

**Summer Flounder, Scup, Black Sea Bass  
Commercial/Recreational Allocation Amendment**

**FMAT Meeting 1 Summary  
April 14, 2020, 1-4 PM**

This document is part of a joint management action being considered by ASMFC and MAFMC. It was developed through the combined efforts of ASMFC’s Plan Development Team (PDT) and MAFMC’s Fishery Management Action Team (FMAT). For ease of readability, both groups will be referred to as FMAT throughout the document. The Fishery Management Action Team (FMAT) met by webinar to provide recommendations to the Council and Board on the scope of this action, including broad categories of alternatives to potentially include in the amendment. The FMAT discussed example approaches and alternatives assembled by staff, which were informed by scoping comments and are listed below. These examples were provided for discussion purposes and were not necessarily endorsed by staff or other members of the FMAT. FMAT comments and recommendations are provided under each category of approaches. The appropriate structure of the alternatives will be determined at a later date.

**FMAT members in attendance:** Kiley Dancy (MAFMC Staff), Julia Beaty (MAFMC Staff), Karson Coutre (MAFMC Staff), Dustin Colson Leaning (ASMFC Staff), Caitlin Starks (ASFMC Staff), Emily Keiley (GARFO), Greg Ardini (NEFSC), Marianne Ferguson (GARFO), Mark Terceiro (NEFSC), Gary Shepherd (NEFSC)

**Others in attendance:** Matt Seeley (MAFMC Staff), Mike Waine (ASA), Steve Cannizzo (NY RFHFA), Tony Wood (NEFSC), Greg DiDomenico (GSSA), Joe Cimino (NJ DEP; Council and Board member), Adam Nowalsky (Council and Board member)

**Recommendation Summary**

<b>Category</b>	<b>Approach</b>	<b>Summary of FMAT Recommendation</b>
<a href="#">1. No Action/Status Quo</a>	1. No Action/Status Quo	Must include in amendment.
<a href="#">2. Revised percentages based on different data or time series</a>	2.1 Existing base years with revised data	Keep for further development. May not be viable for catch-based options for summer flounder and black sea bass.
	2.2 Revised base years based on recent landings/catch	Keep for further development; however, should be evaluated for bias toward recreational sector for some species given recent sector performance.
	2.3 Revised base years based on post-rebuilding years	Keep for further development; however, may be similar in outcome to recent base years and should be evaluated for bias toward recreational sector as with option above.
	2.4 Based on socioeconomic analyses	Keep for further development; explore possible data sources for this type of analysis.
	2.5 Allocate in numbers instead of pounds	Recommend removing from consideration in this action.

<a href="#">3. Allocations attempting to maintain roughly status quo harvest by sector from the most recent year prior to last assessment update</a>		Keep for further development; additional analysis needed before FMAT can determine whether this is a fair & equitable approach.
<a href="#">4. Recreational sector separation</a>	4.1 Separate allocations to for-hire vs. private sectors	Keep for further development.
	4.2 Separate management measures for for-hire vs. private sectors	Keep for further development.
<a href="#">5. Harvest control rule based approaches</a>		Keep for further development; however, needs additional evaluation and detail to determine whether it addresses amendment purpose or should be considered via a separate process.
<a href="#">6. Recreational accountability alternatives</a> (e.g., more frequent overage paybacks or in-season closure)		Additional accountability could be built into allocation options, but current suggestions may represent reversal of recent changes to accountability measures.
<a href="#">7. Recreational catch accounting alternatives</a>	7. Mandatory private angler reporting, issuing tags, mandatory tournament reporting, requiring VTRs for state for-hire vessels, reinstating did not fish reports.	Keep for further development; however, major modifications to the current catch accounting systems are likely beyond the intended scope of this action on the current timeline.
<a href="#">8. Dynamic allocation approaches and options for future revisions</a>	Moving average approach	Keep for further development.
	Allocation changes through frameworks/addenda	Keep for further development; however, the benefits of expediency versus reduced public input need to be considered
	Trigger approach	Keep for further development.
<a href="#">9. Allocation transfers and set-asides</a>	9.1 Transfer of allocation between sectors	Keep for further development.
	9.2 Allow one sector to buy allocation from another	Recommend removing from consideration in this action.
	9.3 Allow a certain amount of allocation to be set aside through specifications	Keep for further development. Concerns about equity considering that the recreational sector is not as easily held to its limits as the commercial sector.

## General comments

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### *NEPA analysis*

One FMAT member noted that as currently presented, the example alternatives would have mostly socioeconomic impacts. If the final range of alternatives is similar to that discussed at the first FMAT meeting, it is anticipated that an Environmental Assessment would be required under the National Environmental Policy Act (NEPA), rather than a more detailed Environmental Impact Statement.

### *Red snapper lawsuit*

The FMAT briefly discussed a legal case regarding reallocation between the commercial and recreational red snapper sectors in the Gulf of Mexico. The court determined that this reallocation was inconsistent with National Standard 4<sup>1</sup> based on the justification provided. One FMAT member emphasized that it is not sufficient to argue that the allocations should change just because the data changed. Consideration also needs to be given to other implications of allocation changes, including fairness and equity. The red snapper case provides a reminder that each alternative considered through this action should have a robust justification and the consistency of each alternative with National Standard 4 should be evaluated.

### *Allocation utilization*

Adam Nowalsky (speaking as a member of the public and not in his capacity as Board chair) noted that many of the example options presented would move allocation from the commercial fishery to the recreational fishery. He noted that for a species like scup with a high level of biomass and very liberal recreational measures, managers should consider the implications of an action that could potentially increase recreational allocation for a species where it may not be needed or fully used. Council staff noted that for scup, under the revised Marine Recreational Information Program (MRIP) estimates, restrictions in recreational measures may be needed if allocations are not revised, given that the current harvest limit is lower than recent MRIP estimates for scup. Potential changes could appear drastic because measures would have to be dramatically reduced to notably impact harvest. This highlights the issue that for all three species, the revised MRIP estimates could result in increased difficulty constraining harvest to the harvest limits under current allocations.

### *Catch vs landings based allocations*

The FMAT agreed that alternatives for both catch-based and landings-based allocations should be developed, and the pros and cons of each should be further explored.

Scup currently has a catch-based allocation, meaning that the Acceptable Biological Catch (ABC), including both landings and discards, is allocated 78% to the commercial fishery and 22% to the

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<sup>1</sup> National Standard 4 states that “Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen; (b) reasonably calculated to promote conservation; and (c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privilege.”

recreational fishery. Summer flounder and black sea bass have landings-based allocations, meaning that the percentage allocations in the FMP apply only to the landings portion of the total ABC. Discards are divided based on Monitoring Committee recommendations using recent year trends in discards by sector. Under this approach, if one sector has higher discards, that sector will likely receive more of the discards portion of the ABC in the following years, resulting in a lower allocation to the other sector. This can lead to unrealistic discard projections by sector and could provide an advantage to a sector that sees increased discards.

If discards are included directly in the allocation (i.e., a catch-based allocation), there may be a greater incentive for each sector to reduce discards in order to increase their allowable landings. This was part of the rationale for creating a catch-based allocation for scup.

### **1. No action/status quo alternative**

The no action/status quo alternative would keep the existing allocations as specified in Table 1.

**Table 1:** Current allocations for summer flounder, scup, and black sea bass.

	<b>Allocation</b>	
<b>Summer flounder:</b> 1980-1989 (landings-based allocation)	<b>Com</b>	60%
	<b>Rec</b>	40%
<b>Scup:</b> 1988-1992 (catch-based allocation)	<b>Com</b>	78%
	<b>Rec</b>	22%
<b>Black sea bass:</b> 1983-1992 (landings-based allocation)	<b>Com</b>	49%
	<b>Rec</b>	51%

#### *FMAT comments and recommendations:*

The revised MRIP estimation methodology resulted in much higher recreational catch estimates than those used to calculate the current allocations. Commercial discard estimates have also changed. Allocations based on the older data pose challenges for constraining the fisheries, especially the recreational sector, to their catch and landings limits.

### **2. Example alternatives for allocations based on different data or time series**

The following example approaches would revise the percentage allocations based on modified base years or different data sets. Both catch-based and landings-based allocation options are included within these categories and could be developed into sub-alternatives where appropriate. The examples below were derived from scoping comments and were presented to the FMAT for the purposes of discussion.

#### **2.1 Keep existing base years but update with the most recent recreational and commercial data.**

This method would maintain the existing base years shown in **Table 2** and re-calculate the percentage allocations using the most recent best available data for each species. In some cases, data may need to be pulled from multiple sources given the varying time series available for different data streams, as described below in **Table 2**.

**Table 2:** Example allocations using existing base years updated with recent data.

		<b>Catch-based</b>	<b>Landings-based</b>
<b>Summer flounder: 1981-1989<sup>a</sup></b>	<b>Com</b>	b	55%
	<b>Rec</b>	b	45%
<b>Scup: 1988-1992</b>	<b>Com</b>	65%	57%
	<b>Rec</b>	35%	43%
<b>Black sea bass: 1983-1992</b>	<b>Com</b>	b	45%
	<b>Rec</b>	b	55%

<sup>a</sup> Summer flounder base years are 1980-1989; however, MRIP data is only available back to 1981, so these calculations are based on 1981-1989.

<sup>b</sup> Discards in weight for both sectors only available from 1989-present.

Data sources: Summer flounder data are from the most recent benchmark stock assessment (2018). Scup data are from the most recent stock assessment update (2019). For black sea bass, the recreational data are from MRIP and the commercial data are from the ACCSP as the black sea bass assessment does not include all of the allocation base years.

*FMAT comments and recommendations:*

The FMAT noted that reliable discard estimates are not available for all base years for all three species. If catch based allocation alternatives are developed, the FMAT should look carefully at the reliability of discard estimates for each sector. Catch-based allocations may not be possible using the existing base years for all species if reliable discard estimates are not available.

The example modified allocations shown in Table 2 would move 5% of the commercial summer flounder allocation to the recreational sector, 13% of the commercial scup allocation to the recreational sector, and 4% of the commercial black sea bass allocation to the recreational sector. Given recent recreational harvest levels, this change may not be enough to prevent future recreational sector restrictions for some species. Some FMAT members also noted that some scoping comments expressed concerns with continuing to use the 1980s and early 1990s as base years given that the fisheries were very different during that time period.

**2.2 Revised base years, based on recent catch or landings averages**

This concept uses more recent base years, for example, the last 5, 10, or 15 years of catch or landings as shown in **Table 3**. These examples were all suggested through scoping.

**Table 3:** Example allocations based on revised base years of catch or landings from the last 5 years, 10 years, and 15 years.

		5 Years: 2014-2018		10 years: 2009-2018		15 years: 2004-2018	
		Catch-based	Landings-based	Catch-based	Landings-based	Catch-based	Landings-based
<b>Summer flounder</b>	<b>Com</b>	40%	41%	43%	45%	44%	45%
	<b>Rec</b>	60%	59%	57%	55%	56%	55%
<b>Scup</b>	<b>Com</b>	62%	57%	61%	57%	60%	56%
	<b>Rec</b>	38%	43%	39%	43%	40%	44%
<b>Black sea bass</b>	<b>Com</b>	25%	22%	24%	22%	28%	27%
	<b>Rec</b>	75%	78%	76%	78%	72%	73%

Data from most recent assessment updates with data through 2018 (final 2019 data is not yet available).

FMAT comments and recommendations:

The FMAT noted that these changes would represent fairly substantial shifts in allocation for all three species. Shifts of this magnitude may not be politically feasible. In addition, using recent years to define allocations is complicated by the fact that these are all years when the fisheries were theoretically constrained by the current allocations. However, the FMAT also noted that the commercial fisheries have been closer to their allocation in each of these years than the recreational fishery. In general, recreational fishery performance relative to recreational limits has been more variable than commercial fishery performance, with some years of substantial recreational overages and/or underages depending on the species.

The FMAT also discussed that although these calculations show that there was a higher percentage of recreational catch and harvest in these years than previously thought, this does not necessarily mean that the recreational sector exceeded their limits, since revised MRIP estimates cannot be compared to recreational limits set using the prior assessments with old MRIP data.

A member of the public noted that the use of these recent base years seems arbitrary and that managers should consider the different management histories of these species in setting allocations.

**2.3 Revised base years based on time period after rebuilding**

A concept suggested during scoping was developing revised base years using the 5 years following the rebuilt declaration for each species (**Table 4**).

**Table 4:** Example allocations based on the 5-year time period following rebuilding for each species. Data are from the most recent assessment updates.

		Catch-based	Landings-based
<b>Summer flounder: 2012-2016</b>	<b>Com</b>	39%	42%
	<b>Rec</b>	61%	58%
<b>Scup: 2010-2014</b>	<b>Com</b>	60%	58%
	<b>Rec</b>	40%	42%
<b>Black sea bass: 2010-2014</b>	<b>Com</b>	24%	24%
	<b>Rec</b>	76%	76%

### FMAT comments and recommendations:

As with the approaches described above, the FMAT noted that these changes would represent fairly substantial shifts for all three species, shifting 18% of landings to the recreational fishery for summer flounder, 18% of catch to the recreational fishery for scup, and 25% of landings to the recreational fishery for black sea bass. Shifts of this magnitude may not be politically feasible. As noted above, this method also relies on base years when the fisheries were theoretically constrained by the current allocations. During these years, the commercial fishery generally stayed closer to its allocation while the recreational fishery has had more variable performance relative to their limits, depending on the species.

In particular for black sea bass during these post-rebuilt years (2010-2014), the recreational fishery tended to exceed its limits, at times substantially. A member of the public noted that during these years, black sea bass was managed under a constant catch approach due to the lack of an accepted stock assessment and as such the fisheries were inappropriately constrained during this time. Some members of the FMAT agreed that these years may not be appropriate base years for black sea bass given that the catch limits at the time did not reflect biomass. Recreational overages during this time period occurred as the result of high availability combined with artificially low catch limits. Meanwhile, the commercial fishery was constrained by quotas that in retrospect were lower than biologically necessary.

The rationale provided for this approach during scoping was that the 5 years post-rebuilding would be more appropriate base years than recent years since higher availability in recent years would bias the allocations in favor of the recreational sector. The FMAT discussed whether using post-rebuilding years would actually be substantially different than recent years, as the example percentages shown in **Table 3** **Table 2** and **Table 4** seem fairly similar for these species. Some FMAT members questioned whether availability was substantially higher in recent years compared to the 5 years after rebuilding. The FMAT considered recommending removal of this option due to these factors, but noted that it may be worth exploring variations on this idea such as a combination of high and low availability years. It would also be beneficial to look at trends in biomass pre- and post-rebuilding for each species.

## **2.4 Alternatives for allocations based on socioeconomic considerations**

Alternatives could be based on socioeconomic information such as evaluating the economic efficiency of the recreational and commercial fisheries. There is currently a project in development for summer flounder which aims to determine which allocations would maximize marginal benefits to the commercial and recreational sectors, by combining recreational and commercial spatial discrete choice models to simulate behavior under alternative allocations between the sectors. This project was initially completed in 2016 by Rob Hicks and Kurt Schnier and is being updated with revised MRIP data. The results may be available in summer 2020. Ideally, the FMAT

will be able to review preliminary results at their next meeting in mid- to late May 2020. This project is only applicable to summer flounder.

Other economic approaches beyond this specific model could also be used to develop alternatives if the resources and expertise are available within the time frame of this action.

*FMAT comments and recommendations:*

It is unclear at this time what the economic model results will show. This type of evaluation is unavailable for scup and black sea bass so different approaches would need to be used for these species.

One FMAT member noted that the NEFSC created an input/output model for the commercial fishery which can be used for socioeconomic evaluations. The NEFSC Social Sciences Branch representative on the FMAT will check with other SSB staff on what information may be available for the recreational sector, and the FMAT will revisit what types of social and economic evaluation could be performed to inform allocation alternatives.

**2.5 Allocations derived from historical catch or landings in numbers of fish (as opposed to pounds)**

A few scoping comments suggested that allocation should be in numbers of fish instead of in pounds, at least for the recreational fishery.

*FMAT comments and recommendations:*

The FMAT advises against further consideration of allocating in numbers of fish in this commercial/ recreational allocation amendment given the concerns described below.

The FMAT noted that while allocating in numbers of fish instead of pounds may produce different allocation percentages, it is unclear how this approach would work in terms of the methodology and implications. For example, because the overall catch limits are in pounds, it is not clear how an allocation in numbers of fish would work and whether it would have any advantages over the current methods of allocating in pounds. At some point in the specifications setting process there would need to be a conversion from pounds to numbers, which could introduce additional uncertainty.

Several FMAT members agreed that the perceived benefits of this approach are more related to development of recreational management measures, rather than allocation between the commercial and recreational sectors. Projected harvest in numbers of fish is already used by the Technical Committee in many ways in the development of recreational measures, but managers could evaluate where it may be beneficial to rely more on numbers of fish in the recreational specifications setting process, such as in the evaluation of the performance of management measures. This would be more appropriate for a separate process from this amendment.

**3. Allocations attempting to maintain roughly status quo commercial harvest and recreational management measures compared to the years before the most recent stock assessments were incorporated into management**

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This concept is designed to allow for approximately status quo commercial landings and recreational management measures compared to 2018 (for summer flounder) or 2019 (for scup and



black sea bass), which are the years prior to catch limit revision based on stock assessments incorporating the new MRIP information. This approach would not result in status quo allocations in terms of the percent allocated to each sector, and it also would not guarantee status quo measures indefinitely. This approach has not been thoroughly developed. The FMAT discussed it as a concept and staff showed some preliminary example allocation percentages.

The most recent assessments incorporating the revised MRIP data took place in 2018 (for summer flounder) and 2019 (for scup and black sea bass), with revised catch limits applied in the following years. For summer flounder, this resulted in a 49% increase in the commercial quota and RHL in 2019. Despite the increase in the RHL, the recreational management measures could not be liberalized because the revised MRIP data showed that the recreational fishery was already harvesting close to the increased RHL. A similar situation occurred for black sea bass after the 2019 operational stock assessment. That assessment resulted in a 59% increase in the black sea bass commercial quota and RHL. Status quo recreational measures for black sea bass were expected to result in an overage of the increased 2020 RHL; however, the Council, Board, and NMFS agreed to maintain status quo recreational management measures for 2020 to allow more time to consider how to best modify recreational management in light of the new MRIP data. For scup, the 2019 operational stock assessment resulted in a decrease in the commercial quota (-7%) and RHL (-12%) in 2020 compared to 2019. Status quo recreational measures for scup in 2020 were maintained based on similar justifications described above for black sea bass as well as the expectation that the commercial fishery would continue to under-harvest their quota.

Given these circumstances, it may be possible to modify the allocations for all three species such that commercial landings and recreational management measures could remain similar to pre-2019 levels for summer flounder and pre-2020 levels for scup and black sea bass (i.e., the years prior to implementation of the most recent stock assessments for all three species), at least in the short term.

*FMAT comments and recommendations:*

The FMAT reviewed preliminary calculations of potential allocations under this approach. Preliminary calculations attempted to allow for RHLs which were close to the average recreational harvest (under the revised MRIP estimates) during 2018-2019 (years with roughly status quo measures for all three species) and commercial quotas which were close to 2018 commercial landings for summer flounder and 2019 commercial landings for black sea bass and scup (i.e., the years prior to implementation of quotas based on the most recent assessments). A two-year average was used to define status quo for the recreational sector to account for variation in recreational harvest under constant management measures. A single year was used to define status quo for the commercial fishery because the commercial sector landings are generally very close to the commercial quota for summer flounder and black sea bass. For scup, commercial landings have been below the quota since 2007. A two-year average may be more appropriate for the scup commercial fishery and could be considered in future refinements of this approach. This example approach calculated landings-based allocations for summer flounder and black sea bass and catch-based allocations for scup, consistent with the current allocations. The resulting allocations are shown in the table below. It should be emphasized that these are preliminary example allocations

and this method should be further refined if this type of alternative is to be retained in the amendment.

**Table 5:** Example allocations which could allow status quo commercial landings and recreational management measures for upcoming years compared to 2018 for summer flounder and 2019 for scup and black sea bass. The examples shown below assume the summer flounder and black sea bass allocations remain landings-based and the scup allocation remains catch-based.

<b>Sector</b>	<b>Summer flounder</b>	<b>Scup</b>	<b>Black sea bass</b>
Commercial	<b>43%</b>	<b>54%</b>	<b>34%</b>
Recreational	<b>57%</b>	<b>46%</b>	<b>66%</b>

One FMAT member questioned how this would be different than using 2018 as the base year for summer flounder allocation and 2019 as the base year for scup and black sea bass allocations. Another FMAT member calculated example scup allocations using 2018-2019 as the base years, which changed each sector’s allocation by 4% compared to the example above. She agreed to calculate example allocations using 2018 as the base year for summer flounder and 2018-2019 for black sea bass for comparison after the meeting.

The FMAT supported continued exploration of this concept, but noted that the resulting percentages may not differ substantially from other options currently under consideration. In addition, as the example calculations suggest, it may result in substantial modifications to allocations. This would be of concern if the ABCs were to decrease in the future as it could require notable reductions in the commercial fishery, which would go against the intent of this approach.

A member of the public asked for confirmation that this would not allow the commercial sector to retain the increase in quota they received for summer flounder and black sea bass from incorporating the new MRIP data into the assessment. Staff confirmed that this is the case given that this approach would attempt to maintain roughly status quo landings levels from prior to the assessment updates. The member of the public noted that this is almost the same as saying only the recreational sector should get an increase and he could not support this approach. He also questioned what it would mean for each sector if total catch limits were to decrease in the future.

#### **4. Recreational sector separation**

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The FMAT emphasized that separate allocations for the for-hire sector and private anglers should be presented as a distinct, though potentially related, concept from separate management measures for the two recreational sectors. A clear distinction should be made between developing a policy for separate management measures versus allocating quota between two sub-sectors. The implications of each approach in practice need to be thought through carefully and conveyed to the public. Considerations for each approach are summarized below.

#### 4.1 Separate sub-allocation of the recreational annual catch limit or recreational harvest limit to for-hire sector and private anglers

MRIP catch data could be used to define allocation percentages for the party/charter and private recreational sectors (**Table 6**); however, this is just one example of the several possible ways to look at these splits as discussed below.

**Table 6:** Example approaches to calculating separate sub-allocations to private and for-hire sectors, based on current base years, post-rebuilding years, and recent years. These percentages are based on MRIP total catch in numbers of fish, including harvest and live discards. See FMAT notes regarding other data that could be explored for these allocations.

	<b>Approach</b>	<b>Years</b>	<b>Private %</b>	<b>For-Hire %</b>
<b>Summer flounder</b>	Base years (no data for 1980)	1980-1989	91%	9%
	5 years post rebuilt declaration	2012-2016	96%	4%
	5 most recent years	2014-2018	96%	4%
	10 most recent years	2009-2018	97%	3%
	15 most recent years	2004-2018	97%	3%
<b>Scup</b>	Base years	1988-1992	92%	8%
	5 years post rebuilt declaration	2010-2014	92%	8%
	5 most recent years	2014-2018	94%	6%
	10 most recent years	2009-2018	93%	7%
	15 most recent years	2004-2018	93%	7%
<b>Black sea bass</b>	Base years	1983-1992	74%	26%
	5 years post rebuilt declaration	2010-2014	93%	7%
	5 most recent years	2014-2018	92%	8%
	10 most recent years	2009-2018	93%	7%
	15 most recent years	2004-2018	92%	8%

FMAT comments and recommendations:

There are different potential data inputs for private vs. for-hire fisheries. A few scoping comments suggested using Vessel Trip Report (VTR) data to establish an allocation for the for-hire sector. One FMAT member said catch in numbers of fish in the VTR data is usually lower than the MRIP for-hire estimates. He also noted that only catch and harvest in numbers of fish are available from VTRs, while MRIP also provides estimates in weight. This would require either establishing allocations based on numbers of fish, developing a method to estimate weights of harvested and discarded fish from the numbers reported on VTRs, or adding a required data field for weight to the VTR electronic forms.

Another FMAT member reminded the group that some state vessels are not required to submit VTRs and cautioned that data from these groups would be missing if VTRs are used to determine for-hire allocations. There could also be a difference in the accuracy of VTRs from smaller charter boats compared to large party boats given that captains of larger party boat vessels are not as able to keep track of harvest and especially discards compared to smaller vessels.

The FMAT also noted that the development of separate allocations for the for-hire and private/rental sectors would require the development of sector-specific accountability measures, assuming the allocation is some form of a sub-allocation of the ABC or ACL, rather than a harvest target of some kind.

#### **4.2 Create policy for development of separate management measures for for-hire vs. private rental (without separate allocation of ACL or RHL)**

Rather than creating a separate allocation for the for-hire sector, several scoping comments supported separate management of the for-hire sector by setting different management measures to account for the differing priorities of and data sets for-hire vs. private anglers.

##### *FMAT comments and recommendations:*

The FMAT agreed that this concept should be considered further. Separate management measures by recreational sector are currently used in a limited manner. For example, in some states, there are different scup possession limits to the for-hire sector at certain times of year. If there is interest in a broader application of this approach, it would be beneficial to develop a policy on how separate measures are developed, how accountability is evaluated, and how necessary adjustments to measures are applied to both sectors. Stakeholders who support this concept may not support it if MRIP is used for both sectors to analyze and evaluate measures. Uncertainty in the data by mode should be considered. National Standard 4 requirements regarding fairness and equity should also be considered.

#### **5. "Harvest control rule" based approaches**

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The FMAT discussed a proposal submitted by six recreational organizations, which is summarized below (see comment starting on page 146 of the final scoping comment summary). Under this approach, recreational "allocation" is not defined as a set percentage of the total catch limit but as a specific combination of bag/size/season limits preferred by recreational fishermen in each state, which would become more restrictive when estimated biomass changes declines below the target level. The restrictions would occur in a pre-determined, stepwise manner. The commercial "allocation" would be the commercial quota preferred by the commercial industry when biomass is high and it would be reduced as biomass declines below the target level in proportion with the restrictions on the recreational fishery. This approach is largely conceptual at this stage and is not yet associated with specific proposed measures.

##### *FMAT comments and recommendations:*

The FMAT noted that while this approach is an intriguing and creative way to approach setting recreational measures, it is not clear that this proposal as currently configured is directly related to the allocation of catch between the commercial and recreational sectors. The FMAT believes that such an approach may be more appropriate for a separate action or a process like the ongoing recreational reform initiative. The FMAT supports further exploration of the idea in the near-term to see if the concept can be adapted to address the purpose and need of this action.

The FMAT's main question regarding this proposal is how it would fit within the current Magnuson Stevens Act requirements for catch limits and accountability measures. Representatives of the organizations who proposed this approach state that it "redefines allocation" for the recreational fishery not as a poundage or percentage amount, but as a level of access defined by recreational bag limits, size limit, and seasons. The FMAT does not believe this definition is consistent with Magnuson requirements for annual catch limits to prevent overfishing, unless the set of recreational measures are clearly associated with a projected catch level. Without a change to the requirements of Magnuson, the FMAT notes that any approach like this would still have to fit within the requirements of constraining catch to an ACL, and have accountability measures associated with that ACL. It was also noted that it could be challenging to associate different sets of recreational measures with levels of projected catch, considering that even when recreational measures have remained fairly similar across years, the resulting MRIP estimates can vary significantly.

The FMAT noted that something like this could possibly be explored for potential application in another part of the specifications process such as the development of recreational management measures.

One FMAT member was concerned about the recommended stepwise approach and noted that near the thresholds between each step there will be political pressure to set measures at the higher level of access, and this could be especially problematic if the steps between measures are large. He suggested that it would be better to formulate this more like the Council risk policy where the probability of overfishing changes linearly with biomass up to a certain point. Another point raised is that regional differences in availability and measures would need to be considered, which could add additional challenges for this approach.

The proposal suggests that there is a limit to how much access each sector "needs" (e.g. there is a range and maximum amount of fish that recreational anglers will want to take home, and there is a limit to where profit will be maximized for the commercial fishery). One FMAT member suggested that it could be possible to define those limits and use them to calculate a ratio off of which to base the sector allocations, and then apply a harvest control rule approach after that. Another FMAT member said if this approach were used to develop allocation percentages, similar concerns about equity expressed for other approaches could also be relevant.

## **6. Recreational accountability alternatives**

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The theme of increased recreational accountability was prominent in many scoping comments. For example, some comments suggested more frequent recreational overage paybacks and bringing back recreational in-season closures.

### *FMAT comments and recommendations:*

More frequent recreational overage paybacks and in-season closures for the recreational fishery would represent a reversal of changes made through the Omnibus Recreational Accountability Amendment (Amendment 19 to this FMP, adopted in 2013). Much of the rationale for the changes

made through Amendment 19 remains valid. For example, the timing of recreational data availability still poses challenges for in-season closures.

The FMAT noted that although some aspects of accountability could be incorporated into the development of allocation alternatives, major changes to the accountability measures and system of overage paybacks would potentially delay development of this action.

## **7. Recreational catch accounting alternatives**

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Examples of recreational catch accounting changes recommended through specifications include mandatory private angler reporting through eVTRs or other smart phone apps, issuing tags to anglers for a specified number of fish per season, mandatory tournament reporting, requiring VTRs for all for-hire vessels (not just federally-permitted vessels), and reinstating “did not fish” reports for the for-hire sector.

### *FMAT comments and recommendations:*

Many of the ideas suggested though scoping have the potential to reduce uncertainties in the recreational data; however, they have tradeoffs associated with increasing the reporting burden on the recreational fishery and potential enforceability/compliance challenges for some approaches. One FMAT member discussed issues related to self-reporting. He noted that there seems to be a sentiment that the for-hire VTRs are not accurate because they are self-reported. MRIP is also investigating how self-reporting can be used for private anglers. He suggested that the FMAT not endorse using self-reporting until MRIP weighs in on that. Another FMAT member pointed out the need to think about what is realistic within the scope of this action and what the Council and Board could take on through other actions. Major initiatives to supplement or modify the current catch accounting systems are likely beyond the scope of this action as currently defined and would delay the amendment timeline.

A member of the public commented that the Council needs to continue the type of accounting that they have done for the past 10 years where if a species is not overfished and total catch is below the ABC but there is an overage, the sector which caused the overage is not penalized. In addition, there are “extra fish” built into the system because of the buffer between the OFL and the ABC. In this sense, the allocation percentages are not so important. He added that when there are “extra fish” (e.g., an OFL underage), neither sector should be penalized with restrictions.

## **8. Dynamic allocation approaches and options for future modification**

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The Council and Board could consider approaches that make the allocations more dynamic instead of fixed indefinitely. Consideration could be given to moving average approaches, trigger mechanisms, and allowing for allocations to be changed via a framework/addendum process. Note that the Council already has an allocation review policy<sup>2</sup>, where allocations will be reviewed at least every 10 years.

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<sup>2</sup> [https://www.mafmc.org/s/MAFMC-Fishery-Allocation-Review-Policy\\_2019-08.pdf](https://www.mafmc.org/s/MAFMC-Fishery-Allocation-Review-Policy_2019-08.pdf)

FMAT comments and recommendations:

One FMAT member recommended consideration of a trigger approach. Under this approach, catch up to a specified ABC level would be allocated to each sector using one set of allocation percentages (e.g. the current allocations or other percentages) and any additional allowable catch above that level would be divided differently between the sectors. For example, if a higher percent of the surplus were allocated to the recreational sector, this could address some concerns that it is harder to constrain the recreational fishery in times of high availability. Other FMAT members supported including this in the scope of alternatives. One FMAT member noted that the concept helps address concerns and suggestions from the public during scoping.

The FMAT noted that allowing allocation changes through frameworks/addenda would allow for a more expedient process, but this would also reduce public input on a very contentious issue. Managers could consider allowing for explicitly temporary adjustments through a framework/addendum if appropriate. One FMAT member pointed out that even if it were an option to use a framework, the Council could still decide it is more appropriate to use an amendment if significant changes are being proposed. Being able to use frameworks could be a helpful tool in the toolbox if the changes are more minor.

## **9. Allocation transfers and set-asides**

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### **9.1 Allow for allocation transfers between sectors**

This could be achieved through specifications or on an as-needed basis via management action, possibly defined as up to a certain percentage of the ABC or defined as a flat value in pounds.

FMAT comments and recommendations:

This could reduce the likelihood of either sector under-harvesting their landings limit, which could put additional fishing pressure on the stock over the long-term. Overall, FMAT members felt this concept should be included in the scope of alternatives at this stage. A member of the public stated that they were comfortable with quota transfers between sectors as a short-term fix, particularly for scup.

### **9.2 Allow one sector to buy allocation from another**

Some scoping comments discussed allowing for-hire vessels to buy commercial quota, for example.

FMAT comments and recommendations:

One FMAT member noted that there is currently a lack of infrastructure to manage this type of system. A similar approach was not included in the ongoing commercial black sea bass state allocation addendum/amendment, largely for this reason. Multiple FMAT members recommended not moving forward with this type of alternative.

### **9.3 Allow a certain amount of allocation to be set aside through specifications to address unforeseen circumstances**

This could be defined as a buffer up to a certain percentage of the ABC or defined as a flat value in pounds. This could help mitigate potential overages in either sector.

*FMAT comments and recommendations:*

There were some concerns about equity for this approach depending on how it would work. For example, would the commercial sector be able to use a buffer? Allocation that is set aside could be more likely to be used by the recreational fishery, which is not as easily held to its limits. Commercial stakeholders may view this option as a de-facto allocation increase for the recreational fishery. However, one FMAT member noted that recreational management measures would still need to be designed to constrain harvest to the RHL which is calculated after the set aside is removed. FMAT members supported including this in the scope of alternatives for further development.