



Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meeting Summary December 4, 2023

The Mid-Atlantic Fishery Management Council's (Council's) Summer Flounder, Scup, and Black Sea Bass Advisory Panel (AP) met jointly with the Atlantic States Marine Fisheries Commission's (Commission's) Summer Flounder, Scup, and Black Sea Bass AP on December 4, 2023. The objectives of this meeting were to:

- Review the Monitoring Committee's recommendations for 2024-2025 recreational management measures for summer flounder and scup and 2024 recreational management measures for black sea bass, and to provide Advisory Panel input on these measures,
- Receive a brief update on the Recreational Measures Setting Process Framework/Addenda, and
- Receive an update on the evaluation of commercial summer flounder minimum mesh regulations and exemptions (i.e., minimum mesh size regulations, Small Mesh Exemption Program, and the flynet exemption), and provide feedback on these issues.

Please note: Advisor comments described below are not consensus or majority statements.

Council Advisory Panel members present: Katie Almeida (MA), Carl Benson (NJ), Joan Berko (NJ), Frank Blount (RI)*, Bonnie Brady (NY), Eric Burnley (DE), Jeff Deem (VA), Joseph DeVito (NY), Greg DiDomenico (NJ)*, James Fletcher (NC), Victor Hartley (NJ), Michael Pirri (CT), Bob Pride (VA), George Topping (MD), Mike Waine (NC), Steven Witthuhn (NY), Harvey Yenkinson (PA)

Commission Advisory Panel members present: Frank Blount (RI)*, Jack Conway (CT), Greg DiDomenico (NJ)*, Brent Fulcher (NC), Phil Michaud (MA), Ken Neill (VA), Kevin Smith (VA), Wes Townsend (DE)

*Serves on both Council and Commission Advisory Panels.

Others present: Chris Batsavage, Tracey Bauer (ASMFC Staff), Julia Beaty (MAFMC Staff), Rick Bellavance, Emily Coffin, Kiley Dancy (MAFMC Staff), Laura Deighan, Steve Doctor, Michelle Duval, Skip Feller, Joe Grist, Hannah Hart (MAFMC Staff), Joeb, Jeff Kaelin, Emily Keiley, Meghan Lapp, Adam Nowalsky, Eric Reid, Mark Sterling, Chelsea Tuohy (ASMFC Staff), Jeremy Hancher, 5 unidentified numbers

2024-2025 Summer Flounder Recreational Measures

Multiple advisors expressed frustration with the 28% reduction in harvest needed for summer flounder under the Percent Change Approach. One advisor noted that this reduction will be devastating, and that Magnuson requires consideration of socioeconomic impacts of management measures but it does not seem like these impacts are being adequately considered in the process. Another advisor noted that this is particularly going to hurt the for-hire industry which is already severely suffering, and it will also hurt tackle shops and shoreside suppliers of fuel. He supported the concept of sector separation for the for-hire fishing modes, which he thought would help the

for-hire sector avoid major cuts in the future if for-hire data reporting could be used to track quotas instead of unreliable MRIP estimates. Another advisor agreed with these points.

One advisor stated that fishery management should come with a warning label that “harvesting and releasing fish may result in severe management decisions.” In his 20 or so years of involvement in management, he thinks things have continued to go downhill. He stated that the 28% reduction was going to put party boats out of business and there is a need to know what the regulations are going to be to achieve this reduction. Summer flounder has gone from a 16% liberalization a few years ago to a 28% reduction this year, which is “feast or famine” management. In combination with restrictions on striped bass, and 10% reductions for scup two years in a row, he expressed frustration with the recreational industry taking hits from multiple angles.

One advisor noted that most states appear to be down in harvest compared to last year. He questioned what the 28% reduction was relative to, and asked whether states using the RDM might find themselves in the position of having to take a large reduction compared to last year’s harvest when harvest already appears to have been reduced for many states in 2023. Staff clarified that the reduction is relative to the projected harvest from the RDM under current measures. The RDM incorporates multiple sources of information, including average catch per trip rates informed by current year harvest through wave 4 as well as the most recent complete fishing year. This advisor asked whether all states and regions would need to take a 28% cut or whether the percent change for some might be more or less. Staff responded that a coastwide reduction of 28% was needed relative to the projection of 2024 harvest from the RDM, likely resulting in a 28% reduction in each region relative to their regional projection of 2024 harvest.

Some advisors expressed concern about setting two-year measures. During this discussion, staff clarified that the 28% reduction is to be taken between 2023 and 2024, and then measures would remain constant between 2024 and 2025. One advisor asked whether the two-year element of the Percent Change Approach was required, and staff responded that it was part of the Harvest Control Rule Framework/Addenda and intended to provide additional stability in the measures. Catch limits and recreational measures for 2025 will both be reviewed in 2024; however, changes would only be expected if there were indications of major changes in fishery conditions.

For development of 2024-2025 measures, one advisor recommended consideration of measures that vary by mode, noting that the fishing he does from shore is very different from fishing elsewhere for summer flounder. There is only a two- or three-month window where summer flounder can be accessed from shore and then they are in deeper water. Another advisor noted opposition to any increases in size limits, as it would be expected to increase dead discards, especially in combination with a lengthened open season. Another advisor agreed with this point and suggested that size limits be decreased to reduce discards.

An advisor noted that there are likely to be additional changes to the MRIP data series based on a pilot study showing substantial differences in estimates based on the order of questions asked in MRIP’s Fishing Effort Survey (FES).¹ He expressed that a discrepancy of the magnitude observed in the pilot study shows that the survey method is terrible, and it’s resulting in major issues such as the 28% proposed harvest reduction for summer flounder. He urged the Council and Board to consider this issue in terms of best available science to limit the reduction for summer flounder.

One advisor asked whether dead discards were only assumed to occur during the open season or whether they were accounted for during times of the year where fishing was occurring, but summer

¹ See: <https://www.fisheries.noaa.gov/recreational-fishing-data/fishing-effort-survey-research-and-improvements>

flounder could not be kept. He noted that all fish caught would be discarded during those other months of the year but is concerned that people targeting other species are not reporting their discards for summer flounder. This advisor expressed frustration that various groups involved in management of these species have not seriously considered a total length limit for managing summer flounder. Another advisor supported exploration of alternative management approaches such as the total length limit option, and also suggested hook size regulations to reduce discards.

One advisor asked about the average dead discard weight used to calculate total discard weight, stating that the number used in North Carolina is completely incorrect and it would be concerning if a similar number was being used as the basis for dead discard weight coastwide.

2024-2025 Scup Recreational Measures

Multiple advisors expressed frustration with the 10% reduction in harvest required for scup under the Percent Change Approach. Several advisors said reductions are not necessary given biomass is so high. Instead, measures should be liberalized.

One advisor noted the significant regulatory changes made in New Jersey earlier this year and the implications for the for-hire sector. He said scup harvest out of New Jersey is not significant yet it is the only state that imposed an August 1 start date. He said these regulations resulted in a significant decrease in effort and catch and further reductions could put these boats out of business.

Multiple advisors advocated for establishing distinct regulations for the for-hire fleet, separate from the regulations for private anglers. They argued that since headboats and charter boats closely track and report their scup catch on vessel trip reports (VTR), their operations should not face reductions aligned to the private recreational fishery, which lack comparable catch reporting. However, some advisors voiced opposition or concerns about recreational sector separation. One advisor warned that under a separated for-hire quota, the sector could see in-season shutdowns if landings exceed the allocated limits. He felt that recreational sector separation could lead to some unintended consequences that others may not have considered. One advisor also questioned whether emerging VTR data accurately captures total for-hire catch and discards, and argued more accountability was still needed. Two advisors, however, disagreed and noted the for-hire sector is aware of the importance of accurately reporting total catch including discards and that there should not be any hesitation in using VTR data for management. Another advisor noted that the for-hire sector is already taking significant cuts and disagreed that there may be some unintended consequences due to recreational sector separation.

Multiple advisors were supportive of removing the January - April federal waters closure for 2024. One advisor argued that for-hire boats should not face this closure given the extensive catch and effort data reported via VTRs. By exempting at least for-hire boats from the January - April federal waters winter closure, he felt it would provide critical fishing opportunities without risk of overharvest due to the fleet's strict monitoring. Other advisors, who supported removing the January - April federal waters closure, agreed with the VTR analysis presented by staff and felt such analysis was appropriate given the wave 1 and 2 MRIP data limitations. They expressed that the analysis accurately represents the limited amount of harvest that occurs during those months. One advisor, however, noted that federal VTR data does not capture harvest from state-only permitted vessels that are operating solely in state waters. One advisor recommended adding 2023 VTR data to inform the analysis, while another advisor questioned the 0.94 average weight multiplier used to convert reported number of fish to pounds of fish and requested for-hire feedback on a more appropriate average weight.

Another advisor that participates in the commercial fishery expressed frustration over the lack of accountability in the recreational fishery compared to the commercial sector. He expressed that until private recreational catch can be fully accounted for, management cuts will continue to unfairly impact commercial and for-hire fishermen who follow strict reporting requirements. He argued that such data deficiencies are the root of the problem and that without accurate recreational data we do not have a clear grasp on the number of fish that are actually removed from the ocean.

2023 Black Sea Bass Recreational Measures

One advisor said the black sea bass fishery is poorly managed and there is little support among the recreational fishing community for management. He said the measures for both scup and black sea bass should be liberalized because biomass is so high. It feels as if the recreational fishery is penalized each year, even for rebuilt stocks. This advisor said the cuts in summer flounder would be more palatable if scup and black sea bass could be liberalized. He said the scup and black sea bass RHL overages are driven by high biomass.

Another advisor from Connecticut agreed with the previous comments. He added that 2023 recreational harvest will likely be lower than suggested in the staff presentation. He thought recreational catch might be down about 50% due to restrictions in the measures during the peak season. He said the Monitoring Committee's justification for status quo measures in 2024 should instead be used to justify a liberalization. He supported going back to the bag, size, and season limits that were in place in 2020, including a 5 fish bag limit all year and a 15-inch minimum size in Connecticut.

A third advisor expressed agreement with the previous two speakers and questioned why management is considering cuts for very abundant species like scup and black sea bass. This advisor thought the regulations for scup and black sea bass should be liberalized and let summer flounder recover.

Another advisor said the wave 5 and 6 data will likely show a decline in black sea bass harvest. However, the New Jersey estimates seem higher than other states, similar to comments made for summer flounder. This advisor recommended looking into why the New Jersey estimates have increased compared to other states.

One advisor asked if there is any potential information from the upcoming peer review of the black sea bass research track assessment that would compel the Monitoring Committee to modify their recommendations. Staff responded that the research track is not intended to be used in management and the Monitoring Committee is not planning to revisit their recommendations for black sea bass.

Another advisor noted that unlike summer flounder where higher minimum size limits increase the mortality of large female fish, higher minimum size limits for black sea bass increase the mortality of large males. This advisor said this is a clear indication the science is wrong. He suggested using artificial intelligence to come up with better science. He also asked at what size all black sea bass are male. Staff responded that some fish remain female even at the largest sizes.

One advisor from New York said he would have previously thought status quo was a good outcome. However, the current black sea bass measures are problematic, including the 16.5-inch minimum size limit in New York. Discard mortality is very high. Regulations should be liberalized to reduce discards. This advisor hoped the upcoming assessment results show increased biomass so the regulations can be liberalized.

One Council member who is also a for-hire captain in Virginia said he believes the majority of the for-hire fleet in Virginia would like to do away with the special February opening. The payback required later in the year has become too large and it does not feel worth it.

Recreational Measures Setting Process Framework/Addenda

One advisor expressed support for using trend data (such as biomass and/or recruitment trends) as metrics in the alternatives currently under consideration, which he believes will contribute to maintaining a healthy stock. He also recommended consideration of a recreational catch per unit effort metric in the alternatives as this could provide insight into the status of the fishery.

One advisor had several general questions about the Recreational Measures Setting Process Framework/Addenda, including when the public will be allowed to comment on this management action, what topics are under consideration, and the purpose of this management action.

Several advisors expressed disapproval of the recreational sector “borrowing” quota from the commercial sector. One advisor noted he has issues with the lack of reporting by a majority of the recreational sector, and allowing “borrowing” condones the recreational sector’s tendency to exceed the RHL. The issue of “borrowing” was originally raised by the Science and Statistical Committee for the Harvest Control Rule Framework/Addenda, and the Council/Policy Board requested it be further investigated in the current management action. Staff clarified that this action is not considering taking quota from the commercial sector to give it to the recreational sector. Rather, the intent is to more broadly consider the impacts of how recreational measures are set on the commercial sector.

One advisor asked if an option to allow quota transfers between the commercial and recreational sectors would be considered in this management action, or if it would be considered by the Council and Commission in the future. Staff responded that it is not under consideration through this action and it has not been prioritized through other actions for the near term (although it is currently listed on the Council’s draft 2024 Implementation Plan under “possible additions”).

One advisor expressed concern about whether the preliminary results of the MRIP’s FES pilot study will be taken into consideration in this management action.

Another advisor expressed hope that this management action will improve current scup and black sea bass management. He appreciates fishery management he can understand and can have confidence in. Reductions when both stocks have very high biomass do not make sense to him.

Summer Flounder Commercial Mesh Issues

The Advisory Panel briefly discussed the summer flounder commercial mesh issues under review by the Council and Board including the current commercial minimum mesh size, the Small Mesh Exemption Program (SMEP), and the flynet exemption. Discussion on this agenda item was limited due to time constraints.

One advisor provided input on the use of diamond vs. square mesh, stating that he is affiliated with fishermen that typically fish both square and diamond mesh. He stated that the assertion of 6.0” square being more selective compared to 5.5” inches is incorrect. Many of his fishermen who were previously fishing 6.0” square went back to diamond because they were losing too many marketable fish with the 6.0” square. He had encouraged them to stick with the square mesh because of the higher market value of the larger fish selected by the square mesh, and also because

the fish quality tends to be better with square mesh due to less interaction with non-target species. The diamond mesh they fish is actually 5 ¾" or 6" diamond to avoid any enforcement issues from nets shrinking over time (for example, if dried in the sun). This advisor also supported the suggested flynet exemption definition changes and the changes to the SMEP area. He noted that wind energy is going to limit fishing opportunities and it's a good idea to give fishermen more area to access.

One advisor said that any action to further evaluate these mesh exemptions should take place as quick as possible, and that industry members were willing to help however possible. He noted that the minor changes suggested to the small mesh exemption area and the flynet definition would help fishermen access areas and clarify the types of gear they need to be using.

A Board member requested additional clarity on which actions could be taken through specifications vs. a framework action/addendum.

Appendix 1: Written/Phone Comments Received Following the Meeting

Advisory Panel Members

From: Eric Burnley <eburnle@aol.com>
Sent: Monday, December 4, 2023 6:25 PM
To: Kiley Dancy
Subject: Comments

As you know, I had problems with my mike during the meeting so I am emailing you my comments.

FLOUNDER To achieve a 28% reduction in Delaware, Maryland and Virginia cut the bag limit to three fish.

BLACK SEA BASS I have already sent you my comment on black sea bass. Reduce the size limit to 12 inches. Since I sent that to you I have been fishing on the Angler out of Ocean City, Maryland. I went last Thursday, November 30. We fished at the Del-Jersey-Land Reef, a location that has been hammered since May 15th. I caught at least one and often two sea bass every time my two-hook rig hit bottom. I ended the day with 20 black sea bass over the 13-inch minimum size. That's five over the bag limit. The mates gave the extra five to others on the boat. The entire time i was fishing from the stern of the boat there were 15 to 20 sea gulls waiting for us to throw back small sea bass. That is bound to increase the black sea bass mortality.

Eric B Burnley, Sr.

From: James Fletcher <unfa34@gmail.com>
Sent: Monday, December 4, 2023 11:40 AM
To: Moore, Christopher; Beal, Robert; Batsavage, Chris; Kiley Dancy; Didden, Jason
Subject: EXPLANATION WHY STAFF WILL NOT DISCUSS TOTAL LENGTH RETENTION BY RECREATIONAL FOR / IN EEZ

Can I request a explanation why Council Staff will NOT ALLOW DISCUSSION of total length retention of all recreational catch in EEZ.

? THUS NO DISCARDS.

What agency is PREVENTING THE DISCUSSION OF TOTAL LENGTH RETENTION FOR RECREATIONAL FISHING IN

EEZ; NOAA, NMFS, ASMFC, OR COUNCIL STAFF? Exactly where or who is THE problem ? PLEASE PROVIDE A REASON!

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United National Fisherman's Association James Fletcher Director 123 Apple Rd Manns Harbor NC 27953
land 252-473- 3287 cell 757-435-8475

From: fishthewizard (null) <fishthewizard@aol.com>
Sent: Tuesday, December 5, 2023 11:08 AM
To: Beaty, Julia <jbeaty@mafmc.org>
Subject: AP Comments

Hi Julia:

I am against any "borrowing" from the commercial sector.

Joan Berko

MAFMC ADVISOR 12/05/2023 Carl L BENSON

SUMMER FLOUNDER COMMENTS

It was clear that a 28% cut in harvest impacts all user groups negatively. We all were pleased when the limits were unexpectedly increased in 2019. This yoyo effect is demoralizing, creates competency issues and is a repetitive cycle of failure. Users expect management to attain the goal of a rebuilt stock. The 10-year plan is greater than ten years late.

What options are available to us today, to be on track for continued success?

- 1) Address summer flounder discards. Discards are a significant proportion of biomass reduction. We need to decide if we wish catch and keep or catch and kill (discard). The following options focus is on significantly reducing discards and reducing the harvest of larger mostly female fish.

1)a Change the commercial fishery minimum size from 14" to 13". These fish are the largest proportion of the discards. Thirteen inch minimum was in place for years. These fish have a 50% chance of spawning. The retained weight of these fish would reduce the equivalent retained weight of larger fish that have a 100% chance of spawning.

ACTION NEEDED-Decision and Paperwork.

1)b For the years 2024 and 2025, do not allow state equivalency to increase retention size or season length. Both parameters increase discards.

ACTION NEEDED-Decision and Paperwork

1)c Require 7/0 size hooks for summer flounder fishery. Bycatch Reduction Engineering Program funded study presented to MAFMC in 2015, (MAFMC also offered to fund), concluded that significant reduction of summer flounder discards could be obtained by using hooks that were appropriate for the targeted retention size. Study was peer reviewed.

ACTION NEEDED-Decision and Paperwork

1)d Implement "N&DONE" or "XX&DONE"

I have proposed that we implement N&DONE, where N is the number of summer founders that may be caught. I would suggest for the coming two years we use 3 as N. The catch of the first 3(three) fish, no minimum size, may be retained or released, BUT the angler is done fishing for summer flounder. NO catch and release.

James Fletcher proposes XX&DONE, where XX is the length of the summer flounder that may be retained.

I would suggest for the coming two years we use 40 inches as XX. The catch of each fish, no minimum size, as caught is measured and when the accumulated length exceeds 40 inches, whether retained or released, the angler is done fishing for summer flounder. NO catch and release.

ACTION NEEDED-Decision and Paperwork.

2) Do 1 above. Focus on the critical few and not the trivial many. Pareto principle.

OTHER COMMENTS

Utilizing the Percent Change Approach is fatally flawed. The focus is on RHL calculations and not on the subject, i.e., biomass.

I would like to know, for Black Sea Bass and Scup, if the current regulations were implemented, what would be the calculated biomass. Is biomass reduced to a point of concern? Is the percentage of reduction going to protect the fishery from falling below the target biomass? Again, the focus is on the trivial few.

Since Black Sea Bass and Scup are over target biomass, what impact are they having on rebuilding Summer Flounder? If some impact, then controlling their biomass nearer to target is recommended.

How can MAFMC regain some semblance of competency?

Use common sense.

2019 Summer Flounder increase was based on fake facts. Should have taken a slow approach. Users expect the biomass target to be attained.

Any species that has high or very high biomass compared to target should have a slow and steady harvest plan.

Public Comments

From: Joseph beneventine <joseph.beneventine@verizon.net>

Sent: Tuesday, December 5, 2023 10:57 AM

To: Beaty, Julia <jbeaty@mafmc.org>

Subject: Black SeaBass comments following 12/04/2023 Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meeting

Good morning,

I'm brand new to the group so I was just listening in on the call last evening. I most likely won't be speaking up on the calls until I feel I've learned enough from the group by just listening.

Adding to the written public comments I've already submitted regarding NY vs Ct. Black SeaBass Regulations in the LI Sound, I want to echo the comments of three of the participants on the call last evening:

First I agree with Capt. Victor Hartley, Jeff Deem and Michael Pirri who all stated their concerns about the need to loosen up "liberalize" Black SeaBass regulations. What's the point of imposing restrictions to rebuild the stock and when the biomass reaches 210% there still being discussions of the need for further cuts ? This is very frustrating to anglers, even those of us who are very conscientious about marine conservation.

Secondly, I also I agree with Michael Pirri who made comments regarding there being no need to have a mid season Black Seabass closure in Connecticut, since the biomass stock is at a healthy level. His comments further support the points I was making in the first written public comments I submitted.

Finally, and most importantly, I strongly agree with Jim Fletcher's comments regarding sizing and the facts that all of the larger Fluke 23" and over being all female and all of the larger Black SeaBass 22" and up the ones I call "Knot heads" being all male. It could be we don't understand all of the science behind how these fish breed but rules in place to rebuild the biomass breeding stock somehow structuring marine conservation regulations that result in anglers "targeting" these breeding fish seems to makes no sense. Also having anglers discard so many fish trying to land larger "keepers" resulting in so many dead discards makes no sense either. In my opinion, a smaller size limit reducing the time it takes to reach the bag limit would significantly reduce dead discards. Please take these facts into consideration. And thank you for all of the hard work you do to preserve the Black SeaBass fishery for us and for future generations.

Joseph Beneventine
Mamaroneck NY