

Atlantic States Marine Fisheries Commission

ISFMP Policy Board Conference Call

June 1, 2017
9:30-10:30 a.m.

Webinar Link: <https://attendee.gotowebinar.com/register/8790318770047891969>

Conference Call: 888-394-8197 Passcode: 499811

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary. The Board Chair may allow limited opportunity for comment and has the discretion to limit the number of speakers and/or the length of each comment.

1. Welcome/Call to Order (*D. Grout*) 9:30 a.m.
2. Board Consent (*D. Grout*) 9:30 a.m.
 - Approval of Agenda
3. Public Comment (for items not on the agenda) 9:35 a.m.
4. Review Non-Compliance Finding from the Summer Flounder, Scup and Black Sea Bass Management Board **Action** (*T. Kerns*) 9:45 a.m.

Move the Summer Flounder, Scup, and Black Sea Bass Board recommend to the ISFMP Policy Board that the state of New Jersey be found out of compliance for not fully and effectively implementing and enforcing Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan if the State does not implement the following measures by May 25, 2017:

- *Shore mode for Island Beach State Park only: 17-inch minimum size limit; 2-fish possession limit and 128-day open season.*
- *Delaware Bay only (west of the colregs line): 18-inch minimum size limit; 3-fish possession limit and 128-day open season.*
- *All other marine waters (east of the colregs line): 19-inch minimum size limit; 3-fish possession limit and 128-day open season*

The implementation of these regulations is necessary to achieve the conservation goals and objectives of the FMP to end overfishing of the summer flounder stock. In order to come back into compliance, the state of New Jersey must implement all of the measures listed above as contained in Addendum XXVIII to the Summer Flounder FMP.

5. New Jersey Appeal: Consider Postponed Motion **Final Action** 10:15 a.m.
Move to postpone the New Jersey Appeal of the Summer Flounders, Scup, and Black Sea Bass Addendum XXVIII until the next ISFMP Policy Board Meeting. Motion by Mr. Allen; Second by Mr. Bush. Motion Carries.
6. Adjourn 10:30 a.m.

Vision: Sustainably Managing Atlantic Coastal Fisheries

Atlantic States Marine Fisheries Commission

Business Session Conference Call

June 1, 2017

Immediately following the ISFMP Policy Board Conference Call

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary. The Board Chair may allow limited opportunity for comment and has the discretion to limit the number of speakers and/or the length of each comment.

1. Welcome/Call to Order (*D. Grout*)
2. Board Consent (*D. Grout*)
3. Approval of Agenda
4. Public Comment (for items not on the agenda)
5. Review Non-Compliance Findings, if Necessary **Final Action** (*T. Kerns*)
6. Adjourn



Atlantic States Marine Fisheries Commission

Meeting Summary

Vision: Sustainably Managing Atlantic Coastal Fisheries

Summer Flounder, Scup and Black Sea Bass Board
Conference Call
May 22, 2017

Toni Kerns, ISFMP, or
Tina Berger, Communications
For more information, please contact
the identified individual at
703.842.0740

Meeting Summary and Motions

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SUMMER FLOUNDER, SCUP AND BLACK SEA BASS MANAGEMENT BOARD (May 22, 2017)

Meeting Summary

The Summer Flounder, Scup, and Black Sea Bass Board (Board) met on May 22, 2017 via conference call to consider a conservation equivalency proposal from New Jersey. At the Commission's Spring Meeting the Board tasked the Technical Committee (TC) to review New Jersey's proposal to implement the following alternative set of regulations for the 2017 summer flounder recreational fishery:

- Shore mode for Island Beach State Park only: 16-inch minimum size limit; 2-fish possession limit and 104-day open season (May 25-Sept 5)
- Delaware Bay only (west of the COLREGS line): 17-inch minimum size limit; 3-fish possession limit and 104-day open season (May 25-Sept 5)
- All other marine waters: 18-inch minimum size limit; 3-fish possession limit and 104-day open season (May 25-Sept 5)

The TC chair reviewed the TC's report with the Board (see the full TC report for details). The TC found when comparing the harvest reduction derived from the standard methodology using final 2016 MRIP harvest in numbers of fish, the reductions were not equivalent; there was a greater reduction in harvest under the Addendum XXVIII measures than the New Jersey proposed measures. The TC also reviewed whether the NJ proposal would reduce total fish removals (harvest + dead discards). After the TC made two changes due to uncertainty in the methods in the original proposal, the TC found using final Marine Recreational Information Program (MRIP) estimates, a 10% discard mortality rate, and prior to evaluating discards during the closed season, the New Jersey option no longer achieved the substantial reductions in total fish removals that the proposal stated. The proposal's approach was unique and different from the standard methodology for developing measures as well as the Fishery management Plan requirement of constraining harvest to the annual coastwide recreational harvest limit (RHL). The TC noted the new approach would effectively set different standards for evaluating New Jersey measures relative to the other states resulting in a logical discrepancy between the various approaches creating issues of inequity. Lastly, in considering the proposed objective of reducing total recreational fishing removals, the TC was in agreement this concept was a potential improvement to the current approach of constraining coastwide harvest to the RHL, but believes the New Jersey method warrants further refinement before it can be incorporated into recreational management. After reviewing the TC report, the Board did not find the measures contained in New Jersey's proposal were equivalent to Addendum XXVIII. Following the previous decision by the Commission to find New Jersey out of compliance if the state did not implement Addendum XXVIII or equivalent measures by May 21, the Board reaffirmed the compliance recommendation to the Policy Board to find New Jersey out of compliance.

For more information, please contact Toni Kerns, ISFMP Director, at tkerns@asmfc.org or 703.842.0740.

Motions

Move the Summer Flounder, Scup, and Black Sea Bass Board recommend to the ISFMP Policy Board that the state of New Jersey be found out of compliance for not fully and effectively implementing and enforcing Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan if the State does not implement the following measures by May 25, 2017:

- **Shore mode for Island Beach State Park only: 17-inch minimum size limit; 2-fish possession limit and 128-day open season.**
- **Delaware Bay only (west of the colregs line): 18-inch minimum size limit; 3-fish possession limit and 128-day open season.**
- **All other marine waters (east of the colregs line): 19-inch minimum size limit; 3-fish possession limit and 128-day open season**

The implementation of these regulations is necessary to achieve the conservation goals and objectives of the FMP to end overfishing of the summer flounder stock. In order to come back into compliance, the state of New Jersey must implement all of the measures listed above as contained in Addendum XXVIII to the Summer Flounder FMP.

Motion made by Mr. Ballou and seconded by Dr. Pierce. Motion carries (Roll call Vote: In Favor – MA; RI; CT; NY; DE; MD; PRFC; VA; NC; Opposed – NJ; Abstentions – USFWS, NMFS).



NEW JERSEY DIVISION OF
Fish and Wildlife
P.O. Box 400
Trenton, NJ 08625-0400
Larry Herrighty, Acting Director

Memorandum

To: ASMFC Summer Flounder, Scup, and Black Sea Bass Technical Committee

From: Peter Clarke, Senior Biologist
New Jersey Bureau of Marine Fisheries

Date: May 12, 2017

Re: New Jersey 2017 Conservation Equivalency Proposal – Recreational Summer Flounder

This memorandum provides the ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board (Board) with New Jersey's proposed management measures for recreational summer flounder for 2017 under conservation equivalency. Outlined is the approach New Jersey utilized to compare total mortality reductions under Addendum XXVIII (Addendum) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and this proposal.

Background

Since 2015, the New Jersey recreational summer flounder regulations have been following a regional approach where the regulations (size, season, and bag) have been consistent within all three states in the region (Connecticut, New York, and New Jersey). These regional measures included an 18 inch size limit, 128 day season, and 5 fish possession limit each year.

The Addendum was available in December 2016, allowing public review and a public comment period ending January 16, 2017. Proposed measures required substantial reductions to recreational harvest that would lead to excessive biological, social, economic, and regulatory concerns for New Jersey's recreational fishery.

The New Jersey Marine Fishery Council met on January 5, 2017 and unanimously opposed all options in the Addendum and recommended remaining status quo. That same evening, New Jersey held a summer flounder public hearing regarding the Addendum with more than 150 people in attendance. Public participants unanimously opposed the Addendum and also recommended status quo regulations for the 2017 fishing season.

At the Board meeting on February 2, 2017, the Commissioner of the New Jersey Department of Environmental Protection testified before the Board to express New Jersey's concern about the strength of the science of the Addendum and the impact these decisions would have upon the recreational fishing industry in New Jersey. New Jersey's ASMFC Commissioners moved to postpone the vote on the Addendum until confirmation of a new Secretary of Commerce, but this motion failed. A subsequent motion by the Board to accept Addendum XXVIII Option 5 was passed, with New Jersey and two other states opposing. Approval of the Addendum and continued regional management measures for 2017 required a 33% reduction for the New Jersey, New York and Connecticut region for 2017. To implement this reduction, New Jersey was required to implement translates into a 19-inch minimum size, 128 day season, and a 3 fish possession limit.

New Jersey filed a formal appeal to the Board's decision through the ASMFC Charter Appeals Process. Within the appeal, New Jersey argued that the ASMFC 1) did not follow proper process in reaching its decision on Addendum, 2) inappropriately used technical information in their decision making process, and 3) passed management measures that result in unforeseen economic impacts. The appeal was submitted to ASMFC on March 24, 2017, and underwent preliminary review by the ASMFC leadership on April 14, 2017, which accepted only portions of the appeal for full review by the ASMFC Policy Board during its meeting on May 11, 2017.

One grievance expressed in New Jersey's appeal is particularly relevant to New Jersey's proposed option. The management measures approved by the Board require New Jersey to increase minimum size from 18 inches to 19 inches for the 2017 season. Based on data from the New Jersey Volunteer Angler Survey, fewer than 8% of the fish caught in New Jersey's 2016 recreational fishery were greater than 19" (Table 1). New Jersey MRIP data indicate only 6% of the catch is greater than the 19-inch size limit. This results in a discard ratio of approximately 12 to 1 (NJ VAS) or 16 to 1 (NJ MRIP) discards per harvested fish (Table 1). Assuming a 10% discard mortality rate used in summer flounder stock assessments since 1998, discard mortality in New Jersey's fishery would exceed harvest mortality by 27% (NJ VAS) to 67% (NJ MRIP) under a 19-inch minimum size (Table 1). This is not an acceptable way to manage a fishery for both biological and socio-economic reasons. Moreover, this is an increase in discard ratio of more than 70% (2016 ratio \approx 7.4 discards per harvested fish at 18 inches NJ VAS). Such a large increase in discarded fish substantially impacts the estimated savings from the proposed regulations. Specifically, the 2016 stock assessment update indicated that fishing mortality exceeded the approved fishing mortality threshold by 26%. The Addendum was developed to achieve a 30% reduction in harvest in the CT-NY-NJ region to account for this excessive fishing mortality (F). However, when the increased discard mortality is taken into account, the savings in total fishing mortality in New Jersey would only be 14 percent, less than half of the required reduction in fishing mortality needed to meet $F_{\text{threshold}}$. (Table 2).

New Jersey's proposal addresses the concerns surrounding discard mortality. New Jersey is proposing to maintain an 18-inch minimum size to prevent discard mortality from exceeding harvest mortality and to minimize the erosion in mortality savings through discards. To compensate for the lower size limit, we propose a reduction in season length from 128 days to 104 days. The bag limit of 3 fish is consistent with the Addendum. These measures will provide a 24 percent reduction in harvest mortality and 30 percent reduction in total mortality compared to 14 percent reduction in total mortality of the Addendum (Table 2).

Further, New Jersey is taking steps to implement an extensive outreach program designed to inform anglers of ways to reduce discard mortality. We are confident that we can reduce discard mortality by at least 2 percent (from 10% to 8%) through robust outreach and education. By reducing discard mortality, our proposed measures will provide an estimated 30 percent reduction in total mortality in New Jersey's recreational summer flounder fishery, compared to the 14% reduction we would achieve by implementing the measures in the Addendum. If all states initiate this endeavor it will result in significant reductions of dead summer flounder discards throughout the entire coast.

Proposed Method for 2017 Reduction

The Addendum requires consistent regulations of a 19" minimum size, 3 fish bag limit, and 128 day season for CT, NY, and NJ. These regulations result in a 32.7 percent harvest reduction for the region as a whole, and a 33.3 percent harvest reduction for NJ specifically. Assuming a 10% discard mortality rate, the overall savings to total mortality in NJ are estimated to be 14 percent under the Addendum.

New Jersey is proposing measures that include maintaining our 2016 18-inch size limit, reducing the bag limit from 5 fish to 3 fish, and decreasing the season length to 104 days. Delaware Bay will remain at 17 inches, 104 days, 3 fish possession limit, while the New Jersey shore enhancement site at Island Beach State park will be 16 inches, 104 days, 2 fish possession limit. We expect as in past years for a very limited number of landings from both Delaware Bay and Island Beach State Park adding fewer than 8,000 fish total for both locations. In addition to these regulations, we will implement an outreach program, drawing on the resources available from NOAA Fisheries' "FishSmart" program, that is expected to reduce our discard mortality from 10% to 8% or less. The proposed regulations will achieve an estimated 24% reduction in harvest for the state. This is lower than the harvest reduction expected for New Jersey under Addendum; however, through reductions to the discard mortality rate, **our proposal will increase the total mortality savings from 14% under the Addendum to 30% under the New Jersey proposed option.**

The estimated savings was calculated as follows; Season and possession limit reductions were applied to the New Jersey 2016 harvest to estimate 2017 harvest. Assuming a 7 to 1 discard ratio as reported by our anglers through the NJ VAS (Table 1), total catch was estimated by multiplying harvest by 8, total dead discards was calculated by subtracting harvest from total caught and multiplying the result by .08. The total number of dead fish was then estimated by adding total harvest to total dead discards. Harvest and total mortality reductions were calculated relative to the 2016 observed values and projected harvest and total mortality under the Addendum.

Discard Mortality Rate and Outreach

Currently, a discard mortality rate of 10% is used to determine the number of fish that die when discarded. New Jersey is confident that by incorporating angler outreach, a discard mortality rate of 8% can be reached. Historical studies have shown a range of discard mortality between 5% and 23% with a mean of 7% achieved through hook size and handling variation. By decreasing the hook size used and amount of time that anglers handle fish, we are confident that our discard mortality rate can be lowered to at least 8% from 10%.

Early stock assessments incorporated a recreational release mortality of 25%, but over time this value drew criticism for being too high (Terceiro 2002). SAW 25 (NEFSC 1997) included a research recommendation to investigate recreational release mortality for fluke. Three studies were completed in 1998 to investigate potential factors affecting release mortality, using both tank studies and field trials in North Carolina, Virginia, and New York. Average release mortality in each of the studies ranged from 6% to 14%. The average of these studies provides an estimate of 10% recreational release mortality, which was adopted for the 1998 stock assessment update (Terceiro 2002) and used in all subsequent assessments.

During the appeal process, New Jersey contracted with Montclair State University to conduct a study to collect information on anglers' summer flounder fishing practices and how they would change under the Addendum, as well as their willingness to take steps to reduce discard mortality. Several of the questions were aimed at evaluating their understanding of release mortality, their willingness to adopt changes to fishing practices to reduce mortality, and the best way to implement an outreach program. Preliminary results are encouraging, provide direction to staff on what aspects to focus on and how to distribute information.

Approximately 26,000 anglers responded to the survey, preliminary results indicate that more than 70% responding that they would very likely or absolutely change their angling or handling procedure voluntarily if it could reduce discard mortality. The number of anglers that responded that "they would not be likely to or definitely would not change their habits" was very small. The full findings of this study will be shared with the ASMFC Technical Committee once it is finalized and peer-reviewed.

Given that the recent study has not been finalized, New Jersey will rely on the reports from 1998. Of the three reports used in the 1998 stock assessment, Lucy and Holton (1998) provide the most detail on how different factors affect summer flounder hooking and mortality that can guide our evaluation of the most effective methods to reduce release mortality. For example, by not removing hooks from fish hooked in the gills, tongue, or esophagus, discard mortality was reduced by 33-50% compared to when hooks were removed from similarly hooked fish (Table 8 of Lucy and Holton 1998). Further, their study found that delaying setting the hook from 10 seconds to 30 seconds increased the proportion of deep hooked fish from 18% to 45%. Although further evaluation of all three reports is warranted before determining the best methods to relay to our anglers, these examples suggest certain methods would achieve our proposed reduction in harvest mortality.

Finally, respondents indicated that emails from the agency and posters/brochures at tackle shops and angling locations would be the most efficient way to disseminate information. New Jersey already has an email distribution list of over 138,000 marine recreational anglers that will be used to distribute hooking and handling protocols plus an additional 14,000 followers on the Division's social media page. Further, we have a strong relationship with many tackle shops, marinas, and for-hire vessels that regularly distribute information for the Division. Garnering their support in this important endeavor should not be difficult and will be energetically pursued.

Although reducing release mortality is not a typical management strategy, we are confident, based on the results of our angler survey and information contained in the release mortality studies, that we will be able to reduce discard mortality in the recreational summer flounder fishery to achieve our proposed goals.

Conclusion:

Based on our analysis of the data provided in this memo, the State of New Jersey is confident that a 2017 size, season, and bag limit of 18-inches, 104 days, and 3 fish will achieve conservation equivalency for the 2017 summer flounder recreational fishing season in New Jersey and urge the Technical Committee's concurrence with our proposal.

Table 1. Length frequency of New Jersey's 2016 recreational summer flounder from the New Jersey VAS and MRIP surveys.

Inch	NJ VAS	Inch	MRIP B2	MRIP A+B1	MRIP Percent
1	0.0000	1	6,286,567		0.9075
2	0.0005	2			
4	0.0000	4			
5	0.0010	5			
6	0.0020	6			
7	0.0000	7			
8	0.0050	8			
9	0.0010	9			
10	0.0131	10			
11	0.0050	11			
12	0.0828	12		1012.78	
13	0.0666	13			
14	0.1434	14		360.88	
15	0.1696	15		1332.29	
16	0.1817	16		6883.76	
17	0.1928	17		92629.01	
18	0.0564	18		229995.98	0.0327
19	0.0276	19		155272.36	0.0221
20	0.0177	20		103459.86	0.0147
21	0.0114	21		79452.27	0.0113
22	0.0088	22		37110.36	0.0053
23	0.0052	23		14724.73	0.0021
24	0.0042	24		4965.74	0.0007
25	0.0031	25		18910.97	0.0027
26	0.0005	26		3563.25	0.0005
27	0.0000	27		982.94	0.0001
28	0.0005	28		593.3	0.0001
29	0.0000	29		2341.66	0.0003
% GE 19"	0.0790				0.0599
Disc:Harv	12.66				16.71

Table 2. Comparison of New Jersey 2017 summer flounder option and the ASMFC Option 5 in terms of total Mortality versus harvest reduction.

Option	Number of days Open	Size	Bag	NJ Harvest Reduction (%)	Open Period	Total Mortality Compared to 2016 Regs	Total Mortality Compared to ASMFC Opt 5
Addendum XXVIII	128	19	3	33	May 17 - Sept 21	-14%	0%
NJ 2017 Proposed	104	18	3	24	May 25 - Sept 5	-30%	-19%



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmfmc.org

MEMORANDUM

May 18, 2017

To: Summer Flounder, Scup, and Black Sea Bass Management Board
From: Summer Flounder, Scup, and Black Sea Bass Technical Committee
RE: Review of New Jersey Proposal for 2017 Summer Flounder Recreational Management

List of Participants

John Maniscalco (NY)	Tiffany Vidal (MA)	Peter Clarke (NJ)
T.D. VanMiddlesworth (NC)	Bob Glenn (MA)	Jeff Kipp (ASMFC)
Brandon Muffley (MAFMC)	Toni Kerns (ASMFC)	Justin Davis (CT)
Katie May Laumann (VA)	Emily Gilbert (NMFS)	Steve Doctor (MD)
Kirby Rootes-Murdy (ASMFC)	Kiley Dancy (MAFMC)	
Jason McNamee (RI)	Mark Terceiro (NEFSC)	
Rich Wong (DE)	Jeff Brust (NJ)	

The following memo contains the Summer Flounder, Scup, and Black Sea Bass Technical Committee (TC) Review of the New Jersey Proposal for 2017 Summer Flounder Recreational Management.

New Jersey Proposal

At the ASFMC Spring Meeting in May 2017, the Summer Flounder, Scup, and Black Sea Bass Board moved to approve proposed 2017 summer flounder recreational measures that were subject to review and approval of the TC and subsequent Board consideration and approval. Those measures were as follows:

- Shore mode for Island Beach State Park only: 16-inch minimum size limit; 2-fish possession limit and 104-day open season (May 25-Sept 5)
- Delaware Bay only (west of the COLREGS line): 17-inch minimum size limit; 3-fish possession limit and 104-day open season (May 25-Sept 5)
- All other marine waters: 18-inch minimum size limit; 3-fish possession limit and 104-day open season (May 25-Sept 5)

The proposed measures for New Jersey (NJ) differed from the Addendum XXVIII measures, which specified that all states within the management unit (with the exception of North Carolina) would increase their size limit by 1 inch and decrease their possession limit to no more than 4 fish from 2016 measures. In tasking the TC with reviewing the proposed measures, the Board requested that the TC evaluate the proposal under conservation equivalency and determine whether the harvest reduction from the proposed measures were equivalent to those required under

Addendum XXVIII. NJ staff sent the TC their proposal on Friday, May 12th. The proposal noted that proposed measures would reduce New Jersey's harvest in 2017 by 24% from 2016 levels and reduce total fish removals (harvest + dead discards) by 30% relative to the 2016 NJ state measures. The calculations in the proposal used preliminary 2016 MRIP harvest information through wave 5 (September/October) as well as the harvest to discard ratio derived from the NJ Volunteer Angler Survey (VAS).

The TC met via conference call on Tuesday, May 16th to review the proposal and provide comments for the Board's consideration. Below are summary points provided by the TC:

- TC members considered the NJ proposal specifically with regards to whether the proposed measures were conservationally equivalent to the harvest reductions prescribed in Addendum XXVIII. The TC found that when comparing the harvest reduction derived from the standard methodology using final 2016 MRIP harvest in numbers of fish, the reductions were not equivalent; there was a greater reduction in harvest under the Addendum XXVIII measures than the NJ proposed measures. NJ evaluated the proposed measures for the entire NJ coast, and did not break out reductions associated with proposed measures to Island Beach State Park nor for NJ waters in the Delaware Bay. The NJ proposal indicated the proposed measures, using preliminary MRIP data through wave 5, would result in a decrease of 24% in the NJ projected harvest in 2017; under the Addendum XXVIII measures NJ's projected harvest would decrease by 33%. The TC acknowledges that additional harvest from Delaware Bay and Island Beach State Park are likely to be minimal. During the call, the TC asked to evaluate the reductions from the two sets of measures using final 2016 MRIP harvest as it was the best available information. In using the final harvest estimates, the reduction from the NJ proposed measures decreased to 20.6% while the reduction associated with Addendum XXVIII measures remained 33% (see below, Table 1). Given that final 2016 MRIP harvest estimates are available and it does impact the reduction associated NJ proposed measures, the TC indicated that final MRIP harvest estimates should be used.

Table 1. New Jersey Projected 2017 Harvest (A+B1) under different scenarios

Approach	Area specific	Management Measures	Projected Harvest in numbers of fish (MRIP data A+B1)	Percentage Reduction
2016 Status quo measures	New Jersey*	18" 5 fish 128 days	754,706	0%
	NJ/DE Bay COLREGS**	17" 4 fish 128 days		
NJ 2017 Proposed measures	New Jersey	18" 3 fish 104 days	599,032	20.6%
	NJ/DE Bay COLREGS	17" 3 fish 104 days		
ASMFC Addendum XXVIII Measures	New Jersey*	19" 3 fish 128 days	505,201	33.1%
	NJ/DE Bay COLREGS**	18" 3 fish 128 days		

*New Jersey east of the COLREGS line at Cape May, NJ will have management measures consistent with the northern region of Connecticut – New York.

**New Jersey west of the COLREGS line at Cape May, NJ inside Delaware Bay will have a similar size limit to DE-VA, the same possession limit and the same season length as Connecticut – New York.

- The TC also reviewed whether the NJ proposal would reduce total fish removals (harvest + dead discards), a key argument of the proposal in conserving the summer flounder resource. The proposal outlined a methodology that incorporated NJ VAS data to calculate a harvest to discard ratio and through an outreach and education program, the number of fish killed through recreational harvest and discarding would be less than under the Addendum XXVIII measures. This was considered a new approach relative to previous analysis conducted by the TC, and the TC indicated some interest in further evaluating a harvest to discard ratio in developing measures. While the NJ VAS data was noted to have an adequate sample size, given concerns on how representative this data was of NJ anglers, the TC noted that the harvest to discard ratio should come from MRIP data to be consistent with data used to calculate harvest reductions, rather than the combination of NJ VAS and MRIP data in the proposal. After reviewing the NJ proposal using final MRIP estimates and a 10% discard mortality rate and prior to evaluating discards during the closed season, the NJ option achieved a 21% total fishing mortality savings compared to the 18% total fishing mortality observed in Addendum XXVIII (Table 2).
- The second step in evaluating reduction in total fish removals, was the application of a new discard mortality rate. The NJ proposal offered that through outreach and education, the recreational discard mortality rate of 10%- currently used in the peer reviewed 2013 stock assessment and subsequent updates, would be reduced by 2% to 8%. In considering the proposal's methodology for achieving a reduced recreational fishing discard mortality, the TC took issue with this assertion, most notably in the lack of data or peer-reviewed literature to support

the assertion that the discard mortality rate would decrease by specifically 2%. Furthermore, NJ staff did not indicate how the 2% reduction in the recreational discard mortality rate could or would be quantifiable. When total fish removals under the measures specified in the NJ proposal were re-analyzed assuming only the 10% discard mortality rate, the difference between total recreational removal reductions under Addendum XXVIII and the NJ Option was decreased. Additional modifications were to incorporate the final 2016 MRIP estimates and use harvest: discard ratios developed from MRIP data as opposed to NJ VAS data in addition to reverting back to a 10% discard mortality; the results under these scenarios of different data and assumptions are included in Table 2 below.

Table 2. Reduction in Total Recreational Fishing Removals (based on MRIP harvest in number of fish)

	Recreational Discard mortality rate	Measures	Total Harvested	Total Dead (Harvested + Dead Discards)	Total Recreational Fishing Removals Compared to 2016 Regulations	Total Recreational Fishing Removals Compared to ASMFC Addendum XXVIII
Preliminary 2016 MRIP data through Wave 5 (Sept/Oct)*	10%*	Addendum XXVIII Measures	526,898	1,159,176	-14%	0%
	8%*	NJ 2017 Proposed	605,256	944,199	-30%	-19%
Final 2016 MRIP data**	10%	Addendum XXVIII Measures	505,201	1,115,438	-18%	0%
	10%**	NJ 2017 Proposed	599,032	1,083,843	-21%	-3%

*These data and assumptions were presented in the NJ proposal.

**These data and assumptions were inputted and adjusted during the TC conference call.

Note: Harvest to discard ratios were derived for final 2016 MRIP data analysis using MRIP data; the NJ proposal ratio were derived from NJ VAS data. Additionally, NJ proposed measures do not account for changes in discard mortality due to a shorter season in 2017.

- The point was made by members of the TC that the NJ proposal ignores the discards that would occur when the fishery was closed. This is problematic as it creates a logical inconsistency in the proposal, in that the crux of the proposal is that the new methodology accounts for all fishing removals, not just harvest. There was a discussion about the magnitude of these discards, and an alternate calculation was performed to try and account for these missing discards. There were different results presented from these additional analyses, resulting in the TC being unable to determine whether the NJ proposal would result in equivalent or reduced total recreational fishing removals relative to the Addendum XXVIII measures. As such, the TC did not agree with the NJ proposal that total recreational fishing removals would be reduced to a greater level under the NJ

proposed measures than under the Addendum XXVIII measures given the uncertainty associated with the assumptions of no discarding of summer flounder once the fishing season is closed and reduced discard mortality through outreach efforts. Additionally, given the new analyses conducted on the call showed a range from increasing discard mortality to reducing discard mortality in the NJ proposal, it was impossible to make a judgement on equivalency without additional work being done on the proposal.

- Members of the TC also noted concern about the timing of the proposal relative to the current fishing season. TC members made clear that all other states had implemented 2017 measures per Addendum XXVIII requirements and that considering a radically different conservation equivalency proposal after other states regulations had been promulgated was problematic as the other states would not have an opportunity to apply this new methodology to their data.
- The TC considered the new methodology from the proposal used to develop NJ's proposed measures as well as the stated objective (reducing total recreational fishing removals rather than harvest alone). This approach was unique and different from the standard methodology for developing measures as well as the FMP requirement of constraining harvest to the annual coastwide Recreational Harvest Limit (RHL). The TC noted this would effectively set different standards for evaluating New Jersey measures relative to the other states resulting in a logical discrepancy between the various approaches creating issues of inequity. The TC also noted that the increased harvest by NJ under their proposal threatens the ability of the states to constrain harvest to the RHL.
- In considering the proposed objective in the NJ proposal of reducing total recreational fishing removals, the TC was in agreement that this was a concept that was a potential improvement to the current approach of constraining coastwide harvest to the RHL, but believes the NJ method warrants further refinement before it can be incorporated into recreational management. It should be noted that currently as part of the Summer Flounder FMP, the annual catch limit (ACL) takes into account both harvest and discards in setting the RHL, and that further evaluation of reducing discards should consider the ACL. The TC did commend the NJ staff for providing a novel approach to incorporating discards and discard mortality into consideration for setting recreational measures. The TC has argued in favor of using a fishing mortality based approach for managing recreational fisheries, including taking into account the status of the resource. For summer flounder, with the stock assessment indicating that the resource is experiencing overfishing, reducing mortality associated with discarding may provide additional conservation benefits in helping the stock. The TC is interested in pursuing more of a fishing mortality based approach to recreational management relative to the current harvest limit-based management; it was noted that the Mid-Atlantic Fishery Management Council is current accepting proposals on this concept specifically for summer flounder.

- Lastly, the TC was in favor and supportive of NJ's proposal of conducting more angler education and outreach to help reduce recreational discard mortality, despite the inability to quantify the benefits specifically.

In summary, the TC noted that in the standard comparison of harvest, the NJ proposal was not conservationally equivalent to the Addendum XXVIII measures. It is important to understand that this standard is a component of the Summer Flounder FMP as the recreational fishery performance is evaluated against the RHL. When examining the new and separate comparison of total recreational fishing removals (harvest and discard mortality in total), there was too much uncertainty to determine equivalency between the NJ proposal and the Addendum XXVIII measures due to unquantifiable reductions in discard mortality in the proposal and the unaccounted for discards during the closed seasons. Therefore, this work on total recreational fishing removals needs additional refinement before a determination can be made.

Atlantic States Marine Fisheries Commission

**ADDENDUM XXVIII TO THE SUMMER FLOUNDER, SCUP, BLACK SEA BASS
FISHERY MANAGEMENT PLAN**

Summer Flounder Recreational Management in 2017



Approved February 2, 2017

Sustainably Managing Atlantic Coastal Fisheries

1.0 Introduction

Addendum XXVIII is adopted under the adaptive management/framework procedures of Amendment 12 and Framework 2 that are a part of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Summer flounder, scup, and black sea bass fisheries are managed cooperatively by the states through the Atlantic States Marine Fisheries Commission (Commission) in state waters (0-3 miles), and through the Mid-Atlantic Fishery Management Council (Council) and the NOAA Fisheries in federal waters (3-200 miles). The management unit for summer flounder in US waters is the western Atlantic Ocean from the southern border of North Carolina northward to the US-Canadian border.

The Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) approved the following motion on October 25, 2016:

Move to initiate an addendum to consider adaptive management, including regional approaches, for the 2017 summer flounder recreational fishery.

This Addendum establishes management of the 2017 recreational summer flounder fishery.

2.0 Overview

2.1 Statement of the Problem

A fundamental goal of Commission FMPs is to provide recreational anglers with fair and equitable access to shared fishery resources throughout the range of each managed species. The Commission's ISFMP Charter establishes fairness and equity as guiding principles for the conservation and management programs set forth in the Commission's FMPs. While the current FMP for summer flounder does not include a goal pertaining to this concept, the Board and Council are considering a new goal for inclusion in the forthcoming Comprehensive Summer Flounder Amendment: "Provide reasonable access to the fishery throughout the management unit." With these principles and goals in mind, the challenges facing the Board (and Council) involve determining what is meant by fair/equitable/reasonable access, and how to achieve it.

Complicating the access issue for 2017 is the significant reduction to the coastwide recreational harvest limit (RHL) set by the Board and Council in August 2016 in response to the most recent Stock Assessment Update. The 2017 RHL is 3.77 million pounds, an all-time low. By way of comparison, the RHL for 2017 is approximately 30% less than 2016, 48% less than 2015, and 68% less than 2011, when it peaked at 11.68 million pounds. Using a projected recreational harvest in 2016 of 6.38 million pounds (subject to change), harvest in 2017 must be reduced by roughly 2.6 million pounds to not exceed the 2017 RHL.

This Addendum addresses the issue that available management approaches are not viewed as providing a fair and reasonable way to constrain the 2017 recreational summer flounder fishery harvest to the RHL. The Board recognizes the management program within this addendum will also

have shortcomings with regards to addressing this problem, and thus intends for it to be an interim program while focusing on the development of a more comprehensive solution for the future.

2.2 Background

Amendment 2 (1993) initially required each state (Massachusetts through North Carolina) to adopt the same minimum size, possession limit, and season length as established in federal waters for the recreational fishery, allowing only for different timing of open seasons. The consistent measures were intended to uniformly impact the resource and stakeholders in all state and federal waters throughout the management unit. However, the states later determined one set of management measures applied coastwide did not provide equitable access to the resource due to the significant geographic differences in summer flounder abundance and size composition.

To address this disparity, the FMP was amended in 2001 (Framework Adjustment 2) to allow for the use of state-specific “conservation equivalent” management, through which recreational harvest would be constrained the same as under coastwide management. The Board and Council would engage in an annual process of determining whether to manage the fishery with coastwide measures or state-specific conservation equivalency; if the latter, the Board would have the lead in approving state-specific regulations. Concurrently, the Board adopted a series of addenda (Addenda III and IV in 2001, and Addendum VIII in 2004) implementing state-based conservation equivalency. Estimates of state recreational landings in 1998 were established as the basis for state recreational allocations- this is outlined in Addendum VIII (see Table 1) upon which state-by-state regulations could be developed. From 2001-2013, the Board and Council opted to use state-specific conservation equivalency tied to the proportion of each state’s estimated 1998 recreational landings. This provided states with the flexibility to tailor their regulations—i.e., minimum size, possession, and season limits—to meet the needs and interests of their fishery, provided their targets were not exceeded.

Table 1. State summer flounder harvest in 1998 and the proportion of harvest conservation equivalency state-by-state harvest targets are based on (Addendum VIII)

State	1998 estimated harvest (thousands)	Percent of the 1998 harvest
MA	383	5.5%
RI	395	5.7%
CT	261	3.7%
NY	1,230	17.6%
NJ	2,728	39.1%
DE	219	3.1%
MD	206	3.0%
VA	1,165	16.7%
NC	391	5.6%

The Board also adopted Addendum XVII in 2005, enabling the states to voluntarily opt into multi-state regions that would set regulations based on a pooling of their 1998-based allocations. The Council followed suit with the adoption of Framework Adjustment 6 in 2006, complementing the regional approach set forth by Addendum XVII. However, no states used this optional regional conservation equivalency approach.

Re-assessing in the Face of Changing Conditions:

The use of state-by-state regulations based on estimated state harvests in 1998 succeeded, initially, in mitigating the disparity in conservation burden among states, but later became viewed as an inadequate long-term solution, given changes in resource status and fishery performance.

As 2013 came to an end, the Board identified the following problems with the use of state allocations based on estimates of recreational harvest in 1998:

- 1) Substantial variation in stock dynamics since 1998. These included a six-fold increase in spawning stock biomass and expansion of the age structure from including 2–3 age classes to 7 or more. These changes led to geographic shifts in the distribution of the resource; as the stock rebuilt, its range expanded. Climate change was also identified as possibly contributing to shifts in migratory patterns, spatially and temporally.
- 2) Substantial changes in socio-economic patterns since 1998, particularly with regard to the number and distribution of anglers along the coast. For example, estimated angler participation increased significantly, and a growing percentage of harvest was attributed to private/rental vessels in contrast to shore-based and party/charter vessel harvest. Industry advisors indicated the rising costs of fuel, bait, and other trip expenditures were impacting angler effort.
- 3) Possible error in the estimates of harvest for 1998. Measuring recreational catch and effort, particularly on a state-by-state basis, is challenging and not without uncertainty in the estimates. The methods used to estimate recreational catch and effort are continually evolving, resulting in more accurate and precise estimates in more recent years.
- 4) Major disparities in the regulatory programs among the states; for example, as recently as 2012 and 2013, no two states had the same regulations, and several neighboring states had regulations that differed significantly. A case in point was New York, whose regulations were more restrictive than any other state, and that contrasted markedly with those of New Jersey, Connecticut, and Rhode Island.

To address these concerns, the Board adopted Addendum XXV, which implemented conservation equivalency on a regional basis for 2014. Five¹ regions were established: 1) Massachusetts; 2) Rhode Island; 3) Connecticut, New York, and New Jersey; 4) Delaware, Maryland, and Virginia; and 5) North Carolina. All states within each region were required to have the same possession limit, size limit, and season length.

¹ Initially, in February 2014, the Board established four regions, one being Massachusetts and Rhode Island combined. Subsequently, in March 2014, the Board approved a request from Massachusetts and Rhode Island to split its region into individual state regions to account for the significantly different recreational fisheries of the two states.

Although the precursors to Addendum XXV (Addendum XVII and Framework Adjustment 6) envisioned a regional approach based on regional harvest limits set as the sum of the harvest limits for all the states in each region, with accountability based on the performance of each region relative to its regional limit, Addendum XXV implemented an alternative approach. Based on analysis provided by the Board's Technical Committee, the Board focused on developing regulations for each region that would lead to projected regional harvests that would collectively achieve, but not exceed, the coastwide recreational harvest limit. The projected regional harvests did not constitute the sum of the harvest limits for all the states in each region. As such, the approach constituted a de facto reallocation of recreational harvest opportunities. Nonetheless, the Board emphasized that:

The new approach is not intended to implement new state allocations and is not intended to set a precedent for new state allocations. Under the adaptive regional approach, states would not give up their (1998-based) allocated portion of the Recreational Harvest Limit (RHL), would not be held accountable for anything other than their allocated portion of the RHL, and would retain the future opportunity (depending on what management approach is adopted for 2015) to continue managing their fisheries in accordance with their allocated portion of the RHL.

To achieve regulatory uniformity within each region, and to meet the coastwide harvest target, regulatory revisions were enacted for CT, NY, NJ, DE, and MD in 2014 (Table 7).

For 2015, the Board continued regional management, with the same regions, via Addendum XXVI. For all states, the same regulations in effect for 2014 were maintained for 2015 (Table 7).

For 2016, the Board again continued regional management via Addendum XXVII, with one adjustment to provide more equity in recreational opportunities for anglers in the Delaware Bay. That adjustment involved establishing New Jersey as a stand-alone region, with the caveat that New Jersey would enact separate management measures for the New Jersey portion of Delaware Bay, while maintaining regulations for the rest of its waters consistent with those of New York and Connecticut. New Jersey complied by enacting regulations for Delaware Bay that were closer to those of Delaware. For all other states the same regulations in effect for 2014 and 2015 were maintained for 2016 (Table 6).

Beginning 2017, the Board continues to have the same concern about disproportionate impacts among states from the use of 1998-based allocations and state-by-state management measures. A return to coastwide management measures is also unlikely to provide equitable access.

2.3 Description of the Fishery

In practice, the recreational fishery for summer flounder is managed on a "target quota" basis. A set portion (40%) of the total allowable landings is established as a recreational harvest limit (RHL), and management measures are established by the states that can reasonably be expected to constrain recreational harvest to this limit each year. It has historically been deemed impractical, because of the limitations of producing timely landing estimates, to try to manage the recreational fishery based on a real-time quota.

Over the past nine years, the coastwide landings exceeded the annual coastwide RHL three times: 2007, 2008, and 2014 (Table 2). The most recent overage in 2014 was by approximately 5% (approximately 380,000 pounds). Based on preliminary harvest estimates through August 2016, coastwide landings have already exceeded the 2016 RHL. The 2016 harvest estimates are subject to change as many states seasons remain open and data for wave 6 (November-December) are not yet available. Projected harvest through the end of 2016—based on state harvest trends in 2015—indicated the final harvest may be approximately 6.38 million pounds (Table 3).

Table 2. Coastwide Harvest Relative to Coastwide RHL: 2007-2016

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Coastwide Harvest (mil. lb)	9.34	8.15	6.03	5.11	5.96	6.49	7.36	7.39	4.72	6.38
Coastwide RHL (mil. lb)	6.68	6.21	7.16	8.59	11.58	8.49	7.63	7.01	7.38	5.42
Percent of RHL harvested	139.77%	131.25	84.22%	59.47%	51.43%	76.44%	96.40%	105.41%	63.97%	117.00%

*2016 Harvest is preliminary, through October only, and subject to change.

Table 3. Projected Coastwide Harvest for 2016 by states

State	Jan-Aug Estimate		Sep-Dec Projection		Projected Total Harvest	
	Weight	Numbers	Weight	Numbers	Weight	Numbers
MA	121,791	53,294	4,860	3,348	126,651	56,642
RI	278,682	89,988	6,927	2,833	285,610	92,821
CT	690,786	218,019	3,875	1,352	694,661	219,371
NY	2,238,513	712,643	55,118	18,164	2,293,630	730,807
NJ	1,904,113	609,878	573,966	181,181	2,478,080	791,059
DE	206,558	82,097	18,075	7,432	224,634	89,229
MD	42,574	18,537	9,123	4,538	51,697	23,075
VA	188,576	75,029	12,460	5,093	201,037	79,332
NC	16,870	9,605	12,152	7,469	29,021	17,074
Total	5,688,463	1,869,090	696,557	230,320	6,385,020	2,099,410

*September-December harvest are projected using proportion of landings by two-month wave by state in 2015.

**Total Projected Harvest is based on preliminary information and is subject to change as new information is made available.

Recreational Survey Estimates

The Marine Recreational Information Program, or MRIP, is a program under NOAA Fisheries which counts and reports marine recreational catch and effort. MRIP is driven by data provided by anglers and captains. MRIP replaced the Marine Recreational Fisheries Statistics Survey, or MRFSS, in 2008, which had been in place since 1979. MRIP is designed to meet two critical needs: (1) provide the detailed, timely, scientifically sound estimates that fisheries managers, stock assessors, and marine scientists need to ensure the sustainability of ocean resources and (2) address head-on stakeholder concerns about the reliability and credibility of recreational fishing catch and effort estimates. MRIP is an evolving program with ongoing improvements. Detailed information on MRIP and the improvements can be found at <http://www.st.nmfs.noaa.gov/recreational-fisheries/index>. All recreational catch and effort data considered in this document are derived from MRIP.

2.4 Status of the Stock

The most recent peer-reviewed benchmark assessment for summer flounder (Northeast Regional Stock Assessment Workshop 57, NEFSC 2013) was updated in July 2016. The assessment utilizes an age-structured assessment model called ASAP. Results of the assessment update indicate the summer flounder stock was not overfished but overfishing was occurring in 2015 relative to the updated biological reference points established in the 2013 SAW 57 assessment. The fishing mortality rate has been below 1.0 since 1997, but was estimated to be 0.390 in 2015, above the threshold fishing mortality reference point $F_{MSY} = 0.309$ (Figure 1). Spawning stock biomass (SSB) was estimated to be 88.9 million pounds (36,240 mt) in 2015, about 58% of the biomass target $SSB_{MSY} = 137.555$ million pounds (62,394 mt) and 16% above the biomass threshold (Figure 2). The 2015 year class is estimated to be about 23 million fish at age 0, continuing the trend of below-average year classes for the past six years (2010-2015).

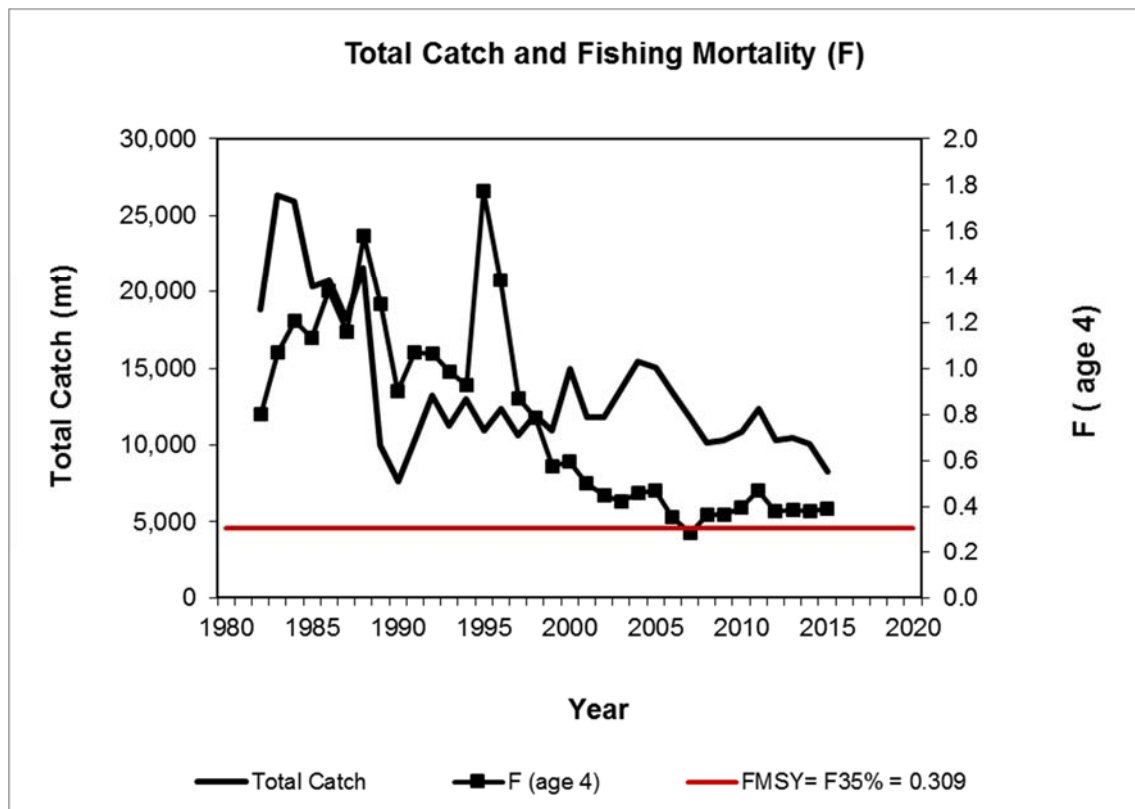


Figure 1. Total fishery catch and fully-recruited fishing mortality (F, peak at age 4) of summer flounder. The horizontal red line is the 2013 SAW 57 fishing mortality threshold reference point proxy. Source: NEFSC Summer Flounder Stock Assessment Update for 2016 (June 2016).

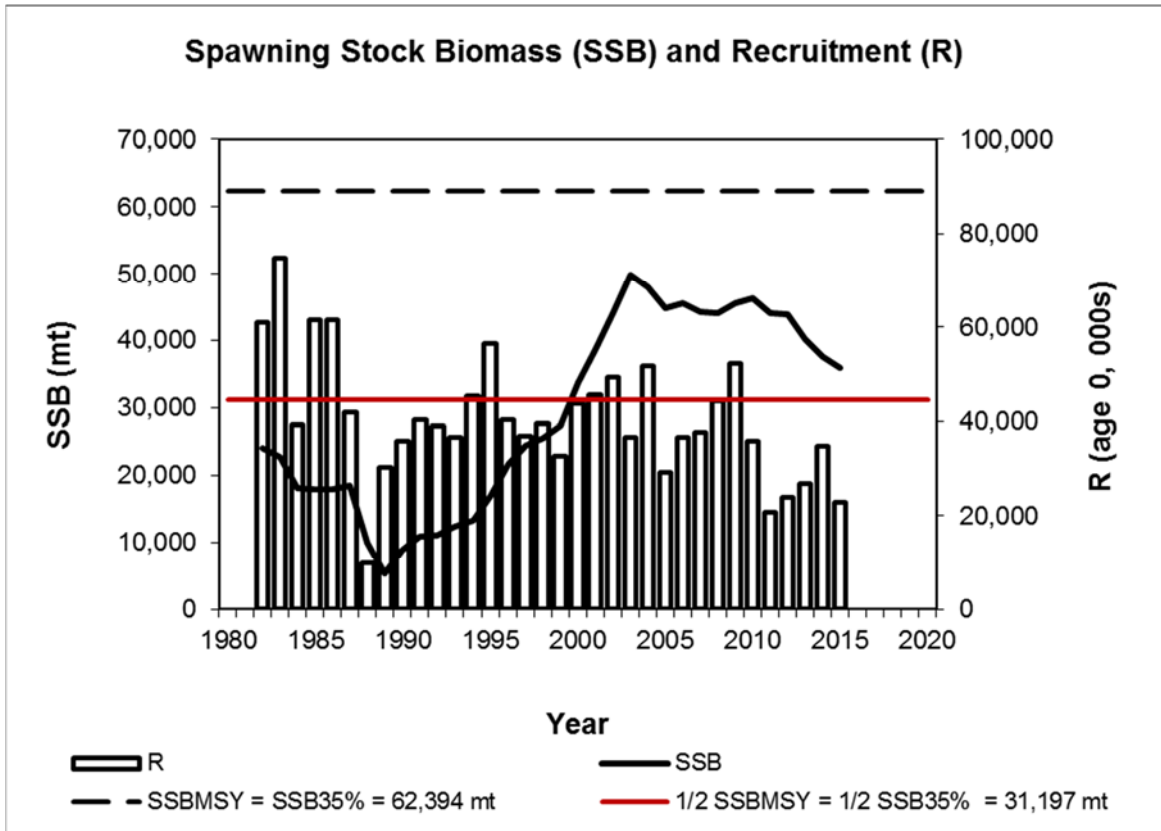


Figure 2. Summer flounder spawning stock biomass (SSB) and recruitment at age 0 (R) by calendar year. The horizontal dashed line is the 2013 SAW 57 biomass target reference point proxy; the horizontal red line is the biomass threshold reference point proxy. Source: NEFSC Summer Flounder Stock Assessment Update for 2016 (June 2016).

A breakdown of the 2017 Overfishing Limit (OFL), Acceptable Biological Catch Limit (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), and subsequent coastwide RHL based on the 2016 stock assessment update is included in Table 4. The 2017 proposed harvest limit is a time series low as the result of the biomass projections from the 2016 stock assessment update.

Table 4. Basis for 2017 summer flounder catch and landings limits. Numbers may not add precisely due to unit conversions and rounding.

Management Specifications	2016		2017		Basis for 2017 Limits
	mil lb.	mt	mil lb.	mt	
OFL	18.06	8,194	16.76	7,600	Stock assessment projections
ABC	16.26	7,375	11.30	5,125	Stock assessment projections/ SSC recommendation
Commercial ACL	9.42	4,275	6.57	2,982	60% of ABC landings portion (per FMP allocation) + 49% of ABC discards portion
Commercial ACT	9.42	4,275	6.57	2,982	Monitoring Committee recommendation: no deduction from ACL for management uncertainty
Commercial Quota	8.12	3,685	5.66	2,567	Commercial ACT, less projected commercial discards
Recreational ACL	6.84	3,100	4.72	2,143	40% of ABC landings portion (per FMP allocation) + 51% of ABC discards portion
Recreational ACT	6.84	3,100	4.72	2,143	Monitoring Committee recommendation; no deduction from ACL for management uncertainty
Recreational Harvest Limit	5.42	2,457	3.77	1,711	Recreational ACT, less projected recreational discards

3.0 Management Program

The 2017 summer flounder recreational fishery will divide the coast into six management regions (similar to 2016): 1) Massachusetts 2) Rhode Island 3) Connecticut-New York 4) New Jersey 5) Delaware-Virginia and 6) North Carolina. The combined management program of all 6 regions is designed to not exceed the 2017 recreational harvest limit.

Each region, except for North Carolina, is required to increase the minimum size by one inch from the 2016 size limit (Note: North Carolina is exempt as long as the state's harvest remains low because its fishery is confounded by three species of similar flatfish for which consistency in regulations is ideal). Each Region is required to have a possession limit of 4 fish or less.

This approach moves away from using the 1998-based allocations to set regional targets, based on the concerns listed in Section 2.2 Background (page 2). Additionally, the past three years have shown how variable annual harvest at the coastal (50%), regional (>60%), and state (>100%) level can be despite consistent measures across the years, underscoring the difficulty of using prior year harvest to predict future year harvest. The Commission recognizes the confidence intervals around the harvest estimates limit the ability to precisely project the impacts of differing management measures. The approach thus applies broad action across all states to reduce harvest and provide for more coastwide consistency in regulations.

Table 5. Example 2017 Regional Management Measures

STATE	2016 Projected Harvest	Example Size Limit	Example Possession Limit	Example Season (# of days)
MASSACHUSETTS	56,642	17"	4 fish	125
RHODE ISLAND	92,821	19"	4 fish	245
CONNECTICUT NEW YORK	950,178	19"	3 fish	128
NEW JERSEY*	782,142	19"	3 fish	128
NEW JERSEY/ DELAWARE BAY COLREGS**	8,916	18"	3 fish	
DELAWARE MARYLAND VIRGINIA	191,636	17"	4 fish	365
NORTH CAROLINA	17,074	15"	4 fish	365

*New Jersey east of the COLREGS line at Cape May, NJ will have management measures consistent with the northern region of Connecticut – New York.

**New Jersey west of the COLREGS line at Cape May, NJ inside Delaware Bay will have a similar size limit to the southern region (DE-VA), the same possession limit and the same season length as the northern region of Connecticut – New York.

Management for 2018

If the Board chooses to continue this management program for 2018, the following outlines the process for setting harvest targets:

The TC will use harvest estimates and fishery performance from 2017 to evaluate the 2018 regional management approach. **If the coastwide RHL is exceeded, then region specific harvest will be evaluated, with the understanding that more restrictive management measures will be needed to constrain regional harvest in 2018. If the predicted 2018 combined regional harvest is higher than the 2018 RHL, regions will have to adjust their management measures in 2018.** The TC will develop proposed measures for each region that, when combined, will constrain the coastwide harvest to the 2018 RHL. Any number of size, possession, and season combinations can be evaluated when looking at regional management.

3.1.1 Timeframe for Summer Flounder Measures

For 2017 and ability to extend through 2018 (One year extension)

The management program outlined in section 3.0 will be in place for 2017. The Board could take action, through a Board vote, to extend the addendum for one year, expiring at the end of 2018. After 2018 (or for 2018 if the Board does not extend the Addendum into 2018), measures would revert back to the FMP status quo coastwide/conservation equivalency measures.

4.0 Compliance:

The management program for summer flounder contained in Section 3.0 of Addendum XXVIII are effective immediately upon its approval (February 2, 2017). States will go through their administrative procedure to implement regional management measures to cumulatively achieve the needed coastwide reduction for 2017. Once management measures are finalized, the states must notify the Board of their final 2017 management measures by March 1, 2017. If a state or region does not implement management measures to cumulatively achieve across the regions the needed 2017 reduction, that state or region must implement the precautionary default management measures. The Board and Council approved in December 2016 precautionary default measures for 2017 that include a minimum size of 20 inches total length, a possession limit of 2 fish, and a season of July 1–August 31. These measures would be in place for both state and federal waters of the state or region in question. If a state or region does not implement either sets of measures, that state or group of states may be found out of compliance. States measures will made available to the public as soon as they are finalized.

Tables and Figures

Table 6. 2016 Summer Flounder Recreational Management Measures. Color blocking indicates regions

State	Minimum Size (inches)	Possession Limit	Open Season
Massachusetts	16	5 fish	May 22-September 23
Rhode Island	18	8 fish	May 1-December 31
Connecticut	18	5 fish	May 17- September 21
CT Shore Program (46 designed shore sites)	16		
New York	18	5 fish	May 17- September 21
New Jersey*	18	5 fish	May 21- September 25
NJ Shore program (1 designated site)	16	2 fish	
New Jersey/Delaware Bay COLREGS**	17	4 fish	
Delaware	16	4 fish	January 1- December 31
Maryland	16	4 fish	January 1- December 31
PRFC	16	4 fish	January 1- December 31
Virginia	16	4 fish	January 1- December 31
North Carolina	15	6 fish	January 1- December 31

*New Jersey east of the COLREGS line at Cape May has management measures consistent with the northern region of Connecticut – New York.

**New Jersey west of the COLREGS line at Cape May, NJ inside Delaware Bay has a similar size limit to the southern region (DE-VA), the same possession limit as the southern region (DE-VA), and the same season length as the northern region of Connecticut – New York.

Table 7. State regulations, 2013–2016. 2013 represents the last year state-by-state regulations applied; regional management applies 2014–2016. Color blocking indicates regions. Red font indicates change from prior year.

	2013	2014	2015	2016
MA	16" 5 fish May 22-Sep 30	16" 5 fish May 22-Sep 30	16" 5 fish May 22-Sep23*	16" 5 fish May 22-Sep 23 (125 day season)
RI	18" 8 fish May 1-Dec 31	18" 8 fish May 1-Dec 31	18" 8 fish May 1-Dec 31	18" 8 fish May 1-Dec 31 (245 day season)
CT	17.5"*** 5 fish May 15-Oct 31	18"*** 5 fish May 17-Sep 21	18"*** 5 fish May 17-Sep21	18"*** 5 fish May 17-Sep21 (128 day season)
NY	19" 4 fish May 1-Sep 29	18" 5 fish May 17-Sep 21	18" 5 fish May 17-Sep21	18" 5 fish May 17-Sep21 (128 day season)
NJ Coast	17.5" 5 fish May 18-Sep16	18"*** 5 fish May 23-Sep 27	18"*** 5 fish May 23-Sep 26	18"*** 5 fish May 21-Sep 25 (128 day season)
NJ	17.5"	18"	18"	17"
Delaware Bay	5 fish May 18-Sep16	5 fish May 23-Sep 27	5 fish May 23-Sep 26	4 fish May 21-Sep 25 (128 day season)
DE	17" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31 (365 day season)
MD	16" 4 fish Mar 28-Dec 31	16" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31 (365 day season)
VA	16" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31	16" 4 fish Jan 1-Dec 31 (365 day season)
NC	15" 6 fish Jan 1-Dec 31	15" 6 fish Jan 1-Dec 31	15" 6 fish Jan 1-Dec 31	15" 6 fish Jan 1-Dec 31 (365 day season)

*MA change in season not due to cut, but correction of error from prior year

**CT has 45 designated coastal sites where minimum size is 16" for the 5-fish limit, 2013–2016

***NJ has 1 designated coastal site where 2 fish at 16" can be taken, 2014–2016 (another 3 at 18" can be taken outside of the designated site)

March 24, 2017

Mr. Douglas E. Grout, Chair
Atlantic States Marine Fisheries Commission
1050 N. Highland Street, Suite 200 A-N
Arlington, Virginia 22201

Dear Mr. Grout:

The New Jersey Commissioners of the Atlantic States Marine Fisheries Commission (ASMFC) hereby formally appeal the February 2, 2017 approval by the Summer Flounder, Scup and Black Sea Bass Management Board (Board) of Addendum XXVIII (Addendum) to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan (FMP). More specifically, New Jersey is appealing the Board's approval of Option 5 under regional management in the Addendum and the specific management measures set forth under Option 5. This decision mandates a one-inch size increase to New Jersey's current recreational summer flounder minimum size limit and decreases the possession limit from five fish to three fish. New Jersey brings this appeal pursuant to the Appeals Process approved by the Interstate Fisheries Management Program (ISFMP) Policy Board (Appeals Process).

New Jersey has previously and repeatedly expressed concerns regarding the Addendum and exhausted all options to gain relief at the Board level. During the drafting of the Addendum and prior to the ASMFC meeting of February 2, 2017, New Jersey's ASMFC Commissioners contacted Commissioners from other member states to discuss our concerns with the options set forth in the Addendum. The Commissioner of New Jersey's Department of Environmental Protection testified before the Board at the ASMFC meeting of February 2, 2017 to express New Jersey's apprehension about the science and the impact these decisions would have on the economic health of the recreational fishing industry in New Jersey and on the health of the summer flounder fishery. At that same meeting, New Jersey voted against Option 5 of the Addendum and unsuccessfully moved to postpone the Addendum.

Since the ASMFC approved Option 5 from the Addendum, and with New Jersey's administrative options exhausted, New Jersey now files this appeal based on the criteria in the Appeals Process

and the ISFMP Charter. First, this appeal demonstrates that the Board's current decision, as well as previous quota limits to the commercial sector, will result in specific adverse impacts to New Jersey's recreational summer flounder industry and the overall summer flounder fishery industry that ASMFC is charged with protecting. Second, this appeal shows that the Board did not properly apply technical information in using Marine Recreational Statistical Program (MRIP) harvest estimates and failed to consider the biological impact of increased size limits on the fishery. Finally, this appeal outlines how the Board failed to follow proper process in reaching its decision on the Addendum.

Specifically, this appeal addresses the following criteria:

- Criteria 5: Management actions resulting in unforeseen circumstances/impacts
 - Increase in Fishery Resource Waste
 - Disproportionate Removal of Larger Breeding Females
 - Unfairness & Inequity Among Member States
 - Failure to Consider Economic and Social Impacts
 - Compliance and Data Collection Issues
- Criteria 3: Insufficient/inaccurate/incorrect application of technical information
 - Variability and Untimeliness of MRIP Data Not Appropriate for Yearly Management Approach
- Criteria 2: "Failure to follow process"
 - Inaccuracies in Draft Addendum XXVIII Subject to Public Comment
 - Failure to Include Enhanced Opportunity Shore Fishing Program in Draft Addendum XXVIII
 - Failure to Properly Consider Public Comments\

Criteria 5: Management actions resulting in unforeseen circumstances/impacts

The Board's recent management actions will likely cause a number of unforeseen adverse impacts to the State of New Jersey. The most critical is the increase in discard mortality, which when coupled with the decrease in harvest, will result in more dead discards than actual harvest. Moreover, the increased minimum size limit has the effect of targeting larger female breeding

stock, which may have a negative impact on the flounder fishery recruitment. The Addendum's minimum size requirements also unfairly affect New Jersey compared to other states because the summer flounder in New Jersey waters are smaller than that of our northern counterparts. Thus, the management measures selected in the Addendum will have more damaging economic and social impacts upon New Jersey's coastal communities. Finally, the Addendum will create additional compliance and enforcement difficulties and data collection problems by continuing to erode anglers' trust in regulatory entities.

Increase in Fishery Resource Waste

Section 6(a)(4) of the ISFMP Charter states that "management measures shall be designed to minimize waste of fishery resources." The Charter's requirement is consistent with National Standard 9 of the Magnuson-Stevens Act (Act), which requires that "[c]onservation and management measures shall, (a) to the extent practicable, minimize bycatch and (b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." [16 U.S.C. 1851(a)(9).] Contrary to these mandates, the Addendum requires New Jersey to increase the minimum size to 19 inches in the recreational fishery which, based upon the 10 percent mortality rate for discards used by ASFMC and MAFMC, will increase recreational discard mortality to such an extent that the discard mortality will actually be higher than the harvest mortality.

These findings are based on New Jersey's analysis of MRIP data and New Jersey Volunteer Angler Survey (VAS) data. A brief description of the calculations is provided below. Data and a full analysis will be presented to the Policy Board if warranted.

In 2008, the New Jersey VAS was implemented to supplement and complement data collected by the MRIP survey. The VAS is open access and conducted entirely online on a volunteer basis. Data collected include information on the fishing trip (*e.g.* wave, mode, area, number of anglers), catch (species, number caught, number released), and lengths of both harvested and released fish. The VAS collects specific information from anglers on the lengths of harvested and discarded fish from all modes, while discard lengths are not as broadly sampled by the MRIP. Accordingly, New Jersey analyzed the length data provided by VAS participants to determine the overall length frequency of reported summer flounder catch (harvest plus

discards). The data was then used to estimate statistics relative to the proposed 19-inch minimum sizes.

The data shows that by increasing the minimum catch size from 18 inches to 19 inches, more flounder will not meet the minimum harvest size requirements. Those fish that do not meet the minimum harvest size cannot be kept and must be discarded. Since there will be more fish discarded, and applying a 10 percent mortality rate of discards, more fish will die after being returned to the water. Indeed, the VAS length frequency data show that increasing the summer flounder minimum catch size from 18 inches to 19 inches would result in discard mortality that is 16.6 percent greater than harvest mortality using 2016 data. **In other words, at a 19-inch minimum size, the number of undersized (discarded) fish that die after being returned to the water will be greater than the number of fish that will be harvested. This will be the first time in New Jersey history that more summer flounder will die as a result of being discarded than will be harvested by anglers. This is not sound fishery management.**

The results of the VAS analysis carry enormous implications, so a similar analysis was conducted using MRIP data to test the veracity of the results. A query of summer flounder catch and length frequency in New Jersey shows that dead discards exceed harvest by nearly 20 percent under a 19-inch minimum size limit using 2016 data. The percentage by which dead discards exceeds harvest using 2016 MRIP data is consistent with the analysis of 2016 New Jersey VAS data.

These analyses assume no changes to fishing effort with the increased size limit. However, common sense dictates, and our initial discussions with members of the private boat and shore angler communities, along with boat captains, indicate that an increased minimum size limit will result in increased fishing effort due to private boat and shore anglers taking more and/or longer trips in an attempt to harvest legal-sized fish. Increased fishing effort, in turn, equates to additional discards, resulting in even higher discard mortality than projected.

These results have severe negative implications for recreational summer flounder management in New Jersey. Discard mortality that exceeds harvest is not acceptable from a fishery management standpoint and will not be well received by the recreational fishing sector. In addition, increasing the minimum size limit of summer flounder to 19-inches is inconsistent not only with the

ISFMP's standard of minimizing fishery waste, but also with the mandate of National Standard 9 of the Act to minimize bycatch. Under the proposed quota, for anglers to catch a legal-sized fish, they will need to throw back more fish. Since the size limit was increased to 18-inches in 2014, the discard rate in New Jersey has been at least 89 percent.

New Jersey is actively exploring how it can reduce the mortality rate for discards through a combination of education, encouraging the use of hooks that cause less damage to the fish, and other methods that would help to ensure that those fish that do not meet the minimum size have a better chance of survival when returned to the water. By reducing the mortality rate, New Jersey aims to achieve compliance by reducing the overall take of summer flounder.

The issue of regulatory discards has been discussed at length at the Technical Committee and at the Management Board for several years. It was originally included in the Comprehensive Summer Flounder Amendment that was initiated in December 2013 and went out to Scoping Hearings in September 2014. Recreational regulatory discards was one of the most frequently raised issues during the scoping process and at the 14 scoping hearings held along the Atlantic coast. Two hearings were held in New Jersey with as many as 100 members of the public in attendance.

Since that time, however, the Board determined that the comprehensive amendment was too burdensome to decide all at once, and projected that final action and implementation on such an undertaking would not occur until 2020. Therefore, in order to set a more realistic date for action, the Council and Board voted to reduce the scope of the comprehensive amendment and limit the focus to commercial issues.

New Jersey's Mid-Atlantic Fishery Management Council (MAFMC) members and NJ ASMFC Commissioners opposed this decision. In fact, at the February 15, 2017 joint meeting of the Council and Board, New Jersey's Commissioners moved to initiate an Addendum to address summer flounder recreational issues. Our motion, however, did not receive the support of the Board. The Board's inaction signaled to stakeholders that these recreational issues, especially high regulatory discards, are not one of the Board's priorities, contrary to the public's interest.

Disproportionate Removal of Larger Breeding Females

Section 6(a)(1) of the ISFMP Charter states that “management measures shall be designed to . . . maintain over time, abundant, self-sustaining stocks of coastal fishery resources.” But the increased minimum size limits could have the opposite effect because the larger size limits promote the harvest of female summer flounder. New Jersey has documented the fact that the larger summer flounder tend to be females, that 90 percent of the summer flounder that are at least 19 inches in length are breeding females, and that the larger the female the more eggs she carries. Thus, the Board’s decision to increase the minimum size limit for New Jersey waters will likely have the unintended consequence of removing the most productive egg-bearing females from the fishery. Indeed, removing breeding females from the fishery may very well explain the lack of recruitment in recent years.

Over the past several years, at every summer flounder public hearing and in numerous written public comments that have been submitted to ASMFC during the Addendum process, anglers have voiced grave concerns regarding high size limits and their impact on the increased harvest of larger females. The consequences of this measure to the breeding females in the fishery should not be disregarded.

Unfairness & Inequity Among Member States

Second, New Jersey is unfairly and inequitably impacted by the current management measures. Section 6(a)(7) of the ISFMP Charter states that an FMP should “allow internal flexibility within states to achieve its objectives while implemented and administered by the states” and that “[f]ishery resources shall be fairly and equitably allocated or assigned among the states.” This section is consistent with National Standard 4 of the Act, which requires that fishing privileges be allocated in a way that is “fair and equitable to all . . . fishermen.” [16 U.S.C. 1851(a)(4)]

The Board has generally recognized that fish size in state waters varies from north to south and has established minimum size limits accordingly. For example, North Carolina generally has always had a smaller minimum size limit than Massachusetts. Length frequency data from several sources, including MRIP and the NMFS Trawl Survey, show that summer flounder off

the coast of New Jersey are smaller than summer flounder in New York and Connecticut waters, our regional counterparts. Yet despite these differences, New Jersey has been forced by the ASMFC to manage summer flounder as part of a region with New York and Connecticut, thus preventing New Jersey from proceeding with conservation equivalency on terms specific to New Jersey. Instead, New Jersey is forced to abide by whatever management measures New York and Connecticut have determined is best for their anglers without any consideration of the impact on New Jersey anglers. The inequity to New Jersey is a violation of ISFMP standards and National Standard 4.

Failure to Consider Economic and Social Impacts

The Addendum will result in serious and lasting impacts on New Jersey's economy. The fishing industry in New Jersey supports 65,000 jobs and creates \$2.5 billion in economic activity. Of that, the recreational fishing industry accounts for 20,000 jobs and contributes \$1.5 billion to New Jersey's economy. Given the size of New Jersey's fishing industries, it is surprising that neither analysis nor consideration of economic or social impacts was considered in the Addendum, particularly because Section 6(a) and Section 6(b)(1)(v)D of the ISFMP Charter clearly state that social and economic impacts must be taken into account in fishery management programs.

New Jersey has serious concerns about the severe impact that the approved measures could cause to a fishery that is a mainstay for our shore economy during the summer months. The increasingly stringent summer flounder management measures have resulted in a continued economic slowdown. Already reeling from the devastating effects of Superstorm Sandy, each year after the 2012 and 2014 restrictions, recreational fishing trips for summer flounder dropped by 19 percent and 20 percent respectively. Overall, from 2012 through 2015, recreational fishing trips for summer flounder in New Jersey are down 24 percent. Closures of bait and tackle shops, boat rentals, marinas, and for-hire boats have already put these communities in jeopardy as a result of previous management measures since at least 2014. This subject, while raised numerous times by our constituents and staff during public comment, was not properly considered by the Board or ASMFC staff. Not only is the Addendum inconsistent with the ISFMP Charter, it is also inconsistent with National Standard 8 because it does not take into

account the importance of fishery resources to fishing communities using economic and social data.

Compliance and Data Collection Issues

Another unforeseen impact will be compliance difficulties. New Jersey anglers continue to struggle with ever-changing regulations that make it more difficult for them to comply and more difficult for the state to enforce these increasingly stringent regulations. One of the fundamental principles in enacting laws or promulgating regulations is that they be reasonable and that those being regulated can be reasonably expected to follow them. New Jersey's anglers are already suffering the effects of earlier reductions, and our many discussions with those in the recreational fishing industry indicate that they feel the reduction called for in 2017 are unjust and that New Jersey is being singled out unfairly. This recent Board decision will only increase the likelihood that the new regulations will encourage non-compliance so as to avoid what the industry sees as unjust, unfair, and punitive quotas.

A bias that continues to corrupt MRIP data collection must also be taken into account when considering this data. More and more anglers and for-hire captains are deliberately avoiding New Jersey's Access Point Angler Intercept Survey (APAIS) field interviewers. Their avoidance arises from their distrust that ASMFC, MAFMC, and NMFS will use this data against them to continue to destroy their industry. As discussed above, the economic impacts of the ASMFC decision could devastate our fishing and tourism communities this upcoming fishing season. The social impacts will be long-term and make trusting the process very difficult for the State of New Jersey.

Criteria 3: Insufficient/inaccurate/incorrect application of technical information

New Jersey appeals under Criteria 3 based on the Board's improper use of MRIP on a year-to-year basis to set the Recreational Harvest Limit (RHL). MRIP data is unsuitable as a year-to-year management tool for summer flounder because of its variability and untimely collection.

Variability and Untimeliness of MRIP Data Not Appropriate for Yearly Management Approach

The major technical flaw in setting the RHL relates to the use of MRIP data on a year-to-year basis. As explained below, MRIP data was not intended to serve as the basis for yearly quota

management decisions or as the basis for yearly changes to particular management measures. Indeed, MRIP annual harvest estimates, in numbers of fish, are not used on a year-to-year basis for most species under the Commission's management.

The recreational fishery for summer flounder is managed on a "target quota" basis. The commercial sector is allocated 60 percent of the overall coastwide Acceptable Biological Catch (ABC) for summer flounder while the remaining 40 percent is allocated to the recreational sector. Council staff calculates the RHL by factoring in management uncertainty and discards from previous years. The summer flounder management regions, as identified in Addenda XXV and XXVIII, then develop management measures that can "reasonably be expected" to constrain recreational harvest to the RHL.

To establish these measures, MRIP data is used in two ways. The first is to determine the projected harvest estimate for the previous year to measure the effectiveness of management measures in that year. The second is to project forward into the future to set the RHLs for the coming year. However, the use of MRIP data both to set the RHL and to select management measures has historically been deemed impractical by managers and technical experts. This view reflects the limitations of producing timely landing estimates in an attempt to manage the recreational fishery based on a real-time quota and due to the variability from year to year. Data from the MRIP recreational fishery survey are known to be highly variable from year to year due to extremely small (i.e. statistically insignificant) sample sizes. This can produce estimates of harvest that fluctuate despite unchanged management measures.

The variability and timeliness of MRIP data undermine both the accuracy of the data and the confidence anglers put in it. This variability is apparent on a coastwide basis where harvest varies by as much as 50 percent on an annual basis with no change in management measures. In New Jersey, fluctuations in estimated harvest were apparent during the 2014, 2015, and 2016 fishing years. Even though the size and bag limit remained the same for those three years, the recreational harvest limit and the landing estimates varied significantly, both increasing and decreasing for no apparent reason other than gross variability.

To illustrate, from 2012 to 2016 in New Jersey, the recreational expanded harvest estimate ranged from a minimum of 497,482 in 2015 to a maximum of 1,244,432 in 2013. By simply

utilizing a yearly MRIP estimate, the variability associated with this estimate is being ignored. If instead a mean was calculated over the five-year period, the expanded harvest estimate would be 927,090, with a 95% Confidence Interval (CI) from 526,840 to 1,237,527. The 95% CI over the five-year period was very large, ranging from close to the minimum yearly estimate to close to the maximum yearly estimate. When the 95% CI has this wide a range, this suggests that the variability of the estimate was high between years and that there is low confidence in yearly estimates.

In addition to its high variability, MRIP data is not appropriate to use as a yearly measure in setting the RHL because it is not collected in a timely manner. The current timeline of summer flounder management dictates that the Technical Committee (TC) and the MAFMC Monitoring Committee (MC) must begin crafting measures for the following year's fishing season during November of the current year, using preliminary MRIP data for the months January through August and projected harvest of data for the months September through December. The projections are an average of data from the last three years for the months missing when the process begins.

Usually in February of the year for which fishery managers are trying to implement management measures, the TC and MC will receive a preliminary estimate for September and October. The TC will then revise the measures that have been crafted in reaction to the new "preliminary estimates." The ASMFC Board will also meet in February to make a management decision based on preliminary estimates and direct each state to implement the agreed upon measures.

The next feed of data, which is called "final" is usually delivered to the TC in April. Depending on the result of the final data feed, states will need to make adjustments yet again. The issues caused are obvious. Most, if not all states, including New Jersey, require several months to get regulatory changes made to fisheries regulations. The delay in the availability of these data does not allow the required time to make a thorough analysis, therefore management measures are often pushed through without possessing a complete understanding of past performance of measures from previous years.

As the ASMFC Technical Committee presented to the Board at the February 2, 2017 meeting, changing the management measures from year-to-year makes it very difficult to predict the

reliability and effectiveness of management measures put in place on an annual basis.

Developing management measures that extend over a period of time, (for example three to five years or until a new benchmark assessment is developed) would result in a more efficient and accurate management structure than the current process and would allow for the anomalous variability of the MRIP estimates to be smoothed over time. Maintaining management measures over multiple years is the best way to react to the trends developed from the MRIP data. The fact that these data are used on an annual basis and not as a multi-year mean is misuse of the data that undermines decision-making.

Criteria 2: “Failure to follow process”

As explained below, the Board failed to follow the proper process to reach its decision in at least three ways. First, the revised Addendum released for public comment on December 23, 2016 differed from that presented to the Board for a vote on February 2, 2017. Second, the Addendum failed to include the Enhanced Opportunity Shore Fishing Program (Program) in the Addendum for public comment. These issues are substantive and go beyond technical corrections to the Addendum. Third, ASMFC failed to properly consider public opposition to the Addendum.

ASMFC’s ISFMP Charter Section 6(c)(9) (iv), states, “Public comments will be evaluated and considered prior to deciding what modifications will be made to the draft FMP or amendment, or draft final FMP or amendment, and prior to approval of the FMP or amendment consistent with the public comment guidelines.” Section 6(b)(3) also requires that the public have an opportunity to review and comment on addenda. The failure to fully and accurately present the Addendum for public comment prior to Board approval hampered the public’s ability to assess and comment upon the recreational summer flounder options.

Inaccuracies in Draft Addendum XXVIII Subject to Public Comment

The Addendum was first released for public comment on December 22, 2016. A revised version of the Addendum was issued on December 23, 2016 with a public comment period open until January 19, 2017. Around January 17, 2017, ASMFC staff determined that there were significant errors in the Addendum. In light of these errors, the ASMFC Summer Flounder, Scup, Black Sea Bass Technical Committee (Technical Committee) met via conference call on January 19,

2017. The Technical Committee decided that three of the five options in the Addendum incorrectly explained the methods used to calculate the tables within the Addendum.

Specifically, the methods described for calculating Options 2-4 differed from the results presented in tables 2-4. Once the Technical Committee had identified these errors, the narrative text was altered to capture the intent of the Addendum and correspond to the tables in the Addendum. Additionally, certain percent reductions in the tables were adjusted at this time due to the mathematical errors found within the original calculations.

Because of the errors in the Addendum, ASMFC should have released, but did not release, an updated version for public comment so that the public would not be misled during the comment period. Instead, on the evening of January 27, 2017, ASMFC staff sent an e-mail to the Board, just five days before the Board meeting where final action was to occur, highlighting the discrepancies in the methods and tables of Options 2-4. ASMFC staff then presented the options with the adjusted language and tables for the first time to the public at the ASMFC Board meeting on February 2, 2017. Since this substantive revision took place well after the public comment period ended on January 19, 2017, the public had no meaningful opportunity to comment on the correct version of these options in violation of Section 6(b)(3) of the ISFMP Charter.

Failure to Include Enhanced Opportunity Shore Fishing Program in Draft Addendum XXVIII

Neither the draft nor the final Addendum contained any reference to the Program for the New York, Connecticut, New Jersey Region (Region). The Program allows specific shore-based access sites a smaller minimum size limit than the rest of the Region. However, this issue was not discussed at the February 2, 2017 Board meeting or during the deliberations to the motions that were eventually approved. Moreover, the status of the Program was not confirmed until receipt of a February 28, 2017 email from the ASMFC Plan Coordinator where he clarified that the size limit for the Program would be 17 inches. The failure to establish criteria for public comment on this subject prior to a final approval is contrary to proper public comment procedures established in ASMFC's ISFMP Charter Section 6(c)(9) (iv).

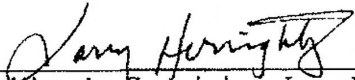
Failure to Properly Consider Public Comments

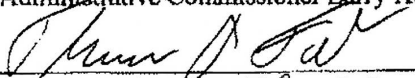
ASMFC held eight public hearings on the proposed addendum from Virginia through Massachusetts. ASMFC held a Public Hearing on the Addendum on January 5, 2017 in Galloway Township, New Jersey with at least 120 members of the public in attendance. A combined total of 103 members of the public attended the other seven hearings held in the other states. At the February 2, 2017 Board meeting, ASMFC staff provided a summary of the comments received during the public comment period. The summary from the New Jersey public hearing included only the following statement: “All in attendance were against all options offered in the draft addendum.” The summary table of all written public comments from all the states (ASMFC Winter Meeting, page 69 of the Board Supplemental materials), which staff presented at the Board meeting, showed overwhelming support to continue the 2016 measures and remain at status quo – far more support than was expressed for any of the five options presented in the Addendum. Based on the overwhelming public support for status quo expressed during the public comment period, and at the February 2, 2017 Board meeting, ASMFC did not adequately consider public comment in selecting their position which is contrary to the ISFMP Charter as outlined above.

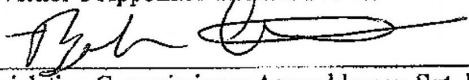
CONCLUSION

The issues raised in this appeal demonstrate that the Board should reconsider the Addendum and immediately address the problems associated with the matter at hand before moving forward. In light of the high discard mortality and associated detrimental effects of increasing the minimum size limitation, and the threat to the jobs of thousands of New Jerseyans and to the multi-million-dollar contribution recreational summer flounder fishing provides to the state’s economy, the Board should consider applying the 2016 management measures for New Jersey. The State of New Jersey appreciates the opportunity to appeal this decision. New Jersey reserves its rights under the provision of the Appeals Process document which states that “upon completion of the appeals process, a state is not precluded from taking further action beyond the Commission process to seek relief.” Thank you for your consideration of this appeal.

Sincerely,
The ASMFC Commissioners of New Jersey


Administrative Commissioner Larry Herrigthy


Governor's Appointee Thomas P. Fote


Legislative Commissioner Assemblyman Sgt. Robert Andrzejczak



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmfc.org

Douglas E. Grout (NH), Chair

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

Robert E. Beal, Executive Director

Vision: Sustainably Managing Atlantic Coastal Fisheries

April 14, 2017

Mr. Larry Herrighty
Acting Director
New Jersey Division of Fish and Wildlife
P.O. Box 400
Trenton, New Jersey 08625-0400

Dear Mr. Herrighty,

This letter responds to the State of New Jersey's March 25, 2017 appeal of the Atlantic States Marine Fisheries Commission's (Commission) approval of Addendum XXVIII (Addendum) to the Summer Flounder Interstate Fishery Management Plan (FMP). On April 3, 2017, in accordance with the appeals process, a conference call of the Commission Chair Doug Grout, Vice-Chair Jim Gilmore, past Chair Robert Boyles (Leadership), and staff was convened to review the New Jersey's appeal. The purpose of the review was to assess the issues New Jersey proposes to raise in its appeal and to determine whether those issues are of the type and substantiality that warrants review by the full *Interstate Fisheries Management Program (ISFMP)* Policy Board.

During the call, it was determined the appeal did **not** meet the qualifying guidelines under appeal criterion five (unforeseen circumstances/impacts) and three (incorrect application of technical information), but **could be forwarded** to the ISFMP Policy Board for appeal consideration under criterion two (failure to follow process).

A. Claims Under Criterion Two: Failure to Follow Process

The appeal cited criterion two, "Failure to follow process." Under this criterion, the appeal states the Summer Flounder, Scup and Black Sea Bass Board (Board) did not follow proper process in three ways: (1) the content of the Draft Addendum that was released for public comment differed from what the Board considered for final approval, (2) the Addendum failed to include an option on the enhanced shore mode, and (3) the Commission failed to properly consider public comment. See letter from New Jersey Commissioners to ASMFC Chair Douglas E. Grout, pp. 11-13 (March 24, 2017).

New Jersey correctly notes that there was an error in the Draft Addendum's text which was found prior to the Commission's 2017 Winter Meeting. However, information on the error, which was in the description of the calculation of the measures as specified in the revised Addendum language memo (January 27, 2017), was sent to the Board prior to the meeting. The Board Chair noted the error (and its late correction) at the start of the meeting and suggested the Board proceed with its consideration of the Draft Addendum since the tables within public comment draft, which included example measures, were correct. No Board

members objected to moving forward with the process. Importantly, the approved option did not contain any errors and was identical to what went out for public comment. At the same time, the fact that there was an error in the Draft Addendum warrants further scrutiny and discussion and – as noted below – Leadership concludes that an appeal as to this issue is justified under criterion two.

However, Leadership rejects the claim that the Commission did not properly consider public comment. The Board was presented an overview of the public comment. Detailed information regarding each of the hearings was included in the briefing materials for members of the Board to review prior to the meeting. In summary, there was an opportunity for public comment and the Board did have the benefit of that comment before reaching its decision. Leadership concludes that substantial grounds for an appeal are not present on this issue.

Natural resource managers are frequently obligated to make decisions that are not consistent with opinions of members of the public. In some cases, management objectives require the adoption of measures that some or most members of the public oppose, this does not mean the public comment was not considered. Here, the Board did consider public comment favoring other approaches, but concluded the measures adopted were nonetheless warranted; Leadership does not find a substantial basis for appeal as to this claim.

New Jersey's appeal letter is correct in observing that the Draft Addendum did not discuss the shore mode program. However, Commission staff notified the states that the shore mode program could still be conducted under the Addendum at the joint meeting with the Mid-Atlantic Fishery Management Council (MAFMC) in December 2016. This is consistent with the shore mode program process in the previous year. Here too, Leadership does not find a valid basis for appeal under the public comment criterion.

B. Claims Under Criterion Three: Application of Technical Information.

The appeal letter cites criterion three, "Insufficient/inaccurate/incorrect application of technical information." New Jersey points to what it regards as the variability and untimeliness of data generated from the Marine Recreational Information Program (MRIP) as not appropriate for yearly management approaches. See letter from New Jersey Commissioners to ASMFC Chair Douglas E. Grout, pp. 8-11 (March 24, 2017).

When considering final action on the Addendum, the Commission fully acknowledged and took into account the uncertainty in MRIP harvest estimates. In particular, it recognized that the confidence intervals around the MRIP harvest estimates constrain our ability to precisely project the impacts of differing management measures. The Commission is constrained in its ability to address this variability, given that summer flounder is jointly managed with the MAFMC and, therefore, falls under the mandates of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). One of these MSA mandates is the establishment of an annual recreational harvest limit (RHL) and associated management measures that seek to constrain harvest to this RHL.

In considering the 2016 harvest estimate relative to the 2017 RHL the Commission determined a reduction in harvest was needed to constrain coastwide harvest to the 2017 RHL. This determination was based on the 2016 harvest estimate from MRIP. The MRIP harvest estimates have been determined to be the best available science for recreational harvest. Until there is another data source or until interpretation of the federal law changes, the Commission is obligated to use the previous year's MRIP data to set the following year's measures. Therefore, Leadership does not find an incorrect application of technical information, and could not justify an appeal on this issue.

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

New Jersey's appeal is partially based on appeal criterion five, "Management actions resulting in unforeseen circumstances/impacts." Under this criterion the appeal cites increased fishery waste, disproportionate removal of larger breeding females, unfairness and inequity among member states, failure to consider economic and social impacts, and compliance and data collection issues. See letter from New Jersey Commissioners to ASMFC Chair Douglas E. Grout, pp. 2-8 (March 24, 2017).

None of these issues, however, constitutes "unforeseen" circumstance or impact. To the contrary, each of these factors was considered and discussed by the Board at either the December 2016 joint meeting with the MAFMC (compliance and data collection issues), the Commission's 2017 Winter Meeting (economic and social impacts), or were included in briefing materials for either of those meetings.

The appeal cites unforeseen circumstances due to increased fishery waste, through discards and disproportionate removal of larger breeding females. Both of these latter concerns were addressed in the MAFMC's staff memo dated November 3, 2016. The Monitoring Committee (MC) concurred with the memo's concerns regarding high size limits and discards. But the MC had reservations in addressing those concerns with slot limits as was recommended by the staff, given the overfishing status of stock and the below-average recruitment of summer flounder observed for the past six years (2010-2015). Slot limits typically result in an increased number of total removals, resulting in increased fishing mortality. There may be concern that increasing the size limit may target more females due to life history characteristics. However, members of the MC have noted that while the proportion of females targeted by an increase in size limit may increase, the total number of females harvested and removed from the population should decrease. This decrease is because the number of fish available for harvest at 19 inches is less than the number at an 18 inch size limit. Therefore, we do expect that the selected management measure will have the intended effect of decreasing harvest for the long term gain of the resource. Given this discussion was summarized in the briefing materials as well as part of the Board deliberations at the joint Board and MAFMC meeting in December 2016, Leadership disagrees with New Jersey's position that these issues were unforeseen.

New Jersey's appeal also cites unforeseen consequences from the one-inch size limit increase specified in the Addendum that would be unfair and inequitably impact New Jersey fisherman. Based on analysis conducted by the Technical Committee, New Jersey's projected

harvest reduction for 2017 under the prescribed measures in the Addendum is approximately 34%. The size limit increase approved in the Addendum distributed the burden of reducing harvest similarly to each state within the management unit, except North Carolina. The projected reductions in harvest due to the size limit increase in 2017 is similar for other states in the Mid-Atlantic region as well along the coast. In particular, New York's projected reduction is 33%, Rhode Island's projected reduction is 34%, and Massachusetts' projected reduction is 31%. This concern was raised by New Jersey at the 2017 Commission Winter Meeting. Given the Board's discussion of this issue and the similarity of the projected reductions, Leadership concludes that New Jersey's claim of unfairness or lack of equity among states is not an unforeseen circumstance justifying appeal to the ISFMP Policy Board.

Further, the appeal also cites unforeseen circumstances due to lack of consideration of economic or social impacts in the Addendum. During the call, Leadership discussed the Commission's practices regarding socioeconomic analyses and determined this Addendum was handled in a manner consistent with our established management process. Due to limited resources, the Commission rarely drafts full socioeconomic analyses for FMPs. However, this does not mean socioeconomic considerations are not part of the Commission's decision-making. In fact, public comment and Advisory Panel input during the public comment period noted concerns on this topic, and those concerns were presented to the Board. Each state delegation brings to the table an extensive knowledge of their fisheries, including the potential impacts of proposed management changes, economic and otherwise on those fisheries. Commissioners commonly highlight these impacts at board meetings prior to significant decisions, as was done with this Addendum. Also, the Commission relies on the public comment process to better understand socioeconomic impacts. Public and Advisory Panel comments noted these concerns and their comments were included in briefing materials for the 2017 Commission Winter Meeting.

As you are aware, the Addendum focuses on the reduction of harvest to address current levels of overfishing as indicated in the 2015 and 2016 stock assessment updates, which were presented to the Board and the MAFMC at previous meetings. These efforts are intended to immediately end overfishing and initiate rebuilding the economically and culturally important summer flounder population, which is on a decline. Board members were aware that, in the short term, a reduction in harvest could result in negative economic impacts to the for-hire sector and broader coastal businesses that support the summer flounder recreational fishery. Further, these potential impacts could affect not only New Jersey, but other states within the management unit. These sorts of impacts are always difficult; but they are, as here, sometimes necessary in service of management objectives to promote healthy and abundant stocks. Since Commissioners recognized and weighed these potential impacts to the states and industry, Leadership does not find the social and economic consequences of this Addendum as unforeseen.

Lastly, under unforeseen impacts, the appeal refers to certain compliance and data collection issues. The appeal raised the issue that management measures are continually changing. From 2014 to 2016 New Jersey maintained fairly consistent regulations with the exception of the New Jersey Delaware Bay fishery, which the state requested a lower size limit (17 inches

Mr. Larry Herrighty

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for the Delaware Bay west of COLREGS line) and a reduced possession limit (from 5 to 4 fish for DE Bay west of COLREGS line) to be more closely aligned with Delaware. With the exception of this area-specific modification in 2016, coastal New Jersey has maintained the same minimum size limit (18 inches) and season length (128 days) for three years and same possession limit for four years. Additionally, for the three previous years New Jersey has a shore-based program at Island Beach State Park that allows for a lower size limit of 16 inches. This is a regional exception that New Jersey and Connecticut have been granted for the past three years and is allowed to continue in 2017 consistent with the provisions of the Addendum, which specify a one inch size limit increase. This demonstrates that measures have remained fairly consistent over recent years and changes have largely been driven by New Jersey interests.

Leadership acknowledges that changes in regulations can be difficult. However, adjusting regulations to serve key management objectives is an unavoidable necessity in today's world of fisheries management if we are to be successful in protecting and restoring declining fisheries. Leadership finds that this issue too is not an unforeseen circumstance or impact meriting appeal.

In light of these findings, Leadership finds there are grounds for appeal to the ISFMP Policy Board as to one of the three claims under criterion two advanced in New Jersey's letter – specifically, New Jersey's claim regarding the error in the text of the Draft Addendum. While Leadership has noted several factors that significantly mitigate the impact of this error, given the paramount importance of maintaining the integrity of the Commission's decision-making process, Leadership concludes it is appropriate to provide New Jersey an opportunity to present its appeal on this issue to the ISMFP Policy Board. During the ISFMP Policy Board meeting on May 11, 2017, the ISFMP Director will present background on the Addendum and the Board's justification. Following this presentation, the Commissioners from New Jersey will be provided 15 minutes to present their rationale for the appeal and their suggested resolution of the issue. The ISMFP Policy Board will then be provided an opportunity to discuss the issue and then decide on the appeal. No additional public comment will be taken in connection with the appeal.

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

Sincerely,



Douglas E. Grout
Chair

cc: Thomas P. Fote, Assemblyman Sgt. Robert Andrzejczak, Adam Nowalsky
Interstate Fisheries Management Program Policy Board

L17-39



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

Mail Code 401-07

P.O. Box 402

Trenton, NJ 08625-0402

TEL (609) 292-2885

FAX (609) 292-7695

CHRIS CHRISTIE

Governor

KIM GUADAGNO

Lt. Governor

BOB MARTIN

Commissioner

May 5, 2017

Mr. Douglas E. Grout, Chair
Atlantic States Marine Fisheries Commission
1050 N. Highland Street, Suite 200 A-N
Arlington, Virginia 22201

Dear Mr. Chairman:

I am writing in response to your April 14, 2017 decision to reject, without the opportunity for a hearing, two of the three grounds raised in New Jersey's appeal of the ASMFC's approval of Addendum XXVIII.

We are deeply disappointed that you have refused a hearing on issues so critical to the State of New Jersey and the entire summer flounder fishery. For the reasons stated below, we formally request that you reconsider this decision and afford New Jersey a full and fair opportunity to have its entire appeal heard and decided by the ASFMC Policy Board.

The decision to deny a hearing on New Jersey's arguments based on Criteria 3 and 5 is both regrettable and wrong. New Jersey's arguments on these criteria clearly meet the appeal criteria, raise significant issues regarding the Interstate Fisheries Management Program (ISFMP) Charter and Addendum XXVIII, and should be heard and considered on May 11 during the ASFMC meeting.

Failure to even allow for a full hearing of the substantive flaws of Addendum XXVIII is arbitrary and unreasonable. Many of the issues New Jersey raises relate to requirements of the ISFMP Charter that were not followed in drafting and approving Addendum XXVIII. An appeals system that does not provide aggrieved member states with a real opportunity to be heard on substantive violations of the ISFMP Charter provisions is both unfair and improper.

The April 14, 2017 decision to deny a hearing on Criteria 5 attempts to dispose of the issues raised by concluding that all the issues raised by New Jersey were purportedly "foreseen" by the ASMFC. To the extent that the ASMFC foresaw, but disregarded, the issues raised in New Jersey's appeal, it is evident that these issues were either not fully considered or were not understood by the ASMFC. The issues presented by New Jersey are of great importance and deserve nothing less than full deliberation and discussion.

As discussed in New Jersey's appeal, the ISFMP Charter Section 6(a)4 requires that "management measures shall be designed to minimize waste of fishery resources." But the data shows that for the first time in New Jersey's history, the State is being directed towards a policy in which more summer flounder will die as discards than as harvested fish kept by anglers. That result is contrary to the goals of ASFMC. That the ASFMC gave passing consideration to one potential solution – a slot limit – does not absolve it of the responsibility to minimize fishery waste.

The notion that New Jersey anglers will cause greater mortality through discards than harvest is not only counterproductive to the fundamental goal of managing fisheries, it also defies simple common sense. New Jersey is strongly committed to and is already taking steps to reduce the mortality rate through education, hook choice, and other methods. We will be promoting NOAA's own FishSmart program across the entire fishing community and will be supplementing this excellent program with specifically targeted messages through every outlet available to us. But this is not enough; the ASFMC must craft sensible management measures to prevent such an obvious and unconscionable waste of the summer flounder fishery.

Likewise, contrary to Section 6(a)(1) of the ISFMP Charter which requires that "management measures shall be designed to ... maintain over time, abundant, self-sustaining stocks of coastal fishery resources", Option 5 to Addendum XXVIII is also nonsensical because it promotes the removal of larger breeding females. It ignores the fact that 90 percent of the summer flounder found in the waters off New Jersey's coast that are at least 19 inches in length are breeding females. Removing from the fishery those fish that are most capable to replenish the fishery does not meet our shared goal of a sustainable fishery.

The April 14, 2017 decision also sidesteps New Jersey's arguments on numerous other issues. It characterizes the unfairness/equity issue under Section 6(a)(7) of the ISFMP Charter as relating to the percent reduction in harvest among the different states. What the ASFMC failed to acknowledge is that the unfairness to New Jersey arose from the impact of forced regionalization, *i.e.*, requiring New Jersey to have the same management measures as New York and Connecticut off the Atlantic Coast.

The regionalization continues unfairly, though Marine Recreational Information Program (MRIP) and National Marine Fisheries Service (NMFS) Trawl Survey data show that summer flounder off the coast of New Jersey are smaller than summer flounder in New York and Connecticut waters. Simply put, maintaining the same size limit will have a greater adverse impact on New Jersey than on either New York or Connecticut. Because fishery resources are not being fairly allocated, the negative impact will be greater upon New Jersey than on other states despite a similar target percentage reduction in harvest. This devastating impact was not fully considered or disposed of during the Addendum XXVIII process or in the April 14, 2017 decision. New Jersey's appeal should be heard.

Furthermore, according to Section 6(a) of the ISFMP Charter, fishery management programs and management measures must take social and economic considerations into account. Section 6(b)(1)(v)D requires that fishery management plans review the social and economic characteristics of the fishery. Neither of these sections are enforced here.

The April 14, 2017 decision notes that, as a matter of practice, the ASFMC does not draft full socioeconomic analyses for Fishery Management Plans and does not have the resources to do so. The letter claims that public commenters and the Advisory Panel input noted such concerns and that the concerns were considered. This, however, misses the point; the process leading to the proposal and adoption of Option 5 in Addendum XXVIII included, at best, cursory consideration of the social and economic impact on New Jersey.

The ASFMC's lack of resources does not justify adoption of measures with a devastating impact on a member state's fishing community without a full review of such impacts as required by the ISFMP Charter. At a minimum, New Jersey should be permitted to present its appeal on this issue.

The ASFMC also refused to hear New Jersey's appeal under Criteria 3 regarding application of technical data that the ASFMC itself recognized has serious flaws. The ASFMC's letter of April 5, 2017, pp. 1-2, to the Regional Administrator of the Greater Atlantic Regional Fisheries Office states that the Technical Committee "has expressed concern over the volatility of [MRIP] harvest estimates and the predictability of crafting measures to achieve a specified harvest target at the state or regional level using conventional tools" and must "work almost exclusively with preliminary harvest data when performance is ultimately weighed against the final estimates."

Furthermore, the ASFMC's letter, p. 2, also states that "recreational management utilizes only preliminary MRIP harvest point estimates, without measures of uncertainty, to attempt to predict/constrain future harvest point estimates." Nonetheless, the ASFMC unreasonably continues to maintain that it is appropriate to use MRIP data to establish year-to-year management measures. It is not appropriate to do so, and New Jersey should be heard on this issue.

Finally, New Jersey raised concerns about the increased likelihood that the regulated community will not comply with these new more stringent regulations, especially considering the unfairness to New Jersey discussed above. MRIP data collection depends, in part, upon the recreational anglers' trust in the governing bodies. The fact that the ASFMC is unwilling to hear New Jersey's appeal on major issues of concern will further erode the fishing community's trust in the ASFMC.

New Jersey requests the opportunity to be heard on all issues raised in the March 24, 2017 letter. As such, New Jersey respectfully requests that the ISFMP Policy Board reconsider its response to New Jersey's appeal request letter and accept all the issues for full consideration on May 11, 2017.

Sincerely,



Bob Martin
Commissioner

cc: NJ Attorney General Christopher Porrino
Samuel D. Rauch III, NOAA, Acting Assistant Administrator for Fisheries
NJ Congressional Delegation