



## Mid-Atlantic Fishery Management Council

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Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman

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January 20, 2021

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 2021 recreational summer flounder be managed under conservation equivalency, as described below. Action is needed for continued implementation of this strategy in 2021 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 2020, which are proposed to remain the same in 2021, 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 2021, the Council and Board recommended no changes to the precautionary default measures used in 2020, which include a 20.0-inch TL minimum size, 2-fish per person possession limit, and open season of July 1-August 31.

2021 recreational management measures must be designed to constrain harvest to the coastwide RHL of 8.32 million pounds. This RHL was adopted in August 2020, when the Council and Board reviewed the previously adopted limits for summer flounder for the 2021 fishing year and recommended changes based on the Council's December 2019 revisions to its risk policy. The revised risk policy allows for increased risk under high stock biomass conditions (increased  $p^*$  at most biomass levels, compared to the previous risk policy).<sup>1</sup> Based on these revisions, the previously implemented 2021 RHL for summer flounder of 7.69 million pounds was revised to 8.32 million pounds, an 8% increase.

The revised commercial quota and RHL were derived using the same stock assessment projections developed following the 66<sup>th</sup> Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC 66) assessment in 2018.<sup>2</sup> The Council's Scientific and Statistical Committee (SSC) applied the same methodology to derive the 2021 revised acceptable biological catch (ABC), but with the revised probability of overfishing associated with the new risk policy.

According to the 2018 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 was projected to increase between 2019 and 2021.

### **Description of the Action**

The Council and Board propose continued recreational management under conservation equivalency for summer flounder in 2021, with regional measures that are expected to achieve, but not exceed, the 2021

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<sup>1</sup> Additional information on the revised risk policy is available at: <https://www.mafmc.org/actions/risk-policy-framework>, and in the final rule published on December 15, 2020 (85 FR 81152).

<sup>2</sup> 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/>.

RHL of 8.32 million pounds. The Council and Board propose that conservation equivalency in 2021 include the same regional configuration and very similar regional measures as 2020. Typically, preliminary partial current year recreational data are used to project harvest through the remainder of the current year. This projection is then compared to the RHL for the upcoming fishing year. This year, recreational data collection was severely limited by restrictions related to the ongoing Covid-19 pandemic. As a result, no 2020 preliminary harvest estimates are available for summer flounder to project harvest for the year.

MRIP effort sampling, via the mail-based Fishery Effort Survey (FES), continued uninterrupted in 2020. Coastwide data on the estimated number of angler trips are available for the first five waves of 2020 (January-October).<sup>3</sup> These data can be broken down by wave and fishing mode; however, they are generated for all recreational species combined and are not available by target species given that directed trip data are generated using information from APAIS.

Table 1 summarizes estimated combined-species recreational trips for waves 1-5 between 2018-2020 for Maine through North Carolina by wave and fishing mode. These data indicate that estimated total trips in waves 1-5 rose by 11% between 2018 and 2019 and increased by 1% between 2019 and 2020. By wave, between 2019 and 2020, total trips in waves 1 through 3 decreased by 10%, while trips in waves 4 and 5 collectively increased by 9% over the same time period. By mode, estimates of party/charter trips in waves 1-5 decreased by 23% between 2019 and 2020. Private/rental trips increased by an estimated 6%, and shore mode trips decreased by 1%.

While these data can give managers a general sense of how effort in 2020 compares to 2018 and 2019, they cannot be used to make conclusions about summer flounder catch or harvest in 2020 in terms of pounds or numbers of fish. Given the lack of intercept survey data, no information is available on recreational catch rates, discard rates, or size/weight of landed and discarded summer flounder in 2020. APAIS information is also required to account for and adjust for non-resident fishing effort and account for area fished, which is important for generating harvest and catch estimates. MRIP is in the process of evaluating possible methods for generating estimates of 2020 catch, including modeling approaches, the feasibility of imputation, and using data proxies such as the previous year's data. These approaches will take some time to develop, and any catch estimates that can be generated for 2020 are not likely to be available until at least early 2021.

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<sup>3</sup> Within the summer flounder management unit, data for wave 1 (January/February) is only available for the state of North Carolina.

**Table 1:** Total estimated angler trips by wave and fishing mode, 2018-2020, waves 1-5, ME-NC. Includes all trips regardless of species caught or targeted.

	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Wave 1 (Jan/Feb)</b>	<b>1,198,416</b>	<b>1,367,270</b>	<b>1,113,345</b>
Party/Charter	284	757	1,935
Private/Rental	396,807	363,376	371,757
Shore	801,325	1,003,137	739,653
<b>Wave 2 (Mar/Apr)</b>	<b>7,356,358</b>	<b>9,755,048</b>	<b>7,883,221</b>
Party/Charter	26,347	28,413	3,164
Private/Rental	1,886,247	3,209,239	2,441,457
Shore	5,443,764	6,517,396	5,438,600
<b>Wave 3 (May/Jun)</b>	<b>17,793,795</b>	<b>16,866,182</b>	<b>16,112,517</b>
Party/Charter	380,926	388,272	261,453
Private/Rental	6,732,529	6,148,493	5,482,056
Shore	10,680,340	10,329,417	10,369,008
<b>Wave 4 (Jul/Aug)</b>	<b>21,434,158</b>	<b>25,000,122</b>	<b>26,429,448</b>
Party/Charter	563,025	675,081	490,213
Private/Rental	7,946,904	8,583,014	10,415,889
Shore	12,924,229	15,742,027	15,523,346
<b>Wave 5 (Sep/Oct)</b>	<b>14,280,282</b>	<b>15,661,062</b>	<b>17,927,208</b>
Party/Charter	162,836	196,394	241,841
Private/Rental	5,088,573	5,607,930	6,712,099
Shore	9,028,873	9,856,738	10,973,268
<b>Total</b>	<b>62,063,009</b>	<b>68,649,684</b>	<b>69,465,739</b>

MRIP data from 2019 is the most recent recreational harvest data available for summer flounder. In 2019, final estimated harvest was 7.80 million pounds, or 1% over the 2019 RHL of 7.69 million pounds.

The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) met on November 16, 2020 to recommend 2021 recreational measures for these species. For summer flounder, the MC supported continued use of regional conservation equivalency for summer flounder in 2021, using the same regions as adopted in 2020. The group noted that the lack of 2020 harvest estimates would create high uncertainty when considering any adjustments to measures. The MC agreed with the rationale that *status quo* summer flounder measures would contribute to improved stability in the fishery and that 2019 data (in the absence of 2020 projections) does not indicate a cause for concern with maintaining the current measures. The MC acknowledged that while 2020 information is not available, given recent performance of this fishery, maintaining *status quo* measures could fall under the recently applied principle of not making minor adjustments in either direction as a way of accounting for uncertainty in the MRIP data.

The 2020 regions and measures are described in Table 2. These measures are expected to remain the same in 2021 with the exception of a minor change to New Jersey's regulations, as described below. Region-specific possession limits range from 2-6 fish with size limits ranging from 15.0-19.0 inches, with various seasons.

The only state expected to modify their 2020 measures in 2021 is New Jersey, which has submitted a proposal for a slight season modification, which was reviewed by the TC and will be forwarded to the Board for approval. New Jersey is proposing an adjustment to the season to allow for a May 28, 2021 start date coinciding with the Friday before Memorial Day as was practiced over the last several years. This would represent a delay in the opening date of 6 days compared to 2020 (from May 22 to May 28) and would extend the season end date by 9 days in September (from September 19 to September 28). These adjustments are expected to result in an overall reduction in harvest of 0.1% in New Jersey between 2020 and 2021. No adjustment to size limits or possession limits are being requested. The proposed management program for 2021 also allows for the continuation of the Delaware Bay specific management measures for New Jersey anglers west of the COLREGS line,<sup>4</sup> first implemented by New Jersey in 2016.

**Table 2:** Summer flounder recreational fishing measures in 2020, by state, under regional conservation equivalency. These measures are expected to remain nearly identical in 2021, with the exception of a slight season adjustment in New Jersey as noted below. 2020 regions include: 1) Massachusetts, 2) Rhode Island, 3) Connecticut and New York, 4) New Jersey, 5) Delaware, Maryland, The Potomac River Fisheries Commission, and Virginia, and 6) North Carolina.

State	2020		
	Min. Size (inches)	Bag Limit	Season
MA	17	5 fish	5/23-10/9
RI	19	6 fish	5/3-12/31
RI 7 designated shore sites	19	4 fish <sup>a</sup>	
	17	2 fish <sup>a</sup>	
CT	19	4 fish	5/4-9/30
CT Shore Program (45 sites)	17		
NY	19		
NJ	18	3 fish	5/22-9/19 <sup>b</sup>
NJ Shore program site (ISBSP)	16	2 fish	
NJ/Delaware Bay COLREGS	17	3 fish	
DE	16.5	4 fish	1/1-12/31
MD			
PRFC			
VA			
NC	15	4 fish	8/16-9/30

<sup>a</sup> Combined possession limit of 6 fish, no more than 2 fish at 17-inch minimum size limit.

<sup>b</sup> NJ proposes to change their season for 2021 to May 28-September 28, pending approval by the Board.

<sup>4</sup> 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).

Under conservation equivalency, the non-preferred coastwide measures are proposed to remain the same as in 20210, 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 2021 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 2021, no additional adjustments are required for the recreational fishery due to past overages (based on a comparison of average 2017-2019 catch to the 2017-2019 average ACL, as specified in the FMP).

### **Effects of the Action**

An initial 2021 RHL of 7.69 million pounds was analyzed through a 2020-2021 Summer Flounder Specifications Environmental Assessment (EA; “Specifications EA”<sup>5</sup>) in March 2020; however, as described above, this limit was recently revised to 8.32 million pounds based on revisions made to the Council’s risk policy. This revision was analyzed via an October 2020 Supplemental Information Report (SIR)<sup>6</sup> and implemented via final rule on December 21, 2020 (85 FR 82946). The revised summer flounder RHL represents an 8% increase from the previously implemented 2021 RHL of 7.69 million pounds. As discussed in the SIR, the impacts to the human environment of the revised 2021 RHL are not expected to differ substantially from those described in the Specifications EA for the initial 2021 RHL.

For this action, 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 described in the Specifications EA and SIR. 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 2020. Because state measures will remain identical or nearly identical to those implemented in 2020, the measures are projected to result in similar levels of effort and harvest as in 2020. These measures are also nearly identical to those implemented in 2019, such that 2021 harvest is also estimated to be similar to that in 2019. Recreational fishing seasons in 2021 will remain the same with the exception of New Jersey’s proposed slight seasonal adjustment, 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

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<sup>5</sup> 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](https://www.mafmc.org/s/FINAL-SFSBSB_2020-2021_specs_EA_signed-FONSI.pdf).

<sup>6</sup> MAFMC (Mid-Atlantic Fishery Management Council). 2020. 2021 Summer Flounder, Scup, and Black Sea Bass Specifications Revisions Supplemental Information Report (SIR) and Fishery Specifications Document. 48p. Available at [https://www.mafmc.org/s/2021-SIR-fluke-scup-BSB\\_Final.pdf](https://www.mafmc.org/s/2021-SIR-fluke-scup-BSB_Final.pdf).

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,

A handwritten signature in black ink, appearing to be 'C. Moore', with a long horizontal flourish extending to the right.

Christopher M. Moore, Ph.D.  
Executive Director

cc: K. Dancy, E. Keiley