

Atlantic States Marine Fisheries Commission

Summer Flounder, Scup, and Black Sea Bass Management Board

*May 3, 2018
10:30 – 11:30 a.m.
Arlington, Virginia*

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

1. Welcome/Call to Order (*B. Ballou*) 10:30 a.m.
2. Board Consent 10:30 a.m.
 - Approval of Agenda
3. Public Comment 10:35 a.m.
4. Consider ISFMP Policy Board Recommendation Regarding Massachusetts, Rhode Island, Connecticut and New York Addendum XXX Appeal, If Necessary (*T. Kerns*) **Final Action** 10:45 a.m.
5. Other Business/Adjourn 11:30 a.m.

The meeting will be held at the Westin Crystal City, 1800 S. Eads Street, Arlington, Virginia; 703.486.1111

MEETING OVERVIEW

Summer Flounder, Scup, and Black Sea Bass Management Board

May 3, 2018

10:30 – 11:30 a.m.

Arlington, Virginia

Chair: Bob Ballou (RI) Assumed Chairmanship: 10/17	Technical Committee Chair: Greg Wojcik (CT)	Law Enforcement Committee Representative: Snellbaker (NJ)
Vice Chair: Adam Nowalsky	Advisory Panel Chair: Vacant	Previous Board Meeting: February 8, 2018 and Conference Call on March 20, 2018
Voting Members: NH, MA, RI, CT, NY, NJ, DE, MD, PRFC, VA, NC, NMFS, USFWS (13 votes for Black Sea Bass; 12 votes for Summer Flounder and Scup)		

2. Board Consent

- Approval of Agenda

3. Public Comment – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Consider ISFMP Policy Board Recommendation Regarding Commonwealth of Virginia Amendment 3 Appeal, If Necessary (10:45-11:30 a.m.) Final Action

Background

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| <ul style="list-style-type: none"> • Addendum XXX to the Black Sea Bass FMP was approved in February 2018 (Policy Board briefing materials). The Addendum established changes to the management of the recreation black sea bass fishery including regional allocation of the recreational harvest limit based on a hybrid of exploitable biomass and historical harvest information. • The states of Massachusetts, Rhode Island, Connecticut and New York are appealing the Board’s decision in Section 3.1.2.3 of Addendum XXX, timeframe for specifying regional allocation of the black sea bass RHL of the Addendum (Policy Board briefing materials). • Following the Appeal Process (Policy Board briefing materials), Commission leadership reviewed the appeal and determined the appeal should be considered by the ISFMP Policy Board under criterion one (decision not consistent with FMP) and parts of criterion three (incorrect application of technical data) (Policy Board briefing materials). |
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- The Policy Board will consider the appeal at the May 3, 2018 meeting and could make a recommendation to the Summer Flounder, Scup, and Black Sea Bass Board for consideration.

Board actions for consideration at this meeting

- Consider ISFMP Policy Board Recommendation Regarding Northern Region Addendum XXX Appeal, if necessary

5. Other Business/Adjourn

March 16, 2018

James J. Gilmore, Jr., Chair
Atlantic States Marine Fisheries Commission
1050 N. Highland Street, Suite 200 A-N
Arlington, VA 22201

Re: Northern Region Appeal of Black Sea Bass Addendum XXX (recreational management in 2018)

Dear Mr. Gilmore,

The states of Massachusetts, Rhode Island, Connecticut, and New York (“Northern Region”) hereby appeal the February 8, 2018 decision of the Summer Flounder, Scup, and Black Sea Bass Management Board (“Management Board”) in Section 3.1.2.3 of Addendum XXX, the timeframe for specifying regional allocation of the black sea bass recreational harvest limit (“RHL”) in 2018.

Background

Under sections 3.1.2.1 and 3.1.2.2 of the draft addendum, the Management Board unanimously selected regional allocation of the RHL between three regions (MA–NY, NJ, and DE–NC) based on historical exploitable biomass (for the primary split between MA–NY and NJ–NC) and historical recreational harvest (for the secondary split between NJ and DE–NC). Then, under section 3.1.2.3, in a highly divisive action, the Management Board hybridized the 2006–2015 and 2011–2015 timeframe options for calculating regional average exploitable biomass and historical recreational harvest by averaging the regional allocations resulting from the two timeframes.

The vote on the timeframe decision was split north/south, with the four jurisdictions of MA–NY voting against the hybrid approach and the six jurisdictions of NJ–NC voting in its favor. The Northern Region unanimously supported the 2011–2015 timeframe option. MA–NY also voted against the addendum’s final approval resulting in another four-vote to six-vote outcome.

Addendum XXX’s regional allocations and the implications for 2018 management measures, incorporating updated harvest data that have become available subsequent to the Management Board’s decision, are shown in Table 1.

Justification for Appeal

Decision not consistent with FMP (appeal criterion #1)

The primary objective of Addendum XXX is to address inequities in recreational black sea bass management that resulted from the ad hoc regional management approach in the preceding six years.¹ Part of that inequity is that the states of DE–NC were frequently held status quo, while the states of MA–NJ took repeated harvest reductions. These northern cuts even incorporated needed reductions from the south in some years. As a consequence, in 2017, the states of DE–NC had a size limit 2.5” lower and a possession limit 5 to 12 fish greater than the states of MA–NY, plus a season longer than all but one state in the Northern Region.

¹ Addendum XXX statement of the problem: “This approach [ad hoc regional management], while allowing the states flexibility in setting their measures, created discrepancies in conservation measures that were not tied to any original plan baseline or goal (e.g., state allocations). Inequities resulted in how much of a harvest reduction states were addressing through their measures, with no accountability for the effectiveness of regulations. Most visibly, the ad hoc approach did not provide uniformity in measures nor in evaluating harvest reductions.”

Contrary to the primary objective to reduce disproportionate impacts on states, the management approach for 2018, approved by the Board via Addendum XXX, exacerbates the inequities by allowing large harvest liberalizations for both the Southern Region (DE–NC) and the NJ Region, while imposing a large harvest reduction for the Northern Region (Table 1). We strongly disagree with—and hereby contest—the final addendum’s language that the timeframe-averaging approach “creates a more equitable allocation scheme” than the 2011–2015 timeframe approach.

Table 2 provides the regional allocations and implications for 2018 management measures, incorporating updated harvest data that have become available subsequent to the Management Board’s decision, that would have resulted from the selection of the 2011–2015 timeframe (under the exploitable biomass/harvest-based allocation approach). NJ and the Southern Region would still be afforded the opportunity to liberalize in 2018 relative to 2017, albeit at more modest rates. For NJ², the harvest increase would be +30.63% instead of +46.71%, and for the Southern Region, +6.83% instead of +21.83%. The Northern Region would still face a reduction in 2018 relative to 2017, but at a rate roughly half of that required under Addendum XXX’s allocation (-5.45% vs. -11.71%). These results identify the 2011–2015 timeframe as the more appropriate approach to establish more equitable recreational black sea bass measures for 2018, consistent with the primary objective of the addendum.

The appellant states remain committed to the tenet of cooperation that is central to the ASMFC’s stewardship of our shared fishery resources. We (and NJ) exhibited this during the six years of ad hoc regional management when we frequently accepted regional harvest reductions that subsidized the management measures allowed for the southern region. The appellant states again demonstrated our willingness to compromise as we worked through sections 3.1.2.1 and 3.1.2.2 of the draft addendum. We recognized that the two-region (MA–NJ & DE–NC) harvest-based allocation option would have provided the most liberal measures possible for MA–NY (regardless of the timeframe selected), a fact that was not overlooked by many of our stakeholders who supported it; yet we looked past this option because of the major impact it would have had on NJ. We also looked past the three-region harvest-based allocation option to support the three-region exploitable biomass-based allocation option, despite the larger percent allocation afforded by the former, because we supported the progressive management approach afforded by the latter. We had hoped that our southern partners would have seen fit to act in this same spirit of compromise by supporting the 2011–2015 timeframe approach.

The equity issue, as set forth in Addendum XXX, has both an inter- and intra-regional component. We have already spoken to the inconsistency of the Board’s decision with regard to inter-regional equity. We also note that the larger reduction imposed on the Northern Region makes it exceedingly more difficult for MA–NY to select regulations that achieve intra-regional equity (more on this under appeal criterion #5). Actions such as intra-regional adjustments can be better accommodated when regional harvest reductions, if necessary, are held to modest levels.

Decision not consistent with FMP (appeal criterion #1)

By affording NJ and the Southern Region the opportunity to liberalize, significantly, in 2018, and by requiring the Northern Region to reduce, significantly, in 2018, Addendum XXX is also inconsistent with nearly all objectives of the Fishery Management Plan (FMP).³

² The calculation for NJ assumes the Management Board will approve the state’s proposal to smooth its large 2017 wave 3 harvest estimate. Otherwise, the effect on NJ of the 2011–2015 timeframe would be a -12.89% reduction instead of a -2.17% reduction.

³ Amendment 12 Objectives:

- Reduce fishing mortality in the summer flounder, scup, and black sea bass fishery to assume that overfishing does not occur.
- Reduce fishing mortality on immature summer flounder, scup, and black sea bass to increase spawning stock biomass.

The 2016 Benchmark Stock Assessment, which provides estimates of fishing mortality (and other metrics) on a regional basis (MA–NY, NJ–NC), indicates that overfishing is occurring in the southern sub-unit (retro adjusted F of 0.39 in 2015, compared to F_{MSY} proxy of 0.36). A large harvest increase for the southern sub-unit is inconsistent with the FMP objective to assure that overfishing does not occur.

Meanwhile, the northern sub-unit is fishing well below the F_{MSY} proxy (northern retro adjusted F of 0.14). Another harvest reduction for the north is inconsistent with the FMP objective to improve yield from the fishery. The more restrictive measures in the north are effectively subsidizing the more liberal measures in the south. Additionally, too much of the north's fishing mortality rate is resulting from discard mortality due to the misalignment between plentiful stock status and draconian regulations.

Another large harvest reduction for the Northern Region will also force state waters regulations for MA–NY that are even further away from being compatible with federal waters regulations, another FMP objective. While the majority of recreational black sea bass landings in MA–NY are caught in state waters, for some of the northern states in some years, harvest from federal waters is high, ranging up to 50 percent of total landings. It's been seven years since recreational anglers and for-hire operators in MA–NY have been subject to uniform state and federal regulations, which would promote uniform and effective enforcement of regulations, another FMP objective. Of note, the process for selecting the federal waters measures this year deferred to the Addendum XXX process for determining the Southern Region's regulations first, meaning that the federal waters measures can be aligned with the state waters regulations for DE–NC regardless of the specific allocation that Addendum XXX sets for the region.

Lastly, the larger the harvest cut required of the Northern Region the greater the need for MA–NY to implement increasingly complex regulations to try to meet the needs of various stakeholder groups as best as possible. In prior years, this has included sector-specific possession limits, season-specific possession limits, and in-season closures, none of which promote uniform and effective enforcement of regulations, or meet the additional FMP objective to minimize regulations.

Insufficient/inaccurate/incorrect application of technical information (appeal criterion #3)

At the time of the Management Board's decisions on Addendum XXX, only waves 1–5 MRIP harvest estimates were available for 2017, necessitating the incorporation of a wave 6 projection to evaluate the potential management effect of the various allocation alternatives in 2018. Since then, additional 2017 harvest information has become available that dramatically alters the management implications, rendering the information that was available to the Management Board insufficient for decision-making.

Now available are preliminary full-year 2017 harvest estimates from MRIP, as well as a revised 2017 harvest estimate for NJ based on the state's proposal to smooth its large wave 3 MRIP harvest estimate. Replacing the wave 6 projections with the wave 6 harvest estimates has the following effect on the full-year harvest estimates: Northern Region +1.9% (from 2,496,841 to 2,544,638 pounds), NJ -19.9% (from 1,413,999 to 1,131,943 pounds), and Southern Region -2.0% (from 257,943 to 252,783 pounds). NJ's full-year harvest estimate is reduced another -33.3% under its proposed, smoothed harvest estimate of 754,768 pounds.

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- Improve yield from these fisheries.
 - Promote compatible management regulations between state and federal jurisdictions.
 - Promote uniform and effective enforcement of regulations.
 - Minimize regulations to achieve the management objectives stated above.

Tables 3 and 4 provide the projected management implications of the 2011–2015 timeframe option and the timeframe-averaging approach that were before the Management Board at the February 8 meeting. We highlight the highly variable implications for NJ as confirmation that the Management Board had insufficient information to determine the appropriate timeframe. The projected outcome of the 2011–2015 timeframe included a -30.27% harvest reduction for NJ (Table 3), which the Board’s averaging approach reduced to a projected -21.69% harvest reduction (Table 4). Based on NJ’s revised 2017 harvest estimate, the state stands to liberalize +46.71% under the timeframe averaging approach (Table 1), but still a very generous +30.63% under the 2011–2015 timeframe (Table 2).

Less dramatic but still notable are the effects on the Northern and Southern Regions. The Management Board knowingly adopted an option with a projected -10.02% reduction for the beleaguered Northern Region (Table 4), which grows to a -11.71% reduction using the updated information (Table 1), but could be reduced to a -5.45% reduction under the updated 2011–2015 timeframe (Table 2). Meanwhile, the updated 2011–2015 timeframe option would still provide a +6.83% increase to the Southern Region (Table 2), larger than the projected +4.69% increase considered by the Management Board (Table 3).

Insufficient/inaccurate/incorrect application of technical information (appeal criterion #3)

The southern states’ argument for the need to include 2006–2010 in the timeframe for determining allocation was predominantly based on the influence of the 2011 year class on the north’s black sea bass population (and not the south’s) and the expectation for a strong 2015 year class in the southern sub-unit. The contention that the Northern Region’s current availability of black sea bass is a year-class effect ignores the best available science.

The results of the peer-review accepted 2016 Benchmark Stock Assessment depict an increasing trend in northern sub-unit biomass beginning well before 2011 (Figure 1). Since the mid-1990s, northern region exploitable biomass has been on a steady positive trajectory from below 1,000 metric tons (mt) to over 15,000 mt in 2015 (22,340 mt after retrospective adjustment). Meanwhile, the southern sub-unit’s biomass has fluctuated around 4,000 mt, increasing to about 5,000 mt in 2015 (3,336 mt after retrospective adjustment). By 2015, 87% of the exploitable biomass⁴ is estimated to be in the states from NY north, nearly matching the 84% of the coastwide recreational harvest (in pounds) attributed to MA–NY that year. Yet, under Addendum XXX, the recreational allocation provided to the Northern Region is just 61.35%. (On a separate but related issue, the commercial quotas allocated to the states from NY north total just 33% of the coastwide quota, despite the species’ aforementioned current distribution.)

Increased black sea bass abundance and availability in the north is consistent with a growing resource and expanded age structure, and with the growing body of scientific research supporting a northward shift in the species’ distribution caused by climate change (i.e., increasing water temperature).⁵ Sixteen years ago, Amendment 13 to the FMP identified “a shift in abundance of black sea bass to the north” as a potential factor affecting the shift in landings to the north. We are not aware of any research that suggests this poleward shift—reflected by the science and highlighted by the FMP—will diminish or change direction in the near or distant future.

⁴After adjustments for retrospective bias.

⁵e.g., 1) Hare JA, Morrison WE, Nelson MW, Stachura MM, Teeters EJ, Griffis RB, et al. (2016). A Vulnerability Assessment of Fish and Invertebrates to Climate Change on the Northeast U.S. Continental Shelf. PLoS ONE 11(2): e0146756. doi:10.1371/journal.pone.0146756. 2) Bell, R. J., Richardson, D. E., Hare, J. A., Lynch, P. D., and Fratantoni, P. S.

Disentangling the effects of climate, abundance, and size on the distribution of marine fish: an example based on four stocks from the Northeast US shelf. – ICES Journal of Marine Science, doi: 10.1093/icesjms/fsu217.

Given the unidirectional shift in distribution, it stands to reason that application of the most recent years' data in an allocation decision is the most appropriate approach—particularly when it can be done without imposing disproportionate impacts throughout the range (in this case, NJ and DE–NC still having liberalizations). Addendum XXX must be viewed in the context of an evolving management system aimed at addressing the northward shift in the black sea bass resource by adjusting the recreational targets and commercial allocations accordingly. Viewed in this way, the Management Board's decision falls short and is out-of-synch with the direction of the Commission's management program.

The southern states have pointed to indications of a 2015 year class that is strong in their region as justification for a higher allocation to the south. State survey data from the Northern Region indicate that the 2015 year class is also exceptionally strong in the north (Figures 2–4). Interestingly, this trend was not evident in the NJ and VA surveys, according to the Northeast Fisheries Science Center's July 2017 data update on black sea bass. Consider also that the 2016 Benchmark Stock Assessment estimates that the south sub-unit's peak recruitment event occurred with the 1999 cohort. This led to the area's highest exploitable biomass estimates the following two years at a level (roughly 7,000 mt) that the north subunit achieved prior to the 2011 cohort's influence.

In addition, when the Mid-Atlantic Council's Scientific & Statistical Committee last provided its catch advice to the Council and Management Board, there was great uncertainty regarding the status and strength of the 2015 year class. That source of uncertainty is a key factor affecting the lower recreational (and commercial) ACLs in 2018 relative to 2017. If in fact the 2015 year class is as strong as it now appears to be, there may be no biological basis for imposing any reductions in the recreational fishery in any areas in 2018.

Management actions resulting in unforeseen circumstances/impacts (appeal criterion #5)

The Northern Region states have convened to determine the management measures within our region needed to meet the -11.7% reduction in harvest for the region imposed by Addendum XXX. The addendum requires adoption of a set of regional measures that would achieve the regional allocation; from those measures, the states can flex their state-specific measures, within bounds, to establish conservationally equivalent state regulatory programs.

From the onset, it was recognized that the unduly small allocation afforded the Northern Region would have a major, negative impact on the states' efforts to meet the requirements of the addendum. This is borne out by the extremely onerous regulatory standard that has emerged from our efforts: a 4-fish bag limit, 15" minimum size, and 119-day season, running from mid-June to mid-October. It was also understood that this regulatory standard approach would prove highly challenging in our efforts to evenly distribute the Northern Region's required reduction. Indeed, it appears that one state, Connecticut, will be forced to incur a -28% reduction in harvest in 2018 in order to enable the Northern Region to achieve the -11.7% regional reduction and uphold the regulatory standard requirements set forth by Addendum XXX. CT views this as an unforeseen and disproportionate impact. The required reduction and associated impact for CT would be lessened considerably if the 2011–2015 timeframe were implemented.

Corrective Action

Because of the uneven impacts to the regions linked to the timeframe options, and because there are more southern states than northern states on the Management Board, the Northern Region states hereby request reconsideration of the timeframe decision by the ISFMP Policy Board. Such review—by a Board whose membership includes unaffected jurisdictions—is necessary to assess a fair and equitable outcome for all states within the management unit. Based on the ample justification for adopting the 2011–2015 timeframe for regional allocation of the RHL (using the combined

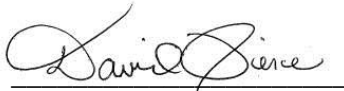
exploitable biomass/harvest approach), as outlined herein, the Northern Region states urge the Policy Board to grant this appeal and to call upon the Management Board to adjust Addendum XXX accordingly. Future utility of the resource-distribution-based approach set forth in the addendum will require the use of the most current data to update the allocation formula in response to new stock assessment results. Inclusion (and averaging) of additional historical years is counter to this progressive management approach.

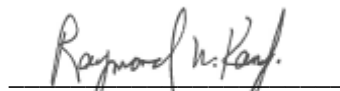
In addition, the Northern Region requests a Policy Board directive to the Management Board to initiate an addendum or amendment to manage the black sea bass resource by its two areal sub-units. The best available science (the 2016 Benchmark Stock Assessment) supports a sound, science-based management framework (i.e., regional management based on regional reference points) that may not otherwise be advanced given the voting membership of the Management Board. We are concerned that the Management Board's decision on Addendum XXX's timeframe option is synoptic of a larger management issue that needs to be put on a path towards resolution.

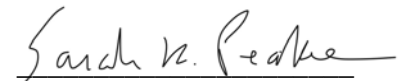
We are unaware of other options to gain relief at the Management Board level and commit to complying with the findings of the Policy Board, subject to our right to take further action beyond the ASMFC to seek relief.

Sincerely yours,


Massachusetts Commissioners



Dr. David E. Pierce

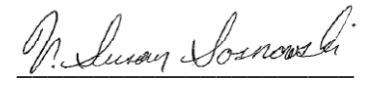

Raymond W. Kane


Representative Sarah K. Peake


Rhode Island Commissioners



Jason McNamee



David V.D. Borden


Senator V. Susan Sosnowski


Connecticut Commissioners

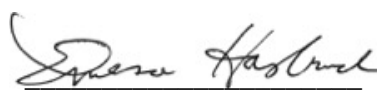

Mark Alexander



Dr. Lance L. Stewart


Senator Craig A. Miner

New York Commissioners


James J. Gilmore, Jr.


Emerson C. Hasbrouck, Jr.


Senator Philip M. Boyle

Cc: Robert Beal, Toni Kerns (ASMFC)

Table 1. Addendum XXX Outcome, Using Updated 2017 Harvest Data

Region	Regional Allocation %	2018 RHL	2018 Regional Allocation (lbs)	Preliminary 2017 Harvest (lbs)*	% Change from 2017 Harvest to 2018 Allocation
North: MA-NY	61.35%	3.66 million pounds	2,246,562	2,544,638	-11.71%
South: NJ	30.24%		1,107,352	754,768	+46.71%
South: DE-NC	8.41%		307,964	252,783	+21.83%

* Preliminary full-year 2017 harvest as estimated by MRIP waves 1–6, with NJ’s wave 3 harvest estimate smoothed as proposed by the state. Without smoothing, NJ’s preliminary 2017 harvest estimate is 1,131,943 pounds, resulting in a -2.17% reduction in 2018.

Table 2. 2011–2015 Timeframe Outcome, Using Updated 2017 Harvest Data

Region	Regional Allocation %	2018 RHL	2018 Regional Allocation (lbs)	Preliminary 2017 Harvest (lbs)*	% Change from 2017 Harvest to 2018 Allocation
North: MA-NY	65.79%	3.66 million pounds	2,405,854	2,544,638	-5.45%
South: NJ	26.85%		985,979	754,768	+30.63%
South: DE-NC	7.36%		270,045	252,783	+6.83%

* Preliminary full-year 2017 harvest as estimated by MRIP waves 1–6, with NJ’s wave 3 harvest estimate smoothed as proposed by the state. Without smoothing, NJ’s preliminary 2017 harvest estimate is 1,131,943 pounds, resulting in a -12.89% reduction in 2018.

Table 3. Projected Outcome of the 2011–2015 Timeframe in Draft Addendum XXX

Region	Regional Allocation %	2018 RHL	2018 Regional Allocation (lbs)	Projected 2017 Harvest (lbs)*	% Change from 2017 Harvest to 2018 Allocation
North: MA-NY	65.7%	3.66 million pounds	2,405,854	2,496,841	-3.64%
South: NJ	26.9%		985,979	1,413,999	-30.27%
South: DE-NC	7.4%		270,045	257,943	+4.69%

* Projected 2017 harvest estimates based on MRIP waves 1-5 plus a wave 6 projection, and no smoothing of NJ’s wave 3 harvest estimate.

Table 4. Projected Outcome of the Timeframe Averaging Approach When Adopted by the Management Board

Region	Regional Allocation %	2018 RHL	2018 Regional Allocation (lbs)	Projected 2017 Harvest (lbs)*	% Change from 2017 Harvest to 2018 Allocation
North: MA-NY	61.35%	3.66 million pounds	2,246,562	2,496,841	-10.02%
South: NJ	30.24%		1,107,352	1,413,999	-21.69%
South: DE-NC	8.41%		307,964	257,943	+19.39%

* Projected 2017 harvest estimates based on MRIP waves 1-5 plus a wave 6 projection, and no smoothing of NJ’s wave 3 harvest estimate.

Figure 1. Comparison of North sub-unit (left) and South sub-unit (right) exploitable biomass estimated by the 2016 Benchmark Stock Assessment. Note the difference in y-axis scale and the increasing trend in the north preceding the 2011 year class.

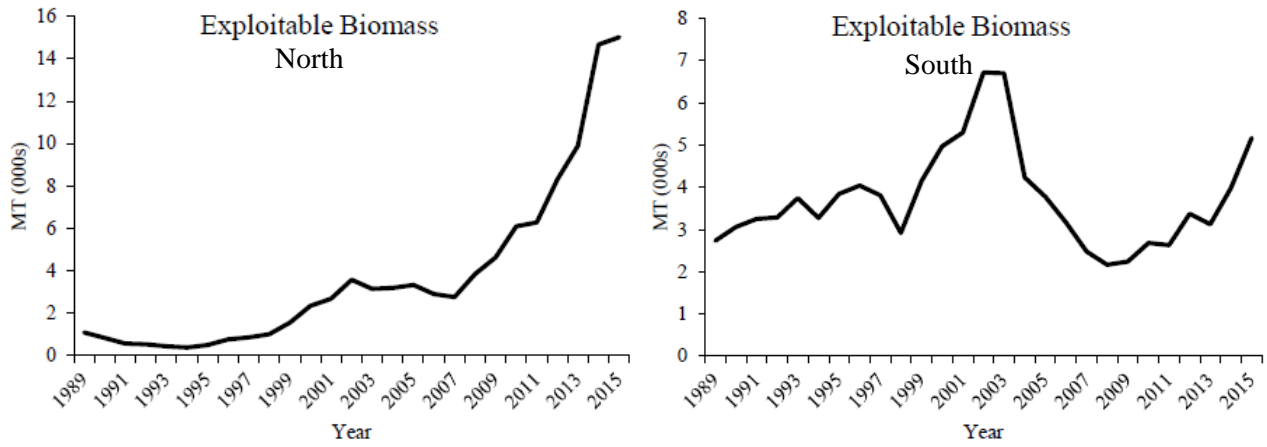


Figure 2. Massachusetts spring trawl survey stratified mean number per tow at age-1, indicating a strong 2015 year class recruiting to the population as age-1 in 2016.

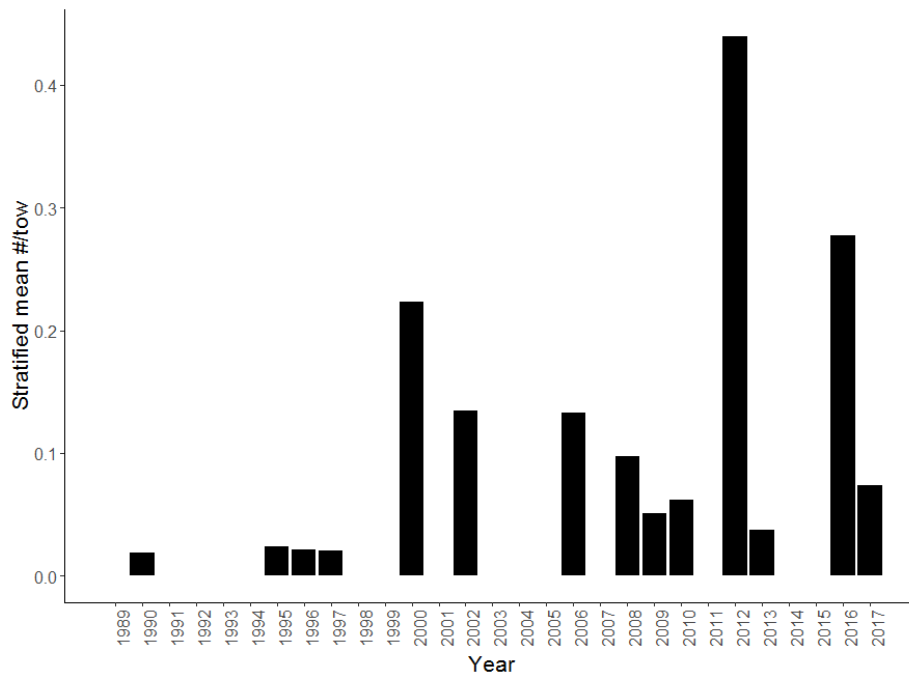


Figure 3. Rhode Island spring trawl survey mean number per tow at age-1, indicating a strong 2015 year class recruiting to the populations as age-1 in 2016.

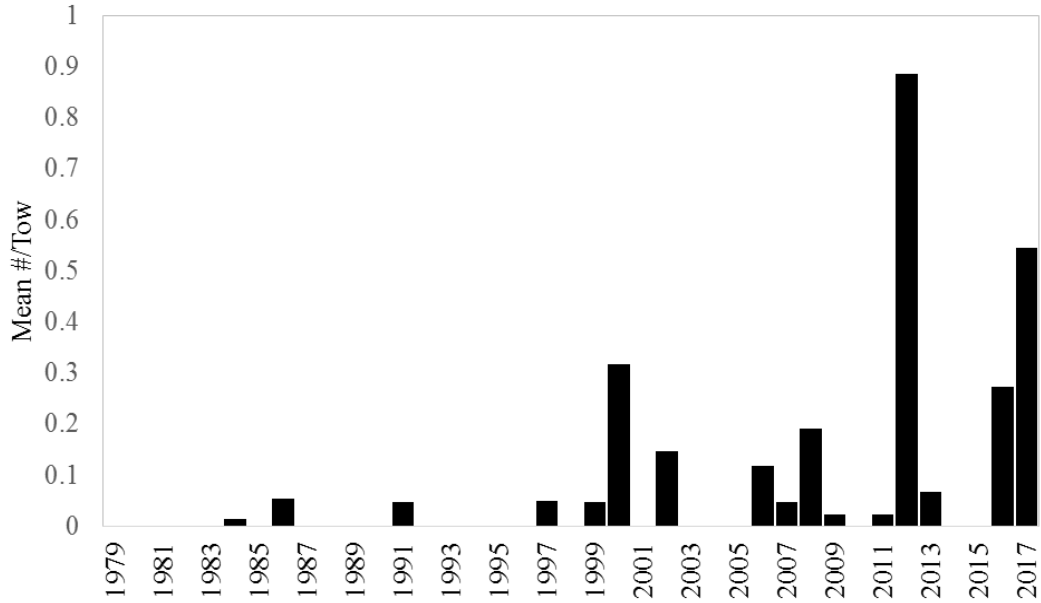
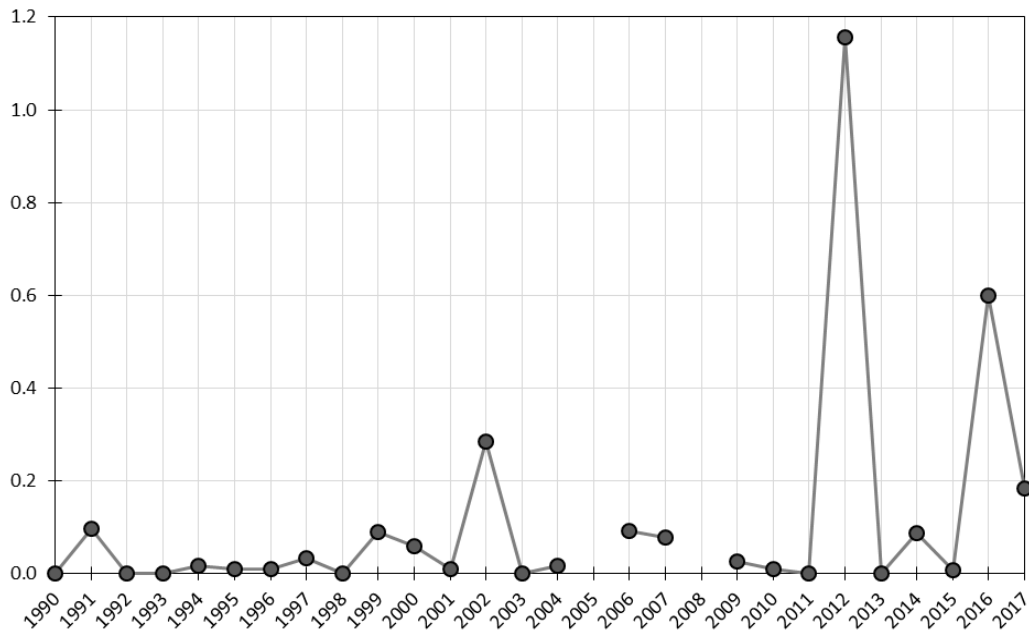


Figure 4. New York small mesh trawl survey mean number per tow at age-1, indicating a strong 2015 year class recruiting to the population as age-1 in 2016.





Atlantic States Marine Fisheries Commission

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James J. Gilmore, Jr. (NY), Chair

Patrick Keliher (ME), Vice-Chair

Robert E. Beal, Executive Director

Vision: Sustainably Managing Atlantic Coastal Fisheries

April 3, 2018

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Dear Dr. Pierce, Mr. McNamee, Mr. Aarrestad and Mr. Gilmore:

This letter responds to the March 16, 2018 appeal by the Commonwealth of Massachusetts and the States of Rhode Island, Connecticut and New York (Northern Region) regarding of the Atlantic States Marine Fisheries Commission's (Commission) approval of Addendum XXX (Addendum) to the Summer Flounder, Scup and Black Sea Bass Interstate Fishery Management Plan (FMP). On March 23, 2018, in accordance with the appeals process, a conference call of the Commission's Vice-Chair Pat Keliher, past Chair Doug Grout and Robert Boyles, proxy for Chairman Gilmore, as he is appellant (Leadership), and staff was convened to review the Northern Region appeal. The purpose of the review was to assess the issues the Northern Region raises in its appeal and to determine whether those issues are of the type and substantiality that warrants review by the Interstate Fisheries Management Program (ISFMP) Policy Board.

During the call, it was determined the appeal did meet the qualifying guidelines and, thus, could be forwarded to the ISFMP Policy Board for consideration under appeal criterion one (decision not consistent with FMP) and parts of criterion three (incorrect application of technical data). However, Leadership did not find the appeal met the qualifying guidelines for criterion five (unforeseen circumstances/impacts).

A. Claims Under Criterion One: Decision Not Consistent with FMP

The appeal referenced criterion one, "Decision not consistent with the FMP." Under this criterion, the appeal argues two points: (1) the allocation method fails to meet the primary goal of the addendum to reduce disproportionate impacts on the states and (2) the significant

reduction required is inconsistent with nearly all objectives of the FMP. See letter from Northern Region Commissioners to ASMFC Chair James J. Gilmore, pp. 2-3 (March 16, 2018).

Leadership concluded the states presented sufficient evidence in their claim to allow for the Policy Board to further consider the Northern Regions claim under criterion one.

B. Claims Under Criterion Three: Insufficient/Inaccurate/Incorrect Application of Technical Information

The appeal cited criterion three, “Insufficient/Inaccurate/Incorrect Application of Technical Information.” Under this criterion, the appeal states wave 6 data was not available when the Summer Flounder, Scup and Black Sea Bass Management Board (Board) approved the addendum. Further, since approval of the addendum, additional 2017 harvest information became available that dramatically altered the management implications. The appeal also claims the Board’s contention that the Northern Region’s current availability of black sea bass is a year-class effect ignores the best availability science, which is an insufficient application of the technical information. See letter from Northern Region Commissioners to ASMFC Chair James J. Gilmore, pp. 3-5 (March 16, 2018).

Routinely, the Board has made management decisions on available wave data, setting specifications based on projected wave 6 data. 2017 was not an anomaly in the management process. Leadership found the exclusion of wave 6 data alone does not meet the appeal criterion for insufficient/inaccurate/incorrect data. However, the significant change in New Jersey’s harvest estimate from 1.4 million pounds to 754,768 pounds due to the smoothing of data does meet the criterion. Specifically, in making its decision, the Board considered one data point (New Jersey’s preliminary harvest estimate) without any indication or discussion about how that data point might change after smoothing. Based on this, Leadership concludes there are grounds for an appeal because the data presented on New Jersey’s harvest estimate was insufficient.

Leadership concludes the Northern Region presented sufficient evidence in the appeal to allow for the Policy Board to further consider the claim that the Board ignored the best available science. The appeal presents that the southern states argued the high availability of black sea bass in the north is predominately based on a single year class (2011), which the claim contests is not based on the best available science under criterion 3. Leadership recognizes as black sea bass distributions shift management strategies become more complex. Shifts in the distribution and productivity of stock will likely cause ecological and economic disruptions. As environmental conditions change, the Board may need to revisit, as necessary, the underlying conservation goals and objectives of the FMP.

C. Claims Under Criterion Five: Unforeseen Circumstances/Impacts.

The appeal letter cites criterion five, “Unforeseen circumstance/impacts.” The appeal claims Connecticut will be forced to take a much greater reduction than the other states within the region. The appeal presents this as an unforeseen and disproportionate impact.

The draft addendum presented a wide range of management options, including example measures, for consideration by the Board. Examples presented in the document had similar changes in magnitude as the Northern Region's current regulatory standard, in addition to options that would have required a larger reduction for Connecticut. These options were likely not ones the state would have voted in favor of, but by inclusion in the draft there was opportunity for the state to consider the impact it would have in comparison to the 2017 regulations based on the example measures provided by staff at the Board meeting. While Leadership agrees Connecticut's reduction is larger than the other states, Leadership does not find this unforeseen.

In light of these findings, Leadership finds there are grounds for the appeal to be considered by the ISFMP Policy Board under two of the three criteria advanced in the Northern Region's letter, specifically criteria one and three. Leadership concludes it is appropriate to provide the Northern Region an opportunity to present its appeal on this issue to the ISFMP Policy Board on May 3, 2018. During that meeting, the ISFMP Director will present background on the Addendum and the Board's justification for its actions. Following this presentation, the Commissioners from the Northern Region will be provided 20 minutes to present their rationale for the appeal and their suggested resolution of the issue. The ISFMP Policy Board will then be provided an opportunity to discuss the issue, consider the corrective action requested by the states, and decide what issues, if any, should be remanded back to the Summer Flounder, Scup and Black Sea Bass Board for corrective action. No public comment will be taken in connection with the appeal.

Thank you for the continued partnership and commitment to the Commission process and actions.

Sincerely,



Patrick Keliher

cc: Raymond Kane, Rep. Sarah Peake, David Borden, Sen. Susan Sosnowski,
Dr. Lance Stewart, Sen. Craig Miner, Emerson Hasbrouck, Jr., Sen. Philip Boyle
Interstate Fisheries Management Program Policy Board

United States Senate

WASHINGTON, DC 20510

April 11, 2018

Mr. Wilbur Ross
Secretary
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Dear Secretary Ross:

I write to express my strong support for the Northern Region's appeal of the Atlantic States Marine Fisheries Commission's (ASMFC) regional allocation of the black sea bass recreational harvest limit (RHL) for 2018. The current black sea bass recreational fishery regulatory regime is unfair, based on poor science, arbitrary and inequitable for the recreational anglers on Long Island and in the state of New York. Therefore, I strongly urge that, based on additional data and estimates that have recently been made available, you approve no harvest reductions to the black sea bass recreational fishery in the Northern Region. This action is grounded in more precise data, can be sustained by the state of the fishery (Black Sea Bass stocks are 240% above the biomass target), will protect New York anglers and keep the management of the fishery consistent with the goals of the Fisheries Management Plan (FMP) agreed upon by the Mid Atlantic Fisheries Management Council (MAFMC) and the ASMFC.

In an April 3rd letter, the ASMFC agreed with the Commissioners from Massachusetts, Rhode Island, Connecticut, and New York's March 16th appeal to the ASMFC Chair that there was reason to reconsider the large harvest reduction for the Northern Region as established in 'Addendum XXX' for recreational black sea bass management. Specifically, while the primary objective of Addendum XXX is to address inequities in recreational black sea bass management, the management approach approved by the ASMFC allows large harvest liberalizations for the Southern Region and the New Jersey Region, while requiring a reduction of approximately 12% from 2017 in the Northern Region. Currently Black Sea Bass stocks are 240% above the biomass target, yet New York anglers have seen decreases in their allotted take for six of the past seven years.

The ASMFC also agreed that since Addendum XXX was passed, additional data had become available that significantly changed past harvest estimates, which served as grounds for reviewing the regional allocations since "...the data presented on New Jersey's harvest estimate was insufficient." Specifically, Marine Recreational Information Program's (MRIP) wave 6 (harvest from November to December) data is now available, as is a revised full-year harvest estimate for New Jersey based on the state's proposal to "smooth" its large wave 3 harvest estimate, which changes New Jersey's initial harvest estimate from 1.4 million pounds to 754,768 pounds. Simply put, with such a significant change in the harvest estimates, it is clear that the data that the ASMFC initially relied upon to make its decision was insufficient and

inadequate, and thus the decision to reduce harvest limits for New York and the rest of the Northern Region should be revisited.

The fishery's stock continues to grow, however the number of fish each New York angler is allowed to take has decreased. In the past, fisherman have been asked to make sacrifices to rebuild stocks; and now that stocks are plentiful, New York anglers are still being asked to make sacrifices based off of insufficient data and decisions that are inconsistent with the FMP. Again, I urge you to swiftly and favorably rule on the pending Northern Region's appeal and approve no reductions to the black sea bass recreational fishery in New York's region due to insufficient data, and the detrimental impact its mismanagement will cause Long Island and New York anglers. Should you have any questions, please do not hesitate to contact my staff.

Sincerely,



Charles E. Schumer
United States Senator

CC

James J. Gilmore, Chair, ASMFC
Mike Luisi, Chair, MAFMC