered Species Act (Turtle Excluder Device)	355	815 (All trawls)
Endangered Species Act (Incidental Take Permit)	242	2,879 (All gill nets)

Table 1. Estimated Marine Patrol Work Hours (*continued*)

Draft Agreement Priority	Draft Agreement Estimated Work Hours	2015 Work Hours
Magnuson-Stevens Act (Dealers / Markets)	300	3,115 (All dealers / markets)
Outreach / Education	75	1,032 ("Public Education")

*\*Data based on Marine Patrol Yearly Activity Report for the 2015 calendar year.*

Marine Patrol officers currently patrol and enforce state regulations that mirror federal regulations for fisheries managed under the Magnuson-Stevens Act (snapper/grouper, red snapper and fisheries closures). Marine Patrol officers also currently provide staff hours and equipment to federal agencies during times of specific need, including assisting with hurricane recovery, port security, search and rescue/recovery, multi-agency training exercises, and other various law enforcement functions.

Funds related to a JEA could help offset routine enforcement activities. As can be seen in Table 1, North Carolina already performs many of the patrols and compliance activities, often exceeding the hours of work estimated under the draft agreement. However, negotiated priorities can change from year to year depending on federal fishery enforcement priorities and may not always align with North Carolina enforcement activities. This could result in a sudden reduction in the amount of funds received by the state, or could require the state to align with federal priorities in order to maintain funding. Further, it is more efficient for the state to enforce fishing laws and rules in inshore waters and as vessels return to port. A JEA could require increased patrol activities in the federal Exclusive Economic Zone which extends out to 200 nautical miles from shore. This could result in a need for larger vessels and increased fuel costs. Finally, there is some concern that a recent change to NC General Statute 113-136 (k), which requires officers to have reasonable suspicion that a violation has occurred or is occurring in order to inspect fishing gear, could impact the state's eligibility for entering into a JEA.

As part of the state's accountability under the agreement, there would likely be numerous daily, monthly, and yearly reporting requirements for submission to the NOAA OLE. Some of these reports would have to be completed daily by officers, while others would be completed by central administrative staff or law enforcement managers. This would clearly increase workloads and costs for field officers, administrative staff, and division management. The draft joint enforcement agreement prepared by division staff estimated administration activities totaling 130 hours annually. Although some costs may be regained through the joint enforcement agreement, some costs will not be recouped by non-law enforcement and division management staff even though their responsibilities will have increased.

### **Other State Fisheries Law Enforcement Agencies**

With the exception of North Carolina, it is the understanding of NCDMF that every coastal state in the United States, including the U.S. Virgin Islands and other island territories, have entered into joint

enforcement agreement with the National Oceanic and Atmospheric Administration. During the course of this study, conversations by various Marine Patrol staff, including the retired Colonel Jim Kelley and Captain Steven Anthony, were held with law enforcement representatives from states surrounding North Carolina. Conversations were either conducted via telephone or personally while attending law enforcement committee meetings held during the Atlantic States Marine Fisheries Commission and South Atlantic Fishery Management Council meetings.

These representatives indicated that funding from the program helps provide for the maintenance of patrol vessels and other equipment as well as for the purchase of new patrol equipment and technology. These representatives also indicated that their officers typically performed their duties under the agreement within the forty-hour work week. While funding can be used to pay for overtime hours, only a few states seemed to use that option. At least one state indicated that it would not have patrol capability if it were not for the funding provided under the agreement. Accountability, time consumption, and changing reporting requirements were identified as some of the drawbacks to the program.

### **June 2016 Stakeholder Meeting**

A news release soliciting interested stakeholders holding for-hire or commercial fishing licenses was issued Feb. 10, 2016. Limited responses were received. Those who did respond were contacted to be on the committee, including:

- Jamie Reibel
- Lee Setkowsky
- Britton Shackelford
- Steve Weeks
- Dossey Pruden
- Dave Timpy
- Duke (Ira) Spencer
- Charlie Shoonmaker
- Tom Roller
- Wendell Hunnings

Two proxies were submitted to attend in the places of Mr. Reibel and Mr. Shackelford by the North Carolina Waterman's Association on the day of the meeting as they were fishing and could not attend. They were:

- David Daniels
- Bobby Smith

One proxy was sent to attend in the place of Mr. Hunnings:

Brent Fulcher

Two additional news releases were submitted, one on May 17 and another on May 31, announcing the stakeholder meeting and providing information on how the public could provide input. The stakeholder meeting was held on June 1, 2016 at the Craven County Extension Service auditorium in New Bern. All stakeholders or their proxies attended except for one. Division staff, one media representative, and 27 members of the public attended, as did two from the National Oceanic and Atmospheric Administration Office of Law Enforcement: Assistant Director Tracy Dunn and Agent Joe Wilson.

At the start of the meeting, division staff reviewed the purpose of the meeting as outlined by Section 4 of S.L. 2015-201, which directs the division to “conduct a study and seek input from stakeholders on the impacts, costs and benefits of a joint enforcement agreement with the National Marine Fisheries Service of the United States Department of Commerce and whether the authorization to enter into such an agreement should be reenacted.” The law specified that the stakeholder advisory group only include persons who are for-hire license holders representing all major recreational fishing areas on the North Carolina coast, commercial fishing license holders on the North Carolina coast, and relevant NCDMF staff.

Staff made a short presentation summarizing basic information about a joint enforcement agreement. The meeting was then opened for discussion.

Much of the stakeholder advisory group’s discussion centered on current North Carolina Marine Patrol and federal enforcement activities. The sovereignty of the state, benefit to the state, and potential costs were primary themes discussed. Minutes from the meeting convey that the majority of the panel did not want the state to enter into a joint enforcement agreement (Appendix B). Instead, most of the members supported Marine Patrol focusing on enforcing state laws that benefit the citizens of North Carolina while the National Oceanic and Atmospheric Administration Office of Law Enforcement should handle federal enforcement. In addition, several members of the stakeholders advisory group voiced concerns that the panel should have included recreational license holders.

Before the stakeholder advisory group voted on a recommendation, the floor was opened for public comment. The majority of the public comments included similar themes expressed by the stakeholder advisory group.

**The Stakeholder Advisory Committee voted for North Carolina not to enter into a joint enforcement agreement (Appendix B).**

The written public comment period ended July 1, 2016. The division received 12 responses via email. Seven were opposed to a joint enforcement agreement and five were in support. One comment received in support was from a member of the stakeholder committee member who abstained from voting on the motion at the stakeholder meeting. News releases, emails and any documents received at the meeting are included in Appendix C.

## **Recommendation**

Based on the information gathered during the study period, while there are many potential benefits to the North Carolina Marine Patrol, significant concerns were expressed by many stakeholders and some

other coastal states expressed logistical concerns. The North Carolina Division of Marine Fisheries shares some of these concerns. Federal fishery enforcement priorities can vary from year to year and may not align always with operations conducted by Marine Patrol. In that event, North Carolina may not qualify for an agreement, may receive reduced funds, or have to decide between enforcing federal or state priorities with limited resources. In addition, time that officers spend performing tasks related to the agreement and time spent by supervisors, management, and central administration may exceed or limit the overall benefit of any funds provided through the JEA. Finally, North Carolina often complements federal fishery management plans and can check compliance on all vessels that are fishing and landing catch within North Carolina's jurisdiction – without needing any additional federal authority. The state has no identified need to patrol vessels fishing in federal waters. It is more efficient in cost, operation, and hours worked to check vessels for compliance with fisheries regulations in North Carolina waters. Therefore, the recommendation of the NCDMF is not to establish a joint enforcement agreement with the National Oceanic and Atmospheric Administration Office of Law Enforcement at this time.

## Appendix A: Legislation

<http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2015-2016/SL2015-201.html>

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

SESSION LAW 2015-201

SENATE BILL 374

AN ACT TO REPEAL THE REQUIREMENT THAT A HOLDER OF A FOR HIRE COASTAL RECREATIONAL FISHING LICENSE SUBMIT A LOGBOOK SUMMARIZING CATCH AND EFFORT STATISTICAL DATA, TO DIRECT THE DIVISION OF MARINE FISHERIES TO STUDY THE ADVISABILITY OF REQUIRING THE SUBMISSION OF CATCH AND EFFORT STATISTICAL DATA; TO FORBID THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM ENTERING INTO A JOINT ENFORCEMENT AGREEMENT WITH THE NATIONAL MARINE FISHERIES SERVICE; AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO STUDY THE JOINT ENFORCEMENT AGREEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113 174.3(e), as enacted by subsection 14.8(o) of S.L. 2013 360, is repealed.

SECTION 2. The Division of Marine Fisheries of the Department of Environment and Natural Resources shall study the advisability of implementing a requirement that for-hire coastal recreational fishing license holders submit to the Division logbooks summarizing catch and effort statistical data. The study shall also include the establishment of and consultation with a stakeholder advisory group that shall only include persons who are for-hire license holders representing all major recreational fishing areas on the North Carolina coast, commercial fishing license holders on the North Carolina coast, and relevant staff to the Division. The Division shall submit its report to the Environmental Review Commission no later than January 15, 2016.

SECTION 3.(a) G.S. 113 224 reads as rewritten:

"§ 113 224. Cooperative agreements by Department.

(a) The Except as otherwise provided in this section, the Department is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this Subchapter. Pursuant to such agreements the Department may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of marine and estuarine resources.

(b) The Fisheries Director or a designee of the Fisheries Director may shall not enter into an agreement with the National Marine Fisheries Service of the United States Department of Commerce allowing Division of Marine Fisheries inspectors to accept delegation of law enforcement powers over matters within the jurisdiction of the National Marine Fisheries Service."

SECTION 3.(b) G.S. 128 1.1(c2) is repealed.

SECTION 4. The Division of Marine Fisheries of the Department of Environment and Natural Resources shall conduct a 12 month process to seek input from stakeholders on the impacts, costs, and benefits of a joint enforcement agreement with the National Marine Fisheries Service of the United States Department of Commerce and whether the authorization to enter into such an agreement should be reenacted. The study shall also include the establishment of and consultation with a stakeholder advisory group that shall only include persons who are for-hire license holders representing all major recreational fishing areas on the North Carolina coast, commercial fishing license holders on the North Carolina coast, and relevant staff to the Division. The Division shall submit its report to the Environmental Review Commission no later than October 15, 2016.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2015.

s/ Louis M. Pate, Jr.

Deputy President Pro Tempore of the Senate

s/ David R. Lewis

Presiding Officer of the House of Representatives

s/ Pat McCrory

Governor

Approved 3:35 p.m. this 5th day of August, 2015

## **Appendix B: Stakeholder Meeting Minutes**

Joint Law Enforcement Agreement Stakeholder Meeting Minutes

Craven County Agricultural Center

300 Industrial Drive, New Bern, N.C. June 1, 2016, 5 p.m.

The Joint Law Enforcement Agreement Stakeholders Advisory Group met at 5 p.m. on June 1, 2016 at the Craven County Agricultural Center located at 300 Industrial Drive, New Bern, N.C.

Stakeholder Advisory Group:

Present - David Daniels, Brent Fulcher, Dossey Pruden, Tom Roller, Charlie Schoonmaker, Bobby Smith, Duke Spencer, Dave Timpy and Steve Weeks

Absent - Lee Setkowsky

Division of Marine Fisheries: Braxton Davis - Director, Dee Lupton - Deputy Director, Col. Jim Kelley, Maj. Dean Nelson, Capt. Steve Anthony, Gina Griffin and Nancy Fish

NOAA Law Enforcement: Tracy Dunn and Joe Wilson

Public: Hal James, Raynor James, Jerry Schill, Tim Hergenrader, Aundrea O'Neal, Chris Elkins, Jason Spatilson, Gladys Suessle, Ed Suessle, Perry Wood Beasley, Jan Willis, Brian Saunders, Mitch Steen, Iggi Husar, Catherine Stash, Bob Stash, Matthew Schwob, Kim Fink, Donald Willis, Earl Dail, Randall Siler, Jonathan Fulcher, Tyler Brewer, Tamara Leonard, Mary Griswold, Robert Griswold and Thomas Jenkins

Media: Mike Shutak, Carteret News Times

Dee Lupton, Division of Marine Fisheries Deputy Director, who served as the facilitator, called the meeting to order.

Purpose

Lupton reviewed Section 4 of S.L. 2015-201, which directs the division to conduct a study and seek input from stakeholders on the impacts, costs and benefits of a joint enforcement agreement with the National Marine Fisheries Service of the United States Department of Commerce and whether the authorization to enter into such an agreement should be reenacted – currently the division is statutorily prohibited from entering into a joint enforcement agreement. Lupton said the law required that a stakeholder advisory group be established to aid the division in the development of this study. The law specified that the stakeholder advisory group only include persons who are for-hire license holders representing all major recreational fishing areas on the North Carolina coast, commercial fishing license holders on the North Carolina coast, and relevant staff to the division.



A news release soliciting advisors for the stakeholder group was issued in February of 2016 and everyone who applied that held the required licenses was named to the group. Lupton explained the division was now at the stage to receive input from the stakeholder group and that was the purpose of tonight's meeting.

She went on to explain that the division will include this input in the study it is conducting. The study will be submitted to the Department of Environmental Quality by Sept. 1, 2016 for review and then submitted by the department to the North Carolina General Assembly's Environmental Review Commission by Oct. 15, 2016.

Once submitted to the legislature, the report will be available to the public. The stakeholders and staff introduced themselves.

#### Joint Enforcement Agreement Presentation

Captain Steve Anthony of the North Carolina Marine Patrol, gave a presentation outlining what a joint enforcement agreement entails and reviewing potential benefits and concerns of entering into such an agreement.

The floor was then open to the stakeholders for discussion.

#### Discussion

Steve Weeks asked questions about how much money, time, equipment, etc. is contributed by the state and NOAA Fisheries in a joint enforcement agreement. He said it seemed that states involved in these agreements contribute as much as the federal agency.

Tracy Dunn, the Southeast Assistant Director in charge of the Southeast Division, NOAA's Office of Enforcement, said normally those agreements do not require matching funds. He said joint enforcement agreements are set up so 50 percent of the funding goes to the state for direct purchases, depending of the needs of the priorities set out in the agreement and the remaining funds cover overhead costs and total patrol hours. The state provides a fully trained and equipped officer and vessel and the joint enforcement agreement pays for the people on the boat, the boat time and the overhead covers a lot of the maintenance costs.

Weeks talked about the joint enforcement agreement with Massachusetts and said the federal agency provided

\$1,295,000 with the state having to contribute \$817,953 in man hours, land based patrol, patrol boat operators, etc. He asked if the joint enforcement agreement works like that. Dunn said that the \$817,953 would have come out of the \$1,295,000. Weeks said that was not the case and Dunn said he would look at that agreement, but agreements used in the Southeast did not work like that.

Weeks said North Carolina lies in an area where the Northeast and Southeast overlap and asked about the species covered under this agreement. Dunn said that was up for negotiation between the state and federal agencies. He said usually three to four priorities were selected to be covered in a joint enforcement agreement.

Weeks asked about the priorities North Carolina focused on. Lupton said when this was previously looked at the priorities were the Snapper-Grouper complex and turtle excluder devices. If the state decided to enter into a joint enforcement agreement, those priorities would be negotiated annually.

Weeks asked if some federal violations would be able to be handled at the state level. Dunn explained joint enforcement agreements are intended to allow smaller federal violations to be handled by the state because the federal court system can't handle the volume.

Dunn said if a case did need to go to the federal court system, then a case file would be put together and submitted to the NOAA Office of General Counsel/Enforcement Section for review. If there is a determination a charge is warranted, then a Notice of Violation and Assessment (NOVA) is issued outlining the charges against the defendant. The defendant has the option to pay the fine, or take it to a civil administrative hearing.

Tom Roller asked if Marine Patrol was already doing work for which they were not getting paid by the federal government. Lupton said that was the case and used turtle excluder device inspections done by Marine Patrol as an example.

Brent Fulcher asked about varying boundary lines for the Exclusive Economic Zone in the Gulf of Mexico. Florida and Texas state boundaries go out to nine miles while other Gulf States' boundaries start at three miles. Fulcher said some Gulf States were considering expanding their boundaries so federal rules on red snapper would not apply to them. He asked what would happen when the state and the federal agencies come into conflict with each other. Dunn said the federal agency would not ask state officers to enforce laws contrary to their state.

Weeks expressed concern that in some cases the federal government gets over \$2 million worth of law enforcement for a little over \$1 million and the state's tax payers are paying the burden. Dunn said that in his experience states come out ahead and that should be the same for all states.

Weeks asked how many federal officers were patrolling North Carolina and it was clarified there was one special agent in the state.

David Daniels said while he was fishing for blue fin tuna in the winter he was checked every day by six or eight people, and then by the Coast Guard, and then Marine Fisheries would check him at the fish house. He thought there were plenty of officers and that we didn't need anymore. He also suggested more time be spent on border and drug issues. Dunn said they run special operations in North Carolina because there isn't a joint enforcement agreement in place and they have to put in their own officers.

Bobby Smith questioned if the state would be willing to go out of compliance with NOAA if it was getting money from NOAA for law enforcement. He also voiced concerns that Marine Patrol officers would be able to handle all the federal regulation questions when he felt they couldn't stay current on the state regulations.

Roller said that the Marine Patrol was very good at answering all of his questions. Smith said that he was trying to say that Marine Patrol didn't need the extra burden of dealing with federal regulations. Roller said that the federal fisheries management process, nor federal councils, were going to go away any time soon so we are just going to have to deal with it.

Fulcher said that he thought that hires of federal officers were increasing instead of decreasing. Dunn indicated that NOAA OLE is currently increasing the number of Enforcement Officers in its staffing with positions that are mostly replacing Special Agents. OLE was under a hiring freeze for some time, during which the number of Special Agents went from 33 prior to the freeze down to 21. With the hiring freeze lifted, EOs have been hired in lieu of Special Agents for the open positions.

Weeks asked if NOAA was using the state enforcement officers at a fraction of the cost that NOAA would have to pay their own. Dunn said that was part of the reason for these agreements and that NOAA will never have the number of people they need to meet their mission goals. Weeks said that the division was currently shorthanded as well and didn't have the number of people to meet its current demands and entering a joint enforcement agreement would put even more demands on state enforcement officers.

Roller voiced concern about enforcement of federal permits, particularly in the for-hire sector. He felt the charter-boat fleet was out of compliance with South Atlantic permit requirements. He felt if limited entry began in the future, the for-hire sector's lack of compliance would cause them lots of problems. He was concerned that state officers don't have the authority to check federal permits because of the lack of a joint enforcement agreement. He talked about an associate of his that was fishing off shore on a charter boat without the required South Atlantic permits and was checked by the Coast Guard. He did not have the appropriate permits for some of the fish in his possession and he received a huge fine. He asked if the state's Marine Patrol handled that case, how would it have been different. Col. Kelley said if Marine Patrol did not have jurisdiction over it, there would be nothing they could do. But if Marine Patrol had enforcement authority over it, the charges would probably be handled in our district courts with a \$25 fine and court costs. Roller said that if handled through the state's district court, it wouldn't be a \$1,500 fine but would instead potentially be a much smaller fine. Dunn said there would have to be a state law that says that the permit is required, otherwise it would be considered a federal case.

Weeks brought up a case where large fines were imposed. Dunn said the joint enforcement agreement was meant to handle smaller cases. Weeks said that the smaller violations go through the state courts with state fines, but the larger ones are handled through issuing notice of violations which can take years. Dunn clarified that a joint enforcement agreement would not put large cases into the state courts, but only smaller ones.

Fulcher voiced concerns about incidents in the Northeast where federal officers were heavy handed and congressional intervention was needed to help with the situation. He mentioned another incident where federal officers boarded his vessel with guns drawn and ordered the captain to take the boat to the dock the next morning or they would seize it. He felt that incidents like that were overkill and not necessary.

Dunn indicated that the investigation of the incident in the Northeast showed the attorney in question to be pretty much out of bounds in his approach to respondents. The investigation also showed that no such problems were found in the Southeast region, which includes North Carolina. He said that there will always be a bad apple from time to time, but those are dealt with. He said overall, their boardings and inspections are done well and the relationship with the fishermen was good.

In reference to the boarding mentioned, Dunn said that if their agents came aboard the boat with weapons drawn it should have been reported to him. No such report was submitted. He said he would look into it because it is not their policy to do that without justification.

Lupton asked because of the overlap of the Northeast and Southeast fisheries in North Carolina, if we would have two joint enforcement agreements. Dunn said that because of the overlap, some of the prosecution would be in the Northeast, but North Carolina would have a joint enforcement agreement with the Southeast.

Dossey Pruden brought up an enforcement manual that he found online and said the Magnusson-Stevens Act, the Lacey Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Highly Migratory Species Act would all need to be covered in a joint enforcement agreement. He talked about local officers having to deal with these laws on a daily basis. Pruden said that Mike Frye, with NOAA Fisheries, told him that he expected state enforcement to go out to patrol 200 miles off shore under a joint enforcement agreement. Dunn said Frye was with administration, not operations, of which Mr. Dunn is in charge, and operations doesn't work like that.

Pruden asked if the Cooperative Enforcement Performance Review Guide was subject to modification. Dunn said that every three years or so they will do a review to make sure that the joint enforcement agreement is performing as intended.

Pruden voiced concerns about administrative cost taking up a lot of the money, and not leaving as much as some may like for the actual enforcement activities. Dunn explained if a state got \$1 million, then \$500,000 would be set aside for purchases of equipment, etc. Of the remaining \$500,000, 35 percent is taken off the top for overhead. The remainder of that would go to services. Dunn said that NOAA doesn't require anything from the state other than the trained officer. Pruden asked how many hours other states have been putting in. He did not want to see more burden put on state officers than they already had.

Timpy asked that all of the concerns voiced during the meeting be documented. Lupton indicated that there would be minutes available of the meeting.

Timpy wanted to know what the other states think of the joint enforcement agreement since the program's inception in 2000 or 2001 and asked if during that time if any state had not renewed their agreement. Dunn said that U.S. Virgin Islands did not renew the agreement on a few occasions, and also Puerto Rico. Timpy asked if any kind of survey had been done or had any kind of national meetings held? Dunn said every other year they have a National Cooperative Enforcement Program meeting. No reports are generated from those meetings, but Dunn thought that it would be a good idea to reach out to other states for their input.

Pruden asked if the joint enforcement agreement monies were divvied out among the states in a tier system. Dunn said that they had a matrix at one time to allocate monies based on the ability of the state to provide the resources. The new director has changed that system and those changes will probably be made to the Cooperative Enforcement Agreement Manual this year he explained.

Fulcher asked how much the Marine Patrol budget had been decreased when it looked like the joint enforcement agreement was going to move forward. Lupton said the budget was initially decreased by \$250,000, and the next year by an additional \$100,000, for a total of \$350,000; but some of that money was restored to the 2015 budget. Fulcher felt that the states were using money they had been budgeting for their fisheries enforcement elsewhere because they were now getting federal money. He said that it would be hard for a state to do without joint enforcement agreement money once that state had become dependent on it.

Timpy wanted clarification of the March 2015 Draft North Carolina Joint Enforcement Agreement. He asked for a better definition of state and federal fisheries regulations in the Exclusive Economic Zone offshore of the state. Dunn said that would depend on the priorities made in the agreement. He said they would be looking for any vessels coming from the exclusive economic zone. Normally, they would operate at the state/federal line. For something like turtle excluder device inspections; however, Dunn said those inspections would not have to be done that far offshore.

Weeks talked about state sovereignty. He told about a case he handled around 1986 where the state joined in a suit with mackerel fisherman against the NOAA. There have been several cases like that. He is concerned that the state will be reluctant to sue to protect their fishermen when they are receiving NOAA monies. He gave the HB2 bill as an example where the federal government has threatened to take funds back if North Carolina does not comply with a federal stance.

Roller voiced concerns that the panel was only made of commercial and for-hire license holders. He didn't believe that it could represent all viewpoints on the issue.

Pruden said that he thought Marine Patrol should be focusing on their jobs and not doing work that the federal government should be doing.

Fulcher wanted to hear the public comment.

#### Summarize Stakeholder Input

Lupton said it appeared the majority of the panel did not want a joint enforcement agreement. She said it also seemed that most of the members felt the Marine Patrol needed to focus on enforcing state laws that benefit the citizens of North Carolina and that NOAA needs to handle federal enforcement. She said she had also heard several members voice concern that the panel should have also included recreational license holders.

The group decided to vote on the issue.

Duke Spencer made a motion that North Carolina not enter into a joint enforcement agreement, seconded by Dossey Pruden.

It was decided to open the floor up to public comment before the vote.

#### Public Comment

Hal James, with the Coastal Carolina Tax Payers Association, supported smaller government and doesn't want the federal dollars. He sees entering into a joint enforcement agreement as an intrusion on state sovereignty.

Raynor James, with the Coastal Carolina Tax Payers Association, was for free enterprise and was against the joint enforcement agreement. She doesn't want the intrusion and influence of the federal government and doesn't want the strings that are attached to federal money.

Jerry Schill, President of the North Carolina Fisheries Association, said we should enter a joint enforcement agreement for the right reasons or not enter for the right reasons. He felt it didn't matter what the other states do. He is concerned the state will be reluctant to enter cases such as the mackerel case mentioned by Steve Weeks if it were getting federal money. He said he is against entering a joint enforcement agreement because it doesn't make sense for North Carolina to do so.

Tim Hergenrader expressed concern that there were no seats on the panel for recreational fishermen. Regarding the questions of sovereignty, he pointed out that that he didn't think the state lost its sovereignty when it took federal monies for the dredging of the inlets or with Cherry Point. He said he supports the state entering into a joint enforcement agreement. He said he thinks this process is a sham because the legislature did not allow the recreational sector a seat on the stakeholder panel.

Aundrea O'Neal, with Carteret County Fishermen's Association, said the association is against entering into a joint enforcement agreement.

Chris Elkins, President of the Coastal Conservation Association, said that the panel was a sham because it did not include seats for recreational fishermen. He thought that was done by the design by the legislature. He said his organization supported legislation authorizing a joint enforcement agreement and that North Carolina is the only costal state in the United States that does not have a joint enforcement agreement. Elkins said the state can carefully write the agreement and can withdraw from the agreement without penalty. He said with the state budget being under such pressure it is foolish to turn down this money.

Jason Spatilson, said he was a commercial fishermen and is against the joint enforcement agreement.

Gladys Sussel said she is from New York and that one of the main reasons she came to North Carolina was because the state still had some freedoms that New York did not. She would hate to see that given up for joint enforcement agreement money. She said tourists come here for the fresh seafood caught by the local commercial industry. With regard to an earlier comment about federal money at Cherry Point, she pointed out that the military is one of the mandates of the constitution.

Perry Beasley said he was against the joint enforcement agreement. He believes that other states are not happy with their joint enforcement agreements but have been unable to reverse them. He thinks that North Carolina doesn't need the federal government to help regulate fisheries.

Iggi Husar said he is a recreational fisherman, a consumer and a businessman. He doesn't see the financial benefit of the joint enforcement agreement to fishermen and wonders what the joint enforcement agreement will do to the price of seafood.

Matthew Schwab said most of his comments have already been mentioned by others and that he appreciates Marine Patrol's work

Kim Fink said she wants North Carolina money to stay in North Carolina.

Donald Willis said he makes his living from the recreational fishing industry and he doesn't understand why North Carolina does not enter into a joint enforcement agreement. Our laws need more teeth, he said and low fines are no good. More enforcement is needed and he believes that more enforcement will make people follow the rules, which will benefit the fishery. He is for the joint enforcement agreement.

Earl Dail said he is a resident of eastern North Carolina and he recreationally fishes and has been in fishing tackle sales for 15 years. He is a member Coastal Carolina Tax Payers Association and he encouraged the panel to list all things the federal government has done good and bad for you. He felt that we need to keep the federal government out of this and that repeat offenders should be heavily fined, but by the state.

Jonathan Fulcher said he is a commercial fisherman and opposes entering the joint enforcement agreement. He thinks the Marine Patrol does a great job and offered thanks.

Tyler Brewer said he is against entering a joint enforcement agreement.

The motion by Duke Spencer that North Carolina not enter into a joint enforcement agreement, seconded by Dossey Pruden, was then brought back to the floor for a vote.

Motion carried 6 – 1, with 2 abstentions.

#### Next Steps

Lupton then advised the group that the division will continue to take public comment on the joint enforcement agreement issue until July 1 and that information, along with the proceedings of the stakeholder meeting, will be included in the legislative report. She reiterated the report will be submitted to the Department of Environmental Quality by Sept. 1, 2016 for review and then submitted, by the department, to the North Carolina General Assembly's Environmental Review Commission by Oct. 15, 2016. Once submitted to the legislature, the report will be available to the public. Lupton also said the audio and minutes of the meeting would be posted on the division's website.

The meeting adjourned at 7:08 pm.

## Appendix C: News Releases and Public Comments

Release: Immediate  
Date: Feb. 10, 2016  
Contact: Patricia Smith  
Phone: 252-726-7021

State seeks applicants for Joint Enforcement Agreement Advisory Group

MOREHEAD CITY — The N.C. Division of Marine Fisheries is seeking members for a Joint Law Enforcement Agreement Advisory Group.

The division is conducting a 12-month study to determine the possible impacts, costs and benefits of the state entering into a joint law enforcement agreement with the National Marine Fisheries Service and whether the N.C. General Assembly should authorize the division to do so. The division is required, by law, to submit findings of a study on this topic to the General Assembly by Oct. 15.

The advisory group is being established for the division to consult as part of this process. By state law, the Joint Law Enforcement Agreement Advisory Group is limited to people who hold a For-Hire Coastal Recreational Fishing License, a Standard Commercial Fishing License and division staff.

Those who would like to serve on the advisory group should contact N.C. Marine Patrol Col. Jim Kelley at 252-808-8130 or [Jim.M.Kelley@ncdenr.gov](mailto:Jim.M.Kelley@ncdenr.gov) by 5 p.m. Feb. 29.

In a joint enforcement agreement, the N.C. Marine Patrol would enter into a contract with the National Marine Fisheries Service Office of Law Enforcement to supplement and enhance federal fisheries law enforcement capabilities. The agreement would be accompanied by an enforcement plan in which both the state and federal agencies agree to a list of priorities and activities to be enforced by state officers. In return, Marine Patrol would receive monetary compensation and training about federal regulations.

A joint enforcement agreement also would allow N.C. Marine Patrol officers to charge fishermen with minor federal offenses, and adjudicate those charge through state court.

nr-11-2016



Release: Immediate

Date: May 17, 2016

Contact: Patricia Smith

Phone: 252-726-7021

Joint Law Enforcement Agreement Advisory Group Meeting Set

MOREHEAD CITY — The Joint Law Enforcement Agreement Advisory Group will meet at 5 p.m. June 1 at the Craven County Agricultural Center, 300 Industrial Drive, New Bern.

The advisory group will discuss whether the state should enter into a joint law enforcement agreement with the federal government.

The N.C. Division of Marine Fisheries is conducting a 12-month study to determine the possible impacts, costs and benefits of a joint law enforcement agreement with the National Marine Fisheries Service, and whether the N.C. General Assembly should authorize the division to enter into an agreement. The division is required, by law, to submit findings of a study on this topic to the General Assembly by Oct. 15. Consultation with an advisory group is part of this process.

In a joint enforcement agreement, the N.C. Marine Patrol would contract with the National Marine Fisheries Service Office of Law Enforcement to supplement and enhance federal fisheries law enforcement capabilities. The agreement would be accompanied by an enforcement plan in which both the state and federal agencies agree to a list of priorities and activities to be enforced by state officers. In return, Marine Patrol would receive monetary compensation and training about federal regulations.

A joint enforcement agreement also would allow N.C. Marine Patrol officers to charge fishermen with minor federal offenses, and adjudicate those charges through state district court.

For more information, contact N.C. Marine Patrol Col. Jim Kelley at 252-808-8130 or

[Jim.M.Kelley@ncdenr.gov](mailto:Jim.M.Kelley@ncdenr.gov).

nr-38-2016

Release: Immediate  
Date: May 31, 2016  
Contact: Patricia Smith  
Phone: 252-726-7021

Marine Fisheries adds public comment to Joint Law  
Enforcement Agreement Advisory Group meeting agenda

MOREHEAD CITY — The N.C. Division of Marine Fisheries has added a public comment period to the agenda for tomorrow's meeting of the Joint Law Enforcement Agreement Advisory Group. The meeting begins at 5 p.m. at the Craven County Agricultural Center, 300 Industrial Drive, New Bern.

Public comment will be accepted at the end of the meeting. [A meeting agenda is attached.](#)

Members of the public may also comment in writing as to whether the state should enter into a joint law enforcement agreement with the federal government. Written comments may be sent to Marine Patrol Capt. Steve Anthony at [Steve.Anthony@ncdenr.gov](mailto:Steve.Anthony@ncdenr.gov) or at P.O. Box 769, Morehead City, N.C. 28557. Comments must be received by the division by 5 p.m. July 1 to be considered as part of the study.

The division is conducting a 12-month study to determine the possible impacts, costs and benefits of a joint law enforcement agreement with the National Marine Fisheries Service, and whether the N.C. General Assembly should authorize the division to enter into an agreement. The division is required, by law, to submit findings of a study on this topic to the General Assembly by Oct. 15. Consultation with an advisory group is part of this process.

In a joint enforcement agreement, the N.C. Marine Patrol would contract with the National Marine Fisheries Service Office of Law Enforcement to supplement and enhance federal fisheries law enforcement capabilities. The agreement would be accompanied by an enforcement plan in which both the state and federal agencies agree to a list of priorities and activities to be enforced by state officers. In return, the Marine Patrol would receive monetary compensation and training about federal regulations.

A joint enforcement agreement also would allow Marine Patrol officers to charge fishermen with minor federal offenses, and adjudicate those charges through state district court.

For more information, contact Marine Patrol Col. Jim Kelley at 252-808-8130 or [Jim.M.Kelley@ncdenr.gov](mailto:Jim.M.Kelley@ncdenr.gov).

nr-41-201

**From:** Chris McCaffity [<mailto:freefish7@hotmail.com>]

**Sent:** Saturday, May 28, 2016 2:43 PM

**To:** Fish, Nancy <[nancy.fish@ncdenr.gov](mailto:nancy.fish@ncdenr.gov)>

**Cc:** Rep. Pat McElraft <[Pat.McElraft@ncleg.net](mailto:Pat.McElraft@ncleg.net)>; Senator Norman Sanderson <[Norman.Sanderson@ncleg.net](mailto:Norman.Sanderson@ncleg.net)>; [housee-mail@ncleg.net](mailto:housee-mail@ncleg.net); [senatee-mail@ncleg.net](mailto:senatee-mail@ncleg.net); [joshua.bowlen@mail.house.gov](mailto:joshua.bowlen@mail.house.gov); [joe\\_nolan@tillis.senate.gov](mailto:joe_nolan@tillis.senate.gov); [wills\\_denton@burr.senate.gov](mailto:wills_denton@burr.senate.gov); Walker, Steven <[steven.walker@nc.gov](mailto:steven.walker@nc.gov)>; Rep. Bob Steinburg <[Bob.Steinburg@ncleg.net](mailto:Bob.Steinburg@ncleg.net)>; Lockwood Phillips <[lockwood@thenewstimes.com](mailto:lockwood@thenewstimes.com)>

**Subject:** JEA Meeting Public Comments

Hi Nancy,

Please pass this on to the JEA committee and enter my comments into the public record.

Thank you,

Chris McCaffity

JEA Meeting Public Comments

There are two recent issues that highlight why entering into a Joint Enforcement Agreement with the federal government and ceding more state sovereignty is such a bad idea. The first is HB2 and the federal government's threats to withhold money if NC does not comply with their demands. The second is our Marine Fisheries Commission's questionable plan to violate a half-witted federal fisheries law mismanaging cobia quotas. This blatant violation of federal law, regardless of how bad the law is, would certainly jeopardize JEA funding.

Please do NOT support JEA. NC should preserve and even expand our sovereignty rather than selling it.

Please support state control of coastal waters and resources out to 50 miles offshore or at least the same 9 miles that other states enjoy.

Thank you,

Chris McCaffity

Captain Anthony, I am a native born NC citizen and currently reside outside of Swansboro on the waterway. I support all legal forms of fishing. I have a lifetime license, I am a member of CCA of NC, support coastal conservation and serve on the board of an entity that protects both our recreational and commercial fishing heritage. I have been an active fisherman all my life and have brought my sons up the same way. Included in those lessons is our responsibility to protect our fisheries and abide by fisheries laws, regardless of whether we think we will be checked by law enforcement or not. It is my opinion we all have a responsibility to protect public assets, therefore it is my opinion NC should participate in JEA.

To me, JEA is not a financial issue. Economics should never be a reason to do the right thing. I would certainly prefer NC be in a drivers position endorsing JEA rather than relenting because of political clout, financial resources and access to seasoned effective lobbyist.

It greatly concerns me that NC has not acted responsibly in passing JEA. How can our state adequately answer "why not" to this issue. Nobody likes being checked if they are subject to being caught violating laws. How can NC make a conscious decision not to participate in this agreement while the argument against it is because some may be caught in violation. If that is the position NC is going to take, it just as well go ahead and not enforce recreational fishing rules either.

Sorry to vent but this issue is an embarrassment to me as a North Carolinian. It clearly sends the wrong signals to those who truly care about our coastal resources as well as those who want to have comfort in not getting caught violating needed regulations.

Feel free to contact me anytime if you would like to discuss this further.

--

John W. Rouse

124 Leslie Drive

Hubert, NC 28539

910-330-0201 Cell

910-325-8316 Home

From: Wavelength charters [<mailto:captdave@wavelengthcharters.com>]

Sent: Thursday, June 02, 2016 3:41 PM

To: Davis, Braxton C <[Braxton.Davis@NCDENR.Gov](mailto:Braxton.Davis@NCDENR.Gov)>

Cc: Fish, Nancy <[nancy.fish@ncdenr.gov](mailto:nancy.fish@ncdenr.gov)>

Subject: Re: JEA Stakeholder Meeting of June 1, 2016

Per our discussion today, this email is in follow-up to the subject JEA stakeholder group meeting.

During the public comment session of this meeting the CCA provided written comment that included a JEA Factsheet (circa 2014) by Colonel Jim Kelly, NC Marine Patrol. This information provided new facts that may not have been adequately considered by the stakeholder committee.

As you may recall, I had asked several questions related to other state programs. Particularly, if there are other states that are satisfied with the NMFS JEA Program. We were advised that the JEA program has been in place since circa 2001 and all JEA program participants have renewed their respective agreements on an annual basis with the exception of the Virgin Islands. I asked why North Carolina is the only state without a signed JEA. Although, some rationale was offered by a few of the stakeholders the reason that NC remains the only state without a JEA remains unclear. However, it can be safely assumed that the JEA renewal history by participating states is indicative of a successful JEA program.

One of the often stated concerns of the JEA is related to risks/issues that can be created by joining a JEA program. Of significant concern is the potential influence that NMFS could leverage on the state to coerce the state to comply with certain federal fishery management plans, actions, or measures that the state may not agree with. Based on the attached factsheet, it appears that Colonel Kelly contacted other JEA participating states and found that no such concerns exist. This is new information to me.

At the subject JEA stakeholders meeting, a motion was made by Duke Spencer to not accept the JEA. This came as a surprise since the JEA stakeholder committee is without a chairman or vice-chairman. It was apparent, however, that someone desired to have a consensus of the committee. Based on these and other concerns cited by other committee members, I abstained from this motion. The study report should only describe the overall consensus of the committee based on discussions during the meeting.

Please note, that I would support the states decision to enter into a JEA provided the terms and conditions were crystal clear and ensures that full ownership of our fishery resources will remain with the people of North Carolina and private allocation of our resources will never occur, as they have in other states that are participating in the NMFS JEA Program. Neither the DRAFT JEA dated March 2015 or the Magnuson-Stevens Act of 2007 provide this assurance. Lastly, the final JEA could alleviate this concern by simply conditioning the JEA to prohibit the state from entering into any type of individual fish quota or catch share program with the NMFS.

Thanks, Dave Timpy

Wavelength Charters

## **Joint Enforcement Agreement Factsheet**

**Prepared by Colonel James M. Kelley  
N. C. Marine Patrol**

### **What is a Joint Enforcement Agreement?**

The program relies on coastal marine enforcement agencies to help enforce federal fisheries regulations within 200 miles of the U.S. coastline known as the Economic Exclusive Zone. Its partnership with state law enforcement agencies is extended under two types of agreements:

1. Cooperative enforcement agreements that deputize state enforcement officials to enforce federal fisheries laws in federal waters. Enforcement is only provided in areas agreed upon by both agencies. Agreements are developed annually.
2. Joint enforcement agreements provide a mechanism for transferring federal dollars to the states to fund their federal enforcement activities. These mechanisms are similar to annual grants.

### **How does a Joint Enforcement Agreement Work?**

Entering into a joint enforcement agreement is mutually beneficial both to North Carolina and the National Oceanic and Atmospheric Administration because state fishery regulations often mirror federal fishery regulations; therefore, N.C. Marine Patrol could be paid for enforcement work they already perform in most instances. In entering a joint enforcement agreement, N.C. Marine Patrol will determine the type and amount of work to perform and they can withdraw from the agreement at any time.

### **What benefit does a Joint Enforcement Agreement provide the Division of Marine Fisheries and the State of North Carolina?**

- Funding is the biggest benefit. The National Marine Fisheries Service estimates that if North Carolina had been a partner state in the Joint Enforcement Agreement in 2008, the N.C. Marine Patrol would have received \$600,000 in federal compensation. Had North Carolina been a partner in 2013, the N.C. Marine Patrol would have been eligible to receive \$200,000 in funding to apply toward working with dolphin strandings (Morbillivirus). Instead, this funding went to neighboring states who were partners.
- The Joint Enforcement Agreement will allow N.C. Marine Patrol officers the ability to handle minor federal violations in state courts saving our fishermen time and money.
- Being a partner state will provide the N.C. Marine Patrol with federal training on items such as gear and species identification.
- Being a partner state will allow N.C. Marine Patrol officers to check out-of-state vessels in the Exclusive Economic Zone for compliance with fisheries regulations. Currently N.C. Marine Patrol cannot board out-of-state vessels in the Exclusive Economic Zone which creates an enforcement disparity.
- Being a partner state will improve communications between all participating states and agencies.
- North Carolina is the only coastal state in the nation without a Joint Enforcement Agreement.

### **What are the risks/issues associated with joining in a Joint Enforcement Agreement?**

A risk of joining in a Joint Enforcement Agreement may include not fulfilling the obligations as stated in the agreement. If this occurs, the N.C. Marine Patrol would have to repay part of the funding. Some fishermen have expressed concerns that the National Marine Fisheries Service may use the funding to leverage influence over the N.C. Marine Patrol. Upon contacting the other participating states, we have found that no state has experienced this problem. Additionally, over the past 10 years, the N.C. Division of Marine Fisheries has received over \$10 million in federal funding for research programs with no undue pressure or incidents of this nature.

Thank you for the opportunity to provide comments regarding North Carolina's evaluation of entering into a Joint Enforcement Agreement with NOAA.

The sustainability of the fisheries resource within the coastal zone of North Carolina is of utmost importance to the state's economy. Whether it be for commercial livelihood, recreational activities, or supporting restaurants and businesses that cater to tourism, a healthy fishery is the foundation of such activity.

North Carolina is a very large coastal state (if not the largest on the East Coast), with hundreds of miles to patrol in order to enforce rules and regulations. Many of the species targeted for catch start in the estuaries, rivers and sounds, then migrate to the Atlantic Ocean. Fish such as striped bass, drum, and shark migrate throughout the range, and are not familiar with arbitrary jurisdictional lines such as inland, state, and federal waters. The differing rules and approach between North Carolina and the Federal Government do not make sense currently, except to those who wish to exploit those rule differences to their own advantage.

A politically connected restaurant owner doesn't care if a striped bass is taken from the Exclusive Economic Zone (EEZ)...it's not his problem. It's to his/her advantage to maintain the status quo of two systems. But if sustainability is the goal, it is his (and my) problem as they will eventually find out. I find it curious that North Carolina is the only state on the entire eastern seaboard which does not have a Joint Enforcement Agreement with NOAA.

The budget climate at both the federal and state level with respect to fishery enforcement could, at best, be described as austere. Not enough money is available to effectively manage the resource properly at either level. In short, fishing enforcement has not historically been a priority. Entering into a Joint Enforcement Agreement with NOAA brings consistency in rules (something every other coastal state seems to have recognized). It brings dollars to the state for additional boats and manpower, all for the price of consistent enforcement.

Due to the geographic reality of North Carolina, and especially the Outer Banks, some of the coastal areas are hard to patrol. Having State enforcement agents with access a little further offshore (JEA funds larger boats) increases enforcement protection opportunities. If federal and state enforcement agencies were operating from the same playbook, it would be a force-multiplier. As things stand currently, the system is being exploited by folks who know a fish is being caught in federal waters, but as the fish is landed and sold in the state, if the angler wasn't caught in the EEZ (Coast Guard or NOAA Enforcement)...then it must have been caught "legally" seems to be their opinion.

I know many people in North Carolina care deeply about the health of fishery resource. I fish in the Cape Fear River often, where there is a moratorium on those species that spawn in the EEZ. The argument against a JEA illustrates the arrangement between the special interests and their representatives suggests a more narrow view, not one that truly embraces the sustainability of a healthy fishery.

South Carolina entered into the first JEA with NOAA in 2001. That North Carolina has not done so some 15 years later is strange. This is a no-brainer. I would like to see North Carolina enter into the JEA with NOAA, so there is enforcement consistency and cooperation when it comes to the coastal range.

Eric Hatcher Wilmington, NC

Honestly, I've had second thoughts about my e-mail and my objections. I was initially concerned extending the jurisdiction of state Marine Patrol officers, but, after more study and consideration, my concerns are alleviated. Furthermore, I am in favor of the Joint Enforcement Agreement to the extent that it provides additional federal funding to the state agency.

Thanks for your response, and sorry for my flip flop!

Lars P. Simonsen

Simonsen Law Firm, PC

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Edenton, NC 27932

252-482-2175

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**From:** "Anthony, Steve" <[steve.anthony@ncdenr.gov](mailto:steve.anthony@ncdenr.gov)>

**Date:** Tuesday, June 7, 2016 at 4:50 PM

**To:** Lars Simonsen <[lars@simonsenlawfirm.com](mailto:lars@simonsenlawfirm.com)>

**Subject:** RE: NC Wildlife Officers

Thank you for your comments regarding whether the Marine Patrol should enter into a joint enforcement agreement with National Marine Fisheries Service Office of Law Enforcement. Your comments will be reviewed and included in the study.

**Steven J. Anthony**

Captain, District II NC Marine Patrol

Division of Marine Fisheries

North Carolina Department of Environmental Quality

252-808-8134 office

[Steve.Anthony@ncdenr.gov](mailto:Steve.Anthony@ncdenr.gov)

3441 Arendell St

PO Box 769

Morehead City, NC 28557



*Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties*

**From:** Lars Simonsen [<mailto:Lars@simonsenlawfirm.com>]

**Sent:** Wednesday, June 01, 2016 3:08 PM

**To:** Anthony, Steve <[steve.anthony@ncdenr.gov](mailto:steve.anthony@ncdenr.gov)>

**Subject:** NC Wildlife Officers

Dear Mr. Anthony,

I am writing to express my opposition to any plan that would allow the NC DNR to enter into a joint law enforcement agreement with the federal government, making NC wildlife officers federal officers.

I am uncertain as to why this move is being made, or how it benefits the people of NC. One of my concerns is that it appears that NCDEQ is slowly being dismantled. As a boater and fisherman, I am also deeply concerned by this proposed change.

I will be unable to attend the public hearing in New Bern, but wanted to express my opposition.

Lars

Lars P. Simonsen

Simonsen Law Firm, PC

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Hello,

I am writing to express my opposition to any plan that would allow the NC DNR to enter into a joint law enforcement agreement with the federal government, making NC wildlife officers federal officers.

I am against the DNR receiving any federal funding and federal power. This would allow officers to board vessels at will and allow them to skirt recently passed state legislation which limits the officers ability to conduct searches without probable cause. It would allow the agency to charge boaters and fisherman with federal offenses in addition to state offenses.

I believe the NC DNR should remain a state agency, operating under the funding and powers granted to it by the state legislature alone. Do not let the agency become dependent on federal funds. It's a shame to see a state agency that used to be fairly well respected, even by the regulated community, fall into such disrepair and dysfunction. So much for local control and a smaller federal government!

I would like to have made these comments in person tonight in New Bern. I understand the public comment period was announced very late yesterday afternoon, giving barely 24 hours notice after a holiday weekend. I feel this is a disgusting tactic to suppress public comment at the meeting.

Sincerely,

-----

Chris Wright, PharmD

*Pharmacy Manager*



Realo Discount Drugs || Carolina Home Medical

322 Pritchard Road

Clayton, NC 27527

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Sincerely,

Brendan Burke

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Sincerely,

Ren Babcock Jr.

104 Burkwood Lane

Raleigh, NC 27612

(919) 815 4891

**From:** Tommy McArthur [<mailto:mcarthur22002@gmail.com>]

**Sent:** Wednesday, June 01, 2016 8:36 AM

**To:** Fish, Nancy <[nancy.fish@ncdenr.gov](mailto:nancy.fish@ncdenr.gov)>

**Subject:** JEA Public Comment

NC DMF does not need to enter into the JEA with NMFS. NC Marine Patrol has enough to enforce now without having more jurisdiction. Why does the Division need to be entering into a JEA with NMFS when there are already more than enough regulations the Marine Patrol are having to enforce and change so quickly at times the officers themselves can not keep up with them, and to even think of entering a JEA with NMFS is a disaster waiting to happen. This is totally uncalled for and not needed. And Generally a bad idea!

**Tommy McArthur**

***“Tell me and I forget, teach me and I may remember, involve me and I learn.”***

***— Benjamin Franklin***

Dear Mr. Anthony,

The Federal Government is regulating way too much in our lives now. States should have the rights of their citizens over the bribe money the Federal Government wants to give the states to force them into compliance and when they don't comply, they jerk the money away.

DO NOT SIGN A JOINT AGREEMENT WITH THE FEDS. IT WILL BE A ONE WAY STREET FOR THEM.

Sincerely,

Becky Kaplan

I am writing to urge you to oppose entering in any type of Joint Law Enforcement Agreement with the Federal Government. As we have all seen from the last 10 years the Feds have taken in more and more power from the state and local governments. They promise to give you all of these federal dollars, and then when a budget cut occurs the funds are cut off. Then the state and local governments end up bearing the cost with no more money being given. Also if you as a state agency, have a conflicting policy, or law then they threaten you with withholding funds if you don't do what they tell you. This type of extortion by the Feds occurs almost daily, and I don't think we need to be intoxicated by amount of money they will give the state. The 10th Amendment gives our state the right to enforce the laws within our borders and I think it will be best if we stick with our state regs and laws, and not put more enforcement burdens on our already overworked enforcement division. These officers are already entangled in the everyday perils and dangers of a job of enforcing our fishery, so lets not put more on their plate than they already have. So I ask you to look at all of the pros and cons and NOT join in a JLEA with the Federal Government.

--

Jon Worthington

405 Japonica Drive 363 Sea Oats Trail

Camden NC 27921 Southern Shores NC 27949

252-562-2914





June 1, 2016

To: Joint Enforcement Advisory Committee  
From: Coastal Conservation Association of North Carolina (CCA NC)

CCA NC is grateful for the opportunity to comment on JEA.

This committee is indisputably a sham in that it totally excludes the largest user group, recreational fishermen. Indeed, not only are anglers the largest user group, but more citations are issued against them than all other groups combined. Although recreational fishermen would like to serve, and generally vote for the Marine Resources, including being in support of a Joint Enforcement Agreement, they were, by design, excluded from this committee.

The composition of this committee is akin to having a Shrimp Advisory or Crab Advisory committee and excluding commercial fishermen. Shrimp and Crab fishermen would not remain silent, nor are we. Clearly, we are playing with a stacked deck here with a predetermined outcome.

The composition of this committee was mandated by the Legislature, so no one in this room is to blame (I think). However, the silence against this injustice by Department of Environmental Quality is conspicuous.

In my handout, page one are my spoken words, page two contains specific comments from CCA NC, and page three is an informational page from the Division of Marine Fisheries outlining JEA pros and cons.

Thanks for your service,

Sincerely,

Chris Elkins PhD  
President, CCA NC

CCA North Carolina  
Board of Directors

Ryd Abbott  
Chairman

Dr. Chris Elkins  
President

Bob Loreng  
Vice President

Keith Johnson  
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Greg Hurt

Hodge Jordan III

Miko Kalet

John Knight

Bill Mandulak

Dave Martin

Mike Mayse

John Moon

Sammy Moser

Edwin Newell

Bo Nowell

Dr. James Oldham

Bert Owens

Eb Pesci

Will Rabon

Bobby Rice

Capt. Tom Roller

Shelby Smith

Jack Sprull

Capt. Lee Sykes

Rollie Tillman III

Capt. Seth Vernon

Joel Waddell

Buzz Wilkinson

Rex Willis III

Rip Woodin

David Sneed  
Executive Director

Todd Shangel  
Assistant Director

Cindy Davis  
Office Administrator

Dr. Tim Nifong, Ph.D., J.D.  
General Counsel

*Dedicated to the Conservation of North Carolina's Marine Resources*

4809 Hargrove Road, Suite 123 Raleigh, NC 27616

(919) 781-3474 (FISH) Fax (919) 781-3475 [contact@ccaunc.org](mailto:contact@ccaunc.org)

[www.ccaunc.org](http://www.ccaunc.org)

**Background**

In North Carolina the enforcement of state fishing regulations is performed by the NC DMF's Marine Patrol. It is the responsibility of the Marine Patrol to make sure fishermen comply with general statutes and rules that are developed to protect and regulate the harvest of the state's fisheries in all coastal waters extending to three miles offshore and some federally regulated species to 200 miles offshore. NC Marine Patrol has 59 officers monitoring 2.5 million acres of water and over 4000 miles of coastline. NCDMF estimates that there are about 4000 commercial fishermen, 9000 Recreational Commercial Gear License holders, and close to 800,000 licensed coastal recreational anglers in NC. Many of these fishermen fish in federal waters yet there are only **two** federal agents to cover all the waters from 3 miles to 200 miles off our coast.

**Issue**

A Joint Enforcement Agreement (JEA) allows a state to enforce federal fisheries rules and regulations. It is a written document agreed upon by the NMFS and NCDMF allowing NC to perform various enforcement duties in return for funding. The NC Marine Patrol currently provides some of these services but the state is not receiving federal compensation. A JEA could provide up to \$600,000 for this work plus give NC Marine Patrol the ability to more fully enforce federal regulations when they identify violations.

**CCA NC Analysis**

CCA NC supports legislation authorizing Joint Enforcement Agreement (JEA). JEA would allow Marine Patrol Officers to assure compliance for all vessels in the EEZ. NC is the only coastal state in the US that does not have a JEA. NC can carefully plan and write the JEA and has the ability to construct one that is acceptable to NC. NC could withdraw from the agreement without penalty.

At a time when our state budget is under such pressure to cut expenses so severely, it is foolish to turn down this money over which our state would total have control.

06/01/2016

## **Joint Enforcement Agreement Factsheet**

**Prepared by Colonel James M. Kelley  
N. C. Marine Patrol**

### **What is a Joint Enforcement Agreement?**

The program relies on coastal marine enforcement agencies to help enforce federal fisheries regulations within 200 miles of the U.S. coastline known as the Economic Exclusive Zone. Its partnership with state law enforcement agencies is extended under two types of agreements:

1. Cooperative enforcement agreements that deputize state enforcement officials to enforce federal fisheries laws in federal waters. Enforcement is only provided in areas agreed upon by both agencies. Agreements are developed annually.
2. Joint enforcement agreements provide a mechanism for transferring federal dollars to the states to fund their federal enforcement activities. These mechanisms are similar to annual grants.

### **How does a Joint Enforcement Agreement Work?**

Entering into a joint enforcement agreement is mutually beneficial both to North Carolina and the National Oceanic and Atmospheric Administration because state fishery regulations often mirror federal fishery regulations; therefore, N.C. Marine Patrol could be paid for enforcement work they already perform in most instances. In entering a joint enforcement agreement, N.C. Marine Patrol will determine the type and amount of work to perform and they can withdraw from the agreement at any time.

### **What benefit does a Joint Enforcement Agreement provide the Division of Marine Fisheries and the State of North Carolina?**

- Funding is the biggest benefit. The National Marine Fisheries Service estimates that if North Carolina had been a partner state in the Joint Enforcement Agreement in 2008, the N.C. Marine Patrol would have received \$600,000 in federal compensation. Had North Carolina been a partner in 2013, the N.C. Marine Patrol would have been eligible to receive \$200,000 in funding to apply toward working with dolphin strandings (Morbillivirus). Instead, this funding went to neighboring states who were partners.
- The Joint Enforcement Agreement will allow N.C. Marine Patrol officers the ability to handle minor federal violations in state courts saving our fishermen time and money.
- Being a partner state will provide the N.C. Marine Patrol with federal training on items such as gear and species identification.
- Being a partner state will allow N.C. Marine Patrol officers to check out-of-state vessels in the Exclusive Economic Zone for compliance with fisheries regulations. Currently N.C. Marine Patrol cannot board out-of-state vessels in the Exclusive Economic Zone which creates an enforcement disparity.
- Being a partner state will improve communications between all participating states and agencies.
- North Carolina is the only coastal state in the nation without a Joint Enforcement Agreement.

### **What are the risks/issues associated with joining in a Joint Enforcement Agreement?**

A risk of joining in a Joint Enforcement Agreement may include not fulfilling the obligations as stated in the agreement. If this occurs, the N.C. Marine Patrol would have to repay part of the funding. Some fishermen have expressed concerns that the National Marine Fisheries Service may use the funding to leverage influence over the N.C. Marine Patrol. Upon contacting the other participating states, we have found that no state has experienced this problem. Additionally, over the past 10 years, the N.C. Division of Marine Fisheries has received over \$10 million in federal funding for research programs with no undue pressure or incidents of this nature.