



Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201, Dover, DE 19901
Phone: 302-674-2331 | FAX: 302-674-5399 | www.mafmc.org
Michael P. Luisi, Chairman | G. Warren Elliott, Vice Chairman
Christopher M. Moore, Ph.D., Executive Director

April 18, 2019

Mr. Michael Pentony
Regional Administrator
National Marine Fisheries Service
Greater Atlantic Region
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

The Council and Atlantic States Marine Fisheries Commission's (ASMFC's) Summer Flounder, Scup, and Black Sea Bass Board (Board) have jointly proposed that the 2019 recreational summer flounder be managed under conservation equivalency, as described below. Action is needed for continued implementation of this strategy in 2019 since the regulations do not roll over from year to year. This letter describes the Council perspective that this action is primarily administrative in nature and should be categorically excluded from requirements to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA).

Action Background

The recreational fishery for summer flounder is managed under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The FMP requires an annual Recreational Harvest Limit (RHL) to be specified (landings only), and that recreational management measures (possession limits, size limits, and seasons) must be designed to ensure that coastwide harvest is constrained to the RHL. This is designed to prevent the recreational Annual Catch Limit (ACL) from being exceeded.

In adopting recreational management measures each year, the Council and Board select either coastwide measures (identical possession limit, size limit, and season in all states and in federal waters) or conservation equivalency, which allows individual states or multi-state regions to set customized measures within guidelines agreed to by the Board, following the provisions established in Framework Adjustments 2 and 6 to the FMP. Under conservation equivalency, federal recreational measures are waived, meaning that federally permitted party/charter vessels and all recreational vessels fishing in federal waters are then subject to the recreational fishing measures implemented by the state in which they land. Each state is responsible for developing their own possession limits, size limits, and season, within the guidelines provided by the Board. This approach allows for more customized measures at a state or regional level that are likely to meet the needs of anglers in each area.

The combination of state or regional measures must be "equivalent," in terms of conservation (i.e., expected to not exceed the RHL), to a set of "non-preferred coastwide measures," which if implemented on a coastwide basis, would be expected to constrain harvest to the RHL. These non-preferred measures are written into the federal regulations, but waived in favor of the state or region-specific measures.

These measures for 2018, which are proposed to remain the same in 2019, include a 19-inch minimum size, a 4-fish possession limit, and an open season of May 15-September 15.

The Board requires each state or region to submit its conservation equivalency proposal early in the relevant recreational fishing year. The ASMFC's Summer Flounder, Scup, and Black Sea Bass Technical Committee (TC) then evaluates the proposals and advises the Board of each proposal's consistency with respect to achieving the state or region landings target and the coastwide recreational harvest limit. After TC evaluation, the Board meets to approve or disapprove each proposal.

The FMP also requires that the Council and Board specify "precautionary default" measures when conservation equivalency is recommended. These are restrictive measures that would be implemented in any state that either does not submit a summer flounder management proposal or whose measures are expected to exceed the intended level of harvest. For 2019, the Council and Board recommended no changes to the precautionary default measures used in 2018, which include a 20.0-inch TL minimum size, 2-fish per person possession limit, and open season of July 1-August 31.

Description of the Action

The Council and Board propose continued recreational management under conservation equivalency for summer flounder in 2019, with regional measures that are expected to achieve, but not exceed, the 2019 RHL of 7.69 million pounds. This RHL was developed based on the results of a recent benchmark stock assessment for summer flounder, developed and peer reviewed in November 2018 through the 66th Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC 66) process.¹ According to the stock assessment, the summer flounder stock was not overfished and overfishing was not occurring in 2017. The assessment incorporated the revised time series of recreational catch from the Marine Recreational Information Program (MRIP), which is 30% higher on average compared to the previous summer flounder estimates for 1981-2017. While fishing mortality rates were not strongly affected by incorporating these revisions, increased recreational catch resulted in increased estimates of stock size compared to past assessments. A decreasing trend in spawning stock biomass is still evident since about 2011; however, biomass is projected to increase between 2019 and 2021.

The Council and Board propose that 2019 conservation equivalency in 2019 include the same regional configuration and very similar measures as 2018. Based on preliminary MRIP data,² 2018 summer flounder landings were estimated to be 7.17 million pounds, which is 7% below the revised 2019 RHL of 7.69 million pounds. Thus, a theoretical small liberalization in landings would be possible to achieve the 2019 RHL, if the point estimates of recreational harvest are considered. However, the Council and Board recommended that harvest remain *status quo* from 2018, allowing for consideration of small changes in state measures that would result in the same level of harvest. The Council and Board have moved toward a policy of considering the uncertainty around the recreational point estimates of harvest, and as such did not approve a liberalization in 2019 measures. In addition, keeping measures *status quo*

¹ Northeast Fisheries Science Center (NEFSC). 2019. 66th Northeast Regional Stock Assessment Workshop (66th SAW) Assessment Summary Report. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 19-01; 40 p. Available from: <http://www.nefsc.noaa.gov/publications/>.

² As of February 15, 2019. Available from: <http://www.st.nmfs.noaa.gov/recreational-fisheries/access-data/run-a-data-query/queries/index>.

recognizes the inherent uncertainty in annual variations in angler effort and catch rates that are driven in part by external factors.

The 2018 regions and measures are described in Table 1. Region-specific possession limits in 2018 ranged from 2-6 fish with size limits ranging from 15.0-19.0 inches, with various seasons. The states of Rhode Island and New Jersey have proposed minor modifications to their management measures for 2019 that are not projected to change their harvest levels. These proposals will be reviewed by the TC and forwarded to the Board for approval.

Table 1: Summer flounder recreational management measures by state and region in 2018. Measures in 2019 are expected to remain the same in all states except for possible minor changes in New Jersey and Rhode Island.

Region	State	Min. Size (inches)	Poss. Limit	Open Season
1	MA	17	5 fish	May 23-Oct. 9
2	RI	19	6 fish	May 1- Dec. 31
3	CT	19	4 fish	May 4 - Sept. 30
		17 (45 designated shore sites)		
	NY	19		
4	NJ	18	3 fish	May 25- Sept. 22
		16 (1 shore site)	2 fish	
		17 (NJ Delaware Bay)	3 fish	
5	DE	16.5	4 fish	Jan. 1- Dec. 31
	MD			
	PRFC			
	VA			
6	NC	15	4 fish	Jan. 1- Dec. 31

The non-preferred coastwide measures are proposed to remain the same as in 2018, consisting of a 19-inch minimum size, a 4-fish possession limit, and an open season of May 15-September 15. Likewise, the precautionary default measures for 2019 are proposed to remain the same, including a 20.0-inch TL minimum size, 2-fish per person possession limit, and open season of July 1-August 31.

The FMP includes recreational accountability measures (AMs) to prevent the recreational ACL from being exceeded, or to correct the cause of an overage if one occurs. For summer flounder, the RHL is designed to prevent the ACL from being exceeded, and for 2019, no additional adjustments are required for the recreational fishery due to past overages (based on a comparison of average 2015-2017 catch to the 2015-2017 average ACL, as specified in the FMP).

Effects of the Action

The revised 2019 RHL is pending implementation by NMFS and has been analyzed through a Supplemental Information Report (SIR), which supplements the previous 2019 Summer Flounder, Scup, and Black Sea Bass Specifications Environmental Assessment (EA; “Specifications EA”³). The associated impacts to the human environment were analyzed in the Specifications EA and reiterated in

³ MAFMC (Mid-Atlantic Fishery Management Council). 2018. Final Environmental Assessment for 2019 Summer Flounder, Scup, and Black Sea Bass Specifications. 183p. Available at http://www.mafmc.org/s/SFSBSB_2019_specs_EA.pdf.

the SIR. Because the recreational measures proposed in this action are simply a means of achieving but not exceeding the previously analyzed harvest limit, this action does not modify the impacts previously analyzed.

The proposed measures are not expected to result in substantial change in any of the following: fishing, location, timing, effort, authorized gear types, or harvest levels. This is primarily an administrative action that continues the same management strategy, and mostly identical management measures, from 2018. Because state measures will remain identical or nearly identical to 2018, the measures are projected to result in similar levels of effort and harvest as in 2018. Recreational fishing seasons will remain the same, or adjusted by 1-2 days, so the timing of fishing effort will not change. This action does not impact the locations fished or the gear used in the recreational summer flounder fishery and simply continues the use of the existing size limits, possession limits, and seasons.

On October 17, 2017, the Protected Resources Division issued a memorandum reinitiating consultation on the Biological Opinion for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and determined that allowing the fishery and associated research to continue during the reinitiation period will not violate Endangered Species Act sections 7(a)(2) and 7(d). The proposed action is not expected to lead to an overall substantial increase of fishing effort, or alter the spatial and/or temporal distribution of current fishing effort in a manner that would increase interaction rates with protected species in a meaningful way. Therefore, we have determined that the impacts of this action are consistent with the scope of the conclusions reached in the October 17, 2017, memorandum and the proposed action would not be likely to jeopardize the continued existence of any whale, sea turtle, Atlantic salmon, or sturgeon species.

Categorical Exclusion

As indicated above, this action is primarily administrative in nature and should be considered for a categorical exclusion from requirements to prepare an EA or EIS under NEPA. Council staff will work with GARFO NEPA staff to finalize a determination on the level of NEPA analysis required.

Please contact me or Kiley Dancy of my staff if you have any questions.

Sincerely,



Christopher M. Moore, Ph.D.
Executive Director

cc: K. Dancy, E. Gilbert, J. Anderson, M. Ferguson