

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 353 (First Edition)

SHORT TITLE: Designation of Coastal Game Fish.

SPONSOR(S): Representatives Glazier, Samuelson, McCormick, and Ingle

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	Loss of all federal Wildlife and Sport Fish Restoration funds (~\$15 - 20 million per year until all funds are repaid)				
EXPENDITURES	Up to \$1 million of fishing license revenue over 3 years				
POSITIONS (cumulative):	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Division of Marine Fisheries, Department of Environment & Natural Resources Wildlife Resources Commission					
EFFECTIVE DATE: July 1, 2011					

BILL SUMMARY:

House Bill 353, Designation of Coastal Game Fish, enacts G.S. 113-192 which designates red drum, spotted sea trout, and striped bass as coastal game fish. Classifying a fish as a coastal game fish prohibits both (1) the taking of the species by methods other than by hook-and-line and (2) the sale of that species. Section 2 of HB 353 directs the Marine Fisheries Commission to make mitigation payments to commercial fishermen from the North Carolina Marine Resources Fund; Section 2(b) of the bill directs that mitigation payments should be made for the following:

- 1) Average annual income from the sale of these three species over the period 2008 to 2010;
- 2) The 2010 value of the commercial fishing gear used in 2010 exclusively to take these species.

Payments for lost income will be made in 2012, 2013, and 2014 while payments for gear will be made in 2012. Total payments are limited to \$1 million. The Marine Fisheries Commission is authorized to adopt any rules necessary to implement Section 2.

ASSUMPTIONS AND METHODOLOGY:

Expenditures

Division Operations

Designating these fish as game fish does not alter the responsibilities of the Division of Marine Fisheries or the Wildlife Resources Commission and would not require any programmatic changes to these divisions. There would be no additional operational expenses associated with implementing HB 353.

Mitigation Payments

HB 353 directs the Marine Fisheries Commission to make mitigation payments to commercial fishermen from the North Carolina Marine Resources Fund for income lost due to the loss of the commercial fishery and the value of gear used in 2010 exclusively to take these fish species. Total mitigation payments are capped at \$1 million. The North Carolina Marine Resources Fund is a special fund that receives the revenue from non-lifetime fishing license revenue; designated gifts, grants, and other contribution to the State; revenue from the sale or rental of property acquired through Marine Resource Fund funds; and any federal reimbursements for projects originally funded by this Fund. Since there are no General Fund dollars in the Marine Resources Fund, mitigation payments would not impact the State's General Fund but could impact future projects or planned expenditures from the Marine Resources Fund.

The Division of Marine Fisheries (DMF) estimates that there are 1,114 unique participants in these three fisheries in 2010; eighty-seven of these participants made over \$2,000 from these species. The average mitigation payment to these 1,114 participants, assuming that all would qualify for payments, would be \$897.67 each over the three years (or \$299.22 annually).

Revenues

As written, version 1 of HB 353 would significantly impact revenues available to both DMF and the Wildlife Resources Commission (WRC). HB 353 requires that the Marine Fisheries Commission make mitigation payments to commercial fishermen from the Marine Resources Fund, which is primarily funded by the sale of fishing license. Federal regulation 50 CFR 80.4 states that hunting and fishing license revenue may only be used for the administration of the State fish and wildlife agency. Per 50 CFR 80.4(d) if a diversion of license revenues occurs, the State becomes ineligible to receive wildlife and sport fish restoration funds "from the date the diversion is declared by the Director until: (1) Adequate legislative prohibitions are in place to prevent diversion of license revenue, and (2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenue diverted or current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency." Administration of the State fish and wildlife agency includes "only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law." (50 CFR 80.4(b)).

HB 353 could potentially be classified as a diversion of hunting and fishing licenses in two ways. First, the US Fish and Wildlife Service (USFWS) may not classify mitigation payments to commercial fishermen as administration of the State fish and wildlife agency. Second, according to USFWS, the Director or Marine Fisheries Commission must make any decision to use hunting

and fishing license funds for operations. Since HB 353 directs the Division to use license funds in a specific manner, it would be considered a diversion of the requirement that authority over these funds remain with the Division. In 2009, USFWS indicated that Session 2009-10, House Bill 918 (Designation of Coastal Game Fish), which is identical to HB 353 except that it includes only two of the three species, would be considered a diversion of license funds and result in loss of Wildlife and Sportfish Restoration Funds.

SOURCES OF DATA:

Code of Federal Regulations

Division of Marine Fisheries, Department of Environment and Natural Resources

US Fish and Wildlife Service

TECHNICAL CONSIDERATIONS:

- 1) Since mitigation payments to commercial fishermen may not be an allowable administrative expense of the State fish and wildlife agency, changing the language in HB 353 to authorize, but not require, these payments would not necessarily eliminate the potential for a diversion. If mitigation payments are not considered an administrative expense then, regardless of who decided these payments should be made, they would be considered a diversion of fishing license revenue. An USFWS opinion on how mitigation payments would be classified is not available at this time.

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DATE: March 29, 2011



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