



Mid-Atlantic Fishery Management Council
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MEMORANDUM

Date: March 29, 2021
To: Chris Moore, Executive Director
From: Kiley Dancy, Karson Coutre, and Julia Beaty, Staff
Subject: Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment: Council Staff Recommendations for Final Action

On Tuesday, April 6, the Council and Board will review public comments and input from advisors and the Fishery Management Action Team (FMAT) before considering final action on the Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment. This memo outlines three realistic paths forward from a Council staff perspective and potential implications of and considerations for each path. The three paths are: a) postpone final action to a time certain, b) take final action in April selecting the status quo allocation alternatives, or c) take final action in April selecting alternatives to change the allocations. Staff are not recommending a specific path; however, there are recommendations associated with each path if the Council and Board were to choose that path.

GARFO staff have indicated that due to their workload concerns and priorities, any allocation changes would not be implemented until January 2023. As such, allocations will remain status quo in 2022 under all scenarios. The impacts of status quo allocations are uncertain given that 2022 catch limits will be unknown until assessments are available later this summer. We are also unsure as to how the 2020 and 2021 recreational harvest estimates will be used to develop 2022 recreational measures. For the past two years, the Council and Board have recommended status quo recreational bag, size, and season limits despite expected Recreational Harvest Limit (RHL) overages to allow more time to complete this allocation amendment, to make progress on the Recreational Reform Initiative (see Appendix), and to more fully transition the management program to the use of the revised Marine Recreational Information Program (MRIP) data. Normally this would not have been possible under the constraints of the Fishery Management Plan (FMP); however, it was viewed as a temporary solution. It's not clear if a similar approach can be used for 2022 recreational management measures.

a) Postpone final action to a time certain

- As described in the public hearing summary and Advisory Panel (AP) meeting summary, many stakeholders and GARFO representatives have recommended further developing the Recreational Reform Initiative (see Appendix) before making an allocation decision. They suggest that fundamental changes to recreational fisheries management should be

considered before considering if and how the commercial/recreational allocations should be changed. This path has been discussed at previous Council and Board meetings, public hearings, the AP meeting and the FMAT meeting.

- If the Council and Board decide to postpone taking final action on this amendment, staff recommend postponing until a date certain, and propose postponing until December 2021. This would allow for further development of the Recreational Reform Initiative while still providing time for document development and rulemaking on the amendment before a target implementation of any allocation changes on January 1, 2023.
- Staff believe it is unwise to delay implementation of any desired allocation changes beyond January 2023 – a delay would result in additional years of status quo allocations. In this case, it would be preferable for the Council and Board to take final action at the April meeting by selecting the status quo alternatives (see section b), rather than postponing a decision indefinitely. Managers and stakeholders need clarity on if and how the Council and Board plan to revise the allocations. The allocations and the changes considered through the Recreational Reform Initiative can work together to define potential future management programs. Neither management action alone will completely resolve current management challenges. Staff believe that both the Recreational Reform Initiative and consideration of allocation adjustments through this action have the potential to address current management issues, and do not see a benefit to delaying implementation of this action beyond January 2023.
- Postponing a final decision on allocations indefinitely, rather than to a time certain, creates uncertainty for managers and stakeholders. Depending on when progress on the amendment were to be resumed, this would require updated analysis and potentially additional public comment period if available information were to change or there was a desire to change the alternatives. Staff strongly caution against postponing final action on this amendment indefinitely.

b) Take final action in April selecting the status quo alternative for each species

- If the Council and Board select the status quo allocation alternatives, the allocations will remain unchanged until reviewed through a future amendment (or framework action/addendum, if framework/addendum provisions are adopted through this action).
- In 2019, the Council adopted an allocation review policy which indicates that review of allocations should take place at least every 10 years.¹
- If future RHLs remain similar to recent levels under status quo allocations, this would likely require additional restrictions in the recreational scup and black sea bass fisheries to prevent RHL overages. For example, 2019 scup harvest (14.12 mil lb) was 117% higher than the 2020 RHL (6.51 mil lb) and the 2019 black sea bass harvest (8.61 mil lb) is 48% higher than the 2020 RHL (5.81 mil lb). These comparisons are provided as examples.

¹ The Council's allocation review policy is available at: https://www.mafmc.org/s/MAFMC-Fishery-Allocation-Review-Policy_2019-08.pdf.

Actual future percentage reductions or liberalizations will vary depending on the outcome of the 2021 stock assessments, as well as future recreational harvest estimates.

c) Take final action in April selecting alternatives to change the allocations

- As described above, GARFO has indicated that any allocation changes adopted at the April meeting would be effective January 1, 2023.
- If the Council and Board take final action in April selecting alternatives to change the allocations, they must choose preferred alternatives based on the information currently available. For example, there is currently no indication that the Recreational Reform Initiative will eliminate the need to constrain the recreational fishery to their catch and landings limits and therefore eliminate the need for near-term restrictions in the recreational scup and black sea bass fisheries under status quo allocations. The Recreational Reform Initiative focuses on management changes to more appropriately account for uncertainty and variability in the MRIP data and provide stability in the recreational bag, size, and season limits (see Appendix). It does not consider ways to avoid the Magnuson Act provisions that require accountability measures for annual catch limit (ACL) overages. Therefore, if the Council and Board were to select a preferred alternative to change the allocations in April, their selection should not be based on an assumption that the Recreational Reform Initiative will prevent the need to further constrain the recreational fisheries. At this point in time, a considerable amount of additional work needs to be done to determine exactly how the Recreational Reform Initiative could change recreational fisheries management for 2022 and beyond. As described in the Appendix, the Council and Board prioritized a list of topics for further development through the Recreational Reform Initiative. However, the details of the associated potential management changes have not been fully developed.
- If the Council and Board select alternatives that change the allocations in April, the sections below contain species-specific considerations for how to change the allocations, given currently available information.

Summer Flounder

Staff agrees with the FMAT conclusion that catch-based allocations are generally preferable from a technical and process standpoint.² Currently, the summer flounder allocation is landings-based. This has resulted in each sector receiving a varying percentage of the Acceptable Biological Catch (ABC) each year in the form of sector ACLs, depending on annual sector discard trends. Because the management process has moved toward catch accounting and greater consideration of discards since the original summer flounder allocations were set, changing the summer flounder allocation to catch-based would simplify the specifications process and decrease the influence of discards from one sector on the other sectors ACLs.

The current 1980-1989 base years for summer flounder were adopted by the Council and Commission based on landings data during a time period when the fisheries were largely

² See 3/24/21 FMAT meeting summary to be posted in supplemental materials at <https://www.mafmc.org/briefing/april-2021>.

unconstrained prior to implementation of the joint FMP. Staff believe that updating these base years with our current best scientific available data would be a well-justified approach for revising summer flounder allocations should the Council and Board wish to reallocate. Other base year options would represent time periods during which each sector was theoretically constrained by their existing allocation, while in practice the summer flounder, the recreational fishery has had much more variable performance relative to their limits since 2004 compared to the commercial fishery. However, for summer flounder, catch-based allocations cannot be calculated using the existing 1980-1989 base years given that dead discard estimates are not available in the stock assessment until 1989. Observer data cannot be used to develop summer flounder discard estimates for years prior to 1989. In addition, MRIP data are only available starting in 1981, so the full 1980-1989 base years cannot be re-calculated for the recreational fishery in catch or harvest.

Based on these considerations, if the Council and Board decide to change the allocations in April, staff recommend selecting a new alternative using the percentages from landings-based alternative 1a-5 (55% commercial, 45% recreational based on 1981-1989 revised data), but applied to catch instead of landings. This would allow for continued use of the existing base years with a transition to a catch-based allocation approach. In comparison to the other alternatives in the document, this would represent a relatively small shift in allocation from the commercial to recreational sector and represent an outcome between status quo (alternative 1a-4) and each of the existing catch-based alternatives (alternatives 1a-1 through 1a-3).

A catch-based allocation of 55% commercial/45% recreational would in fact be very similar to recent splits of the ABC into sector ACLs (Table 1). In this way, this allocation would represent an outcome close to status quo in many years, depending on sector discard trends and projection methods. Furthermore, landings limits for each sector would vary based on projected sector discards, providing an incentive to reduce discards in a given sector to increase their landings limits.

Table 1: Effective split of the ABC into implemented sector ACLs for summer flounder since 2012.

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Avg
Comm ACL % of ABC	55%	54%	59%	59%	58%	58%	58%	54%	54%	54%	56%
Rec ACL % of ABC	45%	46%	41%	42%	42%	42%	42%	46%	46%	46%	44%

Scup

For the purposes of setting specifications and catch accounting, FMAT members generally preferred catch-based allocations. Unlike for summer flounder and black sea bass, the allocation percentages for scup are currently catch based, therefore staff do not recommend further consideration of the landings based reallocation alternatives (1b-5, 1b-6, and 1b-7).

Under all reallocation alternatives there are several tradeoffs to consider. Unlike black sea bass and summer flounder, the scup stock biomass estimate did not increase after the incorporation of the revised MRIP data. In addition, scup biomass is currently decreasing, though still well above

the target level. The base years used for the current scup allocation percentages are all years prior to Council and Commission management. The approach under alternative 1b-2 of revising the commercial/recreational allocations using the same base years with the updated data would allow for consideration of scup fisheries prior to influence by the commercial/recreational allocations and harvest constraints. It would also use what is currently the best scientific information for these fisheries in those base years.

Based on example quotas and RHLs calculated for the Public Hearing Document and recent landings information, the other catch-based reallocation alternatives (1b-3 and 1b-4) would likely allow for less restrictive measures for the recreational sector than alternative 1b-2; however, these alternatives would reallocate based on time periods when the recreational fishery was effectively less constrained to their limits than the commercial fishery. This was a prominent fairness issue identified throughout the public comment period. Based on this same comparison for the commercial sector, all the catch-based reallocation alternatives (1b-2, 1b-3 and 1b-4) would not require more restrictive commercial measures under similar ABCs. If scup biomass continues to decline, or the scup market expands and landings increase, revised allocations have the potential to limit the commercial sector compared with status quo allocations. Based on these considerations, if the Council and Board decide to change the allocations in April, alternative 1b-2 (same base years with revised data) is the recommended alternative and would result in 65% allocation to the commercial sector and 35% allocation to the recreational sector.

Black Sea Bass

As described in the Public Hearing Document, the black sea bass commercial quotas and RHLs both increased by 59% from 2019 to 2020 based on the 2019 operational assessment. This was largely the result of incorporating the revised time series of MRIP data into the assessment, but it was also partially the result of the above average 2015 year class. The quotas and RHLs also increased slightly from 2020 to 2021 due to a change in the Council's risk policy. The degree to which the recent catch and landings limits increased because of the new MRIP data, as opposed to the risk policy change and the above average 2015 year class, cannot be precisely quantified. It stands to reason that both sectors should benefit from biomass increases due to factors other than the revised MRIP data (i.e., incorporation of data on the above average 2015 year class and the risk policy change). However, as described in the Public Hearing Document, only alternatives 1c-4 (status quo black sea bass allocations) and 1c-5 (same base years, new data) would allow the commercial fishery to increase their landings beyond historic levels if the ABC remains similar to recent years. These same alternatives would require notable restrictions in the recreational fisheries to constrain harvest to the RHL if the ABC remains similar to recent levels (Figure 1). All other reallocation alternatives would constrain the commercial fishery to at or below pre-2019 levels, would not allow recreational liberalizations, and could require some moderate recreational restrictions in some cases. Under all reallocation alternatives there are several tradeoffs to consider

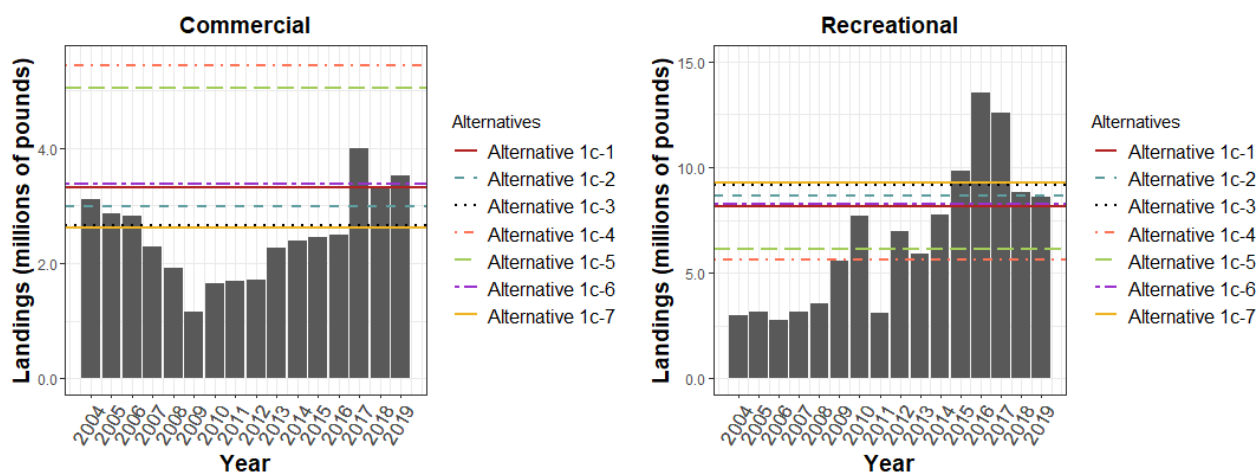
Based on the same fairness considerations described above for scup, Council staff do not believe it would be appropriate to constrain the commercial fishery to below pre-2019 levels with the sole purpose of preventing the need for additional recreational restrictions. For these reasons, if the Council and Board wish to select a preferred reallocation alternative for black sea bass at the April meeting, Council staff recommend consideration of allocation percentages that are not associated

with a specific alternative in the Public Hearing Document, but are within the range of those alternatives.

For the same reasons described above for the other species, staff recommend transitioning to a catch-based allocation for black sea bass. Staff recommend consideration of a catch-based allocation of 42% commercial and 58% recreational, which would result in an example commercial quota of 4.12 million pounds and example RHL of 6.95 million pounds, based on the methodology described in Appendix C of the Public Hearing document, which used the 2020 ABC. The 2021 ABC is slightly higher than the 2020 ABC due to the risk policy change. The ABCs for 2022 and beyond are currently unknown and will depend on upcoming stock assessments. The example quota of 4.12 million pounds is identical to the historic high for the black sea bass quota in 2017. It would allow for a slight increase in commercial landings compared to the 2018-2019 quotas (both 3.52 million pounds); however, it would represent a notable reduction in quota compared to the 2020 quota (5.58 million pounds, which was not fully landed due to COVID-19 impacts) and the 2021 quota (6.09 million pounds). It should be emphasized that the example quotas under any allocation scheme are examples and actual future quotas may vary. A 58% recreational catch-based allocation would require recreational restrictions, considering recent recreational harvest (e.g., 8.61 million pounds in 2019, the most recent complete year for which information is available) and the example RHL of 6.95 million pounds. At this time, Council staff are not aware of any option that would prevent constraining the recreational fishery to their ACL and RHL under the current management program.

In fact, there is no black sea bass allocation approach based on currently available data that would allow the commercial fishery to stay at or above recent landings levels without requiring recreational restrictions, and vice versa. Council staff suggest a 42% commercial, 58% recreational catch-based allocation in an attempt to balance the tradeoffs for both sectors. However, it must be acknowledged that if ABCs remain similar to recent levels, this would result in a need to further constrain the recreational fishery and it would reduce the commercial quota below the 2020 and -2021 quotas (though it would not represent a reduction in commercial landings compared to 2004-2019 as shown in Figure 1).

A 42% commercial, 58% recreational catch-based allocation for black sea bass is within the range of alternatives presented in the Public Hearing Document based on the example quotas and RHLs. Although the specific percentages are not within the range defined by the other catch-based allocation alternatives, Council staff believe this proposed alternative qualifies as within the range of the alternatives based on the expected outcomes.



It is important to note that all alternatives under consideration are assuming that the ABC is similar to the 2020 ABC, which was higher than any previous ABC for black sea bass.

Figure 1: Recent (2004-2019) commercial and recreational black sea bass landings with comparison to example commercial quotas and RHLs developed using the 2020 ABC (see Appendix C of the Public Hearing Document for methodology).

Phase-in Provisions

The benefits of a phase-in period will vary depending on the magnitude of the allocation change implemented and the species under consideration. If the Council and Board wish to use a phase-in period, Council staff recommend a two-year phase-in (alternative 1d-2) rather than a longer phase-in. Depending on the magnitude of the change implemented, a two-year phase-in would most appropriately balance the need to efficiently transition to a revised allocation with the desire to mitigate some of the negative socioeconomic impacts of reallocation and allow stakeholders to adjust.

Transfers

Due to the implementation complexities associated with the proposed transfer process outlined in the Public Hearing Document, Council staff advise against the use of transfers for any of these species. Therefore, staff recommend selection of alternative 2a (no action on transfers).

Framework/Addendum

Council staff support the use of frameworks/addenda to make future allocation changes acknowledging that major allocation changes or controversial allocation changes should still be considered through an amendment. While staff currently recommend against implementing a transfer process for these species, staff recognize that fishery needs, data availability, and proposed transfer mechanisms could change in the future. In this case, a framework/addendum process would be a more efficient means of considering transfer provisions in the future should the Council and Board deem it appropriate. Therefore, Council staff recommend selection of alternative 3b (allow future changes to allocations, transfers, and other measures included in this amendment) as a preferred alternative. Council staff also advise against constraining the use of

frameworks/addenda to changes within a pre-determined range because the decision to use a framework/addendum or an amendment should always be made on a case-by-case basis.

APPENDIX: Recreational Reform Initiative

The goals of the Recreational Reform Initiative are to achieve a greater degree of:

- Stability in recreational bag, size, and season limits;
- Flexibility in the management process; and
- Accessibility aligned with availability and stock status.

It is not the intent of the Recreational Reform Initiative to change the current Magnuson Act or FMP requirements for ACLs and accountability measures, nor is the intent to change how catch and landings limits are calculated. The Recreational Reform Initiative will focus more on topics such as how to better account for uncertainty and variability in the MRIP data while also trying to achieve the three goals listed above.

The table below outlines the topics prioritized by the Council and Board through the Recreational Reform Initiative. More information is available in the staff memo at: https://www.mafmc.org/s/Tab01_Rec_reform_memo_Feb2021_v2.pdf.

Table 2: Example grouping of the prioritized Recreational Reform Initiative topics into three types of management actions. The grouping of the technical guidance document and framework/addendum topics may be revisited after further consideration of which topics may require or warrant a change to the FMPs.

Technical Guidance Document	Framework/Addendum	Amendment
<ul style="list-style-type: none"> • Develop a process for identifying and smoothing outlier MRIP estimates. • Evaluate the pros and cons of using preliminary current year MRIP data. • Develop guidelines for maintaining status quo measures. 	<ul style="list-style-type: none"> • Envelope of uncertainty approach for determining if changes to recreational management measures are needed. • Develop process for setting multi-year recreational management measures. • Consider changes to the timing of recommending federal waters measures. • Harvest Control Rule proposal put forward by 6 recreational organizations. 	<ul style="list-style-type: none"> • Recreational sector separation. • Recreational catch accounting.