



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

June 3, 2022

Mike Luisi, Chair
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 1990

Dear Mike:

As you know, the Atlantic States Marine Fisheries Commission's Policy Board and the Mid-Atlantic Fishery Management Council are expected to take final action on the Harvest Control Rule (HCR) Framework/Addendum at their joint meeting on June 7, 2022. This meeting is the culmination of four years of development, including two Scientific and Statistical Committee (SSC) reviews and the collective efforts of the Plan Development Team (PDT) and Fishery Management Action Team (FMAT), the recreational reform working group, the Council and Commission, and state and Regional Office staff. Given the tremendous collective efforts on this action, I was disappointed when I read the Council staff recommendation for, essentially, a status quo approach.

The Council staff recommendation was posted Friday, May 27, after the most recent meeting of the PDT/FMAT. However, the staff recommendation does not include any insight on what these technical bodies discussed or have recommended at this or any previous meeting. Given the timing of the memo's release, the PDT/FMAT did not have the ability to weigh in on the staff recommendation. Although the PDT/FMAT did not recommend a specific alternative, or provide any consensus statements, many of the members spoke against the status quo, citing the need to move away from comparing a Marine Recreational Information Program (MRIP)-based catch estimate and the recreational harvest limit (RHL) as the sole means by which these fisheries are managed. No mention of these deliberations and technical expertise was provided in the staff memo, and the memo failed to acknowledge the full scope of the PDT/FMAT contributions. For all actions, it is imperative that the Council receive the benefit of the full range of discussions in order to make an informed decision based on the range of scientific and policy expertise available to it.

Regarding the content of the staff recommendation, while I agree that use of the models proposed in the HCR is likely to improve our ability to predict recreational catches, that alone is unlikely to solve our problems. The staff memo suggests that the recommended approach is not "status quo," yet, other than shifting to a 2-year measure-setting process, and the potential future use of the models (which is already be allowed under the existing regulations), the process is unchanged.

A consistent theme in the discussions about recreational management over the last few years, from both Council and Board members as well as public comments, is that we should explicitly consider stock status when making determinations about recreational management measures. This would allow us to better understand the impact that recreational catch is having



on the stock, rather than simply comparing uncertain catch estimates to projection-based catch limits. The current regulations, which the staff recommends remain the same, require us to propose measures that achieve the recreational annual catch limit (ACL), irrespective of stock status. If these regulations remain unchanged, we will still be unable to consider factors such as biomass and fishing mortality in our deliberations on the appropriate recreational management measures. The ability to consider these factors has been a foundational component of the HCR effort, recent Council and Board deliberations, and public comments. The Council staff recommendation seems to ignore this critical component.

The staff recommendation references recent improvements to the management process, including the use of multi-year averages and outlier identification. As you know, these methods are not new, and even when used while considering recreational measures for 2022, they resulted in the need for a 20.7-percent reduction for black sea bass harvest and a 56-percent reduction for scup; reductions that many around the Council/Board table argued were unnecessary given the stock status and trend of these stocks. In addition, this process resulted in a liberalization of summer flounder measures; a stock in a less robust condition than black sea bass or scup. The reductions for scup were strongly opposed by the Council and Board, and ultimately the Council voted *against* the reduction that met the current regulatory requirements for that species. It is unclear how continuation of these techniques represents an improvement to the process.

The staff recommendation also makes a number of comments about the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, some of which may be misleading to the reader or potentially imply that the alternatives are not legal. To be clear, neither a recreational harvest limit nor a recreational sector-specific ACL are requirements of the Magnuson-Stevens Act. While an overall ACL as well as accountability measures are required, these are designed to prevent overfishing at the stock level. The Act also defines overfishing to mean a “rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.” Explicitly agreed upon, by the PDT/FMAT and presented at previous Council/Board meetings, was that the target level of recreational removals would be designed to ensure that overfishing does not occur. The overarching goal of the Magnuson-Stevens Act is to create a system that prevents overfishing, and given the frequent stock assessments, reactive accountability measures, and proactive approach prescribed by the alternatives for setting measures, it is unclear how the new approaches would be in violation of the Act as implied by the Council staff memo.

One of the goals of the alternatives under consideration in the framework is to create a process that recognizes the uncertainty and variability in the data we have on recreational catch, and the catch limits we set, while ensuring that changes in measures are responsive to changing stock conditions (as indicated by metrics such as biomass, recruitment, and fishing mortality). While recreational harvest may be projected to exceed an RHL, this does not always, and often has not, resulted in overfishing.

Given the difficulty in projecting recreational harvest and the uncertainty associated with MRIP data, the triggers identified in the model-based approaches seem a reasonable path forward because they would use the most recent and best available science to determine if changes to recreational management measures are needed to prevent overfishing. A stock close to its target

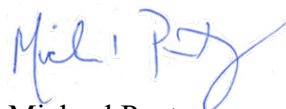
but with a declining biomass trend is more in need of conservative management than a stock at twice its target and a stable or increasing biomass. Yet, in 2022, the structure of the current regulations, which remain blind to stock status, allow for liberalization of measures for summer flounder while requiring significant restrictions for black sea bass and scup. Although the following comment from the SSC report was related to a specific alternative, the point is valid and important to consider as it underscores that the purpose of ACLs/management measures is to prevent overfishing:

“This option compares recent harvest performance to determine whether regulations should be liberalized or restricted. The decision variable should instead be a comparison of recent F [fishing mortality] due to recreational harvest with target F. This is particularly important in situations where a subsequent stock assessment revealed that biomass was underestimated. Under these conditions, the poor performance was in part due to an increase in abundance rather than an increase in F. Regulations are designed to control fishing mortality; decisions to adjust regulations should therefore rely on comparison between target and realized Fs.”

Other than the status quo, the alternatives in the framework provide mechanisms to take into account the status of the stock in terms of biomass relative to its target, trends in stock growth, and/or recent fishing mortality. These alternatives would all be more closely aligned with the scientific advice of the SSC, as well as recent comments by many members of the Council and ASMFC. Frequent stock assessments, proactive and reactive accountability measures, including those directly built into the alternatives themselves, all provide sufficient assurance that the Council can prevent overfishing from occurring through the use of these innovative approaches to recreational management.

It is my strong opinion that the Council/Board process and outcomes for 2022 clearly demonstrate that status quo recreational management for these fisheries is not an acceptable way to move forward. This should be particularly clear given that the Council and Board have explicitly asked us, as recently as this year, to disregard the current regulations by implementing measures that do not meet the requirements of the status quo regulations. The Council staff recommendation is no better than the status quo. I recommend that the Council and Board lead on a course of action that will meaningfully improve the methods used to set management measures. The current system is not working, and this is the Council and Board’s opportunity to weigh in on how to improve the process and management of recreational fisheries. In the absence of meaningful action, NOAA’s National Marine Fisheries Service may be required to make regulatory changes under our own authority. I do not think any of the alternatives are perfect, but they do represent a step forward. As always, we will continue to improve management while taking into consideration its performance and the needs of our stakeholders.

Sincerely,



Michael Pentony
Regional Administrator