



Mid-Atlantic Fishery Management Council

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Michael P. Luisi, Chairman | G. Warren Elliott, Vice Chairman
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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 2020 recreational summer flounder be managed under conservation equivalency, as described below. Action is needed for continued implementation of this strategy in 2020 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 2019, which are proposed to remain the same in 2020, 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 2020, the Council and Board recommended no changes to the precautionary default measures used in 2019, 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 2020, with regional measures that are expected to achieve, but not exceed, the 2020 RHL of 7.69 million pounds. This is the same RHL that was implemented for 2019. These 2019-2020 limits were 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 conservation equivalency in 2020 include the same regional configuration and very similar regional measures as 2019. Based on preliminary MRIP data through October,² 2019 summer flounder landings are projected to be 7.74 million pounds, which is 1% above the 2019 and 2020 RHL of 7.69 million pounds. At the time the Council and Board approved 2020 recreational measures, data only through wave 4 (August) was available for 2019, which resulted in projected harvest of 7.06 million lb (8% below the 2020 RHL). The Council and Board have moved toward a policy of considering the uncertainty around the recreational point estimates of harvest, by maintaining status quo measures if the coastwide percent standard error (PSE) around the recreational estimate encompasses the following year's RHL. This was the case using projections through wave 4, and therefore, the Council and Board did not approve a liberalization in measures for 2020. The revised

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 Projections using preliminary 2019 data through wave 5 (October) as of December 19, 2019. Available from: <http://www.st.nmfs.noaa.gov/recreational-fisheries/access-data/run-a-data-query/queries/index>.

projections using data through wave 5 are very close to the 2020 RHL and thus under the Council and Board's PSE policy, no adjustments would be needed. Regions under conservation equivalency had the option to propose very minor changes in the season start and end dates (a few days in either direction) that would result in the same level of harvest.

The 2019 and expected 2020 regions and measures are described in Table 1. Region-specific possession limits range from 2-6 fish with size limits ranging from 15.0-19.0 inches, with various seasons. The states expected to modify their 2019 measures in 2020 include North Carolina and New Jersey, as described below. These proposals will be reviewed by the TC and forwarded to the Board for approval.

In 2019, the recreational fishing season in North Carolina was originally open year-round, but the recreational season for all flounders in North Carolina (southern, gulf, and summer flounder) closed on September 4, 2019 as the result of measures implemented to end overfishing on southern flounder.³ North Carolina manages all flounder in the recreational fishery under the same regulations resulting in a de facto closure of the summer flounder recreational fishery. In 2020, the recreational season will need to be further restricted in order to limit mortality on southern flounder. North Carolina's 2020 measures are expected to include a 15-inch minimum size, a 4 fish possession limit, and a to-be-determined shortened season compared to 2019. Because this will reduce harvest of summer flounder, this is not expected to hinder the ability of the conservation equivalency measures to constrain harvest to the RHL.

The state of New Jersey has proposed a minor adjustment to their season start and end dates for 2020 that is not projected to change their annual harvest level. Specifically, New Jersey is proposing to move their season start date two days earlier in May (to May 22, 2020 from the current May 24 start date) in order to open the season on the Friday before Memorial Day as was practiced over the last several years. To compensate for the additional harvest over these two days, New Jersey will close the season two days earlier in September (closing on September 19 in 2020 instead of the current closing date of September 21). This is expected to result in an overall reduction in harvest of 0.1% in New Jersey between 2019 and 2020. No adjustment to size limits or possession limits are being requested. The proposed management program for 2020 also allows for the continuation of the Delaware Bay specific management measures for New Jersey anglers west of the COLREGS line,⁴ first implemented by New Jersey in 2016.

³ See proclamation at: <http://portal.ncdenr.org/web/mf/proclamation-ff-32-2019>.

⁴ COLREGS lines of demarcation delineate those waters "upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972" (commonly called 72 COLREGS) and those "waters upon which mariners shall comply with the Inland Navigation Rules." The line for Delaware Bay is defined as "A line drawn from Cape May Light to Refuge Light; thence to the northernmost extremity of Cape Henlopen" (see 33 CFR 80.503).

Table 1: Summer flounder recreational management measures by state and region in 2019 with changes for 2020 noted in bold. The only proposed changes in 2020 include a seasonal reduction in North Carolina and a minor adjustment to New Jersey's season start and end dates expected to result in the same level of harvest as in 2019.

| Region | State | Min. Size (inches) | Poss. Limit | Open Season |
|--------|-------|---|------------------|---|
| 1 | MA | 17 | 5 fish | May 23-Oct. 9 |
| 2 | RI | 19 | 6 fish | May 3- Dec. 31 |
| | | 19/17 ^a (7 designated shore sites) | 4/2 ^a | |
| 3 | CT | 19 | 4 fish | May 4 - Sept. 30 |
| | | 17 (45 designated shore sites) | | |
| | NY | 19 | | |
| 4 | NJ | 18 | 3 fish | 2019: May 24- Sept. 21 2020: May 22-September 19 |
| | | 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 | 2019: Jan. 1- Sep. 3 2020: TBD seasonal reduction from 2019 |

^a Rhode Island's shore program includes a combined possession limit of 6 fish, no more than 2 fish at 17-inch minimum size limit.

The non-preferred coastwide measures are proposed to remain the same as in 2019, 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 2020 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 2020, no additional adjustments are required for the recreational fishery due to past overages (based on a comparison of average 2016-2018 catch to the 2016-2018 average ACL, as specified in the FMP).

Effects of the Action

The 2020 RHL was analyzed through a 2020-2021 Summer Flounder Specifications Environmental Assessment (EA; “Specifications EA”⁵). The associated impacts to the human environment were analyzed in the Specifications EA. 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.

⁵ MAFMC (Mid-Atlantic Fishery Management Council). 2019. Final Environmental Assessment for 2020-2021 Summer Flounder Specifications. 111p. Available at https://www.mafmc.org/s/FINAL-SFSBSB_2020-2021_specs_EA_signed-FONSI.pdf.

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 2019. Because state measures will remain identical or nearly identical to those implemented in 2019 (with the exception of more conservative measures in North Carolina, which accounts for less than 2% of coastwide recreational summer flounder landings on average), the measures are projected to result in similar levels of effort and harvest as in 2019. Recreational fishing seasons in states other than North Carolina will remain the same with the exception of New Jersey's proposed seasonal adjustments of 2 days, so the timing of fishing effort is not expected to 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 re-initiation 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, M. Ruccio, M. Ferguson

