

# Atlantic States Marine Fisheries Commission

## Summer Flounder, Scup and Black Sea Bass Management Board Conference Call

### Draft Agenda

March 30, 2017  
12:30 – 2:00 p.m.

Call in Number: 1-888-394-8197 Passcode: 815277

Webinar Link: <https://global.gotomeeting.com/join/113424341>

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary. The Board Chair may allow limited opportunity for comment and has the discretion to limit the number of speakers and/or the length of each comment.

1. Welcome/Call to Order (*M. Luisi*) 12:30 p.m.
2. Board Consent 12:30 p.m.
  - Approval of Agenda
3. Public Comment (**For items not on the agenda**) 12:35 p.m.
4. Review Proposals from Massachusetts and Rhode Island on 2017 Summer Flounder recreational management (*State staff*) 12:45 p.m.
5. Technical Committee Report (*G. Wojcik*) 1:05 p.m.
6. Consider approval of Massachusetts and Rhode Island proposals **Final Action** (*K. Rootes-Murdy*) 1:25 p.m.
7. Other Business/Adjourn 2:00 p.m.



David E. Pierce, Ph.D.  
Director

# Commonwealth of Massachusetts

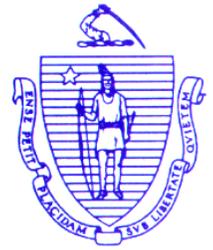
## Division of Marine Fisheries

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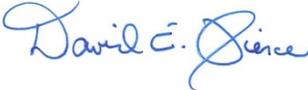
Matthew A. Beaton  
Secretary

George N. Peterson, Jr.  
Commissioner

Mary-Lee King  
Deputy Commissioner

### MEMORANDUM

TO: Robert Beal, ASMFC Executive Director  
Michael Luisi, ASMFC Summer Flounder Management Board Chair

FROM: David E. Pierce, Director 

DATE: March 1, 2017

SUBJECT: Massachusetts Implementation Plan for Summer Flounder Addendum XXVIII

#### Overview

The Massachusetts Division of Marine Fisheries (*Marine Fisheries*) is proposing to adopt the following regulations for Massachusetts' 2017 summer flounder recreational fishery: a 17" minimum size, a 5-fish possession limit, and a 125-day season from May 22–September 23. In terms of projected harvest, these regulations are conservationally equivalent to the Addendum XXVIII requirements for Massachusetts (17" minimum size, 4-fish possession limit, and 125-day season). *Marine Fisheries* is requesting that this implementation plan be considered for approval prior to the Atlantic States Marine Fisheries Commission (ASMFC) submitting its conservation equivalency letter to NOAA Fisheries.

#### Background

On February 2, 2017, the ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board (Management Board) approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, addressing summer flounder recreational management in 2017. Specifically, the Management Board selected *Option 5: More Coastwide Consistency* from the draft addendum for final approval.

Option 5 re-establishes the six management regions in place for 2016, specifies a minimum size limit and maximum possession limit for each region, and maintains the 2016 season for each region (Table 1). For the minimum size, each region's limit is increased by one inch, except North Carolina (status quo). For the possession limit, each region's limit is set at four fish, except for the three-fish limit assigned to Connecticut, New York, and New Jersey. States were requested to submit implementation plans by March 1, 2017.

Table 1. Regulations required under Addendum XXVIII

Region	Minimum Size Limit	Possession Limit	Season (# days)
MA	16 17"	5 4 fish	125
RI	18 19"	8 4 fish	245
CT–Cape May, NJ	18 19"	5 3 fish	128
NJ Portion of DE Bay	17 18"	4 3 fish	128
DE–VA	16 17"	4 fish	365
NC	15"	6 4 fish	365

## Massachusetts 2016 Regulations and Estimated Harvest

Massachusetts' 2016 recreational regulations for summer flounder included a 16" minimum size limit, 5-fish possession limit, and 125-day season from May 22–September 23.

Massachusetts' estimated recreational harvest for 2016 is 56,642 fish, according to preliminary data from the Marine Recreational Information Program (MRIP). This harvest estimate continues a declining trend of recreational harvest in Massachusetts since the implementation of regional management in 2014 (Table 2), under which Massachusetts had largely status quo regulations (the only difference being in 2014 when the season was seven days longer at May 22–September 30).

Massachusetts' 2016 MRIP harvest estimate is based, in part, on an average catch rate determined from 72 in-person intercepts from the Access Point Angler Intercept Survey in which summer flounder were harvested (Table 3). These include shore, private/rental vessel, charter boat, and party boat intercepts. Of note, there were zero intercepts where the average harvest per angler was the possession limit of five fish. The average value is 1.6 fish harvested per angler, and the median value is 1.0 fish harvested per angler. There were two non-compliant trips intercepted with 6 and 10 fish harvested.

Table 2. MRIP Estimates of Massachusetts Recreational Summer Flounder Harvest (Numbers of Fish)

Year	Harvest (#)	PSE	Estimate Status
2014	112,840	41.1	Final
2015	79,109	34.5	Final
2016	56,642	20	Preliminary

Table 3. Distribution of 2016 APAIS Intercepts by the Average Number of Summer Flounder Harvested/Angler for Trips with Summer Flounder Harvested

Average Harvest/Angler	<1 fish	1 fish	2 fish	3 fish	4 fish	5 fish	6+ fish	Total
# Intercepts	10	41	8	6	5	0	2	72

## Implementation Plan

*Marine Fisheries* implementation plan for Addendum XXVIII is consistent with Option 5's 17" size limit and 125-day season requirements, but deviates from the 4-fish possession limit; specifically, it would maintain the 5-fish limit in place in Massachusetts waters in 2016.

*Marine Fisheries*' rationale for this implementation plan is that these regulations result in the same projected harvest for 2017 and associated reduction rate as the Addendum XXVIII requirements (Table 4). They are conservationally equivalent. This is due to the infrequency at which anglers harvested the 5-fish limit in 2016, resulting in zero 5-fish MRIP intercepts. (The calculation assumes that the non-compliant harvests will be unchanged by a possession limit reduction.) The 1" size limit increase for 2017 further decreases the likelihood of anglers harvesting five fish in the coming season. However, the 5-fish limit provides an important benefit to for-hire vessels as a marketing tool.

Furthermore, the 31% reduction rate association with these proposed regulations for Massachusetts is consistent with the projected coastwide reduction rate of Option 5. Consider also that Massachusetts' harvest in 2016 was just 2.7% of the coastwide (MA–NC) harvest, indicating little risk of this implementation plan impacting the coast's ability to achieve the 2017 recreational harvest limit under Option 5. With the decline in the summer flounder stock and Massachusetts' location in the species' range, it is also likely that Massachusetts' harvest will continue to decline in 2017 of its own accord.

Table 4. Projected 2017 Harvest in Massachusetts under the Addendum XXVIII Requirements vs. Massachusetts' Implementation Plan

	<b>Min. Size Limit</b>	<b>Possession Limit</b>	<b>Season</b>	<b>2017 Projected Harvest</b>	<b>Reduction Rate</b>
<b>Addendum 28 Requirements</b>	17"	4 fish	May 22–Sept. 23 (125 days)	39,083 fish	-31%
<b>Massachusetts Plan</b>	17"	5 fish	May 22–Sept. 23 (125 days)	39,083 fish	-31%

As Massachusetts is the only state within its region, this implementation plan does not necessitate coordination with any other state to meet the Addendum XXVIII requirement for all states within a region to implement the same regulations.

*Marine Fisheries* acknowledges that Massachusetts implementing a 5-fish possession limit is inconsistent with the language in Addendum XXVIII requiring a 4-fish limit and its approach of applying “broad action across all states to reduce harvest and provide for more coastwide consistency in regulations.” In consideration of this, we provide the following:

1. While the selection of Option 5 for the final addendum moves recreational summer flounder management in 2017 away from assigning regional harvest targets and reduction rates (counter to all other options in Draft Addendum XXVIII and prior years’ regional approaches), the Commission’s adoption and implementation of any alternative to coastwide measures is authorized through the joint interstate/federal fishery management plan’s conservation equivalency process, which *is* based on state/regional harvest targets and reduction rates. To support this assertion, consider that:
  - a. The Final Rule implementing Framework Adjustment 2 (66 FR 36208), which allowed for the use of state-specific conservation equivalent management, reads: “States will submit their proposed suite of recreational measures to the Commission for review. Any state that does not submit a proposal or submits a proposal that is determined to not achieve the *adjustment target* [emphasis added] will be assigned the precautionary default measures.” The “adjustment target” refers to “the overall *percentage adjustment* [emphasis added] required in each state to achieve the recreational harvest limit.”
  - b. The Final Rule implementing Framework Adjustment 6 (71 FR 42315), which allowed for the use of regional conservation equivalent management, reads: “The precautionary default measures would be assigned to any state that either does not submit a summer flounder management proposal to the Commission’s Summer Flounder Technical Committee, or that submits measures that are determined not to achieve the *required reduction* [emphasis added].” The “required reduction” refers to that necessary to avoid “overages of the regional *targets (in number of fish)* [emphasis added].”
  - c. The federal regulations establishing the conservation equivalency process (50 CFR §648.102(d)) read: “The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the *necessary adjustment to recreational landings* [emphasis added].” What would the ASMFC make this determination on if not a state/region’s projected harvest or reduction rate?
  
2. Whether Massachusetts’ final possession limit for 2017 is four fish or five fish, we will still have inconsistent regulations with our nearest neighbor, Rhode Island. The minimum size and season lengths for these adjacent states (whose waters some anglers will fish both during the

same trip) will differ substantially—by 2" and 120 days. Even under the Addendum XXVIII requirements, state regulations on a coastwide basis will differ by as much as 4", 240 days, and one fish. A slightly higher possession limit for Massachusetts will do little to erode the “consistency” achieved through the addendum.

### **Timeline for Review**

It is *Marine Fisheries*' understanding that the Commission intends to submit to NOAA Fisheries its review of the states' intended measures for 2017, where the precautionary default measures should be applied, and how these measures will collectively constrain 2017 harvest to the recreational harvest limit by March 15. In recognition of this schedule as well as Massachusetts' own rule-making timeline, *Marine Fisheries* is requesting that the Management Board review and consider approval of this implementation plan prior to March 15.

We strongly believe the merits of this implementation plan support its approval; however, should the Management Board disagree, *Marine Fisheries* will implement the Addendum XXVIII requirements for a 17" minimum size limit, 4-fish possession limit, and 125-day season in Massachusetts, and the Commission's conservation equivalency letter to NOAA Fisheries should reflect as much.

Cc: Massachusetts Marine Fisheries Advisory Commission  
George Peterson, Mary-Lee King, Department of Fish and Game  
Dan McKiernan, Nichola Meserve, Bob Glenn, Jared Silva, *Marine Fisheries*  
Toni Kerns, Kirby Rootes-Murdy, ASMFC



**RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF THE DIRECTOR**  
235 Promenade Street, Room 425  
Providence, Rhode Island 02908

**Memorandum**

To: Robert Beal, ASMFC Executive Director  
Michael Luisi, Chair, ASMFC Summer Flounder, Scup and Black Sea Bass Board

From: Janet Coit  
Director, RI Department of Environmental Management

Date: March 3, 2017

Re: RI Conservation Equivalency Proposal – Recreational Summer Flounder

This memorandum provides the Board with Rhode Island’s proposed management measures for recreational summer flounder for 2017, coupled with a request for Board approval under the terms of conservation equivalency.

Rhode Island initiated its state regulatory process, to consider adjustments to recreational summer flounder management measures, on January 31, 2017, via a public notice and the commencement of a public comment period. A public hearing was held on February 13, 2017, and public comments were accepted through February 24, 2017. On February 28, 2017, the Rhode Island Marine Fisheries Council met to formulate a recommendation to RI Department of Environmental Management Director Coit regarding the management measures. The Council voted unanimously to recommend measures aimed at achieving harvest reductions that exceed – i.e., are more conservative than -- those set forth by the Addendum.

The Department has analyzed the Council’s recommendation, and finds that the proposed regulations would achieve more resource conservation than the measures set forth in Addendum XXVIII. Accordingly, the Department requests Board approval of the proposed measures, pursuant to the conservation equivalency principles set forth by the FMP. The measures are: ***a 19” minimum size, a 6-fish possession limit, and a 227-day season from May 19 through December 31.***

## Background

The recreational summer flounder fishery is subject to joint management by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in accordance with the original FMP, as modified by numerous amendments, framework actions, and addenda. In particular:

- Framework Adjustment 2, adopted in 2001, authorizes the use of conservation equivalency to allow states to customize summer flounder recreational management measures, provided that projected harvests fell within harvest targets. Framework Adjustment 2 also adopted the ASMFC's adaptive management process, whereby the ASMFC is able to enact changes within its management program, via addenda, to adapt to changing circumstances.
- Addendum IV, adopted in 2001, provides that, upon the recommendation of the relevant monitoring committee and joint consideration with the Council, the Board will make a decision concerning what state regulations will be rather than make a recommendation to NMFS. The states are then responsible for implementing the Board's decision.
- Addendum XVII, adopted in 2005, and Framework Adjustment 6, adopted in 2006, authorizes the formation of conservation equivalency regions as a management alternative to state-based conservation equivalency.
- Addenda XXV-XXVII, adopted in 2014, 2015, and 2016, implemented regional conservation equivalency under an adaptive regional management approach. Initially, five regions were established – MA; RI; CT/NY/NJ; DE/MD/VA; and NC. (The 2016 program established NJ as its own region to allow for area-specific regulations in the Delaware Bay.) The approach involved the development of proposed measures for each region by the TC which, when combined with other regions, would constrain the coastwide harvest to the RHL. Drawing upon TC advice, regions were afforded the flexibility to evaluate any number of size, possession, and season combinations, and offer a preferred suite of measures, subject to Board approval. With the exception of the modifications enacted in 2016 for Delaware Bay, all regions opted to maintain the same sets of region-specific management measures during all three years. Although Addenda XXV-XXVII did not establish regional harvest targets per se, the analysis and approval of regional measures drew upon a de facto regional harvest target approach, since that was the only way to show that projected regional harvests would collectively achieve, but not exceed, the coastwide recreational harvest limit. All three addenda

were adopted under the long-standing conservation equivalency standards established by Framework Adjustment 2.

- Addendum XXVIII, adopted in February 2017, continues the adaptive regional management approach for 2017, involving the same six management regions. The addendum seeks to address the vexing issue of fair/equitable/reasonable access to the resource and the equally challenging need to constrain coastwise harvest in 2017 to the historically low 2017 RHL, drawing upon prior-year harvest estimates that are fraught with variability and uncertainty. The provisions of the addendum include a mandatory 1” increase in minimum size and a possession limit of 4 fish or less, applicable to all regions. These prescriptive measures notwithstanding, the core purpose of the addendum is to **design a combined management program of all six regions that does not exceed the 2017 recreational harvest limit**. Again, Addendum XXVIII was adopted under the long-standing conservation equivalency standards established by Framework Adjustment 2.

## RI Fishery Performance

Under consistent, status quo management measures (18” minimum size, 8-fish possession limit, and 245 day season from May 1 – December), RI’s recreational harvest has been decreasing since 2014, with 2016 harvest being at about half of what it was in 2014 and 43% of what it was in 2015.

Year	RI Harvest (#)
2014	184,668
2015	164,028
2016	92,821

## RI Conservation Equivalency Proposal - Analysis

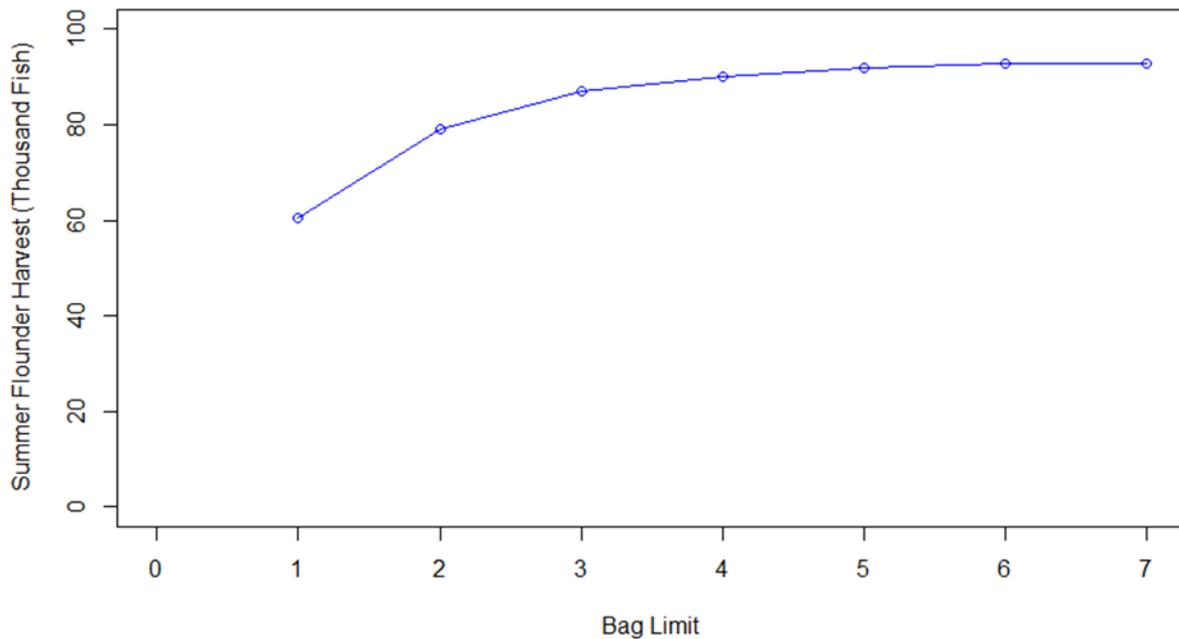
RI proposes to abide by the harvest reduction required under Addendum XXVIII, but achieve it in a slightly different way, for the purpose of minimizing the impact to RI fishermen. Moreover, RI’s proposal is projected to achieve an additional 4% reduction, above and beyond the 34% associated with the measures set forth in the Addendum. Specifically, RI proposes to enact a 19” minimum size, 6-fish possession limit, and a 227-day season from May 19 through December 31. An analysis of the projected effects of these measures follows.

### ➤ Bag limit

- Per the provisions of the addendum, the cut in the possession limit from 8 to 4 fish would achieve a roughly 3% reduction in overall harvest.

- RI’s proposal to reduce the cut to 6 fish, instead of 4, nullifies this 3% reduction; however, this lost reduction is more than compensated for by minimum size and seasonal adjustments.
- The following bag limit table and plot use the previously approved method for accounting for bag limit adjustments, using MRIP data.

Bag Limit	Harvest/1000	Reduction from 2016
8	92.821	0
7	92.821	0
6	92.821	0
5	92.020	0.01
4	90.051	0.03
3	86.969	0.06
2	79.136	0.15
1	60.438	0.35

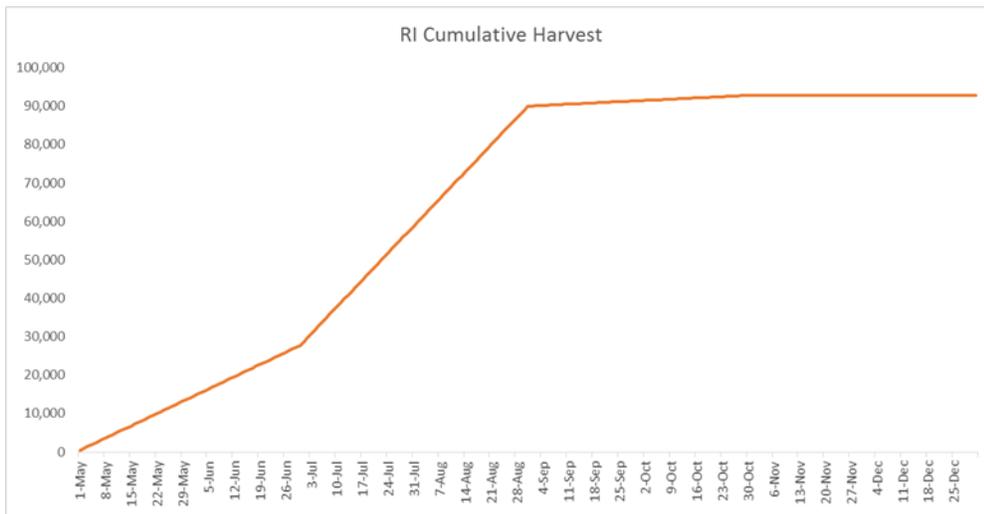


➤ **Season**

- The addendum allows RI to maintain its current season length of 245 days.
- To adjust for the alteration of the proposed bag limit, RI proposes to adjust its season with a later start date.
- As shown below in the season reduction table and seasonal harvest plot, the reduction calculations used are the previously approved method of using the wave

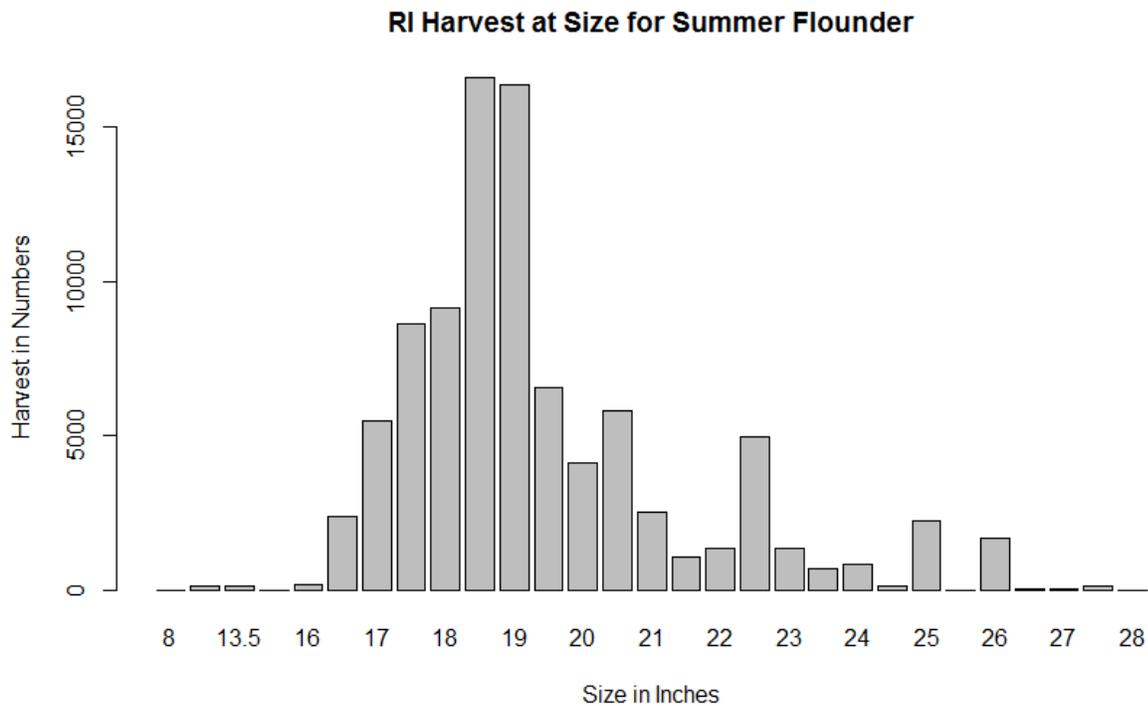
harvest estimate, calculating a daily harvest rate, and then deducting that daily rate for the newly closed period of time.

	Wave 3	Wave 4	Wave 5	Wave 6
2016 daily harvest rate	455 fish/day	1,004 fish/day	46 fish/day	0 fish/day
2016 days open	61	62	61	61
2017 days open	43	62	61	61
Reduction	0.09			



➤ **Minimum size**

- The majority of the reduction for RI is accounted for by the 1” minimum size increase.
- Although there is a currently undiagnosed discrepancy between the reduction method RI used (resulting in a 34% reduction for the 1” increase) and the method used for the addendum, RI hereby adheres to the lower reduction estimate of 32% for the 1” minimum size increase (18” to 19”) used by the addendum.
- RI length frequency plot:



➤ **Final analysis**

- Applying the following recreational measures in 2017:
  - Minimum Size: 19"
  - Season: May 19 – Dec 31
  - Bag Limit: 6 fish
  
- Represents a total harvest reduction of **38%** using the reduction calculation that includes an interaction term in the calculation:
  - $X+Y-(X*Y)$
  - Where X = size limit reduction = 0.32, and Y = seasonal reduction = 0.09
  - Reduction =  $0.32+0.09-(0.32*0.09) = 0.38$
  
- Resulting in a projected 2017 harvest of 57,549 fish.

**RI Conservation Equivalency Proposal – Justification**

- ❖ For Rhode Island, Addendum XXVIII would impose a 1" minimum size increase (18" to 19") and a 50% decrease in the possession limit (from 8-fish to 4-fish). The season

would remain unchanged at 245 days (May 1 – December 31). Those measures would result in a 34% reduction in projected harvest in 2017 (61,621 fish) relative to 2016. While the 1" minimum size increase is unquestionably equitable, in that it applies to all regions, the 50% cut in RI's possession limit is much higher than any other region, and the overall 34% reduction is higher than any other region. Thus, the **impacts** on RI are significant, and clearly **not equitable**.

- ❖ RI's conservation equivalency proposal is not just conservationally equivalent, but **more conservative than the measures set forth in the addendum**. The measures set forth in the addendum is projected to achieve a 34% reduction in harvest in 2017, relative to 2016. RI's conservational equivalency proposal is projected to achieve a 38% reduction in harvest in 2017, relative to 2016. This willingness to propose a more conservative approach is offered as a good faith effort to show that RI is committed to meeting the primary goal of the addendum, i.e., not exceeding the 2017 RHL.
- ❖ RI's recreational **harvests have been steadily decreasing** over the past three years, under status quo regulations. The same cannot be said of other regions. Given RI's performance, it is reasonable to suggest that RI's 2017 harvest could continue to decrease, even under status quo regulations, perhaps approaching the projected harvest of 61,621 fish associated with the measures set forth in the addendum. Nevertheless, RI recognizes and supports the need to enact more restrictive regulations, to help ensure that the necessary coastwide harvest reductions are met, and the coastwide RHL is not exceeded. RI's conservation equivalency proposal yields a projected harvest of 57,549 fish, well below the projected harvest associated with the measures set forth in the Addendum.
- ❖ RI's estimated harvest in 2016 was just 4.4% of the estimated coastwide harvest, indicating **little risk** that RI's more conservative proposal could impact the coast's ability to achieve the 2017 RHL per the provisions of the Addendum.
- ❖ Addendum XXVIII pitches an approach that is aimed at "mov[ing] away from using the 1998-based allocations to set regional targets." RI's 1998-based allocation, applied to the 2017 RHL, would be 70,639 fish. RI's conservational equivalency proposal is projected to achieve a harvest of 57,549 fish, well below the 1998-based allocation. As such, RI's proposal is **consistent with the approach set forth in the Addendum**.
- ❖ Addendum XXVIII also pitches an approach that is intended to apply "broad action across all states to reduce harvest and provide for more coastwide consistency in regulations." RI's conservational equivalency proposal increases the minimum size by 1", reduces the possession limit by 2 fish, and reduces the season by 18 days – clearly constituting broad action and thus clearly consistent with the approach set forth in the

Addendum. By opting not to adopt a uniform coastwide measure, the Board expressly endorsed the continuation of a management program involving differences in regulations between the regions. Per the measures specified by the Addendum, state regulations on a coastwide basis will differ by as much as 4" in the minimum size, and may differ by as much as 240 days in season length and one fish in the possession limit. For RI, a 6-fish possession limit (down from 8) and a 227-day season (down from 245) **comports with the Addendum's intent** to provide more coastwide consistency in regulations. What's more, from a policy perspective, the notion that disparate measures between regions is problematic, in reference to summer flounder, contrasts markedly with management approaches for other species, such as black sea bass, also managed by the Board under the same FMP. For whatever reason, there has not been a concerted push to standardize the disparate regulations implemented by the states in the northern region for black sea bass. Oddly, and without any clear justification, the Board seems to have targeted summer flounder as a special case.

- ❖ While Addendum XXVIII professes to move recreational summer flounder management in 2017 away from assigning regional harvest targets and reduction rates -- counter to all other options in the draft addendum, and prior years' regional approaches, and the provisions that were intended to apply to regional conservation equivalency under Addendum XVII and Framework Adjustment 6 – the Commission's adoption and implementation of any alternative to coastwide measures is authorized through the joint interstate/federal fishery management plan's conservation equivalency process, established via Framework Adjustment 2, which *is* based on state/regional harvest targets and reduction rates.
  - The Final Rule implementing Framework Adjustment 2 (50 CFR 648) reads: "States will submit their proposed suite of recreational measures to the Commission for review. Any state that does not submit a proposal or submits a proposal that is determined to not achieve the *adjustment target* [emphasis added] will be assigned the precautionary default measures." The "adjustment target" refers to "the overall *percentage adjustment* [emphasis added] required in each state to achieve the recreational harvest limit."
  - The Final Rule also reads: "The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the *necessary adjustment to recreational landings* [emphasis added]." On what basis would the ASMFC make this determination if not a state/region's projected harvest or reduction rate?

Per these federal regulatory provisions governing conservation equivalency proposals, RI's proposal **clearly meets the standards**.

- ❖ Although Addendum XXVIII was not adopted pursuant to the regional conservation equivalency framework established via Addendum XVII and Framework Adjustment 6, those management actions provide useful guidance for assessing RI's conservation equivalency proposal. The Final Rule implementing Framework Adjustment 6 (71 FR 42315), which allowed for the use of regional conservation equivalent management, reads: "The precautionary default measures would be assigned to any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that are determined not to achieve the *required reduction* [emphasis added]." The "required reduction" refers to that necessary to avoid "overages of the regional *targets (in number of fish)* [emphasis added]."