



## Summer Flounder, Scup, and Black Sea Bass Allocation Amendment

### FMAT Meeting Summary

March 24, 2021

Webinar

**FMAT Attendees:** Gregory Ardini (NEFSC), Julia Beaty (MAFMC), Dustin Colson Leaning (ASMFC), Karson Coutre (MAFMC), Kiley Dancy (MAFMC), Marianne Ferguson (GARFO), Emily Keiley (GARFO), Savannah Lewis (ASMFC), Gary Shephard (NEFSC), Mark Terceiro (NEFSC)

**Other Attendees:** Katie Almeida (AP member), Joan Berko (AP member), Bonnie Brady (AP member), Kiersten Curti (NEFSC), Greg DiDomenico (AP member), Michelle Duval (Council member), James Fletcher (AP member), Adam Nowalsky (Council member and Board Chair), Mike Plaia (AP member), Eric Reid (Council member), Paul Risi (Council member), Wes Townsend (Council Vice Chair), Mike Waine, Anthony Wood (NEFSC)

The Summer Flounder, Scup and Black Sea Bass Commercial/Recreational Allocation Amendment Fishery Management Action Team (FMAT) met on March 24, 2021 from 1:00 PM to 4:00 PM via webinar. The purpose of this meeting was to review the public comment summary, Advisory Panel (AP) input, and provide recommendations on the alternatives considered in the amendment.

The FMAT discussed guidance and considerations for the Council and Board for final action, however they did not recommend specific alternatives for commercial/recreational allocation. Key points discussed by the FMAT are summarized below, grouped by theme.

#### ***Amendment Timing, Intersection with the Recreational Reform Initiative, and Implications for 2022***

The Greater Atlantic Regional Fisheries Office (GARFO) has indicated that it is extremely unlikely that changes could be implemented for 2022, even if final action is taken on the amendment at the April 2021 joint meeting. The new expected implementation date for any allocation changes adopted in 2021 would be January 1, 2023.

GARFO reiterated their position made over the last few Council and Board meetings that final action on this amendment should be paused in order to further develop the Recreational Reform Initiative. Several stakeholders expressed support for this position during the public comment period of the FMAT meeting. Proponents of a delay argue that a better sense of potential management changes through the Recreational Reform Initiative may inform the allocation decisions that the Council and Board would make through this action. GARFO noted that they believe it is still useful to talk about the allocation options in this amendment, because there is still a potential need for reallocation.

The FMAT was not in agreement about whether the Council and Board should postpone this action. Some FMAT members were unsure of how the Recreational Reform Initiative would inform allocation decisions. The Recreational Reform Initiative does not eliminate the Magnuson-Stevens Act requirement for Annual Catch Limits (ACLs) and associated Accountability Measures (AMs). However, the Recreational Reform Initiative may consider changes to the AMs and, or how performance relative to the ACL is evaluated. The Recreational Reform Initiative does include considerations related to recreational data collection (e.g., private angler reporting); however, this is not a high priority, any changes would not be implemented for several years, and MRIP will remain the best available data on the recreational fisheries for the foreseeable future.

The FMAT did agree that if this amendment is postponed, it should be postponed to a time certain and not indefinitely. FMAT members agreed that postponing indefinitely would most likely result in a similar outcome to adopting status quo allocations at this meeting, at least in the short term and probably also in the longer term. After discussing the implications of possible postponement timelines, the FMAT agreed that the Council and Board could postpone final action until October or December 2021 to allow for additional progress on the Recreational Reform Initiative, while still allowing for a target implementation date of January 2023 for any allocation changes.

Postponing until October as opposed to December would not allow as much time for progress on the Recreational Reform Initiative prior to final action, but would provide an additional timing buffer for 2023 implementation. The FMAT noted that final action on a Recreational Reform Initiative framework/addendum is not expected before December, so in either case, the Council and Board would only have the benefit of a more detailed sense of how the Recreational Reform Initiative *may* work and not a complete picture of how recreational management will change going forward. This could include a better understanding of how a Harvest Control Rule strategy would work, which is a top priority for the Council and Board among the Recreational Reform Initiative topics. Regardless of whether the Council and Board choose to postpone final action on the allocation amendment at this meeting, the issue remains of how to handle recreational management in 2022 under status quo allocations. GARFO has suggested that concepts from the Harvest Control Rule could be applied to the 2022 fishery in some fashion; however, it is not yet clear what could be done given that a change to the FMP could not be implemented in time for 2022.

If the Council and Board choose to postpone final action on the allocations until later in 2021, additional analysis or comment periods may not be necessary unless new alternatives are requested that are outside the existing range. However, the Council and Board could request additional analysis or hold an additional public comment period if they desired. The Council and Board may also wish to solicit new comments if new information may change the public's perception of the allocation decisions (e.g., after further development of the Recreational Reform Initiative). If action on the allocation amendment is postponed indefinitely, depending on when the action were reinitiated, there may be a need to update the data and analysis and possibly a need for a supplemental comment period.

The FMAT agreed that with an implementation date of January 1, 2023, about four months following final action would be ideal for document finalization and submission t, accounting for other ongoing priorities for these species (e.g., specifications). Additional time would be needed

after document submission for NOAA Fisheries rulemaking. If new alternatives were proposed that are not currently in the document, additional time could be required to analyze these appropriately depending on how new alternatives compare to the existing alternatives. This timeline also depends on the overlap of this work with other priorities such as annual specifications development. Ideally, the final rule for any changes effective in 2023 would publish prior to late 2022 to avoid overlap with 2023 specifications and rulemaking and recreational measures development.

### ***Commercial/Recreational Allocation Recommendations***

The FMAT did not feel comfortable making specific recommendations about whether to reallocate or which alternative is preferred. Several FMAT members spoke generally in favor of catch-based allocations from a process perspective and agreed that if the Council and Board decided to reallocate, they would recommend consideration of moving from a landings-based to a catch-based allocation for summer flounder and black sea bass. From a process perspective, allocation percentages applied at the Acceptable Biological Catch (ABC) level make more sense in terms of deriving sector specific ACLs and catch accounting. One FMAT member noted that since scup is already catch-based, it would be better for it to remain catch-based for those reasons as well.

The FMAT also discussed the potential for allocation percentages to be put forward that are not specifically included as an alternative but that fall within the range of percentages. One potential issue is that landings and catch-based allocation percentages are not directly comparable so it may be necessary for staff to run additional analyses, such as deriving example quotas and RHLs for any new percentages proposed. This may be hard to do on the fly during a Council/Board meeting, so the FMAT encourages any Council or Board member who may have a new proposed alternative to send it to staff ahead of the meeting.

One FMAT member said the Council and Board must provide a rationale for any recommendation to change the allocations. For example, NOAA Fisheries lost a lawsuit regarding red snapper allocation in the Gulf of Mexico because the justification for reallocation was based too heavily on a recreational “need” resulting from a change in the MRIP data. The commercial sector was not able to demonstrate a “need” for a different allocation because they were more closely constrained to their catch and landings limits than the recreational sector. The needs of both sectors can be considered in a reallocation decision; however, any allocation changes should not be based solely on the different perceived needs of each sector, especially as the two sectors have very different abilities to demonstrate their need. Several FMAT members agreed that data changes could be decent rationale for changing allocations, though they did not say that this means allocations should change in any specific way. Several FMAT members also agreed that socioeconomic considerations and data considerations could both be part of the rationale.

Another FMAT member added that there are some different reallocation considerations for the commercial scup fishery than for the summer flounder and black sea bass commercial fisheries, which have been more highly utilized. They noted that commercial scup landings were lower in 2018-2019 relative to the previous few years, though the price of scup was relatively high in 2018-2019. What is behind the decrease in landings for those years is not known, and the likelihood of

a future increase in landings is uncertain. The impacts associated with scup allocation changes therefore may be more uncertain than those described for summer flounder and black sea bass.

### ***Phase-In Provisions***

FMAT members noted that the preference for phase-in length depends on which allocation change is selected so it may not make sense to put forward a specific recommendation. Public comments related to phase-in provisions tended to favor either no phase-in or a 2-year phase-in of reallocation. These comments were limited in number and most were made by recreational stakeholders, given that commercial stakeholders tended not to comment on phase-in provisions as they supported status quo allocations. Thus, there is limited evidence of what most stakeholders would prefer if phase-in were used. In addition, the impacts of a phase-in depend not only on the allocation change, but also on future catch and landings limit levels over the phase-in period. For example, if the ABC increases, a phase-in may be viewed as less necessary than under a lower ABC. If the ABC decreases over the phase-in period, some of the benefits of phase-in for the sector losing allocation may be negated. The FMAT supported phase-in periods as an option but did not support a specific approach.

### ***Transfer Provisions***

The FMAT discussed transfer process related concerns include a timing lag between data used and implementation year, overage concerns, and the high utilization of these fisheries. They agreed that in theory transfers are worth considering for the additional flexibility, but the way transfers would need to be implemented in practice doesn't seem to provide much benefit. For this reason, the FMAT recommends alternative 2a (status quo/no transfers). They agreed that if development of transfer provisions were added as a frameworkable option for the future, it could provide the opportunity to develop a different proposed transfer process if desired by the Council and Board, without having to go through an amendment process (see next section).

### ***Framework/Addendum Provisions***

Although the alternatives to allow transfers through this amendment were not recommended by the FMAT as a solution to the allocation issues due to data, timing, and process concerns, they agreed that having transfers as a frameworkable option in the future leaves managers some potential for expediency in developing a process that could work without needing the full amendment process. The FMAT felt that this could be a useful tool in the toolbox though it does not seem it would solve the current issues at hand.

FMAT members agreed that it is beneficial to not be overly prescriptive on specific guidelines for percent reallocation that would warrant an amendment versus a framework/addendum. Generally, it could be useful to have small adjustments in calculating allocation percentages accomplished through a framework, but larger adjustments should likely be done through an amendment due to the need for more opportunities for public involvement and development. Under alternative 3b, the Council and Board can always choose to go through an amendment and would not be forced to select a framework if they were not comfortable with that. There may also be situations where NOAA Fisheries guidance would indicate that an amendment process is preferable or necessary.

For these reasons, the FMAT recommends adoption of alternative 3b, to allow changes to commercial/recreational allocations and allow development of future transfer provisions through a framework/addendum.

### ***Other Attendee Comments***

One attendee asked what final action in April would mean for recreational management in 2022 and asked whether it would mean that NOAA Fisheries could continue the justification for status quo recreational measures that has been used in recent years. GARFO staff responded that if the Council and Board want to make allocation changes for implementation in 2022, it would mean that any other priorities for these species would have to be put on hold to achieve that, including the Recreational Reform Initiative. If the Council and Board either delay or take action but acknowledge 2023 as the target implementation, the options for the 2022 recreational fishery are still unclear. There are still several unknowns, including 2022 catch limits, which will depend on the results of the 2021 stock assessments. Species specific 2020 recreational harvest estimates are also not available at this point in time due to COVID related data impacts. Preliminary partial year data from 2021, which are currently unknown, are also likely to be used to inform 2022 recreational management needs. It is also not currently clear how progress on the ongoing Recreational Reform Initiative may inform 2022 management measures. Due to these considerations, the GARFO representative on the FMAT was hesitant to comment on 2022 at this time.

One attendee asked for clarification on the FMAT comments about catch-based allocations being preferable to landings-based allocations and whether the FMAT was recommending reallocation because of this preference. FMAT members clarified that they recommend a catch-based allocation from a technical perspective if the Council and Board decide to reallocate, but they weren't recommending whether or not reallocation should occur, nor were they endorsing specific alternatives in the document. This attendee also commented on past recreational overages and stated that these issues should have been addressed in the past. They further expressed frustration that this amendment has brought about an adversarial relationship between the recreational and commercial sectors.

One attendee asked if the Council and Board chose an allocation in April whether it would be applied to specifications in 2022 and GARFO clarified that this would not be the case. This attendee also felt that Council and Board did not have enough time on the agenda in April to thoroughly discuss these issues and take final action.

Another attendee spoke as a member of a commercial fishing family and representing other fishing families and said this discussion of cuts in three important fisheries is on top of the industry's struggle with the impacts of COVID-19.

One attendee noted that they appreciated the clarification on the catch-based landings recommendations and the discussion about the case law that exists. They also asked for clarification on the FMAT's rationale for not recommending transfers. FMAT members clarified that it would be difficult to implement given the timing of data availability and the start of the fishing year, and that it does not seem to be a solution to the ongoing issues. Additionally, very little public comment in favor of transfers was received.