



## Summer Flounder Small Mesh and Flynet Exemption Programs Discussion Document for November 2023 Monitoring Committee Meeting

### Introduction

The Mid-Atlantic Fishery Management Council (Council) and Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) are considering several summer flounder mesh regulation issues at their December 2023 joint meeting. This document provides background information and preliminary analysis for the Monitoring Committee's consideration of:

1. The **Small Mesh Exemption Program (SMEP)**, which allows trawl vessels to obtain a Letter of Authorization (LOA) to land more than 200 pounds of summer flounder east of longitude 72° 30.0'W, from November 1 through April 30, using mesh smaller than 5.5" diamond or 6.0" square.
2. The **flynet exemption** to the minimum mesh size requirement, which provides an exemption to the minimum mesh size requirements for vessels fishing with a two-seam otter trawl flynet with specifications defined in regulation.

The SMEP and flynet exemption can be modified through specifications and would not require a separate action. However, if more intensive exploration of potential changes is desired, a framework action/addendum could be initiated. The Council and Board may choose to 1) make no changes to these measures, 2) recommend specific changes with the option of specifying a phase-in period, or 3) identify additional analysis or research needs, and consider initiating an action if desired, to support future consideration of this issue.

The Monitoring Committee should review the information below as well as public feedback provided thus far, and provide feedback and recommendations to the Council and Board on whether changes to the SMEP or flynet exemption are needed. The Monitoring Committee could also identify additional analysis/research needs as appropriate.

### 1. Small Mesh Exemption Program

#### Problem Summary

Since 1993, the FMP has allowed for an exemption to the summer flounder minimum mesh regulations under the **SMEP**, as described below. Participation in this exemption program requires a Letter of Authorization (LOA) from NMFS Greater Atlantic Regional Fisheries Office (GARFO). The number of vessels participating has remained relatively stable over time based on the number of LOAs issued and observer coverage. However, there is less information available to evaluate the absolute extent of summer flounder harvest or discards using this exemption since data for these metrics are based on observer coverage, of trips assumed to be fishing under this exemption. The Monitoring Committee had previously flagged concerns with some years where a higher percentage

of summer flounder discards were observed for trips presumed to be using the exemption; however, this was largely attributed to low quotas over that time period. A few managers and advisors have previously suggested potential modifications to the SMEP that might be considered in this review. Industry feedback was solicited to inform Council and Board discussion of whether the regulations are still serving the original intent, whether there are problems with the exemption program, and if changes to this exemption program are warranted.

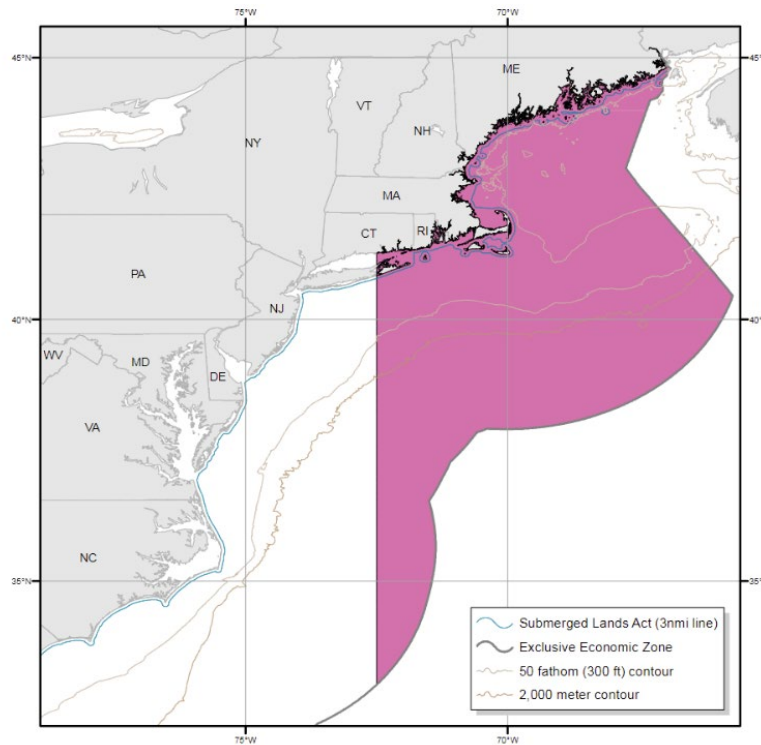
## Background

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Summer flounder moratorium permitted vessels fishing east of longitude 72° 30.0'W (Figure 1), from November 1 through April 30, and using mesh smaller than 5.5-inch diamond or 6.0-inch square, may land more than 200 pounds of summer flounder. Participation in this program requires an LOA obtained through GARFO. Vessels must be enrolled in the program for a minimum of 7 days and may not fish west (landward) of the line while enrolled in the program.

This exemption program was initially suggested by the New England Fishery Management Council and industry participants. It was designed to allow vessels to retain some bycatch of summer flounder while operating in other small-mesh fisheries. The program was developed under Amendment 2 to the FMP in 1993 and modified under Amendment 3 (1993). At the time it was determined that the exemption would not pose an issue for the stock because the mesh size requirement was designed to protect smaller summer flounder, which largely were not being caught in these offshore areas in the winter months. The exemption was thus viewed as consistent with the conservation goals of the FMP while reducing discard waste in the summer flounder fishery.

The original demarcation line followed a yellowtail large mesh area at the northern end before following 72°20.0'W longitude to the south. This proved difficult for compliance and enforcement and was also not favored because of the way it bisected Hudson Canyon. Amendment 3 adjusted the line of demarcation to 72°30.0'W. It has remained unchanged since that time.



**Figure 1:** Summer flounder small mesh exemption area.

Amendment 3 also specified that “if the Regional Director determines after a review of Sea Sampling data that vessels fishing seaward of the line described above are discarding more than 10% of their summer flounder catch, the Regional Director may rescind the exemption.”

The Monitoring Committee is responsible for reviewing observer data annually to evaluate whether vessels fishing under this exemption program are discarding more than 10% of their summer flounder catch. The Committee may recommend adjustments to the exempted area and boundary in 30-minute intervals of latitude and longitude, and to the seasons in 2-week intervals.

Based on observer coverage, 5.79% of trips fishing seaward of the line discarded more than 10% of their summer flounder catch in the most recent period evaluated (November 2021-April 2022). Since 2015, (excluding 2021 when observer coverage was diminished due to Covid), this percentage has ranged from 3.97%-6.18% (Table 1).

**Table 1. Numbers of observed trips that meet specific criteria based on NEFOP data from November 1-April 30 for 2016 through 2022.**

Criteria		Nov. 1, 2015 – April 30, 2016	Nov. 1, 2016 – April 30, 2017	Nov. 1, 2017 – April 30, 2018	Nov. 1, 2018 – April 30, 2019	Nov. 1, 2019 ~March 19, 2020 <sup>a</sup>	Nov. 1, 2020 – April 30, 2021	Nov. 1, 2021 – April 30, 2022
<b>A</b>	Observed bottom trawl trips over this time frame (Nov-April)	398	398	741	657	403	151	232
<b>B</b>	Observed trips with at least one catch record east of 72° 30' W Longitude	302	302	598	534	322	122	190
<b>C</b>	That met the criteria in row B <u>and</u> used small mesh at some point during their trip	177	177	271	261	145	33	99
<b>D</b>	That met the criteria in rows B-C <u>and</u> landed more than 200 pounds summer flounder on whole trip	67	67	90	114	63	22	50
<b>E</b>	That met the criteria in rows B-D <u>and</u> discarded >10% of summer flounder catch east of 72° 30' W Longitude	12	12	35	33	18	4	11
<b>F</b>	% of observed trips with catch east of 72° 30' W Longitude that also used small mesh, landed >200 pounds of summer flounder, and discarded >10% of summer flounder catch (row E/row B)	3.97%	3.97%	5.85%	6.18%	5.59%	3.28%	5.79%
<b>G</b>	Total summer flounder discards (pounds) from trips meeting criteria in B-E	10,992	10,992	22,798	9,925	6,547	1,605	4,775
<b>H</b>	Total summer flounder landings (pounds) from trips meeting criteria in B-E	10,523	10,523	44,711	23,038	13,340	9,165	20,080
<b>I</b>	Total catch (pounds) from trips meeting criteria in B-E	21,515	21,515	67,508	32,963	19,887	10,770	24,856

## Summary of Industry Feedback

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A webinar was held on November 1 to present the evaluation of the SMEP and solicit input from stakeholders on the current utilization of the program and recommended changes. Written comments were also accepted via email and web-based form. Trigger questions provided for public comments can be found in the [overview document found here](#). A full summary of the comments received so far is provided in the [draft public input summary](#) (comments are still being accepted and this document will be updated as needed prior to the Council and Board meeting in December).

Multiple participants noted the importance of the SMEP, particularly to southern New England fleets. Some noted the program has successfully reduced regulatory discards and overall maintaining the program was critical to industry. Nearly all participants who commented on this issue supported moving the SMEP line to the west to provide further flexibility for industry participating in multiple fisheries. Specifically, a proposal was made to move the line about 5 miles west to about 72°37'W longitude, then dropping south to align with the northeast corner of the scup Southern Gear Restricted Area (GRA) at 39°20'N and 72°37'W and then follow along the eastern border of the southern scup GRA to about 37°N latitude.

## Observations and Recommendations

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A MAFMC contractor was asked to evaluate potential changes to the small mesh exemption program, taking into account the current use and effectiveness of the exemption.

Based on feedback from industry, the SMEP has become a very important program to maintain the economic viability of their business. However, the recommendation that the demarcation line be moved approximately 5 miles landward needs to be thoroughly evaluated prior to action being taken. The existing line was established based on the relatively low number of undersized summer flounder being encountered to the east, thus maintaining the FMP objective to protect juvenile summer flounder. Additional data are needed to determine whether a shift of the line to the west would result in an increase in the number of small summer flounder being encountered and therefore being released due to being undersized.

Based on comments from stakeholders and discussions with GARFO staff, some confusion may exist about the requirement that “Vessels fishing under the LOA shall not fish west of the line.” Does this requirement prohibit any vessel with an active LOA from fishing west of the line in any fishery, or just restrict a vessel fishing west of the line during a single trip in which they have participated in the SMEP? GARFO should clarify this portion of the regulation and consider whether it is still necessary.

Approximately 75 vessels currently participate in this program. Using consistent methodology applied in the past that is based solely on observer data, approximately 50 observed bottom trawl trips in November 2021 - April 2022 met the criteria characterizing a SMEP trip (fishing area, gear, and pounds of summer flounder landed) and are presumed to have been fishing under the SMEP. Of these, 11 trips discarded more than 10% of their summer flounder catch (representing approximately 6% of observed bottom trawl trips fishing east of the line in this time frame). It is unknown whether observed trips can be extrapolated to the entire fishery and therefore, the total pounds landed and discarded during SMEP trips cannot be determined. However, the trigger for rescinding this exemption has never been reached using this analysis methodology (vessels fishing east of the line discarding more than 10% of summer flounder catch). The number of vessels

participating and the relative number of observer trips meeting the SMEP criteria have remained stable over the past decade.

A question was raised regarding the calculation of Row F in Table 1 that is used to determine the trigger for rescinding the SMEP. As has been calculated for at least the past 10 years (and likely longer), Row F is calculated by dividing the number of trips that fished east of the line, landed more than 200 pounds and discarded >10% of summer flounder catch (Row E) by the number of observed trips with at least one catch record east of the line (Row B). We assume that this methodology follows the original language contained in Amendment 3, which states:

“If the Regional Director determines after a review of Sea Sampling data that **vessels fishing seaward of the line** described above are discarding more than 10% of their summer flounder catch, the Regional Director may rescind the exemption.”

Row B contains the best estimate of “vessels fishing seaward of the line” and is thus the best estimate *from these data* to use for the denominator.

However, the language contained in the regulations varies slightly and could potentially change this calculation. 50 CFR 648.108 states:

“The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that **vessels fishing under the exemption** are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip.”

By definition “vessels fishing under the exemption” would include the area (seaward of the line) and landing more than 200 pounds of summer flounder, in which case the best data for the denominator would be row D (or potentially Row C).

Questions for the Monitoring Committee are:

- Was this methodology discussed in prior Committee meetings?
- Was the language in the regulations consistent since 1993?
- Is there a reason for the inconsistent language in the original Amendment compared to the regulations?
- Why was this methodology chosen and should there be additional evaluation of it?

Perhaps more importantly is the consideration of updating the data sources used in calculating the impact of the SMEP. At the time that the SMEP was implemented in the early 1990s, the ability to connect disparate datasets was more time consuming and difficult due to the technology at the time. Current day technology and reporting systems may avail themselves to obtaining more accurate information on trips that are actually fishing under the SMEP rather than rely on the assumptions inherent in Table 1 based on the observer datasets. Can observer coverage be tied to the LOAs that are issued for the SMEP through fields such as vessel ID to more accurately determine which trips should be included in the analysis? If not, can the information collected in the process of issuing the LOAs be expanded to allow this? Is there value in tying LOAs to electronic Vessel Trip Reports which are now reporting trips within 48 hours of entering port? More accurate and robust data that should be available through systems that are in place today but which were not available in the 1990s would improve the ability to evaluate the utilization and impact of the SMEP.

## 2. Flynet Exemption

### Problem Summary

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Vessels fishing with a **two-seam otter trawl flynet** (defined in regulation) are exempt from the summer flounder minimum mesh size requirements. The Monitoring Committee typically reviews information from the flynet fishery in North Carolina, which historically has accounted for most of the known flynet fishery and for which the original exemption was developed. However, in recent years, managers have identified the need to better understand if, and to what extent, the flynet exemption is being used in other states and whether this use is consistent with the regulatory intent. Past industry comments have suggested that the flynet exemption is being used to fish with **high rise nets** in other states, many of which are four-seam nets that would not meet the regulatory definition of a flynet. At least one advisor has previously requested revising the regulatory definition to include four-seam nets. The Monitoring Committee has identified this as a potential compliance and enforcement issue and/or indication of a potential need to revise the regulatory language. Input was sought from industry on the use and configuration of different net types in different regions, patterns of use for this exemption, and whether changes to the exemption or the regulatory text may be needed.

### Background

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Vessels fishing with a two-seam otter trawl flynet are exempt from the summer flounder minimum mesh size requirements. The regulatory definition of a fly net is a two-seam otter trawl with the following configuration:

- The net has large mesh webbing in the wings with a stretch mesh measure of 8" to 64".
- The first body (belly) section of the net consists of 35 meshes or more of 8" (stretch mesh) webbing or larger.
- In the body section of the net the stretch mesh decreases in size relative to the wings and continues to decrease throughout the extensions to the cod end, which generally has a webbing of 2" (stretch mesh).

The flynet exemption was added to the FMP through Amendment 2 in 1993, as suggested by the South Atlantic Fishery Management Council and the State of North Carolina. At the time, flynets were mostly used between Cape Henlopen, Delaware and North Carolina in the fall and winter. Atlantic croaker, weakfish, Atlantic mackerel, and bluefish were the dominant species in flynet catches in the mid- to late 1980s when the exemption was proposed. Limited amounts of summer flounder have been harvested by this gear. The exemption was intended to increase flexibility for fishermen while not negatively impacting the conservation objective of the FMP.

The FMP stipulates that the NMFS Regional Administrator may withdraw the exemption if the annual average summer flounder catch in the flynet fishery exceeds 1% of the total flynet catch. However, the language in the current federal regulations regarding this evaluation criteria for the exemption is inconsistent with the original FMP language and intent of the exemption. The current regulations refer to evaluating whether “vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip.”

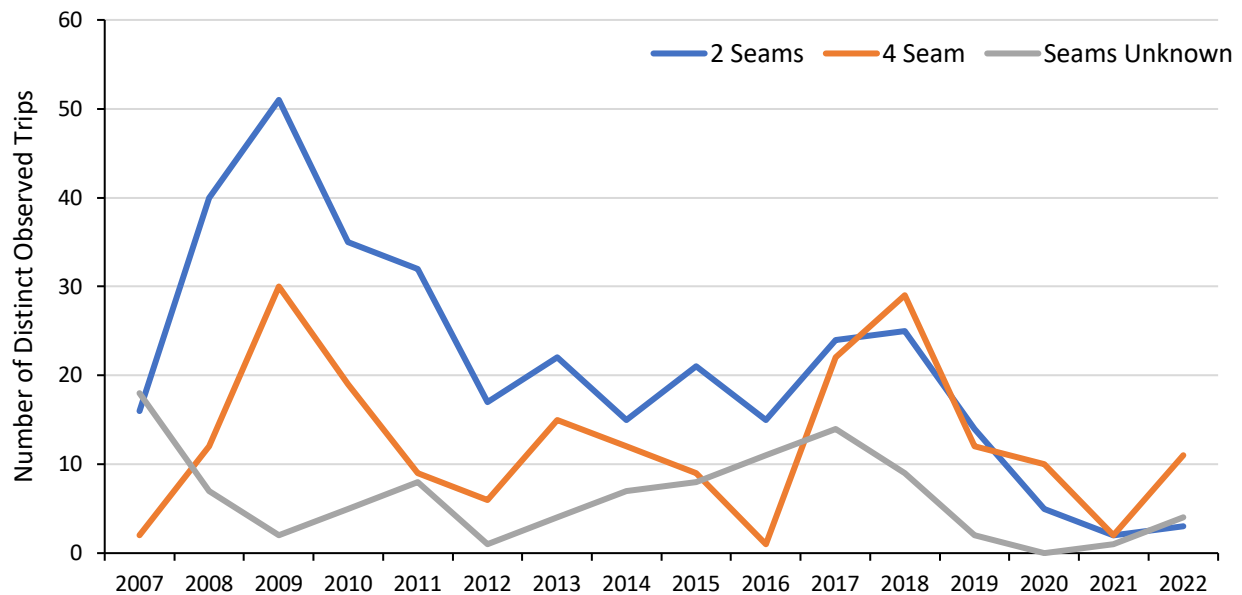
Typically, the Monitoring Committee reviews data from the North Carolina flynet fishery as the bulk of flynet landings in the Greater Atlantic region are thought to originate from North Carolina, though the flynet fishery in North Carolina is small. Landings in the North Carolina flynet fishery have generally declined over time (Table 2), and little to no summer flounder have been landed in this fishery in recent years. Past discussions have suggested that other states such as Virginia, New Jersey, and Maryland may also have small amounts of flynet landings, but data are limited or unavailable for these states to accurately assess such landings.

Based on observer data from 2007-2022, about 325 observed trips were recorded using 2-seam “Flynets” in the GARFO region with fewer than five observed trips in each of the past three years. Additionally, about 197 observer trips recorded using 4-seam and 101 observed trips recorded “seams unknown” flynets (Figure 2).

**Table 1:** North Carolina flynet fishery summer flounder landings in pounds, as a percent of total North Carolina flynet landings, and as a percent of total North Carolina commercial summer flounder landings, 2005-2022. Some values are confidential but as denoted below are <2,000 pounds in those years.

Year	Summer Flounder Flynet Landings (lbs.)	% of Total NC Flynet Landings	% of total NC commercial summer flounder landings
2005	4,102	0.05%	0.10%
2006	5,752	0.07%	0.15%
2007	7,067	0.13%	0.26%
2008	3,147	0.08%	0.07%
2009	2,842	0.05%	0.10%
2010	<2,000 lbs.	<0.05%	<0.06%
2011	<2,000 lbs.	<0.05%	<0.07%
2012	<2,000 lbs.	<0.05%	<0.18%
2013	0	0%	0.00%
2014	<2,000 lbs.	<0.05%	<0.07%
2015	0	0%	0.00%
2016	0	0%	0.00%
2017	0	0%	0.00%
2018	0	0%	0.00%
2019	0	0%	0.00%
2020	0	0%	0.00%
2021	0	0%	0.00%
2022	0	0%	0.00%





**Figure 2:** Number of distinct observed trawl trips using flynet gear, by seam number, 2007-2022 in the GARFO region.

### Summary of Industry Feedback

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Participants who spoke on this issue strongly supported keeping the flynet exemption. It was noted that this exemption is very important to provide flexibility to switch between fisheries like summer flounder, scup, black sea bass, and squid.

All participants who spoke on the issue agreed that the term “high rise” net was regional terminology for a flynet, although those nets may not meet the definition specified in regulation for this exemption, particularly regarding to the number of seams. Industry feedback indicated that they felt that there was little difference in the fishing characteristics of 2-seam flynets and high-rise nets and that the term “flynet” referred mainly to the way in which the net opened at the mouth.

Industry input indicated that the definition of the term flynet should be updated to better reflect current gear use and fishing practices that, while technically not in compliance with the exemption, have become standard application in part due to the lack of permitting or reporting for using this exemption. Specific recommendations to modify the definition of flynet included:

- a flynet must have “at least 2-seams” rather than specifying exactly 2-seams.
- the large mesh portion of the wings should be “greater than 8 inches” without specifying an upper limit (currently 64”).

## Observations and Recommendations

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A MAFMC contractor was asked to evaluate the original intention of the regulation and how it that intent is being served today. The original intent was to accommodate the use of a specifically defined gear in a specific fishery, concentrated in North Carolina and extending north to Cape Henlopen. In that regard, available data suggest the flynet exemption is no longer being utilized today in that area/fishery.

The MAFMC contractor was also asked to get a better understanding of the use and configuration of 2-seam otter trawl flynet and high-rise trawl nets as they relate to this exemption, determine the extent to which the exemption is being applied, and determine the extent to which 4-seam high rise nets are being used. In this regard, industry feedback indicates that the flynet exemption has become an important component of specific fisheries throughout the GARFO region, although the 4-seam net type does not comply with the specific regulatory definition. No data are available to evaluate the extent that this exemption is being used given that no permitting or reporting are required, but industry feedback indicated that where it is being used it provides important economic benefits by fostering flexibility in fishing practices. The Monitoring Committee should address whether action should be taken to accommodate a practice which has become important for industry under the presumption that they were complying with regulations.

Communication between Council staff, contractors, and GARFO staff concluded that the discrepancy between language in the FMP and that in current regulations regarding the 1% evaluation criteria for rescinding this exemption was an administrative matter that should be addressed by GARFO.