



Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meeting Summary November 30, 2022

The Mid-Atlantic Fishery Management Council's (Council's) Summer Flounder, Scup, and Black Sea Bass Advisory Panel (AP) met jointly with the Atlantic States Marine Fisheries Commission's (Commission's) Summer Flounder, Scup, and Black Sea Bass AP on November 30, 2022. The purpose of the meeting was to discuss 2023 recreational management measures (i.e., possession limits, size limits, and open and closed seasons) for all three species.

Please note: Advisor comments described below are not consensus or majority statements.

Council Advisory Panel members present: Frank Blount (RI)*, Bonnie Brady (NY), Eric Burnley (DE), Jeff Deem (VA), Joseph DeVito (NY), Greg DiDomenico (NJ)*, James Fletcher (NC), Victor Hartley (NJ), Kenny Hejducek (NY), Michael Pirri (CT), Mike Plaia (CT)*, Bob Pride (VA), Robert Ruhle (NC), George Topping (MD), Mike Waine (NC), Steven Witthuhn (NY), Harvey Yenkinson (PA)

Commission Advisory Panel members present: Frank Blount (RI)*, Greg DiDomenico (NJ)*, Eric Jacobsen (MA), Ken Neill (VA), Mike Plaia (RI)*, James Tietje (MA)

*Serves on both Council and Commission Advisory Panels.

Others present: Chris Batsavage, Tracey Bauer (ASMFC Staff), Julia Beaty (MAFMC Staff), Rick Bellavance, Kiley Dancy (MAFMC Staff), Justin Davis, Steve Doctor, Hannah Hart (MAFMC Staff), Emerson Hasbrouck, Paul Haertel, TJ Karbowski, Emily Keiley, Adam Nowalsky, Scott Steinback, Angel Wiley, Kate Wilke, "JB"

General Comments

Staff provided an overview of the recently adopted Percent Change Approach that will be used to set recreational measures in 2023, as well as two new models, the Recreational Demand Model (RDM) and the Recreational Fleet Dynamics Model (RFDM), that are available to analyze the impacts of management measures on recreational harvest and discards.

One advisor asked if the RDM could be used to determine which management measures would optimize angler welfare. Angler welfare is included as an output in the RDM as a measure of angler satisfaction or value to recreational anglers. He mentioned the focus for this year seems to be on using the model to estimate harvest and wondered if there was intention to use other outputs from this model to guide decision making. Staff responded that the focus for 2023 is on estimating expected 2023 harvest under 2022 measures and incorporating that into the Percent Change Approach to determine the percent change in harvest required for 2023. It may be difficult to integrate other model outputs into this year's process, but that could be considered in the future if desired by the Council and Board. This advisor also said it is nice to have two models for comparison purposes, especially in the first year of using them; however, he expressed concern

about the divided effort that goes into maintaining both models. He questioned if efforts will shift to a single model in future years. Staff agreed with such concerns and acknowledged this is a future discussion and decision that will need to be made.

Another advisor noted that a lot of changes have been made to the process since last year and it is hard to follow. He asked if changes to the commercial/recreational allocations have been incorporated when determining the required percent reduction. Staff clarified that the revised allocations have been accounted for.

One advisor noted the RDM is similar to a model used by the New England Fishery Management Council to set recreational cod and haddock measures, which appears to be working well for those fisheries. This advisor questioned if the models presented today could produce results by mode. Staff responded that currently only the RFDM for scup is capable of looking at mode specific outputs but both models could be modified in the future to do so for all three species.

Another advisor expressed concern related to the validity of MRIP data and frustration that MRIP information is still a main component of these two models. He recommended electronic reporting for all private recreational anglers to improve recreational data overall.

2023 Scup Recreational Measures

Advisor Feedback on the Monitoring Committee Recommendations

Several advisors expressed frustration with the Monitoring Committee's (MC) recommendation for status quo in place of a 10% liberalization. Four of these advisors also questioned the point of going through the process and providing advisor feedback if the MC and/or GARFO are not going to consider their feedback. One advisor said it seems like the MC is continuing to operate under an ad hoc approach rather than fully utilizing these new tools to follow the newly approved process. Another advisor expressed frustration that one model results in a 10% liberalization while the other in a 10% reduction. He said having multiple model options over-complicates the process and expressed concern that managers could pick and choose which model to use based on their preferred outcome.

Three advisors spoke in favor of a 10% liberalization instead of the MC recommendation for status quo. Two advisors specifically recommended decreasing the minimum size limit by 1 inch in state and federal waters.

Three other advisors spoke in favor of the status quo recommendation and agreed it was appropriate given scup biomass, the restrictions put in place last year, and the continued expected recreational harvest limit (RHL) overages which make it harder to justify a liberalization. One advisor also noted that given one model results in a 10% liberalization while the other a 10% reduction, status quo might be the most appropriate recommendation. He also noted that both model results seem to be comparable and the 2023 RHL is just barely within the lower bounds of the RFDM confidence interval. Another advisor noted that based on the accountability measure (AM) analysis provided by GARFO, even if harvest was zero pounds in 2022, the AMs would be triggered again in 2023, which also makes liberalizations challenging to justify.

Other Comments

One advisor expressed disbelief in the discard numbers presented and questioned why regulations that allow for dead discards are put into place. He expressed the Magnuson Steven Act states actions must be taken to prevent or minimize dead discards and recommended the Council and Board consider a total length limit in the recreational fishery with mandatory retention of all fish up to that cumulative limit and mandatory private angler reporting via cell phone to improve recreational data and prevent dead discards.

One advisor expressed concern with how the current AMs are designed. He said there is currently a mismatch between the Percent Change Approach and the AMs, and questioned why the AMs were not updated to give greater consideration to whether or not recreational annual catch limit (ACL) overages contributed to overfishing, as considered through the Harvest Control Rule Framework/ Addenda. He noted the current AMs are based on projections (i.e., evaluated against Annual Catch Limits that are set using stock projections) while fishing mortality is a realized rate. He recommended the Council and Board take action to incorporate fishing mortality into each of the AM categories.

2023 Black Sea Bass Recreational Measures

Comments on High Availability of Black Sea Bass

Six advisors and one member of the public said they strongly oppose any black sea bass restrictions given the very high availability of the stock. Two advisors questioned why status quo could be considered for scup, but not black sea bass.

Three advisors said the recreational fishery is only exceeding the RHL and recreational ACL because availability is so high and catch cannot be effectively constrained at such high levels of availability. One advisor said black sea bass are so abundant in Massachusetts that they are almost becoming a nuisance species. Another advisor from Maryland made similar comments, saying it's hard to avoid catching black sea bass when trying to catch other species. Another advisor said anglers in Delaware are having no trouble regularly catching the full bag limit. An advisor from New Jersey said recreational anglers can't avoid catching black sea bass and are constantly discarding fish they are not allowed to keep.

Impacts of Restrictions on For-Hire Vessels

Five advisors, including one advisor who provided comments over the phone after the meeting, expressed concerns about how the for-hire sector will be negatively impacted by further black sea bass restrictions. Two advisors said restrictive measures are putting for-hire boats out of business and are preventing new captains from getting into the business. Another advisor asked if an analysis had been done to consider how past restrictions may have impacted the for-hire sector differently than private anglers. Staff said this analysis has not been done at a coastwide or federal level; however, when states implement separate measures by mode, they must provide an analysis of the expected impacts of those measures on harvest through the Commission process.

One advisor said that based on his own examination of the MRIP data, the restrictions implemented in 2022 did not achieve the full intended reduction in harvest and they appear to have impacted the states and modes differently. For example, it appears that the for-hire sector has taken a bigger hit than the private recreational sector. He recommended greater consideration of ensuring that

some states or modes are not disproportionately impacted by future coastwide reductions. Another advisor agreed with this recommendation.

Data Concerns

One advisor expressed concern with the accuracy of the data and how uncertainty in the data impacts the results under the Percent Change Approach.

Three advisors expressed concern about the accuracy of the data from private recreational anglers. One advisor noted that federally permitted for-hire vessels have mandatory vessel trip reporting, which increases his confidence in the for-hire data compared to the private recreational data. One advisor recommended electronic reporting for all recreational fishermen, which should result in better data.

One advisor said management is constantly behind what is really happening on the water due to time lags in the availability of data. Advisors are on the water every day and the Council and Board should listen to their input.

One advisor questioned why model results suggest that the restrictions taken in 2022 do not achieve even half the reduction in coastwide harvest they were intended to achieve. He also said it is confusing that the analysis required switching between numbers of fish and weight.

One advisor said the stock assessment may not be accurately capturing increasing recruitment, which is leading to increasing biomass. He expressed concern that the stock is not accurately sampled.

Changes to the Management Approach

Several advisors said the overall management approach is not working and recommended various changes to the process. One advisor said the whole process makes no sense and we should start from scratch with a totally new process.

One advisor recommended having international experts review the management process because the process has not been working and external review and guidance is needed. He recommended that the external reviewers be selected by fishermen.

Three advisors expressed support for considering a total length limit with no discards (as previously described in the scup section) for black sea bass, at least in the for-hire sector. One advisor said this should be just as easy to enforce as a minimum size limit and possession limit.

One advisor recommended consideration of spreading reductions over multiple years, rather than making the full change in one year.

One advisor said management does not appropriately consider changes in stock dynamics, including under the new Percent Change Approach. Anticipated increases or decreases in the stock size are not sufficiently considered. For example, if the stock is increasing or stable, consideration should be given to leaving measures unchanged.

One AP member noted that although the MC recommended status quo for scup and a 10% reduction for black sea bass despite both species having very high biomass, much larger reductions would have been needed for both species under the requirements that were in place before the Council and Policy Board approved the Percent Change Approach. This advisor noted that the

intention of the Recreational Harvest Control Rule Framework/Addenda (which implemented the Percent Change Approach) was to provide greater stability in the measures and give greater consideration to abundance when setting measures. He said the outcome for scup and black sea bass this year indicates that the Percent Change Approach isn't considering the right starting points for these two species. He recommended further consideration of this issue when the Council and Policy Board consider the appropriate replacement for the Percent Change Approach after the sunset period.

One advisor said black sea bass biomass is so high that it is likely negatively impacting other species, which should be considered when setting the management measures.

Other Comments

One advisor from Delaware said he had planned to come to this meeting and recommend maintaining the current minimum size but extending the open season into January. He said that with climate change, the weather and fishing conditions are good in January. He was very frustrated to learn that further restrictions are instead being considered.

One advisor said there needs to be greater accountability for the private recreational sector so their high catches don't negatively impact the for-hire or commercial sectors.

One advisor noted that because black sea bass are protogynous hermaphrodites (i.e., all start as females and some transition to males after a few years), removing larger fish from the population does not have the same degree of negative impact as for other stocks because removing larger black sea bass will not disproportionately remove female fish.

One advisor recommended a scientific investigation into whether black sea bass can transition from female to male and then back to female again.

One commercial fishery advisor said AMs are necessary, but, at face value, it seems illogical that while AMs are triggered for both scup and black sea bass, the scup measures can remain status quo but black sea bass needs to be restricted.

Two advisors said comments from all advisors may be more effective if expressed directly to Council and Board members, in addition to during this meeting.

Public Comment

One member of the public said black sea bass should be liberalized to reduce dead discards. If that's not possible, then measures should remain status quo. He said further restrictions are totally unwarranted given the very high availability of black sea bass. He was especially concerned about negative impacts to the for-hire sector.

2023 Summer Flounder Recreational Measures

Advisor Feedback on the Monitoring Committee Recommendations

At least one AP member expressed support for the proposed 10% liberalization for summer flounder. However, two advisors expressed concern and were confused that the Percent Change Approach leads to a liberalization for summer flounder but requires a reduction for black sea bass in 2023. These AP members, plus one member of the public, felt this is backwards, as the health

and availability of the summer flounder stock is more of a concern compared to black sea bass, which they noted to be incredibly abundant sometimes to the point of being a nuisance.

One advisor noted that they are frequently limiting out on black sea bass in Long Island Sound but haven't been able to limit out on any trips for summer flounder, which explains why the RHL has not been harvested in recent years. Another AP member noted that summer flounder harvest out of southern New Jersey is down about 20%. These AP members thought a liberalization for black sea bass and reduction for summer flounder would be a more logical response to what they are seeing on the water. A member of the public also commented on this issue and explained that he used to fish for fluke as part of the spring fishery; however, the large 2011 year class of black sea bass eventually displaced fluke in his area. He said catching 30-40 fluke per trip in the past was common and now he is lucky to catch about 10 per season, out of 300 trips. In contrast, black sea bass and sea robins are everywhere.

One commercial fisherman noted that in his recent experience harvesting horseshoe crabs, he has observed many small summer flounder in the 6-12 inch size range.

One AP member noted that the recreational models need to account for changes in population dynamics and distribution. Specifically, he noted that during peak COVID when commercial effort was down, the inshore recreational fishery seemed to do well. He noted this observation may suggest there was notably more of an inshore migration pattern during this time. He also said a lot of effort is concentrated in the Montauk area, potentially creating a regional depletion.

One advisor noted that the confidence interval for the model selected for summer flounder (the RDM) seems tighter than the confidence intervals adopted for other species. He questioned why the variability in the estimates seems to be much less than for the other two species. Staff responded that in general, the RDM had narrower confidence intervals compared to the RFDM, which was identified as the MC preferred model for the other two species. For summer flounder, the MC was concerned about the high CIs under the RFDM.

Two advisors stated support for maintaining conservation equivalency and for the MC's recommendations for non-preferred and precautionary default measures. One advisor noted that conservation equivalency is critical for Virginia because appropriate regulations are much different than in states like, for example, New Jersey. However, this advisor questioned the justification for keeping conservation equivalency at a regional level and said regions may not be necessary.

Other Comments

One advisor would like to see Virginia move toward measures that are split by area to give upriver and inner bay fishermen the ability to keep some smaller fish.

One advisor from New Jersey noted that the slot limit in 2022 was beneficial to him. He suggested some potential tweaks including changing the possession limit to only one fish in the slot and two fish above the slot (as opposed to the current two fish in the slot and one above). However, another advisor who fishes in New Jersey noted that the slot limit seems to have resulted in less catch than usual. He stated that even at the 17-17.99 slot, most of the catch is female. In addition, he noted that there are a lot of mixed opinions on the slot limit regulations in New Jersey with a majority he has heard from saying they do not like it and that it has not been very helpful.

One advisor said when he looks at the numbers, this year's regulations have affected the for-hire sector and the private/shore sector very differently. By his calculations, the for-hire sector, which has observers and Vessel Trip Report requirements, is down 40% in harvest, while private recreational harvest is up by 27% for the same two waves. He questioned whether there has been any analysis of why harvest is going down in the for-hire fleet but up in the private angler sector. He cited possible explanations such as increased effort or increased noncompliance. Staff responded that they have not looked in depth at recent changes in harvest by mode but this could be explored.

One advisor said he is aware that not every summer flounder over the minimum size of 16 inches in his state is female, but asked if staff could comment on the sex ratio of fish over this size. Staff noted that there are more older, larger male fish than there used to be, but the majority of larger fish are still females. Unfortunately, information on the sex ratio in the recreational catch is limited given the need to dissect summer flounder to determine their sex. This has been a limitation to the development of a sex-specific assessment.

One advisor questioned the enforceability of regulations in federal waters under conservation equivalency, given that federal measures are waived in favor of state measures. Staff confirmed that these regulations should be enforced based on the regulations of the state the vessel is returning to, but would check with NOAA Fisheries to see if additional information could be provided on this topic.

One advisor said a lot of management problems could be solved if we could implement a stock enhancement program, raising and releasing all female fish that have been genetically selected to grow faster. He expressed frustration that this has not been considered and asked that managers put together a webinar with experts outside of the U.S. to help get information on how to increase the population. He also questioned whether the Council is using the best available science as required by the Magnuson Stevens Act, due to the perceived lack of consideration of the fecundity of larger female fish. He noted that current recreational size limits and those proposed by the MC for non-preferred coastwide measures are inconsistent with the best available science. This advisor also supported a total length limit in the recreational fishery with mandatory retention and mandatory private angler reporting via cell phone.

Appendix 1: Written/Phone Comments Received Following the Meeting

Carl Benson: COMMENTS RELATING TO NOV 30, 2022, MEETING

The Harvest Control Rule needs a reality check. A base line of 150% is a wonderful accomplishment and here it's treated as normal occurrence. Under no circumstances should a runaway species be required to reduce harvest. This was predicted when the rule was publicly discussed. Change 150% to 120% and add new tiers at 150 and 175% to increase harvest to control this biomass growth. Clearly management did not create the proper harvest levels in prior years, and now has to follow those missteps with further nonsensical decisions. How do you stop this spiral? Definitely not by continuing to have lower harvest levels.

Recommendations demonstrate a lack of common sense.

With respect to summer flounder. April of 2015, a hook study was presented to MAFMC that concluded that hook sizes appropriate to the minimum retention size of summer flounder would reduce discards, and thereby discard mortality. Over 7500 summer flounder data points were generated. The study has been peer reviewed. MAFMC and NOAA NMF BREP offered funding. BREP offer was accepted. NJ used the data when it decided to go out of compliance.

What does it take to recommend or insist on a minimum hook size. Again, if you don't catch it, you don't kill it.

Maybe not part of the recreational scope. Commercial summer flounder fishers should again retain 13-14 inch (small) fish. The scientific argument was only 50% of small summer flounder are mature enough spawn, so target them when they reach 14-inch. Since discard mortality for summer flounder has been increasing, we should harvest these fish rather than dump them to the bottom feeders. Discards are mainly due to management requirements, such as quotas or trip limits, minimum size and closed seasons.

Who does this benefit?

The summer flounder biomass.

Since there is a quota on summer flounder, trading those small fish that are sexually immature will reduce the harvest greater of sexually mature thereby increasing the spawning biomass.

The summer flounder commercial fishers.

Summer flounder is primarily sold as filet to the final consumer. There are ethnic markets that sell whole fish which is more in line with their cultural experience. The movement of discards to sellable catch can only aid the fishermen and any downstream supply chain.

The summer flounder recreational fishers.

Increasing the spawning biomass benefits all user groups.

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The following comments were provided by Advisory Panel member Steve Witthuhn over the phone after the November 30, 2022 Advisory Panel meeting.

- Given the high abundance of black sea bass and the lower abundance of summer flounder, it does not make sense to further restrict the recreational black sea bass fishery and liberalize summer flounder in 2023.
- Black sea bass are very abundant, including small black sea bass. It seems as if there were very strong year classes in recent years.
- Further restricting the black sea bass measures will hurt party boats. Summer flounder are less available than in prior years and striped bass measures are restrictive. Therefore, black sea bass is an especially important target species for for-hire boats as it allows customers to catch something they can take home.
- The black sea bass minimum size limit should not be increased in 2023. The current minimum size limit is already causing high discards.
- Discards are under-reported on vessel trip reports, which poses challenges for understanding the true scale of discards.
- The discard mortality rate is much higher in deeper waters than in shallower waters.
- Measures should remain unchanged for a few years. They should not be changed every year.
- Angler frustration with the regulations leads to non-compliance.
- Gulp bait may be negatively impacting black sea bass as it is widely used and the fish do not appear to digest it. He has seen many fish with gulp bait in their stomachs. Anglers should properly dispose of used gulp bait and should not throw it in the ocean.
- Chub mackerel were abundant this year and helped out his for-hire business.

From: [Kevin Smith](#)

To: tbauer@asmfc.org

Cc: [SUMMER FLOUNDER, SCUP, & BLACK SEA BASS ADVISORY PANEL](#); [Hart, Hannah](#); [Beaty, Julia](#); [Kiley Dancy](#); [Kerns, Toni](#)

Subject: Re: November 30 Draft AP summary for review by end of the day Thursday

Date: Thursday, December 8, 2022 10:28:25 AM

Good Morning Tracey,

As a VA recreational angler, I agree that the larger female fish should be better protected in VA, in an effort to help improve our flounder fishery. It would be great if keeping the larger fish, such as 23-25" plus fish could be limited to 1 per person per trip in VA. Thank you for the opportunity to add comments.

Regards,

Kevin Smith