Comprehensive Summer Flounder Amendment: Draft Range of Alternatives for Commercial Issues

For Council and Board Discussion, May 2017

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Introduction

The Mid-Atlantic Fishery Management Council (Council) and Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) will meet May 10, 2017 to review possible draft alternatives for the commercial issues identified in the Comprehensive Summer Flounder Amendment. The goal of this discussion is for the Council and Board to provide feedback on the range of alternatives developed by staff in cooperation with the amendment's commercial issues working group and Fishery Management Action Team (FMAT).[1]

Specifically, the Council and Board should provide guidance on refining the draft alternatives, including the overall range and specific details. The Council and Board should also indicate if there are alternatives or alternative sets that should not be pursued further in this action. **Suggestions** for additional alternatives, added specificity for existing draft alternatives, removal of alternatives, or other modifications to draft alternatives are requested.

The Commercial working group and FMAT will then refine the draft range of alternatives for commercial issues and begin developing initial analysis for future Council and Board consideration and inclusion in a draft public hearing document. Depending on the scope of work needed, a refined range of alternatives could be considered by the Council and Board in August 2017, followed by approval of a public hearing document and a Draft Environmental Impact Statement (DEIS) in December 2017. The Council must approve a DEIS prior to public hearings, and a refined range of alternatives will be needed to complete the DEIS. This timeline is subject to change depending on the number and scope of the alternatives and the analysis required.

Note that the FMAT meets on Thursday, May 4, and their comments and recommendations will be summarized in a separate document for supplemental briefing materials.

Current Amendment Timeline

February-April 2017	Commercial working group and FMAT develop draft commercial range of alternatives and initial analyses/background for Council and Board consideration; staff begins Draft EIS
May 10, 2017	Council and Board consider range of alternatives on commercial issues
May-August 2017	Staff, FMAT and working groups refine alternatives and analysis, with Committee and Board input where possible; continued work on Draft EIS
August 2017	Council and Board approve refined range of alternatives for inclusion in public hearing document
Sept./Oct. 2017	Draft EIS submitted to NMFS for preliminary review
December 2017	Council and Board approve public hearing document and Draft EIS (Council must approve Draft EIS prior to public hearings)
Early 2018	DEIS final submission; Notice of public hearings; Public hearings and summarization of comments; 60-day NEPA/MSA comment periods
Winter/Spring 2018	Council/Board consideration of public comments; Staff prepares documents for final action
Spring 2018	Final action

[1] See the amendment action plan at http://www.mafmc.org/actions/summer-flounder-amendment for FMAT and working group information.

Summer 2018	Final Environmental Impact Statement finalized and submitted; NMFS and other agencies review; final edits completed
Summer-Fall 2018	Rulemaking and comment periods (4-7 months from after EIS finalized)
Late Winter/Spring 2019	Final rule effective

Issues Not Included in this Document

Other Amendment Issues

The following amendment issues will be included in later documents for this amendment or separate actions:

- **FMP Goals and Objectives:** a revised set of draft goals and objectives will be finalized by the FMAT based on Council and Board input at the December 2015 goals and objectives workshop, for inclusion in a public hearing document for approval by the Council and Board later in 2017.
- **Commercial/Recreational Allocation:** Development of this issue is delayed given major ongoing changes to the Marine Recreational Information Program (MRIP) effort estimation methodology, which will result in revised recreational catch, landings, and effort estimates. These revisions will implications for analysis of this issue. Full use of revised estimates and termination of the current method expected no earlier than 2018.
- **Recreational Issues:** Analysis for several recreational issues would be impacted by the MRIP changes described above, so recreational issues within the amendment will be developed once new MRIP estimates are available. Staff will continue to work with the ASMFC technical committee to address summer flounder recreational issues. As analyses are completed, those results will be made available for possible consideration by the Council and Board in a framework action/addendum. Recreational issues previously identified within the scope of the amendment include: a) Recreational Process, Conservation Equivalency Framework, and Recreational Allocations; b) Recreational Sector Separation (For-Hire and/or Shore Mode); c) Alternative Recreational Strategies (allow for alternatives to minimum size, bag limit, and season restrictions; e.g., slot limits); d) Recreational Gear Requirements or Restrictions; and e) Recreational Data Collection Requirements and Protocols.

New England Fishery Management Council Accountability Measures

Alternatives to incorporate some New England Fishery Management Council Accountability Measures (AMs) impacting summer flounder (primarily the AMs for southern windowpane flounder) into the Summer Flounder, Scup, and Black Sea Bass FMP have been removed from this document for several reasons. First, the potential for southern windowpane AMs to impact the summer flounder fishery has become more pressing, as the AMs triggered in 2015 will be implemented in 2017. The timing of the summer flounder amendment would not allow for a quick response to this issue. Additionally, the New England Council Groundfish Plan Development Team is currently working on potential options to address the impacts of these AMs. Depending on the near-term actions of the NEFMC, the Mid-Atlantic Council may not need to take action on this issue (i.e., if the NEFMC designates southern windowpane flounder as an ecosystem component species or applies the mixed stock exception to the requirement to set Annual Catch

Limits). If Mid-Atlantic Council action is warranted, the specifics of the process and the vehicle for that action are still unclear and are being clarified with GARFO. Finally, these AMs also impact the scup fishery, which the Council may want to include in any action that addresses this issue. Mid-Atlantic Council staff is currently working with New England Council staff and GARFO to identify options to address this issue as soon as possible.

Specifications Measures

Measures that can be modified through the annual specifications process for summer flounder are not addressed in the amendment alternatives. These measures can be modified much more quickly and efficiently through specifications, and their inclusion in the amendment would complicate the analysis and extend the amendment timeline. The federal regulations at §648.102 include a specific list of measures that the Monitoring Committee, and subsequently the Council and Board, may consider during the specifications process:

- Commercial quota and recreational landing limits
- Research quota set from a range of 0 to 3 percent of the allowable landings level for both the commercial and recreational sectors
- Commercial minimum fish size
- Minimum mesh size
- Other gear restrictions
- Adjustments to the summer flounder small mesh exemption area (specified in §648.108(b)(1))
- Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the recreational harvest limit, set after reductions for research quota
- Recreational minimum fish size
- Recreational season
- Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota
- Changes, as appropriate, to the Standardized Bycatch Reporting Methodology (SBRM), including the coefficient of variation (CV)-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs
- Modification of existing Accountability Measures and Annual Catch Target control rules utilized by the Summer Flounder Monitoring Committee.

Commercial Issues: Background and Draft Alternatives

1. Permits and Latent Effort

Permit capacity and latent effort were identified as issues to be addressed in the amendment. Comments offered during the public scoping process (Fall 2014) were mixed regarding how or whether to address this issue. Suggestions have included:

- **Tiered access permits**. Some have suggested separating: 1) active participants, 2) inactive permits, 3) recent and/or new entrants. Several comments suggested that such a tiered system should favor those who have been active participants for many years, especially those active throughout the rebuilding process. Others suggested separate permit categories for separate gear types, or separate permit tiers for directed vs. incidental fisheries.
- **State-level permits**. Some believe that several states have created an effective permit system with fair qualifications, while other states have addressed this issue poorly and now have problems with low trip limits and many part time or incidental fishermen catching a lot of quota. Many acknowledged that state level permits should be reconsidered.
- **Latent effort and permit banks**. Some are concerned about latent effort developing in part through permit banks. The concern is that these banks hold summer flounder permits and over time people may enter back into the fishery using these permits.
- **Permits for scallop limited access vessels**. Some in the scallop limited access fleet assert that they must be able to maintain the summer flounder permits they've qualified for as an important part of their current bundle of fishing rights.
- **Transferability**. There was at least one suggestion to provide for mentorship/transferability of permits to address the ageing population of commercial fishermen.

Current Federal Permit Requirements for Summer Flounder

There is a single limited access federal permit category for the summer flounder commercial fishery: summer flounder moratorium permits. There is no commercial open access permit category for summer flounder nor are there separate permits for incidental catch. In federal waters, a moratorium permit is required to fish commercially for summer flounder, meaning this permit is required to sell any amount of summer flounder taken from federal waters. A permit is not required for those who do not sell summer flounder and adhere to the recreational possession limits. If you have both a summer flounder moratorium permit and a charter/party permit, you may not fish under the terms of both permits at the same time, meaning you may not carry passengers for hire and sell summer flounder on the same trip.

The commercial summer flounder fishery is a limited entry fishery. To be eligible for a moratorium permit, a vessel must have been issued a moratorium permit in the previous year, or be replacing a vessel that was issued a moratorium permit for a vessel after the owner retires the vessel from the fishery. All moratorium permits must be reissued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued (as described below). Failure to renew a moratorium permit in any fishing year bars the renewal of the permit in future years. Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a moratorium permit or CPH based on that or another vessel's fishing and permit history.

The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. A limited access permit cannot be "split" from another limited access permit. Generally, this means if two or more limited access permits are on one boat they may not be divided and put on two boats.

Confirmation of Permit History

A CPH may be issued when a vessel that has been issued a limited access permit has sunk, been destroyed, or has been sold to another person without its permit history. Possession of a CPH will allow the permit holder to maintain landings history of the permit without owning a vessel.

A CPH preserves the eligibility of an individual to apply for a limited access permit for a replacement vessel based on the previous qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in the federal regulations at §648.4. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. The CPH remains valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit.

Vessel Replacements and Upgrades

A permit holder can submit documentation of a replacement of one vessel or CPH with another vessel and the transfer of fishing histories and limited access permit eligibility from the old vessel or CPH to the new vessel. The qualifying vessel or CPH must be under the identical ownership as the replacement vessel. The vessel length and engine horsepower may be increased either through an upgrade or a replacement. A 10% increase in length overall and a 20% increase in engine horsepower are allowed.

State Permit Requirements

States have varying requirements for summer flounder permits, as summarized below.

Massachusetts

All persons who land and sell finfish in Massachusetts must have a commercial fishing permit from the Division of Marine Fisheries (DMF) and must sell only to permitted Massachusetts dealers. A limited entry summer flounder (fluke) permit endorsement, in addition to a Massachusetts commercial fishing permit, is required for any individual and/or vessel to commercially fish for summer flounder within the state waters of Massachusetts, or to harvest, process, or land any summer flounder for commercial purposes in Massachusetts. This endorsement is limited entry due to a moratorium on new fluke endorsements instated in 1999 to address a substantial increase in participation and landings. The fluke endorsement must be renewed annually.

DMF policy has largely been against transfer of summer flounder endorsements, in order to maintain the moratorium's effectiveness in reducing the total number of endorsements. However, DMF allows endorsement transfers between immediate family members (provided they meet the existing eligibility criteria) on a one-time basis, after which the endorsement becomes non-transferable. In addition, inshore trawl fishermen who sell their businesses (i.e., vessels, permits, etc.) may transfer a summer flounder endorsement if the other permits are active as inshore

trawling could result in excessive summer flounder discards otherwise. For the offshore fishery, transfer of the summer flounder endorsement to the new permit holder is allowed when vessels and federal permits are sold.

Rhode Island

A Rhode Island (RI) commercial fishing license with a restricted finfish endorsement is required to take summer flounder for commercial purposes from Rhode Island waters. This endorsement is available only via an annual lottery or via renewal.

Rhode Island landing licenses are also required to transit through state waters for the purpose of landing at Rhode Island ports. For summer flounder, one must hold either a resident landing license or a non-resident restricted finfish landing license in order to transit state waters and land summer flounder at Rhode Island ports.

One additional requirement for commercial summer flounder in RI is, if in possession of more than 200 lbs of summer flounder, a state issued summer flounder exemption certificate is needed. There is a moratorium on issuance of new RI summer flounder exemption certificates, but they may be transferred under similar guidelines to federal summer flounder moratorium permits.

Connecticut

For the commercial possession or landing of summer flounder in Connecticut waters, Connecticut requires a Summer Flounder Quota-Managed Species Endorsement in conjunction with either of two limited access licenses or either of two open access licenses. Quota-Managed Species Endorsements were last issued in 2003 to those who qualified based on their commercial fishing history; new endorsements are not presently being issued. The endorsement must be renewed annually by March 31, or that privilege is permanently retired. Endorsements may only be transferred in conjunction with a limited-access license that qualifies for a transfer.

A Quota-Managed Species License Endorsement may be used in combination with either or both of the following limited-access commercial fishing licenses:

- Principal Commercial Fishing License (trawl gear, lobster pots.)
- General Commercial Fishing (Finfish) License (Commercial hook and line as well as other gears not typically relevant to the summer flounder fishery.)

These limited-access licenses are available only to those persons who held the license from June 1, 1995 to December 31, 2003, and who renewed the license by March 31 of the previous year. Holders of a limited access fishing license must also obtain/renew a Commercial Fishing Vessel Permit (see below) annually to maintain eligibility for the limited access license. Limited access licenses are transferable provided certain compliance and activity threshold requirements are met.

A Quota-Managed Species License Endorsement may also be used with either of the following open-access commercial fishing licenses:

- Commercial Landing Vessel Operator’s License (authorizes licensee to operate a vessel used to land fish taken exclusively outside CT waters; fishing in CT waters is prohibited).
- Restricted Commercial Fishing License (commercial hook and line).

These open-access licenses are non-transferable and there is no annual renewal requirement.

Both of the limited-access licenses and the Commercial Landing Vessel Operator's License require that a Commercial Fishing Vessel Permit be issued for the fishing vessel being used by the licensee. The Commercial Fishing Vessel Permit is non-transferrable.

New York

In New York, a Food Fishing License allows the license holder to take and land food fish harvested from state waters and to land food fish taken from waters outside the state for commercial purposes.

To harvest summer flounder for commercial purposes in state waters, one must have a New York summer flounder commercial permit. To land summer flounder taken legally outside New York state waters for commercial purposes in New York, possession of a summer flounder landing permit is required. Licenses are non-transferrable and must be renewed annually. If the applicant is a corporation, the application must name a specific vessel and a separate permit must be obtained for each vessel fishing owned by the corporation. Such corporate permits must be carried on the specific vessel named in the permit when that vessel is being used to take summer flounder for commercial purposes.

Summer flounder Commercial Permits expire on the last day of December of each year. Applications for a summer flounder commercial permit will be accepted from November 15 until close of business April 15. Permittees must state their intent to be permitted to use only fixed gear (pound/trap net), only hook and line gear or for the use of all gear. The permit authorizes landings for that entire calendar year from that category of gear only. Permits are nontransferable except that the department may allow a one-time re-issuance of a summer flounder commercial harvesters permit to an immediate family member of a permitholder. Upon re-issuance, the former holder is no longer eligible for the permit, and all rights and responsibilities associated with the permit pass to the recipient.

New Jersey

A vessel must possess a valid New Jersey Summer Flounder Permit to participate in the directed fishery for summer flounder. Permits are issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.

Applications for hook and line permits were required to be submitted prior to May 31, 1994, and for any other gear type were required by January 1, 2000. Eligibility for a New Jersey Summer Flounder Permit was determined by the vessel's owner meeting the following criteria:

- The vessel landed and sold at least 1,000 pounds of summer flounder in each of two years during 1985-1992;
- The vessel possessed a valid New Jersey otter trawl, pound net, or gill net license or a valid Federal summer flounder permit during each of the two qualifying years described above. Vessels providing documentation regarding the amount of summer flounder landed for two years between January 1, 1985 to November 2, 1988 or vessels providing documentation of harvest by hook and line are exempt from this requirement.

The permit is valid from the date of issuance and for any subsequent years unless revoked as part of a penalty action. The vessel, when engaged in the directed summer flounder fishery, may only have on board the gear type(s) listed on that vessel's New Jersey Summer Flounder Permit.

The owner of a permitted vessel may transfer their Summer Flounder Permit, with approval by the NJ DEP, for vessel replacements and vessel sales. Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel. Replacement vessels may not exceed 10 percent larger in vessel length, gross registered tonnage and net tonnage and 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced is no longer eligible for a New Jersey Summer Flounder Permit. For vessel sales, the owner selling the vessel shall no longer be eligible for a New Jersey Summer Flounder Permit based on the harvesting history of the vessel being sold.

Vessels operating under a New Jersey Summer Flounder Permit to commercially harvest summer flounder by hook and line are limited to a crew size of no more than five persons, including the captain. The vessel may not carry any passengers for hire while commercial fishing. When carrying passengers for hire the New Jersey Summer Flounder Permit is not valid and the recreational possession limits and seasonal restrictions apply.

Delaware

Delaware meets the Commission's requirements for *de minimis* status for the commercial summer flounder fishery (states having commercial landings less than 0.1% of the coastwide total). There is no permit specific to summer flounder. A person may possess commercial sizes and quantities of summer flounder provided they hold a valid Delaware commercial food fishing license and a food fishing equipment permit for gill nets.

Maryland

Maryland uses catch shares to equitably distribute their summer flounder commercial quota among harvesters in Atlantic coastal waters, coastal bays and tributaries, Chesapeake Bay (primarily bycatch) and the Potomac River. The catch share system assigns a specific individual fishing quota (IFQ) to each fisherman. Commercial fishermen without an IFQ are restricted to 100 lbs. per person per day in coastal waters and 50 lbs. per person per day in tidal waters (Chesapeake Bay).

An individual who possesses a Maryland summer flounder landing permit and lands more than the assigned permit allocation, including any quota transfers, shall have the overage deducted from the permit allocation for the following year. A permittee may annually transfer up to 100 percent of their individual quota to another permittee upon notification of and approval by the Department of Natural Resources (DNR). However, an individual may not hold more than 29 percent of the allocation for the total fishery.

Per Maryland regulations, no more than seven summer flounder landing permits may be issued by the DNR. The number of summer flounder landing permits is based on the reported catch and landing records of summer flounder in Maryland during 1998—2003. The name of the vessel on which the operator is working shall be declared on the Maryland summer flounder landing permit.

Individuals may apply for the permanent transfer of a Maryland Summer Flounder landing permit. Temporary transfers are not permitted. Regardless of the number of authorized individuals with permits on board any one federally permitted vessel, no more than two summer flounder quotas may be fished from one vessel per trip.

Virginia

A Commercial Fisherman Registration License is required to harvest and land summer flounder in Virginia waters. To land summer flounder harvest from outside of Virginia waters a Seafood Landing License, and a Summer Flounder Endorsement License (SFEL) are required. To qualify for a SFEL a vessel needed to have landed and sold at least 500 pounds of summer flounder in Virginia in at least one year during the period of 1993 through 1995. The SFEL was established in 1996. The licenses are transferable.

North Carolina

A license is required to land more than 100 pounds of summer flounder from the Atlantic Ocean in North Carolina. To be eligible for the license, the vessel must have been licensed by North Carolina, either through a resident or non-resident vessel license, or a land or sell license, during two of the three license years from July 1, 1992 to June 30, 1993, July 1, 1993 to June 30, 1994; or July 1, 1994 to June 30, 1995 and have landed 1,000 pounds or more of summer flounder each year for two of the three years.

Federal Control Date

On August 1, 2014, at the request of the Council, GARFO published a notice setting that date as the new control date for participants in the commercial summer flounder fishery (79 FR 44737). The establishment of the control date notified the public that the Council was considering an action to limit the number of federally permitted participants in the fishery in the future. The control date is intended to help the Council to identify latent effort in the summer flounder fishery.

While the control date alone does not have a direct impact on participants, the Council and Board could use it as a reference point as they consider if and how to limit the number of participants in the commercial summer flounder fishery. The Council and Board may choose to use qualification criteria that do not rely on the new control date, or previous dates considered, including the January 26, 1990 control date for the summer flounder fishery. The Council and Board may also choose to take no further action to control entry or access to the summer flounder fishery.

Federal Permit Characterization and Trends

Permit data indicate that 773 vessels held federal commercial permits for summer flounder in 2016.[2] In total, there are 944 Moratorium Rights IDs for summer flounder, meaning that 944 is the total number of federal summer flounder moratorium permits that could ever be held at a given time, based on the qualifying criteria in the FMP. Of those, 200 permits are in CPH as of April 2017. Additional federal permit information was provided by GARFO in September 2014 (Table 1), which will be updated by the working group.

[2] Source: Dealer data pulled on January 31, 2017.

Table 1: Permit information provided by GARFO in September 2014. Source: Commercial Fisheries Dealer Reports and GARFO permit database accessed on 8/25/2014. Note: This information is in the process of being updated.

Summer Flounder Moratorium Rights – As of Sept. 2014	**Permits**	**Comments**
Inactive status (Confirmation of permit history or history retention)	152	These permits have been removed from a vessel.
Active status	800	These permits are eligible to be issued.
Summer Flounder Federal Permits (Permit Database)- Permit year 2013 (May 1, 2013 to April 30, 2014)		
SUMMER FLOUNDER - COMMERCIAL MORATORIUM - 2013	839	This is the number of commercial permits that were **issued** in 2013. Some of these would have been duplicates (i.e., a replacement vessel) or some would have been taken out of History Retention and put on a vessel. Not all of these permits had associated landings in 2013.
SUMMER FLOUNDER - CHARTER/PARTY - 2013	821	Open access; the number of permits issued.
Commercial Fisheries Dealer Database Permit/Hull number Counts - Calendar year 2013 (Permit years 2012 and/or 2013)		
Number of federal summer flounder limited access commercial permitted vessels with dealer-reported summer flounder landings in CY2013	365	
Number of federal summer flounder charter/party (open access) permitted vessels with dealer-reported summer flounder landings in CY2013	57	These are vessels that have a Federal charter/party permit AND a state commercial license, selling to a federally permitted commercial dealer.
Number of distinct vessels (as identified by dealer-reported hull number) with dealer-reported summer flounder landings in CY2013, includes both federally-permitted and state-only permitted vessels	1,388	

Working Group Comments and Considerations for Permit and Latent Effort Alternatives

- The working group's understanding is that the Council and Board's intention is to consider possible reductions in permit capacity, rather than increases, to address perceived overcapacity in the commercial fishery.
- The working group will continue to analyze or characterize, to the extent possible: updated federal permit information, the current number of state permits and/or landing licenses by state, trends in federal or state permits over time (~past 10 years), analysis to help discern "active" from "inactive" permits in recent years and approaches to defining those terms, the extent of dual state/federal permit holding, and permit holding in multiple states. The working group will look at data for landings and effort by permit at the federal level to see if there are natural breaks for reasonable permit tier categories, and to attempt to define and differentiate active vs. inactive permits. Working group members suggested looking at limited access permit holders with no landings in recent years as simple first step.

- Analysis should include effort metrics by permit (e.g., trips), in addition to landings, to account for differences in possession limits by state. Landings alone would not be an accurate reflection of availability or success.
- GARFO and ACCSP are both working to pull landings and trips by permit. ACCSP will work with states to validate information by state. A simple data pull of trip counts and landings by permit number is fairly straightforward, however tracking multiple permit holding and ownership of a permit over time is a much more complex and time-intensive analysis. Many states associate permits with a vessel, while some states permit a person. As a result, tracking permit history over time can be very complicated, given the need to track the correct association. This may require substantial work for some states.
- The data quality for landings and trips associated with a given permit varies by time period in some states. For example, New York indicated that their recent data (i.e., the past 5 years) is much more reliable than using a longer time series. Other states were comfortable with a 10-year or longer period.
- When tracking landings, there is also the complication of tracking safe harbor-related and other quota transfers. For example, in 2013 over 80% of North Carolina's quota was landed in Virginia due to issues with Oregon Inlet. This may complicate the ability to accurately trace landings by permit.
- Tracking the degree of multiple permit-holding using SAFIS would in theory be simple; however, not all states require the use of SAFIS for state-only landings. Tracking multiple permit ownership in some states is thus much more complicated.
- State-specific landings information as well as separating federal vs. state landings would become more important if the scup quota model is pursued as a quota management alternative.
- Some working group members noted that a tiered permit system would help to more actively manage quota, particularly when quotas are smaller, and may also help address commercial discards. Such a system would make it easier to set appropriate trip limits for the directed fishery.
- Gear-based permit tiers may be difficult to analyze at a state level, since gear type is not a required field for reporting in some states. At the federal level landings data by gear type may be more reliable but is still associated with some uncertainty. The working group cautions against making permit categories overly constraining. The ability to shift from one fishery and/or gear type to another provides flexibility to commercial fishing operations that makes them more able to adapt to changing regulatory environments.
- The working group discussed how to handle the intersection between state and federal permit requirements within this amendment, specifically, **potential approaches to managing state-level permit requirements for summer flounder**. Each state is different in terms of their permit requirements, and there are structural inconsistencies with the broader permit system by state. Implementing specific mandates for summer flounder permits under the Commission's FMP may be difficult. Through this amendment, the Council and Board could identify broad conceptual options to improve state-level permitting; however, there is a general sense that this would run into problems quickly

given state-specific constraints and management priorities. Once a clear range of alternatives for federal permits has been identified, it may be easier to see how state-level permitting may fit in or conflict with those alternatives. One possible approach is a Commission-only action to address state permits following the completion of this amendment.

- The FMAT and working group discussed options for Limited Access Privilege Programs (LAPPs), such as an Individual Fishing Quotas or a Catch Share System (which would impact both permits and quota allocation alternatives). These options were suggested by only a few individuals and have not been the subject of much discussion among the Council and Board. Some FMAT members have suggested that these options may be inappropriate for the summer flounder fishery given the number of participants. Given the depth of analysis that would be required for these alternatives and the lack of comments supporting these programs, there are no LAPP alternatives listed in this document at this time. **If the Council and Board wish to pursue these types of options, specific guidance would be required to develop options.** If not, these alternatives would not be considered further in this amendment. Note that analysis of these types of options may be more complex and may extend the amendment timeline, however there are examples of LAPP programs that could help guide the development, including at least one program specific to summer flounder (e.g., Rhode Island).

Draft Alternatives: Permit and Latent Effort

The following is a list of draft alternatives and sub-alternatives to address this issue. The alternatives are currently broad and conceptual; each of these requires further development and additional specificity if carried forward.

Note: this draft alternative set is for **federal permits only**. Given the variation in state-specific permitting and the concerns expressed by the working group, it is not clear at this point whether the amendment should include broader mandatory requirements (or voluntary guidelines) for state level summer flounder permits within the Commission's FMP. It should be noted that the issues of latent effort and overcapacity may apply equally or more to state permitted individuals and the following alternatives may not address those issues. **Additional guidance is needed if state-specific permitting requirements are to be pursued through this amendment.**

- **1A: No Action/*Status Quo***
  - Maintain current single-tier, commercial moratorium permit system for the summer flounder fishery, with no requalification.

- **1B: Requalification of federal moratorium permits under existing single-tier system**
  - Requalify current summer flounder moratorium permits using a different set of qualifying criteria than is currently in place. For example, permits would be requalified if they landed at least X pounds in any year from YEAR-X to YEAR-Y. Permits in CPH could requalify if they have the required landings. This alternative would not allow new entrants to qualify for a moratorium permit. Non-requalifying permits would be eliminated.

    This alternative could have multiple sub-options with varying qualification periods and landings/effort thresholds. Alternatively, options could be explored that look

at whether a permit is associated with a certain percentage of a state's quota. The working group **notes that there are many possibilities here for sub-options. The group will examine permit data to evaluate any natural breaks or other quantitative methods of eliminating latent effort; however, additional policy guidance may be needed here.**

- **1C: Create a tiered limited access federal permit system, with tiers based on landings and/or effort qualifying criteria**
    - **1C-1**: Create two or more separate commercial limited access federal permit categories based on tiered landings and/or effort qualifying criteria. These tiers would be limited access (cannot be reacquired if dropped/lapsed). A permit tier could be created for incidental catch, which some current moratorium permits would qualify for. However, a limited access permit in some form would still be required for vessels to land summer flounder caught in federal waters (as is the case currently).

      This alternative could have multiple sub-options with varying numbers of tiers and qualification periods and landings/effort thresholds. As with alternative 1B, there are many possibilities here for sub-options, and the working group will examine data to add specificity, but **specific policy guidance or proposals would be useful here.**

      1C-2: Consider specific trip limits or other management measures that would be associated with each commercial permit type in a tiered permit system. Without permit tier-specific management measures, restrictions, or quota allocations, there would be little or no benefit to a tiered system. However, trip limits are currently set by individual states, so the intersection with state management measures needs to be considered if the quota allocation remains state-by-state and states continue to manage their quota shares.

- **1D: Create a tiered limited access federal permit system, with tiers based on gear type**
    - **1D-1**: This alternative would create two or more separate commercial limited access federal permit categories based on general gear type categories, with qualifying criteria based on landings and/or effort for each tier. These tiers would be limited access (cannot be reacquired if dropped/lapsed). Summer flounder commercial landings, discards, and total catch by gear type over 2015-2016 are listed in Table 2.

    - **1D-2**: As with 1C-2 above, in addition to creating gear-based permit tiers, the Council and Board may need to consider specific trip limits or other management measures by gear-based permit tier. The intersection with state management measures needs to be considered if the quota allocation remains state-by-state and states continue to manage their quota shares.

Table 2: Gear type breakdown for summer flounder landings, 2011-2015 combined. Source: NMFS AA tables (dealer data linked to VTR data) as of February 2017. Gear types accounting for less than 0.1% of landings are not shown.

Gear Type	% of Summer Flounder Landings	# Trips (5 year total)
TRAWL,OTTER,BOTTOM,FISH	88.20%	156,891
UNKNOWN	4.42%	72,707
HAND LINE, OTHER	2.74%	63,120
GILL NET,SINK, OTHER	0.97%	16,493
TRAWL,OTTER,BOTTOM,SCALLOP	0.72%	1,244
POUND NET, OTHER	0.57%	10,598
BEAM TRAWL, OTHER	0.54%	1,240
DREDGE, SCALLOP,SEA	0.43%	3,568
DREDGE, OTHER	0.40%	4,679
TRAWL,OTTER,BOTTOM,OTHER	0.34%	4,849
TRAWL,OTTER,BOTTOM,SHRIMP	0.21%	581

2. Commercial Allocation

The Council and Board have identified addressing commercial allocation as a priority issue to be explored in the Comprehensive Summer Flounder Amendment. Scoping comments were mixed regarding how or whether to address this issue. Some suggestions and comments previously raised include:

- Many comments supported *status quo* state-by-state allocations.
- **Historical accounting**: Some (from several states) spoke to errors in historical accounting and/or not properly accounting for vessels from one state landing in another state. These commenters felt that the initial designation of state-by-state commercial quota was flawed and spoke to the need for the current state-by-state commercial quota to be reevaluated.
- **Scup quota model**: Several commenters supported changing the state-by-state commercial quota from year-round to summer only, while the rest of the year would be a coastwide quota (similar to scup commercial quota management). This would be accomplished through having a coastwide set of management measures for ~2/3 of the year, with the other 1/3 left to the states to determine appropriate management measures to achieve their state quota.
- **Underages and rollover**: Some agreed that managers should work to ensure that quota underages are not occurring in the commercial fishery, and that any underages could be rolled over into the next year.
- **Distribution**: Some stakeholders are concerned about the interpretation of the science related to distribution changes for summer flounder, and some noted that the apparent shift northward is best interpreted as an overall population expansion along the entire coast. Others pointed to evidence for distribution shifts as justification to pursue allocation changes, indicating that current distribution should be incorporated into the development of options.
- **Other considerations**: Some pointed out that other factors need to be considered when looking at effort reductions and landings trends, such as economic factors and the effects of precautionary management and conservative regulations.

Current Commercial Allocation for Summer Flounder

Currently, 60% of the annual Total Allowable Landings (TAL) are allocated to the commercial sector as a commercial quota. This coastwide quota is further divided on a percentage basis to each of the states (Maine-North Carolina) based on historical landings from the period **1980-1989**.

The commercial quota is divided among the states based on the allocation percentages given in Table 3 and each state sets measures to achieve their state-specific commercial quotas. These allocations are included in both the Council and the Commission FMPs. When a state's quota has been landed, fishing for and/or landing summer flounder is prohibited in that state. Any quota overages by a state during the year are subtracted from the state's quota the following year.

Table 3: State-by-state percent share of commercial summer flounder allocation.

State	Allocation (%)
ME	0.04756
NH	0.00046
MA	6.82046
RI	15.68298
CT	2.25708
NY	7.64699
NJ	16.72499
DE	0.01779
MD	2.03910
VA	21.31676
NC	27.44584
Total	100

Original Development and Modifications

Amendment 2 (1993) specified the current state-by-state percentages based on the proportion of total commercial landings in each state during 1980-1989.[3] State-by-state allocations were developed to allow each state to develop specific management programs that were designed for the commercial fishery in their state.

Many quota management systems were considered at that time, including a coastwide quota as well as regional and state-by-state quotas. A simple coastwide system was determined to be infeasible because of the migratory patterns of summer flounder. Without some mitigating measures, fishermen at the southern end of the range could possibly catch all the quota before fishermen at the northern end of the range had access to the summer flounder.

In 1993, the state of Connecticut argued that during the early and mid-1980s, the state did not have the authority to collect landings data from offshore fishermen, nor did NMFS provide a port agent to the state. Thus, the state contended that their commercial landings during the allocation base years were underreported and that its quota share was too small. Amendment 4 (1993) increased Connecticut's quota share from 0.95% to 2.26%.[4]

Amendment 5 (1993) allowed two or more states, with the consent of NMFS, to transfer or combine their summer flounder commercial quota. These transfers do not permanently affect the state specific share of the coastwide quota that each state receives each year.

Some of the original work on Amendment 11 was conducted to reallocate quota among the states, in order to consider the fact that different minimum fish size regulations were in effect during 1980-1989. However, the Council could not agree on a method to calculate this reallocation, and Amendment 11 ended up as a primarily administrative action affecting vessel replacements and upgrades and permit issues.

[3] Estimated landings by state and year for 1980-1989, as of the time of Amendment 2 development, can be found in Table 2 (pounds) and Table 72 (percentage) of the Amendment 2 document, available at: http://www.mafmc.org/s/SFSCBSB_Amend_2.pdf.

[4] Revised 1980-1989 landings by state and year, and the resulting quota shares from Amendment 4 can be found in Table 1 of that document, at: http://www.mafmc.org/s/SFSCBSB_Amend_4.pdf.

State Commercial Quota Management

States are required to adopt appropriate measures to manage their quota shares, and employ a variety of quota periods, trip limits, and other such measures to do so. Quota periods and other quota management measures vary from state to state (Table 4).

Table 4: State-specific commercial quota management (as of April 2017).

State	Commercial Quota Management Summary
Massachusetts	Two quota periods (30% allocated to January 1-April 22; 70% to April 23-December 31). Landings or possession of fluke by commercial fishermen allowed from 6 AM to 8 PM daily only. Gear-specific season, open days and possession limits.
Rhode Island	Three quota periods (54% of quota allocated to January 1-April 30; 35% to May 1-October 31; 11% from November 1-December 31). Possession limits vary by period.
Connecticut	The harvest strategy is reassessed each year and modified based on annual quota and industry input. Currently, there are four quota periods: Winter I (January 1-March 31), April, Summer (May 1-October 31), Winter II (November 1-December 31). Quota period year-to-date targets include 25% through Winter I; 95% through April and Summer, and 100% through Winter II. Possession limits vary by period and may be adjusted if period target quota is projected to be landed.
New York	Seven quota periods: January-March (25%); April (10%; May (14%); June-July (27%); August-September (14%); October (5%); December (5%). Initial daily trip limit is 70 lb in period 1 and 50 lb in all other periods. Over/under harvest from period 1 rolls into period 7; over/under harvest from period 2 into period 6; over/under harvest from periods 3 through 5 are rolled into the next period.
New Jersey	Six landings periods with differing daily and/or weekly possession limits: January-February; March-April; May-June; July-August; September-October; November-December. Over/under harvest from any of the first five periods is added or deducted from the following period. 10%, but no more than 200,00 pounds, is allocated to bycatch landings when the directed fishery in a given period is closed. The bycatch allocation is divided between the six seasons at the same percentage as for the directed fishery.
Delaware	Delaware qualifies for *de minimis* status for the commercial summer flounder fishery; the fishery operates under a 200 pound trip limit year round.
Maryland	Managed under an IFQ system, where permit holders may land their allocation year-round with no possession limits. Non-permitted harvesters are subject to the relevant daily possession limits (100 lb per day from the Atlantic Ocean and 50 lb per day from the Chesapeake Bay and tributaries).
Virginia	Two landings periods and a separate allocation for tidal waters. Summer flounder harvest from Virginia tidal waters is limited to 300,000 pounds, 142,114 pounds of which is set aside for the Chesapeake Bay. Period 1 includes the first Monday in January-October 31 (70.7% of the quota after deducting tidal allocation). The second period (November 1-December 31) is allocated 29.3% of the quota, after the tidal allocation. Over/under harvest from the first period may be deducted or added to the second. Possession limits vary by period.
North Carolina	The North Carolina season for landing ocean-caught flounder opens January 1 each year. If 80 percent of the quota is projected to be taken, North Carolina ports are closed to landing of flounder taken from the ocean. The season reopens November 1 if there is remaining quota. If after reopening, if 100 percent of the quota is projected to be taken prior to the end of the year, the fishery is closed.

Considerations for Quota Carryover

Some stakeholders have requested consideration of modifying the FMP to allow rollover of unused quota from year to year. This could be explored at a coastwide, regional, or state level, in line with the preferred quota allocation and transfer system, but there are several constraints to consider, particularly for coastwide quota rollover. GARFO has indicated that carryover from one fishing year to the next may be difficult under the current system of catch and landings limits. Sector carryover was proposed for groundfish by the New England Fishery Management Council under Framework 50 to that FMP. However, a 2014 court ruling (*Conservation Law Foundation v. Pritzker, et al.*[5]) found that in order to be consistent with the Magnuson Stevens Act, any quota carryover, when combined with the total Annual Catch Limit (ACL) for the upcoming fishing year (i.e., the total potential catch for that year) cannot exceed the single year Acceptable Biological Catch (ABC) recommended by the Council's Scientific and Statistical Committee.

Currently, for summer flounder, the single year ABC is divided into sector-specific ACLs for the recreational and commercial fisheries, such that the two ACLs sum to the ABC. The ACLs are divided directly into projected discards and a landings limit, with generally no optional reduction taken for management uncertainty to derive an Annual Catch Target (ACT). In other words, there is no buffer in place in the current system of catch and landings limits that would allow carryover from a previous year without exceeding the upcoming year's ABC.

For carryover of the coastwide annual commercial quota (i.e., increasing the commercial ACL in the following year) to be feasible, the system of catch and landings limit derivations would need to be modified to add an additional buffer from the ABC (for example, between the sector-specific ACLs and sector-specific ACTs). It is not clear how this would benefit the commercial fishing sector, since the total commercial catch limit is essentially maxed out under the current system. **Alternatively**, the SSC would need to annually modify the ABC to add the rollover from a prior year. This would likely require a modification to the Council's risk policy and may involve a 2-year lag in rollover given the timing of the specifications cycle, the timing of availability of final catch data, and administrative requirements. Any revised ABC could still not exceed the overfishing limit (OFL).

Working Group Comments and Other Allocation Considerations

The working group offered the following comments and additional tasks to be completed on commercial allocation issues:

- Summer flounder exhibit distinct seasonal migratory behavior, creating two distinct trawl fisheries; a winter offshore fishery and a summer inshore fishery. Participants in the winter offshore fishery are largely high-tonnage vessels, while the summer inshore fishery generally consists of smaller vessels. Alternatives to the current system should consider equitable allocation of the commercial quota to northern and southern participants and between the smaller day boats and larger offshore vessels. Due to the seasonal nature of the fishery, quota systems covering a broader geographic area may benefit from division into smaller temporal units. For example, one approach suggested during the development of Amendment 11 was a bimonthly coastwide quota allocation system, allocated based on past landings.

[5] April 4, 2014 opinion available at: https://www.regulations.gov/document?D=NOAA-NMFS-2012-0059-0204.

- Moving away from a state-by-state quota system would represent a problem for states managing through ITQs (e.g., Maryland). There is a need to consider how each state currently handles their allocation.
- One working group member raised the question of whether it is possible to change the quota year (i.e., start the fishing year on a date other than January1). November and December are very active fishing months for some states, and not having final data for those months until months later makes quota accounting and quota management difficult for a fishing year ending December 31. Prior to publishing the final rule for upcoming quota year, GARFO considers quota accounting through October of the previous year. Overages resulting from November/December harvest are then accounted for in the following year. The suggestion was that changing the quota year may make "rollover" less of a pressing issue. However, given temporal differences in state fishing activity, it may simply create a similar problem in another state.
- The working group is pulling information on month to month harvest, coastwide and by state, as well as performance relative to the coastwide and state quotas in recent years, and is also working on a literature review of scientific information and studies related to the changing distribution and abundance of the summer flounder stock.
- When considering summer flounder distribution, fleet mobility should be considered as well. The importance of current distribution would appear to vary substantially along the coast with varying fleet mobility.
- The group noted that more regular revisiting of quota allocation is generally a good idea, and that the fishery is better off without allocations set in stone for the long term. However, it should also be noted that the stock conditions and distribution are dynamic, and if we were always updating the allocation according to the current conditions, we would always be "chasing our tail." There should be some thought given to a more standardized approach to reviewing and updating allocations, and what data are needed to do so more regularly.
- The group noted that with many of the draft alternatives below, there are nearly infinite possibilities for sub-options. **The group is concerned about proposing options arbitrarily, given that many should be policy-driven and it will be difficult to come up with options based on technical considerations alone. Guidance on what scientific information should be used, for instance using scientific literature on shifting/expanding populations for some portion of the allocation, would also be needed. Specific proposals from Council and Board members for options, with justification, may be a more productive approach here.**
- As described under the permits section, the FMAT and working groups discussed options for Limited Access Privilege Programs (LAPPs), such as Individual Fishing Quotas or a Catch Share System (impacting both permits and quota allocation). For reasons described in the permit section above, there are no LAPP alternatives listed in this document, however if the **Council and Board wish to pursue these types of options, specific proposals and guidance are requested.**

Draft Alternatives: Commercial Allocation

The following is a list of potential draft alternatives and sub-alternatives to address this issue. Each of these requires further development if carried forward.

- **2A: No action/*Status quo* state-by-state allocation system**
  - No changes to the current 1980-1989 allocation basis for state allocation percentages (Table 1).

- **2B: Revised state-by-state allocations**
  - **2B-1: Revised base year period**: revise state-by-state allocation percentages based on a new set of base years. If using landings alone, this option would not be a substantial change from the current allocation given that state landings from 1981 to present generally reflect state-by-state quotas based on the current allocation. In order to truly consider a new allocation, some metric of effort or Catch Per Unit Effort (CPUE) would likely need to be taken into account. However, most metrics would reflect individual state management measures and it may be difficult to account for this effect. Council and Board input on ways to approach this, as well as proposals for new base years, are requested.
  - **2B-2: Based on "best years" system**: e.g., based on the best 5 years of landings for each state. This alternative would face similar challenges to option 2B-1, in that landings in a state's "best years" are likely to reflect the state's quota or even quota overages. Thus, this option may need a condition that years with overages would not be included. Like the option above, it is difficult to account for the effects of the current management regime.
  - **2B-3: Combination of current allocation and recent distribution of summer flounder.** E.g., 50% current state-by-state allocation, 50% recent distribution. For recent distribution, there are major questions regarding what data to include, over what time period, and how this information would be associated with a given state to be translated into actual state allocations. If this option is pursued, some thought should be given to when and how this information and the resulting allocations would be revisited in the future if distributions and stock abundance continue to fluctuate. In addition, the working group notes that there are a wide range of percentage splits (other than 50/50) between current allocation and recent distribution that raises policy questions best addressed by the Council and Board.

- **2C: Coastwide quota with seasonal periods**: This would be a year-round coastwide quota, but with seasonal quota periods. This would allow fishermen to land in any port along the coast and all commercial landings (from state and federal waters) during a given period would count toward that quota period's allocation. Once that allocation is reached, landing of summer flounder would be prohibited for the remainder of the period.
    - **2C-1: Trimester quota system**
        - Trimester allocation based on even division of quota (33.33% of annual quota to each trimester) OR
        - Trimester allocation based on a set of base years
    - **2C-2: Bimonthly quota system:**
        - Bimonthly allocation based on even division of quota (16.67% of annual quota to each two-month period) OR
        - Bimonthly allocation based on a set of base years
    - **2C-3: Associated measures:**
        - Trip limits should be considered with a coastwide, seasonal system, designed appropriately to avoid derby-style fishing practices that may favor larger, more mobile vessels at the beginning of each period. Trip limits could be made responsive to a percentage of the allocation reached in each period, to allow for a continuous supply of product and equitable distribution of flounder to fishermen using both small and large vessels. For example, the limit could decrease when 50% of the period's quota was landed, and again when 90% of the period's quota was landed. Provisions for quota rollover between periods (within the same fishing year) could also be considered.

- **2D: Scup quota model:** Implement a coastwide quota in the winter, and state-by-state quotas in the summer.
    - **2D-1: Same quota periods as scup** (current or as modified under ongoing scup commercial period framework). Current periods for scup include Winter I (January through April), Summer (May through October), and Winter II (November through December). During the winter periods, a coastwide quota and possession limit are in effect whereas in the summer period, a state-by-state quota is used to allocate the quota. The Council and Commission developed these seasonal quota periods ensure that both smaller day boats, which typically operate near shore in the summer months, and larger vessels, which typically operate offshore in the winter months, can land scup before the annual quota is reached. The commercial fishery is closed when the allocation for a period is reached. In addition, any overages during the winter periods are subtracted from that period's allocation for the following year. Any quota overages by a state during the summer period are subtracted from the state's share the following year. If the full Winter I quota is not harvested, unused quota is added to the quota for the Winter II period. Note: under the current fishing year, the winter season must be divided into Winter I and Winter II periods given that the fishing year (and thus the current year's quota) takes effect on January 1.

- **2D-2: Use alternative Winter I, Summer, and Winter II quota periods**: Using the same quota periods as scup would promote regulatory consistency between the two fisheries, but may not account for differences in fishery timing and operation. **Guidance is needed on how to determine alternative quota periods.**

- **2D-3: Allocation options between quota periods**

  Commercial allocation between the scup periods was based on landings over 1983-1992. Quota period allocations for summer flounder could be based on:

  - Current 1980-1989 base period
  - Alternative base period (note that the timing of directed fishing effort varies along the coast, and if using a new base period over recent years, current state-by-state allocations may need to be accounted for).

- **2D-4: State-by-state summer period allocations**

  Summer period state-by-state allocations for scup were based on landings over 1983-1992. Summer allocations for summer flounder could be based on:

  - Current 1980-1989 base period
  - Alternative base period (see state-by-state quota options under alternative set 2B).

- **2E: Regional annual quota system**: determine two or more appropriate regions for quota allocation, between Maine and North Carolina.
  - This option would divide and manage the quota on a regional basis, similar to the way the state-by-state quota operates currently, with any overages subtracted from the regional quota in the following year. This approach requires additional discussion with individual states and GARFO to determine whether it is feasible to monitor regional harvest in a timely and accurate manner, and who would be responsible for the quota accounting. This alternative would likely need associated region-wide management measures (e.g., trip limits and seasons).

- **2F: Quota allocations by permit category**: This alternative would rely on the approval of new permit categories (other than the single commercial moratorium permit currently in place). These categories could be based on **various landings tiers, gear type, or other division**. Quota would be allocated to each permit tier. Allocations to each category would then have to be managed to prevent quota overages and allow for a distribution of landings throughout the year. Could be associated with a state or regional subcomponent, or with seasonal quota periods. Without having specific alternatives for permit tiers, this allocation alternative is difficult to develop at this time.

3. & 4. Landings Flexibility and Safe Harbor Provisions

Two separate but related issues may be addressed through this amendment regarding landing summer flounder in other states: 1) the varying degrees that states within the management unit have implemented a "safe harbor" policy, under which vessels can request to land summer flounder outside their permitted states in cases of emergency, and 2) "landings flexibility," a proposed system that would include a more open ability to land wherever a vessel prefers (not tied to emergencies or exceptional circumstances).

Safe Harbor

Currently "*safe harbor*" is commonly understood among state marine law enforcement professionals as a situation where a vessel seeks shelter in a non-home port due to safety concerns based on mechanical issues, injury, or weather. While each state within the management unit for summer flounder (Massachusetts through North Carolina) have some form of a 'safe harbor' policy, these policies vary in scope and detail, and are not specified as part of the Commission's Summer Flounder FMP. Additionally, these policies are not standardized on a coastwide basis, with some states (e.g., Rhode Island and Virginia) opting for a more formalized procedure for such situations and others (e.g., Massachusetts and New Jersey) opting to grant safe harbor requests at law enforcement officers' discretion.

Under circumstances where a vessel is granted approval to dock under safe harbor, often a vessel stays temporarily and then proceeds to their home state for offloading; however, there have been instances where the vessel has sought to then land and/or offload summer flounder catch for sale. The Commission's Law Enforcement Committee (LEC) has noted that these circumstances do not always occur within traditional business hours and that requests to land summer flounder then require communication between states (between the state the vessel has sought safe harbor in and the vessel's permit state) to request and grant a transfer of quota and allow the landings to occur.

The LEC has indicated that given the lack of uniformity in the state by state safe harbor policies and concerns over liability if safe harbor is not granted, there have been several instances across states where vessels have sought to sell summer flounder and force a quota transfer rather than return to their home port to offload. Furthermore, LEC members have indicated that there are currently few disincentives to request safe harbor, and that under the guise of safe harbor, vessels have sought to land summer flounder in states closer to where they were fishing rather than returning to their home port. In instances where vessels have not been granted the opportunity to unload and sell their catch, law enforcement officials have observed fish being discarded overboard. The need for marine law enforcement professionals to grant safe harbor but then also monitor and facilitate the transfer of quota and allow vessels to land summer flounder in their non-home port presents challenges to both law enforcement professionals and fishery managers.

Safe harbor disputes have resulted in at least one case in which an arrest for illegal landing of summer flounder was thrown out in court over a lack of a written safe harbor policy.[6] Additional enforcement issues arise when a vessel breaks down or has a safety issue and requests to land in another state with different trip limits or other measures. For example, when vessels land summer flounder that is attributed to their home state's quota but in an amount over the landing state's trip

[6]State finalizes safe harbor rules for commercial fishermen. September 10, 2016. Newsday. http://www.newsday.com/news/region-state/state-finalizes-safe-harbor-rules-for-commercial-fishermen-1.12296104

limit, this introduces an enforcement gray area where neither state may be able to cite the vessel for violations of certain regulations.

'Safe Harbor' interacts with the Summer Flounder FMP through the transfer of commercial summer flounder quota from one state to another. Amendment 5 (1993) outlines a program that allows the transfer of quota between states:

> "Two or more states, under mutual agreement and with the concurrence of the Regional Director, could transfer or combine their summer flounder commercial quota between their states. These transfers or combinations would not permanently affect the state specific share of coastwide quota that each state would receive each year, i.e., the state-specific share should remain fixed. The Regional Director may establish regulations and procedures for the implementation of the transfer or combination."

It's important to note that quota transfers can occur in other instances not specific to safe harbor requests. However, the following information pertains to instances specific to 'safe harbor' and its intersection with the landing of summer flounder and potential quota transfers. Generally, in instances when states have come to mutual agreement on a quota transfer, both states submit a written request and acceptance to the NOAA Regional Administrator officially requesting the transfer of a specified quota amount from one state to the other and requesting that the accounting of state landings be adjusted accordingly. The Regional Administrator then confirms the transfer.

Enforcement issues have arisen in instances where vessel have sought to land summer flounder in excess of the landing state's possession limit. Commission LEC members have noted there are instances where vessels have sought to discard fish in order to comply with state possession limits in a non-home state. As these situations become more prevalent, they create more instances of discards that may be unreported and unmonitored.

The LEC continues to discuss the various methods that states currently employ to handle safe harbor requests, as well as possible modifications to the system. **The Council and Board should provide guidance on whether safe harbor requirements or guidelines are appropriate for inclusion in the summer flounder FMP, and whether alternatives related to safe harbor should be considered within this amendment.**

Landings Flexibility

The perceived abuse of safe harbor policies could be in part a function of the limited ability of fishermen to request quota transfers to land their fish in the harbors that would be most convenient or effective for them in certain situations.

Potential Benefits of Landings Flexibility

A "landings flexibility" policy has been suggested as a means of addressing rising fishing costs, fuel use (for both environmental impact and cost reasons), increasing adaptability to market conditions, addressing safety concerns, adapting to a changing distribution of fish, and improving efficiency. It has been suggested that landings flexibility would reduce long steam times and associated operating costs associated with strict requirements to land fish in a specific state (or subset of states). Landings flexibility options could be developed through this amendment to make quota transfers easier, giving fishermen more flexibility in landing ports. With more flexibility in where they can offload fish, fishermen that fish farther from their home state could make multiple

fishing trips before making the trip home. Effective quota transfer procedures may reduce the complications currently occurring with safe harbor.

Many scoping commenters indicated that landings flexibility could be implemented without revising the current state-by-state quotas. Landings would apply to each state's quota the same way they do currently, but the vessels could land them in whichever state they prefer.

Potential Drawbacks of Landings Flexibility

Concerns have been raised about potential equity and fairness issues, particularly regarding impacts to shoreside operations in states where large amounts of landings currently occur due to state-specific allocations. Certain states and ports would be likely to suffer under a system of landings flexibility, while others would benefit. Additional concerns have been raised about the potential for flooding markets. Currently states with cooperative landings agreements try to coordinate when fish is landed to avoid flooding the market.

Some scoping commenters said flexibility would make sense in the winter but would be detrimental in the summer, and supported going to a "scup quota model" with coastwide quotas and landings flexibility in the winter, and state-by-state quotas and landings in the summer.

In August 2016, the Council and Board discussed the policy of landings flexibility and discussed some concerns related to the practical aspects of such a system. For example, some New Jersey stakeholders previously believed that landings flexibility could be implemented with no need to change the allocations (using SAFIS to account for landings from the appropriate permit state). However, discussions with New Jersey DEP indicated that it may be extremely difficult for the state to allocate enforcement resources to resolve this issue. Without the Commission making landings flexibility a compliance measure, it is unlikely that states would have the proper enforcement capacity to implement it.

There is some concern about how monitoring of state and coastwide quotas would be conducted given that there is already a lag in accounting. Properly assigning landings to the appropriate state would potentially create a large administrative burden and extend the timeline for determining final annual landings by state and coastwide.

Additionally, as mentioned for safe harbor, landings flexibility raises questions about how state level trip limits (or other state-specific measures) would be enforced if any vessel could land in any state. Presumably any vessel landing in a given state should be subject to that state's measures, however, given the potential for the landings to count against the "home" (permit) state's quota, this will need to be clarified. Consideration should be given to avoiding confusion and unnecessary complexity.

Considerations for Alternatives

- The Council and Board should consider whether safe harbor alternatives are appropriate to adopt within this amendment, or if they should be considered separately by the Commission.
- The Commission's Law Enforcement Committee (LEC) is currently in the process of considering whether more uniform guidance or policies on safe harbor are appropriate to adopt on a coastwide basis. This discussion is not specific to summer flounder.

- The Commission's LEC indicated that two separate issues need clarification with safe harbor: the conditions under which a safe harbor request should be granted and criteria for whether a quota transfer is approved. The Commission may want to allow more flexibility regarding when states grant a safe harbor request, but possibly adopt more structured criteria for when a quota transfer is granted, to reduce perceived abuses of safe harbor policies. Future work by the LEC will attempt to clarify and separate these issues.
- The draft alternative for a landings flexibility policy below assumes the continuation of some type of state-by-state or regional quota management. If another quota allocation alternative is adopted, a landings flexibility policy may not be necessary. Multiple Council and Board members (and scoping commenters) have noted that moving to the "scup quota model" for summer flounder (state-by-state quotas in the summer; coastwide quotas in the winter) would eliminate the need for landings flexibility.
- If a landings flexibility policy were adopted, criteria and processes would need to be developed to clarify how quota would be transferred and accounted for, and on what timeline, to ensure timely and accurate quota monitoring and reporting.

Draft Alternatives: Safe Harbor

- **3A: *Status quo*.** Safe harbor policies and procedures would remain under the purview of individual states, perhaps with some forthcoming guidance from the Commission's LEC. States can adopt or maintain their own policies regarding conditions under which safe harbor may be granted, and under which quota may transferred as a result.
- **3B: Adopt a single uniform coastwide written policy on safe harbor procedures related to summer flounder** (See Appendices III and IV for examples of written policy from Rhode Island and New York).
    - **3B-1: Mandatory measures** (included as compliance criteria for Commission FMP and/or in the federal regulations). There are some concerns with "mandatory" conditions for or responses to safe harbor given the liability concerns and the need for individual states to make judgement calls in some circumstances. Thus, "mandatory" elements may need to be broad in scope. However, a consistent written policy would serve as a deterrent against abuses of safe harbor provisions.
    - **3B-2: Voluntary measures**: Coastwide guidelines would be developed that individual states would be encouraged to follow.
- **3C: Assign states the task of developing their own policies on safe harbor procedures specific to summer flounder as part of the Commission's FMP compliance criteria** (See Appendices III and IV for examples of written policies from Rhode Island and New York). This differs from 3B in that there would not be a single uniform coastwide policy; instead there would be some flexibility for states to tailor their policies to considerations for each state. However, some guiding principles and/or minimum requirements would need to be established so that states may demonstrate compliance. This approach would likely leave open questions regarding quota transfers, as one state's policy could not force another state to agree to a quota transfer.

Draft Alternatives: Landings Flexibility

- **4A: *Status Quo* (no landings flexibility).** States would continue to allow vessels with the required permits land commercial caught in their states so long as they comply with the conditions of the permit. If the vessel does not have the required permits or is in violation of the permit condition, the vessel cannot land commercial caught summer flounder for sale.
- **4B: Adopt commercial landings flexibility policy.** Allow vessels to land summer flounder caught in federal waters at the preferred port. Landings would be counted toward the quota of the state associated with the permit, requiring a quota transfer or other appropriate quota accounting procedure. If a vessel is permitted to land in multiple states, some mechanism would be needed to ensure landings are attributed to the correct state. Additionally, a landing license or other special license may be required in order to transit state waters and land in a state where a vessel is not permitted to harvest summer flounder.
    - **4B-1:** Allow the sale of summer flounder in landing state. Vessels could sell to permitted dealers in the state in which they land, however, a quota transfer would need to occur to attribute the landings to the vessel's permit state.
    - **4B-2:** Require transport of summer flounder by land to the state associated with the vessel's permit (e.g., fisherman with a Virginia permit would land summer flounder in a New York port, then truck the fish down to Virginia, with both states then accounting for transfers). Enforcement concerns have been raised relative to trucking, as it can be difficult to track fish, and may weaken the ability to appropriately monitor and account for all landings, and ensure that all landings are sold to a permitted dealer.
    - **4B-3**: Allow a vessel to possess multiple state possession limits at one time, according to multiple state permits held, while only allowing landing of the appropriate limit in the relevant permit state. In other words, a vessel can possess an amount of summer flounder equaling the combined possession limits from two permitted states, landing the first state's limit in that state and then transiting to state B to land that limit. This would only be allowed for two different permit states, not two ports within the same state. Accountability could include separating and labeling various state limits in the fish hold, enforcement call in requirement, documentation of licensure in each state from which a limit is claimed.

5. Commercial Data Collection Requirements and Protocols

The Council and Board could consider options to improve current catch monitoring, reporting, and validation. It has been suggested that the effectiveness of commercial catch monitoring varies along the coast. Concerns have also been raised about summer flounder catch that is unaccounted for, especially given the recent retrospective pattern in the assessment. There may be some degree of implementation error in commercial quota monitoring, and that discards could be more actively managed. Recent law enforcement cases have also raised some questions regarding monitoring and catch validation. This issue is currently general in description and scope and could include any number of data collection programs. Guidance from the Council and Board is needed to develop a focused alternative set.

Current Federal Data Collection, Reporting and Monitoring for Summer Flounder

Federal Vessel Trip Reports

Operators of GARFO permitted vessels are required to submit a vessel trip report (VTR) for every fishing trip prior to landing, regardless of where the fishing occurs or what species are targeted. VTRs provide information on when and where catch occurred. [7]

For summer flounder, VTRs must be submitted monthly. Reports must be postmarked or received within 15 days of the end of the month. If a trip starts in one month, and offloads in the next, it should be reported for the month in which the catch was offloaded.

For GARFO permitted vessels, a VTR is required for every fishing trip, whether the vessel is fishing in state or federal waters, or in another region of the country. This is true for all trips, no matter what species is being fished for or caught, and regardless of whether an observer or at-sea monitor is on board. A VTR is required for any trip on a federally permitted vessel that catches fish, or when operations include activities that would support fishing, such as preparing to catch or harvest fish, or attempting to catch or harvest fish. All such fishing activities must be reported, even if no landings are made. The trip is the period of time during which these activities are conducted, beginning when the vessel leaves port and ending when the vessel returns to port. VTRs are not required for transiting without product onboard (no fishing activity), or operation under a scientific Letter of Acknowledgement.[8]

Dealer Reporting

Any person or company that purchases or receives for a commercial purpose (other than solely for transport on land) one of the species or species groups listed in Table 5 from the owner or operator of a vessel permitted by GARFO must be issued a federal seafood dealer permit from GARFO. Any dealer issued a Federal permit for these species must submit trip-level reports on a weekly (at minimum) basis to the NOAA Fisheries Service SAFIS program, unless otherwise directed by the Regional Administrator. If no purchases are made or landings received, a negative report must be submitted. Dealer reports must include the receipt or purchase of all species (with the exception of the "inshore exempted species" defined in CFR 648.2). Electronic reports may be received through the web-based SAFIS interface, via file transfer from a dealer's computer system, or file transfer from an approved state partner reporting system.[9]

Table 5: Species requiring a GARFO permit.

Atlantic Bluefish	Northeast Multispecies
Atlantic Deep-Sea Red Crab	Ocean Quahog (including Processors)
Atlantic Hagfish	Scup
Atlantic Herring (including Processors)	Skate
American Lobster	Spiny Dogfish
Atlantic Mackerel	Squid (*Illex* or *Loligo*)
Atlantic Sea Scallop	Summer Flounder
Black Sea Bass	Surf Clam (including Processors)
Butterfish	Golden Tilefish
Monkfish	Atlantic Tunas

[7] Description from https://www.greateratlantic.fisheries.noaa.gov/aps/evtr/index.html.
[8] Text from full VTR instructions available at: https://www.greateratlantic.fisheries.noaa.gov/aps/evtr/vtr_inst.pdf.
[9] See information and FAQ at https://www.greateratlantic.fisheries.noaa.gov/aps/dealer/index.html.

Vessels selling to a federally permitted dealer must provide the dealer with the vessel name, the federal permit number or hull number, and the serial number from the VTR for that trip. A federally permitted vessel must sell federally managed species to a federally permitted dealer.

Dealers may drop their permits at any time via a request in writing, and may obtain new permits from GARFO by completing and submitting an application.

Vessel Monitoring Systems

The Vessel Monitoring System (VMS) is a satellite surveillance system primarily used to monitor the location and movement of commercial fishing vessels in the U.S. Exclusive Economic Zone (EEZ) and treaty areas. The system uses satellite-based communications from on-board transceiver units, which certain vessels are required to carry. The transceiver units send position reports that include vessel identification, time, date, and location, and are mapped and displayed on the end user's computer screen. Each vessel typically sends position reports once an hour, but at increased intervals when the vessel is approaching an environmentally sensitive area. Alerts can be sent to the VMS technicians and other personnel when a particular vessel location might require additional inquiry or contact with the vessel operator. VMS is used to support law enforcement initiatives and to prevent violations of laws and regulations. VMS also helps enforcement personnel focus their patrol time on areas with the highest potential for significant violations. VMS data is subject to strict confidentiality requirements.[10]

VMS is **not currently required for summer flounder permit holders**. The regulations pertaining to VMS regulations are found at 50 CFR 648.9 and 648.10. The following vessels must have an installed operational VMS unit:

- Full-time or part-time limited access scallop, or LAGC scallop permit
- Occasional limited access scallop permit when fishing under the scallop area access program
- Limited access monkfish, occasional scallop, or combination permit electing to provide VMS notifications
- Limited access multispecies permit when fishing on a category A or B day at sea (DAS)
- Surfclam or ocean quahog open access permit
- Maine mahogany quahog limited access permit
- Limited access monkfish vessel electing to fish in the Offshore Fishery Program
- Limited access herring permit
- Open access herring Areas 2 and 3 permit
- Limited access mackerel permit
- Longfin squid/butterfish/*Illex* moratorium permit

Vessels may be exempted from the reporting requirements under certain conditions where the vessel is not actively participating in the fishery.[11]

[10] Description from http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html.

[11] See https://www.greateratlantic.fisheries.noaa.gov/vms/regs/index.html for additional information on VMS requirements.

Northeast Fisheries Observer Program

The NEFSC Fisheries Sampling Branch (FSB) manages the Northeast Fisheries Observer Program (NEFOP) and the At-Sea Monitoring Program (ASM) which collects, processes and manages data and biological samples obtained during commercial fishing trips. These data are collected by trained fishery observers for scientific and fisheries management purposes.

NEFOP observers collect catch, gear, fishing effort, and biological data over a range of commercial fisheries from Maine to North Carolina. Observer coverage requirements were established under the Magnuson-Stevens Act and the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment[12], the Marine Mammal Protection Act and the Endangered Species Act. Data collected by observers are used to identify key characteristics of commercial fisheries in the Northeast and Mid-Atlantic regions. Catch data and biological information informs stock assessments. Protected species samples provide life history information and data for bycatch estimation. Additional information is available at: https://www.nefsc.noaa.gov/fsb/program.html. The current NEFOP seaday schedule for April 2017-March 2018 can be found at: https://www.nefsc.noaa.gov/fsb/SBRM/2017/NEFOP_Seaday_Schedule_V2.pdf.

Considerations for Monitoring and Reporting

- The Council and Board should consider which monitoring and reporting issues should be addressed through this amendment for the summer flounder fishery, and which should be accomplished as modifications to broader reporting and monitoring programs.
- Drafting appropriate alternatives related to monitoring and reporting will require a more focused problem statement from the Council and Board in order to ensure that the options are effective in addressing that problem.
- Some have suggested that VTR data collection is not designed to effectively record information on multi-day trips, such as vessels fishing multiple gear types over the course of a trip, or in multiple statistical areas. Options to improve VTR data collection and utility could be considered. In addition, fishermen have suggested VTR reporting forms are too complicated, so streamlining of those documents could be considered. This issue is probably not unique to summer flounder.
- Consideration should be given to whether this amendment can and should address state-level monitoring and reporting.

Draft Alternatives: Data Collection, Reporting and Monitoring

- 5**A: *Status Quo* (no changes to current monitoring and reporting requirements)**
- **5B: Require VMS** for all federally permitted summer flounder vessels. Some summer flounder vessels may currently already have VMS onboard to fulfill requirements for other permits; others would be required to install and operate an approved VMS device.

[12] Links and information available at https://www.nefsc.noaa.gov/fsb/SBRM/

6. Summer Flounder Discards

Background

Addressing summer flounder discards could be done through a distinct alternative set, through other issues described in this document.

Commercial summer flounder dead discards over the period 1993-2015 averaged approximately 1,200 mt, or about 20% of commercial landings. Over the same time period, commercial discards also accounted for about 10% of the total catch (recreational and commercial) in weight (commercial landings accounted for ~55% of the catch, recreational landings for 30%, and recreational discards for 5%). In recent years, commercial discards have been below this average (Table 6). A time series (1993-2015) of landings and dead discards is shown in Figure 1.

Table 6: Summer flounder estimated commercial discards and % of total summer flounder catch in weight, 2011-2015. Source: M. Terceiro, presentation to MAMFC SSC, July 2016.

	Commercial dead discards (mt)	% of total summer flounder catch in weight
2011	1,096	9%
2012	718	7%
2013	712	7%
2014	785	8%
2015	670	8%

The 2013 benchmark stock assessment for summer flounder[13] describes the commercial discard mortality rate assumed in the current assessment:

> "As recommended by SAW 16 (NEFSC 1993), a commercial fishery discard mortality rate of 80% was applied to develop the final estimate of discard mortality from live discard estimates. The SAW 47 assessment (NEFSC 2008a) considered some preliminary information from a 2007 Cornell University Cooperative Extension study. This study conducted ten scientific trips on inshore multispecies commercial trawling vessels to determine discard mortality rates relative to tow duration, fish size, and the amount of time fish were on the deck of the vessel. The median mortality for all tows combined was 78.7%, very close to the estimated overall discard mortality of 80% used in the assessment. Another study (Yergey *et al.* 2012) conducted by Rutgers University using acoustic telemetry to evaluate both on-deck and latent discard mortality found total discard mortality in the trawl fishery to be 81.7%, again very close to the estimated overall discard mortality of 80% used in the assessment. This discard mortality rate is applied to the live discard estimate regardless of the discard estimation method used."

[13] http://nefsc.noaa.gov/publications/crd/crd1316/

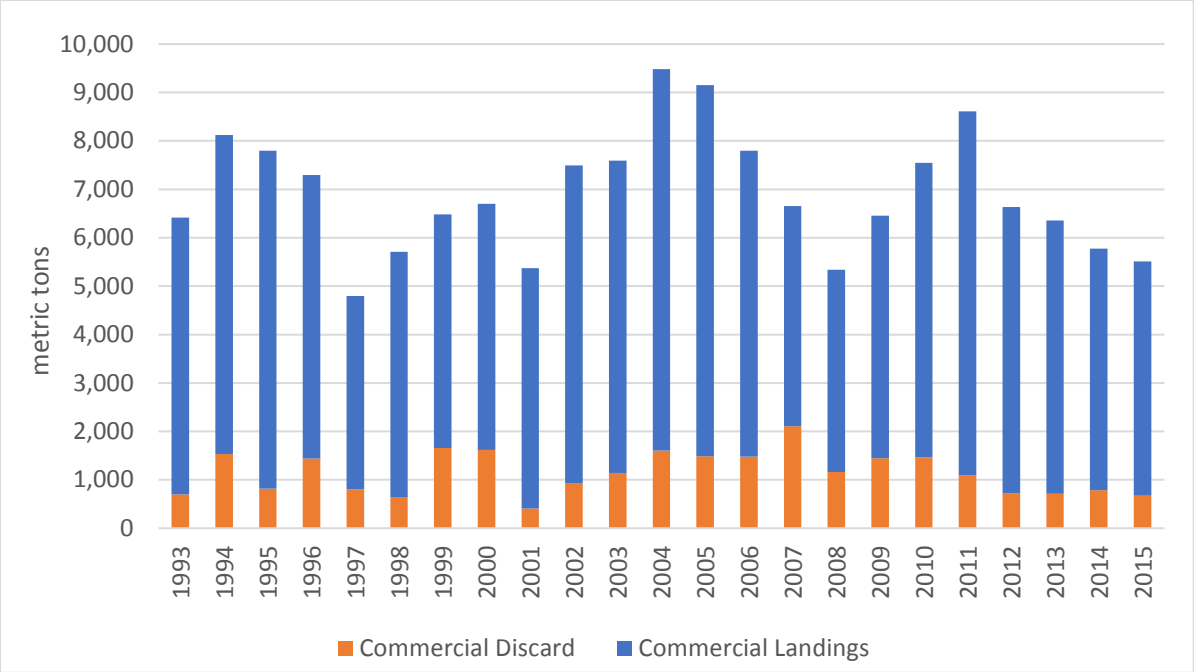

Figure 1:Summer flounder commercial discards and landings, 1993-2015. Source: 2016 summer flounder assessment update and M. Terceiro, personal communication.

According to the 2013 benchmark stock assessment, the reasons for discarding in the fish trawl and scallop dredge fisheries have been changing over time. For example, during 1989 to 1995, the minimum size regulation was recorded as the reason for discarding summer flounder in over 90% of the observed trawl and scallop dredge tows. During 2012-2016, minimum size regulations were identified as the discard reason in 51% of the observed trawl tows on average, quota or trip limits in 36% of the tows, high grading in 5%, and other reasons 8% (Table 7). The assessment also indicates that as a result of the increasing impact of trip limits, fishery closures, and high grading as reasons for discarding, the age structure of the summer flounder discards has also changed, with a higher proportion of older fish being discarded.

Table 7: Percentage of observed summer flounder discards by recorded discard reason, trawl and scallop gear, 2012-2016.

	% of trawl discards	% of scallop dredge discards
Unknown	0.0	0.1
No market	1.6	66.0
Market, too small	1.8	1.6
Market, too large	0.1	0.0
Market, will spoil	1.9	0.5
Special sample	0.1	0.0
Regs., unknown	1.1	0.4
Regs., too small	50.6	5.5
Quota filled	36.1	25.6
Poor quality	1.6	0.3
High Graded	5.3	0.2

Considerations for Discards and Bycatch

- Some measures to address discards and bycatch could be addressed through specifications or through a framework action (noted where appropriate below, though other measures not mentioned below may be possible).
- Some of the options under other alternative sets in this action (some options for quota management, landings flexibility, permitting, etc.) may have the effect of reducing discards in certain fisheries.

Draft Alternatives: Discards and Bycatch

- **6A: *Status Quo*/No Action**
- **6B: Spatial/Temporal Closures or Gear-Restricted Areas.** The Council and Board could consider permanent, seasonal, or rolling closures or gear-restricted areas to address any specific summer flounder bycatch/discarding problems in particular areas, at certain times of the year, or in certain fisheries.
- **6C: Revised Commercial Accountability Measures.** AMs are measures that are implemented if annual catch targets are exceeded and are intended to mitigate the negative biological impacts of such overages. The Council could revise the current summer flounder commercial accountability measures (AMs) to more specifically target consequences for Annual Catch Limit (ACL) overages based on discards. **This may not require an amendment and could likely be done through a framework action.** Commercial AMs for summer flounder currently require pound for pound paybacks of an ACL overage through quota deductions in following years, regardless of the circumstances of the overages. The Council recently initiated a framework action[14] to consider adding flexibility in the commercial AMs for black sea bass based on stock status, similar to the AMs in place for the recreational sector. The Council is considering expanding this framework action to cover summer flounder and scup as well.

  Revised AMs could also include a revised system of ACLs, such as the creation of sub-ACLs for specific fisheries identified as having high summer flounder discards, and consequences for sub-ACL overages that are specific to discard issues occurring in certain fisheries or gear types.

[14] http://www.mafmc.org/s/Tab09_BSB-Commercial-AM-Framework.pdf

APPENDIX I: Summer Flounder Stock Status

The most recent benchmark summer flounder stock assessment was completed and reviewed during the 57th Stock Assessment Workshop and Stock Assessment Review Committee (SAW/SARC 57).[15] This assessment uses a statistical catch at age model (the age-structured assessment program, or "ASAP" model). Stock assessment and peer review reports are available online at the Northeast Fisheries Science Center (NEFSC) website: http://www.nefsc.noaa.gov/saw/reports.html.

In June 2016, the NEFSC completed a stock assessment update for summer flounder, which incorporated data through 2015 into the population model used for the previous benchmark assessment. The 2016 assessment update indicated that the summer flounder stock was not overfished, but that overfishing was occurring in 2015, relative to the biological reference points established through the SAW/SARC 57 assessment. The model-estimated spawning stock biomass (SSB) was estimated to be 79.90 million lb (36,240 mt) in 2015, 58% of the spawning stock biomass at maximum sustainable yield, SSB_{MSY} = 137.56 million lb (62,394 mt). The fishing mortality rate (F) in 2015 was 0.390, 26% above the fishing mortality threshold reference point $F_{MSYPROXY} = F_{35\%}$ = 0.309 (Figure 2).[4][16]

The 2016 assessment update indicates that while catch in recent years has not been substantially over the ABCs, the projected fishing mortality rates have been exceeded and projected spawning stock biomass has not been achieved. The assessment update shows a moderate internal model retrospective pattern with continued recent underestimation of F and overestimation of SSB. The assessment update indicates that the previous assessment had overestimated recruitment for several of the preceding years. These results appear to be largely driven by below average recruitment in each year from 2010-2015. The update shows that recruitment of age 0 fish was below the time series average (41 million fish at age 0; 1982-2015) each year from 2010 through 2015. Recruitment of age 0 fish in 2015 is estimated at 23 million fish.[4]

As the result of the 2016 assessment update, reductions in catch and landings limits were required for 2017 and 2018. Additional information about these cuts and why they were necessary can be found in a fact sheet posted on the Council's website at: http://www.mafmc.org/s/2016-08-24-Summer-Flounder-Fact-Sheet-2017-2018-Update.pdf.

[15] Northeast Fisheries Science Center. 2013. 57th Northeast Regional Stock Assessment Workshop (57th SAW) Assessment Summary Report. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 13-14; 39 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at: http://nefsc.noaa.gov/publications/.

[16] Terceiro M. 2016. Stock Assessment of Summer Flounder for 2016. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 16-15; 117 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at http://www.nefsc.noaa.gov/publications/.

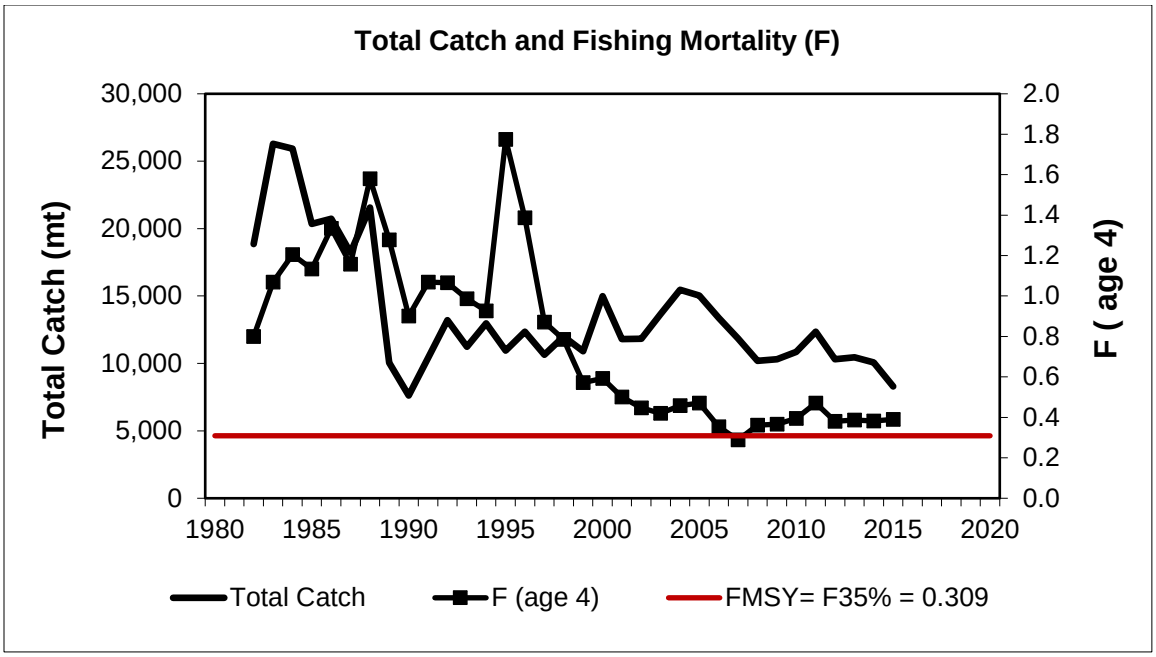

Figure 2: Total fishery catch and fully-recruited fishing mortality (F, peak at age 4) of summer flounder, 1982-2015. The horizontal dashed red line is the 2013 SAW 57 fishing mortality threshold reference point proxy.[4]

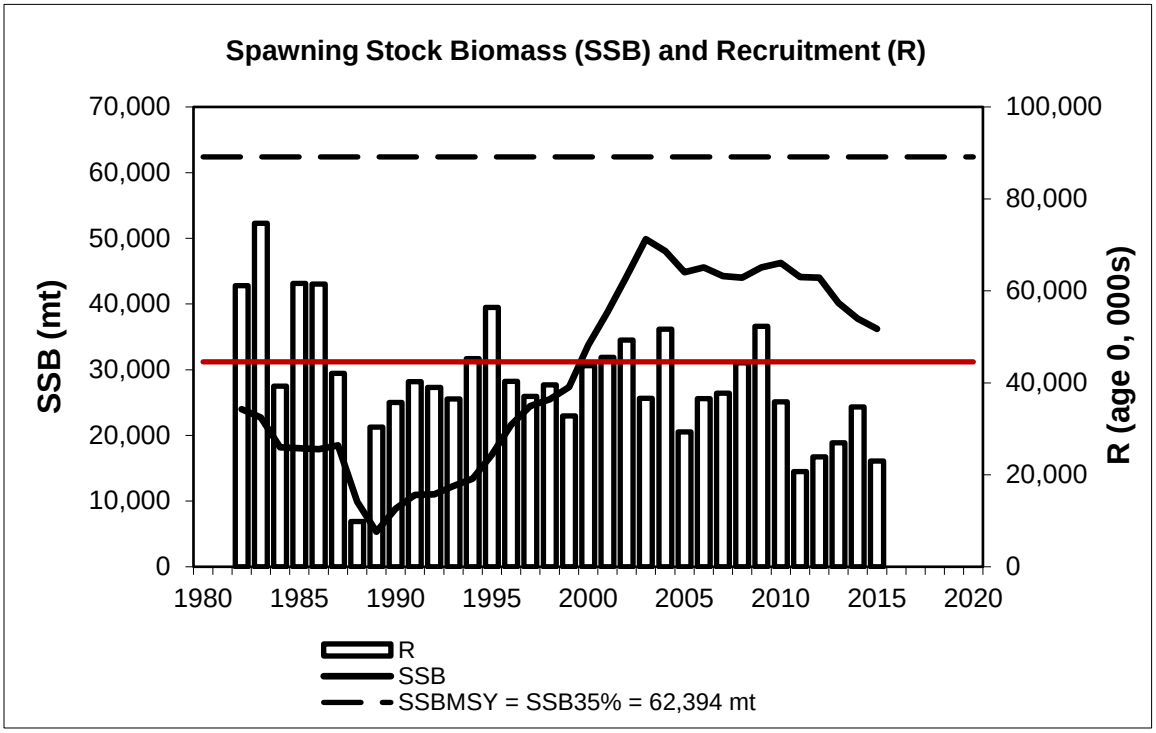

Figure 3: Summer flounder spawning stock biomass (SSB; solid line) and recruitment at age 0 (R; vertical bars) by calendar year, 1982-2015. The horizontal dashed line is the 2013 SAW 57 biomass target reference point proxy, the horizontal red line is the biomass threshold reference point proxy.[4]

APPENDIX II: Supplemental Summer Flounder Commercial Fishery Information, April 2017

In federal waters, a moratorium permit is required to fish commercially for summer flounder. Permit data for 2016 indicate that 773 vessels held commercial permits for summer flounder.[17] Current commercial regulations require a 14-inch total length minimum fish size in the commercial fishery. Trawl nets are required to have 5.5-inch diamond or 6-inch square minimum mesh in the entire net for vessels possessing more than the threshold amount of summer flounder (i.e., 200 lb from November 1-April 30 and 100 lb from May 1-October 31). A thorough review of summer flounder commercial management measures that can be modified through specifications was conducted in the fall of 2015. The report on those measures can be found at: http://www.mafmc.org/s/Tab11_SF-S-BSB-Commercial-Measures.pdf. The performance of the commercial and recreational fisheries relative to the catch and landings limits in recent years is shown in Table 8.

Table 8: Summary of catch limits, landings limits, and landings for commercial and recreational summer flounder fisheries from 2008 through 2018.

Management measures	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018[c]
ABC (mil. lb)[a]	--	21.50	25.5	33.95	25.58	22.34	21.94	22.57	16.26	11.30	13.23
Commercial ACL (mil. lb)[a]	--	--	--	--	14.00	12.11	12.87	13.34	9.43	6.57	7.70
Commercial quota (mil. lb)[b]	9.32	10.74	12.79	17.38	12.73	11.44	10.51	11.07	8.12	5.66	6.63
Commercial landings (mil lb.)	9.21	10.94	13.04	16.56	13.03	12.49	11.07	10.68	7.71	--	--
% of commercial quota landed	99%	102%	102%	95%	102%	109%	105%	96%	95%	--	--
Recreational ACL (mil. lb)	--	--	--	--	11.58	10.23	9.07	9.44	6.84	4.72	5.53
Recreational harvest limit (mil. lb)[b]	6.21	7.16	8.59	11.58	8.49	7.63	7.01	7.38	5.42	3.77	4.42
Recreational landings (mil. lb)	8.15	6.03	5.11	5.96	6.49	7.39	7.36	4.72	6.38	--	--
% of recreational harvest limit landed	131%	84%	59%	51%	76%	97%	105%	66%	118%	--	--

[a] The ABC is the annual Acceptable Biological Catch for the entire summer flounder fishery, and is divided into sector-specific Annual Catch Limits (ACLs) for the commercial and recreational fisheries. The ABC and ACLs include both landings and discards. [b] Commercial quotas and recreational harvest limits reflect the removal of projected discards from the sector-specific ACLs. For 2008-2014, these limits are also adjusted for Research Set Aside (RSA). Quotas and harvest limits for 2015-2018 do not reflect an adjustment for RSA due to the suspension of the program in 2014. [c] Currently implemented; subject to change based on SSC review and subsequent Council and Commission review in July/August 2017.

[17] Source: Unpublished NMFS permit data.

Landings and Value

Commercial landings of summer flounder peaked in 1984 at 37.77 million pounds, and prior to 2016, reached a low of 8.80 million pounds in 1997 (Figure 4). In 2016, preliminary estimates indicate that the commercial fishermen landed approximately 7.71 million pounds of summer flounder (corresponding to 95% of the commercial quota).[18]

For the years 1994 through 2016, NMFS dealer data indicate that summer flounder total ex-vessel revenue (adjusted to 2016 dollars to account for inflation) from Maine to North Carolina ranged from a low of $21.30 million in 1996 to a high of $34.80 million in 2004. The adjusted mean price per pound for summer flounder ranged from a low of $1.74 in 2011 ($1.84 in 2011 dollars) to a high of $3.64 in 2016. In 2016, 7.71 million pounds of summer flounder were landed generating $27.35 million in total ex-vessel revenue (an average of $3.64 per pound; Figure 4).

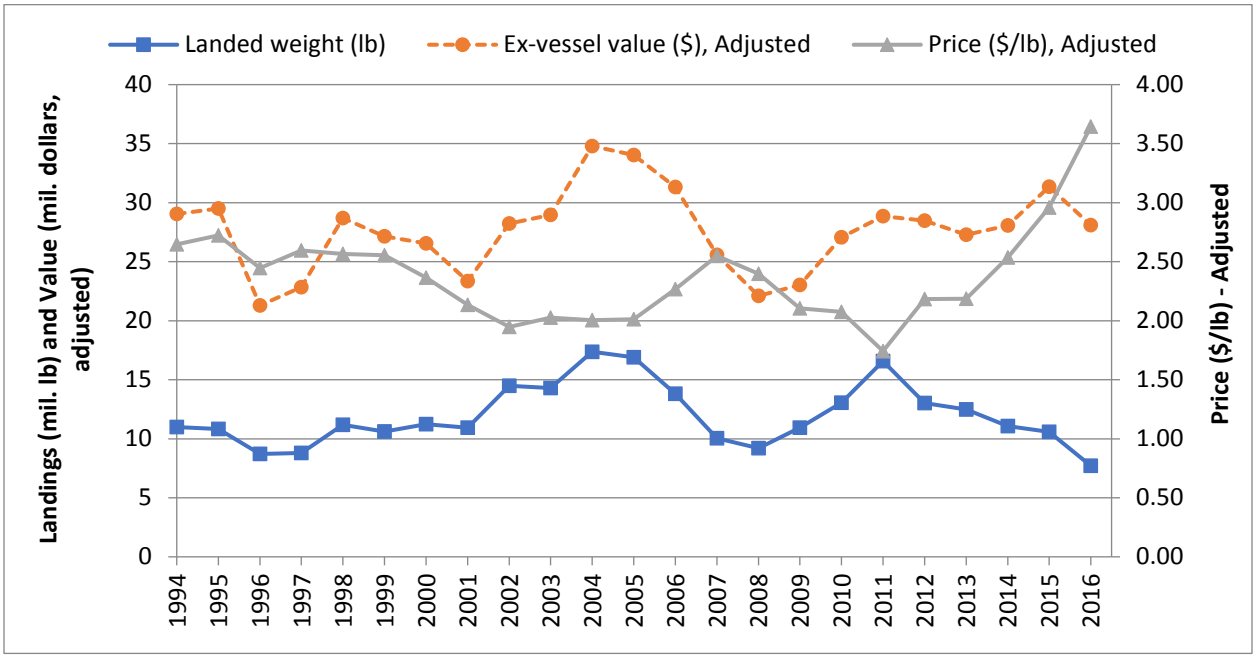

Figure 4: Landings, ex-vessel value, and price per pound for summer flounder, Maine through North Carolina, 1994-2016. Ex-vessel value and price are adjusted to real 2016 dollars. Source: NMFS dealer data as of January 2017.

Gear Type and Area

Dealer data linked to Vessel Trip Report (VTR) data for 2011-2015 (Table 2) indicate that the bulk of the summer flounder landings in recent years were taken by fish bottom otter trawls (88 percent). Unknown or missing gear types in this dataset accounted for approximately 4.5% of landings, followed by hand lines (2.7%) and sink gill nets (1%). Other gear types accounted for 1% or less of landings (e.g., scallop trawls, pound nets, beam drawls, sea scallop dredges, other dredges, and shrimp trawls).

VTR data were used to identify all NMFS statistical areas that accounted for more than 1 percent of the summer flounder commercial catch over 2015-2016 (Table 9; Figure 5). Statistical area 616

[18] Source: Unpublished NMFS dealer data.

was responsible for the highest percentage of the catch and landings. Statistical area 539 accounted for the highest number of trips that caught summer flounder (5,861 trips over these two years).[8]

Table 9: NMFS Statistical Area breakdown for summer flounder landings, discards, and overall catch, 2015-2016. Source: NMFS VTR Data. Areas with less than 1% of total catch not shown.

	% of Summer Flounder Kept	% of Total Summer Flounder Catch	# of Trips Associated with Catch (two years)
616	26.51%	25.94%	1,609
537	18.26%	18.40%	4,244
613	17.56%	17.33%	4,407
612	7.20%	7.09%	3,143
622	4.83%	4.77%	609
539	3.05%	3.69%	5,861
626	3.33%	3.30%	154
615	3.09%	3.05%	821
621	2.79%	2.75%	643
611	2.18%	2.39%	4,124
614	1.68%	1.64%	557
538	1.30%	1.28%	1,003
526	1.17%	1.16%	89
623	1.15%	1.13%	63

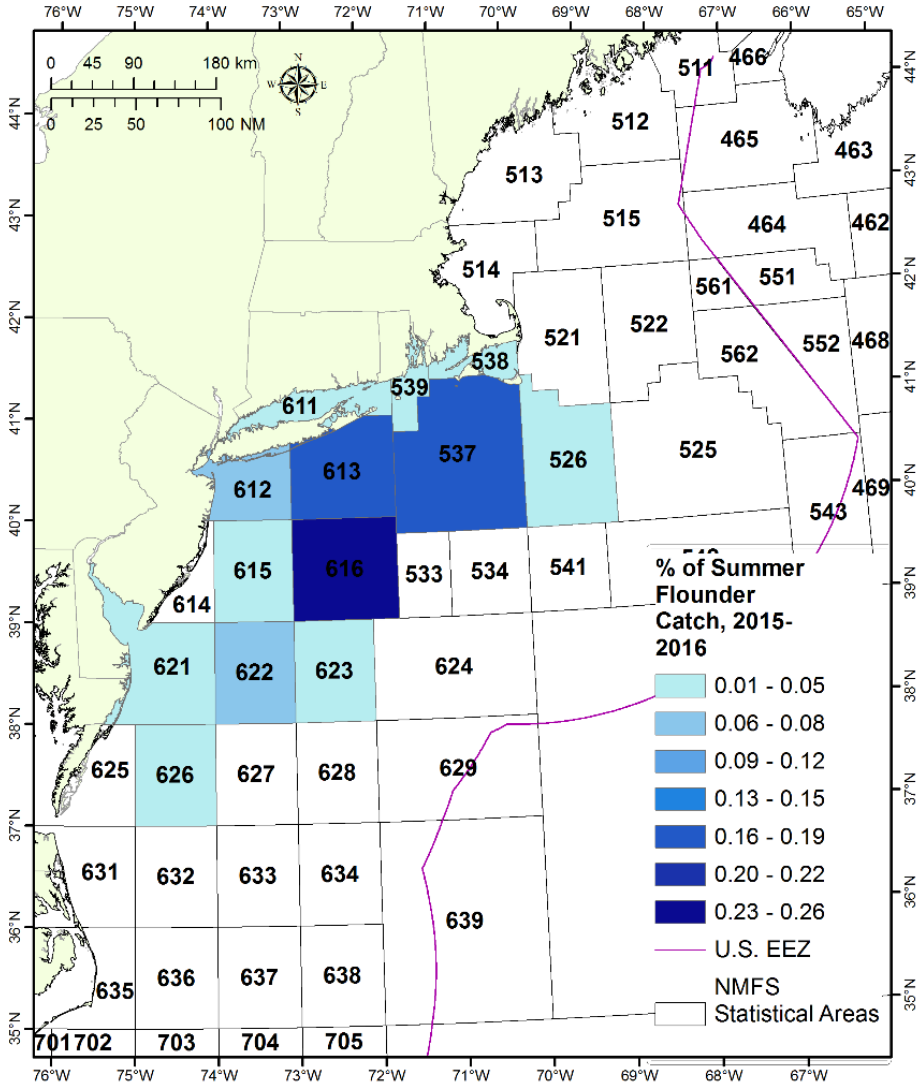

Figure 5: NMFS Statistical Areas, highlighting those that each accounted for more than 1% of VTR-reported commercial summer flounder catch, 2015-2016.

Ports

At least 100,000 lb of summer flounder were landed by commercial fishermen at each of 16 ports in seven states in 2016 (Table 10, Figure 6). These 16 ports accounted for approximately 86% of all 2016 commercial summer flounder landings. Point Judith, RI and Beaufort, NC were the leading ports in 2016 in terms of pounds of summer flounder landed, while Point Judith, RI was the leading port in terms of the number of vessels landing summer flounder (Table 10).[5] The ports and communities that are dependent on summer flounder are fully described in Amendment 13 to the FMP (available at http://www.mafmc.org/sf-s-bsb). Detailed community profiles developed by the Northeast Fisheries Science Center's Social Science Branch can be found at www.mafmc.org/communities/.

Table 10: Ports reporting at least 100,000 lb of summer flounder in 2016, and the corresponding percentage of total 2016 commercial summer flounder landings and number of vessels. Source: NMFS dealer data as of January 2017.

Port	Summer Flounder Landings (lb)	% of 2016 commercial summer flounder landings	Number of vessels
POINT JUDITH, RI	1,141,673	15	135
BEAUFORT, NC	1,065,160	14	60
HAMPTON, VA	876,962	11	64
PT. PLEASANT, NJ	496,770	6	49
NEWPORT NEWS, VA	454,393	6	38
BELFORD, NJ	421,333	5	24
MONTAUK, NY	344,384	4	69
HOBUCKEN, NC	270,554	4	11
WANCHESE, NC	257,872	3	19
NEW BEDFORD, MA	251,806	3	66
CAPE MAY, NJ	236,344	3	58
ORIENTAL, NC	215,439	3	10
CHINCOTEAGUE, VA	198,092	3	25
ENGELHARD, NC	189,583	2	9
STONINGTON, CT	110,158	1	19
LONG BEACH/BARNEGAT LIGHT, NJ	109,493	1	21

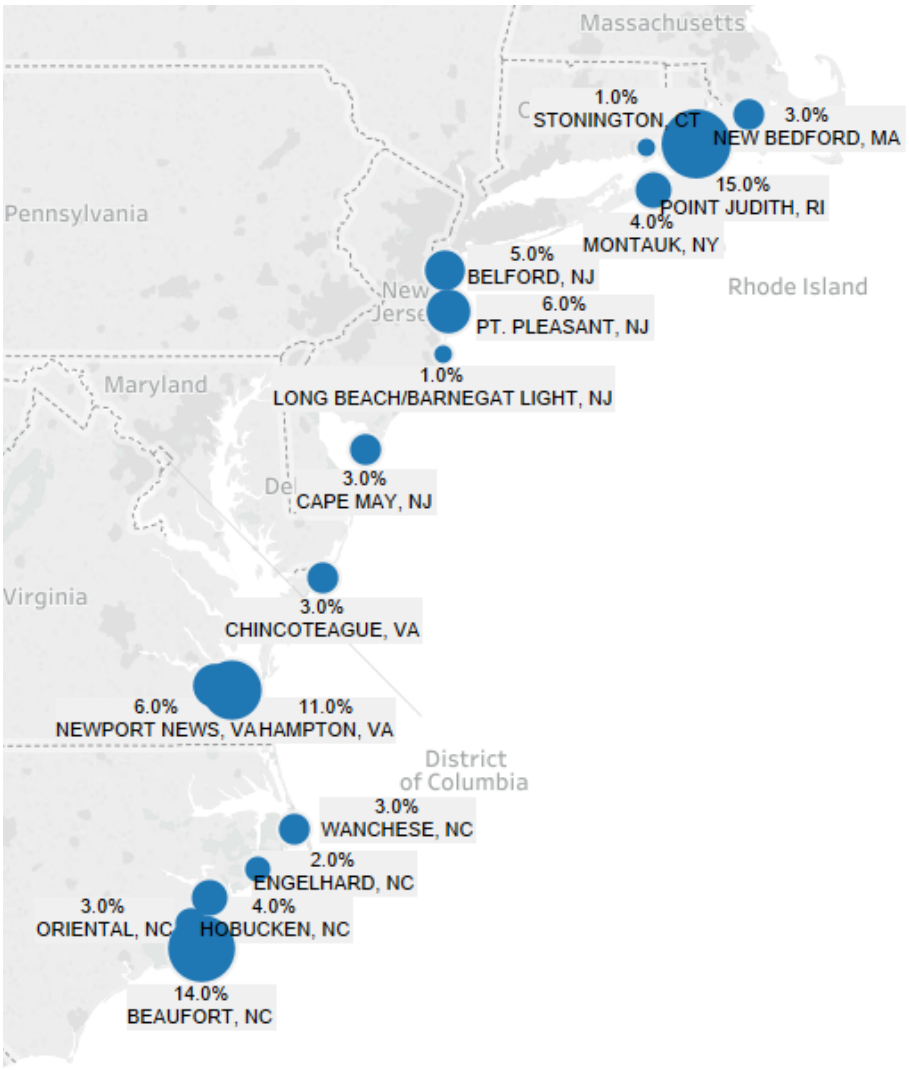

Figure 6: Ports reporting at least 100,000 lb of summer flounder in 2016 and percent of coastwide 2016 summer flounder landings. Source: NMFS dealer data as of January 2017.

Dealers

204 federally permitted dealers from Maine through North Carolina bought summer flounder in 2016. More dealers bought summer flounder in New York than in any other state (Table 11). All dealers bought approximately $27.35 million worth of summer flounder in 2016.

Table 11: Dealers reporting buying summer flounder, by state in 2016.[5]

State	MA	RI	CT	NY	NJ	DE	MD	VA	NC
Number Of Dealers	33	33	13	47	29	0	6	15	28

APPENDIX III: Rhode Island Safe Harbor Policy

RIDEM Safe Harbor Provision

This "Safe Harbor Provision" is based on a concept that has long been a part of the maritime tradition of the United States and most all countries around the world. Rhode Island ports will not reject any deserving, damaged or needful ship. The perils of the sea apply to everyone without regard to treaties, rules, regulations or law.

All sea going vessels will be allowed to land at a Rhode Island port under the following declared circumstances:

Mechanical Breakdown: A vessel having a mechanical problem that makes the continuation of the voyage unsafe and poses risk to life and property.

Unsafe weather conditions: A vessel facing an extended period of high winds (35+knots), waves (10+ feet) ice or other adverse condition that makes the continuation of the voyage unsafe and poses risk to life and property.

Loss of essential equipment: A vessel losing essential gear such as support system that renders the vessel unable to remain at sea or safely fish resulting.

Any vessel seeking landing permission under this ***Safe Harbor Provision*** **shall** call the Department of Environmental Management - Division of Law Enforcement at 401-222-2284 and declare the intention to land. The declaration shall include an explanation of the nature of the problem, the port they intend to land in, and the approximate time of arrival. No offloading of cargo shall be allowed for vessels seeking safe haven under the provisions of this policy.

Any fishing vessels not having a license to land in Rhode Island may be allowed to land in a Rhode Island port under the ***Safe Harbor Provision***. However, it will not be allowed to offload fish unless the vessel is determined to be required to remain in port for repairs related to their original landing request or if weather conditions persist for a period which would result in the fish on board becoming unmarketable. A landing vessel's captain my request permission from the Director of DEM or their designee to offload fish under these circumstances. A request will be considered only when accompanied by an affidavit from a qualified mechanic that verifies the mechanical breakdown, system failure or adverse weather claims that may be verified by the National Weather Service forecast or record.

Any vessel-seeking refuge under provisions of this ***Safe Harbor Provision*** is subject to an inspection by RIDEM Environmental Police Officers to insure compliance with all laws and regulations. Fish possession limits will be evaluated as subject to the possession limits of the port that the vessel is licensed to land in. Weather condition or mechanical situations are not accepted as a reason to be in violation of any State or Federal Marine Fisheries Laws or Regulations.

APPENDIX IV: New York Safe Harbor Guidance

This Safe Harbor Guidance is intended to guide commercial fishing vessels in need of safe harbor for reasons described herein.

August 10, 2016

Sea going commercial fishing vessels who cannot legally enter New York waters will be allowed to enter New York waters and/or dock in a New York port under the following declared circumstances:

- Mechanical Breakdown: A commercial fishing vessel having a mechanical problem that makes the continuation of the voyage unsafe and poses risk to life and property.
- Unsafe weather conditions: A commercial fishing vessel facing an extended period of high winds (35+knots), waves (10+ feet), ice or other adverse condition that makes the continuation of the voyage unsafe and poses risk to life and property.
- Loss of essential equipment: A commercial fishing vessel losing essential gear such as support system that renders the vessel unable to remain at sea or safely fish.
- Significant medical emergency: one which requires immediate medical attention necessary to protect the health of any person on board.

The New York State Department of Environmental Conservation (NYSDEC) may require the vessel captain to independently verify the reason for the unscheduled dockage with a mechanic deemed qualified by New York State, the National Weather Service or a medical professional, as appropriate.
Sea going commercial fishing vessels wishing to enter New York waters and/or dock in a New York port under one of the above declared circumstances must seek prior permission from New York State. A commercial fishing vessel seeking permission to enter New York waters and/or dock in a New York port:

- **SHALL** immediately notify the NYSDEC by calling the 24 hour dispatch at 1-844 DEC ECOS (1-844-332-3267), declare the need for safe harbor and:
  Identify the caller;
  - Identify the vessel captain's name;
  - Identify the home state in which they are licensed to commercially fish;
  - Describe the nature of the problem;
  - Identify the port they intend to enter and the approximate time of arrival;
  - Verbally declare the type and amount of fish on board; and
  - Provide a call back phone number or other method of contact.
- **SHALL NOT** offload cargo without the express authorization of and supervision by personnel of the NYSDEC Divisions of Marine Resources or Law Enforcement. Authorization to offload fish may be granted where the fish on board the vessel will become unmarketable due to the unscheduled dockage. Authorization will be limited according to the willingness of the vessel's home state to accept the fish under that state's fish allocation.

Sea going commercial fishing vessels seeking refuge under this Safe Harbor Guidance are subject to inspection by the United States Coast Guard, other federal agents, and police or peace officers authorized by New York State law to ensure compliance with all laws and regulations.

Sea going commercial fishing vessels must be in compliance with Federal Marine Fisheries Law and the law of the vessel's home state. Fish possession limits will be evaluated subject to the possession limits of the state that the vessel is licensed to land in.

This guidance is not intended to disregard other circumstances that may prevent a vessel's entry to a New York port. For example, a sinking vessel, or a vessel leaking oil or fuel, or a port's capacity to accommodate a vessel, may prevent or delay entry to a port. Additionally, NYSDEC may consult with other Federal and State agencies before granting safe harbor to a sea going commercial fishing vessel.

This guidance does not create any rights enforceable by any party and does not restrict or alter the authority or enforcement discretion of the NYSDEC Commissioner or the Commissioner's designee.

Atlantic States Marine Fisheries Commission

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MEMORANDUM

TO: Summer Flounder, Scup and Black Sea Bass Management Board

FROM: James J. Gilmore, New York State Department of Environmental Conservation

DATE: May 4, 2017

SUBJECT: New York Black Sea Bass Wave 6 Estimate

Following briefings from NOAA Fisheries Marine Recreational Information Program staff, John Maniscalco, in consultation with some Technical Committee members, developed the attached document, which provides additional discussion on the validity of the estimate but also suggest a fix for 2016 Wave 6.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Marine Resources
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www.dec.ny.gov

The preliminary estimate of 2016 Wave 6 harvest of black sea bass in New York was 367,804 fish or 887,186 pounds. The magnitude of this harvest is a significant departure from the pattern NY has previously seen in its Wave 6 BSB harvest since the implementation of recreational surveys to estimate harvest of marine species in the early 1980s (Table 1). The large NY harvest of black sea bass in Wave 6 2016 is a result of PR mode intercepts of Montauk, NY based anglers that primarily fished in federal waters. Prior to 2016, the largest number of BSB estimated to be harvested in NY during Wave 6 was 89,863 fish in 1989. Over this period of time, the survey, the stock, and the regulatory landscape have changed considerably.

After preliminary 2016 Wave 6 estimates were released on February 17, 2017, NY identified the BSB harvest estimate as problematic and asked MRIP staff (2/24/2017) for additional review of the underlying data and sampling. MRIP staff provided a report on the preliminary estimate followed by a conference call (4/19/2017) that included staff from NYDEC Marine Resources, MRIP, and GARFO. MRIP will release the report to the public after inclusion and consideration of the final harvest estimates.

The main points of the preliminary report include:

- No errors in data collection, survey data, or catch and effort estimation
- Higher than normal EEZ fishing by the PR Mode + ubiquitous BSB = high harvest estimate
- Survey conduct by samplers in 2016 achieved similar results to prior years

The conclusions of the preliminary report are not a satisfactory explanation for the preliminary Wave 6 harvest estimate. The 2016 Wave 6 estimate for BSB is the largest in the history of MRFSS/MRIP and many times larger than Wave 6 estimates from the last 10 years. Black sea bass from the dominant 2011 year class had recruited to the late season NY recreational fishery in both 2014 and 2015 (Figure 1), and according to the recent benchmark assessment the stock biomass peaked in 2014 (Figure 2). Despite the large biomass and availability to the fishery, PR mode trips didn't land a single black sea bass from the ocean (state and federal waters) during 2014 and 2015 (Table 2). A quick review of wind (Montauk Airport, Table 3) and wave (Offshore Buoy, Table 4 & Figure 3) data from Montauk, NY (area primarily responsible for PR mode harvest) doesn't support the anecdotal statement in the MRIP report that the weather in Wave 6 2016 was milder than other recent winters, 2015 specifically. In addition, NY 2016 Wave 6 recreational landings of several species co-occurring with black sea bass (tautog, scup, and Atlantic cod) were at or near time series maxima (Table 1) regardless of regulations and stock size.

In summary, NY believes that the data discussed above points to MRIP's inability to consistently capture some modes in a complete and accurate manner, especially during low effort waves such as Wave 6 in NY. This is a sampling and catch expansion issue. Additionally, changes in staff conducting and overseeing APAIS may have impacts that haven't been fully explored.

The sampling difficulty and resulting volatility associated with low effort waves was acknowledged by MRIP staff during the 4/19/2017 call. It was suggested that the swings seen in NY's Wave 6 time series (both the lows and highs) could be moderated by the consideration of additional information. One path forward would be to utilize an average ratio between harvest

estimates from Wave 5 and Wave 6 (Table 5). This method would be most appropriate for years in which regulations (Table 6) didn't change significantly between Waves 5 and 6. A potential working example is detailed below:

During the years 2006-2008 and 2012-2016 changes in regulations between Waves 5 and 6 in NY were minimal. The possession limit in 2015 and 2016 increased by 2 fish during Wave 6. The size limit was consistent during any given year and there was no seasonal closure in NY (it should be noted that federal waters were closed for varying periods of time in Wave 5 for 2012-2016). Additional years could be included in the analysis if days open by wave were considered.

The average yearly ratio of harvest in pounds in wave 6 relative to wave 5 for different subsets of years is provided below. That ratio is then applied to the 2016 wave 5 harvest to calculate a modified estimate for Wave 6.

YEARS	WV 6: WV 5 AVG	MODIFIED NY WV 6 HARVEST LB
2016 (un-modified)	1.56	887,186
2012-2016	0.36	204,867
2006-2008 & 2012-2016	0.32	182,053
2006-2008 & 2012-2015	0.14	81,319
2012-2015	0.06	34,288

Table 1. NY Wave 6 time series of black sea bass and co-occurring species harvest estimates in fish.

Year	BSB	PSE	TAUTOG	PSE	ATL COD	PSE	SCUP	PSE
1983	323	72	32,733	36.9	21,648	38.4		
1984	933	52	11,483	66.1	11,932	33.4	58,846	46.5
1985			225,477	69.3	20,325	36.6	4,053	76.9
1986	13,064	34.8	165,560	19.3	14,129	32.3	89,904	43.7
1987			215,970	37.3	45,267	45.5	35,233	49.7
1988	0	.	295,037	68.1	6,259	71.8		
1989	89,863	46	70,709	33.6	26,596	56.2	655	46.4
1990	26,688	40.5	124,251	28	51,430	26.3	14,340	35.7
1991	4,569	40.6	244,418	20.3	19,191	34.2	6,574	48.1
1992	26,965	41.3	99,308	31.4	12,179	44.2	10,723	59.9
1993	4,771	44.7	195,407	26.1	18,952	36.3	7,818	72.2
1994	17,223	56.3	114,141	26	3,532	33.6	8,728	57.8
1995	0	.	27,391	54.2	1,379	61.4	6,437	72.2
1996	5,573	55.1	3,384	52.4	2,787	45.6		
1997	9,658	69.7	31,593	25.7			225	100
1998	0	.	28,083	43.1				
1999	0	.	137,645	31.9			68,532	76.5
2000	10,502	63.2	23,470	35.5			15,218	67.8
2001	28,524	38.8	19,396	28.2			16,959	60.4
2002	4,136	46.7	519,846	36.6			93,598	37.9
2003	8,717	39.7	72,683	28.4			47,288	23.3
2004	1,527	71.8	212,078	57	0	.	390	80.7
2005	4,986	87.2	47,397	28.4			0	.
2006	9,139	86	176,858	50.9			0	.
2007	27,287	37.5	108,956	25.7	1,885	56	2,759	98.4
2008	53,839	92.6	107,847	33.5	3,822	85.3	1,646	100.5
2009	9,979	96.5	179,844	36.1	34	95.4	0	.
2010	1,306	102.6	21,625	38.8	3,116	25.7	0	.
2011	55,754	60.1	93,277	32.1	10,509	72.7		
2012	1,393	99.5	14,182	40.6				
2013	8,592	88.8	30,075	50.6	1,138	63.3	17,073	82.2
2014	1,969	88	220,255	89.6			43	99.9
2015	15,822	13.8	19,023	46.9	2,076	11.4	49,560	11.3
2016	367,806	33	211,768	34.4	78,496	38.8	279,356	59.9

Figure 1. Modeled size at age of 2011 year class in fall 2014 and 2015.

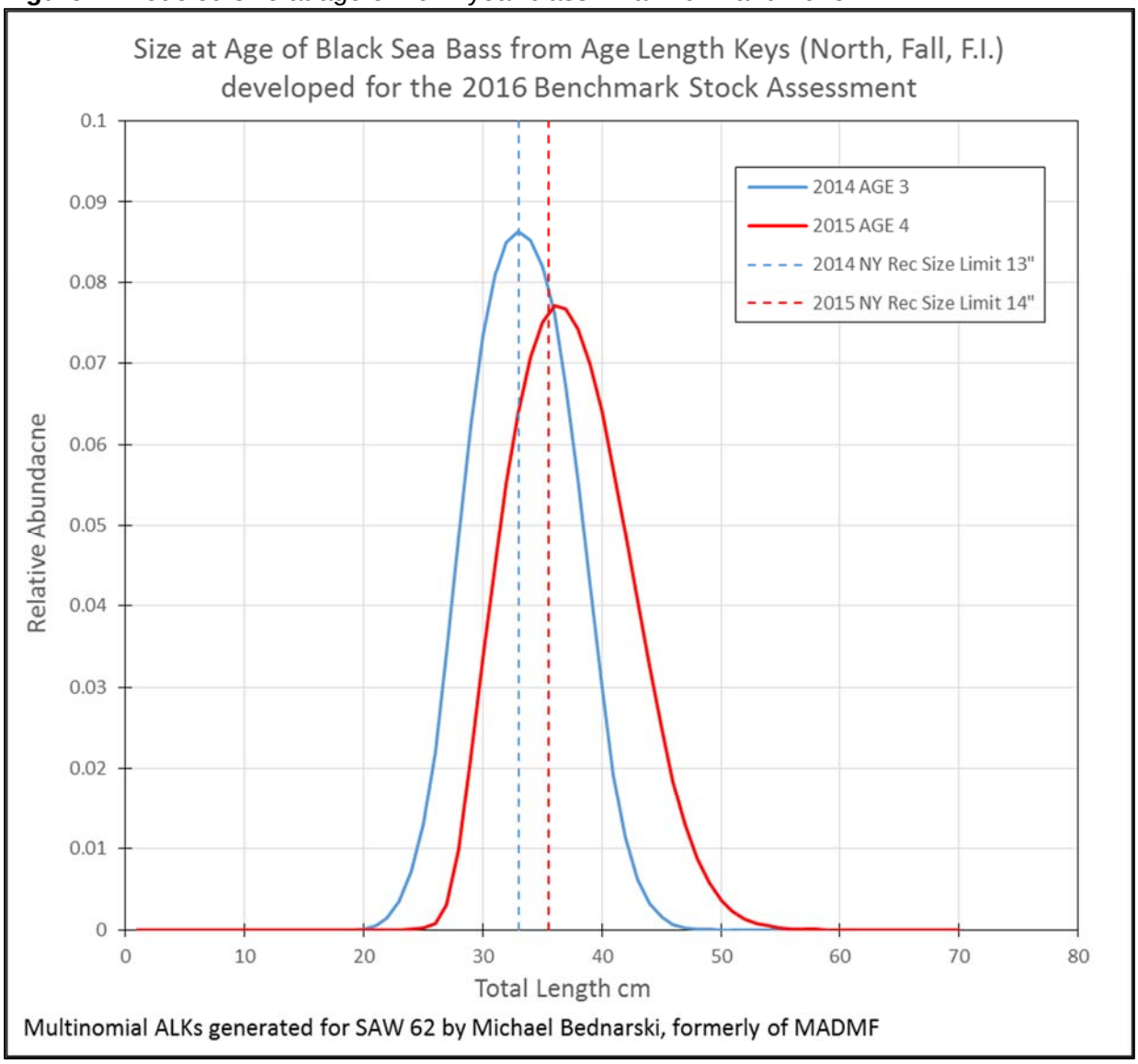

Figure 2. SAW 62 SSB time series.

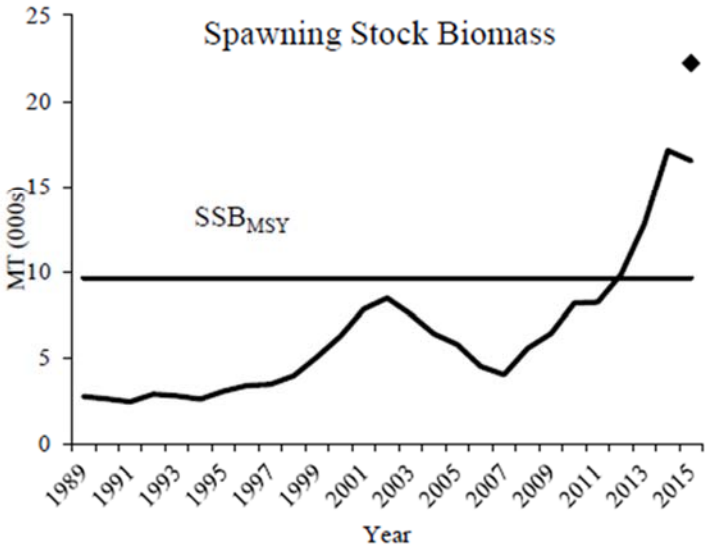

Figure A4. ASAP model results of black sea bass spawning stock biomass (mt, sexes combined) with SSB$_{MSY}$. Retrospective adjusted value indicated with black diamond.

Table 2. NY Wave 6 black sea bass harvest estimates (fish) by mode and area (PR mode).

Harvest (A+B1)	MODE			PR ONLY AREA OF HARVEST		
YEAR	CHARTER	PARTY	PR	INLAND	OCEAN (<= 3 MI)	OCEAN (> 3 MI)
2005	839	0	4,147	0	4,147	
2006		12	9,127	1,419	7,707	
2007	26,598	0	690	690		
2008			53,839		50,054	3,784
2009		212	9,767	9,767	0	
2010			1,306	0	1,306	
2011	6,940	149	48,665	739	47,927	
2012	1,393	0	0	0	0	
2013		183	8,409	8,409		
2014		214	1,756	1,756	0	
2015		14,293	1,529	1,529		0
2016	2,780	79,595	285,430	19,615	47,261	218,553

Table 3. Number of fishable days as measured by wind speed and gusts recorded by the Montauk Airport Weather Station.

YEAR	NOV	DEC	WV 6
2010	21	21	42
2011	19	20	39
2012	22	19	41
2013	13	18	31
2014	17	19	36
2015	12	17	29
2016	15	19	34

AVG W SPD NOT > 20mph or AVG GUSTS NOT > 25mph 5AM-5PM

Table 4. Average monthly and bi-monthly wave height (meters) offshore Long Island, NY (Station 44017).

YEAR	2014	2015	2016
WV 6 AVG WAVE HEIGHT m	1.61	1.38	1.43
NOV AVG WAVE HEIGHT m	1.65	1.29	1.34
DEC AVG WAVE HEIGHT m	1.56	1.47	1.52

Figure 3. Average daily wave height (meters) offshore Long Island, NY (Station 44017)

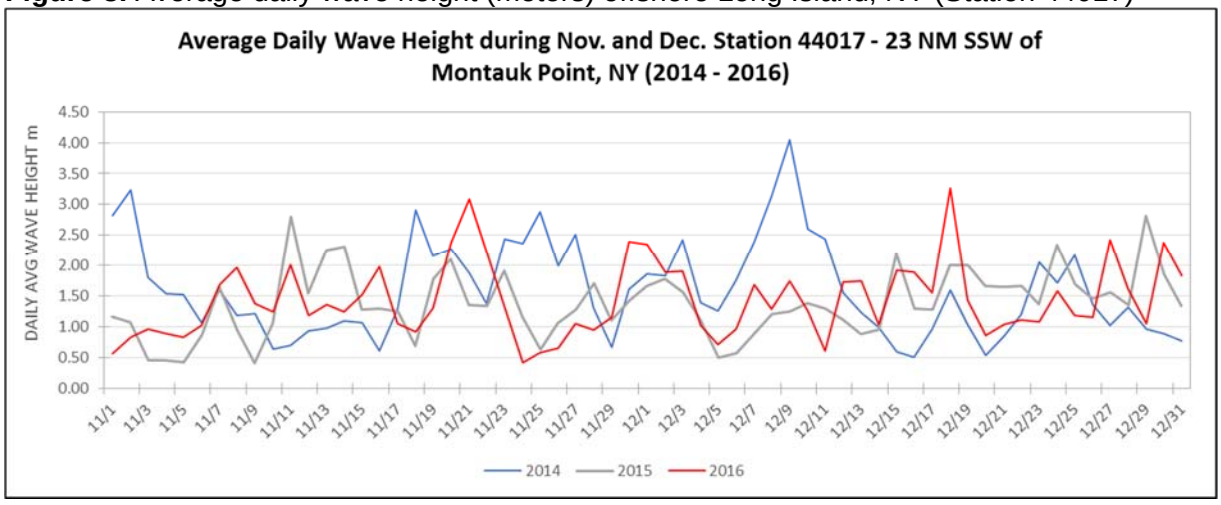

Table 5. MRIP NY Black seas bass harvest estimates by wave for select years.

YEAR	WAVE 3	WAVE 4	WAVE 5	WAVE 6	TOTAL	WV 6: WV 5
2006	145,419	123,792	185,167	22,011	476,389	0.12
2007	182,521	190,676	150,647	34,361	558,205	0.23
2008	74,175	90,108	252,512	104,277	521,072	0.41
2012	104,688	352,605	85,397	2,533	545,223	0.03
2013	0	554,239	163,028	17,468	734,735	0.11
2014	0	558,849	285,535	2,804	847,188	0.01
2015	2,226	1,037,631	449,168	42,483	1,531,507	0.09
2016	0	1,020,672	568,592	887,186	2,476,450	1.56

Table 6. NY black sea bass recreational fishing regulations for select years.

YEAR	SIZE (IN)	POSSESSION	OPEN SEASON
2006	12	25	ALL YEAR
2007	12	25	ALL YEAR
2008	12	25	ALL YEAR
2012	13	15	6/15-12/31
2013	13	8	7/10-12/31
2014	13	8	7/15-12/31
2015	14	8 & 10	7/15-10/31 & 11/1-12/31
2016	15	3,8,10	6/27-8/31, 9/1-10/31 & 11/1-12/31

White Paper on the Potential 2018 Experimental Wave 1 Recreational Black Sea Bass Fishery

May 2017

Brandon Muffley, Fishery Management Specialist

Mid-Atlantic Fishery Management Council

Background

Historically, black sea bass was an important component of the Wave 1 (January – February) recreational offshore fishery, particularly among the for-hire sector that had the vessel capabilities to travel offshore during that time of year. From 1996, when black sea bass was added to Summer Flounder Fishery Management Plan, through the mid-2000's recreational management measures in Wave 1 have become progressively more restrictive in an effort to reduce fishing mortality and promote stock rebuilding (Table 1). Since then, additional management restrictions have been implemented in order to constrain landings to the recreational harvest limit (RHL) and in 2010, the Wave 1 fishery was closed due to overages in 2009. Since then, the Wave 1 fishery has remained closed with the exception of 2013.

In 2014, the Council considered re-opening the Wave 1 fishery for federally permitted for-hire vessels in federal waters for the 2015 fishing season. The Council ultimately decided against the re-opening due to implications for the remaining recreational fishery and the potential disproportionate impacts to states that may not participate in the Wave 1 fishery. In February 2017, the Council and the Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup and Black Sea Bass Management Board (Board) were presented the results of the 2016 benchmark stock assessment which indicated the black sea bass stock was at 229% of the biomass target and the fishing mortality was 25% below Fmsy in 2015, the terminal year of the assessment. Based on this positive information, the Council and Board are considering a potential re-opening of the Wave 1 fishery in 2018. The Council and Board made the following motion in considering the 2018 Wave 1 fishery:

I move to allow an experimental 2018 January/February (wave one), recreational, federally permitted for-hire fishery for black sea bass with a 15 fish per person possession limit, a suspended minimum size limit, and a zero discard policy to allow for barotrauma, and a mandatory trip reporting requirement. Council: DiLernia/King; Board: Heins/Reid

This white paper evaluates black sea bass catch and effort data available during Wave 1, the potential implications of a Wave 1 fishery, potential requirements necessary for the fishery operating under an Exempted Fishing Permit and other items for consideration if this fishery is re-opened.

Wave 1 Black Sea Bass Fishery Information

There is limited catch and effort data available on the recreational black sea bass fishery during Wave 1. Outside of North Carolina since 2004, the Marine Recreational Information Program (MRIP survey) (or its predecessor, the Marine Recreational Fisheries Statistics Survey or MRFSS) does not sample the mid and north Atlantic during this time of the year; therefore, the majority of the available Wave 1 information is derived from mandatory for-hire Vessel Trip Reports (VTR). Federally permitted for-hire vessels are required to submit a VTR on each fishing trip, regardless of species fished for or taken. All federal for-hire black sea bass permit data and all Wave 1 VTR information available from 1996 – 2016 was used to evaluate the Wave 1 black sea bass fishery and its potential re-opening in 2018. Three different Wave 1 time periods were evaluated: a.) the entire 1996 – 2016 time period to take advantage of all data available; b.) only those years in which the Wave 1 fishery was open (1996 – 2009, 2013), given the differences in the fishery and data when open versus closed; c.) 2013 only, the most recent year the fishery was open and likely most representative of the proposed fishery.

A combination of black sea bass permit and VTR data were used to evaluate the potential participation in an experimental Wave 1 fishery by federally permitted for-hire vessels. Federal black sea bass for-hire permits are open access permits and the total number of permits steadily increased from 1997, the first full in year in which the permit requirement was implemented, to a peak of 904 permits in 2009 (Figure 1; Table 1). Since then, the total number of permits has declined and is currently at its lowest level since 2004. On

average in any given year, less than half (44.5%) of all black sea bass permit holders have any documented black sea bass catch reported on their VTR at any time during the entire year. The number of permitted vessels with reported black sea bass catch at any time of year has remained fairly constant from 1997 – 2016 (Figure 1; Table 1), with an average of 306 permits reporting any catch. When evaluating the number of vessels participating in the Wave 1 fishery, on average, only 4.7% of the active black sea bass permit holders reported any black sea bass catch during Wave 1. The number of vessels with reported catch during Wave 1 averaged 15 vessels and is variable year to year with a low of 4 vessels in 2001 and a high of 39 vessels in 2013, the last year the Wave 1 fishery was open (Figure 1; Table 1). All states from Rhode Island to North Carolina have reported some amount of black sea bass catch in Wave 1 in at least one year from 1996 – 2016 (Table 2). New Jersey accounts for the overwhelming majority of the Wave 1 catch with nearly 83%, followed by New York (9.4%) and Virginia (5.5%). Similar trends are observed when evaluating angler participation within each state during Wave 1, calculated as the total number of anglers from 1996 – 2016, with New Jersey accounting for nearly 78% of all anglers participating in the Wave 1 fishery (Table 2).

Black sea bass Wave 1 total catch steadily increased from 1996 through 2001, then declined until 2005 and once again began to steadily increase until the Wave 1 fishery was closed in 2010 (Figure 2). When the fishery re-opened in 2013, catch was more than doubled the highest catch observed in any year from 1996-2009. In those years in which the Wave 1 fishery was open, harvest by federally permitted for-hire vessels averaged 21,052 fish or about 1.6% of the total recreational sea bass harvest, in numbers of fish, during those years. Discards during the open Wave 1 seasons comprised a small portion of the overall catch with an average of 3,279 fish or 13.7% of the total catch. The low discard ratio in the Wave 1 fishery is significantly lower than what occurs during the rest of the recreational black sea bass fishery where 80%, on average, of the catch is discarded.

The Wave 1 VTR data that is available from 1996 – 2016 includes information on 1,311 trips, carrying over 35,500 passengers. Although not a direct measurement of effort, the total number of trips in which black sea bass were caught in Wave 1 follows a very similar pattern to that observed with total catch (Figure 2) with generally increasing participation until the fishery closed in 2010 and another increase in 2013 when the fishery re-opened. Unlike total catch, there are some years, 2012 and 2016 for example, in which the Wave 1 fishery was closed and a high number of trips with reported catch were observed. To evaluate the proposed 15 fish possession limit, the average catch per angler (CPA) was calculated for all 1,311 Wave 1 trips. The average CPA for all trips was 8.7 sea bass and 11.0 sea bass on trips when the Wave 1 season was open. CPA increased from 1996 to a peak in 2001 of 22.4 sea bass and then remained relatively stable around 12.0 sea bass per angler until 2010 when the fishery closed (Table 3). When the Wave 1 fishery re-opened in 2013, CPA averaged 15.5 sea bass, nearly identical to the proposed possession limit.

The 2016 black sea bass benchmark stock assessment developed a CPA tuning index and, although the calculations are different, can be used to make relative comparisons in angler catch rates in Wave 1 to the rest of the recreational fishery. This comparison indicates the Wave 1 fishery, when open, is likely much more productive with catch rates that are 5 times greater, on average, than those observed the rest of the year. For example, in 2013 the CPA in the Wave 1 fishery was 15.5, compared to approximately 2.0 for the rest of the fishery. A cumulative frequency CPA for all Wave 1 trips during the three different time periods was evaluated to determine the proportion of trips that would be constrained by the 15 fish possession limit (Figure 3). When using the CPA for all Wave 1 trips from 1996 - 2016, the 15 fish possession limit would cover 68.5% of all trips; therefore, 31.5% of the trips had a CPA greater than 15 fish and would be constrained by the 15 fish possession limit. As you remove the trips in which the Wave 1 fishery was closed, the CPA increases and therefore fewer trips would be covered (i.e. more trips constrained) under the proposed possession limit. When using only those trips when the Wave 1 fishery was open, 60.1% of all trips would be covered by the 15 fish possession limit; 39.9% would be constrained. Using only the 2013 Wave 1 trips, only 49.8% of the trips would be covered by the 15 fish possession limit and 50.2% would

be constrained. Given the high catch rates and the relatively high proportion of trips with catch rates above the 15 fish possession limit, the proposed possession limit will likely help constrain black sea bass harvest in Wave 1 but may increase discards.

In the absence of any Wave 1 weight or length frequency information to evaluate the weight/size distribution of black sea bass harvest or discards, total Wave 1 catch data was used to estimate the potential harvest of the Wave 1 fishery under a no minimum size and no discard policy. In those years in which the Wave 1 fishery was open, total catch information, in numbers of fish, was used under the assumption that all fish caught would be harvested under a no discard policy. The total Wave 1 catch in numbers of fish was multiplied by the average weight of harvested black sea bass during the rest of the fishery utilizing MRIP data to develop an estimate of total harvest in weight of the Wave 1 fishery.

The average weight of harvested fish within a given year may not be reflective of the average weight of sea bass during this proposed Wave 1 fishery. The average weight during Wave 1 might be higher because the sea bass available at that time of the year are likely larger than at other times of the year. However, under a no minimum size and no discard policy, the average weight of sea bass harvested may be smaller due to smaller sea bass that must be retained. Given these caveats, the average weight of harvested fish during the other times of year seemed reasonable for a first approximation of what total harvest, in weight, might be during the Wave 1 fishery. As with the total catch in numbers of fish, the potential Wave 1 harvest in weight steadily increased to a peak of 59,418 pounds in 2009 (Table 3). When the fishery re-opened in 2013, the potential harvest under a no minimum size and no discard policy would have been an estimated 188,523 pounds, or about 7.7% of the total recreational black sea bass harvest in 2013. If increasing participation and harvest trends within the Wave 1 fishery continue, and with the high availability of black sea bass, its likely Wave 1 harvest would increase in 2018.

In summary, the Wave 1 black sea bass for-hire fishery is comprised of a relatively small fleet of federally permitted for-hire vessels from a limited number of states. Catch per angler during Wave 1 is likely much higher than it is at other times of the year and has a significantly lower discard ratio. Overall black sea bass catch and harvest in Wave 1 has been relatively small in relation to the rest of the fishery. However, with the potential for continued increased participation, high angler success and high sea bass availability during this time of the year, there is the potential for a sizable black sea bass harvest during a Wave 1 fishery in 2018.

2018 Wave 1 Considerations and Fishery Requirements

When considering the Wave 1 re-opening, the Council and Board agreed not to change the overall 2018 recreational fishing season to include a Wave 1 (January/February) season but to allow for a limited fishery in Wave 1 for only federally permitted for-hire vessels. The motion also stipulates a mandatory trip reporting requirement, and although not explicit in the motion, would be accomplished through the submission of electronic VTRs (eVTR) as part of the Council's eVTR framework that will be finalized in 2017. Lastly, it was suggested the most appropriate method to implement this fishery would be through the issuance of an Exempted Fishing Permit (EFP) by the NMFS Regional Administrator that would cover for-hire vessels that apply to participate in the fishery. This approach was made in an effort to limit the number of potential participants, and therefore limit the potential harvest, and also allow for the collection of fishery information through VTR submissions.

A re-opening of the 2018 Wave 1 recreational black sea bass fishery could provide additional recreational opportunities at a time of year with limited options, particularly for a fishery that has only been open once in the last eight years. However, given the trends observed in the Wave 1 black sea bass fishery and expected high interest, there is the potential for a significant harvest to occur which will have implications for the rest of the year. Establishing the Wave 1 fishery within the EFP process provides a unique opportunity to

collect additional information regarding the fishery, an evaluation of the zero discard policy for future application and also obtain biological information that may help future stock assessments. However, there are additional monitoring and administrative costs that will need to be considered.

Given these parameters for a potential re-opening of the Wave 1 fishery in 2018, several issues and decision points outlined below will be need be addressed and decided by the Council and Board.

Implications for the rest of recreational black sea bass fishery

Any catch that occurs during the 2018 Wave 1 fishery will be accounted for and evaluated against the recreational sector Annual Catch Limit (ACL) and Recreational Harvest Limit (RHL), along with the entire 2018 recreational black sea bass fishery. In order to constrain recreational catch and not exceed the ACL and RHL, any black sea bass catch that is allocated to the Wave 1 fishery will require adjustments to the rest of the year. The required adjustments for the remainder of the fishing year will depend on the catch that occurs during Wave 1. There are a variety of catch estimates or allocations that can be derived for the Wave 1 fishery and the potential implications, through modifications to the season, can be determined. Example catch estimates or allocation scenarios are provided in the table below along with potential implications for the remainder of the recreational fishery.

Option	Projected / Allocated Catch	How Derived	Reduction Needed to Rest of Rec Fishery[a]	Season Implications
1	250,000 lb	Approximate 25% increase in 2013 Wave 1 catch estimate, in weight	6.8%	**Coastwide:** 12 days in either Wv 3 or Wv 5 **Federal/Southern Region:** 9 days in Wv 3 or 8 days in Wv 5 **State Specific:** 5 days in Wv 4 for NY; 5 days in Wv 3 or 5 in NJ
2	109,800 lb	3% of the 2018 Recreational Harvest Limit	3.0%	**Coastwide:** 5 days in either Wv 3 or Wv 5 **Federal/Southern Region:** 4 days in Wv 3 or Wv 5 **State Specific:** 2 days in Wv 4 for NY; 2 days in Wv 3 or 5 in NJ
3	215,400 lb	3% of the 2018 Recreational Harvest Limit and 2018 Commercial Quota	3.0%	Same as those described for Option 2
4	188,500 lb	Estimated 2013 Wave 1 catch, in weight	5.2%	**Coastwide:** 9 days in either Wv 3 or Wv 5 **Federal/Southern Region:** 7 days in Wv 3 or 6 days in Wv 5 **State Specific:** 4 days in Wv 4 for NY; 4 days in Wv 3 or 5 in NJ

[a] Assumes no other reduction is needed to constrain harvest to the 2018 RHL

- **Option 1** – assumes the Wave 1 black sea bass fishery trends of increasing participation and catch would continue and increases the 2013 Wave 1 for-hire catch estimate, in weight, by 25%. This option provides the greatest Wave 1 allocation and would require a 6.8% reduction in the season length for the rest of the year.

- **Option 2** – assumes 3% of the 2018 RHL would be allocated to the Wave 1 fishery and would therefore result in a 3% reduction in season length for the rest of the year. The allocation of 109,800 pounds under this option is 41.8% less than the estimated total catch in the 2013 Wave 1 fishery.

- **Option 3** – assumes 3% of the 2018 RHL and 3% of the 2018 commercial quota are allocated to the Wave 1 fishery. Adjustments to the season for the rest of the year would need to be made but only to account for the 3% utilized from the 2018 RHL. The 3% from the 2018 commercial quota would be an additional allocation provided to the recreational sector for the Wave 1 fishery. Therefore, the season implication examples would be the same as those provided in Option 2 in the table above. Of note, after discussions with GARFO and a review of the regulations, it does not appear the FMP regulations would allow for the transfer of commercial quota to the recreational sector nor would it be allowed under an EFP program. Additional regulatory adjustments would be required to allow for this type of transfer.

- **Option 4** – this option assumes a constant catch from the 2013 Wave 1 fishery and would allocate the estimated 2013 Wave 1 catch. This option would require a 5.2% reduction in the season length for the rest of the year.

In order to evaluate the potential implications a Wave 1 fishery may have on the rest of the year, recreational season reduction options were evaluated at the coastwide, regional and state level. Given the continually changing and disparate regulations, particularly for the Northern Region states of NJ-MA, quantifying the seasonal reduction on a coastwide or regional basis has become increasing complex and difficult. Coastwide reductions are based upon data from 2006-2008 (Table 4), the last time there were consistent coastwide measures. Federal/Southern Region reductions are based upon data from 2014-2015 (Table 5). Given the regulatory complexity in the Northern Region, state specific reductions were calculated for New York and New Jersey as examples. New York and New Jersey were chosen since they represent nearly 95% of the Wave 1 black sea bass catch and participation. Reductions were based upon data from 2014-2015 (Table 6). The examples provided here should be used for refence to evaluate the relative reductions needed, but additional analysis by staff and the Monitoring Committee will be necessary to finalize. Also of note, the season reductions provided here do not account for any reductions/liberalizations that may be needed once 2017 recreational black sea bass harvest estimates are available and evaluated to the 2018 RHL.

Potential Wave 1 Fishery Implementation

If the Council and Board decide to allow for a 2018 Wave 1 fishery and set a specific allocation from one of the options above, implementing the Wave 1 fishery could be accomplished by capping the total number of vessels allowed to participate and establishing a total number of trips allowed by each participating vessel. The number of vessel/trip combinations would be set in order to achieve the desired catch allocation and minimize any potential overages. The tables below provide examples of potential vessel and trip combinations assuming a Wave 1 harvest allocation under Option 1 (250,000 pounds) and Option 2 (109,800 pounds) from the table above.

a) Utilizes data from all years the Wave 1 fishery was open (1996-2009, 2013). Top options have a target total catch of 250,000 pounds as specified under Option 1 above. Bottom options have a target total catch of 109,800 pounds as specified under Option 2 above.

Number of Vessels	Number of Trips / Vessel	Total Trips	Ave Number of Anglers / Trip	Avg. Catch / Angler	Avg. Catch / Trip (#)	Avg. Catch / Trip (lb)	Total Catch (lb)
10	36	360	31	11	341	702	252,886
15	24	360	31	11	341	702	252,886
30	12	360	31	11	341	702	252,886
39	9	351	31	11	341	702	246,563
45	8	360	31	11	341	702	252,886
10	15	150	31	11	341	702	105,369
15	10	150	31	11	341	702	105,369
30	5	150	31	11	341	702	105,369
39	4	156	31	11	341	702	109,584
45	3	135	31	11	341	702	94,832

b) Utilizes data from 2013 Wave 1 fishery only. Top options have a target total catch of 250,000 pounds as specified under Option 1 above. Bottom options have a target total catch of 109,800 pounds as specified under Option 2 above.

Number of Vessels	Number of Trips / Vessel	Total Trips	Ave Number of Anglers / Trip	Avg. Catch / Angler	Avg. Catch / Trip (#)	Avg. Catch / Trip (lb)	Total Catch (lb)
10	30	300	26	15.5	403	830	249,054
15	20	300	26	15.5	403	830	249,054
30	10	300	26	15.5	403	830	249,054
39	8	312	26	15.5	403	830	259,016
45	7	315	26	15.5	403	830	261,507
10	13	130	26	15.5	403	830	107,923
15	9	135	26	15.5	403	830	112,074
30	4	120	26	15.5	403	830	99,622
39	3	117	26	15.5	403	830	97,131
45	3	135	26	15.5	403	830	112,074

Depending on which option is selected, the Council and Board then determine the number of vessels that would participate in the fishery. The number of trips allowed, in total and for each vessel, would then be calculated based on the total catch allocated to the Wave 1 fishery. The fishery would be monitored by the

number of trips taken, in total and by vessel (see "Implementation of an Exempted Fishing Permit" for additional details on monitoring). The fishery would close once the total number of trips allotted to the Wave 1 fishery was reached, but no later than February 28th, and an individual vessel would finish its participation in the fishery once it reached its allotted number of trips.

The two different data time periods were provided to show the variability in the data and the potential implications for the number of vessels and trips under each option. The projected total catch in weight under the various vessel and trip combinations assumes an average number of anglers, an average catch per angler and the average weight of harvested sea bass in 2016. If the observed participation, catch per angler or average weight of black sea bass harvested is higher or lower than the respective averages used in this analysis, then the actual harvest observed during the Wave 1 fishery will be very different. This could pose significant implications for the rest of the year or in 2019 if the actual Wave 1 harvest is substantially higher than projected.

Data collection and data validation issues

Federal for-hire VTR data provides managers and scientists with a large quantity of information to evaluate a particular fishery; however, this information is self-reported and is not validated to determine its accuracy and therefore limits it potential utility. The need for accurate, verifiable and validated information is extremely critical for the success, or failure, of an implemented Wave 1 fishery. This necessity is even more critical if a trip or catch cap is put in place. Under a trip or catch cap system, there may be incentive to under-report black sea bass harvest in order to keep catch under the specified cap. Therefore, it is critical that an observer and/or dockside monitoring program be implemented to sub-sample a portion of the vessels and/or trips during the Wave 1 fishery. A significant amount of federal, state and/or other resources would likely be needed to conduct the dockside and/or at-sea monitoring program in order to adequately sample and validate the eVTR information. Depending on the number of vessels and trips specified for the fishery, staff will work with the Monitoring Committee to determine an appropriate level of dockside and/or at-sea sampling needed.

There is an also opportunity, and need, to collect additional information about this fishery. In addition to the information currently required by federal VTR reporting regulations, the total weight and individual length and weight information from a sub-sample of black sea bass caught may be required. This additional information would provide valuable biological, fishery and management information. This data could provide information on the size distribution of sea bass available at this time of year, effects/implications of a zero discard policy and provide an example sampling platform to collect data on other recreational fisheries that take place during this time.

Biological and enforceability considerations under a no discard policy

Due to the deeper depths at which the Wave 1 fishery typically occurs and presence/concentration of a number of predators, black sea bass discard mortality is likely to be high during this time of year. In order to eliminate discards, the Council and Board agreed to a no minimum size and no discard policy. However, even under this policy, discards will likely not be eliminated. As described in the "Wave 1 Black Sea Bass Fishery Information" section, catch rates in Wave 1 are extremely high and more than 50% of the trips in 2013 had catch rates higher than 15 fish per angler. There is also an increased probability of high grading under a no minimum size policy. If the first fishing location visited results in a large number of small black sea bass being caught and the vessel moves to another location where larger sea bass are prevalent, anglers will likely discard the smaller sea bass they needed to retain from the first location. The zero discard policy also creates enforceability concerns and difficulties, particularly in the absence of any observer coverage, to ensure no discarding is occurring. The Council and Board may want to consider other alternatives such

as the use of descending devices or minimum hook sizes, used in conjunction with the other measures, to help reduce discards even further.

Implementation of an Exempted Fishing Permit

As per 50 CFR 600.745(b)(1) an EFP may be authorized by the Regional Administrator "*for limited testing, public display, data collection, exploratory fishing*[1]*, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited."*

An EFP application needs to be provided at least 60 days prior to the desired start date of an approved EFP. An applicant(s) requesting an EFP must complete an application package that provides details on information such as (not an exhaustive list):

- A statement of the purposes and goals of the exempted fishery and a justification for issuance of the EFP
- Information on each vessel and owner participating under the EFP
- Time, place, type and amount of gear used
- Species (target and non-target) expected to be harvested, amount of harvest needed, disposition of all regulated species harvested under EFP
- Potential impacts to environment, fisheries, protected resources and EFH

In addition to the EFP, the applicant(s) may also need to obtain state specific exemption/scientific collection permits in order for vessels participating in the program to land black sea bass out of season in the state they are returning to and offloading passengers.

All federally permitted for-hire vessels participating in the program will be required to submit electronic VTRs (eVTR) documenting all fishing activity and catches. Report submission will follow the Council's eVTR framework which will be finalized in 2017 for implementation in 2018. All eVTRs will be submitted within 48 hours after the completion of a for-hire trip. Failure to provide reports within the specified time period would immediately result in losing the opportunity to continue fishing during the Wave 1 season. All participating vessels will be required to call GARFO's interactive voice recording system (IVR) prior to making a directed black sea bass trip and provide any required information, including the vessel's trip number (eg. trip 3 of the allowed 10 trips for each vessel). This call-in requirement will allow GARFO to monitor the fishery and provide a cross validation of the 48 hour eVTR submission and allow for potential at-sea or dockside sampling opportunities. Black sea bass will only be allowed to be retained on directed black sea bass trips designated under the 2018 Wave 1 EFP program. Black sea bass caught on a non-directed sea bass trip, and therefore not covered under this Wave 1 EFP, would need to be discarded.

When issuing an EFP, the Regional Administrator has the ability to include additional terms, conditions and reporting requirements to the EFP. As discussed in the previous sections, there is a critical need to validate the information provided on the eVTRs and collect additional biological information during the Wave 1 fishery. Therefore, participating vessels may be required to allow federal or state staff observers on board or dockside to collect additional biological information and/or validate VTR reports.Iin addition to the information currently required by the federal VTR reporting regulations (eg. number of anglers, average depth, location and count of all fish harvested and discarded by species), the total weight and

[1] In discussions with GARFO regarding the potential issuance of an EFP for the Wave 1 fishery, exploratory fishing was deemed the most appropriate activity covered by the EFP.

individual length and weight information from a sub-sample of black sea bass caught may be required as additional permit or reporting conditions for each participating vessel.

Administrative and other EFP considerations

If an experimental Wave 1 fishery in 2018 to be administered through an EFP process were approved, there are some administrative issues and questions that will need additional guidance from the Council and Board to address and will require further discussions with Council and GARFO staff.

Topics for additional input and consideration are as follows:

- What is the purpose, goals and justification for the experimental Wave 1 fishery? This is necessary as part of the EFP application.
- Who would be the applicant for the EFP? Is there one "lead" principal investigator or would each interested vessel apply for an individual permit? How would the EFP be administered by GARFO?
- If the number of vessels that apply to participate in the fishery exceeds the number of vessels that are allocated under the selected option, how are participants selected?
- Are there additional data and/or reporting requirements, not mentioned here, that should be implemented?

Table 1. Summary of the recreational Wave 1 (January – February) black sea bass management measures and Federally permitted for-hire participation within the black sea bass fishery. Management measures are shaded from 2010 – 2012, 2014-2017 due to closed Wave 1 fishery.

Year	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
Minimum Size (in)	9	9	10	10	10	11	11.5	12	12	12	12
Possession Limit	NA	NA	NA[a]	NA[a]	NA[a]	25	25	25	25	25	25
# of Federal Black Sea Bass Permit Holders	NA	306	437	501	593	629	667	680	706	826	832
# of Permit Holders with Black Sea Bass Catch		248	254	281	311	306	295	304	275	284	327
# of Permit Holders with Black Sea Bass Catch in Wave 1		12	6	7	12	4	10	8	6	6	11
Year	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
Minimum Size (in)	12	12.5	12.5				12.5				
Possession Limit	25	25	25				15				
# of Federal Black Sea Bass Permit Holders	881	868	904	902	819	808	802	763	778	749	
# of Permit Holders with Black Sea Bass Catch	342	330	333	358	322	320	331	297	324	291	
# of Permit Holders with Black Sea Bass Catch in Wave 1	26	21	28	10	8	34	39	7	12	26	

[a] There were no federal possession limits but some states implemented a 20 fish possession limit in these years.

Table 2. Total 1996 – 2016 proportion of Wave 1 black sea bass catch by state reported on VTRs submitted by federally permitted for-hire vessels.

State	Proportion of Catch	Proportion of Participation
RI	0.29%	1.74%
CT	0.06%	1.44%
NY	9.41%	11.52%
NJ	82.85%	77.77%
DE	1.30%	0.75%
MD	0.54%	1.90%
VA	5.50%	4.75%
NC	0.06%	0.13%

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Table 3. Wave 1 recreational black sea bass harvest, discards, catch and average catch per angler from federally permitted for-hire vessels based on VTR information. Average weight of harvested fish from MRIP survey, not including Wave 1, was used to calculate the total weight of Wave 1 catch. Information from 2010 – 2012, 2014-2017 are shaded to indicate closed Wave 1 fishery.

Year	Harvest (#)	Discards (#)	Catch (#)	Avg. Catch Per Angler	Avg Weight of Harvested Fish (lb)	Total Weight of Catch (lb)
1996	3,854	132	3,986	9.2	1.10	4,385
1997	5,542	75	5,617	4.6	0.90	5,055
1998	5,103	245	5,348	6.0	1.00	5,348
1999	10,997	507	11,504	14.6	1.21	13,920
2000	1,597	572	2,169	2.4	1.10	2,386
2001	12,636	1,315	13,951	13.5	1.20	16,741
2002	18,129	2,989	21,118	9.8	1.30	27,453
2003	16,201	988	17,189	14.3	1.01	17,361
2004	14,765	1,159	15,924	10.6	1.29	20,542
2005	17,680	1,185	18,865	11.0	1.49	28,109
2006	34,640	1,498	36,138	14.7	1.40	50,593
2007	32,979	3,511	36,490	11.8	1.42	51,816
2008	34,562	3,077	37,639	12.8	1.57	59,093
2009	36,555	5,289	41,844	13.8	1.42	59,418
2010	61	2,258	2,319	5.9	1.45	3,363
2011	1	368	369	2.2	1.43	528
2012	1,147	7,495	8,642	2.6	1.70	14,691
2013	70,533	27,656	98,189	15.5	1.92	188,523
2014	1	542	543	2.1	1.73	939
2015	42	701	743	2.3	1.71	1,271
2016	0	5,358	5,358	4.0	2.06	11,027
T.S. Avg.	15,096	3,187	18,283	8.7	1.4	27,741
Open Season Avg.	21,052	3,347	24,398	11.0	1.3	36,716

Table 4. Projected percent reduction in black sea bass landings associated with closing one day per wave, based on 2006-2008 MRIP landings data.

State	Wave 1	Wave 2	Wave 3	Wave 4	Wave 5	Wave 6
MA	0.000	0.000	0.608	0.323	0.702	0.000
RI	0.000	0.000	0.072	0.394	1.050	0.117
CT	0.000	0.000	0.033	1.166	0.016	0.405
NY	0.000	0.000	0.407	0.475	0.592	0.158
NJ	0.000	0.002	0.681	0.268	0.636	0.047
DE	0.000	0.074	0.846	0.350	0.336	0.027
MD	0.000	0.010	0.967	0.154	0.404	0.101
VA	0.000	0.041	0.703	0.415	0.286	0.188
NC[a]	0.041	0.090	0.405	0.381	0.502	0.217
Coast	0.001	0.009	0.594	0.352	0.592	0.087

[a] North of Hatteras

Table 5. Projected percent reduction in black sea bass landings associated with closing one day per wave for the federal/southern states measures, based on MRIP landings data and the number of open days in each wave for 2014-2015.

State	Wave 1	Wave 2	Wave 3	Wave 4	Wave 5	Wave 6
DE	0.000	0.000	1.120	0.240	0.310	0.410
MD	0.000	0.000	0.340	0.340	1.140	0.430
VA	0.000	0.000	1.350	0.140	0.550	0.200
NC[a]	0.000	0.000	0.370	0.390	0.920	0.000
Southern Region	0.000	0.000	0.750	0.270	0.820	0.360

[a] North of Hatteras

Table 6. Projected percent reduction in black sea bass landings associated with closing on day per wave for New York and New Jersey, based on average MRIP landings data and the number of open days in each wave for 2014-2015.

State	Wave 1	Wave 2	Wave 3	Wave 4	Wave 5	Wave 6
NY	0.000	0.000	0.002	1.393	0.517	0.025
NJ	0.000	0.000	1.456	0.351	1.438	0.145

Figure 1. Number of federal black sea bass for-hire permits, the number of permit holders with reported black sea bass catch at any time of year and the number of permit holders with reported black sea bass catch during Wave 1 according to Vessel Trip Reports (VTR) from 1997 – 2016.

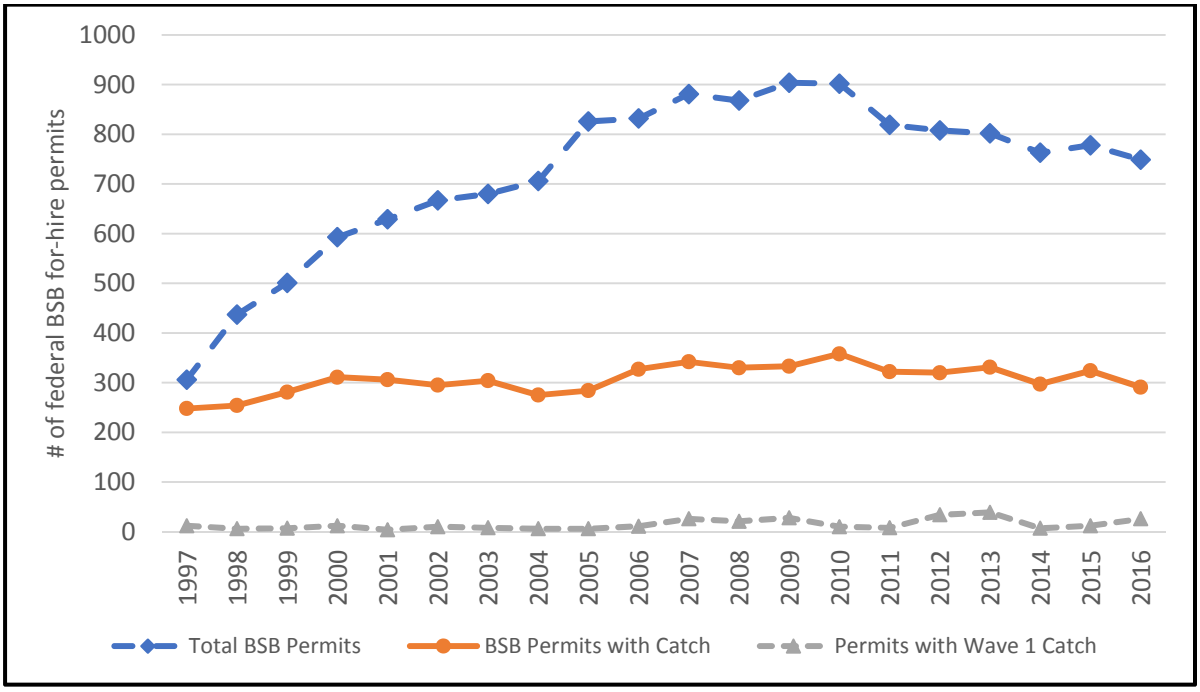


Figure 2. Black sea bass harvest and discards, in numbers of fish, and number of trips with black sea bass catch from federally permitted for-hire vessels VTR reports during Wave 1. The Wave 1 fishery was closed from 2010-2012 and 2014-2016.

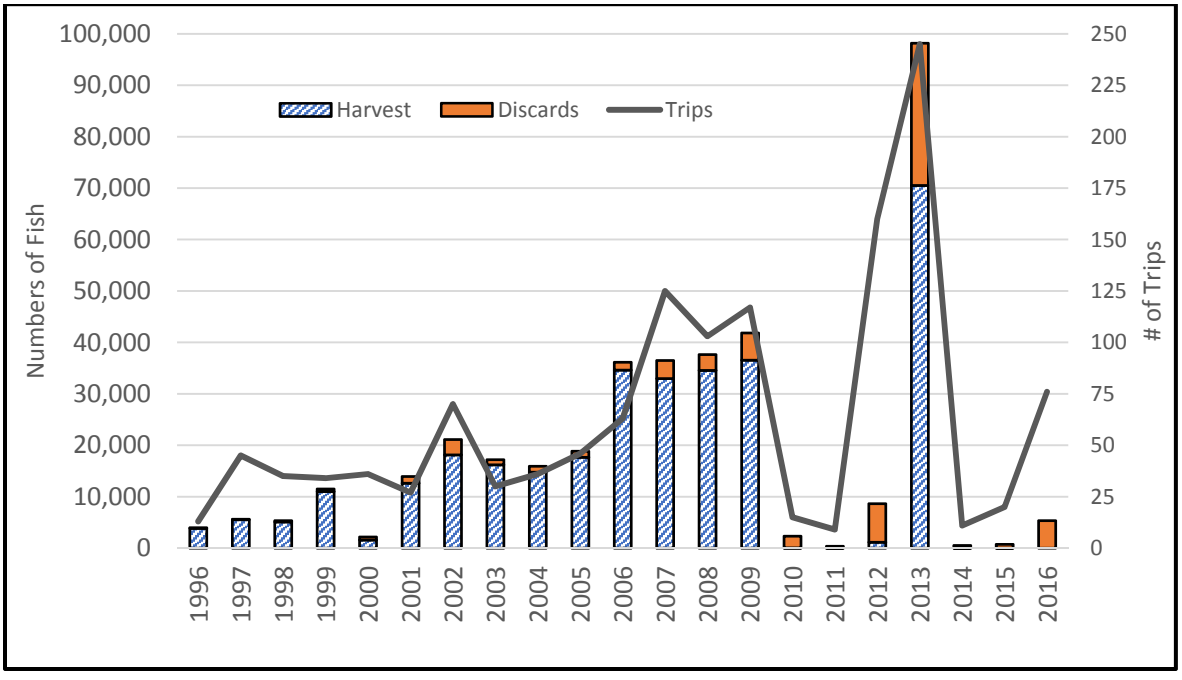
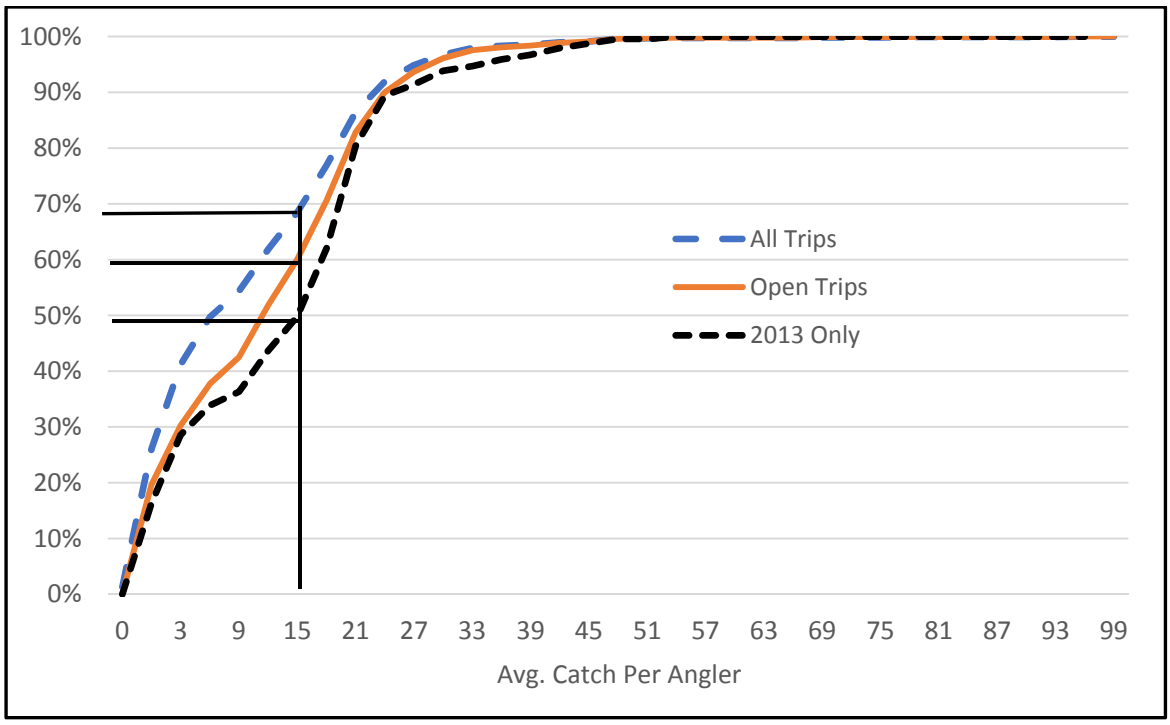


Figure 3. Cumulative frequency of average catch of black sea bass per angler during the Wave 1 fishery from 1996 – 2016; 1996-2009, 2013; and 2013 only. The vertical/horizontal lines indicate the total number of trips with an average catch of 15 black sea bass per angler, the proposed 2018 Wave 1 possession limit.



May 2, 2017

Atlantic States Marine Fisheries Commission
1050 N. Highland St.
Suite 200 A-N
Arlington, Virginia 22201

Dear Commission Council Members,

As of your decision regarding summer flounder regulations in New Jersey on May 11, 2017, you will be running my small fishing business. Kindly utilize your common sense and stewardship of this precious species by rejecting all of the proposed regulations. You have been presented volumes of accurate data from the private sector proving these regulations counter to what we now know about the spawning and growth of summer flounder in New Jersey and our companion states.

You are poised to annihilate the summer flounder fishery in New Jersey. When the chief conservation officer of a state, our DEP Commissioner Bob Martin, passionately rejects the proposed regulations as detrimental to preserving the fishery, you must recognize there is something desperately wrong with them.

Please enter my comments and the attached letter into the records of your joint meeting with the Mid-Atlantic Fishery Management Council. Thank you.

Sincerely,

Robin Scott

Robin Scott
Ray Scott's Dock
9211 Amherst Ave.
Margate, New Jersey 08402

I am Robin Scott, owner/operator of Ray Scott's Dock in Margate, New Jersey, the oldest "continuously same family owned" bait, tackle and boat rental business along the New Jersey Atlantic coast. This small full service marina is on the Intercoastal Waterway a mile and a half from the Great Egg Inlet, 30 miles North of Cape May, New Jersey and the Delaware Bay.

Twenty-three years ago anglers rented boats in early April to catch fresh fish for dinner after a long winter. There was a minimum size limit on summer flounder of thirteen inches but no seasons. In years since, size limits have steadily increased and seasons put in place. Seasons were unnecessary in recreational fishing since they cut off the time before children get out of school for the summer and the time after they go back to school in fall. These prime times for anglers to enjoy quiet proprietorship of the bay were legendary and a major draw to the Jersey Shore. Seasons also compressed New Jersey's fishing businesses to an average of 16 weekends to earn a living and host our guests safely on now crowded waters. That is, if the weather cooperated and fish were abundant.

Fast-forward to proposed regulations for the 2017 summer flounder season, three fish at nineteen inches per angler per day, a season start around Memorial Day and an end right after Labor Day. Stock trends in the years since 1994 are significant. Fishery managers increased size limits yearly based on the theory that by raising the size of a "keeper" flounder, the catch would be reduced. As long as the sizes remained less than seventeen inches, stocks grew and this appeared to work. At seventeen and a half inches growth flatlined. Rather than recognizing the significance of this change, it was explained away by very inaccurate science. The next two years stocks took a downturn as the minimum size of a "keeper" flounder in New Jersey was raised to 18". The easy answer from the fishery managers, "OVERFISHING"; is a term that will get the attention of anyone who doesn't know better, and incite conservationists who should be supporting our recommendations as they provide for a sustainable growing fishery, unlike regulations from NOAA. And now an increase to 19 inches is poised to annihilate the summer flounder fishery in New Jersey.

True science based on flounder sex explains why. Studies conducted by Dr. Patrick Sullivan of Cornell University show that nearly all summer flounder over 18 inches are female. Charter boat captains have been reporting this for years from their cleaning tables. Dr. Sullivan also reports that males die off by the time they reach 17 inches. No mystery here. We have been forced by regulations to only catch spawning stock in their prime. Annihilation comes as we toss back into the water all those fish under 18" in order to reach the prize. Estimates vary, but the mortality rate of those "caught and returned" fish is huge. One customer who has been fishing the Margate bay since we opened our doors in 1958, reported throwing back 77 "short" fish to retain one keeper last summer.

With the panic-evoking term "OVERFISHING" used as front page news, it has been difficult to get the truth out on an otherwise common sense no-brainer issue.

New Jersey holds the mother lode of flounder. Flounder in New Jersey is not just fishing. It is a lifestyle. Flounder are not large game fish like tuna and marlin, they are dinner. They provide a way for families to share the discovery that dinner does not arrive from Shop-Rite on a styrofoam tray. Flounder fishing provides families a means to access state and federal waters. The flounder fishery has provided young people a reason to stay in the state and build careers based on the water and fishing, my own family being a prime example. My son Ray Scott Bonar is an operating engineer in local #825 running the cranes that are building the Army Corp project seawall in Atlantic City. He learned to operate cranes at our marina. He just built a house across the street from the marina. My daughter Rachel Scott attended the University of Pennsylvania. Her acceptance into that prestigious Ivy League school moved forward by her training for a 100 ton Merchant Marine Captain's License.

In short, we in New Jersey can do a stellar job in growing our fishery if given favorable regulations. We share the Delaware Bay and must match Delaware's 2016 regulations if we are serious about preserving the most important fishery in America. Open season, four fish per angler per day at 16". Limit quickly, enjoy a fresh flounder dinner, reduce the discards and leave the prime breeders alone.

Most important fishery? Yes, it is not New England and not Alaska. New Jersey is accessible to all. Planes, trains, cars, boats and buses can all bring families easily to New Jersey to experience a lifestyle we consider a stewardship and are eager to preserve and share.

Respectfully,

Robin Scott

Robin Scott