



Summer Flounder, Scup, and Black Sea Bass Recreational Management Framework and Addendum February 26, 2018 Fishery Management Action Team Call Summary

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Background

Summer flounder, scup, and black sea bass are jointly managed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). In December 2017, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) initiated a joint framework adjustment and addendum to consider adding the following three options to their respective Summer Flounder, Scup, and Black Sea Bass Fishery Management Plans (FMPs): 1) recreational conservation equivalency for black sea bass, 2) transit provisions for recreational fisheries for all three species in Block Island Sound, and 3) slot limits in recreational black sea bass and summer flounder fisheries. In addition, in February 2018, the Council and Board also agreed to consider changes to how black sea bass recreational management measures are evaluated and modified. Specifically, they will consider evaluating the performance of management measures based on the annual catch limit (ACL), rather than the recreational harvest limit (RHL). This potential change is not currently part of the framework/addendum, but it could have implications for some of the alternatives considered through the framework/addendum.

The Council formed a Fishery Management Action Team (FMAT) to assist with development and analysis of alternatives for the framework/addendum. The FMAT consists of staff from the Council, Commission, the National Marine Fisheries Service (NMFS) Greater Atlantic Regional Fisheries Office (GARFO), and the NMFS Northeast Fisheries Science Center (NEFSC). The FMAT met via conference call on Monday February 26, 2018 to discuss the framework/addendum and the proposed changes to recreational management evaluation.

Framework/addendum alternatives

Table 1 summarizes draft framework/addendum alternatives proposed by the FMAT. These alternatives require further discussion and refinement by the Council and Board.

Table 1: Draft framework/addendum alternatives as discussed by the FMAT in February 2018.

<ul style="list-style-type: none">• Draft alternative set 1: black sea bass conservation equivalency<ul style="list-style-type: none">○ Draft alternative 1.A: no action (conservation equivalency may not be used for black sea bass).○ Draft alternative set 1.B: update the FMPs to allow conservation equivalency for black sea bass<ul style="list-style-type: none">▪ Alternative 1.B.i: black sea bass conservation equivalency using the same process as the current summer flounder conservation equivalency process▪ Draft alternative 1.B.ii: black sea bass conservation equivalency using a modified version of the summer flounder conservation equivalency process• Draft alternative set 2: recreational transit provisions (potentially Council only)<ul style="list-style-type: none">○ Draft alternative 2.A: no action (no recreational transit provisions)○ Draft alternative 2.B: Block Island Sound transit provisions• Draft alternative set 3: recreational slot limits (Council only)<ul style="list-style-type: none">○ Draft alternative 3.A: no action (slot limits cannot be used in federal recreational summer flounder, scup, or black sea bass fisheries)○ Draft alternative 3.B: modify the Council's FMP to allow use of a maximum size limit

Conservation equivalency alternatives

The FMP requires uniform coastwide (state and federal waters) measures for the recreational black sea bass fishery; however, for the past several years, the Commission has used a series of addenda to allow temporary deviations from this requirement through an ad-hoc regional management approach. Under this approach, the Council and Board agree to federal waters measures each year. Individual states or regions work through the Commission process to develop measures for state waters. For 2018 (Addendum XXX), the Commission used a combination of historical harvest and exploitable biomass information from the latest stock assessment to allocate the coastwide RHL among three regions: Massachusetts through New York (allocated 61.35% of the coastwide RHL), New Jersey (30.24%), and Delaware through North Carolina, north of Cape Hatteras (8.41%). The states within each region will cooperatively develop recreational measures designed to achieve, but not exceed, their regional RHL allocation. Each region will establish a standard set of measures, with each state in the region afforded the flexibility to adjust their measures up to one inch in minimum size and three fish in possession limit. The Board approved these provisions of Addendum XXX for use in 2018, with the possibility of extension into 2019.

Under the draft no action alternative for conservation equivalency (alternative 1.A), the ad-hoc regional management approach would likely continue to be used to set recreational measures for black sea bass in state waters. The details of how this is carried out may vary year to year. The Council and Board would also have the option of discontinuing the use of ad hoc regional management and reverting to uniform coastwide measures.

Alternative 1.B.i proposes establishing a process for black sea bass conservation equivalency based on the process currently used for summer flounder. Under this process, the Council and Board decide each year whether to use coastwide measures or conservation equivalency. If they agree to conservation equivalency, they must agree on a set of non-preferred coastwide measures consisting of a minimum fish size, possession limit, and season that, if implemented on a coastwide basis, would constrain harvest to the RHL. They also agree to a set of precautionary default measures (described in more detail below).

Individual states or regions develop measures that, when taken as a whole, are the conservation equivalent of the non-preferred coastwide measures. An agreed upon allocation scheme forms the basis for these state/regional measures. The summer flounder allocations are written into the Commission's FMP as state targets based on the percent of 1998 recreational harvest by state. The Board has developed addenda in recent years to deviate from these allocations.

The Commission's Technical Committee reviews the state/regional proposals to determine if, as a whole, they would constrain harvest to the RHL. The Board then considers the proposals for approval, taking into account the Technical Committee recommendations. If the Board does not approve an individual proposal, that state or region may submit a revised proposal. If a state or region ultimately implements measures which are not approved by the Board, then that state or region is found out of compliance with conservation equivalency and the precautionary default measures are enforced in that state or region. The precautionary default measures are intended to be restrictive enough to deter states/regions from going out of compliance with conservation equivalency.

After reviewing and approving the state/region proposals, the Board then submits a letter to NMFS certifying that the combination of state and regional measures is expected to constrain harvest to the RHL. NMFS then either approves or rejects the combination of proposals. If approved, then NMFS waives the federal waters measures (i.e. the non-preferred coastwide measures) in favor of the state or regional conservation equivalency measures. Federally-permitted vessels and vessels fishing in federal waters are then subject to the regulations in the states where they land their catch.

The FMAT discussed possible deviations from this process for black sea bass (draft alternative 1.B.ii). The FMAT agreed that it could be beneficial to allow conservation equivalency to roll over from year to year, which is not currently possible under the summer flounder regulations. If conservation equivalency rolled over from year to year, NMFS would not need to go through the rulemaking process to waive the federal waters measures each year. However, the Council and Board would still need to review the measures each year and demonstrate that they will constrain the fishery to the appropriate management target. The summer flounder conservation equivalency regulations specify that management measures must constrain harvest to the RHL. The black sea bass conservation equivalency regulations could be written to specify that measures must constrain catch to the ACL, rather than constraining harvest to the RHL. The Council and Board have expressed interest in evaluating measures based on the ACL rather than the RHL (see page 6).

The FMAT discussed the possibility of the Council and Board jointly deciding on state or regional recreational allocations under black sea bass conservation equivalency. Summer flounder RHL allocations under conservation equivalency are not included in the Council's FMP and the Council does not have a formal role in the decision-making process for these allocations. The FMAT agreed that an FMP amendment would likely be needed to add conservation equivalency allocations to the Council's FMP. The FMAT cautioned that if the Council wishes to implement black sea bass conservation equivalency through a framework, rather than an amendment, then recreational allocations should be addressed through the Commission process and not included in the Council's FMP. Amendments typically take more time to complete than frameworks.

The Board adopted black sea bass RHL allocations for 2018, with the possibility of extension into 2019, through Addendum XXX. The Marine Recreational Information Program (MRIP) plans to release a revised time series of recreational harvest estimates during the summer of 2018. The NEFSC currently plans to carry out a black sea bass operational assessment using the revised MRIP time series in early 2019. The revised MRIP estimates and the operational assessment could have implications for allocations based on historical harvest. The FMAT recommended that the Council and Board wait until after the results of the operational assessment are available to consider new allocation schemes under conservation equivalency.

The FMAT discussed the possibility of the Council and Board establishing guidelines for how and when to revise RHL allocations. The FMAT did not discuss specific guidelines in detail but agreed that having RHL allocation guidelines in place could be beneficial, especially if it could reduce the need for annual addenda to modify allocations.

The FMAT recommended that the Council and Board focus on updating the FMPs to allow conservation equivalency to be used in a future year, rather than crafting measures to implement conservation equivalency in 2019. Under the current schedule for this action, NMFS will not be able to approve the use of black sea bass conservation equivalency until early 2019 at the earliest. Therefore, if the Council and Board wish to use black sea bass conservation equivalency in 2019, they would need to approve a set of backup measures to be implemented if NMFS does not approve conservation equivalency or if conservation equivalency cannot be implemented in time for setting 2019 measures. The current action timeline, combined with revisions to MRIP data that will impact allocation discussions, means that implementing conservation equivalency for 2019 may not be feasible.

Transit provision alternatives (potentially Council-only)

Under current regulations, when scup and black sea bass recreational fisheries are closed in federal waters but open in state waters, vessels may not transit federal waters with fish caught in state waters. This has been problematic in Block Island Sound during the September 22 – October 21 black sea bass federal waters closure in recent years. State waters in Rhode Island, Connecticut, and New York are open to black sea bass fishing during that time.¹ Anglers fishing

¹ With the exception that in 2017 Rhode Island closed their state waters fishery during the fall federal waters closure.

in state waters around Block Island must pass through federal waters to return to the mainland. If they retain any black sea bass, they are in violation of the federal regulations while they pass through federal waters, even if those black sea bass were legally caught in state waters. This has not been an issue for summer flounder as federal waters regulations for summer flounder are waived under conservation equivalency. It has also not been an issue for scup in recent years as the federal waters scup season has been open year-round since 2012.

The Council and Board wish to consider instituting transit provisions to allow vessels to transit federal waters in Block Island Sound with summer flounder, scup, or black sea bass caught in state waters on board (draft alternative 2.B). The existing transit provisions for striped bass could be used as a model. These regulations state that “it is unlawful for any person to...Possess any Atlantic striped bass in or from the EEZ, except in the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit” (50 CFR 697.7 (b)).

Instituting such transit provisions requires a simple change to the FMP and the regulations. Other FMPs would need to be updated if these provisions were to address additional species besides summer flounder, scup, and black sea bass. The FMAT recommended that this action consider only adding these changes to the Summer Flounder, Scup, and Black Sea Bass FMP. As other FMPs are modified for other purposes, similar transit provisions could easily be added for other species.

The FMAT recommended that, for ease of enforcement, these transit provisions address only Block Island Sound and only situations where federal waters are closed and state waters are open (i.e. not situations where the federal waters minimum fish size or bag limit is more restrictive than in state waters). It is possible that these changes could be implemented through the Council’s FMP without a complementary change to the Commission’s FMP.

Slot limit alternatives (Council only)

Currently, the Council may not use slot limits as a management tool for summer flounder, scup, or black sea bass as the Council’s FMP does not allow for specification of a maximum fish size. Slot limits may be implemented through the Commission process; thus, they may be implemented for summer flounder by states or regions through conservation equivalency.

Modifying the Council’s FMP to allow specification of a maximum fish size would allow for use of regular slot limits, split slot limits, and trophy fish. The FMAT recommended that this framework include an alternative to modify the Council’s FMP to allow a maximum size for all three species, though a maximum size may never be desired for scup. A complementary alternative is not needed in the Commission’s addendum as slot limits can already be used through the Commission process.

The FMAT noted that, given the timing of this action, if the Council and Board wish to use slot limits in 2019, they would need to approve a set of backup measures in case NMFS does not approve adding the option for a maximum size to the FMP or if this change is not implemented in time to be used for 2019 specifications.

The Monitoring and Technical Committees have analyzed slot limits in the past. Their analysis and recommendations should be revisited if the Council and Board wish to consider use of specific slot limits in a given year.

Recreational fishery performance evaluation based on ACL

The Council and Board discussed the possibility of evaluating and modifying recreational management measures based on a comparison of catch to the ACL, rather than harvest to the RHL, as under current practice. The Board approved this change through Addendum XXX, with a delayed implementation pending further refinement by the Board and Council. The Council and Board have not approved this change for inclusion in the new framework/addendum, although it could have implications for the black sea bass conservation equivalency alternatives.

Depending on how this change is configured, FMP and regulation changes may not be necessary.

The current black sea bass and scup regulations require that recreational management measures ensure that the recreational ACL (not the RHL) is not exceeded. The summer flounder conservation equivalency regulations, however, state that measures must constrain harvest to the RHL. The black sea bass conservation equivalency alternatives considered through the framework/addendum could require measures that constrain harvest to the ACL, rather than the RHL. It is possible that, depending on the specific changes, if an FMP change is not required, a Commission Technical Addendum with associated public hearings may still be warranted.

Greater clarification on the Council and Board's intent is needed. For example, it is not clear if both groups intend for recreational measures to be designed to achieve the ACL, or if they should continue to be based on the RHL, with the ACL taken into account when evaluating the performance of the measures. For example, the ACL could be evaluated each year, to determine if catch exceeded the ACL, regardless of if there was an RHL overage or underage. In addition, it is not clear if both groups intend for this change to apply only to black sea bass, or also to the other species in the FMP.

As previously stated, under the current process, recreational management measures are designed to ensure that harvest does not exceed the RHL. Late in year 1, projected year 1 harvest is compared to the year 2 RHL. This is re-evaluated early in year 2 when preliminary harvest estimates for all of year 1 are available. If year 1 harvest is significantly over or under the year 2 RHL, then the recreational management measures are modified to reduce or increase harvest to achieve but not exceed the year 2 RHL.

The timing of availability of discard estimates would be problematic if management measures were evaluated based on catch compared to the ACL, rather than harvest compared to the RHL. MRIP provides estimates of live discards in numbers of fish. Some of these fish are assumed to die after being released. Only dead discards and landings are counted towards the ACL, which is

specified in pounds. NEFSC stock assessment scientists translate the MRIP live discard estimates in numbers of fish to dead discards in weight using the length distribution of recreational discards from MRIP party/charter sampling and other programs, length/age/weight relationship data, and an assumed 10% or 15% discard mortality rate, depending on the species.

If recreational management measures were evaluated against the ACL, rather than the RHL, then discards in weight would be needed to estimate catch in year 1 for comparison with the year 2 ACL when drafting year 2 management measures. Estimates of discards in weight during year 1 are typically not available until mid-year in year 2 as they must be calculated based on final year 1 MRIP discard estimates and other data which are typically not available until mid-year in year 2. Therefore, any necessary modifications to the year 2 measures due to year 1 catch that is significantly higher or lower than the year 2 ACL could not be implemented until late in year 2 or at the start of year 3. This is a notable time lag compared to the current process.

Addendum XXX states that if the ACL is exceeded, it will be evaluated against a three-year moving average of the ACL and states/regions will develop proposals to reduce harvest in the following year. The FMAT noted that under this approach states/regions would still need to constrain catch to a given year's ACL, given current FMP requirements. However, a three-year moving average of the ACL could be used to provide rationale for why a given year's ACL won't be exceeded. Clarification is needed on which three years would be used to calculate the ACL moving average. The FMAT also noted that if, in the future, the SSC uses a multi-year averaging approach to recommend ABCs, then the ACL averaging approach described above may not be able to be used as the single-year ACLs would already be based on an average.

As described in Addendum XXX, a single-year ACL overage would be compared to a three-year moving average of the ACL. The FMAT noted that this is a deviation from how the ACLs are evaluated when determining if accountability measures are triggered. Under the evaluation for accountability measures, the average of the previous three complete years of catch is compared to the average of the previous three years of ACLs.

Addendum XXX also specifies that, if this approach of evaluating measures based on the ACL is used, significant improvements would need to be made in: 1) Biological sampling (length and weight), 2) Reduction in refusal rates of dockside MRIP intercepts/interviews, 3) Discard composition information (i.e. reason discarded, length), 4) Reduction in discarding relative to 2010-2015, 5) Improved compliance with management measures. These topics warrant further clarification and development of guidelines for achieving sufficient progress.

In recent years, the Monitoring and Technical Committees have worked toward improving the recreational measures setting process by identifying technical approaches for considering uncertainty in the recreational data and developing alternative methods for evaluating and responding to recreational harvest estimates. For example, the Committees identified methods of evaluating and smoothing extreme outlier harvest estimates using multiple years of data to project harvest and predict how modified measures will perform. The Monitoring and Technical Committees support continued evaluation of the current process for developing recreational management measures, including consideration of developing and evaluating measures based on

the ACL, rather than the RHL. The FMAT agreed that this topic warrants further discussion by the Monitoring and Technical Committees.