

# Atlantic States Marine Fisheries Commission

## Summer Flounder, Scup, and Black Sea Bass Management Board

*August 7, 2013*

*4:00-5:15 p.m.*

*Alexandria, VA*

### Draft Agenda

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

1. Welcome/Call to Order (*D. Simpson*) 4:00 p.m.
2. Board Consent 4:00 p.m.
  - Approval of Agenda
  - Approval of Proceedings from February 2013
3. Public Comment 4:05 p.m.
4. Summer Flounder Recreational Working Group Report 4:15 p.m.
  - Technical Committee Report (*J. McNamee*)
5. Report on Omnibus Recreational AM Amendment (*K. Rootes-Murdy*) 4:50 p.m.
6. Consider FMP Review and State Compliance Reports (*K. Rootes-Murdy*) **Action** 5:05 p.m.
  - Summer Flounder
  - Scup
  - Black Sea Bass
7. Other Business/Adjourn 5:15 p.m.

The meeting will be held at the Crowne Plaza Hotel, 901 North Fairfax Street, Alexandria, Virginia; 703-683-6000

*Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015*

# MEETING OVERVIEW

**Summer Flounder, Scup, and Black Sea Bass Management Board Meeting**  
**Wednesday, August 7, 2013**  
**4:00-5:15 p.m.**  
**Alexandria, Virginia**

Chair: David Simpson (VA) Assumed Chairmanship: 1/11	Technical Committee Chair: Jason McNamee (RI)	Law Enforcement Committee Representative: Fresco
Vice Chair: David Pierce	Advisory Panel Chair: vacant	Previous Board Meeting: February 21, 2013
Voting Members: MA, RI, CT, NY, NJ, DE, MD, PRFC, VA, NC, NMFS, USFWS (12 votes)		

## 2. Board Consent

- Approval of Agenda
- Approval of Proceedings from February 21, 2013

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

## 4. Summer Flounder Recreational Working Group Progress Report (4:15-4:50 p.m.)

### Background

- The Board established a working group to look review the summer flounder recreational fishery. The working group is focusing on methods to allow for equitable harvest opportunities for along the coast.
- The Summer Flounder Working Group has held one conference call and came up with tasks for the Technical Committee regarding how to achieve more equity in the recreational harvest
- The Working Group tasked the Technical Committee to model retention rates coastwide in the recreational fisheries at the state level

### Presentations

- The TC Chair and staff will provide an update on modeling Summer Flounder Recreational retention rates and considerations

### Board actions for consideration at this meeting

- Review current work by the Technical Committee and provide further guidance on data and information needs

## **5. Report on Omnibus Recreational AM Amendment (4:50-5:05 p.m.)**

### **Background**

- In December 2012 the Mid-Atlantic Fisheries Management Council initiated an omnibus amendment to consider alternative accountability measures (AMs) for the recreational Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass fisheries.
- AMs for the Council's recreational fisheries include a pound-for-pound reduction from a subsequent year ACT when the recreational catch estimate exceeds the ACL.
- In June 2013, the Council approved the Omnibus Amendment for submission to the Secretary of Commerce.

### **Presentations**

- Overview of the Omnibus Recreational Amendment by K. Rootes-Murdy

### **Board actions for consideration at this meeting**

## **6. Consider FMP Review and State Compliance Reports (4:50-5:10 p.m.) Action**

### **Background**

- Compliance reports were due July 1, 2013 (**Supplemental materials**)
- The Summer Flounder Plan Review Team reviewed each state report and compiled the Fishery Management Plan Review (**Supplemental materials**).
- The Scup Plan Review Team reviewed each state report and compiled the Fishery Management Plan Review (**Supplemental materials**).
- The Black Sea Bass Plan Review Team reviewed each state report and compiled the Fishery Management Plan Review (**Supplemental materials**).

### **Presentations**

- Overview of the Fishery Management Plan Review Reports by K. Rootes-Murdy

### **Board actions for consideration at this meeting**

- Approval of *de minimis* status for Delaware state Scup fishery
- Approval of *de minimis* status for Delaware state Summer Flounder fishery
- Approval of the 2013 Fishery Management Plan Review and State Compliance Reports for summer flounder, scup, and black sea bass.

## **7. Other Business/Adjourn**

DRAFT

DRAFT

DRAFT

**DRAFT PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
SUMMER FLOUNDER, SCUP AND BLACK SEA BASS  
MANAGEMENT BOARD**

**Crowne Plaza Hotel - Old Town**  
Alexandria, Virginia  
February 21, 2013

**These minutes are draft and subject to approval by the Summer Flounder, Scup and  
Black Sea Bass Management Board.  
The Board will review the minutes during its next meeting.**

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**Consider Approval of State Scup Recreational Proposals ..... 17**

**Reconsider the Black Sea Bass 2013 Quota ..... 18**

**Consider Draft Addendum XXIII for Final Approval ..... 21**

**Adjournment ..... 28**

## INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of October 25, 2012 by consent** (Page 1).
3. **Move to approve the 2013 state summer flounder recreational proposals approved by the technical committee** (Page 11). Motion by David Pierce; second by Mark Gibson. Motion carried (Page 11).
4. **Move to initiate a fast-track addendum to allow for the use of any unused quota by other states for 2013 only** (Page 11). Motion by James Gilmore; second by Adam Nowalsky. Motion carried (Page 15).
5. **Move to adopt the northern region's scup option providing the 35.5 percent liberalization. For the party and charter mode, an open season of May 1 through December 31<sup>st</sup> with a 30-fish bag limit and 45-fish limit for one wave, and a ten- inch minimum size limit; for the private boat, the same season of May 1 through December 31<sup>st</sup>, 30-fish bag limit, and ten-inch minimum size limit; and for the shore mode, Massachusetts, Rhode Island and Connecticut, the same season of May 1 through December 31<sup>st</sup>, 30-fish bag limit and a nine-inch minimum size** (Page 18). Motion by David Pierce; second by James Gilmore. Motion carried (Page 18).
6. **Move to reconsider the 2013 black sea bass quota of 4.5 million pounds and increase to 5.5 million pounds (recreational harvest limit of 2.26 million pounds and a commercial quota of 2.17 million pounds) consistent with the Mid-Atlantic Fishery Management Council decision** (Page 19). Motion by David Pierce; second by Pat Augustine. Motion carried (Page 21).
7. **Move to approve Addendum XXIII using Option 4, ad hoc regional measures, with the southern states to set their regulations consistent with federal regulations** (Page 25). Motion by Adam Nowalsky; second by Pat Augustine. Motion carried (Page 27).
8. **Move to approve the final Draft Addendum XXIII to the summer flounder, scup and black sea bass fishery management plan for public comment with changes and corrections as agreed to today** (Page 28). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 28).
9. **Motion to adjourn by consent** (Page 28).

## **ATTENDANCE**

### **Board Members**

David Pierce, MA, proxy for P. Diodati (AA)	David Saveikis, DE (AA)
Bill Adler, MA (GA)	John Clark, DE, Administrative proxy
Rep. Sarah Peake, MA (LA)	Roy Miller, DE (GA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Tom O'Connell, MD (AA)
Bill McElroy, RI (GA)	Mike Luisi, MD, Administrative proxy
Rick Bellavance, RI, proxy for Rep. Martin (LA)	Bill Goldsborough, MD (GA)
David Simpson, CT (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Lance Stewart, CT (GA)	Jack Travelstead, VA (AA)
James Gilmore, NY (AA)	Rob O'Reilly, VA, Administrative proxy
Pat Augustine, NY (GA)	Kyle Schick, VA, proxy for Sen. Stuart (LA)
Peter Himchak, NJ, proxy for D. Chanda (AA)	Louis Daniel, NC (AA)
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	Jaime Geiger, USFWS
Tom Fote, NJ (GA)	Bob Ross, NMFS

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

### **Ex-Officio Members**

Mark Robson, Law Enforcement Representative	Jason McNamee, Technical Committee Chair
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### **Staff**

Robert Beal	Pat Campfield
Toni Kerns	Tina Berger
Katie Drew	Laura Leach

### **Guests**

Sen. Ronnie Cromer, SC (LA)	Kelly Danit, NOAA
Rep. Walter Kumeiga, ME (LA)	Kiley Dancy, MA FMC
Gerry Petrella, Ofc. Sen. Schumer (NY)	Rick Robbins, MA FMC
Willis Spear, Yarmouth, ME	Jason McNamee, RI DEM
Steve Heins, NYS DEC	Raymond Kane, CHOIR
Carrie Kennedy, MD DNR	Lewis Gillingham, VMRC
Danielle Rioux, NOAA	John Bullard, NMFS

The Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, February 21, 2013, and was called to order at 9:30 o'clock a.m. by Chairman David Simpson.

### **CALL TO ORDER**

CHAIRMAN DAVID SIMPSON: Good morning, everyone, if we can assemble the Fluke, Scup and Sea Bass Board.

### **APPROVAL OF AGENDA**

CHAIRMAN DAVID SIMPSON: The first thing we need to do is approve the agenda. Are there any changes or additions to the agenda? Seeing none; we will consider, if there is no objection, approval of the agenda.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN DAVID SIMPSON: We need to approve the proceedings from the October 2012 meeting. Are there any changes or comments on that? Any objection to their approval? Seeing none; we will consider those approved.

### **PUBLIC COMMENT**

CHAIRMAN DAVID SIMPSON: Is there any public comment on items that are not on the agenda? Seeing none; we move to Item 4, and that is to consider approval of the state summer flounder recreational proposals. I think Jason and Toni have a presentation for us on that.

### **CONSIDER APPROVAL OF THE STATE SUMMER FLOUNDER RECREATIONAL PROPOSALS**

MS. TONI KERNS: I am going to go through the state proposals and just some information about summer flounder recreational harvest along the coast. This first figure is just an indication of what the summer flounder recreational harvest minimum sizes are along the coast. Up in Rhode Island you see an 18-1/2 total length. New York has 19-1/2; New Jersey 17-1/2; Delaware 18; Virginia and PRFC are at 16-1/2; Maryland is at 17; and North Carolina is at 15 inches. That was the regulations in 2012.

The red shading is each state waters harvest percentage relative to New Jersey. The darker the red shading is the larger the number of fish and then

the white is the lowest number of fish, which is Maryland. The bottom figure is the percent harvest versus catch. The blue is the actual harvest and the total catch is in red.

You can see that some of the states such as New York and New Jersey have a higher number of releases much higher than their actual harvest. This is what fluke availability is by size and area. This is looking at the NEAMAP data. The blue bar is the sights off of the DELMARVA. The red is the sights off of New Jersey. Green is the sights off of New York, and the purplish color is the sights off of Rhode Island.

You can see that there is a larger percentage of fish available in both New York and Rhode Island; and especially as we start to get up in the larger size ranges across the lower – or you can see that we go from greater than 16 inches up to greater than 19 inches at the end. Next is the same figure, but it also includes the CHESMAP information, which is in the dark blue, the first bar. The Long Island Sound Trawl Survey is the darker red color, the second bar. Then we have the NEAMAP data that follows the same as before; DELMARVA in green; New Jersey in purple; New York in the lighter blue; and Rhode Island in the orange. This shows as well that we have a large number of fish available seen in the CHESMAP data as well as the Long Island Sound Trawl Survey Data compared to that of the fish that are of the coast of the DELMARVA and New Jersey.

This slide shows what states' targets were in 2012. The third column is the projected 2012 harvest through MRIP data. The 2013 state harvest target and what a state's reduction or liberalization – and I apologize; a negative number in the reduction really means liberalization. Those translated when they shouldn't have.

All the states have liberalizations except for New York and New Jersey, which have reductions. New York is 14 percent and New Jersey is 15. States could liberalize anywhere from 36.6 percent as a low in Rhode Island to a high of 257 percent in Maryland. This last column shows the proposed harvest liberalizations by the states in each of their state proposals that were sent and reviewed to the commission.

The lowest proposed liberalization was from North Carolina who is proposing to stay status quo, so they're utilizing none of their liberalization. The highest is from Maryland, which proposes to use



about 181 percent of their 257 percent liberalization. These are each of the state proposed options.

I am not going to specifically say what each of their proposals are, but just to let you know some of the technical committee notes on each proposal. The technical committee recommended approval for both Massachusetts and Rhode Island. Rhode Island has one proposal that does drop their size limit and Massachusetts is proposing to drop their size limit as well.

Next are the Connecticut and New York proposals. Connecticut has a couple of proposals to drop size limits as well. The technical committee noted that for Connecticut's proposal, it doesn't meet the FMP requirement of the percent standard error less than 15 percent for separate modes.

Connecticut is proposing as it had last year and was approved for a separate shore mode at specific sites. They have just a smaller size limit for their shore modes of 42 specific sites. There is little data to support the shore mode analysis, but the state of Connecticut has provided evidence for increased data collection for the shore mode in 2013, which was a request by the technical committee from the previous year.

For the New York proposal, these are all for the – in order for New York to reduce by 14 percent, they all meet that reduction. The technical committee noted, though, that any further increases in the size limit potentially will increase non-compliance and will increase the disparity between New York and their neighboring states' regulations.

The technical committee recommends a change in season over a change in size limit for the state. New York is currently one inch greater than all the other states within the management unit. For New Jersey, the technical committee did not approve the status quo regulation because it obviously does not meet the 15 percent required reduction. New Jersey used two methods to develop their proposals.

The first followed the description that is outline in our conservation equivalency memo, and the second uses volunteer angler survey methodology that they presented in 2012. The technical committee does have some reservations about the volunteer angler survey methodology, but those options that were generated by this methodology are more conservation than the options created through the conservation equivalency memo, so they were approved.

Delaware and Maryland's proposals were both approved and both states do have proposals to reduce their size limit; Maryland as low as 15 inches and Delaware as low as 16.5 inches. For Virginia, the technical committee felt that Option 2 was risk prone because there is very little buffer between the projected harvest estimate and the actual harvest target within the range.

Virginia uses three different data sources to do analysis for their data, and so that is why there is a range of percent liberalization for the state. The technical committee did approve all of their options. North Carolina, as I said before, is proposing to stay status quo. For 2013, if the states utilize the maximum proposed harvest, there would be 176,500 fish projected to not be harvested that would be allowed under the RHL.

If states utilize the minimum proposed harvest, there would 389,963 fish left over from the total RHL. For New York to remain status quo in their regulations from 2012 to 2013, 73,368 additional fish are needed, so this would mean that they wouldn't have to take their 14 percent reduction. For New York to drop to a 19-inch minimum size limit to get them closer to the regulations of their neighboring states, they would need 162,347 additional fish. For them to drop to 18-1/2 inch minimum size, they would need an additional 337,040 fish.

For New Jersey to remain status quo and not take their 15 percent reduction, 175,977 additional fish would be needed. Another way to look at this in order to try to help out the state of New York and New Jersey with their reductions is we could have all the states that have liberalizations only use 15 percent of that liberalization and then allow New York to drop to 18-1/2 inches and also allow New Jersey to only take a 13 percent reduction instead of a 15 percent reduction. That would still allow us to reach the RHL of 2.5 million fish.

One other note for New Jersey's proposal, when we've gone through trying to figure out ways to look at the New Jersey and the New York reductions, the New York and Connecticut technical committee members looked at their proposal and saw that if they raised their size limit a half an inch they actually would get to their full reduction.

In their proposal it said that only gave them an 8 percent reduction, but in reality that gets them to full 14 percent reduction; so raising a half an inch would check their box for their reduction. That is all I have for my presentation and I am happy to take questions.

MR. PETER HIMCHAK: Just an observation or a comment, really, when each state submits its proposals on summer flounder, they're required to give their past performance under conservation equivalency for the last 12 years. This is addressing the disparity of minimum size limits along the coast.

If you look at New Jersey's proposal in particular, our response to any reduction has been to shorten the season. We begrudgingly increased the minimum size limit. We would rather constrain the season as controlling effort. That has been our strategy during the 12 years of conservation equivalency. In fact, we were able to actually go down a half an inch last year. If you look at each – it is very interesting to see the required response and how they adjusted their measures. It should be in every state's history of conservation equivalency, and I think that explains a lot of the difference between New York and New Jersey in particular. I just wanted to add that comment.

MR. JAMES GILMORE: Mr. Chairman, I have got a few comments here. Toni, that was a great presentation. I think it laid out very clearly. I love your maps now, too, they're great. It was Dave's idea, okay. The 2012 landings obviously have created a difficult situation for New York and New Jersey with those reductions of 14 and 15 percent.

As Pete had just alluded to, there is a slight difference in New York in terms of what has gone on. New York's fishery is very different from the east end of Long Island versus the west end. Every year in the proposals and we proposed this year was to do the same thing to try to take it out of a season and keep that size limit down because that we feel is not the correct thing to be doing.

However, because primarily the party/charterboat industry, on the east end it is a May fishery. They want it opened May 1<sup>st</sup>. On the west end it is a fall fishery and they want to go to as late in September as they can. We've tried different variations over the year including three or four years ago we did a mid-season closure, which was really a disaster.

That complicates our fishery and what ends up happening is every time we go before our Marine Resources Advisory Council the party and charterboat industry wanted essentially to have that season sacrosanct and essentially that drives the size limit up, which is again probably the worst thing we could be doing.

The state-by-state equivalency method that we have been using has been difficult for us. However, there seemed to be a little progress two years ago when the fishery was rebuilt and we were able to actually get our full season back and then even last year drop our size limit. However, that is a very slow progress.

Then after seeing the numbers this year, we seem to be going backwards now because we're going to be going back to larger fish, which we just really can't do. It is not a good thing from just a basic management standpoint. We're catching large fish which are all females. Our discard rate, as you can see from the graphs, is very high so we're killing a lot of fish for every keeper we take.

I think it has been portrayed mainly as a maybe New York/New Jersey and particularly a New York problem in the past, but now as I can see from the other states for the all the underharvest they're doing we may be having an impact on the overall population because we're taking all those females and will maybe be seeing some reductions in the stock if we don't start correcting this. The size limit is really the problem.

In addition to that, the NEAMAP data is clearly showing the stock as we have been saying has been moving to the north. It is up into Rhode Island now. We're not adapting to what is going on with that fishery, and the end result is that New York is one of the biggest players in this. It is taking very large fish, which is just not a healthy thing to be doing.

What we're trying to do – and when I've talked to some of the other states the couple of weeks about coming up with an approach to try to fix this both on a short term and long term, and the fact there is quite a bit of underharvest and there is some fish left on the table – is that on a short term maybe work out a strategy where we could try to get our size limit down and essentially get more equitable between the adjacent two states so that we stop this escalation back to 20 and 21 inch fish, which is just again a bad idea.

The first part would be to try to utilize those fish on a short-term strategy, just for 2013, and then hopefully as a second part of this is start working on a new management approach as we go forward to essentially make this a healthy fishery and a fishery that is available to everybody so that we can all support our fishermen so they can make a living at it. When we get to the point, Mr. Chairman, I have motions but I would like to hear some discussion from the other commissioners. Thank you.

CHAIRMAN SIMPSON: I do have a couple of people on the list already. Just to frame where we are or remind folks, if we go the normal conservation equivalency route, all we do is we approve the technical committee work and everyone goes back home and sets their measures, and this could be a five-minute meeting.

I think what we have been struggling with and what I've spent a lot of time on in the last two or three months especially and over the last couple of years is trying to figure out how we deal with the changing circumstances out there, the change in the stock size, the associated change in the distribution of these fish. We have shown flexibility over the years.

When we were at coast-wide management I recall particularly that did not work well for North Carolina because they have a unique November/December kind of fishery and our coast-wide seasons were not compatible and that is why we went to state by state. We have tried to do that with black sea bass.

Last year of two years ago Maryland came with a concern that, geez, they're taking a disproportionate hit with coast-wide measures so the need for some flexibility. Generally I think one of the obligations or the reasons to get together here is to figure out how we share in resources. Sometimes the terminology makes a big difference.

We talk a lot about allocation when I think the commission – I would like to see the commission move to more of this resource sharing, more of a dynamic process that responds to where the fish are and make sure that no one is carrying more of the load than anyone else. Summer flounder is the example I think for a long time with New York.

Their retention rate this past year was 9 percent. Maryland's was also about 9 percent, but everyone else was in the 14 to 20 percent range, and I think that is a reflection of how something in our 1998 sort of proxy allocation approach didn't work right. They're two inches above their – or at least an inch above their neighbor to the north and two inches above their neighbor to the south, and it stands out by every measure that I can't find a logical rational basis for it.

I have looked at the NEAMAP data. We have looked at the fishery length frequency data. I can't find an explanation for it and I think it is a flaw in our current plan. I am hoping we can have some discussion about how we might be able to address

this problem that now this New York partner has. We have talked about North Carolina and we have talked about Maryland in another context. One of the things that – can you flip up the rather simple table for a second – this was one approach that I had tried just trying to figure out a way forward for the board for something to think about where each states that could liberalize – I call them the other states; not New York and New Jersey – went up 15 percent and we could make the balance sheet work.

That might not be quite enough of what people need based on my discussions with you sort of offline, but I heard sort of common theme of if could get down a half an inch, that would be a big boost that would be important to our fishery. It has the added advantages, as Jim was pointing out, of helping us to address this discard mortality problem we have.

It is getting better, but if you recall two years ago we were up to a discard rate of 93 percent on the coast where we were killing more fish than we were harvesting on the coast. It really was getting bad for all of us. A couple of states to the south had 19-inch minimum sizes, so you can imagine the discard mortality that is happening in New York.

If we can get that average coast-wide minimum size down, that benefits every state because that works into the calculation of allocation coming in pounds translated to numbers of fish. Everyone carries that load, so there is a benefit to every to everyone I think of addressing this problem and frankly I'm hoping we can find a way to address what I think has been a – New York as the outlier state in even worse management difficulties.

When we were at 19-1/2 inches, they were at 21. In commercial terms that is a jumbo fish. If the only fish you can take is a jumbo category fish., that is kind of crazy. Those are all female fish. An alternative to this one that I crafted at about 5:30 this morning was simply to take – going through each state's plans, if you took your option that just lowered your minimum size for other states by a half inch and New Jersey managed to limit their landings to a million pounds, which is slightly less than what their overage is, it gives a little bit of break; that would allow New York to go to 18-1/2 inches.

I'd like some input from the board on what they think about this. We would be at 2.6 million fish and not 2.5; but I think when you think about the number of pounds that we would land, I think we would be right within quota, and certainly it is well within the operating margins of error with the data we have.

With that little bit of background on what I was hoping as Board Chair to accomplish today, I would like some more comments from the board. Adam.

MR. ADAM NOWALSKY: Mr. Chairman, first off, I want to extend a thank you to yourself as well as all the commissioners that have spent time in recent months recognizing the fact that we can't continue to leave this room tell our constituents that we have rebuilt fisheries but that we're going to continue to ratchet down regulations.

People are being penalized for going the speed limit essentially and I applaud this board for taking a leadership position at this point and trying to find a way out of that box. Now, the question is how do we move forward, and I think, Mr. Chairman, you have outlined a number of very good ideas that way.

Before I get to a couple of comments, I just wanted to ask two questions. One, Toni, you had put up a slide with a number of bar graphs showing distribution of sizes throughout the range. One of things that jumped out at me was that most of the time we have talked about – and I know this just shows two different indices and historically we have talked about the southern range of the fish having primarily smaller fish; but this would actually seem to indicate that according to these two indices, the southern range actually sees more bigger fish than New Jersey does. I was wondering if there were other indices that supported that conclusion. It was something that jumped out to me here today.

CHAIRMAN SIMPSON: This is work that I actually asked my technical committee person to do and some others in the office. They have been working on fluke a whole lot lately to help me with today. This is NEAMAP Trawl Survey data so it is the ocean predominantly, so it wouldn't reflect Maryland to Virginia, Chesapeake Bay, Upper Bay.

Based on the NEAMAP data that has been going on, we used the entire time series. Chris Bonzak was very helpful me this data on a Saturday afternoon, and I worked on it some over that weekend, and then my staff took over from there. It did indicate that in the DELMARVA ocean waters there bigger fish.

This was eye-opening to me and it did indicate that off of New Jersey – I was looking for a rational basis for where states had minimum sizes. It seemed to me that logically along the coast there should be some kind of a fairly smooth continuum of minimum size requirements. So it does indicate that there is some reason why New Jersey might have a smaller

minimum size than New York or Rhode Island or even Connecticut.

That is where I found it and that is where it is from. It does not reflect the Upper Bay area and some of the inner estuaries that – I was talking with Pete this morning. Once you get past May and you're inside the New Jersey barrier beach there, you're going to only see smaller fish. It is ocean waters.

MR. NOWALSKY: And then the second question was the last slide that Toni had up there with regards to one proposed way and then you alluded to something else you had put together here in the eleventh hour; did we actually have that on paper that we could look at up here at this point as a slide.

One of the things is I am certainly in favor of doing whatever we can to bring regulations closer together along the coast in particular with neighboring states and certainly it is a good time to try to help New York in this instance. I don't look at it as we're throwing a state a bone this year. I really look at us as this is us embarking on a way to manage rebuild fisheries. I really think that is an important concept to understand.

That being said, I think it is important, you know, we talked about – Toni had an earlier slide about what New Jersey would need to keep status quo. You mentioned something that made the reduction lower or at least got it close.

I think that is something that is important here; especially we have talked about management strategies that Pete addressed; that Jim also alluded to with regards to the technical committee's advice that using season is the best way to constrain harvest, so the prospects of increasing size in New Jersey; whereas, neighbors in other states would mostly be looking at liberalization, I'm not sure that is the message we want to walk out of here sending today. I wasn't sure if you had something that you could up here and we could all look at in front of us to use as a decision-making basis, something that doesn't show, well, New Jersey is going to go up in size as this one does.

CHAIRMAN SIMPSON: Yes, I think the closest thing we have for a graph is the chart because that has the minimum sizes; so just be able to – however much we will be able to blow it up. You know, North Carolina is at 15 and apparently is planning to maintain status quo. Virginia and PRFC are both at 16-1/2, and what I'm suggesting is they would – and they all have these proposals in there.

If they went to 16; if Maryland went to 16-1/2; Delaware is 18 and they would go to 17-1/2 – that is a proposal of theirs – New Jersey, because of the overage, my calculation and the numbers that my technical committee person and New York, you know, in their review suggested a half inch is all you need to do.

Connecticut would go from 18 to 17-1/2; Rhode Island from 18-1/2 to 18; and Massachusetts would be able to go from 16-1/2 to 16. And with New York getting to 18-1/2, you have got at least some smoothing of the management that to me you would expect that logically from a distribution of the resource. That is the closest I can come to giving you something to look at while you think about it.

MR. NOWALSKY: Okay, and then the final question, Mr. Chairman, is what is our mechanism for doing this? What are we calling this? Is this specifically a mechanism in the plan? What are we calling this?

CHAIRMAN SIMPSON: To do this and allow New York to move to the 18-1/2 inches in this example would require an addendum. I think we would have to want to do this by a fast track. Toni could speak to the time table of that; but in discussion with New York, it sounds like they would have the time to handle the fast track and set their regulations.

MS. KERNS: In terms of timing for a fast-track addendum, I could try to pull something together by Wednesday of next week. I think I could manage that with the amount of stuff that I have already done. The board would need to review that fast-track addendum either through an e-mail vote or a conference call, and then we could have that addendum out for 30 days.

Then at the end of that 30-day period, on Day 31 we could have another e-mail vote or a conference call vote to consider for the options that are in the addendum. I don't have a calendar in front of me right now, so that would be like the end of March. I don't know if that would work with New York's timeframe or not or New Jersey or other states.

CHAIRMAN SIMPSON: Yes, that would be the timeframe it would require and the process would be a fast-track addendum. David.

DR. DAVID PIERCE: First a suggestion for Toni; you provided information from the NEAMAP work regarding the size distribution of the fish and you

only went to Rhode Island. You didn't include Massachusetts and that is because the NEAMAP survey, the one that is done through VIMS, only goes up to the Rhode Island/Massachusetts Border. Please don't forget that we have the bottom trawl survey in Massachusetts' waters going back to '78. That data needs to be included for future reference because it sounds like fluke don't go beyond Rhode Island borders. That is just a suggestion to include that in the future because the board can benefit from that information.

CHAIRMAN SIMPSON: David, to that, we tried to get the Massachusetts data and Rhode Island data while we were working on this in the last few weeks in Connecticut, and we just weren't able to get it quickly enough, but there is a summary of it in your proposal. That was my hope is to build this in its entirety.

The NEAMAP data, when it says Rhode Island in quotes, that is Rhode Island Sound, Block Island Sound. At one level NEAMAP is nice because it is the exact same gear used over the range. I did want to fill it out with other surveys that are capable of catching large summer flounder, which your survey is, our is, CHESMAP is; so you're exactly right, that is where I would like to go in the future is to pull in all these surveys to get a better look at the size fish available in at least oceanfront waters.

DR. PIERCE: Another reason why I raise it is that our survey is considered to be part of NEAMAP; so when you reference NEAMAP, again for future reference; that's all. I have a question that Toni may not be able to answer, but this is a point of information for the board. I can't recall how it works in New York so I turn to Jim.

The New York party and charterboat fleet, some segment of that fleet benefits from the auction of fish that is used as a source of funds for NEAMAP. My question is are the party and charterboat vessels that benefit from that auction, that buy fish from the auction, are they exempt from New York minimum size regulations during the open season?

MR. GILMORE: Not during the open season. In fact, we restrict the RSA to the closed season time of the year. Again, you're right, we have had – up until three or four years ago, we had very few recreational vessels involved and that was a new thing to help them make a living, but they are restricted to outside the normal season.

DR. PIERCE: So outside the normal season; do they still have to live by the minimum sizes or are they exempt from those rules?

MR. GILMORE: Outside the normal season, since it is their quota, we adjust those size limits for them because it is a poundage; and once they take that, they're essentially down, so we're not as concerned about the size limit at that point.

DR. PIERCE: Okay, so that means that – again, just to make sure the record is complete, that means that New York, for the party and charterboat vessels that are involved in the fishery, once you go beyond September 30; so I guess October and November and December, if there is any fishery there, they're not subject to any minimum size restrictions? They command whatever they want size-wise?

MR. GILMORE: Correct. We will note that we're anxiously trying to get them off the RSA Program and getting back to some – I think part of the reason is because of the size limits and what they can catch and do fair is because they're getting very, very low landings when they're doing the normal size limits when it is even at 19-1/2. That lower size limit is more of a business thing for them. If we could get it to a more reasonable size limit, I think a lot of them would like not to invest in the RSA.

CHAIRMAN SIMPSON: Just a second, David; Toni to this point here so we're clear.

MS. KERNS: I just want to make sure the board understands that those landings that are taken under RSA do not count towards their recreational harvest. That is a separate poundage. It is only to the RSA. It is not included in your MRIP estimates, so that is not a part of what you see on what I have presented for MRIP.

DR. PIERCE: That is true, but it does come out of a research set-aside that these states, all of us, contribute to.

MS. KERNS: That is correct.

DR. PIERCE: So I am hopeful that eventually we can wean the recreational fishery off of the auction since it never was really designed for recreational fishermen and just for commercial, but it has morphed into that and it causes all sorts of grief for states. New Jersey can certainly comment. I appreciate Jim's candor on this. He has been great relative to this issue; so not a criticism. I just wanted to make sure I understood what is going on.

All right, relative to the suggestion offered up by the Chair as a way to assist New York in particular to get that minimum size down to a lower amount, I just wanted to note that the availability of the larger fish to New York fishermen seems to be fortunately very great. Because there was a 19-1/2 inch minimum size, big fish, in 2012, and despite that fact the New York harvest went beyond the target, from 400 – the target was 491,000 fish, approximately, and they had 514, according to the survey; so a lot of big fish were available and they were caught, so it doesn't seem like the minimum size was very restrictive for New York because of the availability of the larger fish.

But, anyways, now back to Massachusetts' situation and our attitude towards this suggestion by the Chair. We have been allowed – because our target was 153,000 fish in 2012 and we took 77,000 fish, we're allowed a 77.5 percent liberalization. We did not take advantage of all that opportunity because, well, we're talking about a relatively small number of fish, 60,000 fish between the 77 and the 150 and 137,000.

By dropping it down one-half an inch to 16 inches, we get about a 22 percent liberalization on the maximum side. So if we went to extend the season beyond September 30 to take advantage of the fish that are still in our waters, we felt that we would run the risk of, well, getting too close to that allowable liberalization and maybe exceeding it, so we decided to be cautious and not to make a change – propose a change for 2013 and the season; just the minimum size.

So, in terms of how this appears to the public by putting fish into the pool, so to speak – that is fish we're not going to use – we donate to the other states to assist them, the questions will be raised, well, that is fine and dandy, you're doing that, it's all well and good, but in Massachusetts why didn't you extend your season as opposed to donating the fish to the other states? So, it is just a political consideration, so to speak, how to deal with our public.

Nevertheless, we have decided not to go with the 77 percent liberalization in Massachusetts because we thought that was too risky; and it is only 60,000 fish so we could run afoul and exceed our target, especially if fishermen get off of black sea bass and begin to target fluke again, because sea bass has been their preferable target, it seems.

So, relative to your suggestion, it is attractive. I'm tempted to support it. It is the first I have really seen it. Although the Chair has mentioned this before in

some private conversations, I haven't seen it on paper yet so I haven't had a chance to chew on it and discuss it with my colleagues, my other state colleagues, Massachusetts' colleagues.

So, at this moment I am tempted to support it; I have got to think a little bit more about it. So those are my views and I thank the Chair for the work that he has been doing to try to help out and the minimum sizes down to lower amounts to assist the states that are finding themselves challenged with a larger minimum size.

CHAIRMAN SIMPSON: Thanks, David. Jim, did you have something directly in response to that?

MR. GILMORE: Yes, just to that point – and that has been raised, David, the issue of we're flirting with the quota and essentially there is no buffer and essentially if we all liberalized or whatever is a concern. However, one mitigating factor – and this is not speculation – the two states that are the big harvesters on this have essentially gone through – we are at lockstep with what New Jersey had to do through Hurricane Sandy.

There were 65,000-plus vessels, most recreational, that went underwater. I have the misfortune of having two homes that went underwater. My boat, in getting it in the water and going fishing this year, which is usually my passion, is probably the least of my worries. Many of my fishermen in the community I'm in are essentially in the same boat; no pun intended.

But, we're really anticipating that the effort is going to be extremely off in our two states. Again, I fish in both states and I think that is something that I think pushing up against that number and maybe going over it slightly is something you normally wouldn't do; but because of the situation those two big states are in right now, I think that gives me a great deal of comfort.

MR. THOMAS FOTE: This is very difficult position for me to be in. David asked how we got here, and I think it is important to go back a little history of how we got here. When we basically did the first coast-wide regulations and we basically required Maryland and Virginia and all those states to go to 14 inches, it created huge hardships on the southern states over the northern states.

New York and New Jersey, we went to 13 to 14 inches, but we didn't take real hits. The savings we made to be able to stay at that came from the southern states. I'm going to be honest here and

actually say that is what happened. In 1998, when we looked at that and realized that transfer was going on, that is when we started using state-by-state equivalencies and basically push it.

There was a lot of discussion on what tables we chart – because I have seen some of this in newspaper articles. That is one of the reasons why I'm going through this because some people don't know what happened. We looked at the charts. A lot of those charts would have gave Jersey a certain amount of fish on black sea bass and summer flounder. We gave up 20 percent on black sea bass to basically help the other states out.

On summer flounder we said take whatever year you want. Gordon Colvin at that time from New York made the motion to take '98. Now, that's part of the history. It seemed to be working fine for New York and New Jersey and a few other states until 2001 or 2005. I am not as good as I used to be about remembering dates.

When New York's fishery went from – the recreational statistical survey, one of my favorite instruments over the years, went from 600,000 anglers – and as a former New Yorker, that's where I lived, and I could never understand why they were 600,000 and we were 1.3 million or 900 – why there was that big disparity in number of anglers – and all of a sudden they shot up by 300,000 anglers in one year.

That is when they started going over on summer flounder. There was a lot of discussion. I brought it up. I came to New York's aid and spent hours talking about it. People didn't want to hear it. I says this is going to affect it and what we should do is basically raise the quota, raise New York's part of this quota to reflect that they have been underreporting and under – and NMFS had been underestimating what they have actually been catching all these years, because they picked it up.

The following year, even though in the worse weather years we had where New Jersey went down by 300,000 anglers, New York actually went up by a hundred thousand anglers in participation, and we knew there was a problem. That is when New York started going over on summer flounder. That is a little bit of the history going.

Now we're in this situation here and we have been in a situation. As I said, Jersey has been taking seasons because we think that is the most appropriate course of action. I would love states to give me fish so I don't have to reduce, but what are the consequences?

I am trying to figure this out because where are we going to be next year when it comes to these same measures?

If this was a commercial transfer and the commercial transfer went from one state to another, we could take that so we wouldn't have to do paybacks. But, we would be required to put regulations in place that would keep us to the existing quota that we're in. That is my dilemma here.

On the recreational side, if you give New Jersey, which I would love you to do, more fish and New York more fish, where are we going to be next year when it comes to what we establish as the tract record? Because, you now are liberalizing ours at the same time that we're supposed to be cutting back, so is this going to basically now – I agree; I mean, I have my house flooded so I understand.

I'm looking at all my neighbors with boats that are in – I think it is 35,000 boats; there is still 1,400 boats floating around in Barnegat Bay. It is going to be a different year fishing-wise and maybe that is the impetus we should use for that for New York and New Jersey with the understanding that this is a one-short deal and what goes on. My concern here is we shouldn't set a precedent that allows states – Virginia has had to do it; Delaware has had to do it; we all have had to do it over the years.

We propose regulations based on MRFSS, which is always a crapshoot, and maybe MRIP is a little better except the information at this point in time, which we're hoping gets better, is not any better. They just did better models for bad information. There is also an underlying factor here which a lot of people have forgotten.

When we were doing bluefish management many years ago, they basically looked at the quota for bluefish and the number of recreational catch of bluefish. They decided at that time that NMFS had overestimated the amount of bluefish being caught by the recreational sector; so they went back on the historical data and cut it in half, arbitrarily without a peer review process on that.

That was fine except they decided to do with every other fishery where they didn't go through the data to make sure that was happening. So, the recreational sector started off with all these cuts in what they had basically harvested all those years before this happened. I think that was in '97 or '98, whatever year it was. Bruce Freeman was yelling at me about it the other day.

So, that's all the history. I thought it is important to get that on the table. I would appreciate you giving us fish, but we have got to figure out if you do that what is going to happen next year; and if we go over again, how do we rectify the situation. That is my concern here because I don't want to come to you next year and have to do the same thing. We need to take the best approach we can to keep within our limits.

MR. JACK TRAVELSTEAD: I am very sympathetic to the situation that New York finds itself in; and quite frankly they have been there for a number of years. I don't think any of us would want to have been in that situation for even one year. This is really not about helping New York. This is about helping all of us, and I think you said that earlier, Mr. Chairman.

We have heard from the technical folks for a number of years and we have heard from the stakeholders for a number of years that the way we have been managing this fishery is resulting in the targeting of large female fish and that we should try to find a way to stop that. I think what you have offered is the first step in attempting to do that, and we're trying to do here on the fly, which is fine.

This may not be the long-term solution but at least it gets us headed in the right direction. The option that you have offered – and I certainly appreciate you taking so much of your spare time to do that – that would allow the states that could liberalize to drop a half inch and then allow New York to drop an inch works perfectly for us. I am fully supportive of it.

The other thing you need to be aware of is there is still some buffer I think even your plan allows. I think for the last four or five years Virginia has dropped its size limit almost a half inch every year and yet every year over that period of time we have never met our target. We leave fish on the table it seems every year.

That is why our anglers have constantly been asking us to drop that size limit, which we would like an opportunity to continue to do. But even if we drop it again another half inch, based on past history I have a feeling we're still going to be leaving fish on the table, which I would hope allows some comfort that there is additional buffer there at least from Virginia and probably some of the other states as well. I am fully supportive of the option that you have come up with and appreciate you doing that.



MR. MICHAEL LUISI: Mr. Chairman, there are a few things here. I certainly appreciate one being the dilemma that New York and New Jersey are facing. I still have nightmares of the time when I had to walk to into the Ocean City Marlin Club and tell our folks down there that we were considering a 19-inch size limit in Maryland. Actually, I can't get hose out of my head and I probably never will.

I certainly understand what you guys are facing and I am very much appreciative of the actions that this board has taken over the years, as you mentioned, Mr. Chairman, earlier regarding helping out other partner states when times are tough and you need others to step up and make a tough decision to help out your partner states.

I certainly appreciate the work that has gone into the suggestion that we're looking at right now at how we can help our partners here. Personally I'm very much supportive of this idea. The only concern that I have at this point is the limitation of 15 percent as being part of the plan. The way I'm looking at this, when I look at the slide that is on the board right now, I'm in the position now to try to find a way that Maryland can do what we're trying to do along the coast with my neighbor states and jurisdictions to try to get Maryland as close to as possible Virginia, Potomac River and Delaware.

We currently have a three-fish limit at 17 inches. Depending on what Virginia, Delaware and Potomac River decide to do, I would like to have a little bit more flexibility than being restricted to a certain percentage of liberalization to potentially open our season up for the year and maybe add an extra fish to that bag limit so that we can be very close if not equal to the other bay states on the DELMARVA. That is the only concern I have at this point; but if that limitation of 15 percent weren't part – if we're going to be held to that, it would give me a little bit of relief on that. Thank you.

CHAIRMAN SIMPSON: The 15 percent was a first cut and the refinement that I did to that, based on conversations with people, was that if each state reduced their minimum size a half inch, which generally is a little more than 15 percent, but it is in that neighborhood – so the 15 percent was not part of the strategy or there is not a limitation there. It was get everyone down a half an inch and let's lower the average weight, let's shift some mortality to males instead of exclusively reproductive females. Pat.

MR. PATRICK AUGUSTINE: Mr. Chairman, we welcome all the comments around the table and, Mr.

Travelstead, you hit it right on the head. New York is very appreciative as to the direction that you, Mr. Chairman, have gone with this fresh approach. It is a fresh approach. We still have a locomotive; all of us have a locomotive down the other end; a very small light right now looking at us if we don't move forward with a new approach.

Just in response and to address an issue that was stated earlier, our problem has been doubly negative because we have throw-back numbers per keeper ratio. I think I had mentioned at some other time my wife and I fish regularly. We had 37 fluke in one trip and we had no keepers, so just look at the mortality rate. Many of them were females, so we're looking at that.

The other part of the problem is that every time a new approach has been put on the table, whether it was an offshoot of coastal or regional, it has always been stymied. This is the first time where we have had the chairman – compliments to you, Mr. Chairman – taking a step outside the box and advanced an approach that will stabilize, I think, the coastline, if you will. Each state is going to have to take and give a little bit. We have a regional fishery and we have had it for many years now. We keep struggling with the same issues.

Some states have an abundance of quota and never reached their quota. Others like New York, we happen to be in a vulnerable place where it is abundant but vulnerable because, as Jim has suggested, we have a dichotomy between north and south, Long Island Sound versus the South Shore versus the East End versus the West End. We literally have four basic fisheries that are different. This appears to be an approach for us that will help all of our states. Again, thank you for your efforts and hope that we're successful in moving this forward.

MR. WILLIAM A. ADLER: This is more of a technical question to Toni. Does the plan allow the transfer of – like in some plans allow the transfer from one state to another?

MS. KERNS: The plan allows for transfers of quota just in the commercial fishery and not in the recreational fishery. The only way we can sort of share fish in the recreational fishery is through regions, but the regions have to be identical measures. If you wanted to pool your data together, you could do that with your neighboring states, but your bag, size and season would have to be identical.

It does not have the same regulations as we do under scup or as we have had under black sea bass.

MR. ROY MILLER: Mr. Chairman, I am not unsympathetic to New York's quandary. We have been there so we understand some of the pain you're enduring. Just to give a brief history lesson, in 2007 Delaware had an 18-inch size limit and we went 54 percent over. The following year we constrained our fishery pretty drastically with a 19-1/2 inch size limit as a result of that overage in 2007. As you might expect, in 2008 we were under by 49 percent, so I understand.

At the time we favored a regional approach to management of summer flounder and that particular concept received no traction. Although we sought relief from our neighbor across the Bay, we were unable to get any relief because they have other issues. They have a larger state share and they have a different fishery perhaps in the northern part of the state than they do in the Delaware Bay Region.

Basically we have been there and we have done that. Now, this year it turns out we could liberalize. I appreciate the scenario that the chairman laid out for everyone; but if we were to liberalize by only half an inch, we would be foregoing perhaps 40 percent of what we would be able to liberalize by.

Personally it makes more sense for Delaware to go to 17 inches with a 40 percent liberalization. I'm a little concerned about locking us all into a half an inch, Mr. Chairman. I just wanted to give that little bit of history lesson and say I appreciate what you're trying to do and I am sympathetic to New York's quandary. Thank you.

DR. PIERCE: Okay, Mr. Chairman, it is 10:30 so I assume that you're looking for – I'm turning to you for guidance now. I assume you're looking for a motion to approve the 2013 state summer flounder recreational proposals approved by the technical committee and then that would be followed up by a motion perhaps that Jim would make relevant to the discussions we have just had about how to shift some expected unused quota. What is your expectation?

CHAIRMAN SIMPSON: I think that makes sense because that gives us sort of a backstop position. If we do it the same old way that we have done it in the last few years, then we have approval of the technical committee reviews. Then if we can move to a motion to consider what we have been discussing, that would be great.

DR. PIERCE: **Okay, I move then that we approve the 2013 state summer flounder recreational proposals approved by the technical committee.**

CHAIRMAN SIMPSON: Do I have a second to that motion?

DR. PIERCE: Just a clarification; I think with that said, there is only one option that would not be allowed and that would be the status quo proposal from New Jersey. That is the only one I note in the technical committee's report where there was a recommendation for not approval. All the other options from New Jersey were recommended for approval. I just wanted to make sure the record is clear that is the only one that would not stand up.

CHAIRMAN SIMPSON: Okay, I would take the motion to be that we are accepting all alternatives that were approved by the technical committee. Toni reminds me that there was one proposal from Virginia, was it, that they viewed as being risk prone, but I assume it technically met the standard that we have adopted. If that is the understanding, I need a second to that motion. Seconded by Mark Gibson. Any discussion on the motion? Mike, please.

MR. LUISI: Just a quick clarification. In years past we have presented the technical committee a series of options using a formula approach for which we take to our public and our fishermen. Oftentimes there are other options that get crafted while we just having these discussions with fishermen, but I just want to make sure that there hasn't been any change to us coming back with using the same formula, just maybe extending seasons or adding another fish here or there, that we won't be held just to what was on the screen earlier. Thank you.

CHAIRMAN SIMPSON: Yes, I agree and we will do the same thing. We will go out for public comment; and using the same protocol, I think the board accepts the alternative tweaking that we might need to do. Any further discussion on this motion? Jack.

MR. TRAVELSTEAD: Help me understand what is going on here. How does this motion affect what you had offered?

CHAIRMAN SIMPSON: It doesn't; I view it as sort of a backstop. We will have this in place if we just do conservation equivalency. Further discussion on the motion? Is there any objection to the motion? **Seeing none; we will consider it unanimously approved.** As David had suggested, Jim, do you have a motion for us?

MR. GILMORE: Yes, thank you, Mr. Chairman. **I would move to initiate a fast-track addendum to allow the unused quota in the summer flounder fishery to be utilized by another state for 2013.**

CHAIRMAN SIMPSON: Adam, you second the motion. Jim, while they're getting it down if you can provide some clarification.

MR. GILMORE: The motion may need a little perfecting; but essentially when I wrote this last night, I had a whole lot of different options and things in there. I think that will be explored through the addendum, so I don't think it is necessary put it in here. This recognizes that I think a preferred option would be – the idea you had come up with last night would be a prominent option in that, but we would explore other options based upon what the other states do in terms of their liberalization.

MR. MARK GIBSON: Mr. Chairman, I support this motion. Rhode Island has come forward with only two proposals, the status quo one and the half-inch reduction in minimum size. It doesn't utilize the full opportunity and I think that is a responsible thing to do. I don't particularly care about the history of this and who did what and when.

We're here now with a stock to be managed and a problem; a problem which we have seen for some time. I think that is a responsible thing to do to not fully avail oneself with the opportunity to liberalize and to consider some one-year options to help out another state; but at the same time I strongly endorse your initiation of a thorough analysis of size composition along the state, particularly in the north/south gradient for males and want to look at inshore and offshore distributions as well.

I suspect that as the stock has fully rebuilt and extended its age composition that size distribution probably has changed just as a result of the change in population dynamics but climate shifts as well. That thorough analysis may provide the basis for us to get out of this box and have a new way forward relative to allocations and management by states or jurisdictions. I strongly endorse that should continue to go forward and I support this motion. Thank you.

DR. PIERCE: I support the approach. We have had a lot of discussion about this already. I believe it has merit especially by taking some steps to assist other states, neighboring states; and as you indicated, Mr. Chairman, earlier on to begin to address the issue of

our continuing to target regionwide the very large females. I would support the motion.

I would assume that as part of this fast-track addendum your carefully done analyses in your room last night or this morning will be reviewed and any mistakes you might have made will be caught. Not that you made any, but I have done hotel room work as well, and it is not necessarily always a number one stuff. Anyway, thanks for your efforts, and I support the motion.

MR. NOWALSKY: Mr. Chairman, in terms of what is going to specifically be included in the addendum for options, we have talked about a couple of different things here. We saw on the screen an option where New Jersey went to 18 inches. You offer an option that said, well, New Jersey would need to take some reduction.

I would hope that one of the options in there would also be an option for New Jersey to stay status quo. We talked about a number of different options from New York. I hope that there is a range in there as well from status quo down to 18-1/2 inches. I hope that for the remainder of the states, I heard an option for a 15 percent reduction, which I don't know if that would then allow them to do whatever they saw fit with it, either an extension in season or a half-inch size limit or drop in half-inch size.

You mentioned just a flat half-inch size. I think that would be an option. I would also be interested to hear if those states that could take a liberalization would be interested in having an option in there whereby whatever New York and New Jersey did, we took whatever fish were needed to keep New Jersey status quo, New York to whatever level we're going to keep them out, and then possibly entertain the other states taking the remainder and dividing it up by some percentage that they might have had this year.

They may feel their fishermen may see that as an equitable way or perhaps they may feel there is no interest in it. I think that might be an option they might want to see so that when the public comments on it, they may feel that, hey, at least we're getting our share of things. I would be interested to hear those thoughts on that or if the desire is to keep it simpler.

MS. KERNS: I have a couple of clarifications for Jim. I don't think this addendum would have options as we outlined today. I think it just allows for the sharing of left-over fish from whatever the states do not do. I am aware that several states through their

public process of implementing their regulations will need to go ahead and move forward before this fast-track addendum is over.

I anticipate that this addendum would just allow for the sharing of these fish; and whatever is left over on the table then would be shared to a state, which is up here now. I don't know if you intended that to be state or states, Jim. That is my first clarification question. My second clarification question is, is this supposed to be for one year only or for more than one year?

Unless the board has direction otherwise for specific options, I just don't know how that would work in terms of all of the states' implementation process. I don't think it would work for them, from my understanding, but I would need to hear back from the board on that.

MR. GILMORE: It kind of lost in the sauce here, but I had put down another state, which actually was plural. It could be multiple states. Secondly, I did put for the 2013 season.

MR. ADLER: Mr. Chairman, how does this differ from transferring fish from one state to another? It doesn't say use unused quota; I don't know what the process is of moving it from one state to another, and isn't that transferring part of the fish just like I mentioned before? What is the difference?

CHAIRMAN SIMPSON: Unlike the commercial fishery where it is codified in federal law that Connecticut gets 2.78 something percent of the federal commercial allocation. There is no such thing in federal law on the recreational side. The commission has worked out a sort of sharing agreement that when we could see that coast-wide management wasn't working for all partners, in '99 or 2000 we said, well, what are we going to do?

The last year we all had common rules was '98, just work off of those numbers and that becomes your informal allocation. You will notice in each document they didn't even talk about percentages of allocation by state on the recreational side. It is simply the list of what you caught in 1998 estimated by MRFSS, which has now been replaced by a new and improved estimation system, so it is not as rigid and formal and mathematical as the federal commercial management that you're thinking of.

MR. ADLER: Okay, Mr. Chairman, so therefore basically what you are doing is in an informal manner somebody said I've got fish left over, you can have it,

and the ASMFC says, yes, okay; is that how that would work?

CHAIRMAN SIMPSON: Yes, the addendum would be to say – and this is how I envision this working; the states would go back home and very quickly try to arrive at what steps they're going to take. We have talked about what the need might be to leave fish available to address a long-standing inconsistency with New York having much higher minimum sizes, much more restrictive measures in total. Once that is determined we would know how many fish were available for New York to smooth out this gradient of management restriction so that it fits more with logic. I mean, we have discussed all the details enough already.

MR. ADLER: So, in other words, it would be the ASMFC that would divvy this up?

CHAIRMAN SIMPSON: Right, the federal process doesn't talk about state allocations. It is keep within a coast-wide allocation, so it has been left to the commission to try to figure out how to make that work.

MR. ADLER: Yes, I do support that.

MR. LUISI: Mr. Chairman, I won't belabor the point. I think Toni hit the nail on the head regarding Mr. Nowalsky's issue that was brought up in asking other states kind of what their plan is. We have every intention to go back after this meeting and discuss with our constituents what we're going to do in order to establish the rules and regulations for Maryland.

Any remaining quota, once we talk with our neighboring states and try to come up with a plan that we're going to put forth, would be available. That is how I see it and not starting the other way where New York and New Jersey get what they need and then we're faced with having to restrict our liberalization to a certain degree. Just to answer your point, Adam, that is what we plan to do.

MR. GIBSON: Mr. Chairman, I just want to state for the record my support for this motion is conditioned on again that it is only one year; and it is, just as Toni I think suggested, that the amount of fish is conditioned on our public hearing process back home, which option comes out of the public hearing process and which gets promulgated by our cabinet-level officials, so I can't preempt that now. It could be no liberalization and it could be a modest liberalization; but whatever comes out of it will be what was left. As to what states it goes to, I don't

really have a dog in that fight. We put fish on the table and wherever they go, they go. I don't know how we work that out.

CHAIRMAN SIMPSON: Yes, that was one of the wrenches that got thrown into the wheels the night before our December meeting down at the Mid-Atlantic Council when – I like to say when the crop reports came out the day before we meet to decide this stuff, and that is why we're talking about this now in February. I have a publication deadline of March 1 for our regulations and I am definitely under the gun here, too. John.

MR. JOHN CLARK: I think the point has already been made by Toni. Mike, we're in a similar situation. Mike, we're in a similar situation. Our regulatory process is very lengthy so we have already started the action notice, and we have a public hearing already scheduled that has these four options on it.

For this year we will most likely be going to a 17-inch size from the input I've gotten so far. I would just think also that for this plan that we come up with a nice generic name like Coast-Wide Quota Rationalization or something like that rather than quota going to New York and New Jersey as that would be a harder sell.

CHAIRMAN SIMPSON: I agree completely. As I said at the outset, I think the terms we use are important. I think moving toward a resource-sharing agreement; that's a term we use between Canada and the U.S. that I think implies the kind of flexibility we're going to need to respond to shifts in these fish and numbers and distribution over the decades, and that is where we are with this. Pete, I am going to give you the final word and then we're going to call the question.

MR. HIMCHAK: There is a precedent for this quota-sharing underage in the scup commercial fishery, is there not, where states that do not use their summer scup commercial allocation and essentially put into an ASMFC pool to cover overages from other states. There is a precedent for this, so the mechanism exists.

The problem I see with the motion and the addendum is the logistics of – in other words, New York and New Jersey in this instance, since we're facing reductions, we have to wait until every state finalizes their regulations to know how much is going into the unused quota, and then we would start crafting, based on whatever mechanism the commission comes up

with for sharing the unused quota – I mean, logistically we couldn't do this.

We have a committee meeting next week to essentially select our options – go through our options in the summer flounder recreational fishery. Then we usually finalize all that in April or this year we're going to do it May 2<sup>nd</sup>. We would be waiting and waiting and waiting to find out how many pounds and then go through the process all over again. I just don't see how we could pull it off.

CHAIRMAN SIMPSON: Right, the options are somewhat limited by the time constraints we have in dealing with this in the middle of February. I think it is the only option we have right now to just the alternative to just going home and ignoring the problem again for another year, and I am loathe to do that.

I am going to ask you to take a moment to caucus and then we will vote this up or down. The motion is move to initiate a fast-track addendum to allow for the use of any unused quota by other states for 2013 only. Motion by Mr. Gilmore; seconded by Mr. Nowalsky.

(Whereupon, a caucus was held.)

CHAIRMAN SIMPSON: While your caucusing, Rick Robins, if you want to comment for the Mid.

MR. RICK ROBINS: Rick Robins, Mid-Atlantic Council. I'll be brief. The council does not have a position on the question, but I would like to commend the board for its very positive and thoughtful approach to trying to resolve what has been a long-standing issue and problem within this FMP.

We had a couple of important meeting over the course of the last year in New York with the recreational public through our visioning work. Those were informal meetings, but I think the theme that came very clearly through those discussions was the fact that New York anglers have not experienced the same dividends of stock rebuilding that other anglers in other states have.

I think the residents of New York and every coastal state deserve our collective best efforts to address this issue. I applaud the board for its thoughtful approach; and following on your comments, I will submit that longer-term solutions are necessary in the future. I think frankly there are other management tools that may be considered.

We had a presentation last fall from the group that is working on the management strategy evaluations that are going to look at some alternative models that would include, for example, having some mixed size limits that might allow the retention of one small fish together with the regular bag limit. There may be some creative new tools that could be developed to deal with this, but I really appreciate the board's efforts to address this today. It is a long-standing concern and I applaud your efforts. Thank you.

CHAIRMAN SIMPSON: Thanks, Rick, and part of my thinking in this is this could be part of a transition to those efforts that are broader than the Mid-Atlantic Council is taking on; the idea of slot limits and so forth. We have had considerable discussion on this and I'm just going to call the question at this point. I would ask all states in favor to please raise your hand, 11 in favor; opposed, none; any abstentions; any null votes, none. **The motion passes unanimously.** Adam.

MR. NOWALSKY: What is the expectation that is going to be included in the addendum that is going to outline how New York and New Jersey are going to decide how to split up the leftovers, if there are leftovers?

CHAIRMAN SIMPSON: I think certainly it would be a board decision; but one thing that occurred to me so that we understand what we're doing and why is I guess I would ask each of the states to put forward a short document that would explain why they feel that they need this sort of assistance, what disadvantage that they had in recent years or over the years in our current management system.

I think that would help the board a lot in terms of ultimately determining how we would like to see fish as other states that we leave on the table might be utilized. Frankly, I have spent the time on this because I have seen pretty clearly – to my mind I have been convinced that New York specifically has been disadvantaged by this plan in recent years. I have not had the same feeling, frankly, about New Jersey with a 17-1/2 inch minimum size. Frankly, that has been the problem that I have been trying to address is that New York has consistently been an outlier in terms of the level of restriction required versus other states.

MR. NOWALSKY: So I'm not sure how that answers the question, Mr. Chairman. Is there going to be options in the addendum that this board is going to vote on; are we going to get back together at some

point to decide how to split up what is left? I believe that your intention throughout this process was to ensure that New York would come down somewhat in size. I am not sure we're leaving here with that – I don't think New York can go home with that certainty here today.

CHAIRMAN SIMPSON: No, they don't. This will be a fast-track addendum. I think it would be helpful, as I said, to inform the board and make a decision about where fish are going and that each of the states make their case for why they need help this particular year, and that will inform the board's decision. I think we will make a decision by conference call and fax poll where the left-over fish will go. That is how I see it playing out through board action. Tom.

MR. FOTE: I was sitting here fine with everything going on until you made that last statement about not seeing New Jersey disadvantaged over the period of time. Let me finish because that is what you basically said. What we have done in New Jersey is when we could liberalize, we did not liberalize and we did small percentages.

We also took season reductions to make sure that we basically did – which basically affected our southern fishery that we share with Delaware Bay. We made some tough decisions because we felt that we have to do every step to stay within the quota. It has been as difficult as it is for New York for us to raise and shorten our seasons.

We have lost the fishery in September that is very important to the surf fishermen. As you know, we made the special exception for you. We have eliminated our surf fishermen from their historical fishery in September and October because of closing the seasons down. I needed to get that on the record that we have been impacted greatly, also, and made changes in our regulations so we don't become outliers by cutting seasons, because we thought that was the best method. It seems to be working, but is it making our fishermen happy?

Do we feel disadvantaged? Yes, and part of it has nothing to do – you know, we will go back. It has to do with the quota that shouldn't be here. The quota should be 34 million pounds and we should have basically raised the quota substantially. When we did that, there was a plan in place at that time because we were looking at great increases in quota projected back in the nineties and we were going to get the rebuilt stock and we were going to divide all the increases in quota equally among the states. We all

had agreed to that but those quota increases never came.

CHAIRMAN SIMPSON: Okay, Tom, I will just say you're making the argument that I think would be great to make on paper so that the board members can evaluate it and we will decide what to do come the other end of this fast-track addendum. With this approved, I guess one of the things that we need to do is get a quick sense of how quickly the other states can and expect to move so that New York and potentially New Jersey could follow suit and take advantage of anything that might be, as we're saying, left on the table. As I said, I have to decide by March 1. We have a publication deadline; I need to have my paperwork in on March 1. I'll just go quickly down through if you could give me your best guess at how soon you would be able to tell the board what you're going to do.

MR. GIBSON: Our public hearing is March 13<sup>th</sup>. The Marine Fisheries Council meeting, I think the 1<sup>st</sup> of April and a department decision shortly thereafter; early April.

CHAIRMAN SIMPSON: Massachusetts; David, do you have a quick sense?

DR. PIERCE: Early April.

MR. CLARK: As stated, we already started the process. Our public hearing will be on March 21<sup>st</sup>, I believe.

CHAIRMAN SIMPSON: And the decision around April, early April?

MR. CLARK: Well, we will probably have a decision soon after the public hearing and then, yes, so we will have it probably by the end of March.

CHAIRMAN SIMPSON: Okay, Maryland.

MR. LUISI: Three or four weeks.

CHAIRMAN SIMPSON: Virginia, not sure; North Carolina wasn't planning on changing. There is a pretty good sense of the timing. Hopefully, that does work for the states of concern.

MR. AUGUSTINE: A point of information, Mr. Chairman. Would it be helpful that chart that you developed, that you made that available to the state directors. It just seems to me as a reference point, we are asking them to write a letter as to why they would support or what they would do, and that strawman, if

I may call it that, was a perfect way for them to segue into what they could respond with, and it would probably give them some support of what their actions are in their states.

CHAIRMAN SIMPSON: Sure, I would be happy to; we will do that. A.C. is really going to speak badly of me, I know, but I think the expectations for me were set pretty high to take care of summer flounder in 30 minutes. With that excuse, we move on to the next agenda item, which is scup allocation. These are all trivial things and I don't know we weren't done in 20 minutes, but, Jim, do you want to get us started.

MR. GILMORE: Yes, before we move off of fluke, there was one other motion. Remember, as I said before, I wanted to try to address the longer-term issue with this. I wanted to put a motion up just to form a subcommittee of the Summer Flounder, Scup and Black Sea Bass Board to explore alternate management options for the summer flounder fishery for 2014 and beyond.

CHAIRMAN SIMPSON: Okay, thanks, and Toni is suggesting that we can simply go ahead and do that without the formality of a motion if there is no objection to that. Is that all right with folks? I think I will try to work with the staff to identify a few board members; and if we need a couple of technical people to help us with the number crunching, I think that would be all right. Is that acceptable to everyone? Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Just to comment, it might be worthwhile to ask a staff person from the Mid-Atlantic Council or someone that Rick recommends just so we have the Mid-Atlantic perspective as well. I think moving forward 2014 and beyond we're going to need to coordinate those efforts to some degree.

CHAIRMAN SIMPSON: That makes sense. David.

DR. PIERCE: Before we leave fluke, just a suggestion. In this fast-track addendum let's make sure that the addendum does not indicate that the states that are donating to the pot, so to speak, that their 2013 harvest target is not reduced, okay, because that would make it impossible to approve this fast-track addendum. Well, I have made the point; the targets cannot be reduced for those states that are donating.

CHAIRMAN SIMPSON: Right; it is understood that this would be a team effort to hit the overall recreational harvest limit for the coast. Toni.

## CONSIDER APPROVAL OF STATE SCUP RECREATIONAL PROPOSALS

MS. KERNS: I am going to go through the scup recreational measures. Jason had to go catch a flight so I'll do my best. For 2013 the only states that indicated that they wanted to liberalize their scup regulations was the northern region, so their target is 6.7 million fish. They could liberalize 88 percent or 3.6 million fish.

The technical committee had cautioned for some liberalizations just due to the quality and the quantity of the underlying data and the historical volatile nature of the fishery. When we say "some liberalizations", it means taking very large liberalizations or going all the way up to the 88 percent.

The technical committee did a customization of the regional analysis, meaning that each of the states has the flexibility to make some adjustments to their seasons or potentially size limits. We used a combination of data sources; VTRs from New York and Rhode Island, Massachusetts survey and MRIP data. For the shore-mode harvest estimations we used the MRFSS data from 2001 because that was the last time we had a nine-inch size limit.

When we did the analysis, it was found that the most liberal scenario that was provided by the states as the proposed regulations met the percent increase – the percent increase in harvest was below the allowed liberalization. I believe the maximum amount of liberalization was 30 or 35 percent.

The most liberal that was proposed by the states was a ten-inch minimum size with a nine-inch shore mode for Massachusetts, Rhode Island and Connecticut – New York did not ask for shore mode – a 30-fish bag limit with a bonus season of 45 fish for the party and charter vessels for a full wave or 61 days.

The technical committee also provided a simpler option, which was a ten-inch minimum size for all, a 40-fish bag limit for all, and a season of May 1<sup>st</sup> through December 31<sup>st</sup>, and Connecticut would maintain the shore mode. That is my presentation.

CHAIRMAN SIMPSON: Comments or questions for Toni? David.

DR. PIERCE: Toni, relative to the shore mode, the option in Table 1 of the document that you have referenced that shows the 35.5 percent liberalization, it notes shore mode Massachusetts, Rhode Island and

Connecticut. I believe there are some specific elements of that particular shore mode strategy applied to Rhode Island and Massachusetts as well as Connecticut, of course. Connecticut is the standard barrier on this. I think it would be useful for the record to show that this particular option involves Massachusetts and Rhode Island demonstrating that it can actually achieve the same sorts of strategy that Connecticut has adopted for the shore mode?

MS. KERNS: The shore mode is that designated sites in Connecticut and I believe that is what the states of Massachusetts and Rhode Island would do as well, is they would designate certain sites where that shore mode could be done. The way Connecticut does that is that it is only at access sites that are available for shore fishermen. You cannot have that shore mode size limit at places where there are boat ramps where you can come in and out on a vessel; so no marinas.

DR. PIERCE: So if, indeed, we choose the most liberal option, which basically is not a liberal option, we could go to 88 percent so we have to be careful how we reference it. It is one of two options. Massachusetts, if it chooses to go in the direction that Connecticut has pursued and Rhode Island as well, we would offer up those approaches to the technical committee for review; is that how we would work this to make sure that we do, indeed, not put ourselves in jeopardy by falling outside the bounds; again established by Connecticut through your thoughtful work on having a successful implementation of that shore mode.

CHAIRMAN SIMPSON: Right; I think the key is – you know, and this is following the discussion we had a couple of weeks ago. Rhode Island's discussion was that in areas that were particularly disadvantaged by the high minimum size – in the Providence area – believe it or not, scup find their way all the way to Providence, the north end of Narragansett Bay, and that led to a discussion from Massachusetts that, well, Fall River, the same kind of thing.

What I heard was that Rhode Island and Massachusetts were not looking to expand this program to the oceanfront waters where larger fish are readily available. This is more inner harbor kind of opportunities. I know our focus – and I heard the same theme – was urban angling opportunities.

For us there is a very strong sense of environmental justice angle here, that there is equity among all demographic groups in the state. With shore



fishermen in urban areas, that is something we were compelled to address. That is my understanding; this wouldn't be at Woods Hole where you can catch 14-inch scup off the end of a dock because you're fishing in a hundred feet of water. It is more Upper Bay. I think not so much a technical review – you know, we are talking about six million fish and that is only 22 percent of the whole quota and so forth, so, really, the shore mode itself approaches de minimis status in the areas that we're talking about.

DR. PIERCE: Okay, that is a good clarification, Mr. Chairman. **May I make a motion or are you still offering – all right, I would move that we adopt the northern region's scup option providing the 35.5 percent liberalization.** For the benefit of the board, that would be the first option in Table 1 for the northern region options. That is in the February 13<sup>th</sup> memo from Massachusetts to New York technical committee members to the board.

CHAIRMAN SIMPSON: And, David, does that have specifics of size, season and bag associated with it? Could you read those?

DR. PIERCE: Yes, that would be the option that – would you like the specifics in the motion, all of the elements of it?

CHAIRMAN SIMPSON: I would; thanks.

DR. PIERCE: **Okay; then that would mean for the party and charter mode, an open season of May 1 through December 31<sup>st</sup>, with a 30-fish bag limit and 45-fish limit for one wave; and a ten- inch minimum size limit; for the private boat, the same season of May 1 through December 31<sup>st</sup>, 30-fish bag limit, and ten-inch minimum size limit; and then for the shore mode, Massachusetts, Rhode Island and Connecticut, the same season of May 1 through December 31<sup>st</sup>, 30-fish bag limit and a nine-inch minimum size.**

CHAIRMAN SIMPSON: Thank you, David. Did we get a second to that motion? Jim seconds the motion. Discussion on this motion? Jim.

MR. GILMORE: Just a brief point; the previous slide, but New York wasn't on the group anymore, and I think that was a typo, I'm hoping, unless I got cut out while I was out of the room.

MS. KERNS: We didn't an analysis for New York.

CHAIRMAN SIMPSON: For shore mode?

MS. KERNS: For shore mode because New York said they didn't want to do –

MR. GILMORE: Right; okay.

CHAIRMAN SIMPSON: Okay, any other questions for clarification or discussion on this motion? Is there any objection to the motion? This applies now to Massachusetts through New York. Seeing no objection; **we will approve this unanimously.** Okay, what is our next move?

MS. KERNS: All other states are status quo for scup because no one else asked for any changes.

CHAIRMAN SIMPSON: Okay, the agenda item we had was the technical committee report; and because I was so inefficient on time, Jason had to just down and back and didn't get a chance to present to us, so we're going to just pass on that, if that is okay with the board members. The next action is to reconsider the black sea bass quota. Keep in mind we should be able to do this in 15 minutes.

### **RECONSIDER THE BLACK SEA BASS 2013 QUOTA**

MS. KERNS: And just a note to the technical committee report, that was requested specifically by one person and the technical committee had some questions back; and, Adam, I think I will just get with you to get some of those questions refined and then we can have an even more comprehensive report at the May meeting on averaging. I will get with you after the meeting to do that.

MR. NOWALSKY: That would be great. I suspect that would probably feed into the subcommittee work that we're talking about so being a part of that would be a great way to work on that. Thank you.

MS. KERNS: I concur. Back in December the Mid-Atlantic Council asked their SSC to reconsider their recommendation for the 2013 black sea bass ABC and recommend an ABC for the 2014 fishing year. The SSC went back and they looked at that information, and they reconsidered the 2008 year as the foundation for the ABC. Recall that for black sea bass, when we set the quota, the SSC does not find that the OFL should be used because of the uncertainty that is associated with the assessment, and so they use a constant catch harvest scenario, and they used 2008 as that base year.

The SSC noted that the current constant catch policy that has been in place for the last three years has led

to a relatively constant or potential increasing abundance of black sea bass, so that the 2012 update showed that the stock level is slightly above Bmsy. The 2,041 metric tons of catch represents approximately the 16<sup>th</sup> percentile of cumulative catch distributions, and so that is very conservative.

The other stocks that are managed by the council that are at or above Bmsy such as black sea bass is are managed on an ABC of approximately 75 percent of the OFL. During the rebuilding period from 2000 to 2009 the stock had supported catches of 2,721 metric tons. Based on all of these points, the SSC recommended that the 2013 and 2014 ABC be set using a constant catch policy of 5.5 million pounds for the short term.

They emphasize that a revised assessment should be completed as soon as possible. Last week the council met and they did revise their recommendation to NOAA Fisheries for their 2013 catch and increased that to 5.5 million pounds. Currently we're at 4.5 million pounds. The commission has already set its quota at 4.5 million pounds; so if we want to reconsider that, we would need to do that through a majority vote because we have already set it.

The commission did set a 2014 quota because we knew we were going to be doing a black sea bass update and so we wanted to wait to see what the outcome of that update was before setting a quota. If the group wants to set a quota for 2014, that would not need a majority vote, but we still are planning on the assessment and we will have that information to the board before the end of the year.

DR. PIERCE: Do we need a motion to reconsider consistent with what Toni just said; because if so, I will make that motion.

CHAIRMAN SIMPSON: Okay, I guess a simple motion to set the new quota and a simple majority would suffice according to what Toni told me. We don't need a super majority?

MS. KERNS: Super majority; two-thirds.

CHAIRMAN SIMPSON: Okay, that is not simple; that is super; so two-thirds of us would want to increase the quota – need to want to increase the quota. If you could make a motion, that would be great.

DR. PIERCE: Okay, I would move to – I won't make this too complicated. **I will move that we reconsider the 2013 black sea bass quota of 4.5**

**million pounds and increase it to 5.5 million pounds consistent with the Mid-Atlantic Fishery Management Council decision.**

CHAIRMAN SIMPSON: Pat, were you raising your hand to second?

MR. AUGUSTINE: Yes.

DR. PIERCE: And then I would like to speak to that, Mr. Chairman. A word of thanks to Chairman Rick Robins for all the work that he has done on this. He has provided great leadership on this particular issue and has I suspect been one of the leaders in suggesting to the SSC or tasking the SSC with the charge to reexamine the black sea bass quota.

It was a wise move on his part and on the part of the Mid-Atlantic Council, and I appreciate what they did on this. I also appreciate that the SSC finally found wisdom. This decision actually could have been made last year, I believe. The rationale for the increase of one million pounds to 5.5; the rationale I believe was just as sound last year as this year, but the SSC did not deal with it last year.

This is not hard feelings on my part except to say that we are going to consider an addendum relative to black sea bass recreational measures for 2013, and the reductions that we're looking at in these different options are contingent on the sorts of overages we had in 2012. I submit that we wouldn't have had the sorts of overages we had in 2012 if the amount of quota was 5.5 instead of 4.5.

I think we're going to be taking through this addendum a cut that is unnecessarily harsh, but I don't believe there is any way for us to avoid that. This is at least a step in the right direction and a sensible one by the Mid-Atlantic Council and, of course, the board should approve it as well.

MR. FOTE: I was going to ask Toni before we even made the motion is we could have been at six million pounds. That wasn't the six million pounds which was allowed under the current management; it was just the SSC deciding not to go to six million pounds and go into the 5.5?

MS. KERNS: They decided 5.5 million pounds; that is what their decision was.

MR. FOTE: Yes, but if you looked at the figures, we could have been at six million pounds this year.

MR. LUISI: Mr. Chairman, as part of the discussion last week at the council, this did come up, you know, why during the time period for when we were rebuilding this stock did we have a six million pound quota and now we're faced with a rebuilt stock and a 5.5 million pound quota. I'm trying to remember back just a week ago with all that is my head right now.

Part of that discussion was based on year class strength and that there were year classes years ago that allowed for six million pounds to be considered more so than currently. John Boreman spoke to the issue, and I certainly will not try to be John Boreman at all, but that was one point that did come up and the SSC felt more comfortable with that discussion at 5.5 million pounds.

MR. FOTE: Just to comment on that, I know they feel more comfortable, but 500,000 pounds is 500,000 pounds both to our commercial and recreational fishermen, and it means a big deal. I mean, we have been very restrictive on this fishery, the SSC, over the years and hopefully we will – you know, I appreciate all the work the council did in moving as far as it did, but we still need to move much further on this. I would have loved that 500,000 pounds this year.

CHAIRMAN SIMPSON: Rob, did you want to speak specifically to this issue that Tom raised?

MR. ROB O'REILLY: No, different issue.

CHAIRMAN SIMPSON: Okay, thanks, I will keep you in the queue, then. Rick Bellavance.

MR. RICK BELLAVANCE: Mr. Chairman, just real quick; Dave Pierce already kind of spoke to what I was going to say, but I also wanted to thank the Mid-Atlantic Council for their work here and the leadership of the chairman. It is very helpful to the recreational community in Rhode Island. It is an important fish for us.

MR. O'REILLY: Mr. Chairman, I just wondered whether the recreational harvest and the commercial quota should be part of this motion since that is really what most of the public is going to be looking at.

CHAIRMAN SIMPSON: So that is a 51/59 split and you're looking to see the math into the motion?

MR. O'REILLY: I think there is a table, Mr. Chairman. I think there is already a table. I don't know whether Toni has it to put up or not.

MS. KERNS: It would be an RHL of 2.6 million pounds and a commercial quota of 2.17 million pounds.

CHAIRMAN SIMPSON: Does that look right to you, Rob? No? Okay, Louis is shaking his head no. Hang on a second and we will double check.

MS. KERNS: This is the RHL. Remember that the RHL has – it is after RSA and discards have been removed – RHL and the quota.

MR. NOWALSKY: The document in the meeting materials had 2.26.

CHAIRMAN SIMPSON: That looks closer to 51/49 by my quick math. Rob, did you have something more?

MR. O'REILLY: Just that that is a friendly amendment.

CHAIRMAN SIMPSON: Okay, is that acceptable to the maker and Pat, the seconder? Okay, great! Any other discussion on this motion? **The motion is move to reconsider the 2013 black sea bass quota of 4.5 million pounds and increase to 5.5 million pounds (recreational harvest limit of 2.26 million pounds and a commercial quota of 2.17 million pounds) consistent with the Mid-Atlantic Fishery Management Council decision.** It is a motion by Dr. Pierce and seconded by Mr. Augustine. We do need to take a roll call vote on this because we need two-thirds majority of the membership and not just who is present. We will do a roll call vote on this. Do you need a moment to caucus?

(Whereupon, a caucus was held.)

MS. KERNS: The Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: Yes.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: Yes.

MS. KERNS: New Jersey.

NEW JERSEY: Yes.

MS. KERNS: Delaware.

DELAWARE: Yes.

MS. KERNS: Maryland.

MARYLAND: Yes.

MS. KERNS: Potomac River Fisheries Commission is absent. Virginia.

VIRGINIA: Yes.

MS. KERNS: North Carolina.

NORTH CAROLINA: Yes.

MS. KERNS: U.S. Fish and Wildlife Service is absent. National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

MS. KERNS: Ten yes; two absent.

CHAIRMAN SIMPSON: **So we have ten in favor with two absent and that gives us the super majority we need so the motion carries.** Do you have another presentation?

### **CONSIDER DRAFT ADDENDUM XXIII FOR FINAL APPROVAL**

MS. KERNS: Yes, the next is we're going to go through Draft Addendum XXIII. I just had staff pass out a new version of Addendum XXIII and highlighted in yellow are the values that will reflect this change in quota that we just made, so that the board can see what the reductions that will be required under 5.5 million pounds will be. As a reminder, Addendum XXIII looks at the black sea bass recreational fishery for the year 2013 with a possible extension to 2014 as well.

Today we will be taking final action on options that are contained within the addendum. I am going to skip through the majority of my slides on the background of this addendum. The addendum that we did for coastwide last expired at the end of 2012; and so if the board wants to do some sort of state by state or conservation equivalency again in 2013, we would need to move forward with one of the options in this addendum in order to do so.

The first option is status quo to use coast-wide measures. For 2013 the recreational measures would be set using a single coast-wide size limit, bag limit and season. In the table it says a 32 percent reduction in harvest numbers would be required to achieve the RHL for 2013, which is 2.26 million pounds.

Last night I ran the Wave 6 numbers and that number drops to 31 percent, so just to let you know the Wave 6 numbers were out, and it slightly adjusts the measures. I didn't have time to do all of the other adjustments, but it is very, very close, so these numbers wouldn't be too different; just as a point of information.

Option 2 is to allow for state-by-state measures. States would implement individual recreational management programs for black sea bass using size limits, possession limits and seasons to achieve a specific harvest reduction when combined with the other states would achieve the coast-wide reduction.

If this option is chosen, the board would need to determine whether or not to use data from the last three years or data from the average of the last two years to determine what a state's required reduction or liberalization would need to be. A negative number in this table indicates that a state would be able to liberalize.

Option 3 is to have two regions. Each region would implement programs using identical size limits, possession limits and seasons to achieve a specific harvest reduction. Option 4 is also to regions but each region would be able to implement programs using size limits, possession limits and seasons. States would work together to try to have as consistent regulations as possible, but you could deviate from what your other states in the region are doing.

For both Options 3 and 4, the regions would be a northern and a southern region. If you use the last three years of data, that northern region would need a 33.7 percent reduction and the southern region could have a 14.6 percent liberalization. If we use the average of the last two years of data, the northern region would need a 34.4 percent reduction and the southern region could have a 34.3 percent liberalization.

Again, for either of these options, the board would need to – if they went forward with one of them, the board would need to indicate whether or not they want to use the average of the last two or three years of data. The last option is an ad hoc region approach.

States would have to just come together and determine a set of regulations that when combined all together would achieve the coast-wide reduction, which with the MRIP Wave 6 data would be a 31 percent reduction. There would be no specific reduction identified for any individual state.

Then lastly is the addendum timeframe. Option 1 is status quo. This addendum would expire at the end of the year and then we would revert back to coast-wide measures. Option 2 would be to allow for a board extension for one year. We did go out for public comment on this document and we had one hearing. This hearing was held in Rhode Island.

We received three written public comments. In the public comment there was support for regions. One individual came up with his own region or a group came up with their own regions, and it was North Carolina through Delaware, New Jersey stood alone, and New York through Massachusetts. There were two individuals that had support for two regions, Option 3. There was support for the state-by-state measures from two individuals and support for the addendum to expire in 2013.

The technical committee reviewed the addendum and felt that they could utilize the same methodologies for other species to determine reduction strategies. The methodology chosen would change depending on whether the board votes for regional, state by state or the ad hoc approach. Once this part was determined, the technical committee could determine the most appropriate analysis strategy and the best data sources for the analysis.

The LEC reviewed the addendum and recommended a coastwide or consistent regional regulations, Option 1 or Option 3. They noted that issues can emerge when regulations between state and federal waters do not match and that differing closed periods are difficult to enforce and create confusion for the public.

I think part of that arose because we closed the fishery in federal waters and some of the state waters did not close, and that is what some of those enforcement issues were pertaining to. They did note that consistency is key for enforcement and the larger the area encompassing consistent regulations the easier it is for law enforcement.

We did not have a specific meeting for the advisory panel on this addendum because we did discuss black sea bass measures at our advisory panel meeting in November. The advisory panel for the most part said that they liked what we had done last year that

allowed for the states to develop regulations that met their needs and that they wanted to see an approach that would allow us to do that again in 2013. That is everything that I have and I can take any questions.

CHAIRMAN SIMPSON: Questions for Toni? Louis.

DR. LOUIS DANIEL: One that I think is real quick, but it always makes me nervous to see an asterisk next to North Carolina without a reason.

MS. KERNS: North Carolina's data has not fully been cut off at Hatteras, and so some of it was a projection of cutoff; so once we have that final information from MRIP, I will have a final number for North Carolina. It is projected and I think we have done pretty good in the past in that projection.

MR. O'REILLY: My question was on the years to use for the average landings for the reduction and whether there was any discussion on the regulatory process that 2011 was the time of reduction and 2012 was the time of liberalization. Regulations changed quite a bit and were there any concerns about using those years within this process?

MS. KERNS: None had been brought up. I don't know if the technical committee discussed that when they discussed the addendum or not. I was sick the day of the meeting and had to go home early.

CHAIRMAN SIMPSON: Yes, this is a tough one because again the target we got formally ten minutes ago, so we have an overall target. We don't have any real plan or any time to think about absorbing the management measures that would bring about these changes, so it is a tough spot. I'm trying to figure out what do we do efficiently here in terms of making a decision or can we even respond this quickly and decide how we're going to share the joy on black sea bass this year. Mike.

MR. LUISI: I'm looking at the numbers here and to my understanding and I'm sure the board would agree that in the southern region the majority if not all of this fishery recreationally is prosecuted in the federal waters of the EEZ. Given that the status quo – from thinking back to December, the motion was made that in the event that the Atlantic States Commission was able to meet the required reductions, that the federal waters management measures would revert to status quo from last year with the exception of a five-fish reduction in the bag limit.

When I think about liberalizing in the southern region, what I would first would like to do is try to extend that season; and yet by extending that season in state waters, it does me no good as well as I'm sure in Delaware and Virginia. Was there any consideration at all, were there any calculations done about – you know, an hour ago we were talking about using extra liberalization in a way to reduce the pain, let's say, to other states that have to take reductions. Was any consideration made about whether or not if the southern region were to just stay at status quo, could those 14 or 34 percent liberalizations help out in any way?

MS. KERNS: When the board had discussed this at the December meeting, the document when it was going out for public comment, the southern states did have some liberalization allowed in the original document. They were not as large, but there was no discussion of utilization of those regions.

It seemed to me that I thought that the southern regions were okay with the change in the – keeping those status quo regulations with that change in bag limit and that that was the intention of what the southern states were going to do or I thought so, but that may not be the case. What we had thought we would do is that the northern states would – if the southern states remained at status quo, then the northern states would then adjust their regulations to account for that reduction that was needed.

MR. O'REILLY: It is a similar path as Mike. If we can go back to 2010 and the discussions that took place at the board, which were really more ad hoc than anything we're going to face today, I think at that time there were situations where the liberalization potential where it was frozen for a certain amount of the states.

I think North Carolina had to take a small reduction and I think Connecticut did, and then I think the states north did, but their reduction was lessened by keeping to status quo in the southern states. It has already occurred and that was in 2010, so that is certainly a viable option to look at today. I just don't know what that means in terms of the 31 percent reduction, how that helps defray what other states might have to do. I haven't seen that.

CHAIRMAN SIMPSON: Yes, and to help this I suggest maybe that if we can get a general agreement that the southern states, as Mike suggested, would probably adopt the federal measures, give the technical committee and the staff time to develop some alternatives for the same group of states to the

north essentially, what alternatives do they have to achieve this 31 percent reduction or whatever it is, understanding that it would be status quo measures in the southern states, what are the options we have, evaluate those; and at the same time we get on a call to talk about summer flounder, we decide on the particulars of 2013 black sea bass measures; does that make sense to people?

I don't know what 31 percent means. Is that a 15-inch minimum size, is that a three-fish creel limit; I don't know and I couldn't – I personally couldn't decide until I saw those. What is the sense of the board? Is there agreement on that or can I just get a couple of comments for the record on that?

What I'm suggesting is again the southern states – the scenario will be the southern states remain status quo to federal measures. That is the 20-fish creel limit; the 12-inch minimum size, I think it is, or maybe it is 12-1/2; and whatever the season was, that is what you will do. The northern states will figure out alternatives to achieve the overall reduction. Does that make sense? Okay, Rob.

MR. O'REILLY: I'm just thinking was the 20 fish really through the end of February is the way the council did that, and then I think that was specific to that time period and then it is back to the 25 fish, if someone else do some recall.

MR. LUISI: Yes, and somebody else on the council can correct me if I'm wrong, but I seem to remember that the 15-fish creel limit is what is occurring now in January and February. It was going to a 20-fish limit for the federal measures that would be status quo; so it was reduced from 25 to 20 in the recommendation.

CHAIRMAN SIMPSON: That is good, Mike; that is how I recall it. And as far as effect on North Carolina, I think this allows continuation of the – in 2011 you had technically a reduction to take, and I think last year we said just do what your neighbors are doing, you're a small contributor state, anyway, and so this would also apply to North Carolina; is that your understanding, Louis? Do you have any concern with that?

DR. DANIEL: Not really a concern. The disparities between north and south of Hatteras I can't fix with a liberalization because we're at 13 inches south of Hatteras; but I would expect that at least in North Carolina there would be some expectation if there was a liberalization between 14 and 35 percent, that we may be able to extend our season to achieve that liberalization. But that really wasn't in the addendum

the opportunities for liberalization, so I don't know that anyone commented on that unless I'm missing something.

CHAIRMAN SIMPSON: Do you have a state waters black sea bass fishery north of Hatteras where you could liberalize over what the federal government has?

DR. DANIEL: I'm not sure how lucrative the inshore inside North Carolina waters fishery is. I know we do have it south, but I'm not sure how close in it comes in state waters. The federal seasons are set; is that what you're saying? Okay.

CHAIRMAN SIMPSON: Well, accepting that little nuance, if that is an acceptable approach, we will have some specific alternatives for the northern region to consider. The southern states can reflect on this decision, too, and then we would get back together by conference call to make a decision on sea bass. David.

DR. PIERCE: You mentioned the northern region, which, of course, is one of the options within the addendum. That raises a question for me because if you note in 2012 Massachusetts in the northern region was different from Rhode Island, Connecticut, New York and New Jersey. We had a much larger minimum size and we had an open season that took advantage of the fact that the black sea bass are in our waters in May and in June.

A region-wide approach would perhaps oblige us to drop our minimum size and take away the recreational fishery when they arrive on the grounds in May and in early June. I'm looking at what we need to do in Massachusetts for black sea bass as a 33 or 34 percent cut, whatever strategies we can employ to get that kind of cut, because all the options in the addendum, for Massachusetts it is 33 or 34. Now, it differs according to – for each state in the northern region the different options have different outcomes. Go ahead.

CHAIRMAN SIMPSON: Yes, so my thinking is that we would take the same approach as last year. We could get together as a region. Clearly your points on the difference in the timing of your fishery, as we do with scup, you take your one wave early when the others take it late – I think we could accommodate that. We would certainly see what that would look like. I fully expect Massachusetts is looking to do its job in this, and we could evaluate those options when the board gets back together. Is that fair enough? Pat.

MR. AUGUSTINE: Further to that, I'm looking at this and we're going to go ahead and take action on it sooner or later, but the bottom line is we now have Wave 1 open, and the question would be when will we get data on that approximately. It looks like March, maybe. Toni can help us on that and –

CHAIRMAN SIMPSON: Never; we don't do Wave 1 sampling.

MR. AUGUSTINE: – that has got to be counted in, also.

CHAIRMAN SIMPSON: No, that is a question that I had at length to no avail in the Mid-Atlantic Council. I will leave it at that. It is open at 15 fish; that is as much as they did. What they are catching, I don't know. It doesn't count against the quota because we don't know what they caught. Adam.

MR. NOWALSKY: So the discussion here, we have talked about the merits potentially of keeping the southern states in sync with federal waters and then doing something with the northern region is similar to what we did last year. Are we going to move on this addendum, though, here today and then just leave the percentages to be worked out moving forward; or, is the intention to wait until numbers have been changed and then take action on the addendum in the near future?

CHAIRMAN SIMPSON: I think the latter. In other words, we need to see the tables; what does this mean? I am suggesting a simpler approach because we are into the new year here and time is short. I am suggesting a simpler approach, but as the technical committee works on it, you have a representative, each of us does – if there are nuances within the addendum that you want examined, I think it would be important to do that.

As the discussion we just had with Massachusetts, they did something more conservative last year and it was better suited to the timing of their fishery and so forth. There is a little bit of latitude here, but I'm hoping that what we did last year generally could be used as an approach to timely implementation of the commission component of this FMP.

MR. NOWALSKY: If I could follow up on that, the last three years have provided three very different challenges. In 2011 we met to contemplate significant reductions. Last year we met to contemplate significant liberalization. This year we are now meeting again to contemplate significant reductions.

The last two years have played out very differently. When we contemplated different reductions, what we did was we sat around, carved up the reductions and came up with percentages at that time. I think some people walked away from that meeting feeling like winners and some people walked away not feeling like winners.

Last year was a little bit different whereby everybody was getting a chance to liberalize, so I don't think anybody walked away feeling like a not-winner scenario. I came in here today with the intention to move forward with the addendum with the idea of going with a hybrid range, which is similar to what we have done in the last two years of keeping the southern states in sync with federal waters, which I think they have indicated again here today has merits and with the intention of doing something with the northern region along the lines of what Dr. Pierce indicated that 34 percent reduction, which I think is very close to what Option 4 contemplates at this point.

Then we'd all have to go home and divide up the pie at that point. Based on that, Mr. Chairman, **I think I am going to move forward with that motion at this time, if it would be appropriate. I am going to move that the board approve Addendum XXIII using Option 4, which would be ad hoc regional measure, allowing the southern states to set their season consistent with the federal regulations.** Then I will follow up on that a little bit once we get it up on the board.

CHAIRMAN SIMPSON: Pat, you're seconding that as they get it up on the board. Toni.

MS. KERNS: Adam, I think that we have the flexibility for me to go back and reconstruct the percent reduction to account for the Wave 6 harvest as well as – the actual Wave 6 harvest instead of the projected Wave 6 harvest and the fact that the southern states will stay at status quo federal measures, and then adjust that northern state reduction accordingly. I can let the northern states know what that percentage would be in the next couple of days.

MR. NOWALSKY: Yes, and I think that the addendum provides for that. Option 4 specifically provides a range of liberalization for the southern region. Now I don't know how we go outside that liberalization and say the liberalization is going to be zero percent because that is not really one of the options here. I don't know if that is actually something that we could do now.

If I go back to the original addendum, however, that went out for public comment, it was in the range at that time. The options in Option 4 in the addendum prior to today for the southern region had a 6 percent reduction to a 9.9 percent liberalization, so that status quo was in the range prior to the new document today.

MS. KERNS: And actually, Adam, because it is a liberalization and they're deciding to be more conservative, the zero is within what would be allowable because states are always allowed to be more conservative if they so choose.

MR. NOWALSKY: Great, so what this option would accomplish is that the southern region would basically remain in sync with what the federal waters would be and then the northern region would then each state would craft its own measures to achieve that approximate 34 percent reduction or whatever number that you give us all would be.

CHAIRMAN SIMPSON: Right; and hopefully we would work to coordinate that so that there is some consistency across state lines; and with the understanding that most of the fishery in the southern range is in federal waters and that they would adopt those federal measures. The target for the alternatives we develop would be more toward the 32 percent reduction, I believe it is, than 34, but we will get that clear in the document.

DR. PIERCE: For Massachusetts this is an easy vote; because as I said before, with all the options we're about 34 percent cut. I can support this particular motion because it does say we strive in the region for the same rules and regulations, but we don't have to. There can be an acknowledgment of a difference between states, and that would mean therefore that Massachusetts can be accommodated with our slightly different approach in our state, but all the while going with the 33 percent reduction.

MR. GIBSON: I appreciate the Chair's efforts to find a way forward for us, and I guess we can reluctantly support this. It preserves the regions and allows some flexibility within the regions, but I go back to what Dave Pierce said earlier that we wouldn't be in this position had we had more reasonable catch limits from the get-go. I'm struggling to justify the reduction at all, and I would like to know what would happen if we didn't go forward with an addendum to achieve this reduction and just targeted the same catch.



MS. KERNS: So at the Mid-Atlantic Council meeting we did put forward a set of regulations that if the commission does not an addendum that would meet the required reductions, that the federal regulations would become very restrictive. I don't have those measures right in front of me, but I believe Mike does.

CHAIRMAN SIMPSON: Mike, do you have those? Okay, so that is would happen on the federal side. They would need to meet the federal law. I get your point. We certainly heard this a lot in the last month or two from the public, the number of sea bass, the lack of confidence, the incoming recruitment, which, of course, doesn't help us now but certainly suggests a healthy stock. It is a fair question.

I guess a simple incomplete answer is for federal waters fisheries, it would be much more restrictive; for state waters we did just adopt a recreational harvest limit as the commission of whatever it was, 2.99 overall. I think the chips will fall where they may. Is there anymore discussion of this? Bob Ross.  
MR. BOB ROSS: Mr. Chairman, I did have the motions from the Mid-Atlantic Council. The motion says if the addendum does not address the required reduction, then the federal waters measures would be 12.5 inch minimum fish size, 20-fish possession limit, an open season from June 1 to September 5, 2013.

CHAIRMAN SIMPSON: So there it is. Frankly, when I look at it, we could reduce a half an inch, we could increase five fish and it would have the core of the fishery that most of our public wants available if we fished in federal waters. If we fished in January and February, it would be ad libitum I think is the term. Adam.

MR. NOWALSKY: I hear your sentiment with regards to reducing size limit, but that is a scenario whereby the most of your recreational fishing are targeting summer flounder or something else during that open season in large part; and to lose the spring and the fall would put just about every for-hire boat left out of business at that point. While I hear you saying that may have merit, I can't share that sentiment that that is a viable option. The reason the council took that action was so it would be quite frankly an intolerable pill to swallow, and I still feel that way today.

CHAIRMAN SIMPSON: I think again it is a question of being fair to all the partners. Certainly if I look at this narrowly as Connecticut, this is easy for me. You're right, we have a fall-targeted fishery, but

the reason we're working so hard today on summer flounder and black sea bass again for the third year is to try to more evenly share this burden of conservation responsibility that we have and the benefits of that. Louis.

DR. DANIEL: To that point, kind of, I do feel like it is important. I'm concerned with the comments on the January/February fishery. I don't know how much the fishery goes in January and February, but the fact that that is when North Carolina's fishery is, and we're the only one that has landings information from that time period.

That does give me concern, and so the fact that we're the one state that can actually document January and February landings, then we are penalized for it to some degree. In some cases that has been the case. Maybe if you don't have sampling in January and February, you shouldn't be fishing in January and February.

CHAIRMAN SIMPSON: I made that argument as strongly as I could at the Mid-Atlantic Council and I got blank stares back. Pete.

MR. HIMCHAK: Specific to Dr. Daniel's point – and I didn't want to let this go unnoticed – this was brought up at the February meeting of the Mid-Atlantic Council. I asked when will there be an analysis of VTRs from federally-permitted boats for Wave 1 and who was going to do the analysis.

The information coming on the news of the fishery has been very good. It has been very successful but catching much larger fish, four-to-seven pound fish versus what they typically catch during the year. So the questions were posed will there be a characterization of the fishery and estimate of the landings for the spring data workshop for the alternative assessment that is going to be done enhanced – I don't know what they call it – an enhanced alternative assessment being conducted this summer?

And then will the SSC consider the element of scientific uncertainty resulting from the catch of four-to-seven huge catch – I mean, huge is all relative, but I mean comparatively it is a pretty successful fishery. The SSC will then have to reexamine the scientific uncertainty before the 2014 ABC is finalized, and the council will revisit the two-year ABC recommendation prior to 2014 for this very reason. It is not going unnoticed. I heard Gary Shepherd's name mentioned, so I guess he is going to do the

heavy lifting on characterizing and estimating the landings.

CHAIRMAN SIMPSON: Okay, I think we have had a lot of discussion on this. Thanks to Adam, we have a motion on the floor, so I'm going to read it and give you a moment to caucus and then we're going to vote on it. This is move to approve Addendum XXIII using Option 4, ad hoc regional measures, with the southern states to set their regulations consistent with federal regulations. That was a motion by Mr. Nowalsky and a second by Mr. Augustine. I will give you one moment to caucus and then we will vote.

(Whereupon, a caucus was held.)

CHAIRMAN SIMPSON: Okay, are you ready for the question? Okay, all those in favor please raise your hand, nine in favor; opposed, none opposed; any abstentions, two; any null votes, none. **The motion passes.** Toni.

MS. KERNS: What I will do is I will put together a call with the technical committee and any commissioner who is interested from these northern states to determine what regulations we want to propose. What I would ask is that the northern states work together with your three members to figure out what it is that you're thinking you may want to have, what kind of regulations you want to have prior to that call so that call can be somewhat direct in what we need to do.

The technical committee members will then do an analysis of what you're looking for. Then what we will do is one we have that, then I will set up a conference call for the full board to review the states' proposals and then the board can approve them through board action, which would be I think a separate call from that that we will do for summer flounder because I think we can do this a little bit faster.

For the summer flounder fast-track addendum, in discussions with Dave, what I will do is I will pull together an addendum, e-mail it out to the board, give you one or two days to review it with your other commissioners, and then we will do a fax poll vote just to get it out for public comment.

We will have it out for comment for 30 days, and I will set up a conference call for us to approve that for final consideration. Again, as Dave said, as soon as you have an inkling of what your regulations will be for summer flounder, please do let me know what

those are so that we can start letting the other states know how many fish may be at least available on the table.

CHAIRMAN SIMPSON: Does that sound okay? Adam.

MR. NOWALSKY: And, Toni, what is your expectation for sea bass, when you will have that percentage that the northern region will work with?

MS. KERNS: If I can get one of my technical committee members on the phone today, I think I can get that information out to you guys tomorrow.

MR. NOWALSKY: Wonderful; thank you.

MS. KERNS: But that is only if I can get a technical committee member on the phone to help me out with the math, and that just will be your total percent reduction for the region. Then we will starting in-house with your technical committee member to start developing your regulations so that maybe at the end of next week or the beginning of the following week we can have that call to figure out what your proposals are.

CHAIRMAN SIMPSON: My understanding is we would have tables based on region; and if a state wants to explore something other than the region, I guess ask your technical committee member to develop those and stay in constant communication with your partners so that the pieces fit together when we come back on this again – when we come back around.

If that sounds acceptable to everyone; that will be our course of action. I will make one final pitch on summer flounder. If you could really get your public to engage in this thought of bringing that minimum size down a half an inch and trying to develop a little better, more cohesive, in my view, coast-wide approach to addressing our discard mortality problem, that would be great. Is there anything else? With that, if there is nothing else – Bob Ballou.

MR. ROBERT BALLOU: Mr. Chairman, if I'm not mistaken there is a second issue under Addendum XXIII and that is whether it is one year only or more than that. Thank you.

CHAIRMAN SIMPSON: I was assuming this was one year; is that everyone's understanding? I am seeing lots of nods that we're doing this for one year. Thanks, Bob; it is to keep that clear on the record so

we're just working on 2013 right now. We need a motion for final approval of the addendum, Pat.

MR. AUGUSTINE: Mr. Chairman, **move to approve the final Draft Addendum XXIII to the summer flounder, scup and black sea bass fishery management plan for public comment with changes and corrections as agreed to today.**

CHAIRMAN SIMPSON: Perfect; and Bill Adler is seconding that. Is there any objection to the motion? **Seeing none; it is approved unanimously with one abstention.** The National Marine Fisheries Service abstained.

### ADJOURNMENT

CHAIRMAN SIMPSON: Okay, if there is nothing else, the meeting is adjourned. Thank you for your patience.

(Whereupon, the meeting was adjourned at 12:10 o'clock p.m., February 21, 2013.)

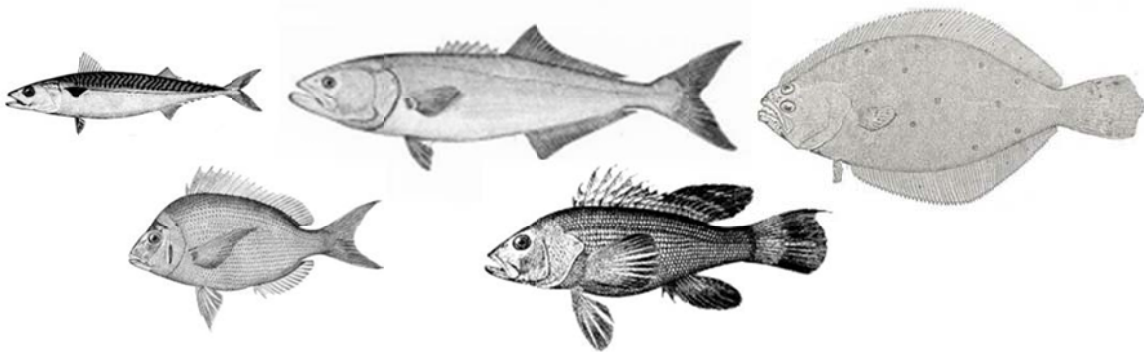
**OMNIBUS RECREATIONAL ACCOUNTABILITY MEASURE AMENDMENT**

**AMENDMENT 17 TO THE  
ATLANTIC MACKEREL, SQUIDS, AND BUTTERFISH FISHERY  
MANAGEMENT PLAN**

**AMENDMENT 4 TO THE  
BLUEFISH FISHERY MANAGEMENT PLAN**

**AMENDMENT 19 TO THE  
SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS  
FISHERY MANAGEMENT PLAN**

**(Includes Environmental Assessment)**



**Mid-Atlantic Fishery Management Council  
in cooperation with  
the National Marine Fisheries Service**

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**Final approved by NOAA:**

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## **1.0 EXECUTIVE SUMMARY**

### **Background**

This Amendment and Environmental Assessment presents and evaluates alternatives to the existing accountability measures (AMs) for the recreational Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass fisheries. These recreational fisheries are managed by the Mid-Atlantic Fishery Management Council (Council) and administered by the National Marine Fisheries Service (NMFS) Northeast Regional Office (NERO) through three Fishery Management Plans (FMPs). Specifically, this Omnibus document would amend the Atlantic Mackerel, Squid, and Butterfish FMP, the Atlantic Bluefish FMP, and the Summer Flounder, Scup, and Black Sea Bass FMP. The existing AMs for these recreational fisheries were established in the Council's Omnibus Annual Catch Limit (ACL) and Accountability Measure Amendment (MAFMC 2011) which was implemented in order to ensure FMP compliance with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSA). The methods for setting allowable biological catch (ABC) and ACLs and the Council's Risk Policy were established in the Omnibus ACL/AM Amendment (MAFMC 2011) and are not the subject of this amendment, nor are the AMs for any of the Council's commercial fisheries.

According to NMFS' National Standard 1 Guidelines (Guidelines), "AMs are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur." Also, AMs are invoked to "address the operational issue that caused the overage." The recreational AMs currently in place involve both proactive and reactive components. Proactive AMs function to prevent the ACL from being exceeded. Reactive AMs are a response to catch exceeding the ACL, and are intended to correct the issue that caused the overage.

### **Problem Statement**

Recreational fisheries are inherently uncertain in that catches are estimated through a statistical methodology rather than tallied under a mandatory reporting framework as occurs in federally managed commercial fisheries. Additionally, controls on recreational catches tend to focus on a combination of limits on fish size and the number of fish that can be retained and whether a fishing season is open or closed. These controls can only loosely restrain potential effort because the total number of recreational anglers in the fishery can fluctuate independently.

Under the Omnibus ACL/AM Amendment, AMs for the Council's recreational fisheries include a pound-for-pound reduction from a subsequent year's ACT when the central value for the recreational catch estimate exceeds the ACL. Paybacks of these overages were initially developed by the Council with an understanding that they would be a necessary component to assure full fishery accountability under the MSA. Subsequent review of the National Standard 1 Guidelines; however, indicates that paybacks may not be an appropriate approach for all fisheries, especially on healthy fish stocks, and that

paybacks, which are primarily punitive in nature, may be more suitable for stocks undergoing rebuilding. None of the Council’s recreational fisheries is overfished, nor is overfishing occurring for any of these fisheries.

Given that recreational fishing is generally associated with an outlay of money, as opposed to an economic reward as in commercial fisheries, recreational effort should generally shift toward species with a greater likelihood of being caught. Because of this, recreational catches may exceed catch limits when those limits prove to be established based on underestimates of availability of a species.

## **Solution**

For the reasons above, the Council is reconsidering its former position that paybacks of estimated recreational overages be mandated under all circumstances. The Council is recommending that, given the uncertain nature of recreational fishery data collection and management, that these primarily punitive accountability measures be limited to cases where stock condition and the nature of the overage merit a punitive response. In those circumstances where there is no pound for pound payback, the Council will use its system of adjustments to fish bag, minimum size, and season to be responsive to fishery performance by reducing or increasing fishing opportunity, as needed, to ensure stocks are harvested sustainably.

In developing the initial ACL/AM Omnibus Amendment, the Council asserted that the existing system of adjustments to bag, size, and season was not *in and of itself*<sup>1</sup> a fully consistent accountability measure. The Council may not have stated that today given its current understanding of accountability measure requirements as informed by the range of approved AMs for other Councils' recreational FMPs. This statement reflected the Council's viewpoint that the process for applying AMs should be automatic, rather than require deliberation. While this would tend to suggest that the Council was initially proposing that pre-determined responses to estimated overages be very specifically stipulated such that their implementation required only the simplest calculations, as in the case of paybacks, this assertion was instead meant to indicate that any deliberative process that would delay the implementation of a management response would be inconsistent with MSRA mandates. The deliberation involved in responding to an estimated overage through bag, size, and season adjustments would operate on the same schedule as would reduction of ACT through a payback, and would therefore, not delay the management response further.

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<sup>1</sup> From the Omnibus ACL/AM Amendment: “Accountability measures that are fully consistent with the new requirements must be automatic and cannot require Council deliberation, modification through an existing process (e.g., modification through specification setting), or be left to the NMFS Regional Administrator (Regional Administrator) discretion. For example, the current process of adjusting the recreational management measures (i.e., fish size, season, and possession limit) each year would not, in and of itself, be a fully consistent accountability measure because the process requires analysis and Council deliberation (Section 4.1).”

In addition, the Council specifies catch limits under the operating guidelines of a Risk Policy (MAFMC 2011) that is progressively precautionary. If under some combination of management measures, stock condition were to decline toward an overfished state, the Council's Risk Policy reduces ABC beyond reductions associated with lower stock size to further ensure that overfishing will not occur. Likewise, recreational measures based on these precautionary ABC values would become increasingly precautionary.

Other accountability measure components such as alternatives to existing proactive AMs are also being considered in this amendment. Proactive AMs established through the previous amendment consist of an ACT and the establishment of in-season closure authority for the NERO.

### **Proposed Actions**

Any alternative recommended by the Council and implemented by NMFS would require modification to some portion of the relevant regulatory language. For the sake of clarity, the alternatives to no action in this amendment are described along with the existing regulatory language. The existing language is provided *in italics* and replacement language is indicated by underlining. A separate deeming process, where regulatory language is approved by the Council, will follow adoption of the amendment, so the final regulatory language may be slightly different. Some alternatives under consideration, primarily reactive AM alternatives, are "process alternatives", each of which describes a set of nested management responses that incorporate information about stock condition and the catch threshold that could potentially be exceeded. Because of the interplay between stock condition and catch thresholds, these alternatives are described in table form below.

### **Proactive AM Alternatives**

Proactive AMs are actions intended to prevent a catch limit from being exceeded and, as such, are put in place either before the fishing year starts or, if, within-season data indicate a need, before the fishing year ends. These include limits on bag, size, and season which are intended to constrain or reduce the ability of recreational fishermen to catch a given species; thus constraining catch to a desired level. The exercise of in-season closure authority is also a proactive accountability measure when its exercise prevents an ACL from being exceeded, but this necessitates adjusting measures or closing the season before the ACL has been reached.

### **ACT**

#### **Alternative 1A. Preferred. (No Action/Status Quo). Current Regulatory Language for Determination of ACT.**

*Monitoring Committee [for the relevant species] shall identify and review the relevant sources of management uncertainty to recommend ACTs for the recreational fishing*

*sector as part of the specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.*

The Council chose this alternative because in comparison to the other ACT alternatives, Alternative 1A offers the greatest amount of flexibility. Furthermore, it does not inhibit the consideration or application of a reduction from ACL to ACT that accounts for management uncertainty as envisioned in either Alternatives 1B or 1C.

**Alternative 1B. Mandatory Review of ACT = ACL – Uncertainty in Recreational Catch Estimates.**

*Monitoring Committee [for the relevant species] shall identify and review the relevant sources of management uncertainty to recommend ACTs for the recreational fishing sector as part of the specification process, including explicit consideration of a reduction from the ACL based on uncertainty in recreational catch estimates. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.*

**Alternative 1C. Mandatory Setting of ACT = ACL – Uncertainty in Recreational Catch Estimates.**

*Monitoring Committee [for the relevant species] shall calculate ACTs for the recreational fishing sector as part of the specification process where ACT = ACL – Uncertainty in Recreational Catch Estimates. The Monitoring Committee recommendations shall also identify other specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.*

Alternatives 1A-1C address the consideration of measures of uncertainty in setting ACT as part of the specification process. The alternatives basically capture the spectrum of how the Council might deal with uncertainty in recreational catch estimates by being very non-specific (Alternative 1A) to explicitly considering a reduction (1B) to mandating a reduction (1C).



## **In Season Closure Authority**

### **Alternative 2A. (No Action / Status Quo). In-Season Closure Authority for the Regional Administrator.**

*The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the Federal Register advising that, effective on a specific date, the recreational fishery in the EEZ shall be closed for remainder of the calendar year.*

### **Alternative 2B. Early Closure with In-Season Projections.**

*The Regional Administrator will monitor recreational landings based on the best available data and shall consider whether projections of future landings indicate that the recreational harvest limit will be met prior to the close of the fishing season. If the recreational harvest limit is projected to be met prior to the close of the season, the Regional Administrator shall publish notification in the Federal Register advising that, effective on a specific date, the recreational fishery in the EEZ shall be closed for remainder of the calendar year.*

**Alternative 2C. Preferred. Eliminate In-Season Closure Authority.** Under this alternative, regulatory language regarding monitoring / closure of the recreational fisheries will be removed. This alternative, if chosen, would reflect a preference for addressing recreational overages in subsequent fishing years rather than imposing an early closure.

The Council selected this alternative because it considers the regional impacts of an abbreviated season to be a less desirable outcome than the post-season implications of addressing a potential overage. Additionally, by allowing the season to continue without closure, any future reduction in catch as a consequence of the overage would be addressed through coastwide measures so that no particular region would be disproportionately affected.

### **Alternative 2D. In-Season adjustment to management measures.**

*The Regional Administrator will monitor recreational landings based on the best available data and shall consider whether landings indicate that the recreational harvest limit has been met prior to the close of the fishing season. If the recreational harvest*

*limit is met prior to the close of the season, the Regional Administrator shall, in consultation with the Council, adjust management measures according to pre-arranged terms and conditions.*

This alternative would limit rather than close further landing of fish in a recreational fishery that has exceeded its RHL. The Council would need to set terms and conditions for the adjustment as part of recreational specifications so that the adjustment by the RA would be automatic. For example, the Council may recommend that the bag limit would be halved for the remainder of the season if the RHL has been determined to have been reached. The specific adjustments would be analyzed at the time the specifications are made. This alternative reflects a viewpoint that the biological costs, if any, associated with RHL being exceeded are outweighed by the socio-economic costs associated with the continual threat of access to the fishery being denied to regions that fish in the EEZ in the latter part of the year.

### **Reactive AMs**

Reactive AMs are triggered when management controls have failed to prevent a catch limit from being exceeded. As such, there are two components to reactive AMs, 1) the trigger, or what has to occur for an accountability measure to be implemented, presented below in Alternatives 3A-3D, and (2) the management response that follows if the trigger condition is met (such as a reduction in a future year's bag limit or ACT), presented below in Alternatives 4A-4D. Finally, the implementation of the management response (that is, how the adjustments are calculated) are presented in Alternatives 5A-5D.

### **Trigger Conditions**

**Alternative 3A. No Action / Status Quo for Summer Flounder Scup Black Sea Bass. Maintain Phase-In Comparing Three Year Average of Recreational Catch Estimates to Three Year Average of ACL.** *The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.*

**Alternative 3B. No Action / Status Quo for Atlantic Mackerel and Bluefish Single Year Comparison.** *The recreational sector ACL will be evaluated based on an annual comparison of the total catch estimate (landings and dead discards). Both landings and*

*dead discard estimates will be evaluated in determining if the recreational sector ACL has been exceeded.*

**Alternative 3C. Preferred. Confidence Interval.** *When a stock is not overfished and overfishing is not occurring for that stock, the recreational sector ACL will be evaluated based on an annual comparison of a specified confidence interval of the total catch estimates (landings and dead discards), where the entire confidence interval (i.e., including the lower confidence limit) is above the recreational ACL to trigger an AM. Both landings and dead discard estimates will be evaluated in determining if the recreational sector ACL has been exceeded.*

At its June 2013 meeting, the Council chose to adopt Alternative 3C and modify the existing regulations only to incorporate the use of the lower confidence limit so that the existing phased-in three year averaging of ACL and the catch estimate as done under Alternative 3A for summer flounder, scup, and black sea bass would continue under this alternative. The only difference would be that the lower confidence limit rather than the point estimate would be used in the averaging. For the bluefish and mackerel FMPs where three year averaging is not specified and the ACL includes commercial catch as well, the lower confidence limit would be used in place of the point estimate to determine if the combined catch (recreational + commercial) exceeded the ACL and single year overage determination would continue.

**Alternative 3D. Repeat Overage.** *The recreational sector ACL will be evaluated based on an annual comparison of the total catch estimate (landings and dead discards), where the recreational catch estimate must be above the recreational ACL more than once in any four year period to trigger an AM. Both landings and dead discard estimates will be evaluated in determining if the recreational sector ACL has been exceeded.*

### **Management Response**

Unlike the no action alternative, the action alternatives contemplated as management responses in this amendment take into account stock condition and the different catch thresholds that could be exceeded. These alternatives are illustrated in Tables 1 – 4 below.

Under each management response alternative, stock condition is considered to potentially be in one of three bins relative to the biomass reference points and any potential rebuilding schedule. In other words, the management response could be different if stock biomass is 1) above  $B_{MSY}$  and rebuilt, 2) below  $B_{MSY}$  but above  $\frac{1}{2} B_{MSY}$  and not in rebuilding, or 3) below  $\frac{1}{2} B_{MSY}$  or in rebuilding. Additionally, the management response could be different if the recreational catch is 1) above the recreational ACL only, 2) above the recreational ACL and the combined recreational and commercial catch is above ABC, or 3) above the recreational ACL and the combined recreational and commercial catch is above OFL.

The management responses under consideration consist of three tiered components: 1) in-season closure, 2) bag, size, season adjustment, or 3) payback of the overage amount. These are cumulative responses, such that if a tier 2 or 3 response is triggered, then all the responses below that tier are also invoked. For example if an adjustment to the bag, size, and season occurs, so does in-season closure.

It is important to note that adjustments to the bag, minimum size, and season may occur in any given year, even if there is no overage. The management measures are established each year and are a reflection of the previous year's catch compared to the coming year's catch limit. That is, each year, the Monitoring Committees recommend a set of management measures that are expected to achieve, but not exceed, the given catch limit based on how much of that species was caught in the previous year.

The management response discussed here would take into account how well those management measures performed, as compared to the expectation that they would constrain catch to the catch limit. If the catch limit were exceeded, then the management measures performed poorly because they did not constrain catch as anticipated. Knowing this, when the Monitoring Committee makes its recommendation for the subsequent year, adjustments to the measures can be made to increase the likelihood that the measures would perform better in the subsequent year.

**Alternative 4A. No Action / Status Quo. Maintain Pound for Pound Payback for any Overage of the Recreational ACL.** ... *the exact amount of the landings overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to an overage of other catch thresholds (ABC, OFL) are not considered. Nevertheless, in order to compare across alternatives, the diagrammatic approach used to illustrate the other process alternatives can be adapted for the no action alternative, as shown in the Table 1 under Alt 4A. This alternative reflects a viewpoint that paybacks of recreational overages are a necessary response to MSA and the NS 1 Guidelines, and this was indeed the Council's viewpoint at the time paybacks were established. That viewpoint has since changed, as discussed in Section 4.0. This alternative represents the most restrictive management response alternative.

**Alternative 4B. Payback when Stock is Overfished or when OFL is Exceeded.** ... *the overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT only if the stock is overfished and/or OFL has been exceeded. When these conditions are not met, AMs will consist of adjustment to bag/size/season and in-season monitoring for early closure when the recreational overage caused ABC to be exceeded, or in-season monitoring only when only the Rec ACL has been exceeded.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The

combination of stock condition and overage type in the year when an overage occurred would be taken into account to determine the automatic management response. The combinations that could occur are shown in Table 1 under Alt 4B. For example, under Alternative 4B, if stock biomass is estimated to be above the  $B_{MSY}$  target, and the recreational catch only exceeded the recreational ACL, while the combination of commercial and recreational catch did not exceed ABC, then no payback would occur and no additional adjustment to the bag, size or season as a result of the overage would be necessary.

Because in-season monitoring for a closure would be in place under all circumstances, if landings estimates in a subsequent year were to exceed the RHL, then the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would take its place, since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an overage within a four year period was to occur, then the management response under this alternative would correspond to the most recent trigger. In other words, if two consecutive overages occur, the stock condition and overage type that determine the management response would be from the second of the two overages. If Alternative 3D is adopted and the overage does not represent a re-occurrence of an overage as described in 3D, then no management response would be necessary. This alternative represents the middle ground among the alternatives with regard to restrictiveness, with Alternatives 4A and 4E being more restrictive, and Alternatives 4C and 4 D being less restrictive.

**Alternative 4C. Preferred. Payback when Stock is Overfished or when OFL is Exceeded.** ... *the overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT only if the stock is overfished and/or OFL has been exceeded AND  $B/B_{MSY}$  is  $<1$ . When these conditions are not met, AMs will consist of adjustment to bag/size/season and in-season monitoring for early closure when the recreational overage caused OFL to be exceeded, but  $B/B_{MSY} >1$ , or caused ABC to be exceeded. In-season monitoring only will occur when only the Rec ACL has been exceeded.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The combination of stock condition and overage type in the year when an overage occurred would be taken into account to determine the automatic management response. The combinations that could occur are shown in Table 1 under Alt 4C. For example, under Alternative 4C, if stock biomass is estimated to be above the  $B_{MSY}$  target, and catch exceeded the OFL, then no payback would occur, but adjustments to the bag, size, and/or season would be implemented. Because in-season monitoring for a closure would be in place under all circumstances, if landings estimates in a subsequent year were to exceed the RHL, then the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would take its place, since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an

overage within a four year period was to occur, then the management response under this alternative would be triggered. If Alternative 3D is adopted and the overage does not represent a re-occurrence of an overage as described in 3D, then no management response would be necessary. This alternative represents the second least restrictive AM management response alternative.

This alternative was selected as the preferred alternative and then modified by the Council at its June meeting to include a recreational payback when, given  $B < B_{MSY}$ , ABC is exceeded in part or in full by a recreational overage. If  $B > B_{MSY}$ , and ABC is exceeded, no payback would be needed (see Table 3 -Alt 4C-Modified by Council at June Meeting).

This alternative was also indirectly modified by the Council's choice of 2C under the In-Season Closure alternatives. As stated above, because the Council prefers Alternative 2C, all of the cells in the response alternative table would be modified to reflect the elimination of that response. Furthermore, "bag, size, and season adjustments" would be moved into the "cells" left vacant by the removal of in-season closure (see Table 1 -Alt 4C-With Council Change and Incorporating 2C). Additionally, since the adjusting the bag, size, season is a response alternative, modification of the bag, size and season would be in response to an overage in combination with the proactive function of the adjustment.

**Alternative 4D. No Payback.** ... *If the stock is overfished or in rebuilding, or  $B/B_{MSY} < 1$  and OFL has been exceeded, then adjustments to bag, size, and season will occur. Otherwise in-season closure only will occur.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The combination of stock condition and overage type in the year when an overage occurred would be taken into account to determine the automatic management response. The combinations that could occur are shown in Table 1 under Alt 4D. For example, under Alternative 4D, if stock biomass is estimated to be above the  $B_{MSY}$  target, and the catch exceeded the OFL, then no payback, or adjustment to the bag, size or season would be necessary. Because in-season monitoring for a closure would be in place under all circumstances, if landings estimates in a subsequent year were to exceed the RHL, then the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would replace that management response since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an overage within a four year period was to occur, then the management response under this alternative would be triggered. If Alternative 3D is adopted and the overage does not represent a re-occurrence of an overage as described in 3D, then no management response would be necessary. This alternative represents the least restrictive AM management response alternative.

**Alternative 4E. Payback when the Stock is Overfished or when ABC is Exceeded.**  
*... if the stock is overfished or when the combined recreational and commercial ACL (i.e., ABC) has been exceeded. When these conditions are not met, AMs will consist of adjustment to bag/size/season and in-season monitoring for early closure when the recreational overage caused OFL to be exceeded, but  $B/B_{MSY} > 1$ , or caused ABC to be exceeded. In-season closure only will occur when only the Recreational ACL has been exceeded.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The combination of stock condition and overage type in the year when an overage occurred would be taken into account to determine the automatic management response. The combinations that could occur are shown in Table 1 under Alt 4E. For example, under Alternative 4E, if the catch exceeded the ABC, regardless of stock condition, then the full suite of payback, adjustment to the bag, size or season, and in-season closure potential would be implemented. However, if the overage is only for the recreational fishery and ABC is not exceeded, and the stock is not in rebuilding or overfished, then only the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would replace that management response, since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an overage within a four year period was to occur, then the management response under this alternative would be triggered. If Alternative 3D is adopted and the overage does not represent a re-occurrence of an overage as described in 3D, then no management response would be necessary. This alternative represents the second most restrictive AM management response alternative, the most restrictive being Alternative 4A.

**Table 1. Process by which reactive accountability measures will be applied conditional on stock status and the threshold that was exceeded.**

Stock Condition		Overage Type			
		$C_R > ACL_{R_f}, C_{R+C} < ABC$	$C_R > ACL_{R_f}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_f}, C_{R+C} > OFL$	
Alt 4A	$B/B_{MSY} > 1$	Payback			
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding				
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding				
Alt 4B	$B/B_{MSY} > 1$	$C_R > ACL_{R_f}, C_{R+C} < ABC$	$C_R > ACL_{R_f}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_f}, C_{R+C} > OFL$	
		In-Season Closure	Bag, Size Season	Payback	
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure	In-Season Closure	Bag, Size Season	Bag, Size Season
			In-Season Closure	Payback	In-Season Closure
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback	Payback	Payback	
		Bag, Size Season	Bag, Size Season	Bag, Size Season	
		In-Season Closure	In-Season Closure	In-Season Closure	



**Table 1 Continued. Process by which reactive accountability measures will be applied conditional on stock status and the threshold that was exceeded.**

Stock Condition		Overage Type		
		$C_R > ACL_{R_t}, C_{R+C} < ABC$	$C_R > ACL_{R_t}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_t}, C_{R+C} > OFL$
Alt 4C	$B/B_{MSY} > 1$	In-Season Closure <sup>1</sup>	Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure <sup>1</sup>	Bag, Size Season	Payback
			In-Season Closure	Bag, Size Season
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback	Payback	Payback
		Bag, Size Season	Bag, Size Season	Bag, Size Season
		In-Season Closure	In-Season Closure	In-Season Closure

Stock Condition		$C_R > ACL_{R_t}, C_{R+C} < ABC$	$C_R > ACL_{R_t}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_t}, C_{R+C} > OFL$
		Alt 4C (Modified by Council at June Meeting)	$B/B_{MSY} > 1$	In-Season Closure <sup>1</sup>
In-Season Closure	In-Season Closure			
$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure <sup>1</sup>		Payback	Payback
			Bag, Size Season	Bag, Size Season
$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback		Payback	Payback
	Bag, Size Season		Bag, Size Season	Bag, Size Season
	In-Season Closure		In-Season Closure	In-Season Closure

<b>Alt 4C Preferred With Council change and Incorporating 2C</b>		$C_R > ACL_R, C_{R+C} < ABC$	$C_R > ACL_R, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_R, C_{R+C} > OFL$
	$B/B_{MSY} > 1$	Bag, Size Season	Bag, Size Season	Bag, Size Season
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	Bag, Size Season	Payback	Payback
			Bag, Size Season	Bag, Size Season
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback	Payback	Payback
			Bag, Size Season	Bag, Size Season

<b>Alt 4D</b>		$C_R > ACL_R, C_{R+C} < ABC$	$C_R > ACL_R, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_R, C_{R+C} > OFL$
	$B/B_{MSY} > 1$	In-Season Closure	In-Season Closure	In-Season Closure
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure	In-Season Closure	Bag, Size Season
				In-Season Closure
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Bag, Size Season	Bag, Size Season	Bag, Size Season
				In-Season Closure

**Table 1 Continued. Process by which reactive accountability measures will be applied conditional on stock status and the threshold that was exceeded.**

Alt 4E		$C_R > ACL_R, C_{R+C} < ABC$	$C_R > ACL_R, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_R, C_{R+C} > OFL$
	$B/B_{MSY} > 1$	In-Season Closure	Payback	Payback
			Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure	Payback	Payback
			Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback	Payback	Payback
		Bag, Size Season	Bag, Size Season	Bag, Size Season
		In-Season Closure	In-Season Closure	In-Season Closure

**Payback Calculation Alternatives**

These alternatives address the existing recreational payback provision wherein, for summer flounder, scup, and black sea bass, a phased in three year average of recreational catch is compared to the three year average of the recreational ACL, and a pound-for-pound payback of any overage is calculated. For Atlantic mackerel and bluefish, an overage of the overall ACL (recreational + commercial catch) is paid back pound for pound on an annual basis. In the alternatives contemplated by the Council, the calculation of the overage payback could be conditional on the status of the stock ( $B/B_{MSY}$ ). The alternatives are provided in Table 2 where O = overage, C = Catch,  $R$  = Recreational,  $C$  = Commercial,  $C_{R+C}$  = combined recreational and commercial catch.

**Alternative 5A. No Action / Status Quo. Payback Difference between the Catch Estimate and the Recreational ACL. ...**

**Atlantic mackerel:** *If the mackerel ACL is exceeded, and the recreational fishery landings are responsible for the overage, then landings in excess of the RHL will be deducted from the RHL for the following year*

**Bluefish:** *If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, ... then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year recreational ACT. If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and*

*recreational sector has occurred for the fishing year, ... then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors.*

**Summer Flounder, Scup, Black Sea Bass:** *If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the RHL, the exact poundage of the landings overage will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to an overage of other catch thresholds (ABC, OFL) are not considered. Instead, the amount of the payback is the difference between the recreational landings and the recreational harvest limit, and then any unaccounted for difference between the recreational catch and the recreational ACL for summer flounder, scup, and black sea bass. For bluefish, it is the difference between the combined recreational and commercial catch and the ACL. For Atlantic mackerel, the payback is the difference between the recreational landings and the RHL.

#### **Alternative 5B. Payback ACL Overage only When Overfished.**

Under this alternative, the condition of the stock and the contribution of a perceived recreational overage to overages of other catch thresholds (ABC, OFL) are considered as shown in Table 2 in panel Alt 5B. The combination of stock condition and overage type in the year when a perceived overage occurred would be taken into account to determine the payback calculation. The combinations that could occur are shown in Table 2 under Alt 5B. For example, under Alternative 5B, if stock biomass is estimated to be above the  $B_{MSY}$  target, and the perceived overage exceeded the OFL, then the payback would be the contribution of the recreational overage to the OFL overage. If, however, the stock is overfished and OFL has been exceeded, then the payback would be the entire recreational overage above ACL. If Alternative 3D is implemented and a repeat of a perceived overage within a four year period was to occur, then the management response would be triggered and a payback calculation may be necessary. If Alternative 3D is implemented and the perceived overage does not represent a re-occurrence of an overage as described in 3D, then no payback would be necessary and no payback calculation would be needed. This alternative represents the second most restrictive payback calculation alternative.

#### **Alternative 5C. Payback ACL Overage only When Overfished/Overfishing.**

Under this alternative, the condition of the stock and the contribution of a perceived recreational overage to overages of other catch thresholds (ABC, OFL) are considered as shown in Table 2 in panel Alt 5C. The combination of stock condition and overage type in the year when a perceived overage occurred would be taken into account to determine the payback calculation. This alternative only envisions paybacks of the entire ACL

overage when overfishing has occurred and the stock is overfished. The combinations that could occur are shown in Table 2 under Alt 5C. For example, under Alternative 5C, if stock biomass is estimated to be above the  $B_{MSY}$  no payback calculation would be necessary unless the management response (Alternative Set 4) calls for a payback. If the stock is overfished and ABC has been exceeded, then the payback would be the entire recreational overage above ABC. If Alternative 3D is implemented and a repeat of a perceived overage within a four year period was to occur, then the management response would be triggered and a payback calculation may be necessary. If Alternative 3D is implemented and the perceived overage does not represent a re-occurrence of an overage as described in 3D, then no payback would be necessary and no payback calculation would be needed. This alternative represents the second least restrictive payback calculation alternative.

**Alternative 5D. Preferred. Scaled Payback of the ACL Overage.**

Under this alternative, the condition of the stock ( $B/B_{MSY}$ ) scales the payback amount. If  $B/B_{MSY} \geq 1$ , the payback is zero. If  $1 \geq B/B_{MSY} \geq \frac{1}{2}$ , then the payback is the product of the overage and the payback coefficient based on  $B/B_{MSY}$ . If  $B/B_{MSY} \leq \frac{1}{2}$ , then the payback is pound for pound. The formula below would be applied for those scenarios where  $B/B_{MSY} > \frac{1}{2}$  to generate a payback coefficient. The product of the overage and the payback coefficient would constitute the payback:

$$\text{Overage} * \frac{(B_{msy} - B)}{\frac{1}{2}B_{msy}}$$

The effective payback coefficient for black sea bass for 2013, the only species for which there is an estimated overage and pending payback would be approximately 0.04. Therefore, because there was a 1.3 M lb overage in 2012, the payback that would be applied to the RHL in 2014 is approximately 52,000 lb

**Alternative 5E. No Payback.**

This alternative would eliminate paybacks of overages. The basis for this is the general absence of biological processes and conditions considered in administering paybacks.

**Table 2. Process by which the overage payback will be calculated conditional on stock status and the threshold that was exceeded.**

		$C_R > ACL_R < ABC$	$C_R > ACL_R, C_{R+C} > ABC$	$C_R > ACL_R, C_{R+C} > OFL$
Alt 5A	$B/B_{MSY} > 1$	$C_R - ACL_R^*$		
	$1 > B/B_{MSY} > 1/2$			
	$1/2 > B/B_{MSY}$			

		$C_R > ACL_R < ABC$	$C_R > ACL_R, C_{R+C} > ABC$	$C_R > ACL_R, C_{R+C} > OFL$
Alt 5B	$B/B_{MSY} > 1$	0	0	$O_R/O_{R+C} * C_{R+C} - OFL$
	$1 > B/B_{MSY} > 1/2$	0	$O_R/O_{R+C} * C_{R+C} - ABC$	$O_R/O_{R+C} * C_{R+C} - ABC$
	$1/2 > B/B_{MSY}$	$C_R - ACL_R$	$C_R - ACL_R$	$C_R - ACL_R$

		$C_R > ACL_R < ABC$	$C_R > ACL_R, C_{R+C} > ABC$	$C_R > ACL_R, C_{R+C} > OFL$
Alt 5C	$B/B_{MSY} > 1$	0	0	0
	$1 > B/B_{MSY} > 1/2$	0	0	$O_R/O_{R+C} * C_{R+C} - OFL$
	$1/2 > B/B_{MSY}$	0	$O_R/O_{R+C} * C_{R+C} - ABC$	$C_R - ACL_R$

\* The  $C_R$  value is shown to generalize the net effect of accounting for total recreational catch overages. The existing (status quo) regulatory language splits the accounting processes between landings and non-landings overages for summer flounder, scup, and black sea bass. For Atlantic mackerel and bluefish, landings above the RHL that contribute to an overall ACL overage are the basis for the payback because the ACL is for both commercial and recreational catch.

**Alternative 6A Preferred. No Action / Status Quo - No ACL/ACT Post Hoc Evaluation.** *There would be no subsequent evaluation of a specified ACL.*

Under Alternative 6A, the ACL that was specified for a given year based on projections or other methods such as constant catch, among others, would remain as the reference for any overage determination. Any improvement in the estimation of abundance or biomass for the specification year through an assessment update or benchmark assessment that may indicate that a larger ACL would have been more appropriate would not be considered in evaluating the likelihood of a potential overage. As such, under Alternative 6A, management triggers and management responses would all use the original ACL based on the original characterization of stock conditions for determining the nature and magnitude of a reactive AM. Although the Council was supportive of the spirit of Alternative 6B below, the Council was unsure of how it would be implemented. As a result, the Council chose Alternative 6A, and will further consider modifications such as 6B in the future.

**Alternative 6B<sup>2</sup>. ACL/ACT Post Hoc Evaluation.** *The ACL/ACT that was set for a given fishing year is re-evaluated based on an updated assessment.*

In considering Alternative 6B, the Council was exploring opportunities to make improved management responses to recreational fishery behavior. A review of the appropriateness of the ACL for the completed fishing year would occur as part of the subsequent year's stock status update and would include a determination as to whether an overage may have occurred because the ACL was set at a level that was inappropriately low given the addition of information on stock abundance in that year. A more informed ACL estimate would then provide the basis for determining the response to the recreational catch estimate. Specifically, if the updated information indicates that catches equal to or above realized catch resulted in no departure from desired stock condition, then no management response to the nominal overage would be indicated.

**Overall Impacts of the Preferred Alternatives**

The alternatives being recommended in this amendment are largely administrative in nature. There are no direct impacts on the human environment; however, indirect impacts, primarily on the socio-economic components of the human environment. These impacts are generally positive in that the recommended action would restrict the implementation of overage paybacks to situations where, in the opinion of the Council, the condition of the stock and the magnitude of the overage merit a more punitive response. In other cases, catches that deviate from specified limits will be addressed through modification of the bag, size, and season limits which takes into account past overages or underages in adjusting to a specified ACT. Additionally, the removal of in-season closure will prevent disproportionate reductions in access to recreational fisheries for regions (primarily states in the southern range of the region) where recreational fishing toward the end of the calendar year occurs primarily in the EEZ.

***Cumulative Impacts***

The biological, social, and economic impacts of the alternatives contained within this document were analyzed. When the Council proposed action is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably foreseeable future actions, it is not expected to result in any significant impacts, positive or negative; therefore, there are no significant cumulative effects associated with the action proposed in this document.

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<sup>2</sup> This Alternative was formerly numbered 1D.

## 2.0 LIST OF ACRONYMS

ABC	Acceptable Biological Catch
ACL	Annual Catch Limit
ACT	Annual Catch Target
AM	Accountability Measure
APA	Administrative Procedures Act
ASMFC	Atlantic States Marine Fisheries Commission or Commission
B	Biomass
BSB	Black Sea Bass
CEQ	Council on Environmental Quality
CZMA	Coastal Zone Management Act
DAH	Domestic Annual Harvest
DAP	Domestic Annual Processing
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EIS	Environmental Impact Statement
ESA	Endangered Species Act of 1973
F	Fishing Mortality Rate
FR	Federal Register
FMP	Fishery Management Plan
FONSI	Finding of No Significant Impact
IOY	Initial Optimum Yield
IQA	Information Quality Act
JVP	Joint Venture Processor/Processing
M	Natural Mortality Rate
MAFMC	Mid-Atlantic Fishery Management Council
MMPA	Marine Mammal Protection Act
MRFSS	Marine Recreational Fisheries Statistical Survey
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSY	Maximum Sustainable Yield
mt	metric tons
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NERO	Northeast Regional Office
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NSI	National Standard 1
OFL	Overfishing limit
OY	Optimal Yield
PRA	Paperwork Reduction Act
RA	Regional Administrator
RFA	Regulatory Flexibility Act
RHL	Recreational Harvest Limit
RIR	Regulatory Impact Review
RQ	Research Quota
RSA	Research Set-Aside
SSB	Spawning Stock Biomass
SSC	Scientific and Statistical Committee
TAC	Total Allowable Catch
TAL	Total Allowable Landings
TALFF	Total Allowable Level of Foreign Fishing
VECs	Valued Ecosystem Components



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## ***ENVIRONMENTAL ASSESSMENT***

### **4.0 INTRODUCTION AND PURPOSE AND NEED**

#### **4.1 Introduction**

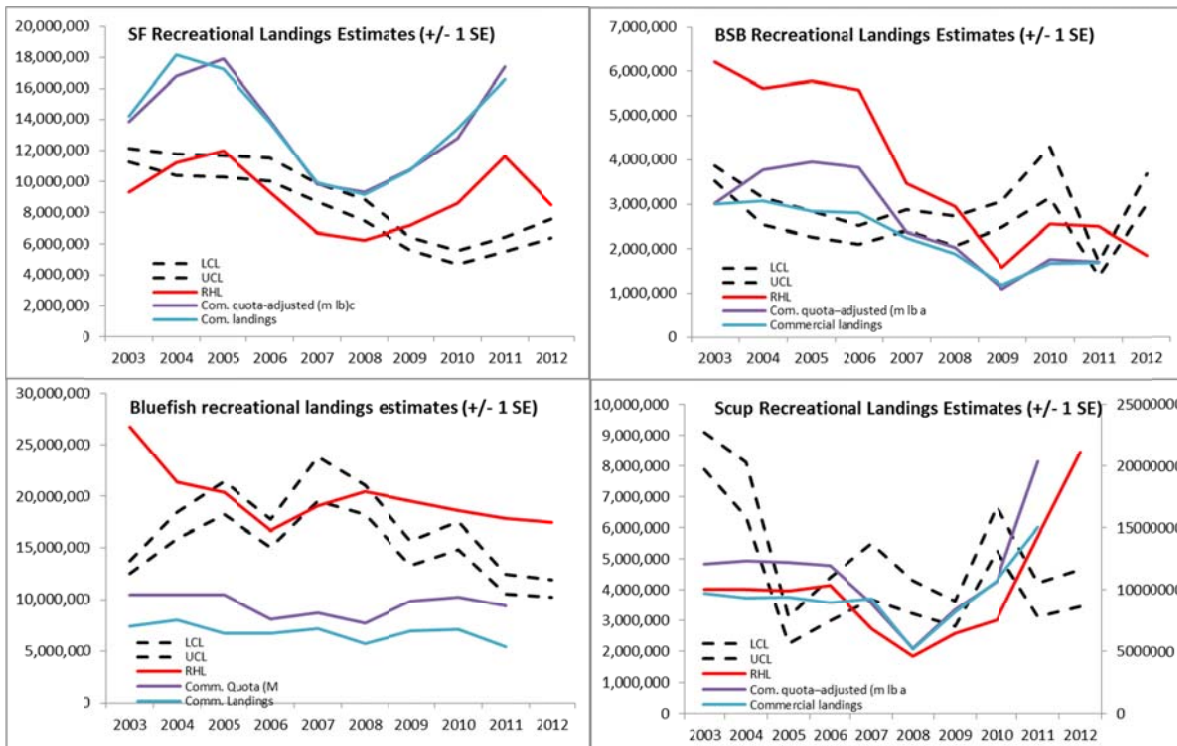
Accountability measures are a necessary component of Federal FMPs according to the MSA. According to the Guidelines, “AMs are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur.” The recreational AMs currently in place involve both proactive and reactive components. Proactive AMs function to prevent the ACL from being exceeded. Reactive AMs are a response to catch exceeding the ACL, and are intended to address the operational issue that caused the overage.

The current reactive AMs for the Council’s recreational fisheries include a pound-for-pound reduction from a subsequent year ACT when the recreational catch estimate exceeds the ACL, regardless of stock condition. This is a more punitive AM approach than may be necessary under the Guidelines, which suggest, but do not require, that a payback be considered for stocks undergoing rebuilding. None of the Council’s recreational fisheries is overfished or in rebuilding, nor is overfishing occurring for any of these fisheries. The general approach in this amendment is to propose that reactive AMs be scaled to the severity of the management error. Additionally, it is proposed that the conditions that trigger reactive AMs incorporate the uncertainty inherent in recreational fishery catch estimates and recreational management controls.

The development of a management framework for recreational AMs that takes into account the fundamental differences between commercial and recreational fisheries reflects an improvement in recreational management from current practices because it reconciles management with the realities of catch estimation and management controls. For this reason, the improvements proposed in this amendment represent a departure from the previous approach contemplated in the Omnibus ACL/AM Amendment that treated recreational and commercial fisheries as operationally consistent, such that identical AMs were established for each sector in the form of pound-for-pound paybacks. That approach was initially supported because it was automatic (i.e., did not require further deliberation) and appeared to maintain the integrity of the Council's established limits. While there is no argument that paybacks are an automatic response, they may not be the most appropriate approach given the numerous sources of uncertainty associated with recreational fisheries. This is further discussed below.

Additionally, pound for pound recreational paybacks may appear on the surface to serve the purpose of constraining the recreational fishery to established catch thresholds; however, the history of the relationship between recreational fishery landings and recreational harvest limits demonstrates that there are limits to the effectiveness of recreational management controls and these are not eliminated by the institution of paybacks. Recreational management measures appear to have constrained recreational landings to the overall range of historic RHLs which has likely contributed to success in constraining overall catches to sustainable levels. Year-to-year recreational catches, however, rarely track established RHLs. A comparison of historic

recreational fishery behavior and hypothetical future behavior under paybacks is not problematic. Paybacks simply adjust the effective RHL such that more restrictive management measures would be put in place in an attempt to limit harvest to the RHL. Therefore, the history of realized (estimated) harvest relative to past RHL levels is illustrative of likely future correspondence to future RHLs. In other words, except for cases where a payback would be extreme, management measures associated with a given payback are likely to result in as much correspondence between landings and RHLs as without paybacks. As shown in Figure 1, compared to the tight correspondence between commercial landings and the commercial quota, recreational landings and the RHL are rather loosely related. While the overall range of RHLs for a given species approximates the range of landings estimates, landings and the RHL do not follow the same year to year patterns. As discussed below, given the low likelihood that recreational landings will converge on a specified RHL in a given year, a more suitable framework would be to make allowances for fluctuations in recreational fishing when stock conditions appear to be favorable (not overfished, no overfishing) while exerting punitive management responses when stock conditions support a more aggressive approach.



**Figure 1. Time series of recreational landings for summer flounder ("SF" top left), black sea bass ("BSB" top right), bluefish (bottom left) and scup (bottom right) relative to established recreational harvest limits for the past ten years (2003-2012). Shown for comparison is the time series of commercial landings and commercial quotas. Recreational landings are expressed as a range of estimates whose upper and lower confidence limits are indicated by the dashed lines.**

## Uncertainty in Recreational Catch Estimates

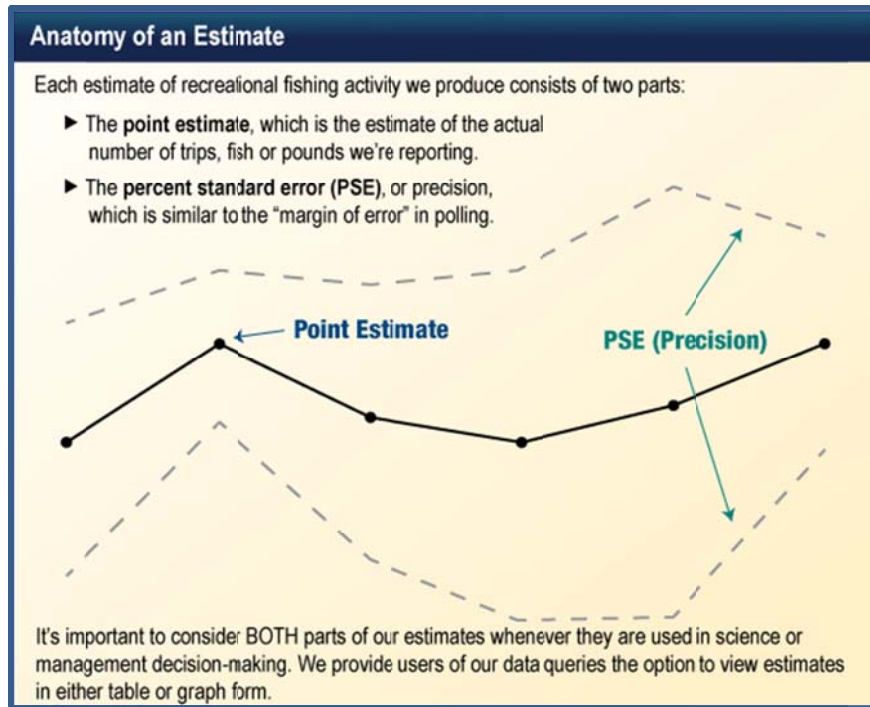
Recreational catches estimates provided via the Marine Recreational Information Program (MRIP) are estimated through a statistical survey methodology. The following text along with Figure 2 is taken from the NOAA Office of Science and Technology website (<http://www.st.nmfs.noaa.gov/index>):

### Understanding Estimates and Uncertainty

All survey estimates include some amount of statistical error and uncertainty. Being able to decipher this error is critical to understanding a catch estimate.

Every MRIP estimate is made up of two parts: The point estimate and the percent standard error (PSE). The point estimate is the estimated number of fish caught at a given place over a specified period of time. When using MRIP queries to examine the data, you will see a number on a table or a point on a graph that indicates the “point estimate.” Even though it is a specific number, it’s important to remember that this number is an estimate. It is impossible to have 100% certainty with any type of sample survey. To indicate how unsure we are about a point estimate, we use the PSE.

The PSE is similar to the “margin of error” that is frequently used in public opinion surveys. It is the measure of how precise an estimate is. The lower the PSE, the greater the precision. Accurately calculating PSEs is important because a full understanding of what we don’t know – and how we can better fill gaps in our knowledge – is an essential component in making prudent, sustainable fisheries management decisions.



**Figure 2. A graphic that briefly addresses the information provided in a recreational catch estimate.**

The MRIP statistical methodology couples catch data acquired from intercepts of recreational anglers by survey personnel and effort data from telephone interviews of randomly selected households. As stated above, the uncertainty is typically reported as a percent standard error (PSE; Table 3 below), where standard error is the average error or difference in estimates from the central value. A large PSE such as for Atlantic mackerel (Table 3) corresponds to a more uncertain catch estimate than an estimate with a smaller PSE such as for summer flounder (Table 3). Ignoring the PSE and treating the central value as completely accurate is an inappropriate use of the statistically derived estimates (pers. comm. Jay Breidt, Statistics Dept., Colorado State University).

Federal commercial fishery landings data, by contrast, are obtained through mandatory dealer and vessel reports that are submitted as a condition of being permitted to participate in the commercial harvest and sale of seafood. There are no statistics involved in the reporting of these data. Every pound of fish is required to be reported. These data are assumed to be 100% accurate, occasional audits and corrections withstanding. Additionally, and importantly, commercial landings are reported in a timely manner (weekly, as opposed to a six week lag in the generation of recreational landings estimates) so that the accumulation of landings relative to the establish quota can allow managers to shut down a fishery much closer to the time when it has reached the quota.

Figure 1 illustrates the disparate behavior of recreational and commercial fisheries relative to their landings limits for all the recreational species except Atlantic mackerel. In the figure, commercial landings closely approximate the commercial quota time series. The recreational



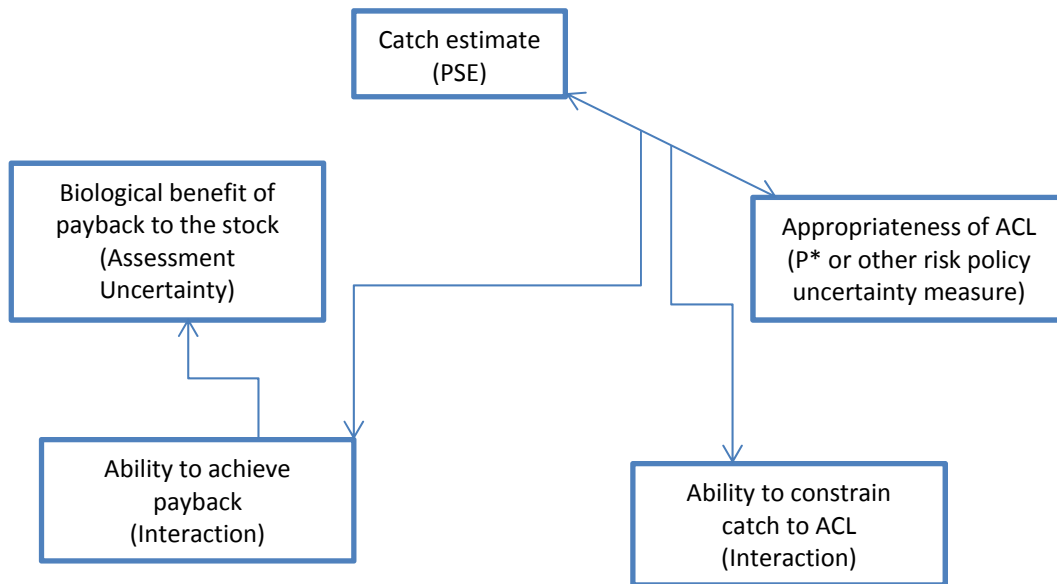
fishery, on the other hand, while operating within the general range of recreational harvest limits, shows indications that management constraints have limited ability to constrain landings to specified levels. Although year-to-year correspondence between recreational landings estimates and the RHLs is poor, the net effect of the recreational measures, which have kept landings within the long-term range of established limits, has apparently been sustainable. None of these stocks are overfished, nor is overfishing occurring.

If the uncertainty in the landings estimates is considered, as it should be, it will be noted that for all of these recreational fisheries, across the same ten year time period, the lower confidence limit for the recreational landings estimate exceeded the RHL in 0/10 years for Atlantic mackerel, 1/10 years for bluefish, 3/10 years for summer flounder, 3/10 years for black sea bass, and 6/10 years for scup. Additionally, in any year when the point estimate of the landings exceeded the RHL, the lower confidence limit also exceeded the RHL. In other words, it would not have made a difference if the point estimate or lower confidence limit for the recreational landings estimate had been used as a test for a landings overage. None of these recreational fishery stocks is characterized as overfished.

### **Paybacks Assume Accuracy**

Under the Council's current recreational management procedures, a payback is prescribed for any pounds of catch above an established ACL. The ACLs are specific to the recreational fishery for summer flounder, scup, and black sea bass, while the ACLs for Atlantic mackerel and bluefish include commercial catch. The current determination that catch is above the ACL assumes the recreational catch estimate as completely accurate. The PSE is ignored. In other words, an ACL that has been specified (to the pound) is compared to the central value from recreational catch estimation and any difference in catch above the ACL is subject to payback. This treatment of the data is inappropriate in the face of uncertainty in the recreational catch estimates. Given the tendency for recreational landings estimates to occasionally exceed the specified RHL, additional uncertainty is added when it is presumed that a specific overage, precisely known, will be precisely paid back. More specifically, this is as unlikely as it is the RHL would be achieved in any year. Finally, further uncertainty is associated with the expectation that any biological benefit to the stock will be achieved by the payback. This uncertainty can be thought of as the product of the uncertainties associated with the probability of 1) achieving the payback, and 2) the retention of those fish in the population contributing to increased biomass through growth and production such that an offset of those factors from the overage is achieved.

In accounting for the various sources of uncertainty that have been discussed thus far - the catch estimate itself, the appropriateness of the ACL, the ability to constrain catches to a specified level, the ability to achieve the payback - another source of uncertainty arises which is the amount of biological value the payback returns to the affected stock. Figure 3 below reflects the accumulation of these sources of uncertainty as the process of specifying catch limits and management measures proceeds.



**Figure 3. Interrelated sources of uncertainty associated with recreational paybacks.**

**Table 3. Average PSE (2003-2012) for landings estimates for recreational species affected by this amendment showing the range of uncertainty in the catch estimates for these species.**

<b>Species</b>	<b>Ave PSE</b>
Summer Flounder	6.99
Bluefish	7.78
Black Sea Bass	10.43
Scup	14.29
Atlantic Mackerel	21.34

### **Managing with Uncertainty**

A central premise to this amendment that represents a departure from the approach taken in MAFMC 2011 is that, in the recreational accountability system, recreational catch estimates will not be treated the same as commercial catch reports. Improvements in the accuracy of recreational catch estimates may occur as MRIP methodology evolves, however, until catches are no longer estimated there will always be uncertainty associated with those estimates.

A general approach in this amendment is to require, under favorable stock conditions, a greater degree of evidence than for commercial fisheries that catches have deviated from desired threshold levels (i.e., above the specified ACL) before a management response is invoked. While this appears to set different standards for the recreational fishery, it must be understood that recreational and commercial fisheries, though they both result in the removal of fish from a population, are in fact very different and require different management approaches.

### **4.2 The Affected Recreational Fisheries**

This amendment addresses only fisheries managed by the Council for which recreational ACLs and AMs have been established. These include recreational fisheries for Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass.

### **4.3 Purpose and Need for Action**

The purpose of this action is to evaluate and implement AMs that consider the biological cost of any catch overage and that recognize the generally uncertain nature of recreational fishery catch estimates and recreational management controls. The need for this action is to consider other accountability measures, in addition to the current pound-for-pound reductions and in-season closures.

## **5.0 MANAGEMENT ALTERNATIVES**

Each suite of alternatives in this section consists of a status quo/no action alternative, and one or more action alternatives that the Council considered when identifying preferred alternatives.

### **5.1 No Action**

Section 5.03(b) of NOAA Administrative Order (NAO) 216-6, “Environmental review procedures for implementing the National Environmental Policy Act,” states that “an EA must consider all reasonable alternatives, including the preferred action and the no action alternative.” Consideration of the “no action” alternative is important because it shows what would happen if the proposed action is not taken. Defining exactly what is meant by the “no action” alternative is often difficult. The President’s Council on Environmental Quality (CEQ) has explained that there are two distinct interpretations of the “no action.” One interpretation is essentially the *status quo*, i.e., no change from the current management; and the other interpretation is when a proposed project, such as building a railroad facility, does not take place. In the case of the proposed action alternatives contained within this document to specify mechanisms to set ABC, ACLs, and AMs, and future review and modification of those actions for the managed resources of this Omnibus Amendment, it is slightly more complicated than either of these interpretations suggest. There is no analogue for these fisheries to the railroad project described above, where no action means nothing happens. The management regimes and associated management measures within the FMPs (section 4.2) for the managed resources have been refined over time and codified in regulation. The *status quo* management measures for the managed resources, therefore, each involve a set of indefinite (i.e., in force until otherwise changed) measures that have been established. These measures will continue as they are even if the actions contained within this document are not taken (i.e., no action). The no action alternative for these managed resources is therefore equivalent to *status quo*. On that basis, the status quo and no action are presented in conjunction (i.e., status quo/no action alternative) for comparative impact analysis relative to the action alternatives.

### **5.2 Proactive Accountability Measures**

Proactive AMs are actions intended to prevent a catch limit from being exceeded and, as such, are put in place either before the fishing year starts or if within-season data indicate a need, before the fishing year ends. These include limits on, bag, size, and season which are intended to constrain or reduce the ability of recreational fishermen to catch a given species; thus, constraining catch to a desired level, which is typically an ACT. The exercise of in-season closure authority is also a pro-active accountability measure when its exercise prevents an ACL from being exceeded, but this necessitates adjusting measures or closing the season before the ACL has been reached.

## **Annual Catch Target**

ACTs are specified for all five species as part of the current specifications process. There are differences among the FMPs as to how this is done. Figures 4-6 illustrate the ACT specification process for each FMP. Figure 6, which illustrates the process for summer flounder, applies to scup and black sea bass as well. Note that for the current fishing year (2013) the recreational ACT is equal to the recreational ACL for summer flounder, scup, and black sea bass, and the ACL is equal to the sum of the commercial and recreational ACTs for bluefish. In 2013, only Atlantic mackerel has an ACT that is reduced from the ACL.

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### Atlantic Mackerel Flowchart

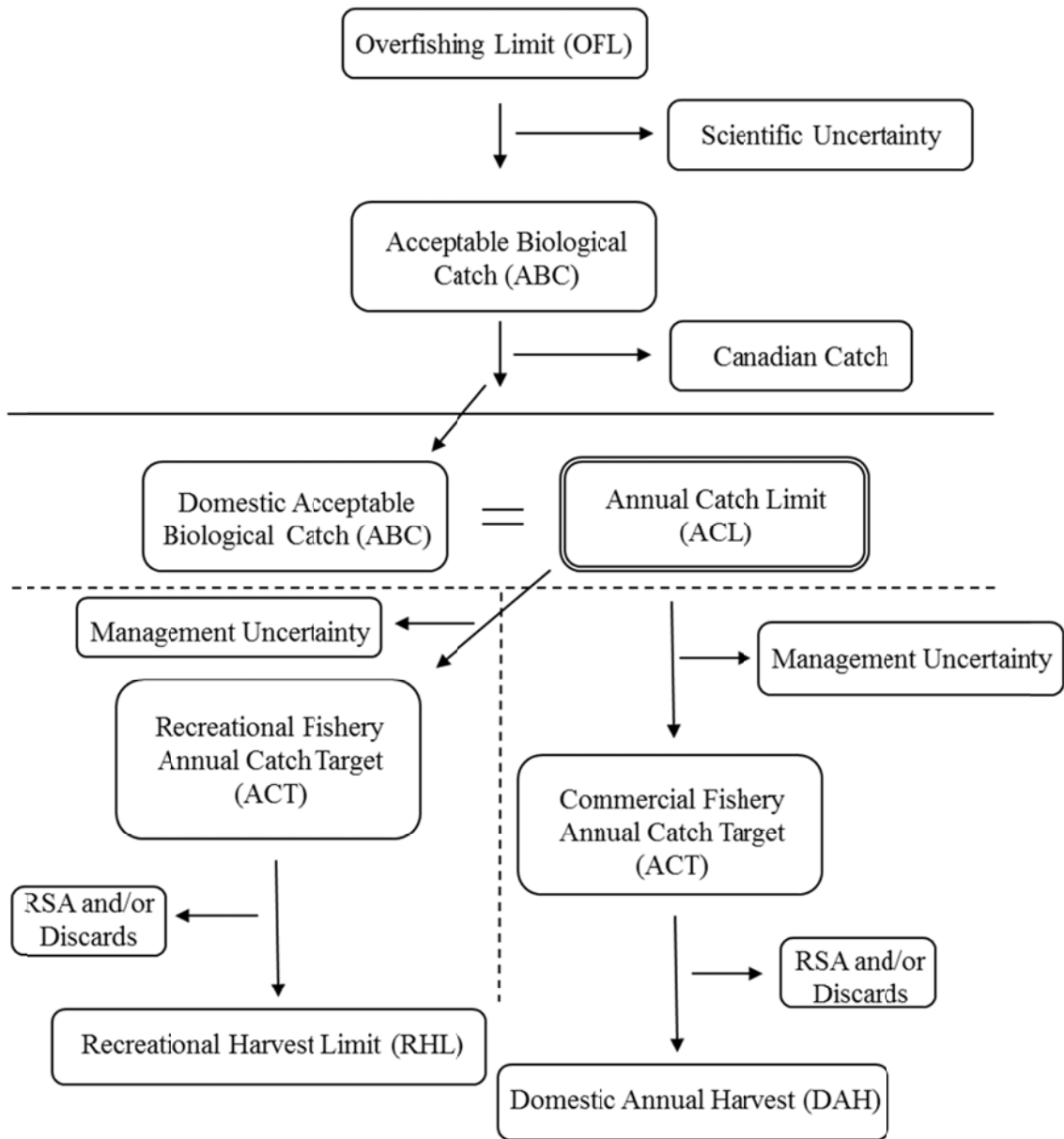


Figure 4. Process for determining Atlantic mackerel ACTs and other catch limits.

### Atlantic Bluefish Flowchart

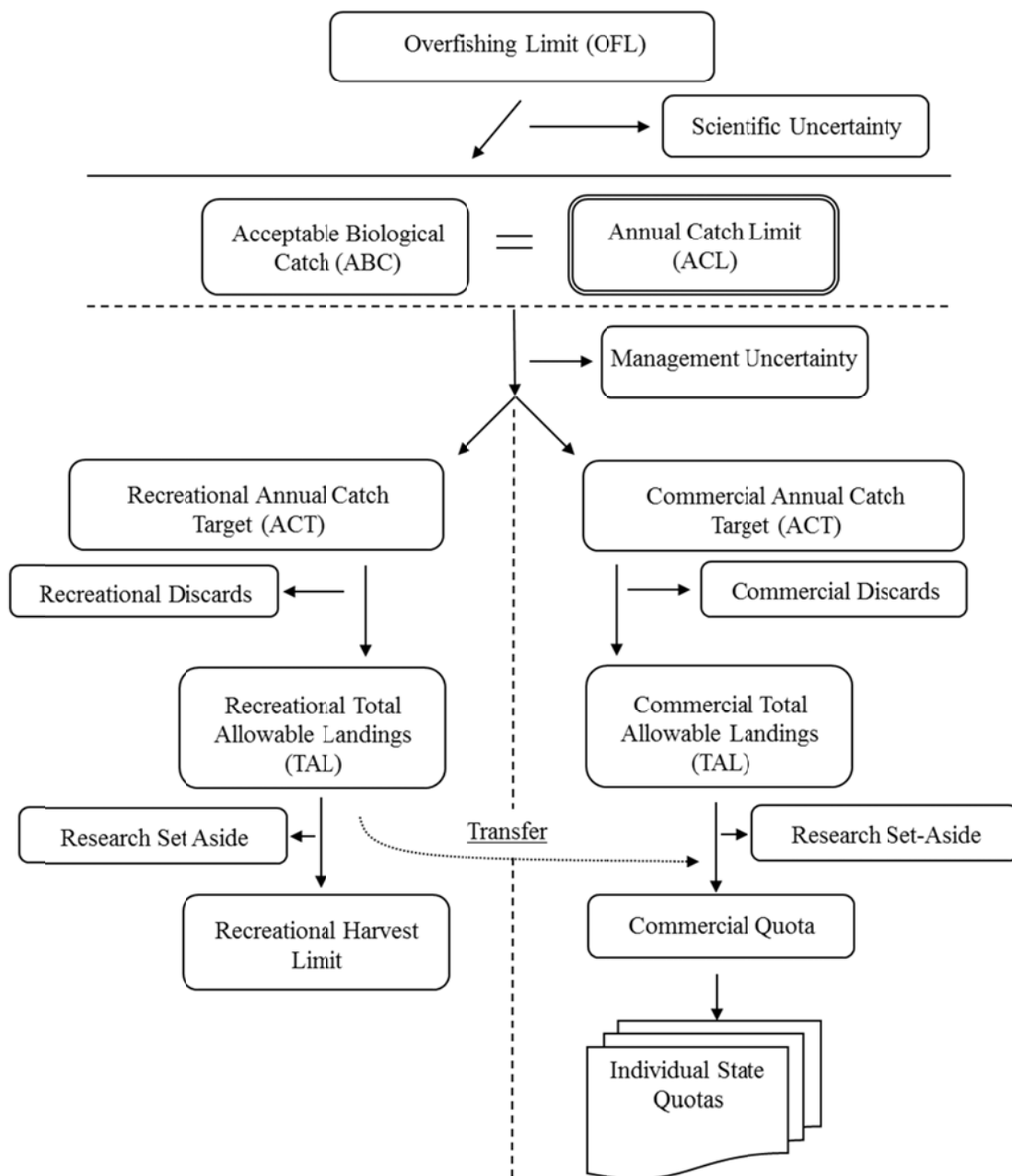


Figure 5. Process for determining Atlantic bluefish ACTs and other catch limits.

## Summer Flounder Flowchart

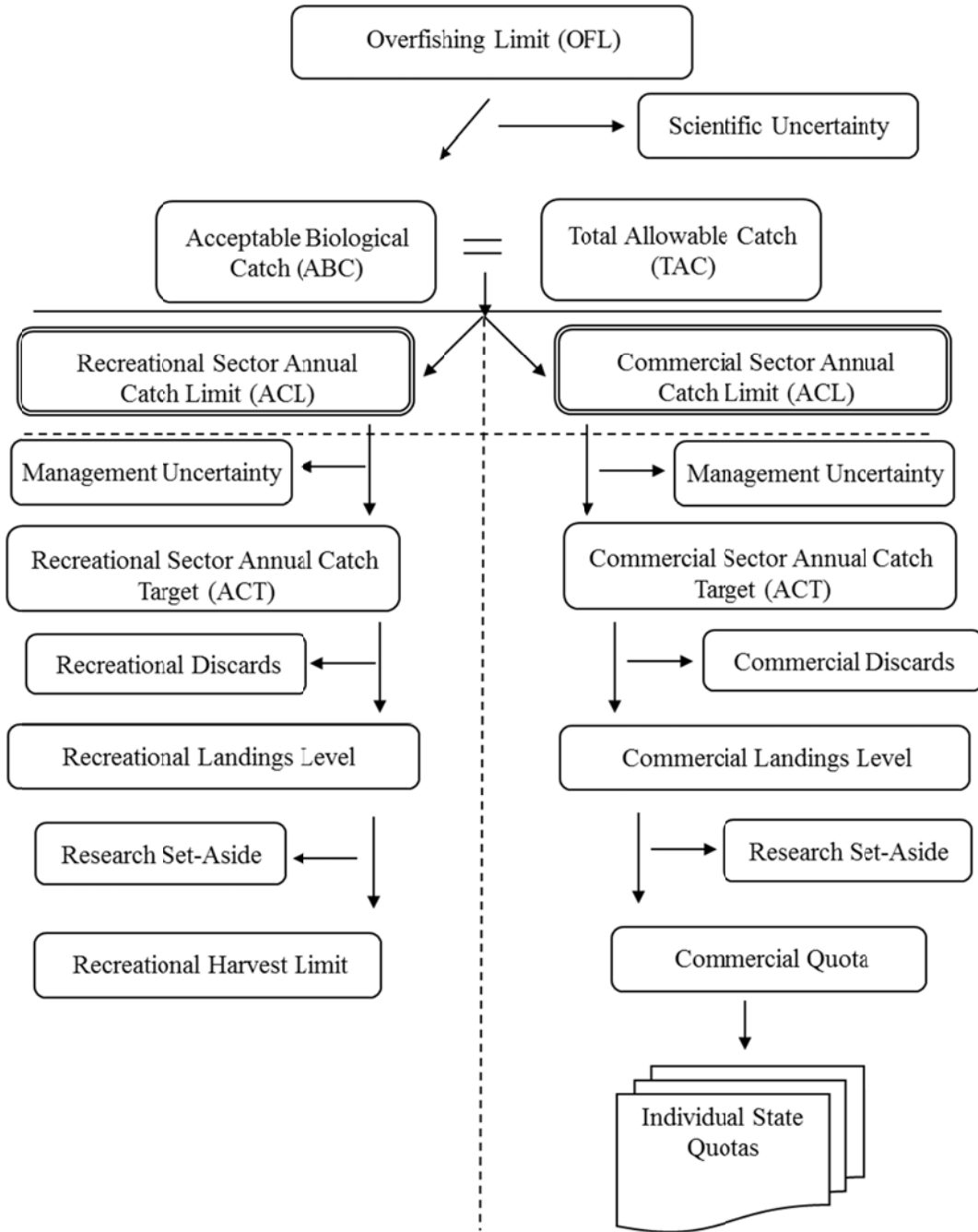


Figure 6. Process for determining summer flounder ACTs and other catch limits. This process also applies to scup and black sea bass.



In considering modifications to ACTs, the Council is not considering changes to the processes established in MAFMC 2011, but rather to how ACT might be alternatively calculated, once the process has arrived at the point where ACT is calculated. As seen in Figures 4-6, the step from ACL to ACT involves consideration of management uncertainty. There is no official guidance on how management uncertainty should be characterized or considered. Nevertheless, any reduction from ACL to ACT is meant to "aim low" at a target that may be exceeded due to uncertainty in the ability of management to control landings. Generally speaking, the history of landings relative to landings limits is examined to make a more informed decision about the level of reduction, if any, necessary to reduce the likelihood that ACL will be exceeded. The language below includes existing and alternative regulatory language for specifying an ACT. The same general language is used for all five recreational fisheries.

**Alternative 1A. Preferred. No Action/Status Quo. Maintain Current Regulatory Language for Determination of ACT.** *Monitoring Committee [for the relevant species] shall identify and review the relevant sources of management uncertainty to recommend ACTs for the recreational fishing sector as part of the specification process.*

Under the current regulatory language, the Monitoring Committee and Council are given substantial discretion in how management uncertainty is considered and applied. For fishing year 2013, the recreational ACTs for summer flounder, scup, and black sea bass, were set equal to the recreational ACLs. For the 2013 bluefish specifications, the recreational ACT plus the commercial ACT are equal to the combined ACL. Setting ACT (or the combined ACTs) equal to the ACL results in management uncertainty essentially being zero for the current fishing year. The 2013 recreational ACT for Atlantic mackerel incorporates a 10 percent buffer for management uncertainty. As stated above, the discretion to set management uncertainty to zero has been exercised for the current fishing year for four out of five of the recreational species and that would be maintained under this alternative.

**Alternative 1B. Mandatory Review of ACT = ACL – Uncertainty in Recreational Catch Estimates.** *Monitoring Committee [for the relevant species] shall identify and review the relevant sources of management uncertainty to recommend ACTs for the recreational fishing sector as part of the specification process, including explicit consideration of a reduction from the ACL based on uncertainty in recreational catch estimates.*

This alternative obligates the Monitoring Committees to communicate the magnitude of the uncertainty in the recreational catch estimates to the Council for consideration during specification setting. The uncertainty in the recreational catch estimates could be used as a reduction from ACL to ACT. In contrast to the no action/status quo alternative (Alternative 1A), which does not explicitly call out the uncertainty in the recreational catch estimate, this

alternative would require the monitoring committee to present an estimate of the amount of uncertainty in the catch estimate for the Council. The Council could then choose to reduce the ACT from the ACL by that amount, or some other estimate of management uncertainty, including zero.

**Alternative 1C. Mandatory Setting of ACT = ACL – Uncertainty in Recreational Catch Estimates.** *Monitoring Committee [for the relevant species] shall calculate ACTs for the recreational fishing sector as part of the specification process where ACT = ACL – Uncertainty in Recreational Catch Estimates – Additional Sources of Uncertainty (as needed).*

This alternative would establish that the uncertainty in the recreational catch estimates be used as a reduction from ACL to ACT regardless of any other mitigating circumstances such as stock condition or underperformance of the commercial fishery. It would not prevent the application of additional measures of management uncertainty to further reduce from ACL to ACT; however, the greatest value ACT could take on would be ACL - a measure of recreational catch uncertainty. In contrast to Alternative 1B, this alternative would obligate the Council to reduce the ACT from the ACL by at least the uncertainty estimate specified by the Monitoring Committee regarding uncertainty in the recreational catch estimate. Because the uncertainty comes from the data, the Council could also have additional sources of management uncertainty that would reduce ACT further.

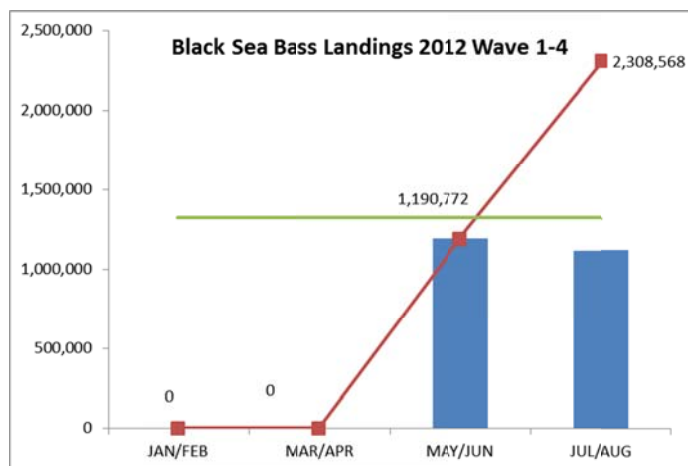
### **In Season Closure Authority**

These proactive accountability measures attempt to prevent the ACL from being exceeded by closing down the recreational fishery as soon as data are available that indicate the RHL has been landed. In order for this to be successful, fishing would have to cease as soon as the RHL is achieved. Since the data for a given recreational fishing wave (two-month period) are typically not available until several weeks after the wave ends, this is rarely the case. Given the timing constraints and uncertainty in the recreational landings estimates, in-season closure may not be appropriate for these fisheries.

**Alternative 2A. No Action / Status Quo. Maintain Current In Season Closure Authority for the Regional Administrator (RA).** *The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the Federal Register advising that, effective on a specific date, the recreational fishery in the EEZ shall be closed for remainder of the calendar year.*

**Alternative 2B. Early Closure with In Season Projections.** *The Regional Administrator will monitor recreational landings based on the best available data and shall consider whether projections of future landings indicate that the recreational harvest limit will be met prior to the close of the fishing season. If the recreational harvest limit is projected to be met prior to the close of the season, the Regional Administrator shall publish notification in the Federal Register advising that, effective on a specific date, the recreational fishery in the EEZ shall be closed for remainder of the calendar year.*

Under this alternative, the RA would be able to use a projection of recreational landings to determine if the RHL has been harvested as the basis for closing a recreational fishery. This can result in an earlier closure than under Alternative 2A and is more likely than Alternative 2A to prevent the ACL from being exceeded. Recreational landings estimates are grouped in to two month waves (January-February are wave 1, March-April are wave 2, etc.) and wave data are available approximately six weeks after the end of a wave. Projections would allow the RA to determine if it is likely that the recreational harvest limit is exceeded in the current wave. For example, and as illustrated in Figure 7 for 2012, when black sea bass landings estimates through wave 3 were approximately 90 percent of the recreational harvest limit, the current regulations prevented the RA from taking any action. Had Alternative 2B been in place, on the other hand, this would have allowed the RA to close the fishery at least two months earlier. Compared to the *status quo*, Alternative 2B would be more likely to prevent excessive recreational overages that would then trigger reactive AMs from being implemented.



**Figure 7. Black sea bass landings by wave in 2012. Under Alternative 2B, a projection of landings based on the increase from wave 2 to wave 3 could have resulted closure of the fishery in wave 4.**

**Alternative 2C. Preferred. Eliminate in-season closure authority.** Regulatory language regarding monitoring / closure of the recreational fisheries would be removed. This alternative, if chosen, would reflect a preference for addressing recreational overages in subsequent fishing years rather than imposing an early closure.

As described above, there is a delay in receiving the in-season recreational landings estimates. In addition to the uncertainty and the delay, there may be seasonal differences in a fishery that would result in in-season closures disproportionately impacting anglers in a particular state or region. For example, if the primary two-month wave for a particular species is May-June in one state and November-December in another state, year to year closures of the fishery in November-December would disproportionately impact anglers in the second state (Table 4).

**Table 4. Total 2009-2012 landings (N) of black sea bass in North Carolina and New York illustrating the relative importance of two-month recreational waves in the two states.**

	NC	NY
<b>JANUARY/FEBRUARY</b>	75,634	0
<b>MARCH/APRIL</b>	13,514	0
<b>MAY/JUNE</b>	155,890	384,539
<b>JULY/AUGUST</b>	84,919	612,500
<b>SEPTEMBER/OCTOBER</b>	67,193	593,076
<b>NOVEMBER/DECEMBER</b>	18,879	67,462

**Alternative 2D.** In-Season adjustment to management measures. *The Regional Administrator will monitor recreational landings based on the best available data and shall consider whether landings indicate that the recreational harvest limit has been met prior to the close of the fishing season. If the recreational harvest limit is met prior to the close of the season, the Regional Administrator shall, in consultation with the Council, adjust management measures according to pre-arranged terms and conditions.*

This alternative would limit rather than close further landing of fish in a recreational fishery that has exceeded its RHL. The Council would submit for approval terms and conditions for the adjustment as part of recreational specifications so that the adjustment by the RA would be automatic. For example, the Council may recommend that the bag limit be halved for the remainder of the season if the RHL has been determined to have been reached.

### 5.3 Reactive AM Alternatives

Reactive AMs are triggered when management controls have failed to prevent a catch limit from being exceeded. As such, there are two components to reactive AMs, 1) the trigger, or what has to occur for an accountability measure to be implemented, and (2) the actual AM, or the action that follows if the trigger condition is met (such as a reduction in a future year's bag limit or ACT).

#### Trigger Conditions

**Alternative 3A. No Action / Status Quo for Summer Flounder, Scup, Black Sea Bass. Maintain Phase-In Comparing Three-Year Average of Recreational Catch Estimates to Three-Year Average of ACL.** *The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.*

Although this alternative represents no action for the Summer Flounder, Scup, and Black Sea Bass FMP, the Council is not considering this alternative for the Atlantic mackerel and bluefish FMPs.

**Alternative 3B. Compare Single Year Recreational Catch Estimate to Same Year ACL (No Action / Status Quo for Atlantic Mackerel and Bluefish).** *The [recreational sector] ACL will be evaluated based on an annual comparison of the total catch estimate (landings and dead discards). Both landings and dead discard estimates will be evaluated in determining if the [recreational sector] ACL has been exceeded.*

This alternative would remove the three-year averaging of the ACL and the catch estimates from the accountability procedures for summer flounder, scup, and black sea bass. Instead, a single year ACL would be measured against that same year's catch estimate for determination of an overage. Because three year averaging is only in place for summer flounder, scup, and black sea bass, this alternative represents the status quo for Atlantic mackerel and bluefish.

**Alternative 3C. Preferred. Compare Confidence Interval of Single Year Recreational Catch Estimate to Same Year ACL.** *The recreational sector ACL will be evaluated based on an annual comparison of the appropriate confidence interval of the total catch estimate (landings and dead discards), where the entire confidence interval (i.e., including the lower confidence limit) must be above the recreational ACL to trigger an AM. Both landings and dead discard estimates will be evaluated in determining if the recreational sector ACL has been*

*exceeded. If overfishing is occurring or the stock is overfished in the year for which the overage determination is being made, then the use of the lower confidence limit would not occur and the point estimate of catch would serve for comparison with the ACL.*

Alternative 3C attempts to incorporate statistical theory into management by acknowledging the uncertainty that is an explicit component of MRIP catch estimates. Under the status quo, a recreational catch estimate is treated the same as commercial fishery data from dealer reports. Dealer reports are not estimates, however, and should be in error only if there is accidental or intentional misreporting. The reports are based on transactions that are traceable and there are significant penalties in place to enforce misreporting.

A confidence interval of +/- one PSE corresponds to a roughly 68% of the total distribution of catch estimates for a given year. This alternative would allow, when stock conditions are favorable (not overfished, no overfishing) the use of the lower confidence limit (central value minus one standard error) as a trigger for AMs. This would appear to introduce some additional level of risk, thus the requirement that stock condition be favorable in order to use the confidence interval. If the stock is overfished or overfishing has been determined to have occurred, then the point estimate would be used as done currently. As has been discussed above; the use of a lower confidence limit in place of the point estimate in the past would likely not have made any difference in determining whether an overage had occurred. In other words, the performance of the fisheries relative to, at least the RHL, suggests that the deviation away from that limit is typically greater than one standard error. This alternative would accommodate a situation where the point estimate is only slightly above the limit, but the lower confidence limit is below it. As has been stated above, the retention of recreational catches to the general range of recreational limits has resulted in healthy stock conditions. As such, the risk to stock health associated with not declaring an overage because of the occurrence of a point estimate above the limit and a lower confidence limit below the limit is virtually nil.

At its June meeting, the Council chose to modify the existing regulations only to incorporate the use of the lower confidence limit so that the existing phased-in three year averaging of ACL and the catch estimate as done under Alternative 3A for summer flounder, scup, and black sea bass would continue under this alternative. The only difference would be that the lower confidence limit rather than the point estimate would be used in the averaging. For the bluefish and mackerel FMPs where three year averaging is not specified and the ACL includes commercial catch as well, the lower confidence limit would be used in place of the point estimate to determine if the combined catch (recreational + commercial) exceeded the ACL and single-year overage determination would continue.

**Alternative 3D. Repeat of Recreational Catch Estimate Exceeding ACL.** *The recreational sector ACL will be evaluated based on an annual comparison of the total catch estimate (landings and dead discards), where the recreational catch estimate must be above the recreational ACL more than once in any four year period to trigger an AM. Both landings and dead discard estimates will be evaluated in determining if the recreational sector ACL has been exceeded.*

Alternative 3D represents an additional approach for dealing with the potential for recreational catch to expand beyond a specified threshold. Limiting trigger conditions to the repeat of an overage within a four year period allows for the occasional departure of recreational fishery behavior from desired limits while preventing this, through the invocation of response measures, from becoming a chronic occurrence. It is unlikely that a single year overage would have a deleterious effect on a healthy fish stock when surrounded by three years on either side.

## **Management Response**

Unlike the no action alternative, the action alternatives contemplated as management responses in this amendment take into account stock condition and the different catch thresholds that may be exceeded. These alternatives are illustrated in Table 5 below.

In each management response alternative, stock condition is considered to potentially be in one of three bins relative to the biomass reference point and any rebuilding schedule. In other words the management response could be different if stock biomass is: 1) above  $B_{MSY}$  and rebuilt, 2) below  $B_{MSY}$  but above  $\frac{1}{2} B_{MSY}$  and not in rebuilding, or 3) below  $\frac{1}{2} B_{MSY}$  or in rebuilding. Additionally, the management response could be different if the recreational catch is: 1) above the recreational ACL only, 2) above the recreational ACL and the combined recreational and commercial catch is above ABC, or 3) above the recreational ACL and the combined recreational and commercial catch is above OFL.

The management responses under consideration consist of three tiered components: 1) monitoring for in-season closure, 2) bag, size, season adjustment, or 3) payback of the estimated overage. These are cumulative responses, such that if a tier 2 or 3 response is triggered, then all the responses below that tier are also invoked. For example if a bag, size, or season adjustment occurs, so does catch monitoring for in-season closure. If the alternative to eliminate in-season closure authority is chosen under Alternative 2C, it would eliminate in-season closure from these management response alternatives.

In order to differentiate itself from the payback response, the bag, size, season response is not prescriptive in that it would not have to achieve a reduction in catch by the exact overage amount. The adjustment would take into account expected stock condition in the year where the AM would be applied such that changes in stock condition would correspond to a different adjustment than would occur under an assumption of equilibrium conditions as is used currently. If payback and bag/size/season adjustment apply in the same year, then bag/size/season would be adjusted to achieve the ACT as reduced by the payback.

Additionally, the bag, size, and season adjustment is comprised of two parts which are separately proactive and reactive. The pro-active component of a bag, size, season adjustment will always occur for the affected species, to the extent that they are addressed as part of the year-to-year activity of the species' Monitoring Committees. These adjustments typically take into account fishery performance relative to previously established measures, however, that would not necessarily occur if a management response alternative is chosen that would require in-season

monitoring for a closure, only. If in-season closure is removed, then the two components of would operate as currently practiced under the status quo.

1) Proactive: For a given year's ACT, an adjustment to bag, size, and season modifies those variables to move from the existing ACT to the future ACT. If the ACTs are the same and catch achieved, but did not exceed the ACT, then no adjustment is needed. If the new ACT is larger, then a relaxation of one or more components may be made; and if the new ACT is smaller, then more restrictive measures are identified that correspond to the ACT. This is how the Council has managed the recreational fisheries to date.

2) Reactive: If the estimated recreational catch exceeds the ACL in a given year, the "inefficiency" or "overefficiency" of the bag, size, season limits for that year would factor into a subsequent adjustment. For example, if an estimated overage occurred, then the percent overage would be applied so that some combination of bag, size, and season adjusts for that overage.

The separation of these two functions of the bag, size, and season management measures is needed in case a response alternative is chosen such that at some combination of stock condition and overage type (e.g.  $B/B_{MSY} > 1$  and ACL only is exceeded under Alternative 4B, below) no adjustment to the bag, size, and season would be implemented. If the new ACT is different from the prior year ACT, an adjustment would be made, but that adjustment would not be "responsive" to any overage. In other words, if the ACT in the subsequent year is 10% greater, but a 5% overage occurred and only in-season monitoring for a closure is called for under the response, then bag, size, and season would be adjusted to account for the 10% increase, but the 5% overage (or any other measure of the inefficiency of the previous bag, size, and season would not be factored in. If, however, bag, size, and season are part of the management response, then both the adjustment from the old to the new ACT would be made as well as the overage. In this case it may be that bag, size, and season are adjusted to achieve a net 5% increase in catch.

All of this is avoided if in-season closures are eliminated, because the responsive component of the bag, size, season adjustment would have to remain. Such an outcome would be consistent with the general practice that has been used in the past for the summer flounder, scup, and black sea bass recreational fisheries by adjusting bag, size, and season limits to achieve a new catch target as informed by the performance of past measures.

For all of the action alternatives (4B-4E) the measure of stock condition would be for within the year that the overage occurred. Stock condition in a given fishing year is generally characterized in the following year. If stock condition is unknown or is not updated for some reason, then the best estimate of stock condition from the most recent stock status update from the Northeast Fisheries Science Center or other acceptable source for stock assessment and stock status information would be used.

### **Timing of the Response**

Because all of the alternatives depend on the collection of information from a fishing year that has been completed, the management response could not be applied to the following fishing year,



but rather to the next year after that. This is consistent with the current application of accountability response measures.

### **Resolution to Conflicts with In-Season Closure Alternative 2C**

Because the approach in this suite of alternatives includes an in-season response, the selection of Alternative 2C (remove in-season closure authority) would conflict with these alternatives. These alternatives could accommodate Alternatives 2A (no action), 2B (in-season closure based on projection), and 2D (in-season adjustment to bag, size, season). If Alternative 2C is implemented, the in-season closure component in any of the alternatives below would be removed and only paybacks and adjustments to bag, size, and season would remain. The alternatives would therefore be modified from their description below such that "in-season closure" would be struck from each alternative. The problem with this is that it would render no accountability response for alternatives where in-season closure is the only response indicated for a particular combination of stock condition and overage type. This would be particularly egregious for Alternative 4D, below, which contemplates only an in-season closure response when OFL is exceeded if biomass is above  $B_{MSY}$ . Because this is highly inconsistent with MSA mandates, if Alternative 2C is implemented, the alternatives below would be modified by extending the bag, size and season adjustment to any "cell" in Table 5 where "in-season closure" is the only response.

**Alternative 4A. No Action / Status Quo. Maintain Pound for Pound Payback for any Overage of the Recreational ACL.** ... *the exact amount of the landings overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to an overage of other catch thresholds (ABC, OFL) are not considered. Nevertheless, in order to compare across alternatives, the diagrammatic approach used to illustrate the other process alternatives can be adapted for the no action alternative, as shown in the Table 5 under Alt 4A. This alternative reflects a viewpoint that paybacks of recreational overages are a necessary response to MSA and the Guidelines, and this was indeed the Council's viewpoint at the time paybacks were established. That viewpoint has since changed, as discussed above in Section 4.0. This alternative represents the most restrictive management response alternative.

**Alternative 4B. Payback when Stock is Overfished or when OFL is exceeded.** ... *the overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT only if the stock is overfished and/or OFL has been exceeded. When these conditions are not met, AMs will consist of adjustment to bag/size/season and in-season closure when the recreational overage caused ABC to be exceeded, or in-season closure only when only the recreational ACL has been exceeded.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The combination of stock condition and overage type in the year when an overage occurred would be taken into account to

determine the automatic management response. The combinations that could occur are shown in Table 5 under Alt 4B. For example, under Alternative 4B, if stock biomass is estimated to be above the  $B_{MSY}$  target, and the recreational catch only exceeded the recreational ACL, while the combination of commercial and recreational catch did not exceed ABC, then no payback would occur and no adjustment to the bag, size, or season would be necessary as a result of the overage.

Because in-season monitoring for a closure would be in place under all circumstances, if landings estimates in a subsequent year were to exceed the RHL, then the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would take its place, since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an overage within a four year period was to occur, then the management response under this alternative would correspond to the most recent trigger. In other words, if two consecutive overages occur, the stock condition and overage type that determine the management response would be from the second of the two overages. If Alternative 3D is adopted, and the overage does not represent a re-occurrence of an overage as described in Alternative 3D, then no management response would be necessary. This alternative represents the middle ground among the alternatives with regard to restrictiveness, with Alternatives 4A and 4E being more restrictive, and Alternatives 4C and 4 D being less restrictive.

**Alternative 4C. Preferred. Payback when Stock is Overfished or when OFL is Exceeded.**

*... the overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT only if the stock is overfished and/or OFL has been exceeded AND  $B/B_{MSY}$  is  $<1$ . When these conditions are not met, AMs will consist of adjustment to bag/size/season and in-season monitoring for early closure when the recreational overage caused OFL to be exceeded, but  $B/B_{MSY} >1$ , or caused ABC to be exceeded. In-season closure of recreational landings only will occur when only the recreational ACL has been exceeded.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The combination of stock condition and overage type in the year when an overage occurred would be taken into account to determine the automatic management response. The combinations that could occur are shown in Table 5 under Alt 4C. For example, under Alternative 4C, if stock biomass is estimated to be above the  $B_{MSY}$  target, and catch exceeded the OFL, then no payback would occur, but adjustments to the bag, size, and/or season would be implemented. Because in-season monitoring for a closure would be in place under all circumstances, if landings estimates in a subsequent year were to exceed the RHL, then the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would take its place, since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an overage within a four year period was to occur, then the management response under this alternative would be triggered. If Alternative 3D is adopted and the overage does not represent a re-occurrence of an overage as described in 3D, then no management response would be necessary. This alternative represents the second least restrictive AM management response alternative.

This alternative was modified by the Council at its June meeting to include a recreational payback when, given  $B < B_{MSY}$ , ABC is exceeded in part or in full by a recreational overage. If  $B > B_{MSY}$ , and ABC is exceeded, no payback would be needed (see Table 3 -Alt 4C-Modified by Council at June Meeting).

This alternative was further modified by the Council's choice of Alternative 2C under the In-Season Closure alternatives. As stated above, if the Council were to choose Alternative 2C, which eliminates the in-season closure authority for the Regional Administrator, then all the cells in the response alternative table would be modified to reflect the elimination of that response. Furthermore, bag, size, and season adjustments would be moved into the "cells" left vacant by the removal of in-season closure.

**Alternative 4D. No Payback.** ... *If the stock is overfished or in rebuilding, or  $B/B_{MSY} < 1$  and OFL has been exceeded, then adjustments to bag, size, and season will occur. Otherwise in-season closure only will occur.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The combination of stock condition and overage type in the year when an overage occurred would be taken into account to determine the automatic management response. The combinations that could occur are shown in Table 5 under Alt 4D. For example, under Alternative 4D, if stock biomass is estimated to be above the  $B_{MSY}$  target, and the catch exceeded the OFL, then no payback, or adjustment to the bag, size or season would be necessary. Because in-season monitoring for a closure would be in place under all circumstances, if landings estimates in a subsequent year were to exceed the RHL, then the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would replace that management response since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an overage within a four year period was to occur, then the management response under this alternative would be triggered. If Alternative 3D is adopted and the overage does not represent a re-occurrence of an overage as described in 3D, then no management response would be necessary. This alternative represents the least restrictive AM management response alternative.

**Alternative 4E. Payback when the Stock is Overfished or when ABC is Exceeded.** ... if the stock is overfished or when the combined recreational and commercial ACL (i.e., ABC) has been exceeded. When these conditions are not met, AMs will consist of adjustment to bag/size/season and in-season monitoring for early closure when the recreational overage caused OFL to be exceeded, but  $B/B_{MSY} > 1$ , or caused ABC to be exceeded. In-season closure only will occur when only the Recreational ACL has been exceeded.

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered. The combination of stock condition and overage type in the year when an overage occurred would be taken into account to determine the automatic management response. The combinations that could occur are shown in Table 5 under Alt 4E. For example, under Alternative 4E, if the catch exceeded the ABC, regardless of stock condition, then the full suite of payback, adjustment to the bag, size or season, and in-season closure potential would be implemented. However, if the overage is only for the recreational fishery and ABC is not exceeded, and the stock is not in rebuilding or overfished, then only the response under the adopted in-season closure alternative would be applied. As stated above, if in-season closure is eliminated through Alternative 2C, adjustments to bag, size, and season would replace that management response, since not having a response would be inconsistent with the MSA. If Alternative 3D is adopted and a repeat of an overage within a four year period was to occur, then the management response under this alternative would be triggered. If Alternative 3D is adopted and the overage does not represent a re-occurrence of an overage as described in 3D, then no management response would be necessary. This alternative represents the second most restrictive AM management response alternative, the most restrictive being Alternative 4A.

**Table 5. Process by which reactive accountability measures will be applied conditional on stock status and the threshold that was exceeded.**

Stock Condition		Overage Type		
		$C_R > ACL_{R_f}, C_{R+C} < ABC$	$C_R > ACL_{R_f}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_f}, C_{R+C} > OFL$
Alt 4A	$B/B_{MSY} > 1$	Payback		
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding			
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding			
Alt 4B	$B/B_{MSY} > 1$	$C_R > ACL_{R_f}, C_{R+C} < ABC$	$C_R > ACL_{R_f}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_f}, C_{R+C} > OFL$
		In-Season Closure <sup>1</sup>	Bag, Size Season	Payback
	In-Season Closure		Bag, Size Season	
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure <sup>1</sup>	Bag, Size Season	Payback
			In-Season Closure	Bag, Size Season
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback	Payback	Payback
		Bag, Size Season	Bag, Size Season	Bag, Size Season
		In-Season Closure	In-Season Closure	In-Season Closure

**Table 5 Continued. Process by which reactive accountability measures will be applied conditional on stock status and the threshold that was exceeded.**

**Stock Condition**

**Overage Type**

		$C_R > ACL_{R_t}, C_{R+C} < ABC$	$C_R > ACL_{R_t}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_t}, C_{R+C} > OFL$
		<b>Alt 4C (Original)</b>	$B/B_{MSY} > 1$	In-Season Closure
In-Season Closure	In-Season Closure			
$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure		Bag, Size Season	Payback
			In-Season Closure	Bag, Size Season
$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback		Payback	Payback
			Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure

		$C_R > ACL_{R_t}, C_{R+C} < ABC$	$C_R > ACL_{R_t}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_t}, C_{R+C} > OFL$
		<b>Alt 4C (Modified by Council at June Meeting)</b>	$B/B_{MSY} > 1$	In-Season Closure <sup>1</sup>
In-Season Closure	In-Season Closure			
$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure <sup>1</sup>		Payback	Payback
			Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure
$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback		Payback	Payback
			Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure

**Table 5 Continued. Process by which reactive accountability measures will be applied conditional on stock status and the threshold that was exceeded.**

**Stock Condition**

**Overage Type**

<b>Alt 4C With Council change and Incorporating 2C</b>		$C_R > ACL_{R_f}, C_{R+C} < ABC$	$C_R > ACL_{R_f}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_f}, C_{R+C} > OFL$
	$B/B_{MSY} > 1$	Bag, Size Season	Bag, Size Season	Bag, Size Season
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	Bag, Size Season	Payback	Payback
			Bag, Size Season	Bag, Size Season
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback	Payback	Payback
		Bag, Size Season	Bag, Size Season	Bag, Size Season

<b>Alt 4D</b>		$C_R > ACL_{R_f}, C_{R+C} < ABC$	$C_R > ACL_{R_f}, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_{R_f}, C_{R+C} > OFL$
	$B/B_{MSY} > 1$	In-Season Closure <sup>1</sup>	In-Season Closure <sup>1</sup>	In-Season Closure <sup>1</sup>
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure <sup>1</sup>	Bag, Size Season	In-Season Closure <sup>1</sup>
			In-Season Closure	Bag, Size Season
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Bag, Size Season	Bag, Size Season	Bag, Size Season
		In-Season Closure	In-Season Closure	In-Season Closure

**Table 5 Continued. Process by which reactive accountability measures will be applied conditional on stock status and the threshold that was exceeded.**

Stock Condition		Overage Type		
		$C_R > ACL_R, C_{R+C} < ABC$	$C_R > ACL_R, C_{R+C} > ABC, C_{R+C} < OFL$	$C_R > ACL_R, C_{R+C} > OFL$
Alt 4E	$B/B_{MSY} > 1$	In-Season Closure <sup>1</sup>	Payback	Payback
			Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure
	$1 > B/B_{MSY} > \frac{1}{2}$ and not in rebuilding	In-Season Closure <sup>1</sup>	Payback	Payback
			Bag, Size Season	Bag, Size Season
			In-Season Closure	In-Season Closure
	$\frac{1}{2} > B/B_{MSY}$ or in rebuilding	Payback	Payback	Payback
		Bag, Size Season	Bag, Size Season	Bag, Size Season
		In-Season Closure	In-Season Closure	In-Season Closure

<sup>1</sup> "In-Season Closure" would be replaced by "Bag, Size, Season" in these cells if Alternative 2C is selected.

### Conservation Equivalency - Summer Flounder

This amendment affects only the Federal process for recreational management measures under an accountability system. For summer flounder, a procedure called "conservation equivalency" that was established in Framework 2 to the Summer Flounder, Scup, and Black Sea Bass FMP allows individual states to recommend measures to NMFS that are conservationally equivalent (i.e., expected to achieve the same conservation goals) to coastwide recreational measures. The development of conservational equivalency measures occurs through the ASMFC and is followed by submission of measures by states to NMFS for adoption.

To constrain recreational landings to the coastwide recreational harvest limit, the Commission established conservation equivalency guidelines that require each state to determine and implement appropriate possession limits, size limits, and closed seasons to achieve the landings target for each state. The state-specific measures are adjusted to account for the past effectiveness of the regulations in each state, consistent with the spirit of reactive accountability measures, although state water fisheries are not thought of as having true accountability measures. In addition, under Framework 6, regional conservation equivalency could be applied. This involves states forming voluntary regions and pooling their recreational harvest limits and landings such that they develop identical regulations for all the states within the region that meet the pooled regional recreational harvest limit.



The Commission requires each state to submit its conservation equivalency proposal by January 15 (Table 6). The Commission's Summer Flounder Technical Committee then evaluates the proposals and advises the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. After the Technical Committee evaluation, the Board meets to approve or disapprove each state's proposal. During the comment period for the proposed rule, the Commission notifies NMFS as to which state proposals have been approved or disapproved. If, at the final rule stage, the Commission recommends and NMFS accepts conservation equivalency, then NMFS waives the Federal recreational measures that would otherwise apply in the Exclusive Economic Zone (EEZ). Federally permitted vessels, as well as vessels fishing in the EEZ, would then be subject to the recreational fishing measures implemented by the state in which they land.

The Summer Flounder, Scup, and Black Sea Bass FMP requires that the Council and Commission specify precautionary default measures when conservation equivalency is recommended as a preferred alternative. These would be the measures required to be implemented by a state that either does not submit a summer flounder management proposal or for states whose measures do not achieve the required reduction. The precautionary default measures need to be set at or below the level of reduction needed for the state with the highest reduction level to ensure it is constraining for all states. The Commission would allow states that had been assigned the precautionary default measures to resubmit revised management measures. Afterwards, NMFS would publish a notice in the *Federal Register* to notify the public of any changes to a state's management measures. The Council also recommends the "non-preferred" coast-wide measures, which are intended to achieve the recreational harvest limit. These measures would be implemented if the Commission could not certify conservation equivalency overall or if the Council recommended not implementing conservation equivalency in any given year. These measures become the regulations at the beginning of the fishing year when conservation equivalency expires.

There is nothing in this amendment that would prevent or alter the exercise of conservation equivalency. The Federal FMP is not empowered to impose paybacks in state waters. However, if a payback is invoked, the reduction would be from the coastwide catch limit, which is the basis for setting management measures. The management measures established by the states are conservationally equivalent to the coastwide measures if, collectively, they would achieve, but not exceed, the recreational catch limit. If the overage occurred because a particular state overharvested its recreational allocation, then the conservation equivalency process would more heavily penalize that state through the Commission. The analysis that contributes to the identification of approvable conservation equivalency measures considers past performance of bag, size, and season combinations and makes adjustments to achieve new catches such that the under- or over-efficiency of past combinations is accounted for.

**Table 6. Procedures for establishing summer flounder recreational management measures under conservation equivalency.**

	<b>August</b>	
	Council/Commissions's Board recommend recreational harvest limit.	
	<b>October</b>	
	MRFSS data available for current year through wave 4.	
	<b>November</b>	
	Monitoring Committee meeting to develop recommendations to Council: Overall % reduction required. Use of coastwide measures or state conservation equivalency. **Precautionary default measures. **Coastwide measures.	
	<b>December</b>	
	Council/Board meeting to make recommendation to NMFS State Conservation Equivalency or Coastwide measures.	
<i>State Conservation Equivalency Measures</i>		<i>Coastwide Measures</i>
<b>Late December</b>		<b>Early January</b>
Commission staff summarizes and distributes state-specific and multi-state conservation equivalency guidelines to states.		Council staff submits recreational measure package to NMFS. Package includes: -Overall % reduction required. -Coastwide measures.
<b>Early January</b>		<b>February 15</b>
Council staff submits recreational measure package to NMFS. Package includes: - Overall % reduction required. - Recommendation to implement conservation equivalency and precautionary default measures (Preferred Alternative). -Coastwide measures (Non-preferred Alternative).		NMFS publishes proposed rule for recreational measures announcing the overall % reduction required and Coastwide measures.
States submit conservation equivalency proposals to ASMFC.		<b>April</b>
<b>January 15</b>		NMFS publishes final rule announcing overall % reduction required and Coastwide measures.
ASMFC distributes state-specific or multi-state conservation equivalency proposals to Technical Committee.		**Precautionary default measures - measures to achieve at least the % required reduction in each state, e.g., one fish possession limit and 15.5 inch bag limit would have achieved at least a 41% reduction in landings for each state in 1999. **Coastwide measures - measure to achieve % reduction coastwide.
<b>Late January</b>		
ASMFC Technical Committee meeting: -Evaluation of proposals. -ASMFC staff summarizes Technical Committee recommendations and distributes to Board.		
<b>February</b>		
Board meeting to approve/disapprove proposals and submits to NMFS within two weeks, but no later than end of February.		
<b>March 1 (on or around)</b>		
NMFS publishes proposed rule for recreational measures announcing the overall % reduction required, state-specific or multi-state conservation equivalency measures and precautionary default measures (as the preferred alternative), and coastwide measures as the non-preferred alternative.		
<b>March 15</b>		
During comment period, Board submits comment to inform whether conservation equivalency proposals are approved.		
<b>April</b>		
NMFS publishes final rule announcing overall % reduction required and one of the following scenarios: -State-specific or multi-state conservation equivalency measures with precautionary default measures, or -Coastwide measures.		

## Payback Calculation Alternatives

These alternatives address the existing recreational payback provision. For summer flounder, scup, and black sea bass, a phased-in three-year average of recreational catch is compared to the three-year average of the ACL. Any landings overage of the RHL is paid back pound for pound from a subsequent year's ACT, and any additional overage of the ACL is deducted from a subsequent year's ACL. For bluefish and mackerel, a single year catch is compared to a single year ACL. In the case of bluefish and mackerel, however, the ACL comprises the commercial and recreational catch limit. In the alternatives contemplated by the Council, the calculation of the overage payback could be conditional on the status of the stock ( $B/B_{MSY}$ ). The alternatives are summarized in Table 7 where O = overage, C = Catch,  $R$  = Recreational,  $C$  = Commercial,  $C_{R+C}$  = combined recreational and commercial catch.

The interaction between the management response and payback alternatives is complicated and certain combinations are not compatible (e.g., Alternatives 4A and 5D). In the event that the Council chooses one of the payback action alternatives (i.e., not Alternative 5A), the Council's choice of management response alternative would determine the use or nonuse of a payback where any conflict might occur.

### **Alternative 5A. No Action / Status Quo. Payback Difference between the Catch Estimate and the Recreational ACL.**

**Atlantic mackerel:** *If the mackerel ACL is exceeded, and the recreational fishery landings are responsible for the overage, then landings in excess of the RHL will be deducted from the RHL for the following year*

**Bluefish:** *If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, ... then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year recreational ACT. If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, ... then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors.*

**Summer Flounder, Scup, Black Sea Bass:** *If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the RHL, the exact poundage of the landings overage will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.*

Under this alternative, the condition of the stock and the contribution of a recreational overage to an overage of other catch thresholds (ABC, OFL) are not considered. Instead, the amount of the payback is the difference between the recreational landings and the recreational harvest limit, and then any unaccounted for difference between the recreational catch and the recreational ACL for summer flounder, scup, and black sea bass. For bluefish, it is the difference between the combined recreational and commercial catch and the ACL. For Atlantic mackerel, the payback is the difference between the recreational landings and the RHL.

**Alternative 5B. Payback ACL Overage only When Overfished.**

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered as shown in Table 7 in panel Alt 5B. This would result in a payback equal of the difference between the point estimate of catch and the ACL only when the stock is overfished or in rebuilding. If the stock is not overfished but is below  $B_{MSY}$ , then the payback would be the ABC overage if catch is above ABC, including when the catch is above OFL. If the stock is above  $B_{MSY}$  then the only payback would be the OFL overage when catch is above OFL.

**Alternative 5C. Payback ACL Overage only When Overfished/Overfishing.**

Under this alternative, the condition of the stock and the contribution of a recreational overage to overages of other catch thresholds (ABC, OFL) are considered as shown in Table 7 in panel Alt 5C. This would result in a payback equal of the difference between the point estimate of catch and the ACL only when the stock is overfished or in rebuilding. If the stock is not overfished but is below  $B_{MSY}$ , then the only payback would be the OFL overage if catch is above OFL. If the stock is not overfished but is below  $B_{MSY}$  and the catch is below OFL, no payback is necessary. Additionally, if the stock is above  $B_{MSY}$ , and no payback is necessary, then the only payback would be the OFL overage when catch is above OFL.

**Table 7. Process by which the overage payback will be calculated conditional on stock status and the threshold that was exceeded.**

		$C_R > ACL_R > ABC$	$C_R > ACL_R, C_{R+C} > ABC$	$C_R > ACL_R, C_{R+C} > OFL$
Alt 5A	$B/B_{MSY} > 1$	$C_R - ACL_R$	$C_R - ACL_R$	$C_R - ACL_R$
	$1 > B/B_{MSY} > 1/2$	$C_R - ACL_R$	$C_R - ACL_R$	$C_R - ACL_R$
	$1/2 > B/B_{MSY}$	$C_R - ACL_R$	$C_R - ACL_R$	$C_R - ACL_R$
		$C_R > ACL_R > ABC$	$C_R > ACL_R, C_{R+C} > ABC$	$C_R > ACL_R, C_{R+C} > OFL$
Alt 5B	$B/B_{MSY} > 1$	0	0	$O_R/O_{R+C} * C_{R+C} - OFL$

$1 > B/B_{MSY} > 1/2$	0	$O_R/O_{R+C} * C_{R+C} - ABC$	$O_R/O_{R+C} * C_{R+C} - ABC$
$1/2 > B/B_{MSY}$	$C_R - ACL_R$	$C_R - ACL_R$	$C_R - ACL_R$

		$C_R > ACL_R > ABC$	$C_R > ACL_R, C_{R+C} > ABC$	$C_R > ACL_R, C_{R+C} > OFL$
Alt 5C	$B/B_{MSY} > 1$	0	0	0
	$1 > B/B_{MSY} > 1/2$	0	0	$O_R/O_{R+C} * C_{R+C} - OFL$
	$1/2 > B/B_{MSY}$	$C_R - ACL_R$	$C_R - ACL_R$	$C_R - ACL_R$

**Alternative 5D. Preferred. Scaled Payback of the ACL Overage.**

Under this alternative, the condition of the stock ( $B/B_{MSY}$ ) scales the payback amount. If  $B/B_{MSY} \geq 1$ , no payback is needed. If  $1 \geq B/B_{MSY} \geq 1/2$ , then the payback is the product of the overage (where the overage is Catch – Recreational ACL) and the payback coefficient based on  $B/B_{MSY}$ . If  $B/B_{MSY} \leq 1/2$ , then the payback is pound for pound. The formula below would be applied for those scenarios where  $B/B_{MSY} > 1/2$  to generate a payback coefficient. The product of the payback and the payback coefficient would constitute the payback:

$$\text{Overage} * \frac{(B_{msy} - B)}{\frac{1}{2}B_{msy}}$$

The effective payback coefficient for black sea bass, the only species for which there is an estimated overage and pending payback would be approximately 0.04. Therefore, because there was a 1.3 M lb overage in 2012, the payback that would be applied to the black sea bass RHL in 2014 is approximately 52,000 lb

**Table 8. Example of payback calculation using black sea bass overage for 2012 that would affect ACT in 2014.**

Stock Status	Payback	Example
$B/B_{MSY} > 1/2$ Not in rebuilding	Scaled to $B/B_{MSY}$	BSB: 12,700/12,978, Overage coefficient = 0.04 Overage ~ 1.3 M lb

$B/B_{MSY} \leq \frac{1}{2}$ Or in rebuilding	1:1	Payback ~ 1.3 M lb*.04 ~ 52 k lb
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**Alternative 5E. No Payback.**

This alternative would eliminate paybacks of overages and reflects a viewpoint that the biological benefit of paybacks is thought to be limited. As discussed in Section 4.0, the linkage between estimating with any precision the biological cost of an overage event and then precisely delivering a return of that cost to the affected fish population through a payback is highly tenuous. Nevertheless, an overage payback can serve a punitive function, albeit delayed by a year. In eliminating any paybacks, this alternative would rely on in-season closures and/or bag, size, and season adjustments as the sole means of accounting for recreational overages.

**Alternative 6A. Preferred. No Action / Status Quo - No ACL/ACT Post Hoc Evaluation.**

There would be no subsequent evaluation of a specified ACL.

Under Alternative 6A, the ACL that was specified for a given year based on projections or other methods such as constant catch, among others, would remain as the reference for any overage determination. Any improvement in the estimation of abundance or biomass for the specification year through an assessment update or benchmark assessment that may indicate that a larger ACL would have been more appropriate would not be considered in evaluating the likelihood of a potential overage. As such, under Alternative 6A, management triggers and management responses would all use the original ACL based on the original characterization of stock conditions for determining the nature and magnitude of a reactive AM. Although the Council was supportive of the spirit of Alternative 6B below, the Council was unsure of how it would be implemented. As a result, the Council chose Alternative 6A and will further consider modifications such as Alternative 6B in the future.

**Alternative 6B. ACL/ACT Post Hoc Evaluation.** The ACL/ACT that was set for a given fishing year is re-evaluated based on an updated assessment. (Note, this Alternative was numbered 1D in prior drafts.)

Expectations about future population size are the basis for setting ABC and ACL/ACT in a given year. These expectations are often based on population projections that include assumptions about future recruitment of year classes into the fishery. An assessment update, on the other hand, is informed by observed catches and fishery-independent measures of year class strength. Because the assessment update is based on observed data, it tends to be more stable and less speculative than a projection of future conditions. Additionally, as data accumulate about the relative size of year classes in a fishery, the assessment stabilizes even further. In order to

evaluate whether the operational issue that caused an overage was an underestimate of future population abundance in a projection, the ACL that was set based on a projection can be re-evaluated after an assessment update has been done. If the availability of additional information in an assessment update indicates that the ACL could have been set a level such that realized landings would not have produced an overage, then no adjustment to management measures may be needed. A metric for assessing this could be a determination that overfishing did not occur. If abundance estimates remain reasonably consistent, then increased effort will be determined as the cause of the overage such that more restrictive effort controls will be considered.

In considering Alternative 6B, the Council was exploring opportunities to make improved management responses to recreational fishery behavior. A review of the appropriateness of the ACL for the completed fishing year would occur as part of the subsequent year's stock status update and would include a determination as to whether an overage may have occurred because the ACL was set at a level that was inappropriately low given the addition of information on stock abundance in that year. A more informed ACL estimate would then provide the basis for determining the response to the recreational catch estimate. Specifically, if the updated information indicates that catches equal to or above realized catch resulted in no departure from desired stock condition, then no management response to the nominal overage would be indicated.

Because the re-evaluation of ACL is based on a desire to more accurately align a subsequent year's management response to stock condition the discovery that an inappropriately high ACL had been established would also need to be considered. In other words, if ACL should have been lower and the realized catch from the MRIP estimates exceeded that ACL, then a reactive AM could potentially be triggered.

## **6.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES**

This section serves to identify and describe the *valued ecosystem components* (VECs; Beanlands and Duinker 1984) that are likely to be directly or indirectly affected by the actions proposed in this document. These VECs comprise the affected environment within which the proposed actions will take place. Following the guidance provided by the Council on Environmental Quality (CEQ 1997), the VECs are identified and described here as a means of establishing a baseline for the impact analysis that will be presented in the subsequent document section (section 7.0 Analysis of Impacts). Impacts of the proposed actions on the VECs will also be determined from a cumulative effects perspective, which is in the context of other past, present, and reasonably foreseeable future actions.

### ***Identification of the Selected Valued Ecosystem Components***

As indicated in CEQ (1997), one of the fundamental principles of cumulative effects analysis is that "... the list of environmental effects must focus on those that are truly meaningful." As such, the range of VECs described in this section is limited to those for which a reasonable likelihood of meaningful impacts is expected. These VECs are listed below.

- 1) Managed and non-target species
- 2) Habitat including EFH
- 3) Endangered and protected resources
- 4) Human Communities

The managed resources VEC includes Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass which are managed under the Atlantic Mackerel, Squid, and Butterfish FMP, Bluefish FMP, and Summer Flounder, Scup, and Black Sea Bass FMP, respectively. Changes to the FMPs, such as those proposed in this Omnibus Amendment, have the potential to directly affect the condition of the managed resources. These impacts may occur when management actions either reduce or expand the directed harvest of managed resources or bycatch of these species.

Similarly, management actions that would change the distribution and/or magnitude of fishing effort for the managed resources may indirectly affect the non-target species VEC (species incidentally captured as a result of fishing activities for the managed resources), the habitat VEC (especially habitats vulnerable to activities related to directed fishing for the managed resource), and the protected resources VEC (especially those species with a history of encounters with the managed resources). The human communities VEC could be affected directly or indirectly through a variety of complex economic and social relationships associated with managing these species.

### **6.1 Description of the Managed Resources**

For the recreational fisheries addressed in this amendment, AMs were established through the Omnibus ACL/AM Amendment (MAFMC 2011). Recreational fishery performance in 2012 is



the first to be subjected to AMs under that amendment. There are differences in how the AMs are administered through the different FMPs as described below and associated values are provided in Table 9.

### **6.1.1 Existing Accountability Measures**

#### *Atlantic Mackerel*

For mackerel, there is a single ACL that is equal to the U.S. ABC (Total ABC – Canadian allocation). The recreational catch allocation is 6.2% of the ACL and the recreational ACT is a further reduction based on management uncertainty. Components of the ACT include the RHL, RSA, and dead discards. In order for AMs to be triggered, the entire ACL (i.e., commercial and recreational catch) must be exceeded. If the ACL is exceeded and recreational landings are responsible for the overage, then landings in excess of the RHL are deducted from the RHL in the following year, as a single-year adjustment. In 2012, the recreational catch was approximately 1.735 M lb compared to the recreational ACT of 5.386 M lb. Combined recreational and commercial catch was approximately 13.855 M lb compared to ACL of 96.521 M lb. No AMs would be applied based on 2012 recreational fishery performance.

#### *Bluefish*

For bluefish, there is a single ACL that is equal to ABC. The recreational catch allocation (Recreational ACT) is 83% of the ACL, after a reduction based on management uncertainty. Components of the recreational ACT include the RHL, RSA, and dead discards. In order for AMs to be triggered, the entire ACL must be exceeded. An important difference for the bluefish fishery is that after the initial allocation of 83% of the ACL to the recreational fishery, a transfer provision allows for some of the recreational catch to be moved to the commercial fishery, if the recreational fishery is not expected to catch the entire 83%. Therefore, if the ACL is exceeded and the recreational fishery caused the overage, and a transfer occurred, then the amount transferred in a subsequent year can be reduced by the overage amount. If there was no transfer, then the overage (catch – ACL) is deducted from a subsequent year's recreational ACT. In 2012, the recreational catch was approximately 14.244 M lb compared to the recreational ACT of 26.597 M lb. Combined recreational and commercial catch was approximately 18.649 M lb compared to ACL of 32.045 M lb. No AMs would be applied based on 2012 recreational fishery performance.

#### *Summer Flounder, Scup, and Black Sea Bass*

For these species, separate commercial and recreational ACLs are specified based on a percentage of the ABC. The recreational sector ACL is evaluated using a comparison of the 3-year moving average of both recreational catch and recreational ACLs. If the 3-year average of the recreational ACLs has been exceeded because of the 3-year averaged recreational landings, then the exact poundage of the landings overage is deducted from a subsequent single fishing year recreational sector ACT. If there is an overage that was not accounted for under the landings based deduction (that is, if the Catch – ACL is greater than Landings – RHL), then any additional overage would be deducted from a subsequent single fishing year recreational ACL.

*Summer Flounder*

In 2012, the recreational catch was approximately 7.303 M lb compared to the recreational ACL of 11.580 M lb. Combined recreational and commercial catch was approximately 13.895 M lb compared to the ABC of 25.580 M lb. No AMs would be applied based on 2012 recreational fishery performance.

*Scup*

In 2012, the recreational catch was approximately 4.290 M lb compared to the recreational ACL of 8.990 M lb. Combined recreational and commercial catch was approximately 19.213 M lb compared to the ABC of 40.880 M lb. No AMs would be applied based on 2012 recreational fishery performance.

*Black Sea Bass*

In 2012, the recreational catch was approximately 3.623 M lb (LCL = 3.314) compared to the recreational ACL of 2.520 M lb, resulting in a recreational ACL overage of 1.103 M lb. Recreational landings were approximately 2.96 M lb; compared to the RHL of 1.32 M lb. This results in a landings overage of approximately 1.64 M lb. Combined recreational and commercial catch was approximately 5.585 M lb compared to the ABC of 4.500 M lb resulting in an ABC overage of 1.085 M lb. Under the existing AMs, the black sea bass landings overage would trigger a payback of approximately 1.64 M lb, which would be deducted from the 2014 recreational ACT. Because the landings overage is greater than the catch overage, no additional deduction from the ACL would be required. The fishing year 2014 recreational ACT is 2.90 M lb. The payback AM that was established in the Omnibus ACL/AM Amendment would reduce the 2014 recreational ACT to 1.26 M lb.

**Table 9. Catch levels and thresholds in 2012 associated with the five recreational fisheries addressed in this amendment. All values are in M lb.**

	<b>Atl. Mack</b>	<b>Bluefish</b>	<b>Sum. Flounder</b>	<b>Scup</b>	<b>Black Sea Bass</b>
<b>Rec Landings*</b>	1.661	11.184	6.972	4.057	3.071
<b>Rec Discards</b>	0.074	3.060	0.331	0.232	0.552
<b>Rec Catch</b>	1.735	14.244	7.303	4.290	3.623
<b>Rec ACL**</b>	5.386	26.597	11.580	8.990	2.520
<b>Rec ACL Overage</b>	-3.651	-12.353	-4.277	-4.700	1.103
<b>Rec +Com Catch</b>	13.855	18.649	21.197	19.213	5.585
<b>ABC</b>	96.521	32.045	25.580	40.880	4.500
<b>ABC Overage</b>	-82.666	-13.396	-4.383	-21.667	1.085
<b>OFL</b>	N/A	38.627	29.813	47.796	7.000
<b>OFL Overage</b>		-19.978	-8.616	-28.583	-1.415

\*Estimate may change with subsequent MRIP updates.

\*\* Rec ACL does not apply to Atl. mackerel or bluefish - for those species, the RHL is listed.

### 6.1.2 Stock Status

Reports on “Stock Status,” including annual assessment and reference point update reports, Stock Assessment Workshop (SAW) reports, Stock Assessment Review Committee (SARC) panelist reports, and peer-review panelist reports are available online at the NEFSC website: <http://www.nefsc.noaa.gov>.

Table 10 summarizes information from the 2012 fourth quarter NMFS status of the stocks report to Congress. Based on the fourth quarter update, none of the managed resources are experiencing overfishing. Except for bluefish, all of the managed resources have stock biomass (either total or spawning stock biomass) above biomass target ( $B_{MSY}$ ). None of the stock is in rebuilding. Bluefish was declared rebuilt in 2009 and summer flounder was declared rebuilt in 2011.

**Table 10. Stock Status based on NMFS fourth quarter Status of Stocks Report to Congress.**

FMP	Stock	Overfishing? (Is Fishing Mortality above Threshold?)	Overfished? (Is Biomass below Threshold?)	Management Action Required	Rebuilding Program Progress	B/ $B_{MSY}$ or B/ $B_{MSY}$ proxy
Atlantic Mackerel, Squid and Butterfish	Atlantic mackerel	No	No	N/A	N/A	3.57
Bluefish	Bluefish	No	No	N/A	N/A	0.90
Summer Flounder, Scup and Black Sea Bass	Black sea bass	No	No	N/A	N/A	1.02
Summer Flounder, Scup and Black Sea Bass	Scup	No	No	N/A	N/A	2.07
Summer Flounder, Scup and Black Sea Bass	Summer flounder	No	No	N/A	N/A	?

### 6.1.3 Description of Stock Characteristics and Ecological Relationships

EFH Source Documents, which include details on stock characteristics and ecological relationships, are available at the following website:  
<http://www.nefsc.noaa.gov/nefsc/habitat/efh/>.

#### **Atlantic mackerel**

Atlantic mackerel, *Scomber scombrus*, is a fast swimming, pelagic, schooling species distributed in the Northwest Atlantic between Labrador and North Carolina. There are two major spawning components in the population: a southern group that spawns primarily in the Mid-Atlantic Bight during April and May, and a northern group that spawns in the Gulf of St. Lawrence in June and July. Both groups winter between Sable Island (off Nova Scotia) and Cape Hatteras in waters generally warmer than 7°C (45°F), with extensive northerly (spring) and southerly (autumn) migrations to and from spawning and summering grounds. The two groups are managed as a unit stock. Maximum observed size in recent years is about 42 cm (16.5 in) in length and 1.0 kg (2.2 lb) in weight. Sexual maturity begins at age 2 and is usually complete by age 3. Maximum age is about 20 years.

#### **Bluefish**

The bluefish, *Pomatomus saltatrix*, is a migratory, pelagic species found throughout the world in most temperate coastal regions, except the eastern Pacific. Bluefish may reach ages of 12 years and sizes in excess of 100 cm (39 in.) and 14 kg (31 lb). Along the U.S. Atlantic coast, bluefish are found from Maine to Florida and mix extensively during seasonal coastal migrations. During winter, large bluefish tend to remain in the Mid-Atlantic Bight, moving south to North Carolina by March. Small fish move farther south in winter with some fish wintering off the coast of Florida. As water temperatures increase, the spring migration north begins and spawning occurs in the South Atlantic Bight at this time. By summer, bluefish move north into the Mid-Atlantic Bight, although some medium size fish may remain off Florida. A second spawning occurs in the offshore waters of the Mid-Atlantic Bight during summer.

#### **Summer Flounder**

The summer flounder or fluke, *Paralichthys dentatus*, is a demersal flatfish distributed from the southern Gulf of Maine to South Carolina. Important commercial and recreational fisheries exist from Cape Cod, Massachusetts to Cape Hatteras, North Carolina. The resource is managed as a unit stock from North Carolina to Maine. Summer flounder are concentrated in bays and estuaries from late spring through early autumn, when an offshore migration to the outer continental shelf is undertaken. Spawning occurs during autumn and early winter, and the larvae are transported toward coastal areas by prevailing water currents. Development of post larvae and juveniles occurs primarily within bays and estuarine areas, notably Pamlico Sound and Chesapeake Bay. Most fish are sexually mature by age 2. Female summer flounder live to at least 14 years, and males to at least 12 years. Growth rates differ appreciably between the sexes with females reported to have attained lengths to 97 cm (38 inches) and weights to 11.0 kg (24.3 lb).

## Scup

Scup or porgy, *Stenotomus chrysops*, is a demersal, schooling species distributed in the Mid-Atlantic Bight from Cape Cod, MA to Cape Hatteras, NC. Previous tagging studies have indicated the possibility of two stocks; one in Southern New England waters and the other extending south from New Jersey. However, the lack of definitive tag return data from these studies, coupled with distributional information from NEFSC trawl surveys, support the concept of a single unit stock from New England to Cape Hatteras. A new industry-cooperative tagging study for scup, designed to evaluate fish movement and estimate mortality rates, was initiated in 2005. Scup undertake extensive migrations between coastal waters in summer and offshore waters in winter, migrating north and inshore to spawn in spring. Sexual maturity is essentially complete by age 3 at a total length of 21 cm. Scup attain a maximum fork length of about 40 cm, and ages of up to at least 14 years.

## Black Sea Bass

Black sea bass, *Centropristis striata*, are distributed in the Northwest Atlantic from Maine to Florida with Cape Hatteras, NC serving as a geographic boundary between northern and southern stocks. Black sea bass are members of the family Serranidae, which includes groupers commonly found in tropical and sub-tropical waters. Structures such as reefs, wrecks or oyster beds are preferred habitats. Black sea bass may attain sizes up to 60 cm (23.5 in) and 3.6 kg (8 lbs) with maximum age of 10-12 years. Sexual maturity is attained between ages 2 to 4 for females. Black sea bass are protogynous hermaphrodites, meaning that they change sex from female to male. Born as females, most fish will change sex to males between ages 2 to 5. The factors that lead to the sex change have not been proven although it has been speculated that the relative scarcity of males in a spawning group may be the stimulus for a female to switch sex. Spawning in the northern stock generally occurs from April to June after fish have migrated into coastal habitats.

## 6.2 Non-target Species

Non-target species includes species either landed or discarded (bycatch) as part of fisheries activities used to harvest target species. The principle gears used in the recreational fishery for Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass are rod and reel and handline. While recreational fishing often involves targeting a particular species, it also may be practiced in a general manner where the catch of any species is associated with success. The term "bycatch," as defined by the MSA, means fish that are captured in a fishery, but that are not sold (as in commercial fisheries) or kept for personal use. Bycatch includes the discard of whole fish at sea or elsewhere, including economic and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include fish released alive under a recreational catch-and-release fishery management program.

### **6.3 Habitat (Including Essential Fish Habitat)**

The use of recreational hook and line gear, the primary gear used in these recreational fisheries, has minimal impacts on marine habitat. Recreational fisheries can be a source of debris in the marine environment (O'Hara et al. 1988). Although recreational fishing affects marine species, nothing in this document would modify the manner in which the Council's recreational fisheries are prosecuted. Because no impacts are expected, habitat is not carried through for analysis in the document.

### **6.4 Endangered and Protected Resources**

Recreational fisheries have limited direct interaction with species listed under the Endangered Species Act (ESA) or species protected under the Marine Mammal Protection Act (MMPA). Anecdotal information suggests recreational anglers can potentially hook Atlantic sturgeon while fishing for striped bass, but this is likely an infrequent occurrence that does not significantly affect their survival (Damon-Randall, NMFS, Protected Resources Division, pers. comm.).

There are numerous species protected by the ESA and MMPA that inhabit the area within the management units for the recreational species. Table 11 provides species formally listed as threatened or endangered under the ESA, with four additional candidate species, that occur within the management units for summer flounder, scup, and black sea bass.

On February 6, 2012, NMFS issued two final rules listing five Distinct Population Segments (DPS) of Atlantic sturgeon as threatened or endangered. As a result of this listing, NMFS reinitiated consultation on seven commercial fisheries, including those for the species affected by this amendment. In a draft biological opinion dated May 20, 2013, NMFS concluded that the action considered would not jeopardize the continued existence of any ESA- listed species.

**Table 11. Species endangered and threatened under the ESA that are found in the environment utilized by Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass.**

Species	Common name	Scientific Name	Status
Cetaceans	North Atlantic right	<i>Eubalaena glacialis</i>	Endangered
	Humpback	<i>Megaptera novaeangliae</i>	Endangered
	Fin	<i>Balaenoptera physalus</i>	Endangered
	Blue	<i>Balaenoptera musculus</i>	Endangered
	Sei	<i>Balaenoptera borealis</i>	Endangered
	Sperm	<i>Physeter macrocephalus</i>	Endangered
Sea Turtles	Leatherback	<i>Dermochelys coriacea</i>	Endangered
	Kemp's ridley	<i>Lepidochelys kempii</i>	Endangered
	Green	<i>Chelonia mydas</i>	Threatened
	Hawksbill	<i>Eretmochelys imbricata</i>	Endangered
	Loggerhead <sup>1</sup>	<i>Caretta caretta</i>	Threatened
Fishes	Shortnose sturgeon	<i>Acipenser brevirostrum</i>	Endangered
	Atlantic salmon	<i>Salmo salar</i>	Endangered
	Atlantic sturgeon	<i>Acipenser oxyrinchus</i>	
	Gulf of Maine DPS		Threatened
	New York Bight DPS		Endangered
	Chesapeake Bay DPS		Endangered
	Carolina DPS		Endangered
	South Atlantic DPS		Endangered
	Cusk	<i>Brosme brosme</i>	Candidate
	Alewife	<i>Alosa pseudoharengus</i>	Candidate
Blueback herring	<i>Alosa aestivalis</i>	Candidate	
Scalloped hammerhead	<i>Sphyrna lewini</i>	Candidate	

<sup>1</sup> Northwest Atlantic distinct population segment (DPS) of loggerhead turtles.

Four species (cusk, blueback herring, alewife, and scalloped hammerhead) are candidate species for listing under the ESA (Table 11). The Protected Resources Division of the NMFS Northeast Regional Office has initiated review of recent stock assessments, bycatch information, and other information for the candidate species. Any conservation measures deemed appropriate for these species will follow the information from these reviews.

### 6.3.1 Recreational Fisheries Interactions

The principle gears used in the recreational fishery for Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass are rod and reel and handline. Recreational fisheries, in general, have very limited interaction with ESA-listed or MMPA protected species. Anecdotal information indicates that recreational anglers periodically foul hook Atlantic sturgeon while in pursuit of other recreational species such as striped bass, but these impacts are believed to be infrequent occurrences, and thought to be well below the level which would impact the continued survivability of Atlantic sturgeon (Damon-Randall, NMFS, Protected Resources Division, pers. comm.). Recreational fishermen do contribute to difficulties for ESA-listed and MMPA protected marine species in that it is estimated that recreational fishermen discard over 227 million lb (103 million kg) of litter each year (O'Hara et al. 1988). More than nine million recreational vessels are registered in the United States. The greatest concentrations of recreational vessels in the United States are found in the waters off New York, New Jersey, the Chesapeake Bay, and Florida (O'Hara et al. 1988). As previously stated, recreational fishermen are a major source of debris in the form of monofilament fishing line. The amount of fishing line lost or discarded by the 17 million U.S. fishermen during an estimated 72 million fishing trips in 1986 is not known, but if the average angler snares or cuts loose only one yard of line per trip, the potential amount of monofilament line is enough to stretch around the planet (O'Hara et al. 1988). Although the recreational fishery may impact these marine species, nothing in this document would modify the manner in which the fishery is prosecuted. Because no impacts are expected, protected species are not carried through for analysis in the document.

## 6.5 Human Communities and Economic Environment

### 6.5.1 Description of the Fisheries

Detailed descriptions of the economic aspects of the recreational fisheries for the managed resources, as well as the management regimes, are available in their respective FMPs and recent specifications documents available at <http://www.mafmc.org>.

Bluefish, summer flounder, scup, and black sea bass continue to be important components of the recreational fishery, with 2012 recreational landings of about 11.184 M lb, 6.972 M lb, 4.057 million lb, and 3.352 M lb, respectively. This represents approximately 81% of total recreational landings from the mid- through north Atlantic in 2012. Atlantic mackerel is a less frequently landed recreational species, with 2012 landings of 1.661 million lb. In 2012, 37.966 million recreational angler trips on the Atlantic coast occurred, with about 25.599 million of those trips



taken in the Northeast (i.e., Maine through North Carolina; Table 12). Table 12. The total number of angler trips taken from Maine through Florida's East coast by fishing mode in 2012.

Year	Mode		
	Shore	Party/Charter	Private/Rental
Maine	405,255	18,550	212,204
New Hampshire	80,509	54,727	163,479
Massachusetts	1,151,202	203,083	1,470,662
Connecticut	575,173	40,329	461,111
Rhode Island	474,677	26,780	824,786
New York	1,491,724	209,518	1,908,164
New Jersey	2,071,587	207,152	2,579,808
Delaware	374,306	9,775	480,635
Maryland	816,919	79,778	1,281,218
Virginia	1,050,572	41,194	1,425,992
North Carolina	3,082,394	160,046	2,060,989
South Carolina	992,277	24,662	1,189,444
Georgia	376,251	19,920	496,246
East Florida	4,218,549	143,663	5,028,191
<b>Total</b>	<b>17,161,395</b>	<b>1,239,177</b>	<b>19,582,929</b>

Source: Marine Recreational Information Program.

Angler expenditures in the Northeast Region by state and mode for marine fishing were obtained from Gentner and Steinback (2008). These expenditure data were produced from extensive surveys of marine recreational fishermen in the Northeast Region in 2006 (Table 13). The surveys were conducted as part of the Marine Recreational Fisheries Statistical Survey (MRFSS). Average nominal fishing trip expenditures were provided for each state and mode of fishing (i.e., private boat, party/charter, and shore) in the Northeast region in 2006. Trip-related expenditure categories shown in the report included private and public transportation, auto rentals, grocery store purchases, restaurants, lodging, boat fuel, boat and equipment rentals, party/charter fees, party/charter crew tips, catch processing, access and parking, bait, ice, tackle

used on trip, tournament fees and gifts/souvenirs. In addition to trip-related expenditures, Gentner and Steinback (2008) also estimated anglers' expenditures for semi-durable items (e.g., rods, reels, lines, clothing, etc.) and durable goods (e.g., motor boats, vehicles, etc.).

**Table 13. Average nominal daily trip expenditures by recreational fishermen in the Northeast region by mode in 2006.**

Expenditures	\$		
	Party/Charter	Private/Rental	Shore
Private transportation	13.88	11.03	12.94
Public transportation	0.26	0.07	0.40
Auto rental	0.27	0.02	0.10
Food from grocery stores	7.40	4.92	7.33
Food from restaurants	8.70	3.42	9.28
Lodging	10.0	2.64	14.90
Boat fuel	0	9.54	0
Boat or equipment rental	0.05	0.19	0.03
Charter fees	57.76	0	0
Charter crew tips	3.0	0	0
Catch processing	0.02	0	0
Access and parking	0.44	1.11	1.32
Bait	0.31	3.42	3.25
Ice	0.39	0.59	0.39
Tackle used on trip	1.87	2.04	3.98
Tournament fees	1.10	0.04	0.02
Gifts and souvenirs	1.67	0.10	1.45
<b>Total</b>	<b>107.13</b>	<b>39.14</b>	<b>55.39</b>

## **7.0 ENVIRONMENTAL CONSEQUENCES AND REGULATORY ECONOMIC EVALUATION OF ALTERNATIVES**

This section focuses on potential impacts to managed resources and non-target species and human communities and the characterization of impacts to these VECs is given in the sections below. Given the minimal interaction between the recreational fisheries and habitat and protected resources, no significant impacts are expected for these VECs and these VECs are not carried through for analysis. The managed resource and non-target species VECs are expected to be primarily affected by increased catches (negative impacts from increased mortality) or decreased catches (positive impacts from decreased mortality) relative to no action / status quo. Human communities are expected to be affected by increased or decreased fishing opportunities and associated benefits whether monetary (as for the recreational fishing industry), consumptive (as for recreational anglers who retain catch for food), or intangible (as for the pleasure derived from recreational fishing). The actions proposed in this amendment are largely administrative in the sense that they do not have immediate impacts, but rather affect the management framework for future accountability actions. Indirect impacts that are anticipated are described in the sections that follow.

An evaluation of indirect impacts of the alternatives considers the potential for increased or decreased recreational catches and recreational fishing opportunities relative to no action being taken. For example, a more restrictive alternative to the current ACT specification process (i.e., Alternative 1C) would reduce future catch levels and fishing opportunities. Alternatives that would reduce pending payback of observed catch overages (i.e., Alternatives 4A and 5A) would tend to increase catch opportunity relative to no action being taken. Because a reduction in fishing opportunity for black sea bass is a pending future event should no action be taken (black sea bass is the only recreational species with a pending accountability action), that outcome represents the impact of the no action alternative for the black sea bass and affected human community VECs. Any alternative, whether no action or action, that would maintain current or reasonably foreseeable future condition of a VEC is considered to result in a null impact. Black sea bass is the only stock for which an AM is expected in the near future. The impacts of the alternatives on VECs associated with other fisheries is largely hypothetical. Nevertheless, a discussion of the potential impacts is offered for these fisheries, if in the reasonably foreseeable future of an AM is triggered.

### **7.1 ACT Alternatives**

Currently, ACTs are reduced from ACL for Atlantic mackerel by 10%. Fishery underperformance (failure to achieve catch targets) obviated reductions from ACL for summer flounder, scup, and bluefish (ACT = ACL). For black sea bass, a reduction from ACL was implemented for 2012, but not in 2013.

Alternative 1A (no action/preferred) would maintain current constraints on ACT specification and would maintain the current process of accounting for management uncertainty in the specifications setting process. Alternative 1B, which would require that a reduction from ACL to ACT be evaluated, would still be expected to result in very similar impacts as 1A since there would be no obligation by the Council to actually reduce ACT. Alternative 1B may increase the likelihood that the Council would select lower ACTs, but that is largely speculative, and as such, these alternatives are considered indistinguishable, in terms of impacts. Alternative 1C, on the other hand would be expected to result in lower ACTs in the long term than either 1A or 1B, which would tend to be associated with positive impacts for the managed resources (through lower catches) and negative impacts for human communities (through decreased fishing opportunities (Table 14). Under Alternative 1C, the discretionary use of a reduction from ACL to ACT would be removed. This could result in the imposition of bag, size and season limits that might be unnecessarily restrictive because they would be designed to achieve a smaller ACT than may be necessary.

## **7.2 In Season Closure Alternatives**

By allowing the Regional Administrator to close a recreational fishery based on a projection before the RHL has been achieved, Alternative 2B would tend to decrease catches and fishing opportunity in that year relative to the no action alternative (Alternative 2A). Conversely, Alternative 2C (preferred), which would eliminate the in-season closure authority, would tend to allow catches to continue after the RHL is potentially achieved. Assuming that there is biological justification in closing the fishery as triggered by landing (or projecting to land) the RHL, catches above that level would negatively affect managed and non-target species. Because data indicating that the RHL has been exceeded are not available for several weeks after that event, closure of the fishery would seldom cap landings exactly at the RHL. For this reason, Alternative 2B, which would likely close the fishery before Alternative 2A, is associated with positive to null impacts on managed and non-target species and null to negative impacts to human communities, when compared to the no action alternative. On the other hand, Alternative 2C (preferred) would result in positive impacts to the human communities, and potentially null to negative impacts on the managed and non-target species, if landings cause the overall catch limits to be exceeded.

Alternative 2D, which would result in changes to the bag limit or minimum size, would be expected to reduce but not eliminate catches. Compared to a closure (i.e., 2A and 2B) this alternative is associated with slightly negative impacts to managed and non-target resources, but more positive than compared to 2C which would allow fishing to continue. For human communities, this alternative is associated with more positive impacts than 2A and 2B, but slightly negative impacts compared to 2C.

## **7.3 Trigger Condition Alternatives**

Among the trigger condition action alternatives, Alternative 3D is the only one associated with positive impacts to human communities, but null impacts to the managed resource and non-target

VECs. Alternatives 3A (no action), 3B, and 3C (preferred) are associated with null impacts for all VECs. This is because, at least in the foreseeable future, Alternative 3D would obviate the pending implementation of any AM as a result of the 2012 black sea bass overage. Note that none of these alternatives specify the nature of any management response, so none are associated with direct impacts. Alternatives 3A, 3B, and 3C, would all maintain that an overage did occur in 2012, while Alternative 3D would result in no overage since it would require the re-occurrence of ACL being exceeded.

Alternative 3C (preferred) would require that the lower confidence limit (3.314 M lb) be above the recreational ACL (2.520 M lb) for an overage to be considered to have occurred. Since the lower confidence limit of the recreational catch in 2012 is above the 2012 recreational ACL for black sea bass, Alternative 3C would result in a null impact relative to the effects of no action / status quo. Administratively, Alternative 3B would only affect the summer flounder, scup and black sea bass fisheries in that a single year comparison is already in place for Atlantic mackerel and bluefish. Additionally, the three-year averaging under Alternative 3A is being phased in so that for AMs that would be applied in fishing year 2014 as a result of fishery performance in fishing year 2012, Alternatives 3A and 3B are essentially equivalent for the coming fishing year.

From the standpoint of maximizing benefits to human communities and minimizing costs to managed and non-target species, the merits of the different approaches are debatable and are related to whether paybacks are being invoked compared to other AMs, such as bag, size, and season adjustments. There are theoretical events that could make a single year comparison more appealing (from a human community impact perspective) than a three year average. For example, if an overage is such that it causes the three year average (Alternative 3A) to be above the comparison threshold (e.g., ACL) for more than one year, then the AMs could be triggered over a longer period than if a single year comparison (Alternative 3B) is made. However, if paybacks are being invoked, the magnitude of the overage may be such that the catch reduction is much greater in a single year (Alternative 3B) than spread over a number of years (Alternative 3A). This would result in larger short term benefits to biological resources (reduced catches) and costs to human communities (decreased fishing opportunities for 3B than 3A. As acknowledged in Section 5, there is some marginal risk to managed resources associated with Alternative 3C, but that is at least somewhat mitigated by the requirement that stock conditions be “favorable” in order to invoke the use of a confidence interval. If stock conditions are not favorable (stock is overfished or overfishing is occurring), then the use of the point estimate would be maintained under 3C and the impacts to all VECs would be indistinguishable from no action / status quo. Likewise, Alternative 3C would have impacts to all VECs that are indistinguishable from the status quo when catches exceed the threshold by a large amount. In the long term, Alternative 3C is more likely to prevent continual adjustments to recreational management measures, which is associated with negative impacts to human communities (confusion, potential violations of regulations) if catch estimates are reasonably close to but occasionally exceed catch thresholds.

## **7.4 Management Response Alternatives**

Among the management response alternatives, Alternatives 4B and 4C (preferred) are associated with positive impacts on human communities and null impacts otherwise. The positive impacts to human communities are related to the prevention of punitive paybacks in both 2014, in real terms for the black sea bass fishery, or any future year, theoretically, for any fishery. It could be argued that the lower likelihood of paybacks under these alternatives could be associated with negative impacts to the managed and non-target species; however, these alternatives are intended to scale the AMs to stock conditions such that long term negative impacts are avoided. Alternative 4D would do this without any paybacks and is associated with the greatest short-term benefit to human communities; however, it also has the greatest potential to delay bag, size, and season adjustments to the point where a stock could be fished to very close to an overfished condition. For that reason it is associated with negative impacts to the managed and non-target species.

Paybacks have limited biological relevance (i.e., null to positive impacts to managed resources but highly uncertain in terms of magnitude, if positive) in that once fish from a given year class have been removed, no amount of future payback is going to replace them. Nevertheless, when a fish population has been significantly reduced by fishing mortality such that a sustained period of lower catches is needed to rebuild the stock, then reduced catches should contribute to stock expansion. If the stated management goal is to grow the stock, which can only occur over time, catch targets would be set that would accomplish that goal rather than use of overage paybacks. In other words, because paybacks are a punitive response associated with overages in specific years and a rebuilding plan addresses long-term catch reductions needed for stock recovery, it should not be expected that paybacks will achieve stock rebuilding goals. Additionally, because of the cascading nature of these alternatives, a payback on top of bag, size, and season adjustment would by definition be punitive since the other measures would be developed to achieve, but not exceed, the target catch.

#### *Black Sea Bass in 2014*

If the ACT for black sea bass in 2014 is reduced by the payback, as under Alternative 4A (the *status quo*), more restrictive limits (i.e., lower possession limits, higher minimum size limits, and/or shorter open seasons) would be required. It is possible that Alternative 4A would decrease recreational satisfaction for the black sea bass recreational fishery, relative to 2012. However, it is likely that anglers would be able to keep some of the fish they catch and could also engage in catch and release fishing. Anglers that choose to reduce their black sea bass effort in 2014 may be likely to transfer this effort to alternative species (i.e., summer flounder, scup, spot, bluefish, weakfish, striped bass, tautog, pelagics, etc.), resulting in less change in overall fishing effort. In addition, recreational measures for many of the alternative species in the Northeast are becoming more restrictive each year, resulting in fewer substitute landing opportunities, particularly for anglers fishing aboard headboats where passengers are primarily limited to bottom fishing.

Steinback et al. (2009) estimate that only up to about 28% of marine anglers fishing in the Northeast US fish to bring home fish to eat. The remaining 72% of anglers were found to fish purely for recreational purposes and, therefore, likely place little importance on being able to keep fish. Findings of this study generally concur with previous studies that found non-catch reasons for participating in marine recreational fishing were rated much higher than keeping fish for food. In combination with alternative target species available to anglers, the findings of the Steinback et al. (2009) and many other peer-reviewed studies suggest that at least some of the potentially affected anglers would not reduce their effort when faced with the proposed landings restrictions.

## **7.5 Payback Calculation Alternatives**

Paybacks have limited biological value to managed resources compared to long-term catch reduction associated with rebuilding. The impacts of the payback alternatives can generally be characterized as increasingly positive to human communities, with inversely increasing, albeit small, biological costs as the size of the payback decreases. The OFL and ABC paybacks are necessarily smaller than the ACL paybacks because they represent the difference between the catch and a larger catch threshold than ACL, with OFL being the greatest. Both Alternatives 5B and 5C would restrict ACL overage paybacks to instances when the stock is overfished or in rebuilding. Alternative 5C, however, would have no paybacks if the stock is above  $B_{MSY}$ , while Alternative 5B would call for a payback of the OFL overage when biomass is above  $B_{MSY}$ . For that reason, Alternative 5C is less restrictive than Alternative 5B and is associated with greater short term benefits to human communities than is Alternative 5B.

Alternative 5D (preferred) is different from the other alternatives because the payback (Catch – ACL) would be scaled by the ratio of  $B$  to  $B_{MSY}$ , resulting in a smaller payback than a straight pound-for-pound approach. That is, if biomass is close to, but not over  $B_{MSY}$ , then the payback would be relatively small. This alternative is between Alternatives 5B and 5C in terms of benefits to human communities because, while Alternative 5B would require a payback of the OFL overage when the stock is above  $B_{MSY}$ , Alternative 5D would not. Alternative 5C would not require a payback of the ACL or ABC overage if biomass is below  $B_{MSY}$ , but not overfished, while Alternative 5D would. All of the other alternatives are more restrictive than Alternative 5E, which would eliminate paybacks altogether. The elimination of paybacks has the greatest short term benefit to human communities. There is a risk to the managed resources associated with the elimination of payback; however, it is limited because bag, size, and season adjustments would continue to be made to respond to overages. In addition, the Council's Risk Policy, which explicitly reduces ABC as stock condition declines, would make it very unlikely that any stock would be allowed to decline into an overfished condition.

## **7.6 ACL/ACT Post Hoc Evaluation Alternatives**

Alternative 6B could result in an increase or decrease to catch levels and fishing opportunity, relative to the no action alternative, depending on the results of the ACL/ACT evaluation. This is associated with mixed positive and negative impacts for all VECs. If the ACL/ACT is determined to have been underestimated in the projection, such that any potential AM is unjustified, and; therefore, reduced or eliminated, then catch levels and fishing opportunities would be greater than if the exercise was not conducted. If, however, an evaluation of ACL/ACT indicates that effort, potentially disproportionate to changes in stock size, was the cause of the overage, then more restrictive measures could be put in place and catches and fishing opportunities could decrease. Regardless of the outcome of the analysis, catch opportunities in the future specification year would be set according to the best available scientific information about stock condition. Alternative 6A (preferred) would not allow for the previously determined ACL to be re-estimated for consideration by the Council regarding the application of AMs. This means that if the operational issue causing an overage was an overly restrictive ACL (as determined by updated stock information) that would otherwise preclude a reactive AM response, then AMs may be applied that are excessively restrictive, at least from a biological basis. This would be associated with benefits to managed resources and non-target species and costs to human communities through decreased catches. On the other hand, if an ACL was too liberal, based on updated stock information, the cost to human communities from an AM that would otherwise have been invoked under 6B, will be avoided (positive outcome) and any benefit to the managed and non-target resources that would have come from an AM response would be forgone. As such, 6A is also associated with both positive and negative impacts to all VECs.



**Table 14. Indirect Impacts on Valued Ecosystem Components**

	Preferred	ACT Alternatives	Managed and Non-Target Species	Human Communities
1A	X	No Action/Status Quo	0	0
1B		Mandatory Review ACT = ACL – Uncert.	0	0
1C		Mandatory Setting ACT = ACL – Uncert.	+	-
<b>In-Season Closure Alternatives</b>				
2A		No Action/Status Quo	+	-
2B		Early Closure with In Season Projections	++	--
2C	X	Eliminate In-Season Closure Authority	-	+
2D		In-Season Adjustment to Management Measures	+	+
<b>Trigger Alternatives</b>				
3A		No Action / Status Quo for SF/Scup/BSB	0	0
3B		Single Year Comparison / Status Quo for Mackerel, Bluefish	0	0
3C	X	Confidence Interval	0	0
3D		Repeat Overage	-	+
<b>Management Response Alternatives</b>				
4A		No Action / Status Quo	0	-
4B		Payback when $B < \frac{1}{2} B_{msy}$ or $F > F_{msy}$	0	+
4C	X	Payback when $B < \frac{1}{2} B_{msy}$ or $F > F_{msy}$ and $B < B_{msy}$	0	+
4D		No Payback	-	++
<b>Payback Calculation Alternatives</b>				
5A		No Action / Status Quo	+	-
5B		Payback ACL Overage When Overfished	0	+
5C		Payback ACL Overage When Overfished/Overfishing	0	+
5D	X	Scaled Payback	0	++
5E		No Payback	-	+
<b>ACL Post Hoc Evaluation Alternatives</b>				
6A	X	No Action / Status Quo	+/-	+/-
6B		ACL Post Hoc Evaluation	+/-	+/-

## **7.7 Magnitude and Significance of Cumulative Effects**

A cumulative effects analysis (CEA) is required by the Council on Environmental Quality (CEQ) (40 CFR part 1508.7). The purpose of CEA is to consider the combined effects of many actions on the human environment over time that would be missed if each action were evaluated separately. CEQ guidelines recognize that it is not practical to analyze the cumulative effects of an action from every conceivable perspective, but rather, the intent is to focus on those effects that are truly meaningful. A formal cumulative impact assessment is not necessarily required as part of an EA under NEPA as long as the significance of cumulative impacts have been considered (U.S. EPA 1999). The following remarks address the significance of the expected cumulative impacts as they relate to all five recreational fisheries.

### **7.7.1 Consideration of the VECs**

In section 6.0 (Description of the Affected Environment), the VECs that exist within the recreational fisheries environment are identified. Therefore, the significance of the cumulative effects will be discussed in relation to the VECs listed below.

1. Managed resources (Atlantic mackerel, bluefish, summer flounder, scup, black sea bass)
2. Non-target species
3. Human communities

### **7.7.2 Geographic Boundaries**

The core geographic scope for each of the VECs is focused on the Western Atlantic Ocean (section 6.0). The core geographic scopes for the managed resources are the range of the management units (section 6.1). For non-target species, those ranges may be expanded and would depend on the biological range of each individual non-target species in the Western Atlantic Ocean. For habitat, the core geographic scope is focused on EFH within the EEZ but includes all habitat utilized by the managed resources and non-target species in the Western Atlantic Ocean. The core geographic scope for endangered and protected resources can be considered the overall range of these VECs in the Western Atlantic Ocean. For human communities, the core geographic boundaries are defined as those U.S. fishing communities directly involved in the harvest of the managed resources, which were found to occur in coastal states from Maine through North Carolina (section 6.4).

### **7.7.3 Temporal Boundaries**

The temporal scope of past and present actions for VECs is primarily focused on actions that have occurred after FMP implementation (1978 for Atl. mackerel, 1988 for summer flounder, 1990 for bluefish, 1996 for scup and black sea bass). For endangered and other protected resources, the scope of past and present actions is on a species-by-species basis (section 6.3) and is largely focused on the 1980s and 1990s through the present, when NMFS began generating stock assessments for marine mammals and sea turtles that inhabit waters of the U.S. EEZ. The temporal scope of future actions for all three VECs extends about five years into the future. The

dynamic nature of resource management and a lack of information on projects that may occur in the future make it very difficult to predict impacts beyond a few years with any certainty. The Omnibus ACL/AM Amendment (MAFMC 2011) requires a 5-year review of performance of ACLs and AMs; therefore, it is not unreasonable to anticipate actions that may affect these fisheries for about five years.

#### **7.7.4 Actions Other Than Those Proposed in this Amendment**

The impacts of each of the alternatives considered in this specifications document are given in section 7.1 through 7.6. Table 15 presents meaningful past (P), present (Pr), or reasonably foreseeable future (RFF) actions to be considered other than those actions being considered in this specifications document. These impacts are described in chronological order and qualitatively, as the actual impacts of these actions are too complex to be quantified in a meaningful way. When any of these abbreviations occur together (i.e., P, Pr, RFF), it indicates that some past actions are still relevant to the present and/or future actions.

##### ***Past and Present Actions***

The historical management practices of the Council have resulted in positive impacts on the health of the stocks (section 6.1). Actions have been taken to manage the commercial and recreational fisheries for these species through amendment actions. In addition, the annual specifications process is intended to provide the opportunity for the Council and NMFS to regularly assess the status of these fisheries and to make necessary adjustments to ensure that there is a reasonable expectation of meeting the objectives of the FMPs. The statutory basis for Federal fisheries management is the MSA. To the degree with which this regulatory regime is complied, the cumulative impacts of past, present, and reasonably foreseeable future Federal fishery management actions on the VECs should generally be associated with positive long-term outcomes. Constraining fishing effort through regulatory actions can often have negative short-term socioeconomic impacts. These impacts are usually necessary to bring about long-term sustainability of a given resource, and as such, should, in the long-term, promote positive effects on human communities, especially those that are economically dependent upon the stocks.

Non-fishing activities that introduce chemical pollutants, sewage, changes in water temperature, salinity, dissolved oxygen, and suspended sediment into the marine environment pose a risk to all of the identified VECs. Human-induced non-fishing activities tend to be localized in nearshore areas and marine project areas where they occur. Examples of these activities include, but are not limited to: Agriculture, port maintenance, beach nourishment, coastal development, marine transportation, marine mining, dredging, and the disposal of dredged material. Wherever these activities co-occur, they are likely to work additively or synergistically to decrease habitat quality and, as such, may indirectly constrain the sustainability of the managed resources, non-target species, and protected resources. Decreased habitat suitability would tend to reduce the tolerance of these VECs to the impacts of fishing effort. Mitigation of this outcome through regulations that would reduce fishing effort could then negatively impact human communities. The overall impact to the affected species and its habitat on a population level is unknown, but likely neutral to low negative, since a large portion of these species has a limited or minor exposure to these local non-fishing perturbations.

In addition to guidelines mandated by the MSA, NMFS reviews these types of effects through the review processes required by Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for certain activities that are regulated by federal, state, and local authorities. The jurisdiction of these activities is in "waters of the U.S." and includes both riverine and marine habitats.

### ***Reasonably Foreseeable Future Actions***

For many of the proposed non-fishing activities to be permitted under other Federal agencies (such as beach nourishment, offshore wind facilities, etc.), those agencies would conduct examinations of potential impacts on the VECs. The MSA (50 CFR 600.930) imposes an obligation on other Federal agencies to consult with the Secretary of Commerce on actions that may adversely affect EFH. The eight Fishery Management Councils are engaged in this review process by making comments and recommendations on any Federal or state action that may affect habitat, including EFH, for their managed species and by commenting on actions likely to substantially affect habitat, including EFH.

In addition, under the Fish and Wildlife Coordination Act (Section 662), "whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the U.S., or by any public or private agency under Federal permit or license, such department or agency first shall consult with the U.S. Fish and Wildlife Service (USFWS), Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular state wherein the" activity is taking place. This act provides another avenue for review of actions by other Federal and state agencies that may impact resources that NMFS manages in the reasonably foreseeable future.

In addition, NMFS and the USFWS share responsibility for implementing the ESA. ESA requires NMFS to designate "critical habitat" for any species it lists under the ESA (i.e., areas that contain physical or biological features essential to conservation, which may require special management considerations or protection) and to develop and implement recovery plans for threatened and endangered species. The ESA provides another avenue for NMFS to review actions by other entities that may impact endangered and protected resources whose management units are under NMFS' jurisdiction.

### **7.7.5 Magnitude and Significance of Cumulative Effects**

In determining the magnitude and significance of the cumulative effects, the additive and synergistic effects of the proposed action, as well as past, present, and future actions, must be taken into account. The following section discusses the effects of these actions on each of the VECs.

**Table 15. Impacts of Past (P), Present (Pr), and Reasonably Foreseeable Future (RFF) Actions on the five VECs (not including those actions considered in this specifications document).**

<b>Action</b>	<b>Description</b>	<b>Impacts on Managed Resource</b>	<b>Impacts on Non-target Species</b>	<b>Impacts on Habitat and EFH</b>	<b>Impacts on Protected Species</b>	<b>Impacts on Human Communities</b>
<b>P, Pr</b> Original FMPs and subsequent Amendments and Frameworks to the FMPs	Established commercial and recreational management measures	<b>Indirect Positive</b> Regulatory tool available to rebuild and manage stocks	<b>Indirect Positive</b> Reduced fishing effort	<b>Indirect Positive</b> Reduced fishing effort	<b>Indirect Positive</b> Reduced fishing effort	<b>Indirect Positive</b> Benefited domestic businesses
<b>P, Pr</b> Species Specifications	Establish annual quotas, RHLs, other fishery regulations (commercial and recreational)	<b>Indirect Positive</b> Regulatory tool to specify catch limits, and other regulation; allows response to annual stock updates	<b>Indirect Positive</b> Reduced effort levels and gear requirements	<b>Indirect Positive</b> Reduced effort levels and gear requirements	<b>Indirect Positive</b> Reduced effort levels and gear requirements	<b>Indirect Positive</b> Benefited domestic businesses
<b>P, Pr</b> Developed and Applied Standardized Bycatch Reporting Methodology	Established acceptable level of precision and accuracy for monitoring of bycatch in fisheries	<b>Neutral</b> May improve data quality for monitoring total removals of managed resource	<b>Neutral</b> May improve data quality for monitoring removals of non-target species	<b>Neutral</b> Will not affect distribution of effort	<b>Neutral</b> May increase observer coverage and will not affect distribution of effort	<b>Potentially Indirect Negative</b> May impose an inconvenience on vessel operations
<b>Pr, RFF</b> Omnibus Amendment ACLs/AMs Implemented	Establish ACLs and AMs for all five species	<b>Potentially Indirect Positive</b> Pending full analysis	<b>Potentially Indirect Positive</b> Pending full analysis	<b>Potentially Indirect Positive</b> Pending full analysis	<b>Potentially Indirect Positive</b> Pending full analysis	<b>Potentially Indirect Positive</b> Pending full analysis
<b>P, Pr, RFF</b> Agricultural runoff	Nutrients applied to agricultural land are introduced into aquatic systems	<b>Indirect Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Reduced habitat quality	<b>Direct Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Reduced habitat quality negatively affects resource
<b>P, Pr, RFF</b> Port maintenance	Dredging of coastal, port and harbor areas for port maintenance	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Direct Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Mixed</b> Dependent on mitigation effects

**Table 15 (Continued). Impacts of Past (P), Present (Pr), and Reasonably Foreseeable Future (RFF) Actions on the five VECs (not including those actions considered in this specifications document).**

Action	Description	Impacts on Managed Resource	Impacts on Non-target Species	Impacts on Habitat and EFH	Impacts on Protected Species	Impacts on Human Communities
P, Pr, RFF Offshore disposal of dredged materials	Disposal of dredged materials	<b>Indirect Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Reduced habitat quality	<b>Direct Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Reduced habitat quality negatively affects resource viability
P, Pr, RFF Beach nourishment	Offshore mining of sand for beaches	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Direct Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Mixed</b> Positive for mining companies, possibly negative for fishing industry
	Placement of sand to nourish beach shorelines	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Direct Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Positive</b> Beachgoers like sand; positive for tourism
P, Pr, RFF Marine transportation	Expansion of port facilities, vessel operations and recreational marinas	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Direct Negative</b> Reduced habitat quality	<b>Indirect Negative</b> Localized decreases in habitat quality	<b>Mixed</b> Positive for some interests, potential displacement for others
P, Pr, RFF Installation of pipelines, utility lines and cables	Transportation of oil, gas and energy through pipelines, utility lines and cables	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Direct Negative</b> Reduced habitat quality	<b>Potentially Direct Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Mixed</b> Dependent on mitigation effects
P, Pr, RFF National Offshore Aquaculture Act of 2007	Bill that would grant DOC authority to issue permits for offshore aquaculture in Federal waters	<b>Potentially Indirect Negative</b> Localized decreases in habitat quality possible	<b>Potentially Indirect Negative</b> Localized decreases in habitat quality possible	<b>Direct Negative</b> Localized decreases in habitat quality possible	<b>Potentially Indirect Negative</b> Localized decreases in habitat quality possible	<b>Uncertain – Likely Mixed</b> Costs/benefits remain unanalyzed

**Table 15 (Continued). Impacts of Past (P), Present (Pr), and Reasonably Foreseeable Future (RFF) Actions on the five VECs (not including those actions considered in this specifications document).**

<b>Action</b>	<b>Description</b>	<b>Impacts on Managed Resource</b>	<b>Impacts on Non-target Species</b>	<b>Impacts on Habitat and EFH</b>	<b>Impacts on Protected Species</b>	<b>Impacts on Human Communities</b>
<b>RFF</b> Offshore Wind Energy Facilities (within 3 years)	Construction of wind turbines to harness electrical power (Several proposed from ME through NC, including NY/NJ, DE, and VA)	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Potentially Direct Negative</b> Localized decreases in habitat quality possible	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Mixed</b> Dependent on mitigation effects
<b>Pr, RFF</b> Liquefied Natural Gas (LNG) terminals (within 3 years)	Transport natural gas via tanker to terminals offshore and onshore (1 terminal built in MA; 1 under construction; proposed in RI, NY, NJ, and DE)	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Potentially Direct Negative</b> Localized decreases in habitat quality possible	<b>Uncertain – Likely Indirect Negative</b> Dependent on mitigation effects	<b>Uncertain – Likely Mixed</b> Dependent on mitigation effects
<b>RFF</b> Convening Gear Take Reduction Teams (within next 3 years)	Recommend measures to reduce mortality and injury to marine mammals	<b>Indirect Positive</b> Will improve data quality for monitoring total removals	<b>Indirect Positive</b> Reducing availability of gear could reduce bycatch	<b>Indirect Positive</b> Reducing availability of gear could reduce gear impacts	<b>Indirect Positive</b> Reducing availability of gear could reduce encounters	<b>Indirect Negative</b> Reducing availability of gear could reduce revenues
<b>RFF</b> Strategy for Sea Turtle Conservation for the Atlantic Ocean and the Gulf of Mexico Fisheries (w/in next 3 years)	May recommend strategies to prevent the bycatch of sea turtles in commercial fisheries operations	<b>Indirect Positive</b> Will improve data quality for monitoring total removals	<b>Indirect Positive</b> Reducing availability of gear could reduce bycatch	<b>Indirect Positive</b> Reducing availability of gear could reduce gear impacts	<b>Indirect Positive</b> Reducing availability of gear could reduce encounters	<b>Indirect Negative</b> Reducing availability of gear could reduce revenues

### 7.7.5.1 Managed Resources

Those past, present, and reasonably foreseeable future actions, whose effects may impact the managed resources and the direction of those potential impacts, are summarized in Table 15. The indirectly negative actions described in Table 15 are localized in nearshore areas and marine project areas where they occur. Therefore, the magnitude of those impacts on the managed resource is expected to be limited due to a lack of exposure to the population at large.

Agricultural runoff may be much broader in scope, and the impacts of nutrient inputs to the coastal system may be of a larger magnitude, although the impact on productivity of the managed resources is unquantifiable. As described above (section 7.5.4), NMFS has several means under which it can review non-fishing actions of other federal or state agencies that may impact NMFS' managed resources prior to permitting or implementation of those projects. This serves to minimize the extent and magnitude of indirect negative impacts those actions could have on resources under NMFS' jurisdiction.

Past fishery management actions taken through the FMP and annual specification process have had a positive cumulative effect on the managed resource. It is anticipated that the future management actions, described in Table 16, will result in additional indirect positive effects on the managed resources through actions which reduce and monitor bycatch, protect habitat, and protect ecosystem services on which productivity depends. The 2012 fishing year was the first year of ACLs/AMs and catch accountability. This represented a major change to the management program and is expected to lead to improvements in resource sustainability over the long-term. These impacts could be broad in scope. Overall, the past, present, and reasonably foreseeable future actions that are truly meaningful to the managed resources have had a positive cumulative effect.

Catch limits, commercial quotas, and recreational harvest limits for the managed resource have been specified to ensure the stock is managed in a sustainable manner, and measures are consistent with the objectives of the FMPs under the guidance of the MSA. The impacts from annual specification of management measures established in previous years on the managed resource are largely dependent on how effective those measures were in meeting their intended objectives (i.e., preventing overfishing, achieve OY) and the extent to which mitigating measures were effective. The proposed action in this document would positively reinforce the past and anticipated positive cumulative effects on the stocks, by achieving the objectives specified in the FMPs. Therefore, the proposed action would not have any significant effect on the managed resources individually or in conjunction with other anthropogenic activities (see Table 16).



**Table 16. Summary of the effects of past, present, and reasonably foreseeable future actions on the managed resource.**

<b>Action</b>	<b>Past to the Present</b>	<b>Reasonably Foreseeable Future</b>
Original FMP and subsequent Amendments and Frameworks to the FMP	<b>Indirect Positive</b>	
Specifications	<b>Indirect Positive</b>	
Developed and Implement Standardized Bycatch Reporting Methodology	<b>Neutral</b>	
Amendment to address ACLs/AMs implemented		<b>Potentially Indirect Positive</b>
Agricultural runoff	<b>Indirect Negative</b>	
Port maintenance	<b>Uncertain – Likely Indirect Negative</b>	
Offshore disposal of dredged materials	<b>Indirect Negative</b>	
Beach nourishment – Offshore mining	<b>Indirect Negative</b>	
Beach nourishment – Sand placement	<b>Indirect Negative</b>	
Marine transportation	<b>Indirect Negative</b>	
Installation of pipelines, utility lines and cables	<b>Uncertain – Likely Indirect Negative</b>	
National Offshore Aquaculture Act of 2007	<b>Potentially Indirect Negative</b>	
Offshore Wind Energy Facilities (within 3 years)		<b>Uncertain – Likely Indirect Negative</b>
Liquefied Natural Gas (LNG) terminals (within 3 years)		<b>Uncertain – Likely Indirect Negative</b>
Convening Gear Take Reduction Teams (within 3 years)		<b>Indirect Positive</b>
Strategy for Sea Turtle Conservation for the Atlantic Ocean and the Gulf of Mexico Fisheries (within next 3 years)		<b>Indirect Positive</b>
<b>Summary of past, present, and future actions excluding those proposed in this specifications document</b>	<b>Overall, actions have had, or will have, positive impacts on the managed resources</b>	

### **7.7.5.2 Non-Target Species or Bycatch**

Those past, present, and reasonably foreseeable future actions, whose effects may impact non-target species and the direction of those potential impacts, are summarized in Table 15. The effects of indirectly negative actions described in Table 15 are localized in nearshore areas and marine project areas where they occur. Therefore, the magnitude of those impacts on non-target species is expected to be limited due to a lack of exposure to the population at large.

Agricultural runoff may be much broader in scope, and the impacts of nutrient inputs to the coastal system may be of a larger magnitude, although the impact on productivity of non-target resources and the oceanic ecosystem is unquantifiable. As described above (section 7.7.4), NMFS has several means under which it can review non-fishing actions of other Federal or state agencies that may impact NMFS' managed resources prior to permitting or implementation of those projects. At this time, NMFS can consider impacts to non-target species (federally-managed or otherwise) and comment on potential impacts. This serves to minimize the extent and magnitude of indirect negative impacts those actions could have on resources within NMFS' jurisdiction.

Past fishery management actions taken through the FMPs and annual specification processes have had a positive cumulative effect on non-target species. Implementation and application of a standardized bycatch reporting methodology would have a particular impact on non-target species by improving the methods which can be used to assess the magnitude and extent of a potential bycatch problem. Better assessment of potential bycatch issues allows more effective and specific management measures to be developed to address a bycatch problem. It is anticipated that future management actions, described in Table 17, will result in additional indirect positive effects on non-target species through actions which reduce and monitor bycatch, protect habitat, and protect ecosystem services on which the productivity of many of these non-target resources depend. The impacts of these future actions could be broad in scope, and it should be noted the managed resources and non-target species are often coupled in that they utilize similar habitat areas and ecosystem resources on which they depend. Overall, the past, present, and reasonably foreseeable future actions that are truly meaningful have had a positive cumulative effect on non-target species.

Catch limits, commercial quotas, and recreational harvest limits for the managed resource have been specified to ensure the stock is managed in a sustainable manner, and measures are consistent with the objectives of the FMPs under the guidance of the MSA. The proposed actions in this document have impacts that range from neutral to positive or negative impacts, and would not change the past and anticipated positive cumulative effects on non-target species and thus, would not have any significant effect on these species individually or in conjunction with other anthropogenic activities (Table 17).

**Table 17. Summary of the effects of past, present, and reasonably foreseeable future actions on the non-target species.**

<b>Action</b>	<b>Past to the Present</b>	<b>Reasonably Foreseeable Future</b>
Original FMP and subsequent Amendments and Frameworks to the FMP	<b>Indirect Positive</b>	
Specifications	<b>Indirect Positive</b>	
Developed and Implement Standardized Bycatch Reporting Methodology	<b>Neutral</b>	
Amendment to address ACLs/AMs implemented		<b>Potentially Indirect Positive</b>
Agricultural runoff	<b>Indirect Negative</b>	
Port maintenance	<b>Uncertain – Likely Indirect Negative</b>	
Offshore disposal of dredged materials	<b>Indirect Negative</b>	
Beach nourishment – Offshore mining	<b>Indirect Negative</b>	
Beach nourishment – Sand placement	<b>Indirect Negative</b>	
Marine transportation	<b>Indirect Negative</b>	
Installation of pipelines, utility lines and cables	<b>Uncertain – Likely Indirect Negative</b>	
National Offshore Aquaculture Act of 2007	<b>Potentially Indirect Negative</b>	
Offshore Wind Energy Facilities (within 3 years)		<b>Uncertain – Likely Indirect Negative</b>
Liquefied Natural Gas (LNG) terminals (within 3 years)		<b>Uncertain – Likely Indirect Negative</b>
Convening Gear Take Reduction Teams (within 3 years)		<b>Indirect Positive</b>
Strategy for Sea Turtle Conservation for the Atlantic Ocean and the Gulf of Mexico Fisheries (within next 3 years)		<b>Indirect Positive</b>
<b>Summary of past, present, and future actions excluding those proposed in this specifications document</b>	<b>Overall, actions have had, or will have, positive impacts on the non-target species</b>	

### **7.7.5.3 Human Communities**

Those past, present, and reasonably foreseeable future actions, whose effects may impact human communities and the direction of those potential impacts, are summarized in Table 15. The indirectly negative actions described in Table 15 are localized in nearshore areas and marine project areas where they occur. Therefore, the magnitude of those impacts on human communities is expected to be limited in scope. It may, however, displace fishermen from project areas. Agricultural runoff may be much broader in scope, and the impacts of nutrient inputs to the coastal system may be of a larger magnitude. This may result in indirect negative impacts on human communities by reducing resource availability; however, this effect is unquantifiable. As described above (section 7.7.4), NMFS has several means under which it can review non-fishing actions of other Federal or state agencies prior to permitting or implementation of those projects. This serves to minimize the extent and magnitude of indirect negative impacts those actions could have on human communities.

Past fishery management actions taken through the FMPs and annual specification processes have had both positive and negative cumulative effects on human communities by benefiting domestic fisheries through sustainable fishery management practices, while at the same time potentially reducing the availability of the resource to all participants. Sustainable management practices are, however, expected to yield broad positive impacts to fishermen, their communities, businesses, and the nation as a whole. It is anticipated that the future management actions, described in Table 18, will result in positive effects for human communities due to sustainable management practices, although additional indirect negative effects on the human communities could occur through management actions that may implement gear requirements or area closures and thus, reduce revenues. Overall, the past, present, and reasonably foreseeable future actions that are truly meaningful to human communities have had an overall positive cumulative effect.

Catch limits, commercial quotas, and recreational harvest limits for the managed resource have been specified to ensure the stock is managed in a sustainable manner, and measures are consistent with the objectives of the FMPs under the guidance of the MSA. The impacts from annual specification measures established in previous years on the managed resources are largely dependent on how effective those measures were in meeting their intended objectives and the extent to which mitigating measures were effective. Overages may alter the timing of commercial fishery revenues (revenues realized a year earlier), and there may be impacts on some fishermen caused by unexpected reductions in their opportunities to earn revenues in the commercial fisheries in the year during which the overages are deducted. Similarly recreational fisheries may have decreased harvest opportunities due to reduced harvest limits as a result of overages, or more restrictive recreational management measures that must be implemented (i.e., minimum fish size, possession limits, fishing seasons).

Despite the potential for neutral to positive short-term effects on human communities, the expectation is that there would be a positive long-term effect on human communities due to the long-term sustainability of the managed resources. Overall, the proposed actions in this document would not change the past and anticipated cumulative effects on human communities and thus, would not have any significant effect on human communities individually, or in conjunction with other anthropogenic activities (Table 18).

**Table 18. Summary of the effects of past, present, and reasonably foreseeable future actions on human communities.**

<b>Action</b>	<b>Past to the Present</b>	<b>Reasonably Foreseeable Future</b>
Original FMP and subsequent Amendments and Frameworks to the FMP	<b>Indirect Positive</b>	
Specifications	<b>Indirect Positive</b>	
Developed and Implement Standardized Bycatch Reporting Methodology	<b>Potentially Indirect Negative</b>	
Amendment to address ACL/AMs implemented		<b>Potentially Indirect Positive</b>
Agricultural runoff	<b>Indirect Negative</b>	
Port maintenance	<b>Uncertain – Likely Mixed</b>	
Offshore disposal of dredged materials	<b>Indirect Negative</b>	
Beach nourishment – Offshore mining	<b>Mixed</b>	
Beach nourishment – Sand placement	<b>Positive</b>	
Marine transportation	<b>Mixed</b>	
Installation of pipelines, utility lines and cables	<b>Uncertain – Likely Mixed</b>	
National Offshore Aquaculture Act of 2007	<b>Uncertain – Likely Mixed</b>	
Offshore Wind Energy Facilities (within 3 years)		<b>Uncertain – Likely Mixed</b>
Liquefied Natural Gas (LNG) terminals (within 3 years)		<b>Uncertain – Likely Mixed</b>
Convening Gear Take Reduction Teams (within 3 years)		<b>Indirect Negative</b>
Strategy for Sea Turtle Conservation for the Atlantic Ocean and the Gulf of Mexico Fisheries (within next 3 years)		<b>Indirect Negative</b>
<b>Summary of past, present, and future actions excluding those proposed in this specifications document</b>	<b>Overall, actions have had, or will have, positive impacts on human communities</b>	

### 7.7.6 Preferred Action on all the VECS

The Council has identified its preferred action alternatives in section 5.0. The cumulative effects of the range of actions considered in this document can be considered to make a determination if significant cumulative effects are anticipated from the preferred action.

The direct and indirect impacts of the proposed action on the VECs are described in sections 7.1 through 7.6. The magnitude and significance of the cumulative effects, which include the additive and synergistic effects of the proposed action, as well as past, present, and future actions, have been taken into account throughout this section 7.7. The action proposed in this Omnibus Amendment builds off action taken in the original FMPs and subsequent amendments and framework documents, including the Omnibus ACL/AM Amendment in 2011. When this action is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably foreseeable future actions, it is not expected to result in any significant impacts, positive or negative. Based on the information and analyses presented in these past FMP documents and this document, there are no significant cumulative effects associated with the action proposed in this document (Table 19).

**Table 19. Magnitude and significance of the cumulative effects; the additive and synergistic effects of the preferred action, as well as past, present, and future actions.**

VEC	Status in 2012	Net Impact of P, Pr, and RFF Actions	Impact of the Preferred Action	Significant Cumulative Effects
<b>Managed Resource</b>	Complex and variable (Section 6.1)	Positive (Section 7.7.5.1)	Neutral (Sections 7.1-7.6)	<b>None</b>
<b>Non-target Species</b>	Complex and variable (Section 6.2)	Positive (Section 7.7.5.2)	Slight negative to slight positive (Sections 7.1-7.6)	<b>None</b>
<b>Human Communities</b>	Complex and variable (Section 6.5)	Positive (Section 7.7.5.3)	Negative to short-term Positive (Sections 7.1-7.6)	<b>None</b>

## **8.0 APPLICABLE LAWS**

### **8.1 Magnuson-Stevens Fishery Conservation and Management Act (MSA) and National Standards**

Section 301 of the MSA requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The most recent FMP amendments for the managed resources address how the management actions comply with the National Standards. First and foremost, the Council continues to meet the obligations of National Standard 1 by adopting and implementing conservation and management measures that will continue to prevent overfishing, while achieving, on a continuing basis, the optimum yield for the managed resources and the U.S. fishing industry.

This action was developed to amend recreational accountability measures implemented to comply with the revised NS1 guidelines; therefore, the Council has identified new management measures, when taken in conjunction with existing measures, will maintain compliance with all National Standards while being more closely aligned with the requirements for accountability measures under the MSRA. The avoidance of overfishing these managed resources is not diminished by these actions and OY can be achieved in these fisheries. The Council uses the best scientific information available (National Standard 2) and by explicitly taking into account measures of uncertainty that are provided with recreational catch estimates, the Council is addressing those estimates in a manner that is more consistent with their statistical basis and therefore more consistent with National Standard 2. The Council manages all of its resources throughout their range (National Standard 3) and this action does not alter the management units or management jurisdictions for any of these resources. These management measures do not discriminate among residents of different states (National Standard 4) because the application of catch limits and accountability are applied to the fishery as a whole or to the fishing sectors (i.e., recreational or commercial). The positive impacts which result from preventing overfishing and achieving OY should be maintained and realized by all fishery participants, irrespective of state of residency. The actions taken within this document do not have economic allocation as their sole purpose (National Standard 5). These measures account for variations in these fisheries (National Standard 6) by enabling the inherent scientific and management uncertainty associated with assessing these resources and implementing fishery management measures to be considered when implementing accountability responses for these fisheries. This action is not associated with unnecessary duplication (National Standard 7). This action would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished, and therefore should not alter the manner in which fishing communities participant in these fisheries. This action considers fishing communities (National Standard 8) in that in-season closures are eliminated which would reduce any regional bias in reductions in access to recreational resources during the latter months of the fishing season. The actions will provide greater social and economic benefits to fishery participants and fishing communities. This action does not propose any measures that would affect safety at sea (National Standard 10). Finally, actions taken are consistent

with National Standard 9, because the proposed measures consider all components of the catch, including bycatch.

The Council has implemented many regulations that have indirectly acted to reduce fishing gear impacts on EFH. By continuing to meet the National Standards requirements of the MSA through future FMP amendment, FMP framework adjustment, and specifications, the Council will ensure that cumulative impacts of these actions will remain positive overall for the ports and communities that depend on these fisheries, the Nation as a whole, and certainly for the resources.

## **8.2 NEPA (FONSI)**

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. §1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not expected to jeopardize the sustainability of any target species affected by the action (section 6.1). The action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources, which is expected to result in an increase in the likelihood of sustainability of the target species. As such, the impacts of these alternatives are largely administrative in nature; there are no significant physical or biological impacts associated with the alternatives (section 7.0).

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

The proposed action is not expected to jeopardize the sustainability of any non-target species (section 6.2). These measures, which would amend the process for addressing accountability in these five recreational fisheries, would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. As such, the impacts of the preferred alternatives that may be affected by the measures are largely administrative in nature; there are no significant physical or biological impacts associated with the preferred alternatives (section 7.0).

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?



The proposed action is not expected to cause substantial damage to the ocean, coastal habitats, and/or EFH as defined under the Magnuson-Stevens Act and identified in the FMP. In general, recreational gear does not adversely affect EFH. The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. There are no significant habitat impacts associated with the preferred alternatives (section 7.0).

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

The proposed action, which would amend the process for addressing accountability in these five recreational fisheries, would not alter the manner in which the industry conducts fishing activities in a way that would affect safety. The overall effect of the proposed actions on these fisheries, including the communities in which they operate, will not impact adversely public health or safety (section 7.0). NMFS will consider comments received concerning safety and public health issues.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

The proposed action is not expected to adversely affect ESA listed, threatened, or endangered, marine mammals, or critical habitat of these species (section 6.4). These measures, which would amend the process for addressing accountability in these five recreational fisheries, would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. As such, the impacts of the alternatives on any species that may be affected by the measures are wholly administrative in nature; there are no expected significant impacts on ESA proposed, threatened, or endangered, and MMPA protected species associated with the alternatives (section 7.0).

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area (section 7.7.2). The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. These measures would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. As such, the impacts of the preferred alternatives on biodiversity and ecosystem function within the affected area are administrative in nature; there are no significant impacts on biodiversity and ecosystem function associated with the alternatives (section 7.0).

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

The proposed action is not expected to have a substantial impact on the natural or physical environment (section 6.0). The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. These measures would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. As such, the impacts of the preferred alternatives are administrative in nature and not expected to result in significant social or economic impacts interrelated with natural or physical environmental effects (section 7.0).

8) Are the effects on the quality of the human environment likely to be highly controversial?

The impacts of the proposed measures on the human environment are described in section 7.0 of this document. The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. These measures are administrative in nature and build on measures contained in the FMPs which have been in place for many years. Thus, the measures contained in this action are not expected to be highly controversial.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

It is possible that historic or cultural resources such as shipwrecks could be present in the area where these recreational fisheries are prosecuted. However, it is unlikely that recreational gear (rod and reel) would become entangled or otherwise interact with these sites. Therefore, it is not likely that the proposed action would result in substantial impacts to unique areas.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The impacts of the proposed measures on the human environment are described in section 7.0 of the EA. The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. These measures are administrative in nature and build on measures contained in the FMPs which have been in place for many years. The measures contained in this action are not expected to have highly uncertain effects or to involve unique or unknown risks on the human environment.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

The proposed action, which would amend the process for addressing accountability in these five recreational fisheries, is not expected to have individually insignificant, but cumulatively significant impacts. The synergistic interaction of improvements in the efficiency of the fishery is expected to generate positive impacts overall. The proposed actions, together with past, present, and future actions, are not expected to result in significant cumulative impacts on the biological, physical, and human components of the environment.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Although, there are shipwrecks present in areas where these fisheries occur, including some registered on the National Register of Historic Places, it is unlikely that recreational gear (rod and reel) would become entangled or otherwise interact with these sites. Therefore, it is not likely that the proposed action, which would amend the process for addressing accountability in these five recreational fisheries, would adversely affect historic resources.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. There is no evidence or indication that the managed resources fisheries have ever resulted in the introduction or spread of nonindigenous species. None of the proposed measures is expected to substantially change the manner in which these fisheries are prosecuted. Therefore, it is highly unlikely that the proposed action would be expected to result in the introduction or spread of a non-indigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. The performance of the fisheries relative to catch limits and the entire system of catch limits and accountability will be monitored and measures contained within the FMP will be adjusted in response to those conditions in the future. Therefore, these actions are not expected to result in significant effects, nor do they represent a decision in principle about a future consideration.

15) Can the proposed action reasonably be expected to threaten a violation of federal, State, or local law or requirements imposed for the protection of the environment?

The proposed action would amend the process for addressing accountability for recreational catch (landings and discards) of the managed resources. The proposed action is not expected to alter fishing methods or activities such that they threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment. In fact, the proposed measures have been found to be consistent with other applicable laws (see sections 8.3-8.10 below).

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The impacts of the proposed alternatives on the biological, physical, and human environment are described in section 7.0. The cumulative effects of the proposed action on target and non-target species are detailed in section 7.4 of the EA. None of the proposed measures are expected to significantly alter the manner in which the fishery is prosecuted. The synergistic interaction of improvements in the manner in which scientific and management uncertainty is addressed when specifying catch limits for the managed resources fisheries is expected to generate positive impacts overall.

## **DETERMINATION**

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for this Omnibus Amendment document, it is hereby determined that the proposed actions in this amendment will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

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Regional Administrator for NERO, NMFS, NOAA

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Date

### **8.3 Endangered Species Act**

Sections 6.3 and 7.0 should be referenced for an assessment of the impacts of the proposed action on endangered species and protected resources. None of the actions proposed in this document are expected to alter fishing methods or activities. Therefore, this action is not expected to affect proposed, threatened, or endangered species or critical habitat in any manner not considered in previous consultations on the fisheries.

### **8.4 Marine Mammal Protection Act**

Sections 6.3 and 7.0 should be referenced for an assessment of the impacts of the proposed action on marine mammals. None of the actions proposed in this document are expected to alter fishing methods or activities. Therefore, this action is not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

## 8.5 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) of 1972, as amended, provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. It is recognized that responsible management of both coastal zones and fish stocks must involve mutually supportive goals. The Council has developed this document and will submit it to NMFS; NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each state (Maine through North Carolina).

## 8.6 Administrative Procedure Act

Sections 551-553 of the Federal Administrative Procedure Act establish procedural requirements applicable to informal rulemaking by Federal agencies. The purpose is to ensure public access to the federal rulemaking process and to give the public notice and opportunity to comment before the agency promulgates new regulations.

The Administrative Procedure Act requires solicitation and review of public comments on actions taken in the development of an FMP and subsequent FMP amendment and framework adjustments. Development of this document provided many opportunities for public review, input, and access to the rulemaking process. This proposed action and the document were developed through a multi-stage process that was open to review by affected members of the public. A Public Comment Period was held for the Omnibus Amendment from April 12 to May 15, 2013 as advertised in the Federal Register ([78FR21914](#)) during which written comments were accepted for consideration. Those comments are provided in the Appendix. Additionally, during the Public Comment Period, five Public Hearings occurred as listed below.

Date	Location
29-Apr	Warwick, RI
30-Apr	Riverhead, NY
1-May	Manahawkin, NJ
2-May	Ocean City, MD
3-May	Virginia Beach, VA

Finally, as with all Council actions, the public had the opportunity to review and comment on this action at the February, April, and June Mid-Atlantic Council meetings in 2013.

## 8.7 Section 515 (Data Quality Act)

### *Utility of Information Product*

The action contained within this document was developed to be consistent with the FMP, MSA, and other applicable laws, through a multi-stage process that was open to review by affected members of the public. The public had the opportunity to review and comment on management measures during the same meetings listed above in section 8.6. The public will have further opportunity to comment once NMFS publishes a request for comments on the proposed regulations in the *Federal Register*.

### ***Integrity of Information Product***

The information product meets the standards for integrity under the following types of documents: Other/Discussion (e.g., Confidentiality of Statistics of the MSA; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act).

### ***Objectivity of Information Product***

The category of information product that applies here is “Natural Resource Plans.” This section (section 8.0) describes how this document was developed to be consistent with any applicable laws, including MSA with any of the applicable National Standards. The analyses used to develop the alternatives (i.e., policy choices) are based upon the best scientific information available and the most up to date information is used to develop the EA which evaluates the impacts of those alternatives (see sections 5.0 and 7.0 of this document for additional details). The specialists who worked with these core data sets and population assessment models are familiar with the most recent analytical techniques and are familiar with the available data and information relevant to the Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass, fisheries.

The review process for this document involves MAFMC, the Northeast Fisheries Science Center (NEFSC), the Northeast Regional Office (NERO), and NMFS headquarters. The NEFSC technical review is conducted by senior level scientists with specialties in fisheries ecology, population dynamics and biology, as well as economics and social anthropology. The MAFMC review process involves public meetings at which affected stakeholders have the opportunity to comments on proposed management measures. Review by NERO is conducted by those with expertise in fisheries management and policy, habitat conservation, protected resources, and compliance with the applicable law. Final approval of the Omnibus Amendment and clearance of the rule is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

## **8.8 Paperwork Reduction Act (PRA)**

The purpose of the PRA is to control and, to the extent possible, minimize the paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by or for the Federal Government. The preferred alternatives currently associated with this action do not propose to modify any existing collections, or to add any new collections; therefore, no review under the PRA is necessary.

## **8.9 Impacts of the Plan Relative to Federalism/EO 13132**

This document does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order (EO) 13132.

## **8.10 Environmental Justice/EO 12898**

This EO provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” EO 12898 directs each Federal agency to analyze the environmental effects, including human health, economic, and social effects of Federal actions on minority populations, low-income populations, and Indian tribes, when such analysis is required by NEPA. Agencies are further directed to “identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices.” The action contained within this document are not expected to affect participation in the Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass fisheries. Since the proposed action represents no changes relative to the current levels of participation in these fisheries, no negative economic or social effects in the context of EO 12898 are anticipated as a result. Therefore, the proposed action is not expected to cause disproportionately high and adverse human health, environmental or economic effects on minority populations, low-income populations, or Indian tribes.

## **8.11 Regulatory Impact Review/Initial Regulatory Flexibility Analysis**

A Regulatory Impact Review (RIR) is required by NMFS for all regulatory actions that either implement a new FMP or significantly amend an existing FMP. An RIR is required by NMFS for all regulatory actions that are part of the “public interest.” The RIR is a required component of the process of preparing and reviewing FMPs or amendments and provides a comprehensive review of the economic impacts associated with proposed regulatory actions. The RIR addresses many concerns posed by the regulatory philosophy and principles of E.O. 12866. The RIR serves as the basis for assessing whether or not any proposed regulation is a “significant regulatory action” under criteria specified by E.O. 12866. The RIR must provide the following information: (1) A comprehensive review of the level and incidence of economic impacts associated with a proposed regulatory action or actions; (2) a review of the problems and policy

objectives prompting the regulatory proposals; and (3) an evaluation of the major alternatives that could be used to meet these objectives. In addition, an RIR must ensure that the regulatory agency systematically and comprehensively consider all available alternatives such that the public welfare can be enhanced in the most efficient and cost effective manner. Under the Regulatory Flexibility Act (RFA) of 1980, as amended by Public Law 104-121, new FMPs or amendments also require an assessment of whether or not proposed regulations would have a significant economic impact on a substantial number of small business entities. The primary purposes of the RFA are to relieve small businesses, small organizations, and small Government agencies from burdensome regulations and record-keeping requirements, to the extent possible.

This section of the Omnibus Amendment provides an assessment and discussion of the potential economic impacts, as required of an RIR and the RFA, of various proposed actions consistent with the purpose of this action.

### **8.11.1 Basis and Purpose for the Action**

The legal basis for this Omnibus Amendment can be found in the MSA (16 U.S.C. §1853(a)(15)), which includes requirements for ACLs and AMs and other provisions regarding preventing and ending overfishing. The purpose of this action is to evaluate and implement AMs that consider the biological cost of any catch overage and that recognize the generally uncertain nature of recreational fishery catch estimates and recreational management controls. The need for this action is to consider other accountability measures in addition to the current pound-for-pound reductions.

## **8.11 Regulatory Flexibility Analysis (RFA/IRFA)**

### **8.11.2 Evaluation of E.O 12866 Significance**

#### **8.11.2.1 Description of the Management Objectives**

A complete description of the purpose and need and objectives of this proposed rule is found under section 4.2. This action is taken under the authority of the MSA and regulations at 50 CFR part 648.

#### **8.11.2.2 Description of the Fishery**

A description of the managed resources fisheries is presented in section 6.0. Detailed descriptions of the economic aspects of the commercial and recreational fisheries for the managed resources, descriptions of important ports and communities, as well as the management regimes are available in the respective FMPs (section 4.3).

#### **8.11.2.3 A Statement of the Problem**

A statement of the problem for resolution is presented under section 1.0. The purpose and need for this amendment is found in section 4.2.



#### **8.11.2.4 A Description of Each Alternative**

A full description of the alternatives analyzed in this section is presented in sections 5.0.

##### *Description of the Affected Entities*

A description of the affected entities is provided in section 8.10.3.1 of the IRFA. As noted in earlier sections (see sections 7.1 to 7.4), this action would amend the established accountability measures for the 5 recreational fisheries in the Mid-Atlantic. Thus, the scope of the impacts associated with this Omnibus Amendment is atypical for an FMP amendment. Most FMP amendments focus on changes to fishing regulations in order to effect a direct change in either fishing effort or fishing practices, and these regulatory changes generally result in direct effect on fishing vessel operations (by modifying where, when, and/or how fishing may take place). These types of changes to fishing vessel operations almost always have socio-economic impacts on the participants of the subject fisheries.

However, as the focus of this amendment is on establishing administrative processes consistent with NS1, there are no direct impacts. Therefore, although this Omnibus Amendment addresses all fisheries operating for the managed resources, the actual economic impacts associated with this amendment are considered to be negligible. More details on these fisheries are available in section 6.5.

#### **8.11.2.5 Determination of Significance under E.O. 12866**

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be significant. A “significant regulatory action” is one that is likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, safety, or state, local, or tribal Governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. A regulatory program is “economically significant” if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be “economically significant.”

A complete evaluation of the expected economic effects of the various alternatives, including cumulative impacts, is presented throughout sections 7.1-7.4. The proposed action would establish a comprehensive system of accountability for catch (including both landings and discards) relative to those limits, for each of the managed resources. These actions would not affect the conservation objectives associated with each of the managed fisheries. Thus, while having no immediate direct economic impact, these

actions would provide greater assurance that the current and future flow of commercial and recreational economic benefits from the managed fisheries will be maintained.

The MAFMC has determined that, given the information presented above, there would be no substantive change in net benefits derived from the implementation of the proposed Omnibus Amendment. Because none of the factors defining “significant regulatory action” are triggered by this proposed action, the action has been determined to be not significant for purposes of E.O. 12866.

### **8.11.3 Initial Regulatory Flexibility Analysis**

The objective of the RFA is to require consideration of the capacity of regulated small entities affected by regulations to bear the direct and indirect costs of regulation. If an action would have a significant impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis must be prepared to identify the need for action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of whether the proposed action would have a significant economic impact on a substantial number of small entities. Depending on the nature of the proposed regulations assessment of the economic impacts on small businesses, small organizations, and small Governmental jurisdictions may be required. If an action is determined to affect a substantial number of small entities, the analysis must include:

- 1) A description and estimate of the number of regulated small entities and total number of entities in a particular affected sector, and the total number of small entities affected; and
- 2) Analysis of the economic impact on regulated small entities, including the direct and indirect compliance costs of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity’s cash flow and liquidity, and ability of small entities to remain in the market.

If it is clear that an action would not have a significant economic impact on a substantial number of small regulated entities, the RFA allows Federal agencies to certify the proposed action to that effect to the SBA. The decision on whether or not to certify is generally made after the final decision on the preferred alternatives for the action and may be documented at either the proposed rule or the final rule stage.

Based on the information and analyses provided in earlier sections of this Omnibus Amendment, it is clear that this action would not have a significant economic impact on a substantial number of small entities, and that certification under the RFA is warranted. The remainder of this section establishes the factual basis for this determination, as recommended by the Office of Advocacy at the SBA.

#### **8.11.3.1 Description and Estimate of Number of Small Entities to Which the Action Applies**

The implementation of this action will amend the process for addressing accountability for the recreational catch (including both landings and discards), for the managed resources identified in this document. This action would indirectly affect the recreational fishing sector only. The impacts are speculative because they only establish an accountability framework that functions off of recreational catch estimates. It is likely that the Council's preferred alternatives would prevent a large scale reduction in the black sea bass ACT for 2014. Nevertheless the action applies to all recreational anglers that may participate in fishing for the managed resources as well as all federally licensed party/charter vessels that fish for those species.

A total of 714 vessels were issued at least one recreation party/charter permit for the managed resources during 2012. Vessels ranged in length from 14 to 125 ft (average = 40 ft) and employed crew ranging from 1 to 8 persons (average = 3). Based on average passenger fees of \$65.78<sup>4</sup> none of the participating party/charter operators exceeded \$1.238 million so all participating entities were determined to be small entities under the SBA size standards.

### **8.11.3.2 Economic Impacts on Small Entities**

The economic impacts associated with each alternative considered in the development of this Omnibus Amendment are evaluated throughout section 7.0. For the purposes of the RFA certification review, the following addresses the economic impacts associated with each element of the proposed action.

#### **8.11.3.2.1 Accountability Measures**

The proposed action addresses accountability for catch for each of the managed resources. Because the actions proposed in this Amendment are administrative in nature, there are no marginal changes to the economic impacts on small entities associated with this action (see section 7.0). If in the future, the implementation of the administrative processes described in this document indirectly results in any economic impacts, those would be identified and analyzed in the future management action.

### **8.11.3.3 Criteria Used to Evaluate the Action**

#### **8.11.3.3.1 Significant Economic Impacts**

The RFA requires Federal agencies to consider two criteria to determine the significance of regulatory impacts: Disproportionality and profitability. If either criterion is met for a substantial number of small entities, then the action should not be certified.

##### **8.11.3.3.1.1 Disproportionality**

Since all party/charter operators were determined to be small entities the disproportionality standard does not apply.

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<sup>4</sup> The 2006 party/charter average expenditure (per angler, per trip) estimate (\$57.76) was adjusted to its 2012 equivalent using the Bureau of Labor's Consumer Price Index.

#### **8.11.3.3.1.2 Profitability**

As noted above, none of the elements of this proposed action are associated with economic impacts on small entities. This is the case for small regulated entities engaged in recreational party/charter activities. Since the proposed action would have no economic impact on small entities there would no change in expected profitability.

#### **8.11.3.4 Substantial Number of Small Entities**

Indirectly, the methodologies established by this action apply generally across all of the managed resource fisheries under the subject FMPs. However, although a substantial number of entities are involved in these fisheries, none of these entities are expected to incur any economic impacts as a result of this action.

#### **8.11.3.5 Description of and Explanation of, the Basis for All Assumptions Used**

Because the actions proposed in this Omnibus Amendment are all are focused on the administrative aspects a comprehensive system of accountability, there are no direct economic impacts associated with this Omnibus Amendment. No assumptions are necessary to conduct the analyses in support of this conclusion.

### **9.0 EFH ASSESSMENT**

The managed resources have EFH designated in many of the same bottom habitats that have been designated as EFH for most of the MAFMC, New England Fishery Management Council, South Atlantic Fishery Management Council, and NMFS Highly Migratory Species Division managed species. An overview of habitat information for the managed resources is available in section 6.3 of this document.

#### **9.1 Description of Action**

The purpose of the proposed action is to amend established recreational accountability measures. Under the EFH Final Rule, “Councils must act to prevent, mitigate, or minimize any adverse effect from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature...” Because of the administrative scope of this document, and the fact that any future actions will be taken in a manner that is consistent with the current regulations implementing the FMPs and the MSA, the effects of fishing on EFH have not been re-evaluated and no alternatives to minimize adverse effects on EFH are presented.

#### **9.2 Analysis of Potential Adverse Effects on EFH**

Recreational fisheries in general are not associated with significant impacts on habitat (including EFH).

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## **11.0 LIST OF PREPARERS OF THE ENVIRONMENTAL ASSESSMENT**

This Omnibus Amendment was submitted to NMFS by the MAFMC. This document was prepared by the following members of the MAFMC technical staff: James Armstrong. In addition, input throughout Omnibus Amendment development was provided by the AM Amendment Fishery Management Action Team (FMAT): Moira Kelly, Sarah Beigel, Scott Steinback, and Anthony Wood.

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## **12.0 LIST OF AGENCIES AND PERSONS CONSULTED**

In preparing this Omnibus Amendment, the Council consulted with the NMFS, New England and South Atlantic Fishery Management Councils, Fish and Wildlife Service, and the states of Maine through North Carolina through their membership on the Mid-Atlantic and New England Fishery Management Councils. In addition, states that are members within the management unit were consulted by NMFS through the Coastal Zone Management Program consistency process.

## GLOSSARY

*Acceptable biological catch.* A level of stock or stock complex's annual catch that accounts for scientific uncertainty in the estimate of the overfishing limit (OFL; see definition below), and other sources of scientific uncertainty.

*Accountability measures.* Management controls that prevent annual catch limits (ACLs; see definition below) from being exceeded (i.e., proactive measures), or where possible, correct or mitigate overages if they occur (i.e., reactive measures).

*Amendment.* A formal change to a fishery management plan (FMP). The Council prepares amendments and submits them to the Secretary of Commerce for review and approval. The Council may also change FMPs through an FMP framework adjustment (see below).

*Annual catch limit.* The level of annual catch of a stock or stock complex that serves as a basis for invoking accountability measures.

*Annual catch target.* The level of annual catch of a stock that is the management target of the fishery. Considered to be a type of accountability measure (AM).

*B.* Biomass, measured in terms of total weight, spawning capacity, or other appropriate units of production.

*BMSY.* Long-term average exploitable biomass that would be achieved if fishing at a constant rate equal to FMSY. For most stocks, BMSY is about  $\frac{1}{2}$  of the carrying capacity. Overfishing definition control rules usually call for action when biomass is below  $\frac{1}{4}$  or  $\frac{1}{2}$  BMSY, depending on the species.

*Bycatch.* Fish that are harvested in a fishery, but which are not sold or kept for personal use. This includes economic discards and regulatory discards. The fish that are being targeted may be bycatch if they are not retained.

*Commission.* Atlantic States Marine Fisheries Commission (ASMFC).

*Committee.* The Monitoring Committee, made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Commission, the Northeast Regional Office of NMFS, the Northeast Fisheries Center, and the Southeast Fisheries Center. The MAFMC Executive Director or his designee chairs the Committee.

*Conservation equivalency.* The approach under which states are required to develop, and submit to the Commission for approval, state-specific or region-specific management measures (i.e., possession limits, size limits, and seasons) designed to achieve state specific or region-specific harvest limits.

*Control rule.* A pre-determined method for determining actions.

*Council.* The Mid-Atlantic Fishery Management Council.

*Exclusive Economic Zone.* For the purposes of the Magnuson-Stevens Fishery Conservation and Management Act, the area from the seaward boundary of each of the coastal states to 200 nautical miles from the baseline.

*Fishing for managed resources.* Any activity, other than scientific research vessel activity, which involves: (a) the catching, taking, or harvesting of the managed resources; (b) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of the managed resources; or (c) any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) or (b) of this definition.

*Fishing effort.* The amount of time and fishing power used to harvest fish. Fishing power is a function of gear size, boat size, and horsepower.

*Fishing mortality rate.* The part of the total mortality rate (which also includes natural mortality) applying to a fish population that is caused by man's harvesting. Fishing mortality is usually expressed as an instantaneous rate (F), and can range from 0 for no fishing to very high values such as 1.5 or 2.0. The corresponding annual fishing mortality rate (A) is easily computed but not frequently used. Values of A that would correspond to the F values of 1.5 and 2.0 would be 78 percent and 86 percent, meaning that there would be only 22 percent and 14 percent of the fish alive (without any natural mortality) at the end of the year that were alive at the beginning of the year. Fishing mortality rates are estimated using a variety of techniques, depending on the available data for a species or stock.

*FMSY.* A fishing mortality rate that would produce MSY when the stock biomass is sufficient for producing MSY on a continuing basis.

*Framework adjustments.* Adjustments within a range of measures previously specified in a fishery management plan (FMP). A change usually can be made more quickly and easily by a FMP framework adjustment than through an amendment. For plans developed by the Mid-Atlantic Council, the procedure requires at least two Council meetings including at least one public hearing and an evaluation of environmental impacts not already analyzed as part of the FMP.

*Landings.* The portion of the catch that is harvested for personal use or sold.

*Management uncertainty.* Less than perfect application of management measures (i.e., implementation error). Management uncertainty can occur because of a lack of sufficient information about the catch or because of a lack of management precision in many fisheries.

*Metric ton.* A unit of weight equal to 1,000 kilograms (1 kg = 2.2 lb.). A metric ton is equivalent to 2,205 lb. A thousand metric tons is equivalent to 2.2 million lb.

*Mortality rates.* The rate at which the numbers in a population decline over time. Mortality rates are critical parameters for determining the effects of harvesting strategies on fish stocks and yields. Together, the natural mortality rate (M) and fishing mortality rate (F) make up the total mortality rate (Z). Natural mortality is the death of fish from all causes other than fishing (e.g. aging, predation, cannibalism, disease, etc.).

*MSY.* Maximum sustainable yield. The largest long-term average yield (catch) that can be taken from a stock under prevailing ecological and environmental conditions.

*Optimum yield.* MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery.

*Overfished.* An overfished stock is one “whose size is sufficiently small that a change in management practices is required to achieve an appropriate level and rate of rebuilding.” A stock or stock complex is considered overfished when its population size falls below the minimum stock size threshold (MSST). A rebuilding plan is required for stocks that are deemed overfished. A stock is considered “overfished” when exploited beyond an explicit limit beyond which its abundance is considered “too low” to ensure safe reproduction.

*Overfishing.* According to the National Standard Guidelines, “overfishing occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce maximum sustainable yield (MSY) on a continuing basis.” Overfishing is occurring if the maximum fishing mortality threshold (MFMT) is exceeded for 1 year or more. In general, it is the action of exerting fishing pressure (fishing intensity) beyond the agreed optimum level. A reduction of fishing pressure would, in the medium term, lead to an increase in the total catch.

*Overfishing limit.* The annual amount of catch that corresponds to the fishing mortality rate at maximum sustainable yield applied to stock abundance (in no. or weight).

*Party/Charter boat.* Any vessel which carries passengers for hire to engage in fishing.

*Scientific uncertainty.* Less than perfect knowledge about the likely outcome of an event, based on estimates derived from scientific information (models and data).

*Sector.* A grouping of similar fish harvesting entities participating under a specified ACL. Examples include recreational fishery participants (i.e., recreational sector), commercial fishery participants (i.e., commercial sector) or smaller sub-components of each such as party/charter vessels (i.e., party/charter sector--sub sector of the recreational sector).

*Status Determination.* A determination of stock status relative to B-threshold (defines overfished) and F-threshold (defines overfishing). A determination of either overfished or overfishing triggers a SFA requirement for rebuilding plan (overfished), ending overfishing (overfishing) or both.

*Stock.* A grouping of a species usually based on genetic relationship, geographic distribution and movement patterns. A region may have more than one stock of a species (for example, Gulf of Maine cod and Georges Bank cod).

**Commonwealth of Massachusetts  
Division of Marine Fisheries**



**ATLANTIC STATES MARINE FISHERIES COMMISSION  
SUMMER FLOUNDER FISHERIES MANAGEMENT PLAN  
FMP COMPLIANCE REPORT**

May, 2013

Prepared by

Paul G. Caruso  
Senior Marine Fisheries Biologist

## **I. Introduction**

The following represents the Commonwealth of Massachusetts Division of Marine Fisheries (MDMF) annual FMP compliance report as per the ASMFC Summer flounder, Scup and Black sea bass Fishery Management Plan. There were no significant changes in fluke monitoring in 2012. Commercial landings were 891,495 lbs as compared to a 868,226 lb quota (103 % landed). This is a 21 % decrease in commercial harvest from 2011, due to a significantly decreased quota. The recreational harvest was estimated at 77,375 fish up 30 % from the previous year (58,372 fish) despite reports of a poor recreational harvest due to a scarcity of fish in the legal recreational harvest size range.

## **II. Request for de minimus status**

Not applicable.

## **III. Review of previous year fishery and management program**

### **A. Activity and results of fisheries dependent monitoring**

There was limited monitoring of the recreational fluke fishery. Recreational catch and harvest data come from the MRIP survey. For total commercial harvest data I relied on the MDMF dealer reporting system. Several commercial trawl trips were observed to estimate discard ratios and catch length frequencies.

### **B. Activity and results of fishery independent monitoring**

The 2012 fisheries independent monitoring program for summer flounder consisted of the acquisition of age and maturity samples and local abundance indices (stratified number and weight per tow) from our synoptic spring and fall otter trawl surveys. Age samples from the survey are forwarded to the NMFS North East Fisheries Science Center, Age and Growth Unit. This coast-wide state waters survey of approximately 100 - twenty minute tows, has a random stratified design. The index for fluke includes data from all strata. Local adult fluke abundance in number increased significantly from the 2011 value, See Figure 3 for a plot of index values over time. Additionally, MDMF captures some YOY fluke in its juvenile winter flounder beach seine survey. Fifty three YOY fluke were captured in 2012, with an average of catch of 39 fish during the years 2006-2012. This is a considerable increase from the long time series average of 15 fish.

### **C. Regulations in effect in 2012**

#### **1. Recreational Fisheries (322 CMR 6.09 & 6.22)**

- Permit required to conduct "For-Hire" fishing operations

<b>Minimum Size</b>	<b>Open Season</b>	<b>Possession Limit</b>
16.5"	May 22 – September 30	5 fluke per day per angler

#### **2. Commercial Fisheries**

Permitting & Reporting (322 CMR 6.22)

- Regulated fishery permit (in addition to a commercial fishing permit) required for commercial fishermen to possess scup.
- Limited entry provisions for regulated fishery permit
- Fluke dealers must be permitted to purchase fluke
- Mandatory dealer and fisherman’s catch reporting.

Directed Fishery Limits (322 CMR 6.09 & 6.22)

- 14” minimum size
- Landings or possession of fluke by commercial fishermen allowed from 6 AM to 8 PM daily only
- 30% quota split between Winter I & II periods
- 70% quota allocated to Summer period
- 

<b>Season (quota dependent)</b>	<b>Gear Type</b>	<b>Possession limit</b>	<b>No Fishing Days</b>
<b>Winter 1</b> (Jan 1 – Apr 22)	Nets	2,500 lb daily trip limit; 100-lb. trip limit when 10% or more of the annual quota has been reached.	N/A
<b>Summer</b>			
April 23 – Jun 9	Nets & longlines	100 lbs	N/A
Jun 10 – Oct	Nets	300 lbs	Friday & Saturday
	Hook-and-line	200 lbs	
<b>Winter II</b> (Nov – Dec)	Nets	2,500 lbs	N/A

In addition to the above directed fluke regulations the following laws and regulations were in effect and have an effect on fluke landings:

- Commercial Fishing Permit required for the sale of all fish and shellfish.
- Limited entry permits for the lobster pot, fish pot, gillnet and mobile gear fisheries.
- Numerous area/time closures to otter trawling and gillnets including a seasonal closure for gillnets in waters south of Cape Cod which precludes a directed gillnet fishery for fluke in state regulated waters.
- Minimum mesh size restrictions for the trawl and gillnet fisheries.
- Nantucket and Vineyard Sounds closed to night trawling
- Buzzards Bay closed to the use of all nets.

**D. 2012 Harvest**



Based on MDMF harvest data, the estimate of the 2012 commercial harvest was 891,495 pounds, 103 % of the allocated quota (868,226 pounds). Trends in the commercial harvest are plotted in Figure 1. There is no current estimate of commercial losses from discard mortality because there are no local estimates of discarded commercial catch from all gear types. However, since most commercial catches of fluke in Massachusetts are from shallow waters with gear types with low or moderate levels of discard mortality, we assume that additional losses from the discard of commercial catch are minimal relative to the total commercial catch.

The recreational losses from 2012 are estimated at 113,947 fish. This number was derived from the MRIP estimated type A and B1 catch (77,375 fish) plus 14 % of the estimated B2 catch (36,572 fish), representing an estimate of the catch/release mortality (Malchoff and Lucy 1998). Recreational fishery harvest trends are plotted in Figure 2.

**E. Progress in implementing habitat recommendations**

Not applicable.

**IV. Planned 2013 Management Program**

**A. Regulations for 2013**

**1. Recreational Fisheries (322 CMR 6.09 & 6.22)**

Permit required to conduct “for-hire” fishing operations

Minimum Size	Open Season	Possession Limit
16.5”	May 22 –Sept. 30	5 fish per day per angler

**2. Commercial Fisheries**

Permitting & Reporting (322 CMR 6.22) – Status Quo

- Regulated fishery permit (in addition to a commercial fishing permit) required for commercial fishermen to possess summer flounder.
- Limited entry provisions for fluke endorsement
- Dealers must be permitted to purchase fluke
- Mandatory dealer and fisherman’s catch reporting.

Directed Fishery Limits (322 CMR 6.09 & 6.22)

- 14” minimum size – *Status quo*
- Landings or possession of fluke by commercial fishermen allowed from 6 AM to 8 PM daily only – *Status quo*
- 30% quota allocated to Period I (Jan 1 – Apr 22)
- 70% quota allocated to Period II (Apr 23 – Dec)
- *Status quo* possession limits

<b>Season (quota dependent)</b>	<b>Gear Type</b>	<b>Possession limit</b>	<b>No Fishing Days</b>
<b>Period I</b> (Jan 1 – Apr 22)	Nets	2,500 lb daily trip limit; 100-lb. trip limit when 10% or more of the annual quota has been reached.	N/A
<b>Period II</b>			
April 23 – Jun 9	Nets & longlines	100 lbs	N/A
Jun 10 – Oct	Nets	300 lbs	Friday & Saturday
	hook-and-line	200 lbs	

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- Commercial Fishing Permit required for the sale of all fish and shellfish.
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- Numerous area/time closures to otter trawling and gillnets including a seasonal closure for gillnets in waters south of Cape Cod which precludes a directed gillnet fishery for fluke in state regulated waters.
- Minimum mesh size restrictions for the trawl and gillnet fisheries.
- Nantucket and Vineyard Sounds closed to night trawling
- Buzzards Bay closed to the use of all nets.

Copies of all fluke directed regulations can be found in Appendix A.

## **B. 2013 Monitoring Program**

The 2013 monitoring program for fluke will continue to derive a fisheries independent index of abundance from our synoptic trawl survey. Limited fluke age and growth parameters will also be collected from survey trawl catch. Data on YOY fluke encountered during our beach seine survey will continue to be collected. Some directed commercial fishery trawl tows will be observed. Our tagging study will continue for another season as it gives us length frequency data for recreational size limit analyses.

For aggregate recreational catch and harvest data the MDMF will continue to rely on the MRIP survey estimates. For commercial catch data we will continue to rely on the MDMF Quota Monitoring Project.

## **C. Changes from previous years monitoring program**

All recreational modes will be sampled under the MDMF participation in the MRIP surveys.

**V. Plan specific requirements**

Not applicable.

**VI. Law Enforcement Reporting requirements**

Not applicable

**VII. Figures**

**Figure 1.** Commercial harvest trends.

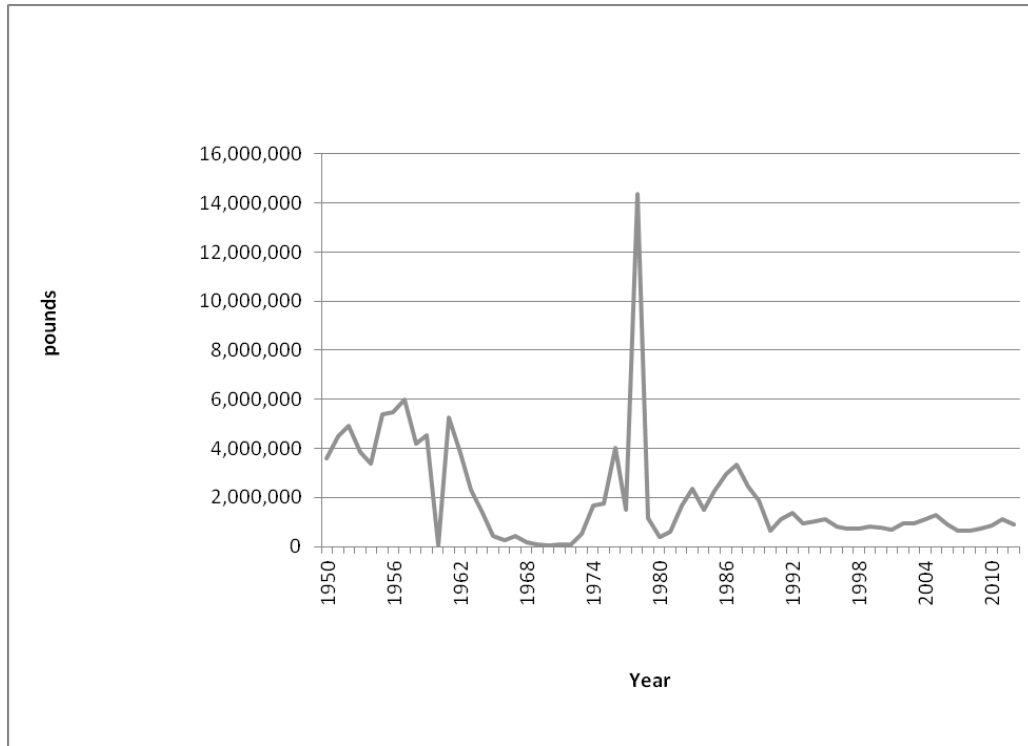
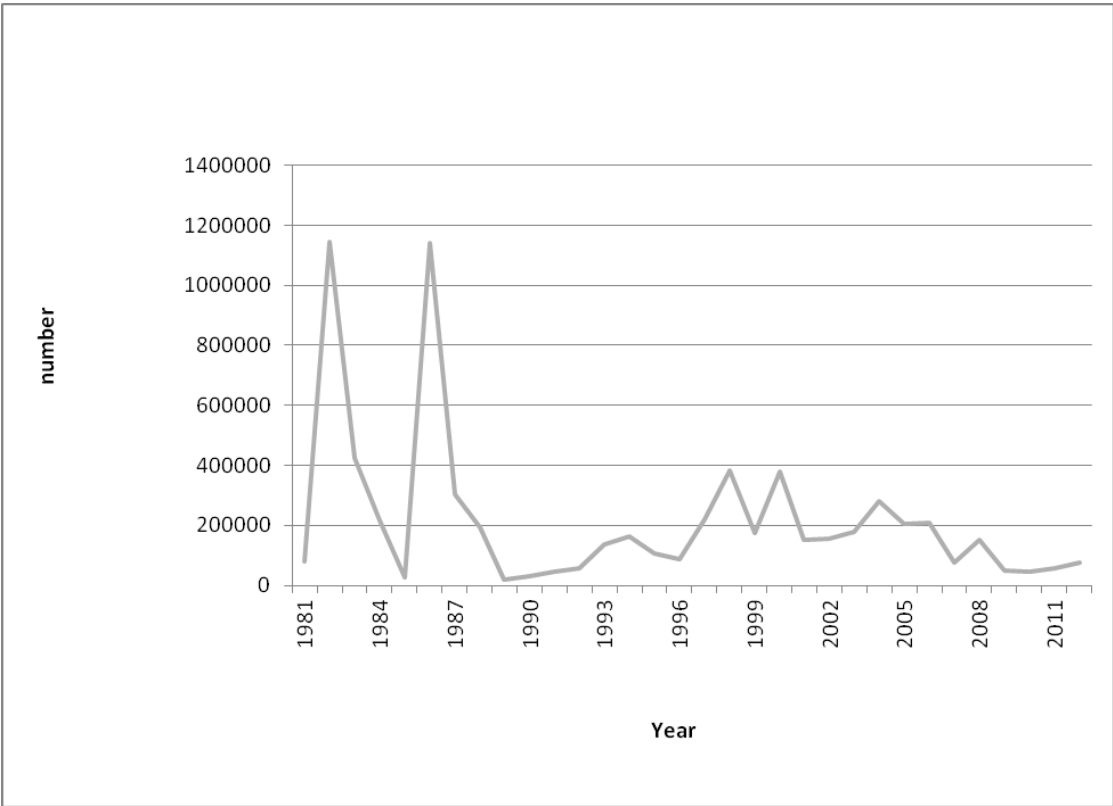
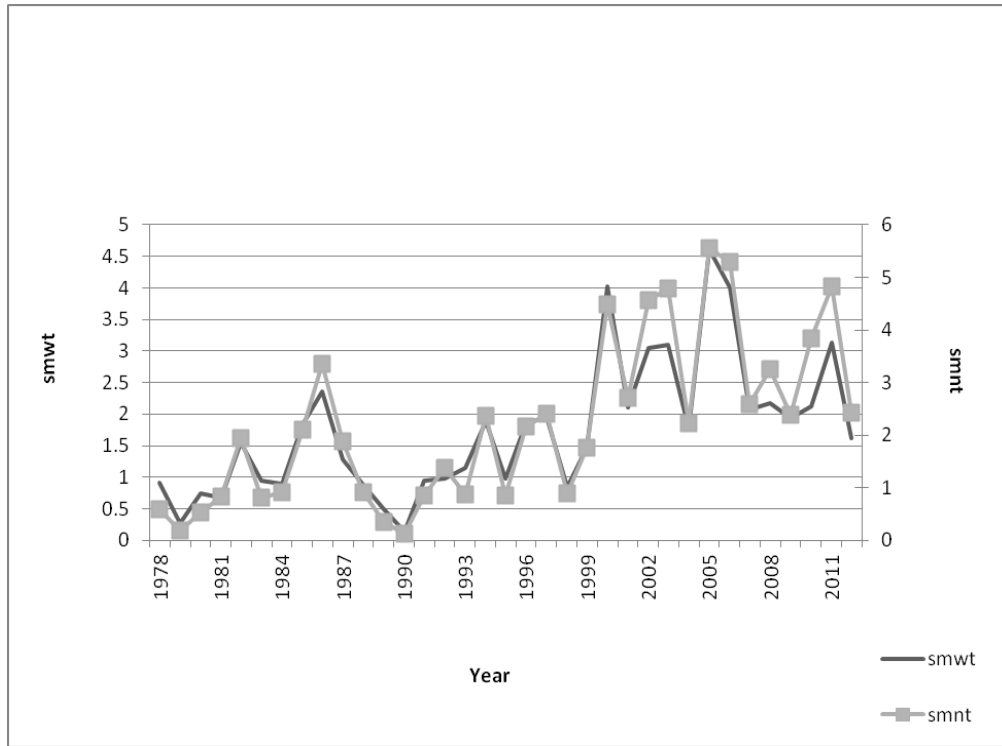


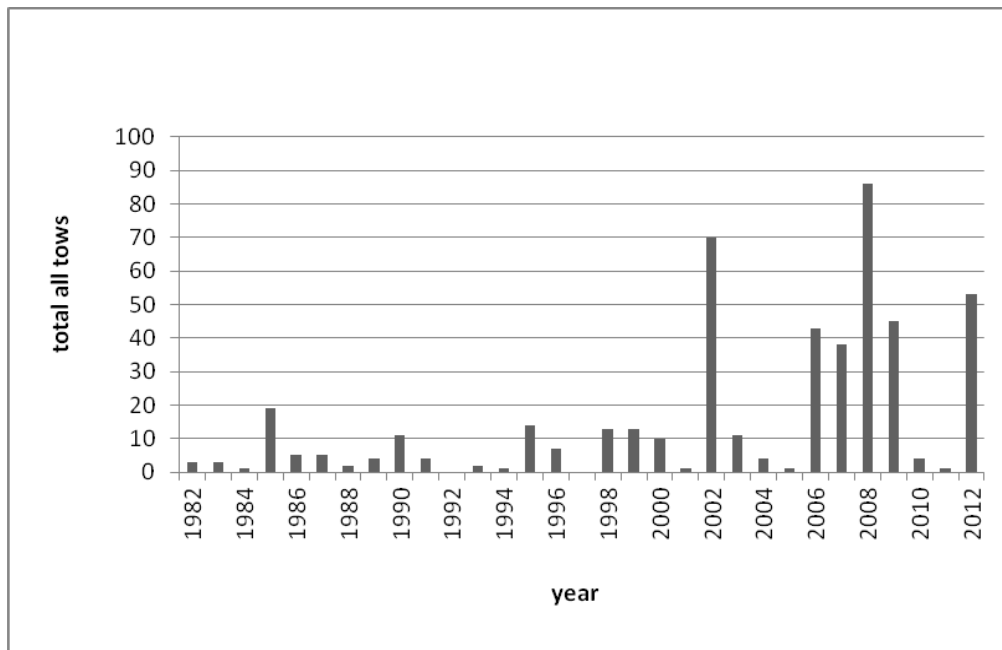
Figure 2. Recreational harvest trends.



**Figure 3.** Fisheries Independent Trawl Survey index trends.



**Figure 4.** YOY Index trends.





Rhode Island  
Department of Environmental Management

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**DIVISION OF FISH AND WILDLIFE**

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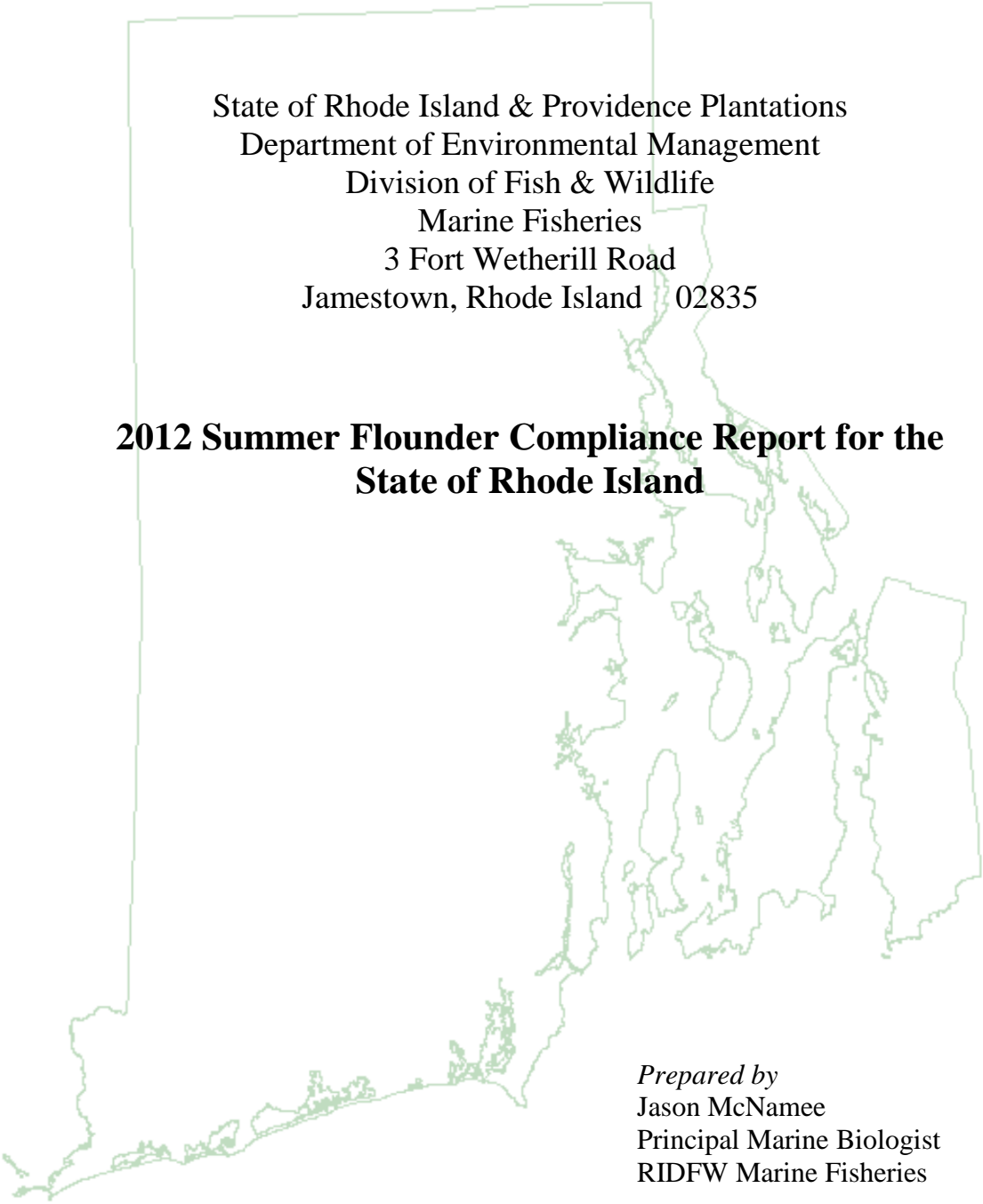
TO: Kirby Rootes-Murdy

FROM: Jason McNamee, Principal Marine Biologist

DATE: June 8, 2013

SUBJECT: Rhode Island Annual Compliance Report for Summer Flounder

Please find Rhode Island's 2012 annual compliance report for summer flounder. If you have any questions, you may contact me directly at 401.423.1943.



State of Rhode Island & Providence Plantations  
Department of Environmental Management  
Division of Fish & Wildlife  
Marine Fisheries  
3 Fort Wetherill Road  
Jamestown, Rhode Island 02835

**2012 Summer Flounder Compliance Report for the  
State of Rhode Island**

*Prepared by*  
Jason McNamee  
Principal Marine Biologist  
RIDFW Marine Fisheries

June 8, 2013



# Rhode Island's 2013 Annual Compliance Report for Summer Flounder

## I. Introduction

Summer flounder continue to support active commercial and recreational fisheries in Rhode Island. Commercial landings for summer flounder decreased from 2,714,283 pounds in 2011 to 2,064,076 million pounds in 2012, which is 3,960 pounds above the 2012 quota (2,060,116). The recreational harvest decreased from 161,125 fish in 2011 to 103,102 fish in 2012. Fishery-independent monitoring suggests a continued high level of abundance and biomass of summer flounder in Rhode Island waters. An average of 2.70 kg/tow of summer flounder were observed in 2012 during the fall component of the RIDFW seasonal trawl survey, down from 3.44 kg/tow observed the previous year, but is still one of the higher values of the time series. The abundance index derived from the fall data decreased from 5.16 fish/tow in 2011 to 3.09 fish/tow in 2012.

Rhode Island provides regulations for both the commercial and recreational summer flounder fisheries. Minimum sizes, possession limits and seasons were implemented for both fisheries as required in part by the Summer Flounder FMP and as it pertains to the commercial fishery to control harvest of the quota. Total commercial landings allowable are limited by the state's allocated share of the annual quota, which has been fully harvested since the quota system has been in place.

## II. Request for *de minimis*, where applicable

The state of Rhode Island does not wish to apply for *de minimus* status.

## III. Previous Calendar Year's Fishery and Management Program

### A. Activity and results of fishery dependent monitoring.

The RIDFW Marine Fisheries Section utilizes the Standard Atlantic Fisheries Information System (SAFIS) reporting system to monitor landings of quota-managed species, including summer flounder. Based on information collected under this system, Rhode Island commercial landings for 2012 were approximately 1.9 lbs.

Estimates of recreational fishery statistics for Rhode Island are obtained from the MRIP (formerly MRFSS) online data query (NMFS, Fisheries Statistics and Economics Division, Silver Spring, MD, pers. comm.). Recreational harvest (Type A + B1) of summer flounder in Rhode Island for 2012 was 103,102 fish.

Trends in commercial and recreational harvest patterns for summer flounder landed in Rhode Island are depicted in Figure 1.

### B. Activity and results of fishery independent monitoring

The RIDFW Marine Fisheries Section operates a seasonal trawl survey to monitor finfish



resources (Olszewski 2012). Summer flounder are more common in the fall component of the survey as the availability during the spring is highly dependent upon the timing between the survey and inshore migration. Summer flounder biomass and abundance indices updated for 2012 were calculated as mean number per tow and mean weight per tow, respectively. Estimated relative biomass of summer flounder in RI for 2012 was 2.70 kg/tow, a decrease from the 2011 estimate (=3.44 kg/tow). Relative abundance demonstrated an increase from the previous year with an estimate of 3.09 fish/tow for 2012 compared to 5.16 fish/tow observed in 2011. Figure 2 shows the year-to-year variability in relative biomass and abundance of summer flounder observed in the fall component of the RIDFW seasonal trawl survey over time.

C. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

1. Commercial

A commercial fishing license is required to take summer flounder for commercial purposes from Rhode Island waters and an exemption permit is required to land more than 200 pounds when the possession limit exceeds that amount. In 2012, the minimum size limit was fourteen inches total length as mandated by the FMP and three seasons during which a portion of the overall quota allocated to the State of Rhode Island was available. The total quota equaled 1,996,400 lbs; 54% was available from January 1 through April 30, 35% from May 1 through Oct 31, and 11% from November 1 through December 31. Possession limits varied within each season with the goal of harvesting the entire allocation and no closures of the fishery. An aggregate landing program was adopted for the January through April period allowing an individual to land up to 2,500 lbs of summer flounder within a one week period. A second aggregate program was implemented in the May – October (starting in June) sub period for those who did not participate in the winter aggregate program, which allowed a total of 700 lbs per week. The sector pilot program that had been in place in 2011 was discontinued in 2012. FMP mandated gear restrictions included a 5.5 inch diamond or 6 inch square minimum mesh size for trawl nets when in possession of 100 lbs or more of summer flounder from May 1 through October 31 or 200 lbs or more from November 1 through April 30.

2. Recreational

The state of Rhode Island required a license (either state issued or federal register) for marine recreational fishing in 2012. Recreational fishermen were subject to a minimum size limit of 18.5 inches and a possession limit of 8 summer flounder per person per day. The season opened on May 1 and closed on December 31. These specifications were adopted through the monitoring committee process and were expected in part to keep coast wide landings within a specified target.

D. Harvest broken down by commercial (by gear type where applicable) and recreational, and non-harvest losses (when available).

1. Commercial

The commercial fishery sector landed 2,064,076 lbs of summer flounder in Rhode Island in 2012.

2. Recreational

Recreational harvest (Type A + B1) is considered as the sum of landings (Type A) and dead discards (Type B1), following MRIP (formerly MRFSS) definitions. Recreational harvest of summer flounder in Rhode Island for 2012 was 103,102 fish (PSE = 32.9; NMFS, Fisheries Statistics and Economics Division, Silver Spring, MD). In terms of pounds, 335,552 lbs (PSE = 36.7) of summer flounder were harvested from Rhode Island waters in 2012 by recreational anglers. Estimates of the amount of summer flounder that were released alive (Type B2) are available in terms of numbers only. In 2012, Rhode Island recreational fishermen released approximately 381,801 fish (PSE = 20.0) live summer flounder. Assuming a discard mortality rate of 10%, 38,180.1 summer flounder released alive would have died.

E. Review of progress in implementing habitat recommendations.

NA

#### **IV. Planned Management Programs for the Current Calendar Year**

A. Summarize regulations that will be in effect.

1. Commercial

There were no major modifications to the RI summer flounder management plan in 2012.

During the 2002 legislative session the Rhode Island General Assembly adopted the Commercial Fisheries Management Act, which implemented a new commercial fishing license system and ended the moratorium on the issuance of new commercial fishing licenses that had been in place since 1995 (RIDFW 2002). The regulations identify two endorsement categories for finfish, restricted and non-restricted. The RI Department of Environmental Management (DEM) currently issues new licenses to harvest species in the non-restricted category and limits access to species listed in the restricted category to the current number of participants, which includes summer flounder for 2012. The current list of species placed in the restricted and non-restricted endorsement categories is updated annually, based on updated stock status information and fishery performance in the previous year.

## 2. Recreational

A minor modification to the regulations that were in place in 2012 is a one half inch decrease in minimum size (=18") for the recreational fishery.

### B. Summarize monitoring programs that will be performed.

#### 1. Commercial

The RIDFW Marine Fisheries Section will continue to monitor landings of summer flounder and other quota-managed species using the Standard Atlantic Fisheries Information System (SAFIS) Reporting System.

#### 2. Recreational

Rhode Island recreational fishery statistics will continue to be collected and managed through the MRIP program. Information characterizing the catch of summer flounder from Rhode Island waters by recreational anglers will be obtained via the MRIP online data query. It is unclear at this point how the new MRIP program information will be used as far as monitoring recreational fisheries, but this program should begin to take a primary role in determining recreational landings data. In addition, RI has developed a voluntary electronic recreational logbook. This data will be analyzed in the future for comparison to MRIP data, and may be substituted in for various aspects of management (i.e. harvest at size, harvest at bag limit, etc) if it proves to be more robust than the MRIP dataset.

### C. Highlight any changes from the previous year.

As stated above, there were no major modifications to the commercial management plan.

## **V. Plan Specific Requirements**

No plan specific requirements for summer flounder

## **VI. Law Enforcement Reporting Requirements**

Commercially licensed dealers are required to report summer flounder landings through the SAFIS reporting system. Commercially licensed fishermen are required to call enforcement at least one hour prior to offloading summer flounder.

## **VII. References**

Olszewski, S. 2012. Assessment of Recreationally Important Finfish Stocks in Rhode Island Waters. Rhode Island Division of Fish and Wildlife Coastal Fishery Resource Assessment Trawl Survey 2011 Performance Report. Project No. F-61-R-18.

Figure 1. Commercial (1950-2012) and recreational (1981-2012) landings of summer flounder in Rhode Island

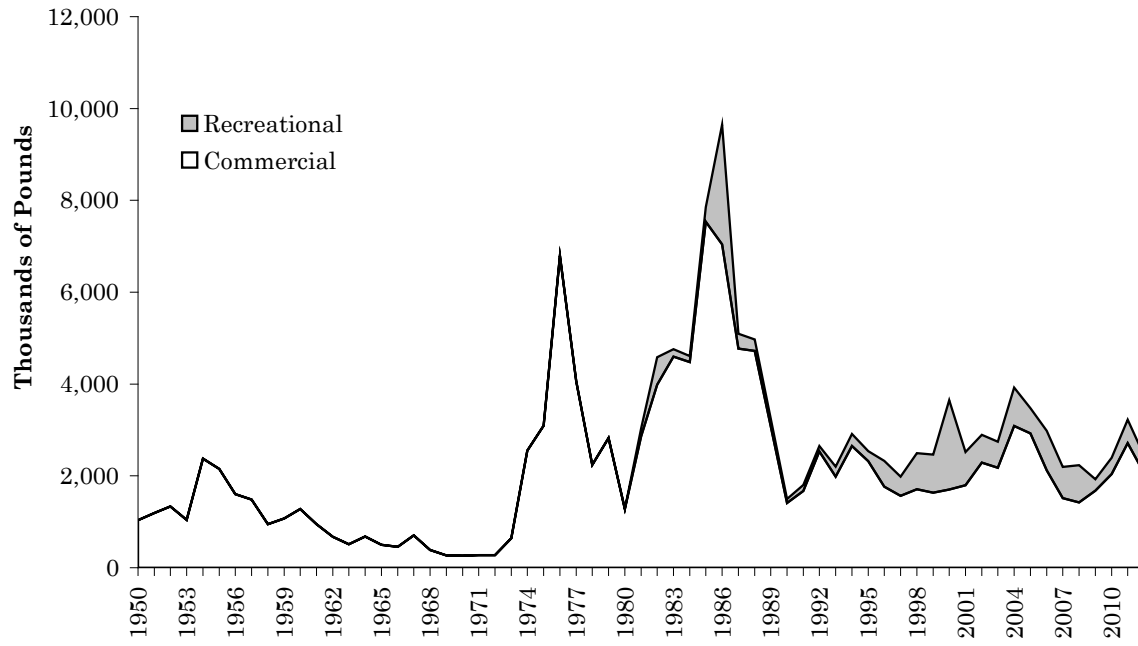
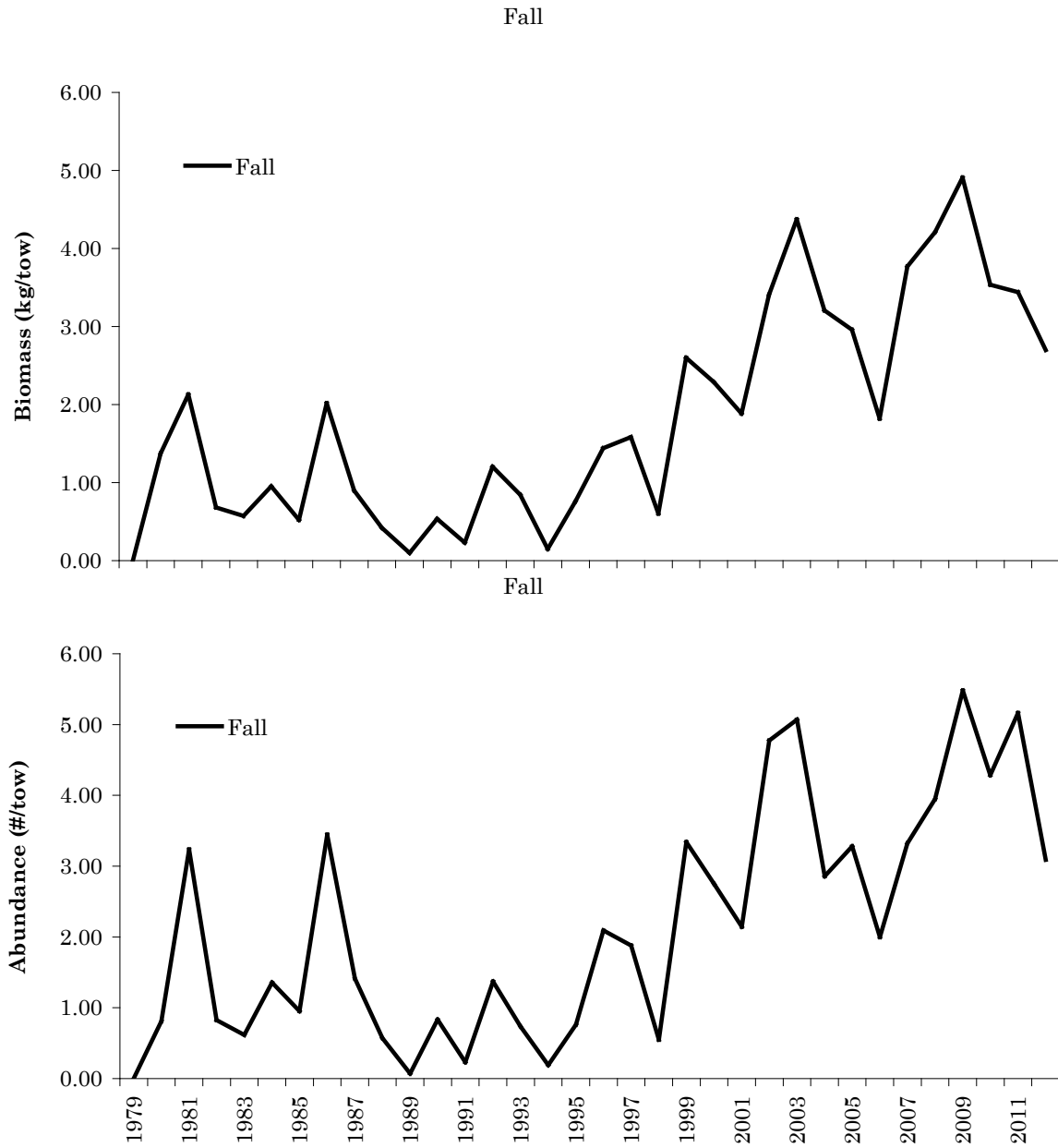


Figure 2. Rhode Island Division of Fish and Wildlife seasonal trawl survey, abundance (#/tow) and biomass (kg/tow) of summer flounder, 1979 - 2012.



# New York State Department of Environmental Conservation

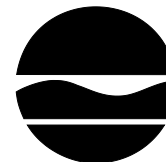
## Division of Fish, Wildlife & Marine Resources

### Bureau of Marine Resources

205 North Belle Mead Road, Suite 1, East Setauket, New York 11733

Phone: (631) 444-0430 • Fax: (631) 444-0434

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

## 2012 Compliance Report to the ASMFC for Summer Flounder

### I. Introduction

### II. Request for *de minimis* Not applicable.

### III. Previous calendar year's fishery and management program

#### a. *Activity and results of fishery dependent monitoring*

Recreational: NYSDEC staff sampled head-boats targeting summer flounder throughout the fishing season and measured ALL kept and discarded fish from 129 individuals spread across 19 trips (17 different vessels, 6/5-9/27). Out of the 543 summer flounder that were caught, 41 anglers landed 55 fish of 19.5" or greater in length. This data was utilized to calculate the %liberalization/reduction associated with different regulatory changes.

#### *Activity and results of fishery independent monitoring*

Peconic Bay Small Mesh Trawl Survey: In 2012, 390 tows were conducted in the Peconic Bays, yielding 432 summer flounder for an average CPUE of 1.11 summer flounder per tow which is significantly higher than the previous year (0.65 summer flounder per tow) and the time series average (1987-present) of 0.61 (Fig 1). The summer flounder data for the entire time series has been aged using NEFSC Fall Age-Length Keys and been made available for stock assessment purposes.

#### b. *Regulations in effect*

Recreational Regulations: 19.5" minimum size limit  
4 fish possession limit  
Open season May 1 – September 30  
Commercial Regulations: 14" minimum size limit  
See quota distribution plan (Appendix A)

#### c. *Harvest*

Commercial: NY commercial fishermen landed 1,237,120.3 lbs. According to dealer reports, 52.6% were not coded to any specific gear. About thirty-seven percent of landings were attributed to trawls, 5.7% to hook and line/hand line and the remaining 4.5% to other gears. According to New York State vessel trip reports, 68.7% of summer flounder harvest was by trawl, 15.2% by pots and traps, 14.4% by hook and line and 1.7% by other gears.

Recreational: In 2011, under a 20.5" minimum size limit, a 3 fish possession limit, and a season that went from 5/1 – 9/30 NY recreational anglers harvested 376,198 summer flounder according to MRIP. NY was allowed to liberalize its regulations for 2012 to achieve a harvest of up to 492,000 summer flounder. Under a 19.5" minimum size limit, a 4 fish possession limit, and the same season as 2011, NY anglers harvested 489,449 summer flounder in 2012.

See Table 1. for data on commercial and recreational summer flounder harvest in NY state from 2000 to the present.

#### d. *Implementation of habitat recommendations*

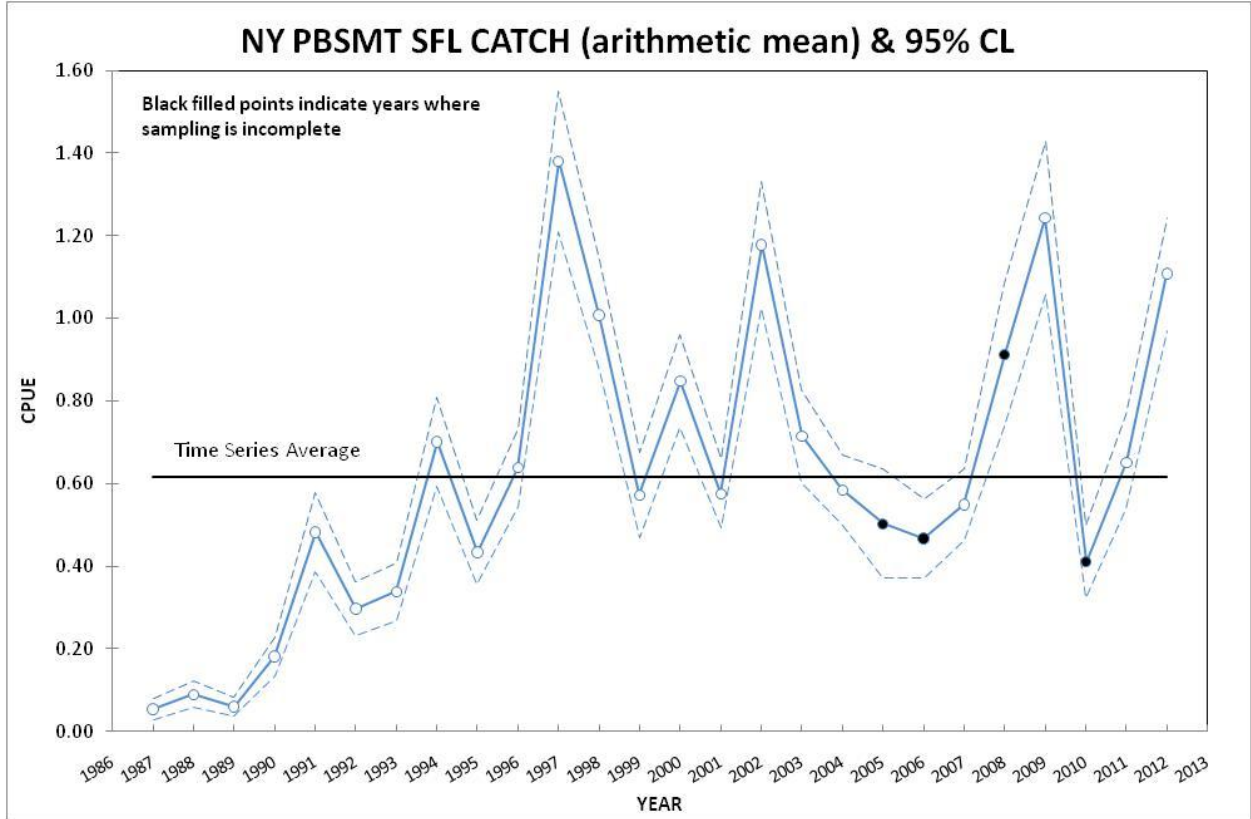
### IV. Planned management programs for the current calendar year

#### e. *Regulations in effect* See Appendix B

- f. *Monitoring programs* No changes anticipated
- g. *Changes*

Recreational (for 2013 fishing season): Minimum size limit reduced by 0.5” to 19.0” and one day removed from end of season (May 1 – September 29). Possession limit of 4 fish remains the same.

**Fig 1.**



**Table 1.**

SUMMER FLOUNDER YEAR	COMMERCIAL		*GEAR				RECREATIONAL	
	Live Lbs	Value	% Hook n Line/Hand Line	Not Coded	Trawls	Other	No. Fish Harvested (A+B1)	PSE
2000	811,917.0	\$2,007,394.00	3.6%	0.0%	92.5%	3.9%	1,671,470	7.4
2001	752,348.0	\$1,780,385.53	2.8%	0.0%	96.1%	1.0%	699,625	8.6
2002	1,052,839.0	\$2,042,654.40	3.0%	0.0%	96.0%	1.0%	696,343	8.1
2003	1,073,207.0	\$2,240,871.00	4.6%	0.0%	93.7%	1.7%	1,539,115	7.1
2004	1,539,902.0	\$3,188,064.60	2.2%	35.2%	58.9%	3.6%	1,024,670	13.1
2005	1,803,775.0	\$3,809,929.09	9.2%	57.2%	20.9%	12.7%	1,163,329	12.3
2006	1,219,701.0	\$3,409,171.00	5.0%	67.0%	20.0%	8.0%	752,388	13.9
2007	941,575.1	\$3,131,895.36	6.0%	63.1%	26.1%	4.8%	865,957	12.6
2008	856,293.6	\$2,933,225.89	6.3%	61.9%	25.4%	6.4%	608,925	13.9
2009	1,141,832.5	\$3,087,134.85	5.9%	60.6%	28.3%	5.2%	298,634	17.7
2010	1,363,530.0	\$3,549,475.02	6.2%	41.8%	47.3%	4.7%	334,491	16.8
2011	1,517,022.4	\$3,731,878.14	7.0%	51.2%	37.0%	4.8%	376,198	16.3
2012	1,237,120.3	\$3,651,870.44	5.7%	52.6%	37.2%	4.5%	489,449	17.7

6/6/2013 ACCSP Confidential Commercial Landings (Dealer Reports)

\*Gear categories have been combined to protect individual confidentiality

**Appendix A.**

**2012 SUMMER FLOUNDER DISTRIBUTION**

The 2012 summer flounder quota allocation provided by the United States Department of Commerce, National Marine Fisheries Service to the State of New York is anticipated to be **922,705** pounds. The quota distribution plan for summer flounder is below. The purpose of this distribution plan is to fully utilize the available quota of summer flounder for the maximum benefit to New York’s commercial fishery and to minimize the likelihood of a fishery closure.

After consultation with industry, who expressed concern on possible summer period over-harvest and subsequent closures, DEC has set the initial daily trip limits for Period 3 and 4 at 140 pounds.

**2012 Summer Flounder Quota Distribution**

<b>Period</b>	<b>Quota</b>	<b>% of annual quota</b>	<b>Initial Daily Trip Limit</b>	<b>Weekly limit (max of two landings per week) <u>effective January 14</u></b>	<b>Trigger</b>	<b>Action</b>
<b>1 (Jan - March)</b>	<b>230,676</b>	<b>25%</b>	<b>70</b>	<b>1,500</b>	<b>70%</b>	<b>400 lb weekly</b>
<b>2 (April - May)</b>	<b>166,087</b>	<b>18%</b>	<b>April – 140</b>	<b>XXX</b>	<b>60%</b>	<b>100 lb daily</b>
			<b>May - 210</b>	<b>XXX</b>	<b>60%</b>	<b>100 lb daily</b>
<b>3 (June - July)</b>	<b>249,130</b>	<b>27%</b>	<b>140</b>	<b>XXX</b>	<b>60%</b>	<b>100 lb daily</b>
<b>4 (Aug - Oct)</b>	<b>156,860</b>	<b>17%</b>	<b>140</b>	<b>XXX</b>	<b>60%</b>	<b>100 lb daily</b>
<b>5 (Nov - Dec)</b>	<b>119,952</b>	<b>13%</b>	<b>140</b>	<b>To Be Determined</b>		

Provisions to the quota distribution plan--

1. Trip limits and triggers are intended to spread quota allocation over each period and to avoid fishery closures if possible.
2. A percent of the period’s assigned quota share is set as a trigger to lower the daily trip limit. When the period landings reach the stated trigger, trip limits will be lowered to prevent over-harvest.
3. If there is a year-end over-harvest that results in a deduction in the state’s quota for the following year, the deduction may be taken proportionately from each period for which the assigned quota was exceeded.
4. Overharvest/underharvest from Period 1 will be deducted from/added to Period 5 November only. Overharvest/underharvest from Periods 2 through 4 will be rolled into the next period.
5. Any over or under harvest from Period 4 will roll into Period 5. The ASMFC Fishery Management Plan does not allow for one year’s unused quota to be rolled over to the next year.
6. DEC may adjust this quota distribution plan if the level of harvest is different from what was projected to ensure maximum utilization of the summer flounder resource and prevent the state allocation from being exceeded.
7. The final 2012 quota allocation is subject to adjustment by the National Marine Fisheries Service.





NEW JERSEY DIVISION OF  
**Fish and Wildlife**  
P.O. Box 400  
Trenton, NJ 08625-0400  
David Chanda, Director

## Memorandum

TO: Toni Kerns, Director, Interstate Fisheries Management Program  
Atlantic States Marine Fisheries Commission

FROM: Peter Clarke, Assistant Fisheries Biologist  
NJ Division of Fish and Wildlife

DATE: 8 May 2013

SUBJECT: 2012 Summer Flounder, Scup and Black Sea Bass Compliance Report

Attached is the subject report. If you have any questions or need anything else please contact me.

STATE OF NEW JERSEY  
ASMFC Compliance Report for Summer Flounder,  
Scup and Black Sea Bass  
Calendar Year 2012

1. Introduction

This report has been prepared to satisfy Atlantic States Marine Fisheries Commission (ASMFC) compliance reporting requirements for summer flounder, scup and black sea bass. No significant changes in monitoring occurred. Several regulatory changes occurred. Daily commercial trip limits for summer flounder were changed for 2012. Dealers and fishermen were notified of any changes concerning trip limits, seasons and quotas for all three species. These changes are reflected in Tables 4a, 4b, and 4c. The summer flounder recreational fishing regulations were changed from 8 fish at 18 inches with an open season from May 7 through September 25 in 2011 to 5 fish at 17.5 inches with an open season from May 5 to September 28 in 2012. The scup recreational fishing season remained at 50 fish at 9 inches from January 1 through February 28 and July 1 through December 31 in 2012. The black sea bass recreational fishing season was open May 28 through September 11 and November 1 through December 31 with a minimum size limit of 12.5 inches and a possession limit of 25 fish per day in 2011. This changed in 2012 to an open season from May 19 to September 3, September 23 to October 14, and November 1 to December 31 with a minimum size of 12.5 inches and a 25 fish possession limit.

2. Request for de minimus status: Not Applicable.

3. Previous Calendar Years Fishery and Management (2011):

a. Fishery Dependent Monitoring

Commercial summer flounder, scup and black sea bass landings were monitored through daily and/or weekly SAFIS dealer reports listing landings by vessel. These reports are used to administer commercial quotas Tables 4a, 4b, and 4c.

Commercial landings were also available through the National Marine Fisheries Service. Recreational harvest was monitored through the Marine Recreational Information Program.

b. Fishery Independent Monitoring

Summer flounder, scup and black sea bass abundance and size composition have been monitored through New Jersey's Ocean Stock Assessment Survey since 1988. The survey is conducted five times a year. Annual survey indices expressed as #/tow and weight/tow for summer flounder, scup and black sea bass are listed on

Table 1. Summer flounder and black sea bass aging has been conducted since 2010. Results are expressed in number collected per year and average age at length and can be found in tables 2 and 3.

c. Copies of Regulations for 2012.

Commercial and recreational regulations are attached as Appendix I and II.

d. 2012 New Jersey Commercial and Recreational Harvest (pounds)

	<u>Commercial</u>	<u>Recreational</u>
<b>Summer Flounder</b>	2,269,375	2,946,167
<b>Scup</b>	978,531	107,650
<b>Black Sea Bass</b>	310,427	774,076

e. Habitat Recommendations: Not Applicable

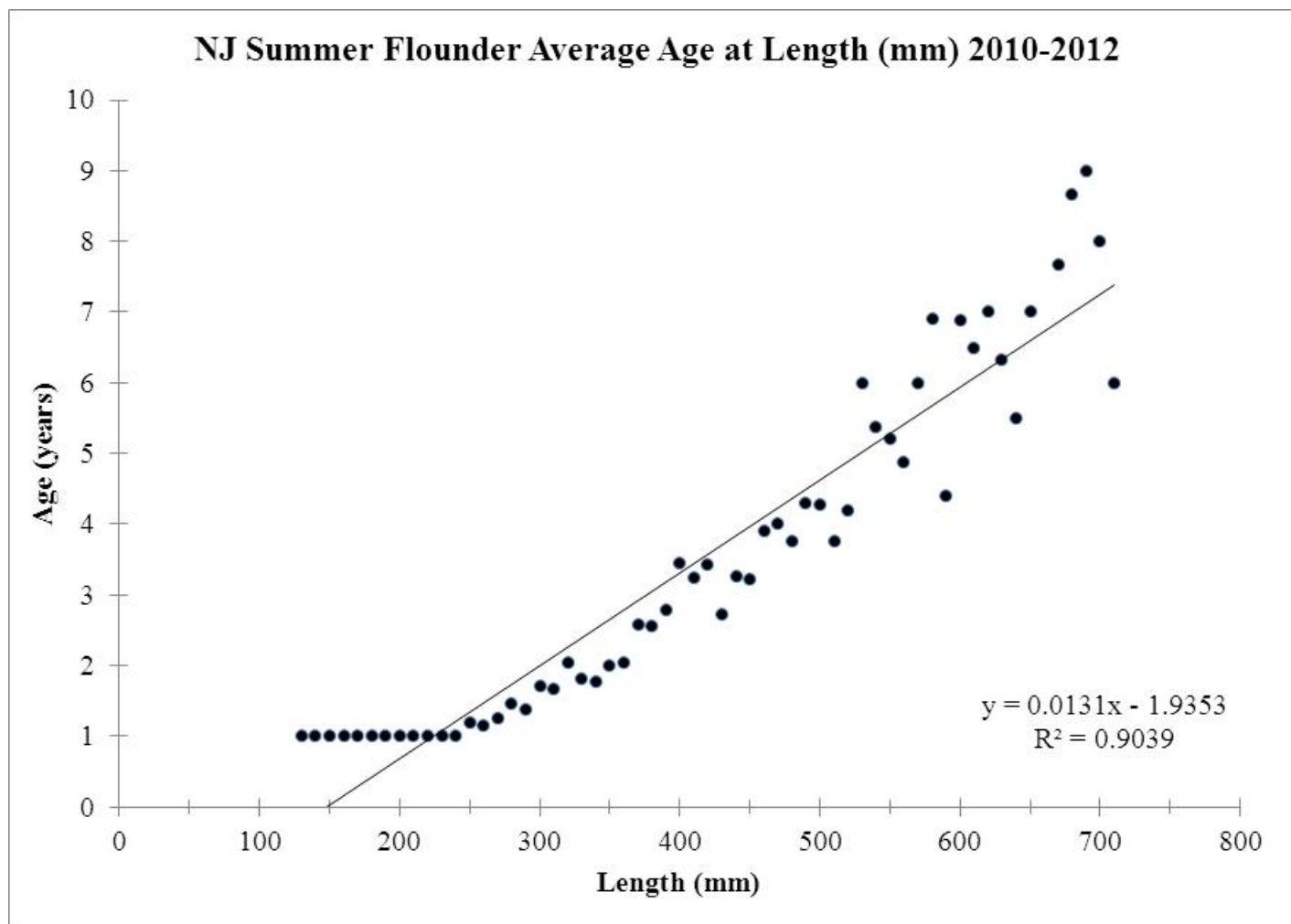
4. Planned Management Programs for 2013

Commercial landings of summer flounder, scup and black sea bass will continue to be monitored via SAFIS electronic dealer reporting for quota management. All New Jersey Summer Flounder, Scup, and Black Sea Bass Dealers were notified that the NJ Department of Environmental Protection will accept SAFIS reporting as an approved method to satisfy state reporting requirements beginning January 1, 2007. This action was taken to eliminate the duplicate reporting requirements that had been in effect. Trip limits and quotas will be modified as per ASMFC direction. Effective since 2007, black sea bass circular escape vent size increased from 2.375-inches to 2.5 inches and two escape vents are required in each pot. The recreational fishing regulations for summer flounder changed from 5 fish at 17.5 inches with an open season from May 5 to September 28 in 2012 to 5 fish at 17.5 inches with an open season from May 18 to September 16 in 2013. The recreational fishing regulations for black sea bass have changed from May 19 to September 3, September 23 to October 14, and November 1 to December 31 with a minimum size of 12.5 inches and a 25 fish possession limit in 2012 to May 19 to August 8, September 27 to October 14, and November 1 to December 31 in 2013. The recreational fishing regulations for scup have not changed from 2012 and will remain the same for 2013.

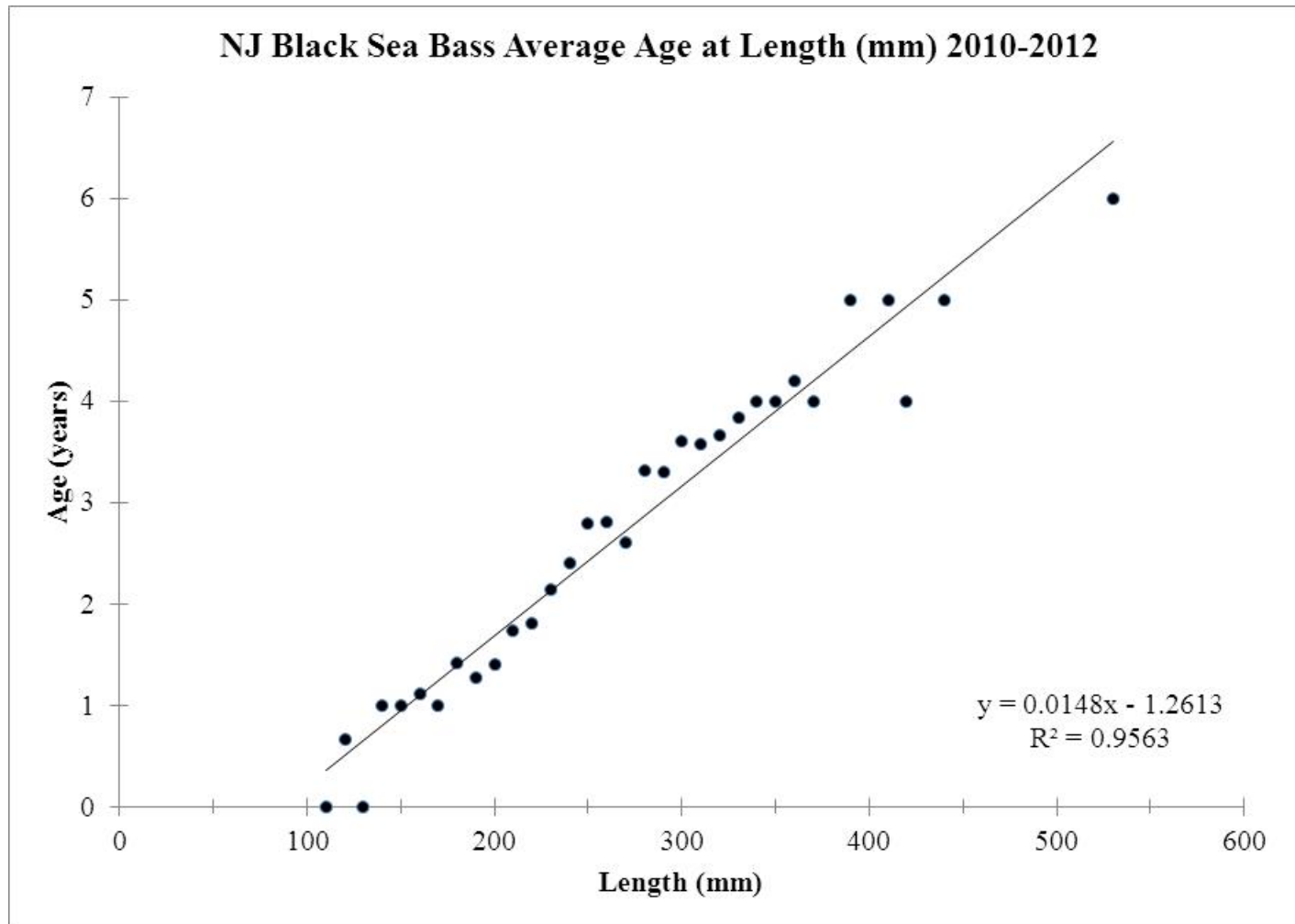
**Table 1.** Annual abundance indices (mean stratified number and weight [kg] per tow) of scup, summer flounder, and black sea bass taken in bottom trawl surveys of New Jersey coastal waters, 1989-2012. Means are based on data pooled for five surveys each year (January, April, June, August, October [+ Dec in 1989]).

Year	No. Samples	Scup		Summer Flounder		Black Sea Bass	
		Number	Weight	Number	Weight	Number	Weight
1989	193	72.75	2.75	1.33	0.58	1.58	0.25
1990	171	74.72	3.77	2.43	1.04	1.42	0.26
1991	189	200.61	6.17	3.32	1.38	4.10	0.57
1992	191	222.70	7.16	3.98	1.77	2.32	0.33
1993	187	256.91	5.21	7.19	2.69	3.01	0.49
1994	186	86.45	3.30	2.39	1.04	0.64	0.13
1995	188	27.13	2.08	7.24	3.00	1.84	0.26
1996	189	30.81	1.04	8.06	3.53	2.90	0.62
1997	187	52.09	3.82	13.80	7.49	40.21	0.62
1998	188	220.05	4.88	8.05	4.09	4.36	0.29
1999	186	209.10	10.30	9.66	5.03	2.48	0.30
2000	187	262.66	6.67	6.35	3.64	7.14	1.76
2001	186	163.37	4.32	4.80	2.68	5.52	1.25
2002	188	568.07	25.73	14.45	9.97	25.23	2.86
2003	188	804.08	10.19	8.54	6.06	5.43	1.34
2004	187	449.12	11.70	9.22	5.96	3.29	0.60
2005	186	147.98	4.19	9.63	4.22	1.21	0.23
2006	186	943.63	16.52	9.10	5.03	4.54	0.50
2007	187	1185.54	38.27	7.98	4.94	15.64	1.95
2008	186	141.17	3.19	5.41	2.85	2.76	0.62
2009	186	205.66	6.04	7.33	3.90	6.64	1.21
2010	186	141.11	2.21	9.41	4.52	2.20	0.34
2011	186	101.74	5.13	5.84	3.27	3.62	0.55
2012	186	131.73	5.83	7.53	3.99	7.15	0.63

**Table 2.** Annual summer flounder aging results expressed in numbers of fish collected per year and average age at length for all years combined.



**Table 3.** Annual black sea bass aging results expressed in numbers of fish collected per year and average age at length for all years combined.



**Table 4a. New Jersey Commercial Summer Flounder Quota Summary: 2012**

Coastwide ACL (Rec and Com):	25,581,054
Commercial Discards:	459,000
Recreational Discards:	2,550,000
Research Set Aside (RSA):	677,162
Coastwide ACL Less RSA and Discards:	21,894,892
Coastwide Commercial Quota (60%):	13,136,935
NJ Annual Quota (16.72499% CCQ):	2,197,151
Previous year overage:	0
Total Adjusted Quota:	2,197,151
Total Landings:	2,270,310
Total over (-)/under ( ):	-73,159
Percent of Quota Harvested	103.33%

Season	Original Directed Quota	Adjusted Directed Quota	Directed Landings	Over/Under	By-Catch Quota	By-Catch Landings	Over/Under	Total Season Quota	Total Season Landings	Number of Directed Vessels: 2009/2010/2011/2012	Possible Closure Date	Trip Limits
1 Jan 1-Feb 8 (directed) Feb 9 Feb 18 (by catch) Feb 19 - Feb 29 (closed)	559,202		674,171	-114,969	56,000	8,406	47,594	615,202	682,577	58/60/66/61	landing :: 100K/wk Feb 4 or Feb 11	3,000x2 or 5,000x1
2 Mar 1- Mar 3 (bycatch) Mar 4 - Apr 14 (directed) April 15- April 30 (bycatch)	219,687	152,312	155,465	-3,153	22,000	8,815	13,185	174,312	164,280	41/41/36	ave 30k/wk. Close 3/14.	1,500x3
3 May 1 - May 5 (bycatch) May 6 - Jun 30 (directed)	209,701	219,733	186,415	33,318	21,000	2,408	18,592	240,733	188,823	33/36/33		250x7 or 500x4
4 Jul 1-Aug 31 (directed)	209,701	261,611	271,009	-9,398	21,000	0	21,000	282,611	271,009	33/32/24		250x7 or 500x4
5 Sep 1 (bycatch) Sep 2 - Oct 31 (directed)	579,174	590,776	621,783	-31,007	58,000	0	58,000	648,776	621,783	67/43/	oct 27	750x4 or 3,000x1
6 Nov 1-Nov 3 (bycatch) Nov 4-Dec 31 (directed)	219,687	246,679	340,903	-94,224	22,000	0	22,000	268,679	340,903	44/57/38	Dec. 15 or 22, 2012	1,000x4 or 3,500x1
Total	1,977,436				219,715							
Adjusted Total	1,997,151		2,249,746		200,000	19,629			2,269,375			

**Table 4b. New Jersey Commercial Black Sea Bass Quota Summary: 2012**

Coastwide Landings ACT (Rec and Com):	3,600,000
RSA:	108,000
Coastwide Landings ACT Less RSA:	3,492,000
Coastwide Commercial Quota (CCQ):	1,711,080
NJ Annual Quota (20% CCQ):	342,216
Previous year overage:	0
Total Adjusted Quota:	342,216
Total Pounds Harvested:	310,427
Total over (-) / under ( ):	31,789
Percent of Quota Harvested:	90.71%

Season	Original Directed Quota	Adjusted Directed Quota	Directed Landings	Overage (-) / Underage	By-Catch Quota	By-Catch Landings	Overage (-) / Underage	Trip Limits	Total Quota	Total Landed	Total Overage (-) / Underage
Jan 1 to March 13 (directed) March 14 to April 15 (bycatch)	119,502		101,819	17,683	13,278	2,184	11,094	500x4 or 1,000x2	132,780	104,003	28,777
April 16 to June 30	63,447	92,224	70,232	21,992	7,050	0	7,050	500x2 or 1,000x1	99,273	70,232	29,041
July 1 to Sept 30	41,579	70,621	42,925	27,696	4,620	0	4,620	500x2 or 1,000x1	75,240	42,925	32,315
Oct 1 to Dec 31	83,466	115,782	93,267	22,515	9,274	0	22,515	500x2 or 1,000x1	125,056	93,267	31,789
Total	307,994		308,243		34,222	2,184			342,216	310,427	



**Table 4c. New Jersey Commercial Scup Landings Data: 2012**

Season	Quota	Coastwide Landings	NJ Landings	Percent of Quota Landed	NJ % of Coastwide Landings	Trip Limit
WINTER 1 Coastal (Jan.1 - Apr. 30)	12,589,558	5,190,370	615,771	41%	12%	50,000/trip with a max of 7 trips per week
SUMMER State Share(May 1 - October 31) 2.9% of coastal quota	315,241	6,349,749	40,877	28.79%	4.96%	5,000/trip up to 7 trips per week
WINTER 2 Coastal (Nov 1- Dec. 31)	11,635,321	2,350,393	308,348	20.20%	13%	8,000/day with a maximum of 7 trips per week.

**Appendix I. N.J.A.C. 7:25-18.1** Size, season, and possession limits. 2012

(a) For the purpose of this subchapter, the following common names shall mean the following scientific name(s) for a species or group of species, except as otherwise specified elsewhere in this subchapter.

<u>Common Name</u>	<u>Scientific Name</u>
Black Sea Bass	Centropristis striata
Scup (Porgy)	Stenotomus chrysops
Summer Flounder (Fluke)	Paralichthys dentatus

(b) A person shall not purchase, sell, offer for sale, or expose for sale any species listed below less than the minimum length, measured in inches, except as may be provided elsewhere in this subchapter, and subject to the specific provisions of any such section. Any commercially licensed vessel or person shall be presumed to possess the following species for sale purposes and shall comply with the minimum sizes below. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below.

<u>Species</u>	<u>Minimum Size (inches)</u>
Black Sea Bass	11
Scup (Porgy)	9
Summer Flounder	14

1. Total length for black sea bass shall be measured along the midline from the tip of the snout to the end of the central portion of the tail, not to include tail filaments.

(c) A person angling with a hand line or with a rod and line or using a bait net or spearfishing shall not have in his or her possession any species listed below less than the minimum length, nor shall such person take in any one day or possess more than the possession limits as provided below, nor shall such person possess any species listed below during the closed season for that species. Exceptions to this section as may be provided elsewhere in this subchapter shall be subject to the specific provisions of any such section. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below:

<u>Species</u>	<u>Minimum Size In Inches</u>	<u>Open Season</u>	<u>Possession Limit</u>
Black Sea Bass	12.5	May 19 – Sept 3 Sept 23-Oct 14 Nov 1 – Dec 31	25
Scup (Porgy)	9	Jan. 1—Feb. 28, and July 1—Dec. 31	50
Summer Flounder (Fluke)	17.5	May 5—Sept. 28	5

1. Total length for black sea bass shall be measured along the midline from the tip of the snout to the end of the central portion of the tail, not to include tail filaments.

(e) Except as provided in (e)2 and (f) below, a person shall not remove the head, tail or skin, or otherwise mutilate to the extent that its length or species cannot be determined, any species with a minimum size limit specified at (b) or (c) above or any other species of flatfish, or possess such mutilated fish, except after fishing has ceased and such species have been landed to any ramp, pier, wharf or dock or other shore feature where it may be inspected for compliance with the appropriate size limit.

1. A shark may be eviscerated and the head and tail removed prior to landing, provided that the alternate length as measured from the origin of the first dorsal fin to the precaudal pit (located just forward of the origin of the upper lobe of the caudal or tail fin) is not less than 23 inches in length. The fins may not be removed from a shark or dogfish, except after fishing has ceased and such shark or dogfish has been landed as specified in (e) above.

2. A person may use parts of one legal sized summer flounder as bait. The carcass of the fish minus the fillets, commonly known as the rack, of the summer flounder used must be retained by the person and counted as part of the person's daily bag limit for that day. The rack shall be kept fully intact so it can be measured for minimum size limit. One summer flounder caught on the person's current fishing trip can be used for this purpose. No parts of fish caught on previous fishing trips shall be in possession. No other species of flat fish or fish listed under (b) or (c) above shall be used for this purpose.

(f) Special provisions applicable to a Special Fillet Permit are as follows:

1. A party boat owner may apply to the Commissioner for a permit for a specific vessel, known as a Special Fillet Permit to fillet species specified at (c) above at sea;

2. For purposes of this section, party boats are defined as vessels that can accommodate 15 or more passengers as indicated on the Certificate of Inspection issued by the United States Coast Guard for daily hire for the purpose of recreational fishing;

3. The Special Fillet Permit shall be subject to the following conditions:

i. Once fishing commences, no parts or carcasses of any species specified in (c) above and no flatfish parts or carcasses shall be discarded overboard; of the species specified at (c) above, only whole live fish may be returned to the water;

ii. No carcasses of any flatfish or species listed at (c) above shall be mutilated to the extent that its length or species cannot be determined;

iii. All fish carcasses of species specified at (c) above shall be retained until such time as the vessel has docked and been secured at the end of the fishing trip adequate to provide a law enforcement officer access to inspect the vessel and catch;

iv. No fillet of any flounder or other flatfish shall be less than eight inches in length during the period of May 1 through October 31 or less than five inches in length during the period of November 1 through April 30;

v. No fish of any species less than the minimum size limit specified in (c) above shall be filleted and no fillet of any species listed below shall have the skin removed and no fillet shall be less than the minimum length in inches specified below.

<u>Species</u>	<u>Minimum Fillet or Part Length</u>
Black Sea Bass	5 inches
Scup	4 inches

vi. Fish carcasses from the previous trip shall be disposed of prior to commencing fishing on a subsequent trip;

vii. Violation of any of the provisions of the Special Fillet Permit shall subject the captain and permit holder to the penalties established pursuant to N.J.S.A. 23:2B-14 and shall result in a suspension or revocation, applicable to both the vessel and the owner of the Special Fillet Permit according to the following schedule:

(1) First offense: 60 days suspension;

(2) Second offense: 120 days suspension; and

(3) Third offense: Revocation of permit, rendering the vessel and the owner not eligible for permit renewal regardless of vessel ownership.

viii. In calculating the period of suspension or revocation applicable under (f)3vii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three-

year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.

ix. Upon receipt of the notice of suspension but prior to the suspension or revocation of the Special Fillet Permit, the permittee has 20 days to request a hearing from the Department. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1. If a request for a hearing is not received by the Department within 20 days of the permittee's receipt of the notice of suspension, the permit suspension or revocation will be effective on the date indicated in such notice.

(g) Any person violating the provisions of (b), (c), (d) or (e) above shall be liable to a penalty of \$ 30.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

(m) Wanton waste of fish is prohibited.

1. Fish of any species, taken by any means, which are purposely killed shall become part of the fisherman's daily possession limit and shall be removed from the waters from which they were taken and from adjacent lands. This subsection shall not apply to those fish which are released while still alive and subsequently die or to those fish taken inadvertently by net (bycatch) and subsequently die.

(n) Any person violating the provisions of (h) through (l) above shall be liable for a penalty of \$ 100.00 for each fish taken or possessed. Each fish taken or possessed shall constitute a separate and distinct offense.

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, minimum size limits and possession limits specified in this section by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Department shall publish notice of any such modification in the New Jersey Fish and Wildlife Digest and the New Jersey Register, and shall submit a news release to individuals on the Division outdoor writers' mailing list.

(q) All persons aboard any fishing vessel subject to this rule shall immediately comply with instructions and signals issued by a conservation officer, a marine police officer or other law enforcement officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for the purpose of enforcement of this rule. After any instructions, signals or other communication from an authorized law enforcement officer indicating the officer's intent to perform an inspection, it shall be unlawful for any person to dispose of fish, fish parts or any other matter in any manner until such time as the inspection is complete. Violation of this provision shall subject the violator to the penalties established pursuant to N.J.S.A. 23:2B-14.

(r) Pursuant to N.J.S.A. 23:10-21 and 21.1, any gear used in the violating of the provisions of this subchapter may be seized and forfeited to the Division.

## Appendix II. Commercial Regulations

### N.J.A.C. 7:25-18.12; Commercial fishing seasons, quotas, and trip limits.

(h) The following provisions are applicable to the commercial harvest of black sea bass:

1. After December 31, 2002, a vessel shall not land more than 100 pounds of black sea bass during the period of January 1 through March 31 or more than 50 pounds of black sea bass during the period of April 1 through December 31 in New Jersey on any one trip unless said vessel is in possession of a valid New Jersey Black Sea Bass Permit. The permit shall be issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.
  - i. Applicants for a New Jersey Black Sea Bass Permit shall complete and submit an application provided by the Department by December 31, 2002 that includes information on name, address, vessel name, vessel documentation or registration number, gear and landings criteria as specified in (h)1ii below. Applications for a New Jersey Black Sea Bass Permit received after the above date shall be denied.
  - ii. To be eligible for a New Jersey Black Sea Bass Permit, the vessel's owner shall meet the following criteria:
    - (1) The vessel shall have landed and sold a minimum cumulative total of 10,000 pounds of black sea bass in New Jersey during the period 1988 through May 3, 2001;
    - (2) The vessel shall have possessed a valid Federal Black Sea Bass Moratorium Permit or appropriate New Jersey gear license for each year of submitted landings documentation; and
    - (3) Documented proof of landings shall consist of one or more of the following:
      - (A) Weigh-out slips totaling the weight harvested;
      - (B) A notarized statement from the applicant and the purchaser(s) attesting to the weight harvested (a copy of the business records the statement(s) must accompany the application);
      - (C) Other documentation similar to that in (h)1ii(3)(A) or (B) above may be accepted at the discretion of the Commissioner after his or her review.
2. The New Jersey Black Sea Bass Permit shall be on board the vessel to which it is issued at all times. The permit is valid from the date of issuance and for any subsequent years unless revoked as part of a penalty action. The vessel, when engaged in a black sea bass fishery, may have on board the gear type(s) listed on that vessel's New Jersey Black Sea Bass Permit.
3. The owner of a vessel permitted pursuant to this sub-section not pending revocation or court action may transfer his or her Black Sea Bass Permit, upon application to the Department, as follows:
  - i. To his or her replacement vessel, provided the replacement vessel is not greater than 10 percent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced shall no longer be eligible for a black sea bass permit; or
  - ii. Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a Black Sea Bass Permit based on the harvesting history of the vessel being sold.
4. Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.
5. Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without prior approval of the Department.
6. A vessel possessing a valid Black Sea Bass Permit to commercially harvest black sea bass by angling or hook and line and when operating under the permit shall be subject to the following:
  - i. Crew size shall be limited to no more than five persons, including the captain; and
  - ii. The vessel shall not carry any passengers for hire. When carrying passengers for hire the Black Sea Bass Permit is not valid and the recreational possession limits and seasonal restriction as specified in N.J.A.C. 7:25-18.1 apply.
7. A vessel that does not possess a New Jersey Black Sea Bass Permit shall be permitted to land not more than 100 pounds of black sea bass during the period of January 1 through March 31, or not more than 50 pounds of black sea bass during the period of April 1 through December 31 on any trip provided the amount of black sea bass landed from any vessel

shall not exceed 10 percent, by weight, of the total weight of all species landed and sold. Vessels taking black sea bass by angling or hook and line that do not possess a New Jersey Black Sea Bass Permit shall be subject to the possession limits established in N.J.A.C. 7:25-18.1 and the seasonal by-catch limits and 10 percent criteria specified above.

8. Annual and seasonal black sea bass quotas and daily trip limits shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission.
  - i. The Commissioner, or his or her designee, shall implement annual and seasonal black sea bass quotas and daily trip limits determined by the Atlantic States Marine Fisheries Commission upon four days public notice. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.
  - ii. Ten percent of the New Jersey annual black sea bass quota shall be allocated each year for by-catch landings when any of the seasons for the directed commercial fishery defined in (h)8iii below are closed. The by-catch landings shall be divided between seasons as identified in (h)8iii below at the same percentage apportioned to each season specified at (h)8iii below.
    - (1) Any by-catch not landed during the season allocated shall be added to the directed fishery quota of the following season except during the last season.
    - (2) If any of the by-catch allowance has not been landed by December 1 in any calendar year the remaining amount shall be added to the directed black sea bass fishery quota.
  - iii. The balance of the New Jersey annual quota for the black sea bass fishery remaining after deducting the by-catch allowance specified in (h)8ii above shall be divided into seasons, percentage of the annual quota apportioned to each season, daily trip limits and number of allowable landings days in each week (Sunday through Saturday) as follows:
    - (1) January 1-April 15: 38.8 percent, 500 pound trip limit and a maximum of four days per week or 1,000 pound trip limit with a maximum of two days per week that a vessel may land black sea bass.
    - (2) April 16-June 30: 20.6 percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (3) July 1-September 30: 13.5percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (4) October 1-December 31: 27.1 percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (5) If a minimum of 50,000 pounds of the New Jersey black sea bass quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year.
    - (6) Any daily landings of black sea bass not exceeding 100 pounds during the period of January 1 through March 31 or 50 pounds during the period of April 1 through December 31 shall not be applied to maximum weekly landings days during any season as specified in (h)8iii(1) through (4) above, provided the amount of black sea bass landed from any vessel shall not exceed 10 percent by weight, of the total weight of all species landed and sold.
  - iv. No vessel shall have in possession or land and no dealer shall accept from any one vessel or person more than the lesser of the daily trip limit of black sea bass set by the National Marine Fisheries Service or the Atlantic State Marine Fisheries Commission in any one calendar day.
  - v. The Commissioner, or his or her designee, shall close the season for the commercial black sea bass fishery upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders.

- vi. Once the season has been closed for the directed commercial black sea bass fishery, no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or purchase any black sea bass landed in New Jersey in excess of the by-catch allowances specified in (h)1 and 7 above and provided the amount of black sea bass landed from any vessel shall not exceed 10 percent, by weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or buy any black sea bass landed in New Jersey.
- vii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (h)7v above.
  - (1) The Commissioner, or his or her designee may set daily trip limits when reopening a prematurely closed season.
- viii. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.
- ix. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following season. The amount overharvested shall also be deducted from the following years seasonal quota in pounds and reallocated to the season from which it was deducted the previous year.
- x. Any vessel participating in the black sea bass fishery shall notify the Department of the time and place of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the trip being called in. For example, "this will be my third landing this week." Notification shall include phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.
- 9. After December 31, 2002, no dealer shall accept or purchase any black sea bass from any vessel or harvester unless such dealer is in possession of a valid New Jersey Black Sea Bass Dealers Permit. A New Jersey Black Sea Bass Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:
  - New Jersey Black Sea Bass Dealers Permit
  - Nacote Creek Research Station
  - PO Box 419
  - Port Republic, NJ 08241
- 10. After December 31, 2002, no dealer shall accept or purchase from any one vessel more than the amounts of black sea bass specified at (h)1 above unless said vessel is in possession of its valid New Jersey Black Sea Bass Permit.
- 11. After December 31, 2002, any harvester or vessel landing black sea bass in New Jersey for the purpose of sale shall sell all black sea bass to a permitted New Jersey Black Sea Bass Dealer.
- 12. All permitted New Jersey Black Sea Bass Dealers shall provide daily reports during the period January 1 through April 15 and weekly reports during the period April 16 through December 31 to the Division listing the amount of black sea bass landed on a daily basis and any other information that may be required by the Commissioner. If no black sea bass were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number listed on the reporting form no later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
- 13. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
  - i. Failure to submit the required documentation to an application shall result in the denial of the permit.

- ii. Falsification or misrepresentation of any information on an application including documentation provided to verify the amount of black sea bass landed as specified in (h)1ii(3) above shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.
- iii. Failure to comply with the provisions of (h)6 above, criteria under which a vessel may harvest black sea bass by angling or hook and line, (h)8 above, exceeding daily trip limits and landing black sea bass after the season has been closed, (h)9 above, accepting or purchasing black sea bass without a New Jersey Black Sea Bass Dealers Permit, (h)10 above, accepting or purchasing from any non-permitted vessel more than the amount of black sea bass stipulated pursuant to (h)1 and 7 above, and (h)11 above, selling black sea bass to a non-permitted dealer shall result in the suspension during open season(s) or revocation of the vessel's and/or dealer's Black Sea Bass Permit according to the following schedule:
  - (1) First offense: 60 days suspension;
  - (2) Second offense: 120 days suspension;
  - (3) Third offense: permanent revocation;
- iv. In calculating the period of suspension or revocation applicable under (h)13iii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.
- v. Any person who has had his or her New Jersey Black Sea Bass Dealers Permit suspended or revoked shall not land or permit the landing of any black sea bass at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Black Sea Bass Dealers Permit.
- vi. Prior to revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(i) The following provisions are applicable to the commercial harvest of summer flounder:

- 1. A vessel shall not land more than 100 pounds of summer flounder during the period of May 1 through October 31 or more than 200 pounds of summer flounder during the period of November 1 through April 30 in New Jersey on any one trip unless said vessel is in possession of a valid New Jersey Summer Flounder Permit to participate in the directed fishery for summer flounder. Vessels fishing under the special terms of a quota transfer or combination program as provided in (i)3 below may be exempt from this requirement if such terms specify that a New Jersey Summer Flounder Permit is not necessary to land summer flounder in New Jersey. The permit shall be issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.
  - i. Applicants for a New Jersey Summer Flounder Permit shall complete and submit an application provided by the Department. Applicants applying to use hook and line shall submit their applications no later than May 31, 1994. Applicants applying for a New Jersey Summer Flounder permit for any other gear type shall submit their applications no later than January 1, 2000. Applications for a New Jersey Summer Flounder Permit received after the above dates shall be denied.
  - ii. To be eligible for a New Jersey Summer Flounder Permit, the vessel's owner shall meet the following criteria:
    - (1) The vessel shall have landed and sold at least 1,000 pounds of summer flounder in each of two years during the period of 1985-1992;
    - (2) The vessel shall have possessed a valid New Jersey otter trawl, pound net, or gill net license or a valid Federal summer flounder permit during each of the two years it qualified based upon the pounds of



summer flounder landed and sold in (i)1ii(!) above. Vessels providing documentation regarding the amount of summer flounder landed for two years between January 1, 1985 to November 2, 1988 or vessels providing documentation of harvest by hook and line are exempt from this requirement; and

- (3) Applicants shall provide weigh out slips to document the amount of summer flounder landed and copies of their New Jersey otter trawl, pound net or gill net license or Federal summer flounder permit for the respective years.

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

- (1) The owner of a vessel permitted pursuant to this subsection not pending revocation or court action may transfer his or her Summer Flounder Permit, upon application to the Department, as follows:
  - (A) To his or her replacement vessel, provided the replacement vessel is not greater than 10 percent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced shall no longer be eligible for a New Jersey Summer Flounder Permit; or
  - (B) Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a New Jersey Summer Flounder Permit based on the harvesting history of the vessel being sold.
- (2) Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.
- (3) Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without prior approval of the Department.

iv. A vessel possessing a valid New Jersey Summer Flounder Permit to commercially harvest summer flounder by angling or hook and line and when operating under the permit shall be subject to the following:

- (1) Crew size shall be limited to no more than five persons, including the captain; and
- (2) The vessel shall not carry any passengers for hire. When carrying passengers for hire the New Jersey Summer Flounder Permit is not valid and the recreational possession limits and seasonal restriction as specified in N.J.A.C. 7:25-18.1 apply.

v. A vessel that does not possess a New Jersey Summer Flounder Permit shall be permitted to land not more than 100 pounds of summer flounder during the period of May 1 through October 31, or not more than 200 pounds of summer flounder during the period of November 1 through April 30 on any trip provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight, of the total weight of all species landed and sold, except that vessels taking summer flounder by angling or hook and line shall be subject to the possession limits established in N.J.A.C. 7:25-18.1.

2. The annual summer flounder harvest quota for New Jersey shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries. All landings of summer flounder in New Jersey shall be applied to the New Jersey annual summer flounder quota unless New Jersey enters into an agreement with another state(s) to transfer or combine summer flounder commercial quotas, as provided for pursuant to (i)3 below and such agreement indicated otherwise.

- i. Ten percent, but no more than 200,00 pounds of the of the New Jersey annual summer flounder quota, shall be allocated each year for by-catch landings when any of the six seasons for the directed commercial fishery are closed. The by-catch landings shall be divided between the six seasons as identified at (i)2ii below at the same percentage as for the directed fishery specified at (i)2ii below or as modified by the Commissioner.

- (1) Any by-catch not landed during the season allocated shall be added to the directed fishery quota of the following season except during the last season.
  - (2) If any of the by-catch allowance has not been landed by December 1 in any calendar year the remaining amount shall be added to the directed summer flounder fishery quota.
  - (3) For the purpose of this section, all directed fishery seasons identified at (i)2i below shall start on the first Sunday of the applicable month.
- ii. The balance of the New Jersey annual quota for the summer flounder fishery remaining after deducting the by-catch allowance specified in (i)2i above shall be divided into seasons, percentage of the annual quota apportioned to each season, daily trip limits and number of allowable landings days in each week (Sunday through Saturday) as follows:
- (1) January-February: 28 percent, 3,000 pound trip limit and a maximum of two days a week or 5,000 pound trip limit and a maximum of one day a week that a vessel may land summer flounder;
  - (2) March - April: 11 percent, 1,500 pound trip limit and a maximum of three days per week that a vessel may land summer flounder;
  - (3) May-June: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;
  - (4) July-August: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;
  - (5) September - October: 29 percent, 750 pound trip limit and a maximum of four days that a vessel may land summer flounder, except as follows:
    - (A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 3,000 pounds;
  - (6) November - December: 11 percent, 1,000 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, except as follows:
    - (A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 3,500 pounds; and
  - (7) Any daily landings of summer flounder not exceeding 100 pounds during the period of May 1 through October 31 or 200 pounds during the period of November 1 through April 30 shall not be applied to maximum weekly landings days during any season as specified in (i)2ii(1) through (6) above, provided the amount of summer flounder landed from any vessel shall not exceed 10 percent by weight, of the total weight of all species landed and sold.
- iii. No vessel shall have in possession or land and no dealer shall accept from any one vessel more than the daily trip limit of summer flounder in any one calendar year.
- iv. Any vessel participating in a directed summer flounder fishery shall notify the Department of the time and place of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the tip being called in. For example, "This will be my third landing this week." Notification shall include a phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.

- v. If a minimum of 100,000 pounds of the New Jersey summer flounder quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year or until the quota specified in (i)2 above is landed, whichever occurs first.
- vi. The Commissioner, or his or her designee, shall close the season for the directed and/or by-catch commercial summer flounder fishing season upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all permitted New Jersey Summer Flounder Dealers and New Jersey Summer Flounder Permit holders.
- vii. Once the season has been closed for the directed commercial summer flounder fishery, no vessel shall land any summer flounder and no dealer shall accept any summer flounder landed in New Jersey in excess of the by-catch allowances specified in (i)1 above and provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any summer flounder and no dealer or person shall accept or buy any summer flounder landed in New Jersey.
- viii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated environmental events resulting in the quota not being landed by the projected date and at least one month remains in the current season, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (i)2vi above.
  - (1) The Commissioner, or his or her designee may set daily trip limits when reopening a prematurely closed season.
- ix. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.
- x. If the quota for any of the first five seasons is exceeded, the amount overharvested shall be deducted from the following season.
- xi. If the quota for any year is exceeded, the amount overharvested will be deducted from the following year's annual quota. The remaining annual quota will then be allocated as defined in (i)2i and ii above.
- xii. Beginning in 1994, the Department shall notify the holders of New Jersey Summer Flounder Permits of the season allocations no later than January 31 of the year to which the allocation applies. Notification shall be accomplished by first class mail to permit holders.
- xiii. All New Jersey Summer Flounder Permit holders shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than 15 working days following the end of the reported month at the following address:

New Jersey Summer Flounder Program  
 Nacote Creek Research Station  
 PO Box 419  
 Port Republic, NJ 08241

- (1) The monthly report shall include, but not be limited to, the following information: name, New Jersey Summer Flounder Permit number of the vessel, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which summer flounder are landed. New Jersey Summer Flounder Permit holders who also possess a Federal summer flounder permit and are required to report monthly to the Federal government may submit the "STATE" copy of their Federal log book in satisfaction of the New Jersey reporting requirements.
- (2) If no trips for summer flounder were taken and no summer flounder were landed during the month, a report to that effect shall be required.

3. Pursuant to Amendment 5 of the Mid-Atlantic Fishery Management Council's Summer Flounder Management Plan, the Commissioner may enter into agreements with other states to transfer or combine summer flounder commercial quotas. Such agreements shall specify the terms and conditions under which vessels not in possession of a New Jersey Summer Flounder Permit may land summer flounder in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.
4. No fish dealer shall accept any summer flounder from any vessel or harvester unless such dealer is in possession of a valid New Jersey Summer Flounder Dealers Permit. A New Jersey Summer Flounder Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:

New Jersey Summer Flounder Dealers Permit  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

5. No dealer shall accept from any vessel more than the amounts of summer flounder specified at (i)1 above unless said vessel is in possession of its valid New Jersey Summer Flounder Permit.
6. No vessel shall land and no dealer shall accept any summer flounder which have been frozen, filleted or processed in any way. Only whole, fresh summer flounder may be landed, except that by-catch amounts of summer flounder as specified in i(1) above may be landed frozen provided that each fish is individually frozen whole and can be individually weighed and measured without thawing.
7. Any harvester or vessel landing summer flounder in New Jersey for the purpose of sale shall sell all summer flounder to a permitted New Jersey Summer Flounder Dealer.
8. All permitted New Summer Flounder Dealers shall provide daily reports during the period January 1 through February 28 and weekly reports during the period March 1 through December 31 to the Division listing the amount summer flounder landed on a daily basis by size category and any other information that may be required by the Commissioner or as a result of any agreement with other states pursuant to (i)3 above. If no summer flounder were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division not later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
9. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
  - i. Failure to submit the application by May 31, 1994 for use of hook and line or to attach the required documentation to the application shall result in the denial of the permit.
  - ii. Falsification or misrepresentation of any information on an application including documentation provided to verify the amount of summer flounder landed as specified in (i)1ii(3) above shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.
  - iii. Failure to comply with the provisions of N.J.A.C. 7:25-18.14(i)2, minimum mesh sizes, (i)2iii above, landing, possession or accepting in excess of the daily trip limit for summer flounder, (i)2iv above, failure of notification of landing of summer flounder, (i)2vii above, landing summer flounder after the directed fishery and/or by-catch season has been closed, (i)2xiii above, failure to submit accurate and timely monthly reports, (i)5 above accepting more than by-catch amounts from non-permitted vessels, (i)6 above accepting any summer flounder other than fresh product, or N.J.S.A. 7:25-18.14(a), (b), (d), (e), (f) or N.J.S.A. 23:3-46 through 47 shall result in the suspension during open seasons or revocation of the vessel's New Jersey Summer Flounder Permit or the dealers New Jersey Summer Flounder Dealers Permit according to the following schedule:
    - (1) First offense: 60 days suspension;
    - (2) Second offense: 120 days suspension;

(3) Third offense: permanent revocation;

- iv. In calculating the period of suspension or revocation applicable under (i)9iii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.
- v. Any person who has had his or her New Jersey Summer Flounder Dealers Permit suspended or revoked shall not land or permit the landing of any summer flounder at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Summer Flounder Dealers Permit.
- vi. Prior to revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(k) The following provisions are applicable to the commercial harvest of scup:

- 1. Annual coastwide scup quotas and daily trip limits for the periods of January 1 through April 28 and November 1 through December 31, and an annual New Jersey scup quota for the period from May 1 through October 31 shall be determined by the Mid-Atlantic Fishery Management Council as implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission. All landings of scup in New Jersey during the period from May 1 through October 31 shall be applied to the New Jersey scup quota.
  - i. Any closure of the scup fishery by the National Marine Fisheries Service in adjacent Federal waters or any closure which includes New Jersey marine waters during the periods January 1 through April 28 and November 1 through December 31 would automatically close New Jersey to commercial landings of scup.
  - ii. The Commissioner, or his or her designee, shall implement annual and seasonal scup quotas and daily trip limits determined by the Atlantic States Marine Fisheries Commission upon two days public notice. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.
  - iii. The Commissioner, or his or her designee, shall close the season for the commercial scup fishery upon two days public notice of the projected date the New Jersey seasonal quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Scup Dealer Permit holders and Federal scup moratorium, permit holders that are New Jersey residents.
  - iv. Once the season has been closed for the commercial scup fishery, no vessel shall land any scup and no dealer shall accept any scup landed in New Jersey.
  - v. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (k)1iii above.
  - vi. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following year's quota for that season.
- 2. No vessel shall have in possession or land and no dealer shall accept from any vessel more than the lesser of the daily trip limits set by the National Marine Fisheries Service or the Atlantic State Marine Fisheries Commission for the season of January 1 through April 30 and November 1 through December 31 and no vessel shall have in possession or land and no dealers shall accept from any one vessel more than the daily trip limit of 5,000 pounds of scup during the season of May 1 through October 31 or as provided for in (k)2i above.

- i. If a minimum of 25 percent of the New Jersey scup quota is projected to remain unlanded as of October 1 in any calendar year, then there shall be a 10,000 pound trip limit for the remainder of the season or until the season is closed as provided in (k)1i above.
  - ii. The trip limit for scup shall be two trips per week (Sunday through Saturday) with landings not to exceed 50,000 pounds during any two-week period from January 1 through April 28 and a daily limit as established by the National Marine Fisheries Service from November 1 through December 31. During the period of January 1 through April 28, the daily trip limit will be reduced to 1,000 pounds when it is projected that 80 percent of the period quota will be harvested.
3. No fish dealer shall accept any scup from any vessel or harvester unless such dealer is in possession of a valid New Jersey Scup Dealer Permit. A New Jersey Scup Dealer Permit may be obtained by completing an application supplied by the Department and submitting it to:

New Jersey Scup Dealers Permit  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

4. A harvester or vessel shall not land scup for the purpose of sale or sell any scup unless such harvester or vessel is in possession of a valid scup moratorium permit issued by the National Marine Fisheries Service.
5. Any harvester or vessel landing scup in New Jersey for the purpose of sale shall sell all scup to a permitted New Jersey Scup Dealer.
6. All permitted New Jersey Scup Dealers shall provide weekly reports to the Division listing the amount of scup landed on a daily basis and any other information that may be required by the Commissioner or as a result of an agreement with other states pursuant to (k)9 below. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division no later than two days following the week's end or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
7. All scup moratorium permit holders landing scup in New Jersey shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than 15 working days following the end of the reported month at the following address:

New Jersey Scup Program  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

- i. The monthly report shall include, but not be limited to, the following information: name, scup moratorium permit number, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which scup are landed. Scup moratorium permit holders may submit the "STATE" copy of their Federal log book in satisfaction of the New Jersey reporting requirements.
8. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
- i. Failure to comply with the provisions (k)1iv above, landing or accepting scup after the season has been closed; (k)2 above, landing or accepting more than the daily trip limit; (k)3 above, accepting scup from a vessel without first having obtained a valid New Jersey Scup Dealer Permit; (k)4 above, landing for the purpose of sale or selling scup without first having obtained a valid scup moratorium permit; (k)5 above, selling scup to a non-permitted fish dealer; or (k)6 and 7 above, failure to submit accurate and timely reports, shall result in the suspension during the open seasons or revocation of the dealer's New Jersey Scup Dealer Permit according to the following schedule:

- (1) First offense: 60 days suspension;
- (2) Second offense: 120 days suspension;
- (3) Third offense: permanent revocation;

ii. In calculating the period of suspension or revocation applicable under (k)8i above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.

9. Pursuant to Amendment 8 of the Mid-Atlantic Fishery Management Council's Fishery Management Plan for the Summer Flounder and Scup Fishery, the Commissioner may enter into agreements with other states to transfer or combine scup commercial quotas. Such agreements shall specify the terms and conditions under which vessels may land scup in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.

#### **N.J.A.C. 7:25-18.14**

(l) Special provisions applicable to the commercial harvest of summer flounder are as follows:

1. The possession of more than 100 pounds of summer flounder during the period of May 1 through October 31 or the possession of more than 200 pounds of summer flounder during the period of November 1 through April 30 on board a vessel or landed from a vessel shall constitute a directed fishery for summer flounder.
2. A person utilizing an otter or beam trawl in the directed fishery for summer flounder shall not use a net of less than 5.5 inches stretched diamond mesh or 6.0 inches minimum stretched square mesh, inside measurement. The mesh size shall be applied throughout the body, extensions and cod end portions of the net upon adoption in the Federal Register of essentially the same criteria. Until such time, the mesh size shall be applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified above in this paragraph, on board a vessel engaged in a directed fishery for summer flounder is prohibited unless such net is not available for immediate use as defined in (b) above or is one of the following:

i. Vessels fishing in the fly net fishery are exempt from the minimum mesh size requirement. A fly net is a two seam otter trawl with the following configuration:

- (1) The net has large mesh webbing in the wings with a stretch mesh measure of eight inches to 64 inches;
- (2) The first body (belly) section of the net consists of 35 meshes or more of eight inches stretch mesh webbing or larger;
- (3) In the body section of the net the stretch mesh decreases in size relative to the wings and continues to decrease throughout the extensions to the cod end, which generally has a webbing of two inch stretch mesh.

(p) Special provisions applicable to a directed scup fishery are as follows:

1. The possession of more than 500 pounds of scup during the period of November 1 through April 30 and more than 200 pounds of scup during the period of May 1 through October 31 on board a vessel or landed from a vessel shall constitute a directed fishery for scup.

2. A person utilizing an otter or beam trawl in a directed fishery for scup shall not use a net of less than 5.0 inches stretched mesh inside measurement applied for a minimum of 75 continuous meshes forward of the terminus of the net.
    - i. Nets not large enough to accommodate the number of minimum meshes listed in (p)2 above shall not contain any meshes less than 5.0 inches stretched mesh inside measurement throughout the entire net.
  3. The possession of any net with a mesh less than the minimum specified in (p)2 above on board a vessel in a directed fishery for scup is prohibited unless it is not available for immediate use as defined in (b) above.
- (q) Special provisions applicable to a directed black sea bass fishery are as follows:
1. The possession of more than 500 pounds of black sea bass during the period of January 1 through March 31 or more than 100 pounds of black sea bass during the period of April 1 through December 31 on board a vessel or landed from a vessel shall constitute a directed fishery for black sea bass for the purpose of requiring minimum mesh sizes as defined in (q)2 below.
  2. A person utilizing an otter or beam trawl in a directed fishery for black sea bass shall not use a net of less than 4.5 inches stretched diamond mesh or 4.0 inches minimum stretched square mesh, inside measurement applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified in this paragraph on board a vessel in a directed fishery for black sea bass is prohibited unless it is not available for immediate use as defined in (b) above.
    - i. Nets not large enough to accommodate the number of minimum meshes listed in (q)2 above shall not contain any meshes less than 4.5 inches stretched diamond mesh or 4.0 inches stretched square mesh inside measurement throughout the entire net.





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
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DIVISION OF FISH & WILDLIFE  
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## Delaware Summer Flounder Compliance Report for 2013

June 1, 2013

### I. Introduction

Summer flounder commercial and recreational fishing regulations were not changed in 2012. Harvest was limited to state licensed fishers operating within state territorial waters. Since the inception of the commercial quota system in 1993, Delaware has restricted summer flounder commercial landings to the bycatch taken by its gill net fishery and to those landed in the commercial hook and line fishery, which operates under recreational summer flounder regulations. Delaware will maintain low landing levels by preventing the development of a directed commercial fishery. Commercial landings are reported monthly and local stock conditions are monitored by an annual trawl survey program.

### II. Request for *de minimis* status

Delaware qualifies for *de minimis* designation under the guidelines of the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan for Summer Flounder, Amendment 13. In 2012 the coast wide commercial quota was 12.71 million pounds and the *de minimis* threshold of 0.1% of the coast wide commercial quota was 12,710 pounds. Delaware's reported commercial landings in 2012 were only 677 pounds, so Delaware is requesting *de minimis* status for commercial summer flounder landings for the 2013 fishing season.

### III. Previous year's fishery and management program

#### A. Fishery – Independent Monitoring

Two trawl survey programs are conducted annually in Delaware's coastal waters to assess relative abundance of both juvenile and adult finfish. Information from these surveys is analyzed in order to determine catch at age for adults and young of the year, and catch per tow is calculated for estimating annual relative abundance. These findings are provided to the Northeast Fisheries Science Center for inclusion in the annual stock assessment update for summer flounder.

#### B. Current Regulations (2013)

Summer flounder minimum size for fish caught in gill nets is 14 inches, while the minimum size for fish caught by commercial hook and line is 18 inches. The

commercial hook and line fishery is bound by all recreational summer flounder regulations. A regulation, in effect since 1997, limits summer flounder landings to 200 pounds per trip in order to prevent federally licensed vessels from landing in Delaware and off-loading flounder taken in federal waters. Commercial fishers are required to submit landing reports monthly. Delaware does have the authority to prohibit landings of summer flounder by commercial fishers if projections based on monthly landings reports suggest that the *de minimis* target could be exceeded in a given year.

The recreational summer flounder regulations for 2013 a 17 inch minimum size, four fish creel limit and no closed season.

#### C. 2012 Landings

Delaware's 2012 commercial summer flounder landings were the lowest in the 1990 through 2012 time series (Table 1). All landings were reported by state licensed fishers operating in state territorial waters. Gill nets accounted for 40 percent of the summer flounder landed in 2012, the fourth consecutive year that gill net landings were lower than commercial hook and line landings (Table 2). The gill net landings were harvested as bycatch in gill nets targeting weakfish and striped bass during the months of March and April. Commercial hook and line fishers were required to adhere to the recreational management measures during 2012, but accounted for 60% of landings.

Based on estimates from the Marine Recreational Information Program (MRIP), the number of summer flounder harvested (A+B1) by Delaware recreational anglers in 2012 was 41,176 (Table 3), well under Delaware's recreational quota of 87,536 summer flounder. The 2012 recreational summer flounder regulations were a minimum size limit of 18 inches, a 4 fish creel limit, and a closed season of October 23 to December 31.

#### IV Planned Management Programs for 2013

A 17 inch minimum size limit, four fish creel, and no closed season will apply to both recreational and commercial hook and line fishers in 2013. All other regulations remain in place and no changes are anticipated for the remainder of the 2013 season.

Table 1. Delaware Commercial summer flounder landing 1990 -2012.

<b>YEAR</b>	<b>LANDINGS (LBS)</b>
1990	1,930
1991	4,453
1992	12,791
1993	7,602
1994	4,246
1995	4,263
1996	7,887
1997	4,370
1998	11,205
1999	7,482
2000	11,549
2001	7,484
2002	2,731
2003	5,522
2004	7,486
2005	5,559
2006	4,383
2007	5,258
2008	1,567
2009	2,909
2010	1,858
2011	837
2012	677

Table 2. Delaware commercial summer flounder landings by gear types 1990 – 2012.

<b>YEAR</b>	<b>GILL NETS</b>	<b>HOOK &amp; LINE</b>	<b>FYKE NETS</b>	<b>FISH POT</b>	<b>TOTAL</b>
1990	1,306	624			1,930
1991	3,447	850	156		4,453
1992	7,295	5,482	14		12,791
1993	5,476	2,079	47		7,602
1994	3,691	555			4,246
1995	1,357	2,899	7		4,263
1996	3,986	3,776		125	7,887
1997	2,780	1,590			4,370
1998	8,586	2,558		61	11,205
1999	4,924	1,366	1,192		7,482
2000	7,971	3,578			11,549
2001	5,713	1,564		207	7,484
2002	1,252	1,479			2,731
2003	3,858	1,657	4	3	5,522
2004	6,595	846	45		7,486
2005	4,731	868			5,599
2006	3,048	1,277		58	4,383
2007	4,139	934		185	5,258
2008	1015	496		56	1,567
2009	958	1,948		3	2,909
2010	853	1,005			1,858
2011	282	555			837
2012	274	403			677

Table 3. Delaware recreational estimates of the number of summer flounder landed (A+B1), 1990 – 2012.

<b>YEAR</b>	<b>LANDINGS</b>
1990	135,329
1991	174,089
1992	285,181
1993	366,793
1994	229,646
1995	104,930
1996	514,071
1997	201,443
1998	218,933
1999	292,647
2000	321,009
2001	145,289
2002	105,991
2003	102,963
2004	121,647
2005	81,863
2006	107,445
2007	109,905
2008	32,953
2009	92,309
2010	72,102
2011	66,820
2012	41,176

**Maryland's 2012 Summer Flounder (*Paralichthys dentatus*) Compliance Report  
to the Atlantic States Marine Fisheries Commission**  
Prepared for ASMFC

by:

Steve Doctor

Maryland Department of Natural Resources  
Fisheries Service  
Estuarine and Marine Fisheries Division

June 2013

## **I. Introduction**

According to the 2012 assessment the summer flounder stock was not overfished and overfishing was not occurring in 2011 relative to the biological reference points established in the 2008 SAW 47 assessment. The fishing mortality rate (F) was estimated to be 0.241 in 2011, below the fishing mortality threshold reference point =  $FMSY = F35\% = 0.310$ . Spawning Stock Biomass (SSB) was estimated to be 57.020 metric tons (mt) = 125.708 million lbs in 2011, below the biomass target reference point =  $SSBMSY = SSB35\% = 60,074 \text{ mt} = 132.440 \text{ million lbs}$ . The summer flounder stock reached the biomass target in 2010 and is considered rebuilt (Terciero 2012).

Summer flounder are managed as one stock extending from North Carolina to Maine. Since 1980, 70% of the coastal commercial landings have come from the Exclusive Economic Zone (EEZ). Large variability in landings has occurred within and among the states and over time. Maryland's share of the coastal commercial quota is 2.04%. Maryland's share of the coastal recreational quota is 2.9%. The recreational fishery is actively pursued in the Atlantic Ocean and both the coastal back bays and, to a lesser extent, in the Chesapeake Bay.

Summer flounder occupy Maryland waters where the salinity is greater than 10 parts per thousand. This includes the Maryland Coastal Bays, near shore Atlantic Ocean, and the Chesapeake Bay south of the Bay Bridge.

## **II. Request for *De Minimis***

No de minimis status is requested.

## **III. Previous Year's Fishery and Management Program**

### **A. Fishery Dependent Monitoring**

Summer flounder were measured on commercial trawlers fishing in the near-shore Atlantic waters. From all the trips combined, a total of 79 Summer Flounder were measured. (Figure 1.).

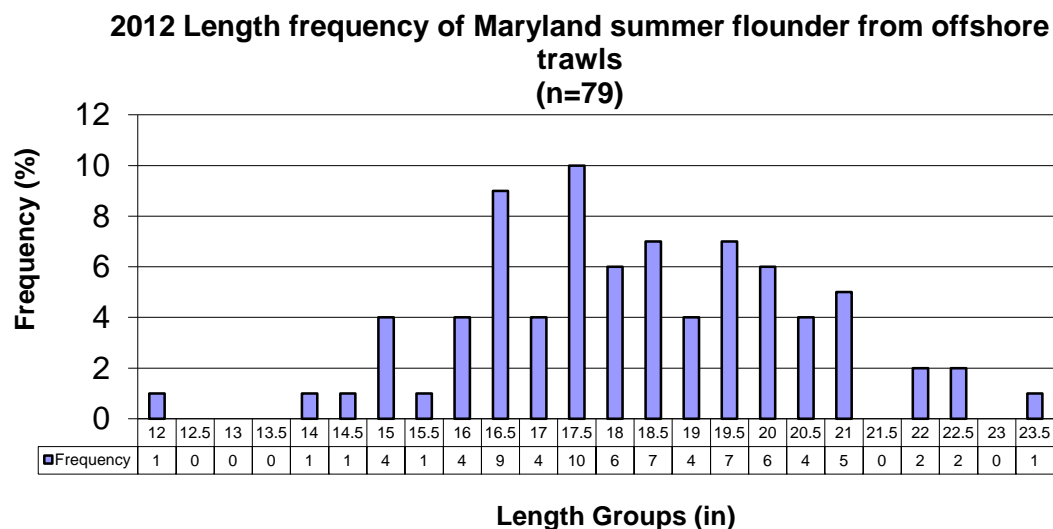


Figure 1. Summer Flounder (*Paralichthys dentatus*) Length Frequency from Commercial Offshore Trawls Sub-sampled by the Maryland Department of Natural Resources between June and October 2012 n=79. Data are derived from five trawl trips taken at different water depths.

### B. Fishery Independent Monitoring

Maryland has conducted a juvenile finfish trawl and beach seine survey in the Coastal Bays since 1972. Beginning in 1989, the Coastal Bays Fisheries Investigation Trawl and Beach Seine Survey was performed following a standardized sampling protocol. Analyses presented in this report from that survey were from 1989 forward.

In 2012, summer flounder were collected in 91 of 140 trawls (65.0%) and 19 of 38 seines (50.0%). A total of 400 summer flounder were collected in trawl (353 fish) and beach seine (47 fish) samples conducted on Maryland’s Coastal Bays in 2012. Summer flounder ranked 7<sup>th</sup> out of 71 species in overall finfish abundance. The trawl and beach seine CPUEs were 20.1 fish/hectare and 1.2 fish/haul, respectively.

GM indices of relative abundance were calculated and compared with the 1989-2012 time series grand mean. The point estimate of the time series grand mean was used as an indicator of central tendency of abundance, against which the 95% CIs of the GM indices of relative abundance were compared. The 2012 trawl index and the beach seine index were both equal to the grand mean (Figures 2 and 3, respectively).

## Summer Flounder Trawl Index Maryland Costal Bays

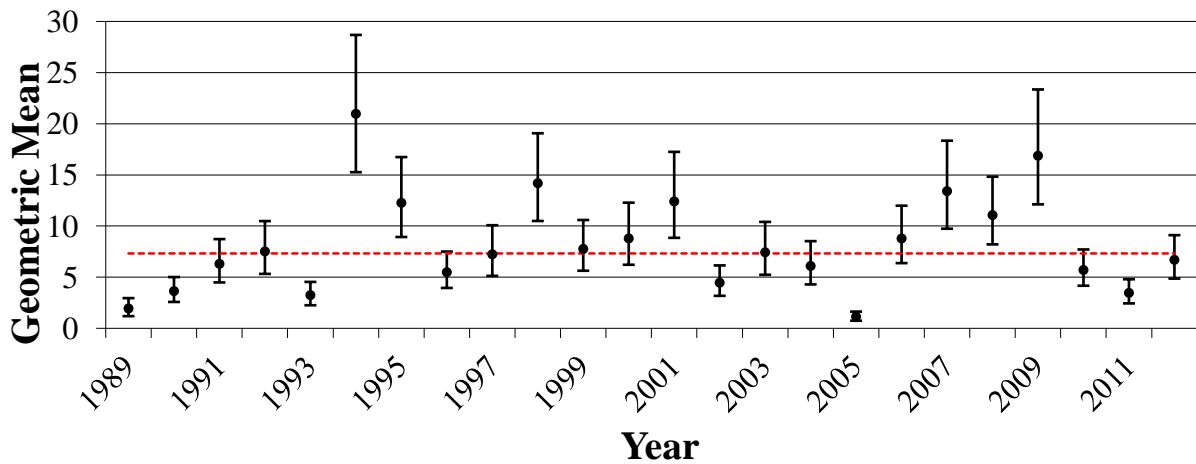


Figure 2. Summer flounder trawl index of relative abundance (geometric mean) with 95% confidence intervals (1989-2012). Protocols of the Coastal Bays Fishery Investigation Trawl and Beach Seine Survey were standardized in 1989 (n=140/year).

## Summer Flounder Seine Index Maryland Coastal Bays

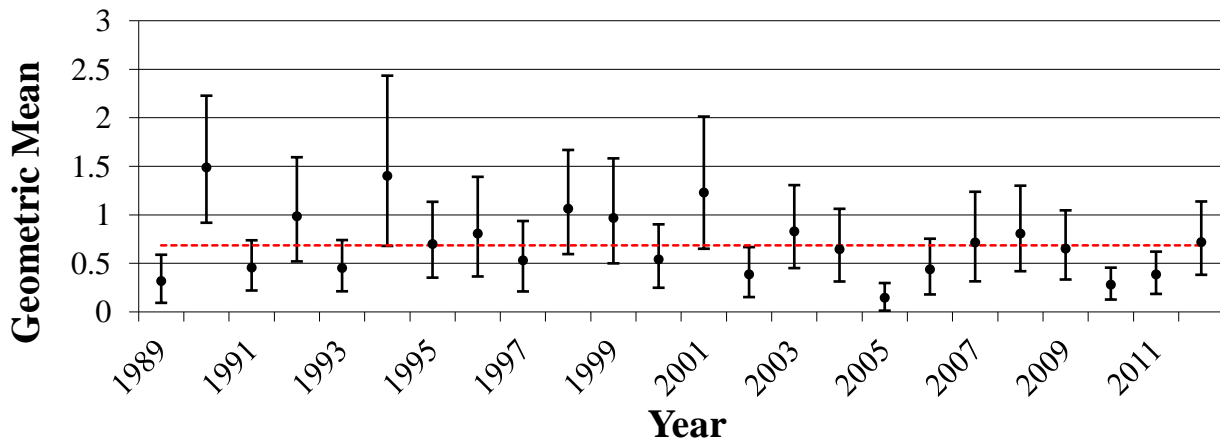


Figure 3. Summer flounder beach seine index of relative abundance (geometric mean) with 95% confidence intervals (1989-2012). Dotted line represents the 1989-2012 time series grand mean. Protocols of the Coastal Bays Fishery Investigation Trawl and Beach Seine Survey were standardized in 1989 (n=38/year).



## C. Regulations

The Code of Maryland Regulations (COMAR) pertaining to summer flounder (section 08.02.05.12) were reorganized and edited for consistency with our other commercial permits late in 2012. Before October 29, 2012, the regulations were as follows:

### A. Recreational Fishery.

- (1) Minimum Size. An individual may not catch or possess summer flounder less than:
  - (a) 17.0 inches total length in the Atlantic Ocean, its coastal bays, and their tributaries; and in the Chesapeake Bay and its tidal tributaries.
- (2) Catch Limits. An individual may not catch or possess more than three summer flounder per day in the Atlantic Ocean and coastal bays, and in the Chesapeake Bay and its tidal tributaries.
- (3) The recreational season was open from April 14<sup>th</sup> through December 16<sup>th</sup>.

### B. Commercial Fishery.

- (1) Quotas.
  - (a) The annual commercial quota for Maryland is established by the National Marine Fisheries Service and the Atlantic States Marine Fisheries Commission.
  - (b) The annual commercial quota is divided into an allocation for:
    - (i) The Atlantic Ocean, its coastal bays, and their tributaries;
    - (ii) The Chesapeake Bay and its tidal tributaries;
    - (iii) The Potomac river; and
    - (iv) The harvest of summer flounder provided for in §B(3)(a) and (4) of this regulation.
  - (c) The annual commercial quota and allocations are subject to downward adjustment action if there are overages in the previous year's landings.
  - (d) Ten percent of the allocation for the Atlantic Ocean, its coastal bays, and their tributaries may be set aside to provide for the possible downward quota adjustment.
  - (e) Equal individual allocations shall be established for the portion of the annual commercial quota provided for in §B(1)(b)(i) of this regulation and allocated by permit to an individual that meets the requirements set forth in §C(5) of this regulation.
  - (f) An individual licensed to catch fish for commercial purposes who is in possession of a Maryland summer flounder landing permit in accordance with §C of this regulation and lands more than the assigned permit allocation shall have the overage deducted from the permit allocation for the following year.
- (2) Minimum Size. An individual licensed to catch fish for commercial purposes may not catch or possess a summer flounder less than:
  - (a) The size limit set forth in §A(1) of this regulation if caught by hook and line; or
  - (b) 14 inches total length if caught by gear other than hook and line.
- (3) Daily Catch Limits. An individual licensed to catch fish for commercial purposes may not catch, possess, or land more than:
  - (a) 100 pounds of summer flounder per day from the Atlantic Ocean, its coastal bays, and their tributaries unless in possession of a Maryland summer flounder landing permit; and

- (b) 50 pounds of summer flounder per day from the Chesapeake Bay and its tidal tributaries.
- (4) An individual licensed to catch fish for commercial purposes may not:
  - (a) Transfer summer flounder from one vessel to another vessel; or
  - (b) Land more than 5 percent by:
    - (i) Number of summer flounder under 14 inches as part of the daily limit for flounder caught by gear other than hook and line; or
    - (ii) Weight of summer flounder in excess of the daily catch limits established in §B(3) of this regulation.
- (5) Reporting Requirements.
  - (a) Summer flounder harvested for commercial purposes from Maryland waters of the Atlantic Ocean or from the waters of the Exclusive Economic Zone (EEZ) and landed in Maryland shall be sold to a dealer with a federal permit.
  - (b) A dealer shall transmit information weekly, or as requested, on each summer flounder transaction through the Department-approved reporting system.

### C. Licenses and Permits.

- (1) The owner or operator of a vessel which is used to catch, possess, or land summer flounder for commercial purposes shall be licensed to fish for commercial purposes in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland.
- (2) A vessel which is used to catch, possess, or land summer flounder for commercial purposes from the waters of the Exclusive Economic Zone (EEZ) of the Atlantic Ocean shall have a permit from the National Marine Fisheries Service.
- (3) A vessel declared on a summer flounder landing permit may be operated by an individual other than the owner of that vessel if the individual is in possession of the summer flounder landing permit.
- (4) A permittee may catch, possess, or land summer flounder for commercial purposes on a vessel other than the vessel declared on the permittee's permit if in possession of the permit issued to the permittee, and the undeclared vessel is permitted by the National Marine Fisheries Service.
- (5) Summer Flounder Landing Permit.
  - (a) An owner of a vessel with a permit from the National Marine Fisheries Service may obtain a Maryland summer flounder landing permit if the vessel or owner:
    - (i) Meets the requirements set forth in §C(1) and (2) of this regulation;
    - (ii) Landed in the State at least 25,000 pounds of summer flounder in a year for at least 2 years of the period 1998—2003;
    - (iii) Held a Maryland summer flounder landing permit for at least 1 year during the period 1998—2003; and
    - (iv) Provides proof of eligibility to the Department.
  - (b) An eligible permittee shall declare a vessel owned by the permittee to which the summer flounder landing permit will be assigned annually. The federally registered name of a vessel with a permit or the State registration numbers shall be indicated at the time of application for the permit.
  - (c) A declared vessel may only be changed for reasons of extreme hardship documented to the Department.

(d) Proof of eligibility for a Maryland summer flounder landing permit as required in §C(5)(a) of this regulation may be documented by records of the Department or records of the National Marine Fisheries Service.

(6) Permanent Transfer of a Landing Permit. The Department may approve the permanent transfer of a Maryland summer flounder landing permit to an individual who:

(a) Meets all of the requirements set forth in §C(1) and (2) of this regulation;

(b) Is not currently a permit holder;

(c) Has not held a Maryland summer flounder landing permit for the prior 2 calendar years; and

(d) Meets one of the following conditions:

(i) Is the permittee's spouse, daughter, son, stepchild, grandchild, stepgrandchild, parent, sister, brother, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, or brother-in-law;

(ii) Upon death of the permittee, has been designated as an authorized representative of the permittee;

(iii) Has purchased a vessel with a federal permit used for commercial fishing from the Maryland permit holder, or

(iv) Provides a notarized bill of sale for the purchase of equipment and assets with a minimum value of \$2,000 and the commercial fishing business from the permit holder.

(7) An individual in possession of a Maryland summer flounder landing permit shall record the harvest of summer flounder on the permit daily.

#### D. Gear Restrictions.

(1) A person who catches summer flounder for commercial purposes may not use a trawl net with stretched mesh size of less than 6 inches square or 5 1/2 inches diamond applied throughout the net, including the body, extensions, and cod end.

(2) For the purposes of measuring the required mesh sizes, at least 20 meshes shall be measured, of which:

(a) At least 12 meshes shall measure the minimum size or larger; and

(b) The remaining meshes may not measure more than 1/4 inch less than the minimum mesh size.

#### E. General.

(1) The Secretary may modify catch limits, quotas, or open or close a season by publishing notice in a daily newspaper of general circulation at least 48 hours in advance, stating the effective hour and date.

(2) The Secretary shall make reasonable effort to disseminate public notice through various other media so that an affected person has reasonable opportunity to be informed.

(3) The Department shall make a reasonable effort to modify quotas to ensure that the Maryland portion of the coast-wide quota is harvested and not exceeded.

(4) An individual who catches or lands summer flounder in Maryland shall report catch and landing information daily on the forms provided by the Department.

(5) An individual shall return the forms containing catch and landing information to the Department in the time period specified by the Department

On October 29, 2012, the following regulations became effective (please note no changes were made to the recreational regulations):

B. Commercial Fishery.

(1) Quotas.

(a) The annual commercial quota for Maryland is established by the National Marine Fisheries Service and the Atlantic States Marine Fisheries Commission.

(b) The annual commercial quota is divided into an allocation for:

(i) The Atlantic Ocean, its coastal bays, and their tributaries;

(ii) The Chesapeake Bay and its tidal tributaries;

(iii) The Potomac river; and

(iv) The harvest of summer flounder provided for in §B(3)(a) and

(4) of this regulation.

(c) The annual commercial quota and allocations are subject to downward adjustment action if there are overages in the previous year's landings.

(d) Equal individual allocations shall be established for the portion of the annual commercial quota provided for in §B(1)(b)(i) of this regulation and allocated by permit to an individual that meets the requirements set forth in §C(5) of this regulation.

(e) An individual who possesses a Maryland summer flounder landing permit in accordance with §C of this regulation and lands more than the assigned permit allocation, including any quota transfers, shall have the overage deducted from the permit allocation for the following year.

(f) A Maryland summer flounder permit holder (permittee) may annually transfer up to 100 percent of the permittee's individual quota to another permittee upon notification of and approval by the Department. However, an individual may not hold more than 29 percent of the allocation for the total fishery.

(2) Minimum Size. An individual licensed to catch fish for commercial purposes may not catch or possess a summer flounder less than:

(a) The size limit set forth in §A(1) of this regulation if caught by hook and line; or

(b) 14 inches total length if caught by gear other than hook and line.

(3) Daily Catch Limits. An individual licensed to catch fish for commercial purposes may not catch, possess, or land more than:

(a) 100 pounds of summer flounder per day from the Atlantic Ocean, its coastal bays, and their tributaries unless in possession of a Maryland summer flounder landing permit; and

(b) 50 pounds of summer flounder per day from the Chesapeake Bay and its tidal tributaries.

(4) An individual licensed to catch fish for commercial purposes may not:

(a) Transfer summer flounder from one vessel to another vessel; or

(b) Land more than 5 percent by:

(i) Number of summer flounder under 14 inches as part of the daily limit for flounder caught by gear other than hook and line; or

(ii) Weight of summer flounder in excess of the daily catch limits established in §B(3) of this regulation.

(5) Summer flounder harvested for commercial purposes from Maryland waters of the Atlantic Ocean or from the waters of the Exclusive Economic Zone (EEZ) and landed in Maryland shall be sold to a dealer with a federal permit.

C. Licenses and Permits.

(1) A person shall be licensed to fish for commercial purposes in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, in order to catch, possess, or land summer flounder.

(2) A vessel which is used to catch, possess, or land summer flounder for commercial purposes from the waters of the Exclusive Economic Zone (EEZ) of the Atlantic Ocean shall be permitted by the National Marine Fisheries Service in accordance with 50 CFR §648.4.

(3) A permittee may catch, possess, or land summer flounder for commercial purposes on a vessel other than the vessel declared on the permittee's permit if in possession of the permit issued to the permittee, and the undeclared vessel is permitted by the National Marine Fisheries Service.

(4) Declaration.

(a) Tidal fish licensees shall declare their intent to fish for summer flounder by August 31 of each year.

(b) A tidal fish licensee who has not declared by August 31 of the current year, and who has not declared by the August 31 deadline in any of the 3 preceding years, may apply until September 14 of the current year, or the next business day if September 14 occurs on a weekend, to the Director of Fisheries Service provided the licensee shows good reason why the application should be processed.

(c) An exception to the September 14 deadline will be considered only for an individual who can provide satisfactory documentation of a physical or mental incapacity that prevented that individual from meeting the declaration time period established in this subsection.

(d) The federally registered name or the State registration numbers of the permitted vessels owned by the permittee shall be indicated at the time of application for the permit and declared on the Maryland summer flounder landing permit.

(e) Any change in vessel ownership shall be reported to the Department so that a revised permit card may be issued.

(5) Summer Flounder Landing Permit.

(a) No more than seven summer flounder landing permits may be issued by the Department. The number of summer flounder landing permits is based on the reported catch and landing records of summer flounder in Maryland during 1998—2003.

(b) The Department may issue a permit to catch and land summer flounder in Maryland to a person who is licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, owns or has a share of ownership in a federally permitted vessel, and:

(i) Declared or was eligible to declare, in the previous year, an intent to fish for summer flounder in accordance with §C(4) of this

regulation in the previous year and has not transferred the permit;  
or

(ii) Received a summer flounder landing permit through a permanent business transfer in accordance with §C(7) of this regulation.

(6) Operators.

(a) An operator means an individual who is not a permittee and acts as an agent of a permittee.

(b) The name of the vessel on which the operator is working shall be declared on the Maryland summer flounder landing permit.

(c) An operator may catch, possess, or land summer flounder for commercial purposes on a vessel owned by a permittee if they are in possession of that permittee's permit.

(7) Permanent Transfer of a Landing Permit. The Department may approve the permanent transfer of a Maryland summer flounder landing permit to an individual who applies to the Department requesting the transfer on forms provided by the Department.

(8) Temporary transfers of summer flounder landing permits are not permitted.

(9) Regardless of the number of authorized individuals with Maryland summer flounder landing permits on board any one federally permitted vessel, no more than two summer flounder quotas may be fished from one vessel per trip.

D. Gear Restrictions.

(1) A person who catches summer flounder for commercial purposes may not use a trawl net with stretched mesh size of less than 6 inches square or 5-1/2 inches diamond applied throughout the net, including the body, extensions, and cod end.

(2) For the purposes of measuring the required mesh sizes, at least 20 meshes shall be measured, of which:

(a) At least 12 meshes shall measure the minimum size or larger; and

(b) The remaining meshes may not measure more than 1/4 inch less than the minimum mesh size.

E. Reporting and Penalties.

(1) In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland, an individual in possession of a Maryland summer flounder landing permit shall record the harvest of summer flounder on the permit daily and submit the completed permit to the Department within 14 days from the end of the summer flounder season.

(2) A dealer shall transmit information weekly, or as requested, on each summer flounder transaction through the Department-approved reporting system.

(3) The Department may withhold quota allocation for a summer flounder landing permit for failing to comply with §E(1) of this regulation during the previous season.

(4) The Department may deny an application for a summer flounder landing permit for failing to comply with §E(1) of this regulation during the previous season.

F. General.

(1) The Secretary may modify catch limits, size limits, quotas, or open or close a season in order to comply with species management through the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Summer

Flounder, by publishing notice on the Fisheries Service website at least 48 hours in advance, stating the effective hour and date.

(2) The Secretary shall make reasonable effort to disseminate public notice through various other media so that an affected person has reasonable opportunity to be informed.

(3) The Department shall make a reasonable effort to modify quotas to ensure that the Maryland portion of the coast-wide quota is harvested and not exceeded.

#### **D. Harvest by Gear Type**

##### **1. Commercial Landings**

Maryland allocates portions of their commercial quota to the Atlantic coastal waters, the Chesapeake Bay, and the Potomac River. The Potomac River quota is set aside from both Maryland and Virginia state quotas by agreement. The quota for Maryland in 2012 was 267,856 pounds. The Maryland commercial harvest in 2012 was 139,824 pounds (accessed May 22, 2013, National Marine Fisheries Service, Fisheries Statistics and Economics Division, Personal communication). NMFS data are confidential.

Maryland established individual fishing quotas for the Atlantic coastal waters including the Coastal Bays, and their tributaries. The individual fishing quota system assigns a specific quota per fisherman and allows fishermen to plan and manage the fishing business for best economic yield. In 2012 there were seven summer flounder harvesters permitted in Maryland. There is additional Maryland quota not allocated to IFQs to allow for some minimal bycatch on the coast and in the Chesapeake Bay.

##### **2. Recreational Landings**

The 2012 recreational catch of summer flounder was estimated at 21,267 fish (PSE 33.6) with an estimated combined weight of 58,222 pounds (accessed May 22, 2013, National Marine Fisheries Service, Fisheries Statistics and Economics Division, Personal communication).

#### **E. Progress in Implementing Habitat Recommendations**

There were no habitat recommendations in the plan.

#### **IV. Planned Management for 2013**

##### **A. Summary of Regulations that will be in Effect**

The Code of Maryland Regulations (COMAR) pertaining to summer flounder (section 08.02.05.12) are online at URL: <http://www.dsd.state.md.us/comar/08/08.02.05.12.htm>

<http://www.dsd.state.md.us/comar/comarhtml/08/08.02.05.12.htm>

Recreational management measures for Maryland in 2013 include a 16.0 inch minimum size with a four fish creel limit on the Atlantic coast and in the Chesapeake Bay, and open season from March 28<sup>th</sup> to December 31<sup>st</sup>.

Regulations were proposed in 2013 that remove the specific minimum size, season, and creel language from the regulation and replace it with authority to set those specifications through our public notice process. Currently, the Department issues a public notice after the management decision has been approved and then submits both emergency and proposed regulations with the limits specified in the public notice. There is a time period when the restrictions in the regulation and public notice are different and it can be confusing (regulation says one thing and the public notice something different). Those proposed regulations are expected to be withdrawn due to legislative concerns. A new regulatory process is expected to begin in 2013 that would not include authority to modify seasons, size, or creel by public notice, though we do not have the details of those changes at this time.

#### **B. Summary of Monitoring Programs that will be in Effect**

Maryland will continue monitoring the abundance and obtain measurements of summer flounder from the CBFITrawl and Beach Seine Survey and the MVASFS in 2012.

#### **C. Highlights of Changes from the Previous Year**

Changes to minimum sizes and creel limits were necessary for compliance with regulatory requirements. All regulation changes are outlined in the section labeled, Summary of Regulations that will be in effect.

#### **V. Plan Specific Requirements**

Not Applicable

#### **VI. Law Enforcement Requirements**

Not Applicable

#### **References**

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# COMMONWEALTH of VIRGINIA

*Marine Resources Commission*

*2600 Washington Avenue*

*Third Floor*

*Newport News, Virginia 23607*

Douglas W. Domenech  
Secretary of Natural Resources

Jack G. Travelstead  
Commissioner

June 1, 2013

## MEMORANDUM

TO: Kirby Rootes-Murdy, Summer Flounder Fisheries Management Plan Coordinator  
Atlantic States Marine Fisheries Commission

FROM: Allison Watts, Fisheries Management Division  
Virginia Marine Resources Commission

SUBJECT: Virginia's 2012 Compliance Report for Summer Flounder

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### I. Introduction

Virginia's 2012 initial allocation of commercial quota was 2,800,170 pounds of summer flounder. After quota transfers from North Carolina, the final 2012 commercial quota was 4,704,093 pounds. The preliminary estimate for total 2012 commercial landings of summer flounder in Virginia is 4,111,708 pounds.

Virginia's target recreational landings decreased in 2012 relative to 2011. The Marine Recreational Fisheries Statistics Survey (MRIP) 2012 summer flounder landings estimate of 259,183 fish was under the 2012 target of 466,000 fish.

### II. Request for *de minimis*, where applicable

N/A

### **III. Previous calendar year's fishery and management program**

#### **A. Activity and results of fishery-dependent monitoring (provide general results and references to technical documentation).**

##### **1. Commercial**

The Virginia Marine Resources Commission (VMRC) Biological Sampling Program collects biological data from Virginia's commercial and recreational fisheries. A total of 6,558 lengths and weights were taken from summer flounder sampled from Virginia's commercial and recreational fisheries (Table 1). The majority of samples are taken from commercially-harvested fish; of the 6,558 summer flounder sampled for lengths and weights, 27 were caught recreationally. Sampled fish ranged from 12 to 30 inches total length (Figure 1). There were 817 scale samples and 355 otoliths (paired samples) collected and processed for ageing, and all aged fish were commercially harvested except for two. Based on the scale and otolith samples, the ages of summer flounder sampled from the commercial fisheries ranged from 1 to 13 years (Table 2).

##### **2. Recreational**

###### Virginia Game Fish Tagging Program

The Virginia Game Fish Tagging Program (VGFTP)—a cooperative project of the VMRC Saltwater Fishing Tournament Program and the Virginia Institute of Marine Science's (VIMS) Sea Grant Marine Advisory Program—was initiated in 1995 to enhance data collection of selected species using recreational anglers, and to educate anglers. The program's primary funding source is revenue from Virginia's saltwater recreational fishing license sales. The VGFTP added summer flounder as a target species in 2000. Since then, over 72,030 summer flounder have been tagged and 7,540 have been recaptured. In 2012, 1,772 summer flounder were tagged and 98 were recaptured. Summer flounder have shown consistent patterns of within-year site fidelity to structure-oriented habitat based on results from the tagging program.

###### Virginia Saltwater Fisherman's Journal

In the summer of 2007, the VMRC introduced the Virginia Saltwater Fisherman's Journal, a voluntary online reporting system for recreational anglers (available at <https://www.vasaltwaterjournal.com>). Anglers can keep a record of their fishing activities including trip dates, locations, weather conditions, species caught, quantities, lengths, weights, disposition (i.e., kept or released), gears, baits, and more. The anglers can choose to make their information publicly available to other participants in the program. The data provide the VMRC anecdotal information on the distribution and sizes of recreational species in the Chesapeake Bay, and are used in management decisions regarding changes in size limits. Participating anglers shared information on 78 summer flounder caught in 2012. Forty-three of the reported summer flounder were classified as kept fish and ranged in length from 16.5 to 26 inches. The remaining 35 summer flounder were classified as released, and ranged from 9.5 to 16.5 inches in length.

### Marine Recreational Information Program Biological Sampling

The access-point angler intercept component of the MRIP program interviews anglers at public access points to collect demographic information and individual catch data. The average weight of the Type A summer flounder samples was 2.5 pounds, compared to 2.8 pounds in 2011. The sampled Type A+B1 fish ranged in length from 15 to 25 inches (Figure 2), compared to a range of 12 to 27 inches in 2011.

#### B. Activity and results of fishery-independent monitoring (provide general results and references to technical documentation).

The VIMS Juvenile Fish and Blue Crab Survey monitors the distribution and abundance of important finfish and invertebrate species occurring in the Chesapeake Bay. Young-of-year (YOY) summer flounder are typically most abundant in the VIMS survey catches from September through October. During this time, the YOY summer flounder are observed throughout the main stem of the Chesapeake Bay and the lower rivers and are rarely found in the upper rivers.

The survey data are used to develop annual indices of abundance to track trends in the relative year-class strength of targeted species. Indices are calculated as the weighted geometric average number per tow, based on time and area combinations appropriate for the species. The Random Stratified Index (RSI) is based on post-stratification of gear and/or vessel, using spatially relevant data. The 2011 RSI estimate for age-0 summer flounder (0.17) is the lowest value observed in the 24-year time series (1988-2011; Figure 3). The 2012 RSI estimate is not yet available.

#### C. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

A copy of Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder", that was in effect for 2012 is provided in Attachment I.

##### 1. Commercial

A Commercial Fisherman Registration License, or Seafood Landing License, and a Summer Flounder Endorsement License are required to land summer flounder in Virginia from federal waters. All registered commercial fishermen and holders of seafood landing licenses are required to report daily harvest from Virginia tidal and federal waters to the VMRC on a monthly basis, if not selling to a federally-permitted dealer. Any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder. All licensed seafood buyers are required to use a certified scale for determining the weight of fish, shellfish, or marine organisms that are regulated by a harvest weight limit or quota, possession weight limit, or landing weight limit.

Virginia has established a minimum size limit of 14 inches total length for summer flounder harvested by commercial gear (see Section 50 of Chapter 4 VAC 20-620-10

et seq., Attachment I). The state is allocated an annual quota, for the commercial summer flounder fishery, which is based on the state's percentage share of the coast-wide quota for the commercial sector. Virginia was allocated 2,800,170 pounds for the 2012 fishing year, based on the state's 21.32% share. Commercial harvest of summer flounder within state waters is limited to 300,000 pounds (see Section 30 of Chapter 4 VAC 20-620-10 et seq.). Of this amount, an allocation of 142,114 pounds is set aside for harvest within the Chesapeake Bay. The remainder of the state's total quota is allocated for landings harvested offshore. The offshore harvest quota was divided semi-annually in 2012. Commercial fishery vessel possession restrictions and landings limitations are detailed in Section 40 of Attachment I, which includes the allowance that vessels may possess the combined total of the Virginia landing limit and the legal North Carolina landing or trip limit.

The harvest or landing of summer flounder for commercial purposes is prohibited after the commercial harvest or landings quota has been attained and announced as such (see Section 30 of Chapter 4 VAC 20-620-10 et seq.). It is also unlawful for seafood buyers to receive summer flounder when it has been announced that the commercial harvest or landings quota has been attained.

## 2. Recreational

The state of Virginia requires a license to take or catch marine species for recreational purposes in tidal waters. Virginia maintained a minimum size limit of 16.5 inches total length and possession limit of four fish per person for the 2012 summer flounder recreational fishery. There was no closed season for the recreational fishery in 2012 (see Sections 50, 60 and 70 of Chapter 4 VAC 20-620-10 et seq., Attachment I).

## D. Harvest broken down by commercial (by gear type where applicable) and recreational, and non-harvest losses (when available).

### 1. Commercial

While the initial commercial quota was 2,800,170 pounds, additional quota (1,903,923 pounds) was transferred from North Carolina during the course of 2012 for North Carolina vessels seeking safe harbor. This was due to the continued shoaling of the Oregon Inlet Channel in North Carolina. The final 2012 commercial quota was 4,704,093 pounds, and the preliminary estimate of Virginia's 2012 commercial landings of summer flounder is 4,111,708 pounds (Table 3). As in previous years, the majority of summer flounder landed in Virginia have been harvested offshore (>3 miles) and the offshore component has been dominated by the commercial otter trawl fishery. Commercial landings from in-state harvest (including the Potomac River tributaries) totaled 140,597 pounds in 2012. The majority of the in-state commercial harvest (58%) was taken by pound nets.

2. Recreational

MRIP landings estimates of summer flounder in Virginia from 2004 to 2012 are available in Table 4. MRIP estimated 259,183 fish (656,355 pounds) were landed and 1,863,983 fish were released alive in 2012.

3. Non-harvest losses

There are currently no estimates of non-harvest losses from any fisheries for flounder in Virginia.

E. Review of progress in implementing habitat recommendations.

N/A

**IV. Planned management programs for the current calendar year**

A. Summarize regulations that will be in effect (copy of current regulations if different from III c).

A copy of Chapter 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder", that will be in effect in 2013 is provided in Attachment II.

1. Commercial

Virginia's initial harvest quota (less the RSA) for the 2013 commercial summer flounder fishery is 2,438,592 pounds. The offshore harvest quota will be divided among two sub-periods as in previous years; however, the landing limit was increased to 12,500 pounds for the first commercial sub-period that begins March 4, 2013 (see Section 40 of Attachment II). All other commercial regulations in effect in 2012 will remain in effect in 2013.

2. Recreational

The 2013 recreational landings target for Virginia was established as 417,657 summer flounder which provided Virginia the opportunity to liberalize regulations from 2012. In 2013, the recreational fishery minimum size limit was established as 16 inches total length, a half-inch decrease from 2012 regulation minimum size. The possession limit will remain four fish per person, and there will be no closed season.

B. Summarize monitoring programs that will be performed.

Commercial harvest and landings of summer flounder in Virginia will continue to be monitored through the VMRC mandatory reporting system. The VMRC will continue to collect biological samples from Virginia's commercial and recreational fisheries as part of the agency's Biological Sampling Program and Marine Sport Fish Collection Project. The MRIP intercept interview and headboat sampling records will be processed to summarize any summer flounder observed and sampled from Virginia's marine recreational fisheries in 2013. The Virginia Game Fish Tagging Program will continue to

include summer flounder as one of their target species in 2013. The Virginia Saltwater Fisherman's Journal will continue to be reviewed for reports of summer flounder.

C. Highlight any changes from the previous year.

Virginia's 2013 annual commercial quota amount decreased by 12.9% in 2013 from the amount initially allocated in 2012. Changes to the summer flounder commercial fishery management program for 2013 include commercial vessel possession restrictions. The target recreational landings will be lower in 2013 than in 2012, and the recreational minimum size limit will decrease in 2013 as well.

Table 1. Number of summer flounder length and age samples collected from Virginia's commercial and recreational fisheries by the Virginia Marine Resources Commission Biological Sampling Program, by gear (2012).

Gear	Number of lengths	Number of ages (scales/otoliths)
Trawl	5,623	461
Pound net	642	205
Hook and line	220	136
Gill net	63	13
Haul seine	8	0
Crab pot	2	2
Total	6,558	817

Table 2. Age-frequency distributions of summer flounder samples collected from Virginia's commercial and recreational fisheries by the Virginia Marine Resources Commission Biological Sampling Program, from scale ages (2012).

Age	Frequency of age
1	45
2	159
3	210
4	148
5	109
6	58
7	25
8	38
9	10
10	10
11	3
12	1
13	1
Total	817



Table 3. Virginia's annual commercial landings (pounds) of summer flounder harvested from state and federal waters, by gear (2012).

<b>Gear</b>	<b>Pounds</b>
Trawl	2,913,208
Dredge	516,270
Other	417,945
Pots	96,869
Pound net	80,249
Hook and line	37,727
Gill net	27,830
Haul Seine	21,611
<b>Total*</b>	<b>4,111,708</b>

\*2012 data are preliminary

Table 4. Virginia recreational summer flounder harvest and release estimates from the Marine Recreational Information Program (2004 through 2012).

Year	Harvest	Harvest	Released Alive
	(pounds) Type A+B1	(numbers) Type A+B1	(numbers) Type B2
2004	1,733,542	674,552	3,696,609
2005	1,731,178	684,272	2,509,013
2006	1,971,754	762,597	2,164,118
2007	1,309,310	397,041	3,023,421
2008	922,568	260,221	2,424,687
2009	911,592	289,075	3,613,064
2010	788,592	260,050	2,419,838
2011	881,285	317,674	1,986,983
2012	656,355	259,183	856,066

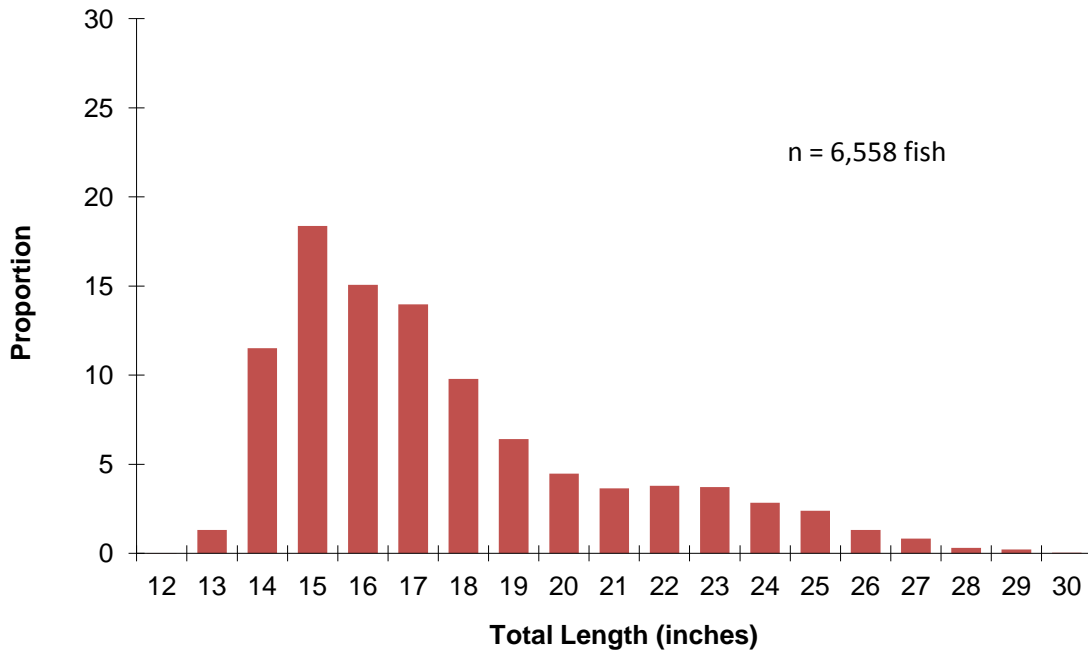


Figure 1. Length-frequency distributions of summer flounder samples collected from Virginia’s 2012 commercial and recreational fisheries by the VMRC Biological Sampling Program.

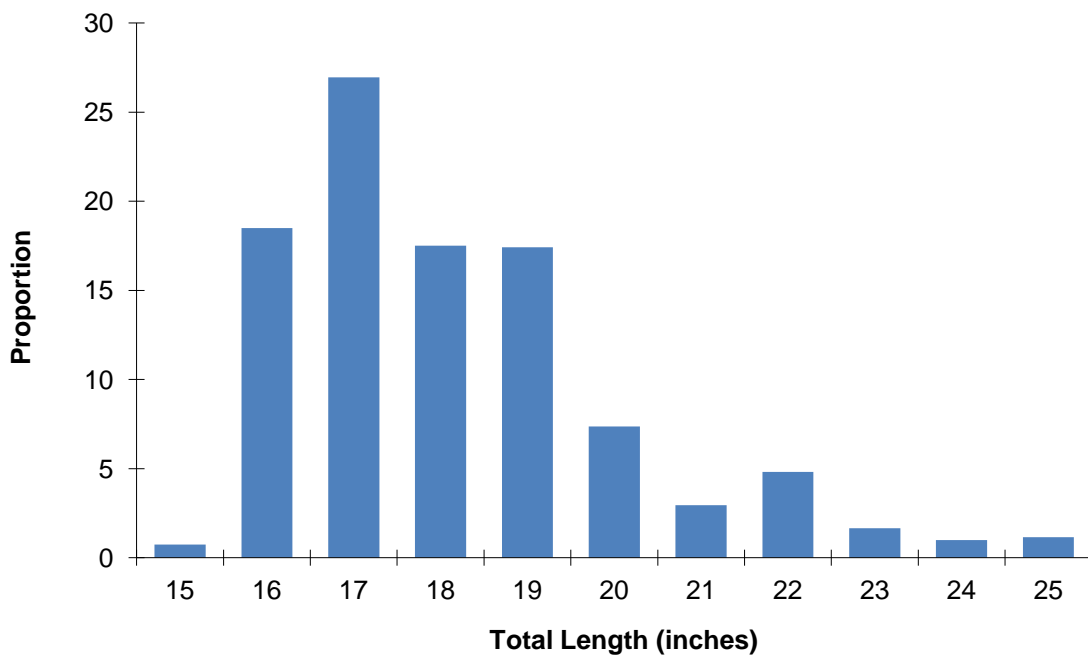


Figure 2. Length-frequency distributions of summer flounder samples collected from Virginia’s 2012 recreational fishery by the Marine Recreational Information Program.

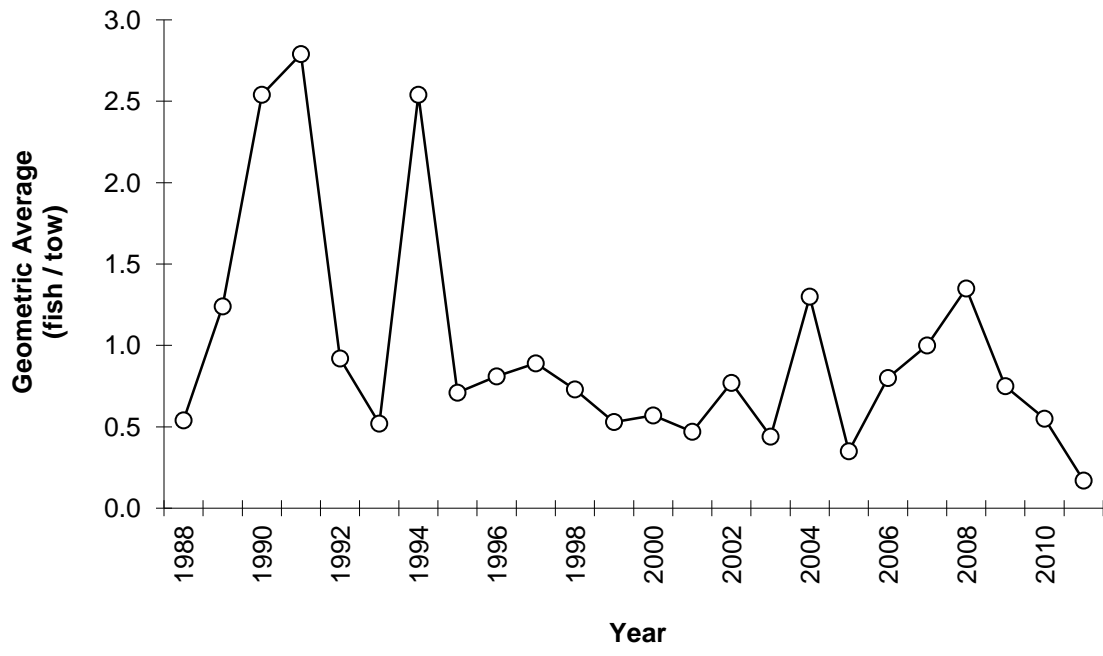


Figure 3. Annual Random Stratified Index (RSI) of juvenile summer flounder relative abundance based on the VIMS Juvenile Trawl Survey (1988 through 2011).

**Attachment I.** Copy of the Virginia Marine Resources Commission's regulations for summer flounder fisheries that were in effect in 2012.

**VIRGINIA MARINE RESOURCES COMMISSION  
"PERTAINING TO SUMMER FLOUNDER"  
CHAPTER 4 VAC 20-620-10 ET SEQ.**

**PREAMBLE**

This chapter establishes limitations on the commercial and recreational harvest of Summer Flounder in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of Summer Flounder. The limitations include a commercial harvest quota and possession limits, minimum size limits, and a recreational possession and season limit.

This chapter is promulgated pursuant to the authority contained in §§28.2-201, and 28.2-204 of the Code of Virginia and amends and re-adopts, as amended, previous Chapter 4VAC20-620-10 et seq. which was promulgated February 28, 2012 and made effective on March 1, 2012. The effective date of this chapter, as amended, is March 29, 2012.

**4VAC20-620-10. Purpose.**

The purpose of this chapter is to reduce commercial and recreational fishing mortality in order to rebuild the severely depleted stocks of Summer Flounder.

**4VAC20-620-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

"Chesapeake Bay and its tributaries" means all tidal waters of Virginia, excluding the Potomac River tributaries and the coastal area as defined in this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea and all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County, including areas east of the causeway from Fisherman Island to the mainland and the City of Virginia Beach, including federal areas and state parks fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond, thence upstream to the District

of Columbia boundary.

"Safe harbor" means that a vessel has been authorized by the commissioner to enter Virginia waters from federal waters solely to either dock temporarily at a Virginia seafood buyer's place of business or traverse the Intracoastal Waterway from Virginia to North Carolina.

**4VAC20-620-30. Commercial harvest quota and allowable landings.**

A. During each calendar year, allowable commercial landings of Summer Flounder shall be limited to a quota in total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through G of this section.

B. The commercial harvest of Summer Flounder from Virginia tidal waters for each calendar year shall be limited to 300,000 pounds of the annual quota described in subsection A of this section. Of this amount, 142,114 pounds shall be set aside for Chesapeake Bay-wide harvest.

C. From the first Monday in January through the day preceding the second Monday in November allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 70.7% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From the second Monday in November through December 31, allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% of the quota, as described in subsection A of this section, after deducting the amount specified in subsection B of this section, and as may be further modified by subsection E.

E. Should landings from the first Monday in January through the day preceding the second Monday in November exceed or fall short of 70.7% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to the allowable landings as described in subsection D of this section. Should the commercial harvest specified in subsection B of this section be projected as less than 300,000 pounds, any such shortage shall be added to the allowable landings described in subsection D of this section.

F. The Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments to any allowable landings described in subsections C and D of this section. It shall be unlawful for any person to harvest or to land Summer Flounder for commercial purposes after the commercial harvest or any allowable landings as described in this section have been attained and announced as such. If any person lands Summer Flounder after the commercial harvest or any allowable landings have been attained and announced as such, the entire amount of Summer Flounder in that person's possession shall be confiscated.

G. It shall be unlawful for any buyer of seafood to receive any Summer Flounder after any

commercial harvest or landing quota as described in this section has been attained and announced as such.

**4VAC20-620-40. Commercial vessel possession and landing limitations.**

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D of this section:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the first Monday in March through the day preceding the second Monday in November, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit, described in subdivision 3, of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.
3. Land in Virginia more than 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.
4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From the second Monday in November through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit, described in subdivision 3 of this subsection, and the amount of the legal North Carolina landing limit or trip limit.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during

each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4 VAC 20-620-30 F.

E. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

F. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection I of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection I of this section.

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

H. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading

Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 9 p.m. to 7 a.m.

I. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

J. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

K. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30A, has been taken.

**4VAC20-620-45. Repealed.**

**4VAC20-620-50. Minimum size limits.**

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be 16 ½ inches, total length, except that the minimum size of Summer Flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

**4VAC20-620-60. Possession limit.**



A. It shall be unlawful for any person fishing in any tidal waters of Virginia, except the Potomac River tributaries, with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more than four Summer Flounder. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing in the Potomac River tributaries with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more Summer Flounder than the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

C. Possession of any quantity of Summer Flounder that exceeds the possession limit described in subsections A and B of this section shall be presumed to be for commercial purposes.

**4VAC20-620-70. Recreational fishing season.**

A. The recreational fishing season for any tidal waters of Virginia, except the Potomac River tributaries, shall be open year-round.

B. The recreational fishing season for the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. It shall be unlawful for any person fishing recreationally to take, catch, or possess any Summer Flounder during any closed recreational fishing season.

D. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

**4VAC20-620-75. (Repealed.)**

**4VAC20-620-80. Penalty.**

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a

Class 1 misdemeanor.

\* \* \* \* \*

**Attachment II.** Copy of the Virginia Marine Resources Commission's regulations for summer flounder fisheries that will be in effect in 2013.

**VIRGINIA MARINE RESOURCES COMMISSION  
"PERTAINING TO SUMMER FLOUNDER"  
CHAPTER 4 VAC 20-620-10 ET SEQ.**

**PREAMBLE**

This chapter establishes limitations on the commercial and recreational harvest of Summer Flounder in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of Summer Flounder. The limitations include a commercial harvest quota and possession limits, minimum size limits, and a recreational possession and season limit.

This chapter is promulgated pursuant to the authority contained in §§28.2-201, and 28.2-204 of the Code of Virginia and amends and re-adopts, as amended, previous Chapter 4VAC20-620-10 et seq. which was promulgated March 27, 2012 and made effective on March 29, 2012. The effective date of this chapter, as amended, is March 1, 2013.

**4VAC20-620-10. Purpose.**

The purpose of this chapter is to reduce commercial and recreational fishing mortality in order to rebuild the severely depleted stocks of Summer Flounder.

**4VAC20-620-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

"Chesapeake Bay and its tributaries" means all tidal waters of Virginia, excluding the Potomac River tributaries and the coastal area as defined in this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea and all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County, including areas east of the causeway from Fisherman Island to the mainland and the City of Virginia Beach, including federal areas and state parks fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond, thence upstream to the District of Columbia boundary.

"Safe harbor" means that a vessel has been authorized by the commissioner to enter Virginia waters from federal waters solely to either dock temporarily at a Virginia seafood buyer's place of business or traverse the Intracoastal Waterway from Virginia to North Carolina.

4VAC20-620-30. Commercial harvest quota and allowable landings.

A. During each calendar year, allowable commercial landings of Summer Flounder shall be limited to a quota in total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through G of this section.

B. The commercial harvest of Summer Flounder from Virginia tidal waters for each calendar year shall be limited to 300,000 pounds of the annual quota described in subsection A of this section. Of this amount, 142,114 pounds shall be set aside for Chesapeake Bay-wide harvest.

C. From the first Monday in January through the day preceding the second Monday in November allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 70.7% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From the second Monday in November through December 31, allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% of the quota, as described in subsection A of this section, after deducting the amount specified in subsection B of this section, and as may be further modified by subsection E.

E. Should landings from the first Monday in January through the day preceding the second Monday in November exceed or fall short of 70.7% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to the allowable landings as described in subsection D of this section. Should the commercial harvest specified in subsection B of this section be projected as less than 300,000 pounds, any such shortage shall be added to the allowable landings described in subsection D of this section.

F. The Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments to any allowable landings described in subsections C and D of this section. It shall be unlawful for any person to harvest or to land Summer Flounder for commercial purposes after the commercial harvest or any allowable landings as described in this section have been attained and announced as such. If any person lands Summer Flounder after the commercial harvest or any allowable landings have been attained and announced as such, the entire amount of Summer Flounder in that person's possession shall be confiscated.

G. It shall be unlawful for any buyer of seafood to receive any Summer Flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D of this section:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the first Monday in March through the day preceding the second Monday in November, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.
3. Land in Virginia more than 12,500 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.
4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From the second Monday in November through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4 VAC 20-620-30 F.

E. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

F. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection I of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection I of this section.

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

H. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has

been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 9 p.m. to 7 a.m.

I. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

J. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

K. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30A has been taken.

**4VAC20-620-45. Repealed.**

4VAC20-620-50. Minimum size limits.

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be 16 inches, total length, except that the minimum size of Summer Flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

4VAC20-620-60. Possession limit.

A. It shall be unlawful for any person fishing in any tidal waters of Virginia, except the Potomac River tributaries, with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more than four Summer Flounder. When fishing is from a boat or vessel where

the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing in the Potomac River tributaries with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more Summer Flounder than the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

C. Possession of any quantity of Summer Flounder that exceeds the possession limit described in subsections A and B of this section shall be presumed to be for commercial purposes.

4VAC20-620-70. Recreational fishing season.

A. The recreational fishing season for any tidal waters of Virginia, except the Potomac River tributaries, shall be open year-round.

B. The recreational fishing season for the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. It shall be unlawful for any person fishing recreationally to take, catch, or possess any Summer Flounder during any closed recreational fishing season.

D. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

**4VAC20-620-75. (Repealed.)**

4VAC20-620-80. Penalty.

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

\*\*\*\*\*





MARYLAND - VIRGINIA  
"Potomac River Compact of 1958"

## Potomac River Fisheries Commission

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### **Summer Flounder** **2012 Annual State Report** June 1, 2013

#### **I. Introduction**

Summary of the year - Commercial harvest of summer flounder in the Potomac River in 2012 continued to be depressed, and was the lowest value on record for a second year in a row.

#### **II. Request *de minimis*, where applicable. – N/A**

#### **III. Previous calendar year's fishery and management program**

##### A. Fishery Dependent Monitoring

Pound nets are the primary commercial gear for summer flounder. Haul seines, hook and line, and several miscellaneous gear types can occasionally contribute to the total summer flounder harvest.

Although the PRFC does not have a separate 'state-by-state quota' under the MAFMC/ASMFC FMP, a PRFC quota is set annually under an MD/VA/PRFC agreement to allocate landings from within in-state waters. During 2012, the PRFC commercial quota was 41,843 pounds.

##### B. Fishery Independent Monitoring – None.

##### C. Regulations in effect

The minimum commercial size limit was 14 inches. The season was open January 1 through December 31, subject to daily harvest limits being imposed when 80% of the quota was landed and/or total closure if the quota was reached.

In 2011, it became mandatory for pound netters to properly install six PRFC approved fish cull panels in the sides of their pound nets. Studies have shown that sub-legal flounder are released alive when the fish cull panels are used.

The 2012 recreational and charter boat summer flounder regulations included a season of Jan. 1 through December 31, a 16.5-inch minimum size limit, and four fish per person per day creel limit.

##### D. Harvest

Summer flounder commercial harvest in 2012 was reported as 11,152 pounds, from the PRFC's mandatory commercial daily harvest reporting system. In addition to collecting harvest, the

mandatory reporting system also collects discards or releases. In 2012, a total of 32 pounds of undersize summer flounder were reported as released by commercial fishermen. The pound net fish cull panels release undersize summer flounder before the net is fished; therefore an unknown amount of small fish were released/escaped from the net and were not reported.

The pound net fishery effort is expressed as ‘PN fished days’, which is one pound net fished one time (net-days fished). The haul seine effort is expressed as “hauls” and is one-fishing of the haul seine. The term “gear days” is used to express effort for the miscellaneous gear types.

<u>Harvest (lbs.)</u>	<u>Gear</u>	<u>Effort</u>
11,015	Pound net	1196 PN fished days
100	Haul Seine	14 hauls
37	Miscellaneous	4 gear days

For the private recreational fishery, the PRFC ‘adds-on’ to the MRFSS phone survey. Results are reported and included as either MD or VA landings. Contact information is supplied to the NOAA for Hire survey for all charter boats licensed to operator in the Potomac.

**Tables and Figures:**

Table 1 shows the Potomac River commercial harvest of summer flounder from 1964 through the reporting year.

Table 2 shows the Potomac River charter boat harvest of summer flounder, and the estimated numbers and sizes of released summer flounder from 1993 through the reporting year.

Table 3 shows the Potomac River commercial pound net harvest of summer flounder from 1976 through the reporting year, including effort expressed as PN fished days and CPUE.

Figure 1 illustrates the Potomac River commercial summer flounder harvest (1964-2011).

Figure 2 illustrates the Potomac River commercial summer flounder harvest and pound net CPUE.

**IV. Planned management programs for the current calendar year**

A. Summarize regulations that will be in effect

The pound net fishery is a limited entry fishery, with a maximum of 100 licenses on a total riverwide basis. A pound net is defined as a fixed fishing device with one head, trap or pound measuring not less than 20 feet square at the surface of the water on the channel end and only one leader or hedging not less than 300 feet in length. We have no specific regulations for summer flounder, other than size limit, creel limit and quota as noted earlier

Effective January 1, 2011 – all pound nets in the Potomac River must have at least six PRFC approved fish cull panels properly installed in each pound net to help release undersize fish. These fish cull panels were being used by some pound netters on a voluntary basis prior to 2011. **As a conservation measure, PRFC fish cull panel devices may allow escapement of at least 83 percent of sublegal summer flounder.**

B. Summarize monitoring programs that will be performed  
We will continue mandatory daily harvest reports.

C. Highlight any changes from the previous year. – None

Table 1

**Potomac River Commercial Harvest (lbs) for SUMMER FLOUNDER by gear type**

YEAR	HAUL SEINE	POUND NET	FYKE NET	GILL NET	H & L	MISC.	LBS LANDED IN		TOTAL
							MARYLAND	VIRGINIA	
1964	-	-	-	-	-	41,275	18	41,257	41,275
1965	-	-	-	-	-	46,354	512	45,842	46,354
1966	-	-	-	-	-	59,883	430	59,453	59,883
1967	-	-	-	-	-	105,500	31	105,469	105,500
1968	-	-	-	-	-	83,547	340	83,207	83,547
1969	-	-	-	-	-	33,395	79	33,316	33,395
1970	-	-	-	-	-	20,496	639	19,857	20,496
1971	-	-	-	-	-	14,736	611	14,125	14,736
1972	-	-	-	-	-	23,738	870	22,868	23,738
1973	-	-	-	-	-	85,648	2,367	83,281	85,648
1974	-	-	-	-	-	46,922	1,856	46,066	47,922
1975	-	-	-	-	-	77,915	3,799	74,116	77,915
1976	-	47,513	-	-	-	1,480	1,752	47,241	48,993
1977	-	43,606	59	9	-	12	2,289	41,397	43,686
1978	-	58,616	-	23	-	537	4,356	54,820	59,176
1979	23	63,726	-	501	-	-	2,708	61,542	64,250
1980	-	76,081	-	28	-	-	4,565	71,516	76,081
1981	-	32,760	-	92	-	-	2,293	30,559	32,852
1982	40	31,710	-	57	-	-	1,193	30,614	31,807
1983	-	84,095	-	43	-	-	4,096	80,042	84,138
1984*	25	37,627	-	-	-	-	2,059	35,593	37,652
1985	16	21,710	-	50	-	-	1,502	20,274	21,776
1986	-	77,730	-	1	-	-	5,411	72,320	77,731
1987	108	118,050	-	-	111	-	11,498	106,771	118,269
1988	-	50,197	-	-	-	2	5,205	44,994	50,199
1989	-	18,414	-	-	0	-	1,659	16,755	18,414
1990	-	19,914	5	-	0	1	1,695	18,225	19,920
1991	-	27,007	2	-	0	28	1,790	25,247	27,037
1992	-	56,132	-	-	28	9	8,498	47,643	56,141
1993	-	44,611	-	-	2	-	2,577	42,034	83,547
1994	24	30,372	2	-	0	-	1,734	28,664	33,395

\* Since 1984, Summer & Winter flounder reported separately, previously combined as flounder.

Table 1 continued

**Potomac River Commercial Harvest (lbs) for SUMMER FLOUNDER by gear type**

YEAR	HAUL SEINE	POUND NET	FYKE NET	GILL NET	H & L	MISC.	LBS LANDED IN		TOTAL
							MARYLAND	VIRGINIA	
1995	-	49,973	-	-	0	-	1,494	48,479	49,973
1996	107	36,066	-	-	0	-	4,288	31,885	36,173
1997	-	38,699	61	-	0	-	3,159	35,601	38,760
1998	-	58,756	62	-	0	-	4,715	54,103	58,818
1999	-	45,467	17	-	0	-	6,114	39,370	45,484
2000	8	49,026	43	-	0	1	5,651	43,427	49,078
2001	59	30,761	1,007	-	202	-	7,140	24,913	32,053
2002	-	40,774	31	-	135	2	7,280	33,662	40,942
2003	-	28,156	31	-	-	7	7,569	20,625	28,194
2004	3	35,576	39	-	4	2	6,866	28,758	35,624
2005	-	23,249	56	-	-	3	6,549	16,759	23,308
2006	29	29,718	98	-	-	-	9,693	20,045	29,738
2007	-	22,012	47	-	1	9	7,405	14,664	22,069
2008	-	27,164	109	-	29	3	8,722	18,583	27,305
2009	27	24,719	11	-	231	-	13,387	11,601	24,988
2010	59	22,205	83	-	55	20	3,535	18,887	22,422
2011	39	11,263	45	-	5	-	2,554	8,798	11,352
2012	100	11,015	-	-	-	37	1,333	9,819	11,152

Table 2

Potomac River  
Charter Boat Summer Flounder Catches

<u>Year</u>	<u>Harvest</u>		<u>Released</u>	
	<u># Fish</u>	<u>Pounds</u>	<u># Fish</u>	<u>Avg. Size (in.)</u>
1993	150	226	170	13
1994	10	14	66	7
1995	347	358	29	11
1996	40	48	22	12
1997	22	41	5	10
1998	77	101	155	9
1999	17	26	124	14
2000	43	44	224	14
2001	30	65	503	14
2002	35	57	60	14
2003	4	8	0	0
2004	38	37	113	12

2005 through 2012 NOAA for Hire Survey

Table 3

**Potomac River Commercial Summer Flounder Pound Net Harvest**

<u>Year</u>	<u>Pounds</u>	<u>Effort</u>	<u>CPUE</u>
1976	47,513	3,977	11.95
1977	43,606	3,999	10.90
1978	58,616	4,030	14.54
1979	63,726	4,191	15.21
1980	76,081	4,308	17.66
1981	32,760	*	
1982	31,710	*	
1983	84,095	*	
1984**	37,627	*	
1985	21,710	*	
1986	77,730	*	
1987	118,050	*	
1988	50,197	4,140	12.12
1989	18,414	3,359	5.48
1990	19,914	3,026	6.58
1991	27,007	2,941	9.18
1992	56,132	3,049	18.41
1993	44,611	2,916	15.30
1994	30,372	3,086	9.84
1995	49,973	3,188	15.68
1996	36,066	2,673	13.49
1997	38,699	2,978	12.99
1998	58,756	3,023	19.44
1999	45,467	2,213	20.55
2000	49,026	2,333	21.01
2001	30,761	2,302	13.36
2002	40,774	2,256	18.07
2003	28,156	1,997	14.10
2004	35,576	2,117	16.80
2005	23,249	1,793	12.97
2006	29,718	1,602	18.55
2007	22,012	1,439	15.30
2008	27,164	1,494	18.18
2009	24,719	1,317	18.77
2010	22,205	1,099	20.20
2011	11,263	792	14.22
2012	11,015	1,196	9.21

\* No effort data available for 1981 - 1987

\*\* Since 1984, Summer & Winter flounder reported separately, previously combined as flounder

Figure 1

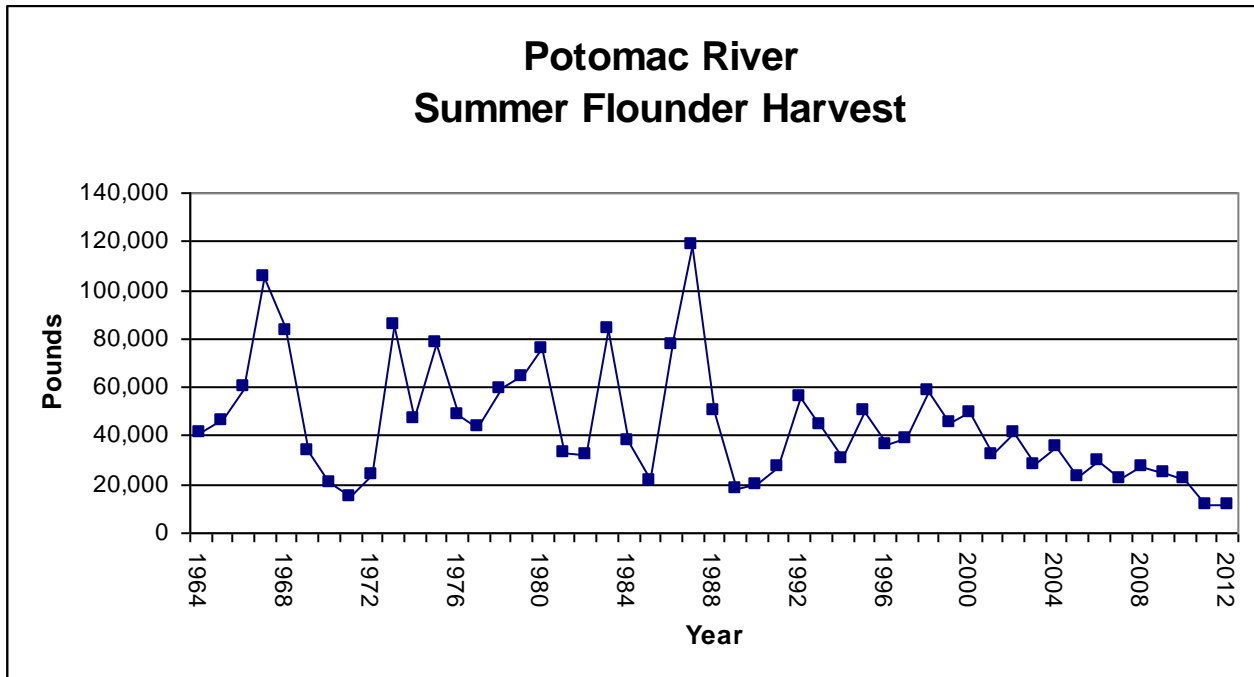
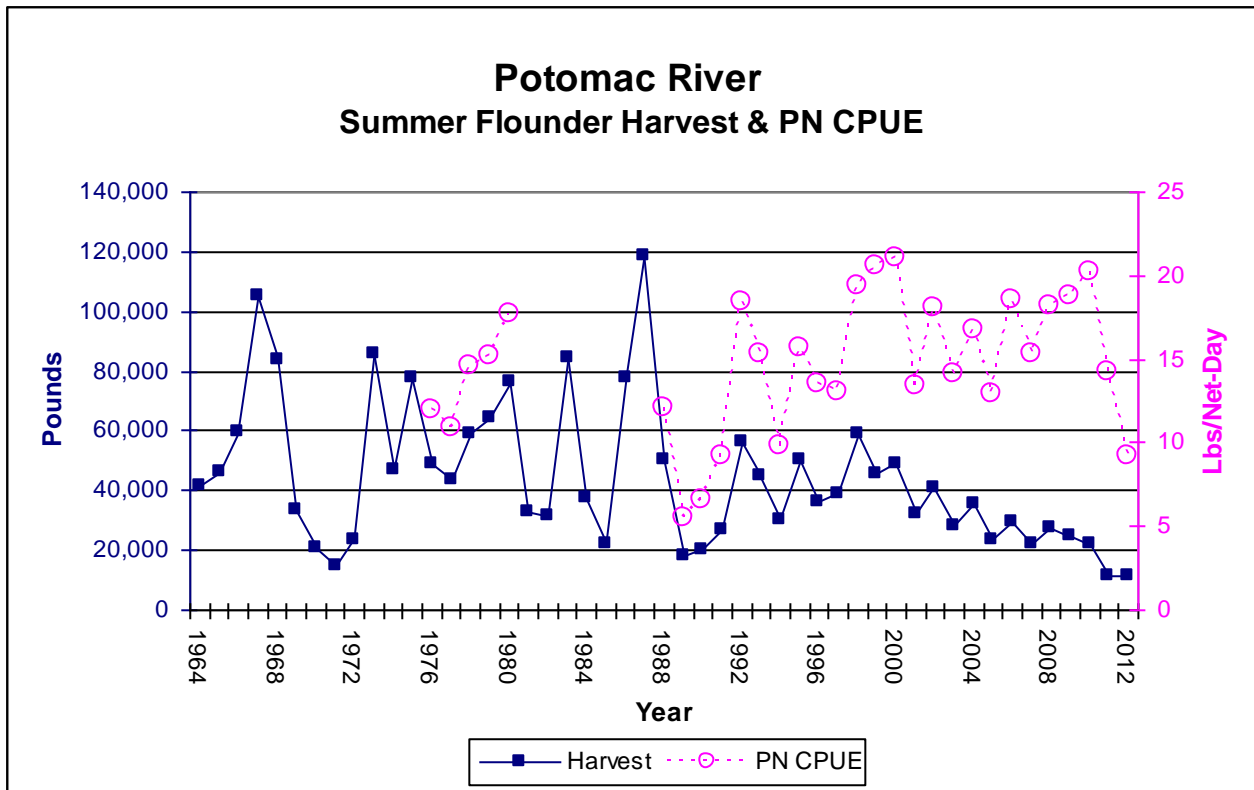


Figure 2







North Carolina Department of Environment and Natural Resources  
Division of Marine Fisheries  
Dr. Louis B. Daniel III  
Director

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

## 2012 North Carolina Summer Flounder Compliance Report

By

Tom Wadsworth

North Carolina Division of Marine Fisheries

June 1, 2013

### I. Introduction

North Carolina has a significant commercial fishery for summer flounder in the Atlantic Ocean. The commercial fishery is prosecuted primarily with otter trawls from November through March. The recreational fishery for summer flounder occurs mainly from early spring through the fall. The majority of the landings of summer flounder by recreational fishermen are from private boats that fish in close proximity to the inlets and in near shore ocean waters. No significant changes in monitoring or regulations from 2011 occurred in 2012 for the recreational fishery. North Carolina's proportions of the commercial and recreational quota were the same as 2011, but the allocations were lower due to the commercial quota in 2012. However, most of the commercial quota was transferred to Virginia to account for North Carolina landing in Virginia ports due to safe harbor reasons. No significant changes in monitoring or regulations from 2011 occurred in 2012 for the commercial fishery.

### II. *De minimis* status

North Carolina does not request *de minimis* status for the 2013 fishing year.

### III. 2012 Summer Flounder Fishery and Management Program

#### A. Activity and Results of Fishery-Dependent Monitoring

Commercial fishing activity is monitored through fishery dependent sampling conducted under Title III of the Interjurisdictional Fisheries Act (IJFA) and has been ongoing since 1982. North Carolina Division of Marine Fisheries (NCDMF) staff sampled commercial catches of summer flounder during dockside fishery dependent sampling of the winter trawl fishery. Information on areas fished and gear specifications as well as summer flounder length, age and aggregate weight data was obtained (Assessment of North Carolina Commercial Finfisheries, NCDMF Completion Reports, 1984-2012). Winter trawls account for ~99% of the annual summer flounder landings, although summer flounder are an incidental catch in other commercial fisheries. A total of 7,439 summer flounder was measured from winter trawl catches in 2012. A total of 857 scale samples were collected from summer flounder and 541 were aged (ages 1 to 13). These data were used to calculate the North Carolina winter trawl catch at age for summer flounder which is used in the annual coastwide stock assessment.

## B. Activity and Results of Fishery-Independent Monitoring

The North Carolina Division of Marine Fisheries (NCDMF) has conducted a stratified random trawl survey in Pamlico Sound (The Pamlico Sound Survey) since 1987 as a juvenile abundance index (JAI) for several economically important species, including summer flounder. The survey takes place in mid-June and mid-September with the samples collected in June serving as a JAI for summer flounder in North Carolina. The 2012 summer flounder JAI was 9.26. From 1987-2012 the average JAI was 9.82. The summer flounder JAI from the Pamlico Sound Survey is one of the recruitment indices provided for the annual coastwide stock assessment for summer flounder.

## C. Summer Flounder Regulations for 2012

The authority for management of flounder in North Carolina is found in North Carolina Fisheries Rule 15A NCAC 3M .0503 - FLOUNDER. The Fisheries Rule does not distinguish between the three species of parichthid flounder (summer, southern and Gulf flounder) commonly found in North Carolina waters. With the exception of the size limit and season exemptions for flounder possessed and sold by flounder hatcheries or aquaculture operations, all of the current Fisheries Rule applies to flounder in the Atlantic Ocean. The following is a summary of the provisions of the Fisheries Rule that are most applicable to summer flounder:

Size Limits: Fisheries Rule 15A NCAC 3M .0503(a) specifies a 14 inch minimum size limit for flounder taken in commercial fisheries in the Atlantic Ocean. Fisheries Rule 15A NCAC 3M .0503(k) provides the Fisheries Director with proclamation authority to establish minimum size limits for flounder taken in recreational fisheries in the Atlantic Ocean and internal waters.

Possession Limits: Fisheries Rule 15A NCAC 3M .0503(j) provides the Fisheries Director with proclamation authority to establish commercial trip limits for the taking of flounder from the Atlantic Ocean to assure that the quota allocated to North Carolina under the Fishery Management Plan (FMP) is not exceeded. Fisheries Rule 15A NCAC 3M .0503(k) provides the Fisheries Director with proclamation authority to establish recreational possession limits in the Atlantic Ocean and internal waters.

Season: The North Carolina season for landing ocean-caught flounder opens January 1st each year. When 80% of the quota allocated to North Carolina by the FMP is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean. During the closed season, vessels may land a bycatch of up to 100 pounds of flounder per trip taken from the Atlantic Ocean. The season for landing flounder taken from the Atlantic Ocean reopens on or after November 1. The quota available for the fall fishery is that amount not harvested in the winter fishery (approximately 20%) less any landings that occur under the bycatch allowance. The combination of the reduction to a 100 pound trip limit when 80% of the allocated quota is taken and the authority to set trip limits by proclamation allows for the closed season retention of a small quantity of summer flounder that is taken as bycatch in other fisheries.

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

Trawling: A trawl may not be used in the Atlantic Ocean from the North Carolina/Virginia line to Cape Lookout between October 1 and April 30 unless the trawl has a mesh size of 5 ½ inches or larger diamond mesh (stretched) or 6 inches or larger square mesh (stretched) applied throughout the body, extension(s) and the cod end (tailbag) (Fisheries Rule NCAC 3M .0503(a)). Fisheries Rule 15A NCAC 3M .0503(g) allows trawls, with mesh sizes smaller than 5 ½ inches, to be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through

April 30 is possessed aboard or landed from that vessel. Flynets, which may only be used north of Cape Hatteras, are exempt from this rule if they meet the specifications defining flynets (Fisheries Rule 15A NCAC 3M .0503(h)).

Other Applicable Rules and Statutes: North Carolina General Statute (G.S.) 143B-289.52(e) authorizes the North Carolina Marine Fisheries Commission (NCMFC) to adopt temporary rules at any time within six months of the adoption of a fishery management plan requirement by the Atlantic States Marine Fisheries Commission (ASMFC) or a Regional Fishery Management Council in order to comply with or implement these requirements. This statute allows North Carolina to adjust management measures to be in compliance with the fishery management plan. G.S. 113-168.2 requires any person who engages in a commercial fishing operation in North Carolina coastal waters to hold a Standard Commercial Fishing License. This statute also requires dealers to purchase only from fishermen who possess a license to sell the type of fish being offered and to report those transactions on a form provided by the North Carolina Department of Environment and Natural Resources. G.S. 113-168.4 specifies that it is unlawful for any person who takes or lands any species of fish under the authority of the NCMFC from coastal waters by any means, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value without holding a license required to sell the type of fish being offered. Fisheries Rule 15A NCAC 3I .0114 requires a fish dealer to complete all mandatory items on a North Carolina Trip Ticket for each transaction and report it to the NCDMF by the tenth day of the following month. Through this system, North Carolina monitors and records landings of finfish, including summer flounder, from both state and federal waters. Fisheries Rule 15A NCAC 3M .0503 (e) prohibits the transfer of flounder taken from the Atlantic Ocean from one vessel to another.

## 2012 Management Measures

### Commercial Fishery

In accordance with, or as authorized under Fisheries Rule 15A NCAC 3M .0503, the following management measures were implemented in the commercial fishery for flounder in the Atlantic Ocean in 2012:

Season: The winter season opened on January 1, 2012 and closed on March 31, 2012. The fall season opened on November 1, 2012 and closed on December 31, 2012. Harvest limits were established for 15 to 61 day periods throughout the open seasons rather than for individual trips.

Size Limit: The minimum size was 14 inches.

Possession Limit: Harvest limits were 10,000 and 17,500 pounds during the winter open season and 15,000 and 20,000 pounds during the fall open season. Different harvest limits were implemented in response to stock distribution, catch rates and the amount of quota that remained.

### Recreational Fishery

The following management measures were implemented in 2012 in the Atlantic Ocean recreational fishery:

Season: The season was open throughout the year.

Size Limit: The minimum size limit for flounder was 15 inches statewide.

Possession Limit: The possession limit for flounder statewide was 6 fish per person, per day.

## D. Summer Flounder Harvest by Commercial, Recreational and Non-Harvest Losses

The commercial harvest of summer flounder in North Carolina in 2012 totaled 1,087,427 pounds. A total of 2,027,290 pounds of summer flounder quota was transferred to other states for safe harbor purposes, and an additional 20,000 pounds of summer flounder quota was transferred to Connecticut. The North Carolina quota for 2012 (after quota transfers) was 1,567,401 pounds. Approximately 99% of the summer flounder landings

were from the winter trawl fishery. The North Carolina quota for 2012 was 188,218 pounds. Landings of summer flounder in North Carolina were less, and transfers higher, than previous years mainly due to the inability of participants in the winter trawl fishery to land their catches at ports accessed by Oregon Inlet. Many winter trawl landings are typically made at ports inside Oregon Inlet but in 2012 shoaling of the Inlet made it impassable to larger vessels.

The 2012 recreational target for North Carolina was 140,175 fish. The MRIP estimated that anglers in North Carolina harvested 63,134 summer flounder weighing 101,782 pounds in 2012. Most of the harvest occurred in internal waters, particularly near the inlets in the northeastern part of the State.

The NCDMF does not have estimates of non-harvest losses of summer flounder. The Northeast Fishery Science Center (NEFSC) fishery observer data are used to estimate commercial discards of summer flounder for the annual coastwide stock assessment. The observer data included trips from North Carolina vessels. A discard mortality rate of 80% was assumed for the commercial discard mortality estimate. However, discards are low in the winter trawl fishery as a result of the required 5 ½ inch stretched mesh throughout the entire net. Discards are also low during the period when small mesh trawls may be used (May 1-September 30) because summer flounder are not abundant in North Carolina's ocean waters during this time. The MRIP estimated number of summer flounder released by the recreational fishery, 478,094 fish in 2012, was used as the estimate of recreational discards for the annual coastwide stock assessment. A 10% release mortality rate was assumed for the recreational discard mortality estimate.

#### E. Review of Progress in Implementing Habitat Recommendations

No new implementation at this time.

### IV. Planned Management Programs for the Current Fishing Year

#### A. Summary of Regulations That Will Be in Effect for the Current Fishing Year

The Fisheries Director used proclamation authority found in Fisheries Rule 15A NCAC 3M .0503(k) to implement various trip limits and associated harvest periods during the winter 2013 season as a means of managing North Carolina's summer flounder commercial quota. Unlike previous years, the fishery was allowed to land more than 80% of the annual quota during the winter opening. This was because the fall fishery no longer catches large amounts of summer flounder and consequently landings in 2012 were well under the allocated quota.

No significant changes should occur in the 2013 summer flounder commercial fishery regulations. The minimum size limit will remain at 14 inches in the Atlantic Ocean commercial fishery as well as the commercial flounder fishery in internal waters. As in past years, the commercial flounder fishery in internal waters will be closed from December 1-31, 2013 as a management measure from the North Carolina Southern Flounder FMP. In internal and ocean waters, the size limit in the recreational fishery will remain at 15 inches and the possession limit will remain at 6 fish per person per day. The recreational measures were a result of the North Carolina Southern Flounder FMP.

#### B. Summary of Monitoring Programs That Will Be Performed

Monitoring programs will be the same as the previous fishing year. Summer flounder will be sampled during IJFA sampling of the winter trawl fishery. Scale samples for aging will also be collected from the various dependent and independent sampling the NCDMF conducts. The JAI for summer flounder in North Carolina will be estimated from the Pamlico Sound Survey.

#### C. Changes from the Previous Year

The only significant change in management of the commercial fishery in 2013 from 2012 is the temporary suspension of the rule requiring the quota to be allocated 80% to the winter fishery and 20% to the fall fishery. Approximately 91% of the allocated quota for 2013 was landed during the opening from January 1<sup>st</sup> to April 5<sup>th</sup>. There are no changes to regulations for the recreational flounder fishery planned for 2013.

# **Commonwealth of Massachusetts Division of Marine Fisheries**



## **ATLANTIC STATES MARINE FISHERIES COMMISSION SCUP FISHERIES MANAGEMENT PLAN COMPLIANCE REPORT**

May, 2013

Prepared by

Paul G. Caruso  
Senior Marine Fisheries Biologist

## **I. Introduction**

The following represents the Commonwealth of Massachusetts Division of Marine Fisheries (MDMF) annual FMP compliance report for scup as per the ASMFC Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. There were no significant changes to the regulations for the commercial fisheries in 2012. Commercial landings were 1,416,412 pounds as compared to 1,044,854 pounds in 2011, and the 2012 quota of 2,346,406 pounds. Thus, the commercial fishery only harvested only 60 % of the allocated summer period quota due to low ex-vessel prices. Recreational fishery regulations were liberalized slightly for 2012. Estimated harvest increased to 1,401,960 fish, approximately 78% more than 2011 (785,205 fish).

## **II. Request for *de minimus* status**

Not applicable.

## **III. Review of previous year fishery and management program**

### **A. Activity and results of fisheries dependent monitoring**

In 2012 MDMF conducted no monitoring of the directed commercial fisheries for scup, but sampled one non-directed fishery (the squid trawl fishery) that occasionally has a substantial scup by-catch.

For aggregate commercial landings we relied on the MDMF Quota Monitoring Project. For recreational fisheries aggregate catch and landings data the Division relied on the Marine Recreational Information Program (MRIP).

### **B. Activity and results of fishery independent monitoring**

Our 2012 fisheries independent monitoring program for scup consisted of our synoptic spring and fall trawl surveys. This coast-wide state waters survey of approximately 100 - twenty minute tows has a random stratified design. The indices (stratified mean number and weight per tow), includes data from all strata south of Cape Cod (Figure 3). Abundance of adult fish increased substantially from 2011 levels. However measured YOY production was down from 2011 levels. Limited age and maturity samples are also gathered during the survey. All age samples from the survey cruises are forwarded to the NMFS North East Fisheries Science Center Laboratory in Woods Hole.

**C. Regulations in effect in 2012**

**1. Recreational Fishery (322 CMR 8.06)**

- Permit required to conduct “For-Hire” operations

<b>Recreational Sector</b>	<b>Minimum Size</b>	<b>Open Season</b>	<b>Possession Limit</b>
<b>Private</b>	10.5”	May 24 – Sep. 26.	20 fish; 100 per vessel with 5 or more anglers aboard
<b>For-hire</b>	11”	May 15 – June 18	45 fish
		June 19 – Sep 17	20 fish

**2. Commercial Fishery**

Permitting & Reporting (322 CMR 6.12, 6.27 & 7.01)

- Regulated fishery permit (in addition to a commercial fishing permit) required for commercial fishermen to possess scup.
- Dealers must be permitted to purchase scup.
- Mandatory dealer and fisherman’s catch reporting.
- Limited entry provisions for the fish pot fishery.

Gear Marking & Specifications (322 CMR 4.13, 6.12, 6.15 & 12.03)

- Year specific trap tag with permit number must be attached to trap’s cross member.
- Pot Limit of 50 scup pots; 200 combined sea bass and scup, or 350 if two permit holders fish from the same vessel.
- Two unobstructed escape vents or openings in the parlor section measuring at least 3.1” in diameter or 2.25” square required.
- All buoys and traps must bear fisherman’s permit number.
- Use of floating line at the surface prohibited.
- Positively buoyant ground line prohibited.
- Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 overall length of the buoy line.
- Marking:
  - 1) Traps require a single buoy (7”x 7” or 5”x 11”); stick optional with no flag.
  - 2) Trawls: East end – double buoy and one or more 3’ sticks.  
West end – single buoy with 3’ stick and flag.
- All fish traps require ghost panel.
- Trawl maximum length: 2000 feet.
- Use of trawls is prohibited in the waters of Gosnold (M.G.L c.130 §37).



- All vessels must display buoy color scheme.
- No tending or lifting of pots from ½ hour after sunset to ½ hour before sunrise.

Directed Fishery Limits (322 CMR 6.28)

- 9” minimum size

<b>Season (quota dependent)</b>	<b>Gear Type</b>	<b>Possession limit</b>	<b>No Fishing Days</b>
January - April	All authorized gear types	30,000 lbs	N/A
January – December	Fish Weir	None*	N/A
April 23 – Jun 9	Trawlers	400 lbs	N/A
Jun 10 – October			Friday & Saturday
May – July	Fish pot & hook-and-line	400 lbs	Friday & Saturday
August - October	All authorized gear types	800 lbs	Friday & Saturday
November – December		1,500 lbs	

\*fish weirs were subject to a collective 225,000-lb. quota

In addition, the Commonwealth retained all of the other direct and indirect fisheries management measures that apply to scup. Among those were:

- Commercial Fishing Permit required for the sale of all fish and shellfish.
- Limited entry permits for all commercial fisheries other than rod and reel.
- Numerous area/time closures to otter trawling and gillnets.
- Minimum mesh size restrictions for the trawl and gillnet fisheries.
- A night closure to mobile gear in waters of Nantucket and Vineyard Sounds.
- Buzzards Bay closed year round to all mobile gear.

## D. 2012 Harvest

The estimate of the 2012 commercial harvest is 1,523,024 fish, estimated by dividing the landed weight (1,416,412) by 0.93 pounds per fish (MDMF 2003 sea sampling data). This is the latest commercial catch data available from MDMF, and is provisional at this time. Trends in the commercial harvest are plotted in Figure 1.

There is no current estimate of commercial losses from discard mortality because there is no estimate of discarded commercial catch or gear specific mortality rates. Observed scup discards from monitored commercial fisheries have been minimal in past years with the largest discards coming from the pot and weir fisheries. Since those fisheries operate in shallow waters and the catch is immediately culled, additional losses are assumed to be relatively small, in comparison to landings.

The recreational losses from 2012 are estimated at 1,663,263 fish. This number was derived from the MRFSS estimated type A and B1 catch (1,401,960 fish) plus 15 % of the B2 catch (261,303 fish), representing an estimate of catch/release mortality. Recreational fishery harvest trends are plotted in Figure 2.

## E. Progress in implementing habitat recommendations

Not applicable.

## IV. Planned 2013 Management Program

### A. Regulations for 2013

#### 1. Recreational Fishery (322 CMR 8.06)

- Permit required to conduct “for-hire” fishing operations

Recreational Sector	Minimum Size	Open Season	Possession Limit
Private	10”	May 1 – December 31	30 fish
For-hire	10”	May 1 – June 30 July1 – December 31	45 fish 30 fish

#### 2. Commercial Fishery

##### Permitting & Reporting (322 CMR 6.12, 6.27 & 7.01)

- Regulated fishery permit (in addition to a commercial fishing permit) required for commercial fishermen to possess scup.
- Dealers must be permitted to purchase scup.
- Mandatory dealer and fisherman’s catch reporting.

- Limited entry provisions for the fish pot fishery.

Gear Marking & Specifications (322 CMR 4.13, 6.12, 6.15, 6.28 & 12.03) –

*Status quo*

- Year specific trap tag with permit number must be attached to trap’s cross member.
- Pot Limit of 50 scup pots; 200 combined sea bass and scup, or 350 if two permit holders fish from the same vessel.
- Two unobstructed escape vents or openings in the parlor section measuring at least 2 1/2” in diameter, two inches square, or 1 3/8” by 5 3/4” required.
- All buoys and traps must bear fisherman’s permit number.
- Use of floating line at the surface prohibited.
- Positively buoyant ground line prohibited.
- Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 overall length of the buoy line.
- Marking:
  - 3) Traps require a single buoy (7”x 7” or 5”x 11”); stick optional with no flag.
  - 4) Trawls: East end – double buoy and one or more 3’ sticks.  
West end – single buoy with 3’ stick and flag.
- All fish traps require ghost panel.
- Trawl maximum length: 2000 feet.
- Use of trawls is prohibited in the waters of Gosnold (M.G.L c.130 §37).
- All vessels must display buoy color scheme.
- No tending or lifting of pots from ½ hour after sunset to ½ hour before sunrise.

Directed Fishery Limits (322 CMR 6.28)

- 9” minimum size – *status quo*

Season (quota dependent)	Gear Type	Possession limit	No Fishing Days
Jan.- Apr.	All authorized gear types	30,000 lbs	N/A
May 1 – October 31	Fish Weir	none	275,000 set aside
May 1- June 9	Trawlers	800 lbs	N/A
Jun. 10 - quota			Friday & Saturday

May 1 – 31	Fish pot & hook-and-line	800 lbs	Friday & Saturday
June 1 – June 30	Fish pot & hook-and-line	400 lbs.	Monday, Thursday, Friday & Saturday
August 1 - quota.		1,500 lbs	Friday & Saturday

In addition, the Commonwealth retained all of the other direct and indirect fisheries management measures that apply to scup. Among those were:

- Commercial Fishing Permit required for the sale of all fish and shellfish.
- Limited entry permits for all commercial fisheries other than rod and reel.
- Numerous area/time closures to otter trawling and gillnets.
- Minimum mesh size restrictions for the trawl and gillnet fisheries.
- A night closure to mobile gear in waters of Nantucket and Vineyard Sounds.
- Buzzards Bay closed year round to all mobile gear.

### **B. 2013 Monitoring Program**

The 2013 monitoring program for scup will continue to derive fisheries independent indices of abundance from our synoptic trawl survey, and collect scup age and growth parameters and samples from limited sampling of commercial fishermen’s catches, directed market sampling and opportunistically from trawl survey catches. Recreational mode specific catch will be opportunistically sampled for catch lengths and age samples during MRIP survey sampling.

For aggregate recreational catch and harvest data the Division will rely on the MRIP survey. For aggregate commercial catch data we will continue to rely on the MDMF Quota Monitoring Project.

### C. Changes from previous years monitoring program

Beginning in 2013 the MDMF will sample the entire recreational fishery through the MRIP survey.

### V. Plan specific requirements

Not applicable.

### VI. Law Enforcement Reporting requirements

Not applicable.

### VII. Figures

Figure 1. Commercial harvest trends.

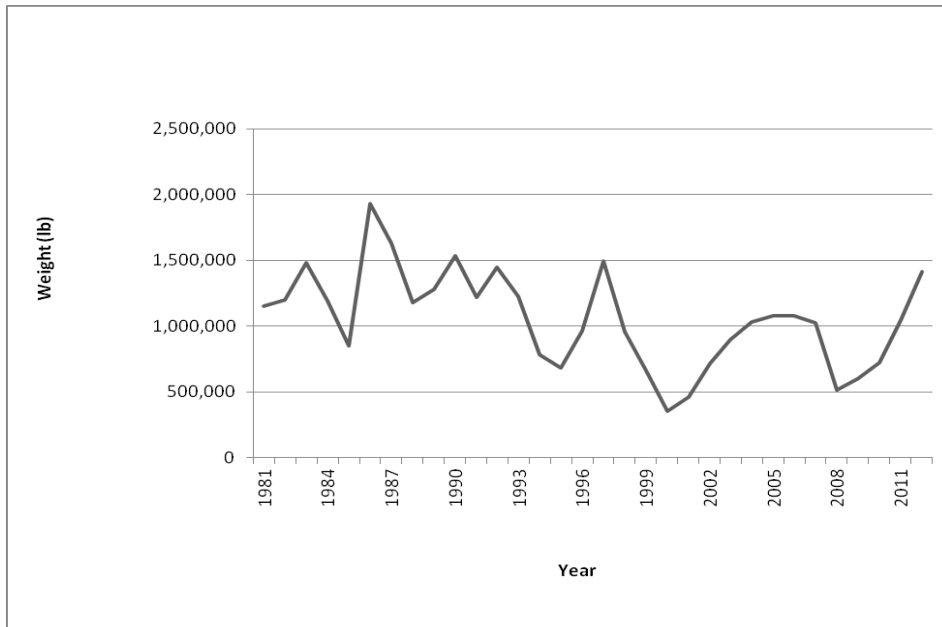


Figure 2. Recreational harvest trends.

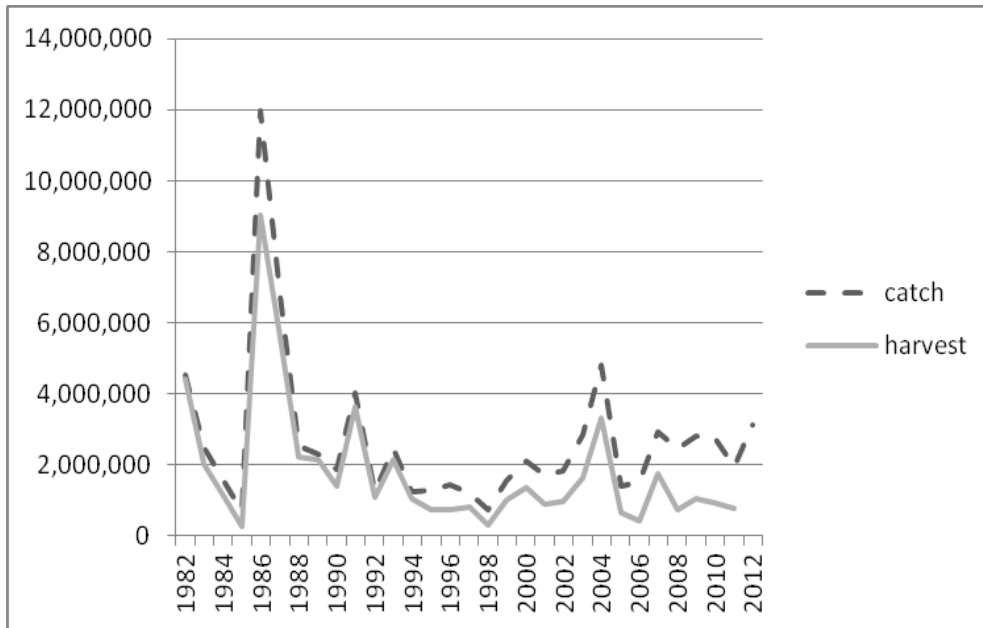
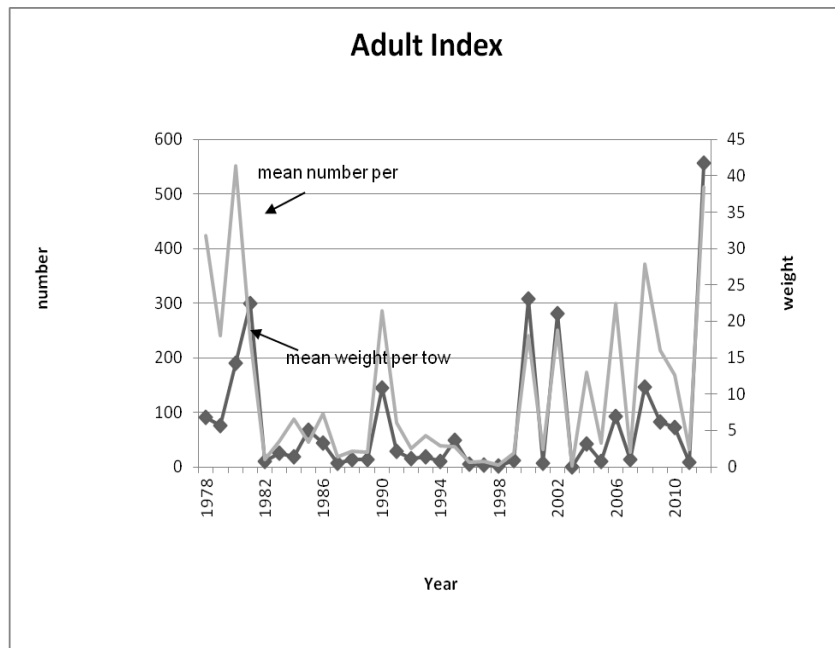
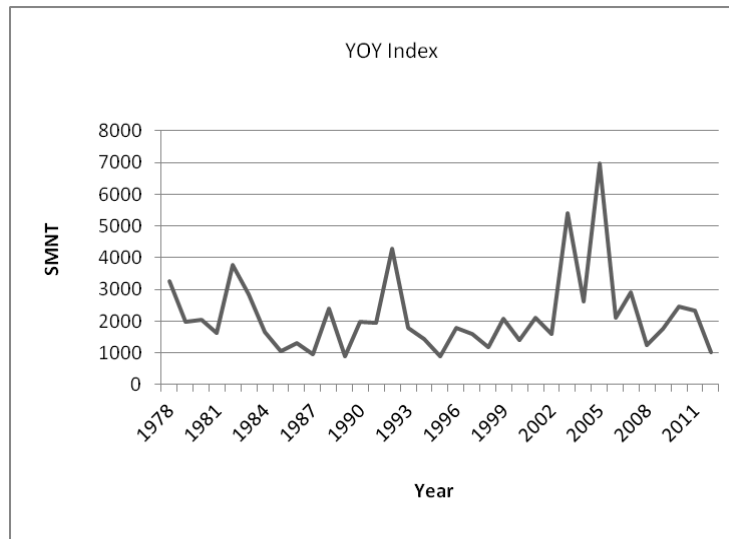


Figure 3. Fisheries Independent Trawl Survey adult index trends.



**Figure 4.** Fisheries Independent Trawl Survey YOY index trends.





Rhode Island  
Department of Environmental Management

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**DIVISION OF FISH AND WILDLIFE**

3 Fort Wetherill Road  
Jamestown, RI 02835

401 423-1920  
FAX 401 423-1925  
TDD 401 831-5508

TO: Kirby Rootes-Murdy, ASMFC

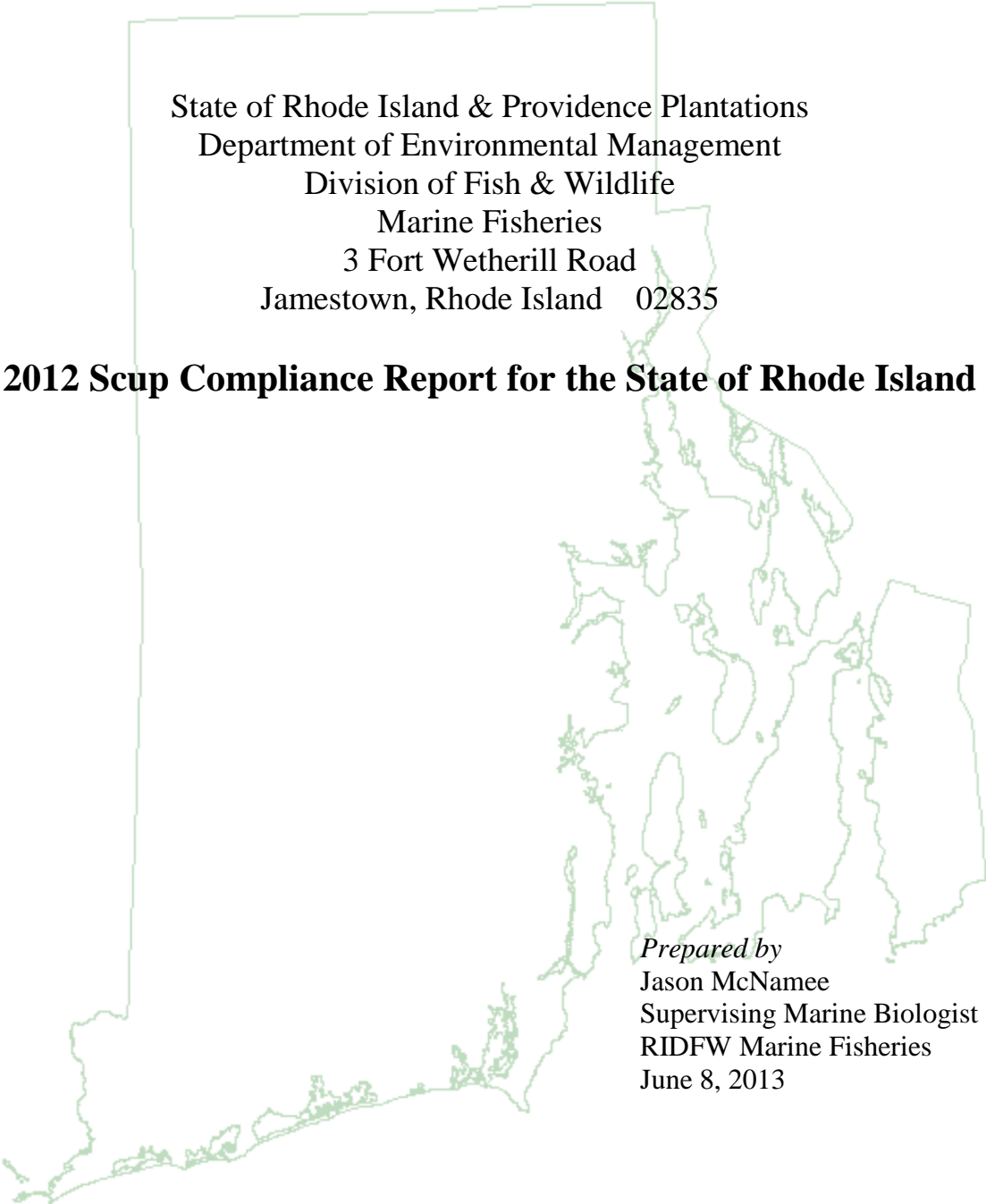
FROM: Jason McNamee, RIDFW

DATE: June 8, 2013

SUBJECT: Rhode Island Annual Compliance Report for Scup

Please find Rhode Island's 2012 annual compliance report for scup. If you have any questions, you may contact me directly at 401.423.1943.






State of Rhode Island & Providence Plantations  
Department of Environmental Management  
Division of Fish & Wildlife  
Marine Fisheries  
3 Fort Wetherill Road  
Jamestown, Rhode Island 02835

## **2012 Scup Compliance Report for the State of Rhode Island**

*Prepared by*  
Jason McNamee  
Supervising Marine Biologist  
RIDFW Marine Fisheries  
June 8, 2013



## **Rhode Island's 2012 Annual Compliance Report for Scup**

### **I. Introduction**

Scup continue to support active commercial and recreational fisheries in Rhode Island. Recreational catch decreased from 719,364 pounds in 2011 to 556,038 pounds in 2012. Commercial landings increased from 4,322,108 pounds landed in 2011 to 2,015,703 pounds in 2012. During the period May 1 through October 31, 1,950,600 pounds were landed by the general category fishery (all gears other than floating fish traps) and 65,103 pounds were landed by the floating fish trap fishery. This resulted in a 4,092,369 pound underage for RI in 2012. Fishery-independent monitoring suggested a decrease in the relative biomass of scup in Rhode Island waters. An average of 23.02 kg/tow of scup were observed in 2012 during the fall component of the RIDFW seasonal trawl survey, down from 30.59 kg/tow observed the previous year. Despite the decrease in biomass, the 2012 fall index is one of the highest values observed for the time series.

Rhode Island provides regulations for both the commercial and recreational scup fisheries. Recreational restrictions included a minimum size limit of 10.5", an open season from May 1 through December 31, and a 20 fish possession limit. For charter and party boats the season extended from May 1 through December 31 same as was the case for the general recreational fishery with a "bonus season" with a higher bag limit from (45 fish) from September 1 through October 31, with a minimum size of 11". The minimum size limit for the commercial fishery was 9" and the quota allocated to Rhode Island was divided between floating fish traps and all other gear types. The quota allocated to all other gear types was available during three periods between May 1 and October 31 under various weekly possession limits. The quota allocated to floating fish traps was also available during the same time frame. The commercial fishery operated under a federal quota system from November 1 through April 30.

### **II. Request for *de minimis*, where applicable**

The state of Rhode Island does not wish to apply for *de minimus* status.

### **III. Previous calendar year's fishery and management program**

#### **A. Activity and results of fishery dependent monitoring**

The RIDFW Marine Fisheries Section utilizes the Standard Atlantic Fisheries Information System (SAFIS) reporting system to monitor landings of quota-managed species, including scup. Based on information collected under this system, Rhode Island commercial scup landings for 2012 were approximately 2,015,703 pounds.

Estimates of recreational fishery statistics for Rhode Island are obtained from the MRIP online data query (NMFS, Fisheries Statistics and Economics Division, Silver Spring, MD, pers. comm.). Recreational harvest (Type A + B1) of scup in Rhode Island for 2012 was 556,038 pounds or 497,505 fish.

Trends in commercial and recreational harvest patterns for scup landed in Rhode Island are depicted in Figure 1.

Length and age frequency data was generated for scup harvested by floating fish traps in 2012. The fish migration was missed by the floating fish traps in 2012, therefore no samples were achieved during this year. In 2011, the previous year, a total of 1,074 samples (235 scale samples) were taken from five trap companies over the period May 10 through June 10 for aging. Scup ranged in size from 19 to 40 cm total length with an average of 26.76 cm (N = 235). Scales from these scup were removed for age validation. Age data was not available by the due date of this report.

- B. Activity and results of fishery independent monitoring (provide general results and references to technical documentation).

The RIDFW Marine Fisheries Section operates a seasonal trawl survey to monitor finfish resources (Olszewski 2012). Scup biomass and abundance indices updated for 2012 were calculated as mean number per tow and mean weight per tow, respectively. Estimated relative biomass of scup in RI for 2012 during the fall component of the survey was 23.02 kg/tow, a decrease from the 2011 estimate (30.59 kg/tow). The spring component increased from 1.66 kg/tow in 2011 to 2.87 kg/tow in 2012.

The RIDFW Marine Fisheries Section also operates a seasonal beach seine survey to monitor finfish resources (McNamee 2012). Juvenile scup abundance indices updated for 2012 were calculated as mean number per haul. Estimated relative abundance of scup in RI for 2012 during the survey was 15.6 fish/haul, a significant increase from the 2011 estimate (0.03 fish/haul).

- C. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

See Attachment 1.

- D. Harvest broken down by commercial (by gear type where applicable) and recreational, and non-harvest losses (when available).

### **Commercial**

The commercial fishery sector landed 2,015,703 pounds of scup in Rhode Island in 2012. Sixty percent (60%) of the quota is allocated to the floating fish traps while 40% of the quota is allocated to all other gear types. Of the 2,015,703 pounds allocated to Rhode Island for the period May 1 through October 31 in 2012, 1,950,600 pounds was landed by the general category fishery and 65,103 pounds

were landed by the floating fish traps. The total for the year was a 4,092,369 pound underage for 2012.

### **Recreational**

Recreational harvest (Type A + B1) is considered as the sum of landings (Type A) and dead discards (Type B1), following MRFSS definitions. Recreational harvest of scup in Rhode Island for 2012 was 556,038 pounds (PSE = 24.6; NMFS, Fisheries Statistics and Economics Division, Silver Spring, MD). In terms of numbers, 497,505 (PSE = 23.0) scup were harvested from Rhode Island waters in 2012 by recreational anglers. Estimates of the amount of scup that were released alive (Type B2) are available in terms of numbers only. In 2012, Rhode Island recreational fishermen released approximately 674,835 (PSE = 16.2) live scup. Assuming a discard mortality estimate of 15%, 101,225 of the fish released alive would have died in 2012.

- E. Review of progress in implementing habitat recommendations: *NA*

### **IV. Planned management programs for the current calendar year**

- A. Summarize regulations that will be in effect.

The regulations effective in 2012 will continue into the 2013 calendar year with the following modifications:

The RI recreational regulations were liberalized to some degree for 2013. The minimum size was decreased to 10" for all recreational modes and bag limits were increased. A major departure can be found in an experimental scup shore mode fishery in 2013. All existing regulations are in effect in the three chosen experimental shore fishing areas (May 1 – December 31 season and 30 fish bag limit), but a smaller minimum size will be allowed (9"). Data will be collected on this experimental fishery and a report will be produced in 2014.

During the 2002 legislative session the Rhode Island General Assembly adopted the Commercial Fisheries Management Act, which implemented a new commercial fishing license system and ended the moratorium on the issuance of new commercial fishing licenses that had been in place since 1995 (RIDFW 2002). The regulations identify two endorsement categories for finfish, restricted and non-restricted. The RI Department of Environmental Management (DEM) has limited access to species listed in the restricted category to the current number of participants and currently issues new licenses to harvest species in the non-restricted category, which does not include scup for 2013. The current list of species placed in the restricted and non-restricted endorsement categories is updated annually, based on updated stock status information and fishery performance in the previous year.

- B. Summarize monitoring programs that will be performed.

## **Commercial**

The RIDFW Marine Fisheries Section will continue to monitor landings of scup and other quota-managed species using the SAFIS Reporting System.

## **Recreational**

Rhode Island recreational fishery statistics will continue to be collected and managed through the MRIP (formerly MRFSS) program. Information characterizing the catch of scup from Rhode Island waters by recreational anglers will be obtained via the MRIP online data query. It is unclear at this point how the new MRIP program information will be used as far as monitoring recreational fisheries, but this program has begun to take a primary role in determining recreational landings data.

### **C. Highlight any changes from the previous year:**

No major changes in 2013 for the commercial fishery. The recreational fishery has a liberalized season, size limit, and bag limit for all modes in 2013. In addition an experimental shore mode fishery will occur in 2013 as described in section IV A above.

## **V. Plan specific requirements**

No plan specific requirements for scup

## **VI. Law Enforcement Reporting Requirements**

Commercially licensed dealers are required to report scup landings through the SAFIS reporting system. The floating fish trap operators are required to report 3 times per week as an effort to adequately track their landings in their new flexible management structure.

## **VII. References**

McNamee, J. 2012. Assessment of Recreationally Important Finfish Stocks in Rhode Island Waters. Rhode Island Division of Fish and Wildlife Juvenile Finfish Survey 2011 Performance Report. Project No. F-61-R-18.

Olszewski, S. 2012. Assessment of Recreationally Important Finfish Stocks in Rhode Island Waters. Rhode Island Division of Fish and Wildlife Coastal Fishery Resource Assessment Trawl Survey 2011 Performance Report. Project No. F-61-R-18.

Table 1. Landings and survey indices of scup within Rhode Island.

Year	Commercial Landings (lbs)	Recreational Landings (lbs)	Total Landings (lbs)	RIDFW Seine Survey	RIDFW Trawl Survey (kg/tow)	
					Spring	Fall
1975	5,356,500					
1976	4,357,000					
1977	6,580,600					
1978	6,137,100					
1979	6,885,500					
1980	6,468,300					
1981	6,524,400		173,384		0.40	2.54
1982	7,060,900	237,151	7,298,051		0.04	0.70
1983	5,693,700	255,540	5,949,240		0.32	2.75
1984	6,435,800	348,051	6,783,851		0.88	10.57
1985	7,899,600	54,780	7,954,380		0.41	1.51
1986	6,585,500	154,333	6,739,833		0.33	4.20
1987	4,766,700	241,748	5,008,448		0.01	4.73
1988	6,244,500	367,024	6,611,524		0.04	7.10
1989	3,090,800	750,937	3,841,737	0.31	0.04	6.62
1990	3,938,342	517,589	4,455,931	1.69	0.15	5.66
1991	6,397,343	1,072,218	7,469,561	34.23	0.57	16.62
1992	5,900,175	529,254	6,429,429	0.11	0.61	9.10
1993	2,937,325	467,576	3,404,901	0.04	0.06	8.90
1994	3,337,857	439,037	3,776,894	0.00	0.53	3.66
1995	2,303,091	421,775	2,724,866	0.01	0.53	5.03
1996	1,703,478	563,791	2,267,269	0.06	0.07	3.83
1997	1,070,443	183,577	1,254,020	0.01	0.15	6.04
1998	794,601	167,428	962,029	0.00	0.03	1.89
1999	1,280,491	392,029	1,672,520	0.50	0.07	12.39
2000	1,016,959	1,159,355	2,176,314	0.37	3.54	9.11
2001	1,617,373	896,966	2,514,339	3.07	5.08	11.07
2002	3,674,789	512,792	4,187,581	2.49	10.28	9.52
2003	3,813,811	747,677	4,561,488	0.68	0.00	11.38
2004	3,457,498	808,140	4,265,638	0.29	0.50	9.60
2005	3,574,463	474,049	4,014,627	1.74	1.67	20.65
2006	3,671,250	456,046	4,127,296	3.93	3.90	11.26
2007	3,892,671	416,833	4,309,504	0.72	0.25	23.76
2008	2,133,001	541,933	2,674,934	0.22	0.04	18.15
2009	1,785,994	178,165	1,964,159	0.31	0.39	25.0
2010	2,473,247	411,211	2,884,458	0.32	0.56	17.39
2011	4,322,108	719,364	5,041,472	0.03	1.66	30.59
2012	2,015,703	556,038		15.6	2.87	23.02

Figure 1. Commercial and recreational landings of scup in Rhode Island since 1950

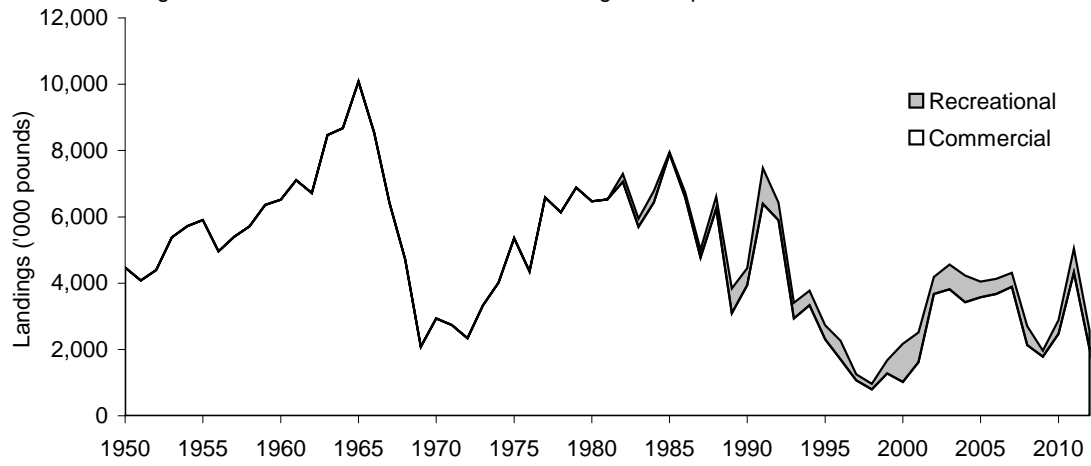


Figure 2. Rhode Island Division of Fish and Wildlife seasonal trawl survey, abundance (#/tow) and biomass (kg/tow) of scup, 1979 - 2012.

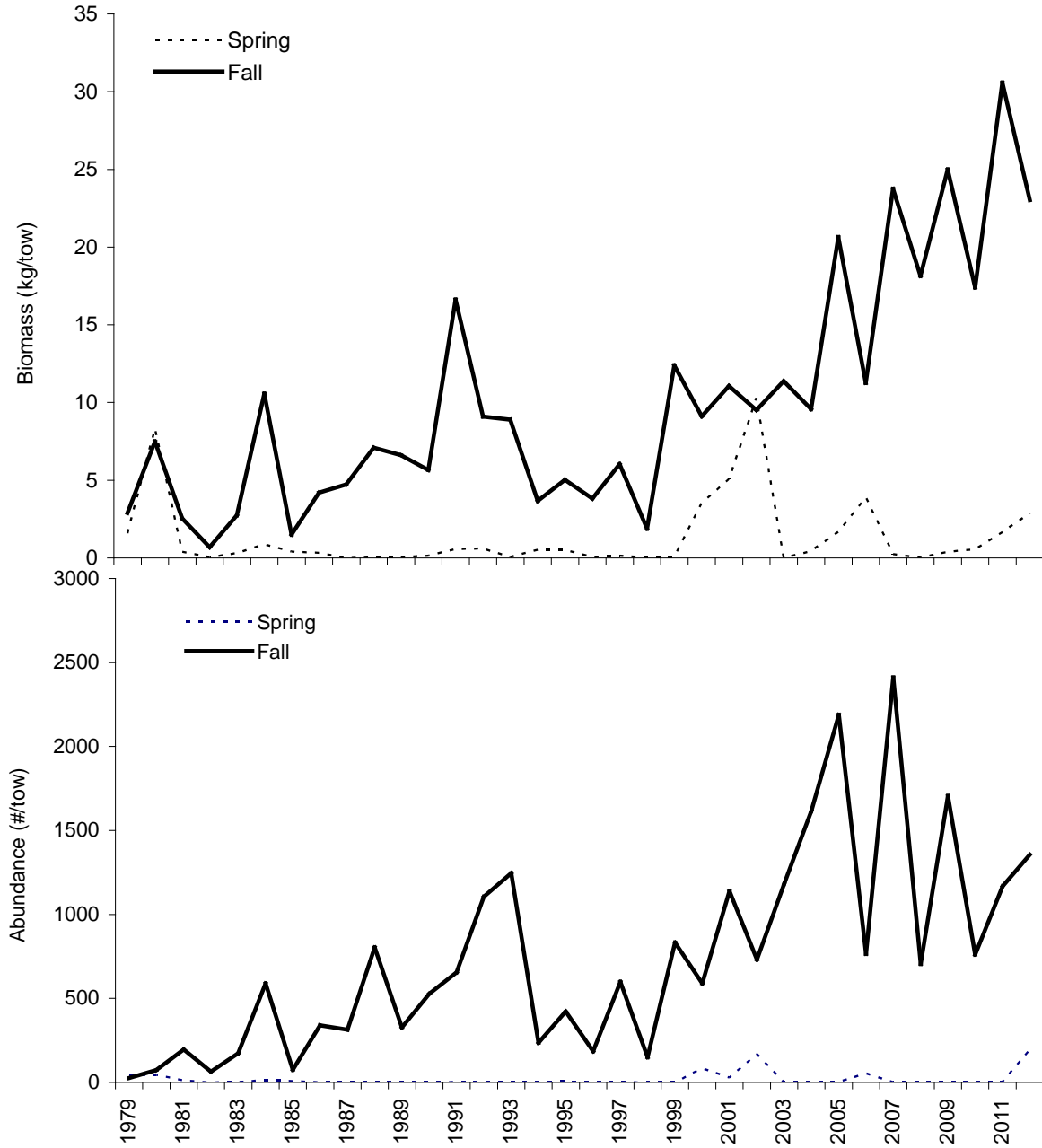
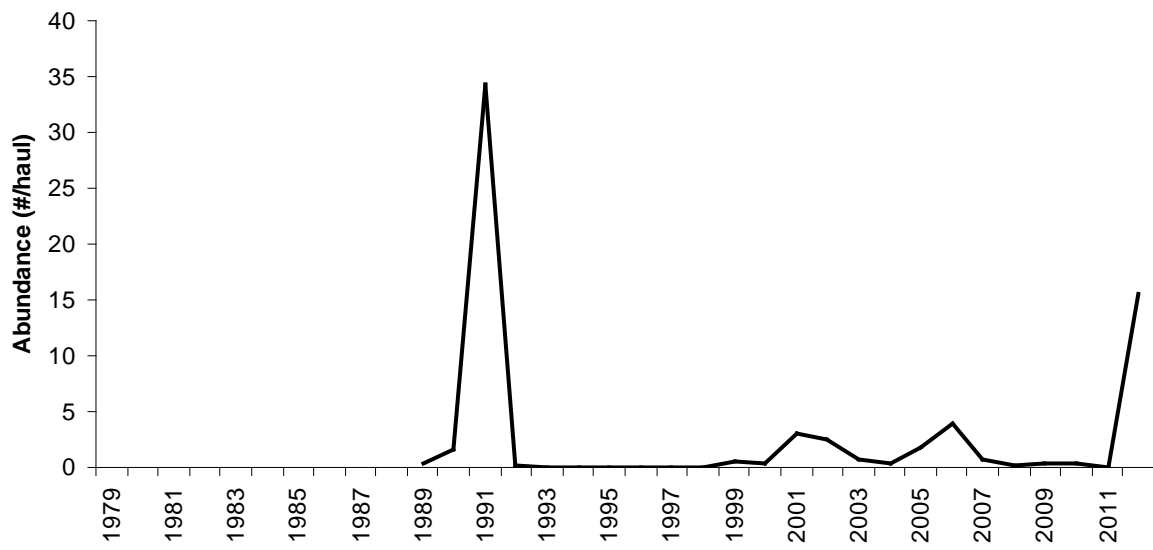




Figure 3 - RI Division of Fish and Wildlife beach seine survey abundance per haul 1988 - 2012.



## Attachment 1 – 2012 regulations

**7.11 Scup Regulations - Minimum Size - 9" total length (TL)** -- It is unlawful for any person commercially licensed under RIGL 20-2-27 or RIMFC Part II, to land or possess any scup, or parts thereof, that do not meet this size limit. [see Part 10.12 for gear roller regs] (RIMFC REGULATION) [Penalty - Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

**7.11.1 - Scup - Commercial Quota** -- A total allowable harvest of scup will be established annually, and shall be that amount allocated to the State of Rhode Island by the Regional Fishery Management Councils and/or the Atlantic States Marine Fisheries Commission. The quota may be harvested only by permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the Department of Environmental Management. To provide for the orderly harvest of the quota, the Department of Environmental Management has established the following sub-period allocations.

### **7.11.2 Scup Commercial Quota - Sub-Periods**

#### **7.11.2-1 Winter Period I (January-April) –**

- a.** Any vessel which possesses a valid federal scup moratorium permit if harvesting scup from federal waters; or, if harvesting exclusively in State waters, any vessel whose operator possesses a valid license to harvest or land scup for commercial purposes in Rhode Island may land scup in any amount between 0 and 30,000 pounds in any calendar week period so long as the total landed by that vessel does not exceed 30,000 pounds in any calendar week period beginning on January 1 and running through April 30 or until the program is terminated as provided in this part. It shall be unlawful for the cumulative landings to exceed the-weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on Saturday at 11:59 PM. On April 30 or when 80% of the Winter I scup quota has been harvested as determined by the National Marine Fisheries Service (NMFS), whichever first occurs, the program will terminate and the possession limit per vessel will be 1,000 pounds per calendar day. **Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.**

#### **7.11.2-1.1 (Repealed 12.2010)**

**Winter Period II (November- December)** -- possession and landing limit is 2,000 pounds, decreasing to 500 pounds once 70% of the period quota is landed. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

**7.11.2-2 Summer-Fall Period (May - October)** A state quota for scup will be established annually for the Summer-Fall period and shall be the most recent amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission and/or the Secretary of the U.S. Department of Commerce and published in the Federal Register. The total scup quota for will be divided as follows:

**FLOATING TRAPS** - licensed by the state of Rhode Island – Sixty percent (60%) of the Summer-Fall period quota will be allocated to the floating trap harvesting sector.

During those years in which the Winter I federal coastwide scup quota allocation is completely exhausted prior to April 15, the floating fish trap quota will be available on April 15. During those years in which the Winter I federal coastwide scup quota allocation is not completely exhausted prior to April 15, the floating fish trap quota will be available on May 1.

Floating Fish Trap Licensees\* will be required to report landings of scup to SAFIS every Monday, Wednesday, and Friday, of every week that the trap is in operation.

If the Division estimates that the Floating Fish Trap sector will not fully utilize its allocation prior to the end of the sub period, beginning on June 15, the Division has the authority to move the designated Floating Fish Trap sector allocation in to the general category fishery as set forth in this part. The Division will consult with the Floating Fish Trap Licensees or their designee prior to enacting any allocation roll over, and will maintain written correspondence in the form of a letter on file as proof of said consultation.

If there is noncompliance with the reporting requirements as set forth above, the Floating Fish Trap Licensees\* will default to the program as set forth below:

**APRIL 15 – October 31:** During those years in which the Winter I federal coastwide scup quota allocation is completely exhausted prior to April 15, the floating fish trap quota will be available on April 15. The possession limit will be 25,000 pounds per floating fish trap licensee\* per calendar day. Once ninety percent (90%) of the sub-period allocation is projected to be harvested, the possession limit will

be 5,000 pounds per fish trap licensee per calendar day until one hundred percent (100%) of the quota has been harvested. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

**MAY 1 – OCTOBER 31:** During those years in which the Winter I federal coastwide scup quota allocation is not completely exhausted prior to April 15, the floating fish trap quota will be available on May 1. The possession limit will be 25,000 pounds per floating fish trap licensee\* per calendar day. Once ninety percent (90%) of the sub-period allocation is projected to be harvested, the possession limit will be 5,000 pounds per fish trap licensee per calendar day until one hundred percent (100%) of the quota has been harvested. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

If the Floating Fish Trap Licensees\* are found to be out of compliance with the reporting regulations as set forth above, the Licensees will be notified and a notice will be filed with the Secretary of States Office.

\* **“Floating Fish trap licensee”** – for purposes of this section, fish trap licensee shall refer to a resident person or resident corporation currently issued a license pursuant to RI General Laws §20-5-2. The maximum possession limit per fish trap licensee shall be the amount set forth above regardless of the number of authorized trap locations, the number of vessels or the number of licensed fishermen who may be working for or may enter into contract with the fish trap licensee. While engaged in the operation of a fish trap, any licensed fisherman that may be working for or may enter into contract with the fish trap licensee waives any individual right to possess scup pursuant to a possession limit set out in RIMF Regulations Part 7.11.2-2.

Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

**General Category scup fishery (gear types other than floating fish traps)** – Forty percent (40%) of the Summer- Fall period quota will be allocated to all gear types except floating fish traps. The quota allocated to the General Category sector will be available during the following sub-periods.

**Spring Sub Period:** One-third (1/3) of the General Category quota will be available during the Spring Sub Period, defined as May 1 until the first Sunday in July. The possession limit will be reduced at the

discretion of the Division. The fishery will close once the entire period allocation is projected to be harvested.

- a. **Beginning May 1** any vessel authorized to land scup for commercial purposes in Rhode Island is authorized to land scup in any amount between 0 and 5,000 pounds in any calendar week period during the Spring Sub Period so long as the total landed by that vessel does not exceed 5,000 pounds in any calendar week period. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When the Spring Sub Period scup quota has been harvested as determined by the Division of Fish and Wildlife (Division) the fishery will close. The fishery will restart on the first Sunday in July, and will be administered as set forth in this part. The Division may adjust the possession limit during the Spring Sub Period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3
- b. The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of scup landed by a specific vessel during a calendar week.
- c. The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the scup were landed. The vessel must have all reports dating back to May 1<sup>st</sup> on board the vessel.
- d. Non-compliance with the provisions of these regulations shall subject both the owner and the operator to revocation of participation in the commercial fisheries for the subsequent Spring Sub Period fishery. If for any reason a Spring Sub Period fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Spring Sub Period upon adjudication.

Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer,

**Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife".**

- e. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations the owner and/or operator of the vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations as well as the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3).**
  - (1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.**
  - (2) Any person who seeks an adjudicatory hearing must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.**
  - (3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.**

**Summer Sub Period: One-third (1/3) of the General Category quota will be available from the first Sunday in July until the third Sunday in September.**

- a. Beginning the first Sunday in July any vessel authorized to land scup for commercial purposes in Rhode Island is authorized to land scup in any amount between 0 and 5,000 pounds in any calendar week period during the Summer Sub Period so long as the total landed by that vessel does not exceed 5,000 pounds in any calendar**

**week period. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When the Summer Sub Period scup quota has been harvested as determined by the Division the fishery will close. The fishery will restart on the third Sunday in September, and will be administered as set forth in this part. The Division may adjust the possession limit during the Summer Sub Period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.**

- b. The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of scup landed by a specific vessel during a calendar week.**
- c. The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the scup were landed. The vessel must have all reports dating back to May 1<sup>st</sup> on board the vessel.**
- d. Non-compliance with the provisions of these regulations shall subject both the owner and the operator to revocation of participation in the commercial fisheries for the subsequent Summer Sub Period fishery. If for any reason a Summer Sub Period fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Summer Sub Period upon adjudication.**

**Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife".**

- e. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations the owner and/or operator of the vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by**

certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations as well as the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3).

(1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

(2) Any person who seeks an adjudicatory hearing must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

**Fall Sub Period:** One-third (1/3) of the General Category quota will be available from the third Sunday in September through October 31. The Division may increase the possession limit if they project the entire quota will not be harvested by the end of the sub-period. The DFW will have the discretion of adjusting trip limits upwards or downwards as necessary.

- a. **Beginning the third Sunday in September** any vessel authorized to land scup for commercial purposes in Rhode Island is authorized to land scup in any amount between 0 and 5,000 pounds in any calendar week period during the Fall Sub Period so long as the total landed by that vessel does not exceed 5,000 pounds in any calendar week period. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When the Fall Sub Period scup quota has been harvested as determined by the Division of Fish and Wildlife (Division) the fishery



**will close. The fishery will restart at the beginning of the Winter 2 fishery as set forth in this part. The Division may adjust the possession limit during the Fall Sub Period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.**

- b. The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of scup landed by a specific vessel during a calendar week.**
- c. The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the scup were landed. The vessel must have all reports dating back to May 1<sup>st</sup> on board the vessel.**
- d. Non-compliance with the provisions of these regulations shall subject both the owner and the operator to revocation of participation in the commercial fisheries for the subsequent Fall Sub Period fishery. If for any reason a Fall Sub Period fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Fall Sub Period upon adjudication.**

**Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife".**

- e. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations the owner and/or operator of the vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division**

pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations as well as the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3).

- (1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.
- (2) Any person who seeks an adjudicatory hearing must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.
- (3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

**7.11.2-3 Possession Limit Adjustments** -- Fish and Wildlife, after discussions with fishing industry representatives, will determine, based upon the period of time remaining in the quota period and the current catch rate, whether the quota will be reached prior to the end of the sub-period. Having determined the catch rate and time remaining in the sub-period, Fish and Wildlife will decide whether the possession limit should be decreased or increased. Fish and Wildlife will file a notice with the Secretary of State's Office if the rate is changed and submit a listserve notice announcing the change. The rate may be modified by Fish and Wildlife upon providing such notification with the possession limit altered between a range of 0 - 10,000 pounds in possession.

**7.11.3 Scup - Reporting Requirement** -- Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

**7.11.4 Scup - Recreational**

**7.11.4-1** - No person fishing recreationally shall possess scup less than ten and one half inches (10.5") total length, and no person fishing recreationally shall possess, per calendar day, more than twenty (20)

scup, whether caught within the jurisdiction of this State or otherwise except as provided in section 7.11.4-3. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on board a vessel by the number of fishermen on board said vessel.

**7.11.4-2** – The recreational season for scup in Rhode Island waters will be open from May 1 through December 31 annually.

**7.11.4-3** – While fishing on a party or charter boat, no person shall possess scup less than eleven inches (11”) total length, and no person fishing while on a party or charter boat shall possess, per calendar day, whether caught within the jurisdiction of this State or otherwise, more than ten (20) scup from May 1 through August 31, more than forty-five (45) scup from September 1 through October 31, and more than twenty (20) scup from November 1 through December 31. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on board a vessel by the number of fishermen on board said vessel.

#### **7.11.5 Scup - Scup Dealer/Shipping/Transfer/Reporting Regulations**

**7.11.5-1 Prohibition on the transfer of Scup** -- No Scup, *Stenotomus chrysops*, may be purchased, bartered, or sold within the State of Rhode Island unless in compliance with the following:

- A.** All persons are prohibited from transferring or attempting to transfer scup from one vessel to another vessel while at sea. The licensed person in charge of the vessel may only transfer scup to a dealer licensed by the State of Rhode Island. Dealers are required to be licensed by the R.I. Department of Environmental Management (in compliance with RIGL 20-2-27 (d), or 20-2-28.1).
- B.** All scup must be weighed prior to the removal of the scup from the dealer’s premises or from the point of transfer.
- C.** The weight scales must be certified in accordance with RIGL, Chapter 47-1.
- D.** Vessels are only allowed one trip limit in possession per calendar day. In addition, no person may land more than one trip limit in any calendar day. No person shall transport into the State of Rhode Island any scup which is not landed at a port located within the state unless the transaction of the first point of sale is in another state.

**E. All dealers are required to record and report all transfers of scup in accordance with the following:**

- (1) Dealers shall maintain a written record on forms provided by the DFW, or dealer forms, of each scup transaction at their permanent place of business in Rhode Island, or with an authorized agent located in Rhode Island for inspection 8:00 AM - 4:00 PM during the course of normal daily business operations. Records must be available by 10:00 AM on the next business day following the date of landing. Records must be available at the dealer's or agent's Rhode Island office for a period of three years.**
- (2) The record must include: date of purchase, time of offloading, location of purchase, the vessel name, the name and license number of the Rhode Island license holder and the amount of scup transferred.**

**F. Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations**

#### **7.11.5-2 License Suspension**

**A. In addition to the penalty prescribed in RIGL 20-1-16, the license of any person who refuses or neglects to make the report required herein will be suspended by the Director. The license of any person who knowingly or willfully makes a false report or violates any provision of these regulations may be suspended for a period not to exceed one year.**

**B. The Director has determined that non-compliance with these regulations seriously threatens the proper management of the available stock of scup and thus the general welfare as represented that it is appropriate to suspend the license of alleged violators pending formal suspension or revocation hearing arising from the alleged violation.**

**C. No person shall take, sell, or possess within this state any scup which have not been taken in compliance with the provisions of this regulation. Any scup which the Director shall have reasonable cause to believe have not been taken in compliance with the provisions of RIGL Title 20 and the regulations adopted in accordance therewith shall be confiscated and sold by the Department of Environmental Management.**

## **10.11 Trawl Vessel Gear Restrictions - Minimum Mesh Size**

**10.11.1 Scup - Owners or operators of otter trawl vessels possessing: 500 pounds or more of scup from November 1 through April 30; or 200 pounds or more of scup from May 1 through October 31, may only fish with nets that have a minimum mesh size of five (5) inches diamond (inside measure) or square mesh with a minimum length of seventy-five (75) meshes from the terminus of the net. For nets with less than seventy-five (75) mesh codends, the entire net will be five (5) inch minimum size diamond or square mesh.**

**10.12 Trawling Gear Roller Regulations -- The use of rollers greater than 18" in diameter is prohibited while in possession of scup or black sea bass.**

# New York State Department of Environmental Conservation

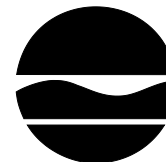
## Division of Fish, Wildlife & Marine Resources

### Bureau of Marine Resources

205 North Belle Mead Road, Suite 1, East Setauket, New York 11733

Phone: (631) 444-0430 • Fax: (631) 444-0434

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

## 2012 Compliance Report to the ASMFC for Scup

### I. Introduction

### II. Request for *de minimis* Not applicable.

### III. Previous calendar year's fishery and management program

#### a. *Activity and results of fishery dependent monitoring*

Recreational: NYSDEC staff sampled head-boats targeting scup throughout the fishing season and measured ALL kept and discarded fish from 129 individuals spread across 12 trips (10 different vessels, 6/20-9/27). Out of the 571 scup that were caught, 428 fish were kept. This data was utilized to calculate the % liberalization/reduction associated with different regulatory changes.

#### *Activity and results of fishery independent monitoring*

Peconic Bay Small Mesh Trawl Survey: In 2012, 390 tows were conducted in the Peconic Bays, yielding 46,924 scup. Scup catches are broken down into 3 age/size classes: YOY, Yearlings and Older (Age 2+). Average CPUE for each class was higher than the time series average (1987-present), see Figure 1. The scup data for the entire time series is available for stock assessment purposes.

#### b. *Regulations in effect*

Recreational Regulations: 10.5" minimum size limit for private and shore anglers  
11.0" minimum size for anglers fishing from For-Hire vessels  
20 fish possession limit  
Open season May 1 – December 31  
40 fish possession limit, For Hire vessels only, September 1 – October 1

Commercial Regulations: 9" minimum size limit  
Follows federal regulations during Winter Periods I & II  
See quota distribution plan for Summer Scup (Appendix A)

#### c. *Harvest*

Commercial: NY commercial fishermen landed 4,306,616 lbs. According to federal dealer reports, 71.1% were not coded to any specific gear. About twenty-two percent of landings were attributed to trawls, 2.5% to hook and line/hand line and the remaining 4.4% to other gears. According to New York State vessel trip reports, 60% of scup harvest was by trawl, 28.7% by pots or traps, 9.9% by hook and line, and 1.4% by other gear types.

Recreational: NY recreational anglers harvested 524,755 scup in 2012 according to MRIP. This is less than 2011 which was less than 2010, despite regulations that have grown more liberal each successive year.

See Table 1. for data on commercial and recreational summer flounder harvest in NY state from 2000 to the present.

#### d. *Implementation of habitat recommendations*

### IV. Planned management programs for the current calendar year

e. *Regulations in effect* See Appendix B

f. *Monitoring programs* No changes anticipated

g. *Changes*

Recreational (for 2013 fishing season): Minimum size limit reduced to 10.0” for ALL anglers and the possession limit increased by 10 fish to 30 scup per angler. In addition, the possession limit during the For-Hire “bonus season” during September and October has been increased by 5 fish to a total of 45 fish per angler.

Fig 1.

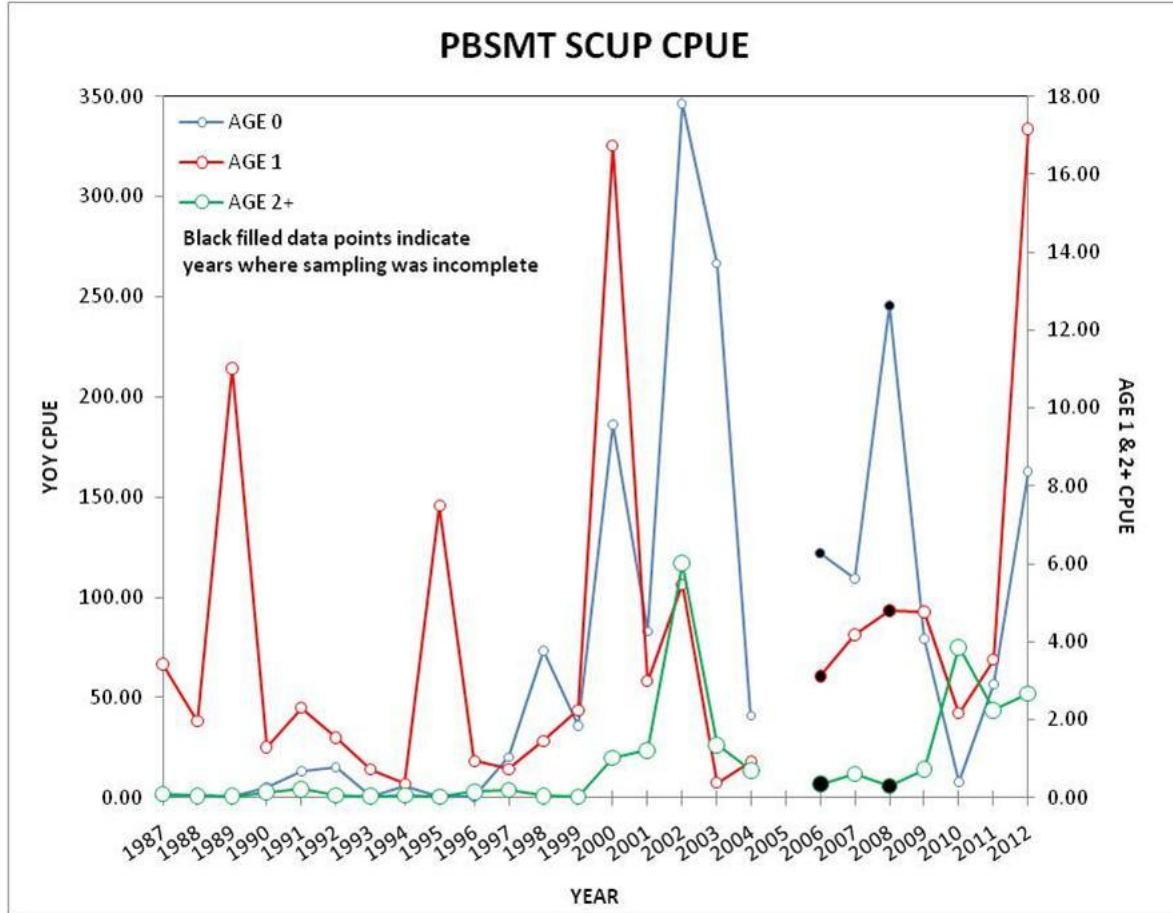


Table 1.

SCUP YEAR	COMMERCIAL		*GEAR					RECREATIONAL	
	Live Lbs	Value	% Hook n Line/Hand Line	Not Coded	Pots & Traps	Trawls	Other	No. Fish Harvested (A+B1)	PSE
2000	633,712.0	\$908,668	6.0%	0.0%	0.1%	93.1%	0.8%	3,126,016	16.9
2001	655,200.0	\$702,607	7.5%	0.0%	0.1%	92.1%	0.3%	1,734,346	14.8
2002	1,557,672.0	\$1,185,095	4.5%	0.0%	0.2%	94.5%	0.7%	1,090,857	13.8
2003	1,849,957.0	\$1,330,537	5.1%	0.0%	0.2%	94.0%	0.8%	5,111,561	9.2
2004	1,719,634.0	\$1,384,833	0.6%	60.7%	0.8%	35.7%	2.0%	1,876,973	20.4
2005	2,180,952.0	\$2,023,735	2.8%	70.4%	1.5%	15.7%	9.6%	859,156	36.5
2006	2,415,793.0	\$2,450,372	1.6%	72.4%	0.2%	20.9%	4.8%	1,677,998	34.6
2007	2,324,524.7	\$2,348,057	1.4%	79.6%	0.2%	16.2%	2.6%	1,596,391	26.7
2008	1,214,008.3	\$1,710,348	1.6%	81.1%	0.4%	14.3%	2.6%	1,450,860	21.3
2009	1,850,322.9	\$1,886,781	1.5%	89.0%	0.4%	6.8%	2.3%	1,460,314	23.3
2010	2,689,695.9	\$2,112,428	0.9%	76.5%	0.6%	19.0%	2.9%	1,990,340	23.8
2011	3,729,027.0	\$2,551,173	1.5%	66.6%	0.5%	27.5%	3.9%	714,789	27.8
2012	4,306,616.1	\$3,536,108	2.5%	71.1%	0.5%	22.1%	3.9%	524,755	24.1

6/6/2013 ACCSP Confidential Commercial Landings (Dealer Reports)

\*Gear categories have been combined to protect individual confidentiality

**Appendix A.**

**2012 SUMMER SCUP DISTRIBUTION**

The 2012 summer scup quota allocation provided by the United States Department of Commerce, National Marine Fisheries Service to the State of New York is **anticipated to be 1,694,863** pounds. DEC's quota distribution plan for scup in 2012 follows. The purpose of this distribution is to fully utilize the available scup quota for the maximum benefit to New York's fishery and to minimize the likelihood of a closure.

<b>2012 Summer Scup Quota Distribution</b>				
	Dates	Quota (lbs)	Initial trip limit	% Distribution
Period 1	<b>May - June</b>	847,431		50%
	<b>MAY</b>		500	
	<b>JUNE</b>		1,000	
Period 2	<b>July - August</b>	423,716	280	25%
Period 3	<b>September - October</b>	423,716	280	25%

Provisions to the quota distribution plan—

1. Any period's unused allocation will roll over to the next period. Currently, the Fishery Management Plan does not allow for one year's unused quota to be rolled over to the next year.
2. As per regulations, holders of a summer flounder fixed gear permit (pound net/trap net) will be exempt from any scup fishery closures. In the event of a closure, a daily trip limit will be established for the fixed gear fishery.
3. If there is an over-harvest that results in a deduction in the state's quota share for the following year, the deduction may be taken proportionately from each period for which the assigned quota was exceeded.
4. DEC may adjust this quota distribution plan if the level of harvest is different from what was projected to ensure maximum utilization of the scup resource and prevent the state allocation from being surpassed.
5. The final 2012 quota allocation is subject to change by adjustments made by the National Marine Fisheries Service.





NEW JERSEY DIVISION OF  
**Fish and Wildlife**  
P.O. Box 400  
Trenton, NJ 08625-0400  
David Chanda, Director

## Memorandum

TO: Toni Kerns, Director, Interstate Fisheries Management Program  
Atlantic States Marine Fisheries Commission

FROM: Peter Clarke, Assistant Fisheries Biologist  
NJ Division of Fish and Wildlife

DATE: 8 May 2013

SUBJECT: 2012 Summer Flounder, Scup and Black Sea Bass Compliance Report

Attached is the subject report. If you have any questions or need anything else please contact me.

STATE OF NEW JERSEY  
ASMFC Compliance Report for Summer Flounder,  
Scup and Black Sea Bass  
Calendar Year 2012

1. Introduction

This report has been prepared to satisfy Atlantic States Marine Fisheries Commission (ASMFC) compliance reporting requirements for summer flounder, scup and black sea bass. No significant changes in monitoring occurred. Several regulatory changes occurred. Daily commercial trip limits for summer flounder were changed for 2012. Dealers and fishermen were notified of any changes concerning trip limits, seasons and quotas for all three species. These changes are reflected in Tables 4a, 4b, and 4c. The summer flounder recreational fishing regulations were changed from 8 fish at 18 inches with an open season from May 7 through September 25 in 2011 to 5 fish at 17.5 inches with an open season from May 5 to September 28 in 2012. The scup recreational fishing season remained at 50 fish at 9 inches from January 1 through February 28 and July 1 through December 31 in 2012. The black sea bass recreational fishing season was open May 28 through September 11 and November 1 through December 31 with a minimum size limit of 12.5 inches and a possession limit of 25 fish per day in 2011. This changed in 2012 to an open season from May 19 to September 3, September 23 to October 14, and November 1 to December 31 with a minimum size of 12.5 inches and a 25 fish possession limit.

2. Request for de minimus status: Not Applicable.

3. Previous Calendar Years Fishery and Management (2011):

a. Fishery Dependent Monitoring

Commercial summer flounder, scup and black sea bass landings were monitored through daily and/or weekly SAFIS dealer reports listing landings by vessel. These reports are used to administer commercial quotas Tables 4a, 4b, and 4c.

Commercial landings were also available through the National Marine Fisheries Service. Recreational harvest was monitored through the Marine Recreational Information Program.

b. Fishery Independent Monitoring

Summer flounder, scup and black sea bass abundance and size composition have been monitored through New Jersey's Ocean Stock Assessment Survey since 1988. The survey is conducted five times a year. Annual survey indices expressed as #/tow and weight/tow for summer flounder, scup and black sea bass are listed on

Table 1. Summer flounder and black sea bass aging has been conducted since 2010. Results are expressed in number collected per year and average age at length and can be found in tables 2 and 3.

c. Copies of Regulations for 2012.

Commercial and recreational regulations are attached as Appendix I and II.

d. 2012 New Jersey Commercial and Recreational Harvest (pounds)

	<u>Commercial</u>	<u>Recreational</u>
<b>Summer Flounder</b>	2,269,375	2,946,167
<b>Scup</b>	978,531	107,650
<b>Black Sea Bass</b>	310,427	774,076

e. Habitat Recommendations: Not Applicable

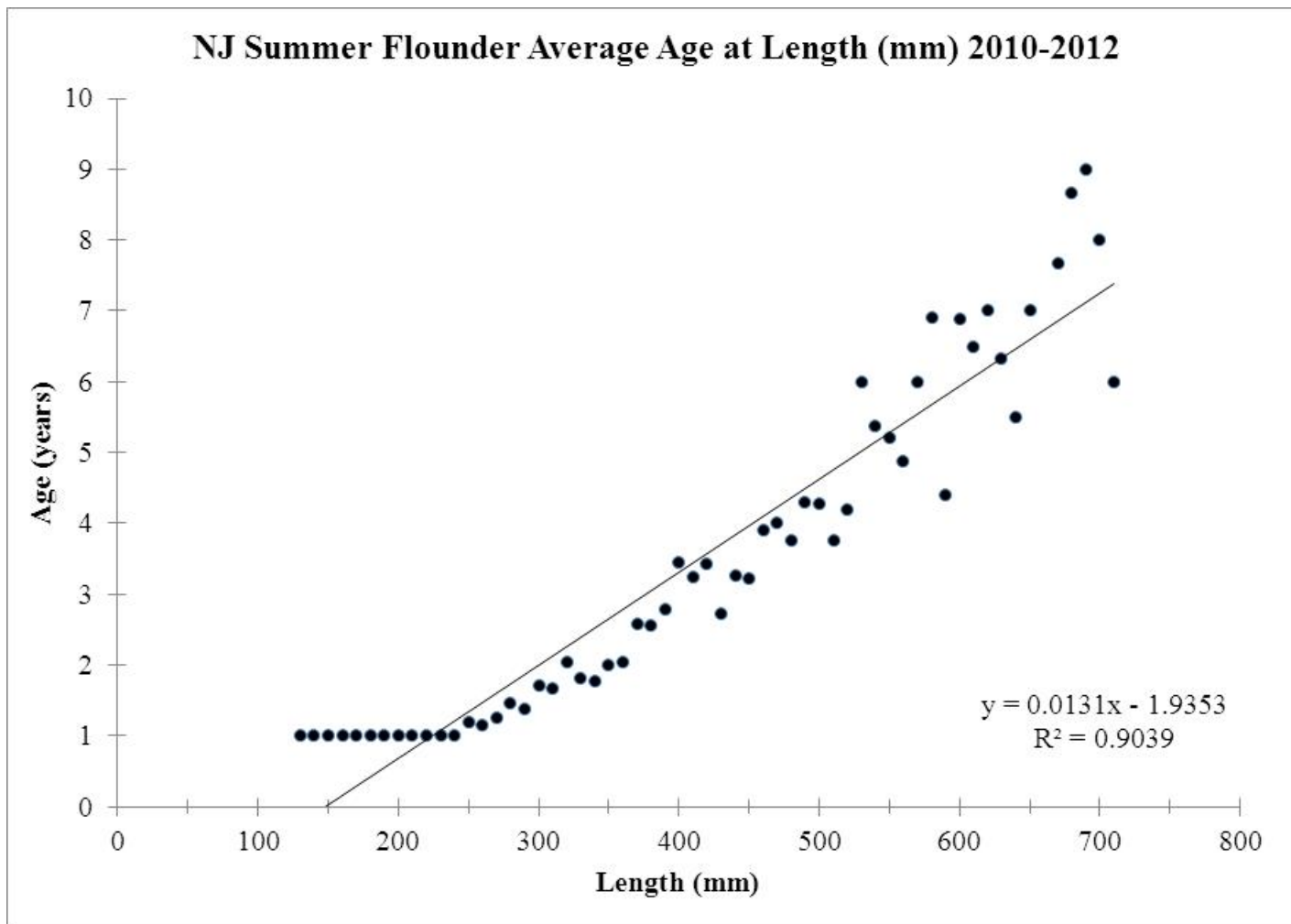
4. Planned Management Programs for 2013

Commercial landings of summer flounder, scup and black sea bass will continue to be monitored via SAFIS electronic dealer reporting for quota management. All New Jersey Summer Flounder, Scup, and Black Sea Bass Dealers were notified that the NJ Department of Environmental Protection will accept SAFIS reporting as an approved method to satisfy state reporting requirements beginning January 1, 2007. This action was taken to eliminate the duplicate reporting requirements that had been in effect. Trip limits and quotas will be modified as per ASMFC direction. Effective since 2007, black sea bass circular escape vent size increased from 2.375-inches to 2.5 inches and two escape vents are required in each pot. The recreational fishing regulations for summer flounder changed from 5 fish at 17.5 inches with an open season from May 5 to September 28 in 2012 to 5 fish at 17.5 inches with an open season from May 18 to September 16 in 2013. The recreational fishing regulations for black sea bass have changed from May 19 to September 3, September 23 to October 14, and November 1 to December 31 with a minimum size of 12.5 inches and a 25 fish possession limit in 2012 to May 19 to August 8, September 27 to October 14, and November 1 to December 31 in 2013. The recreational fishing regulations for scup have not changed from 2012 and will remain the same for 2013.

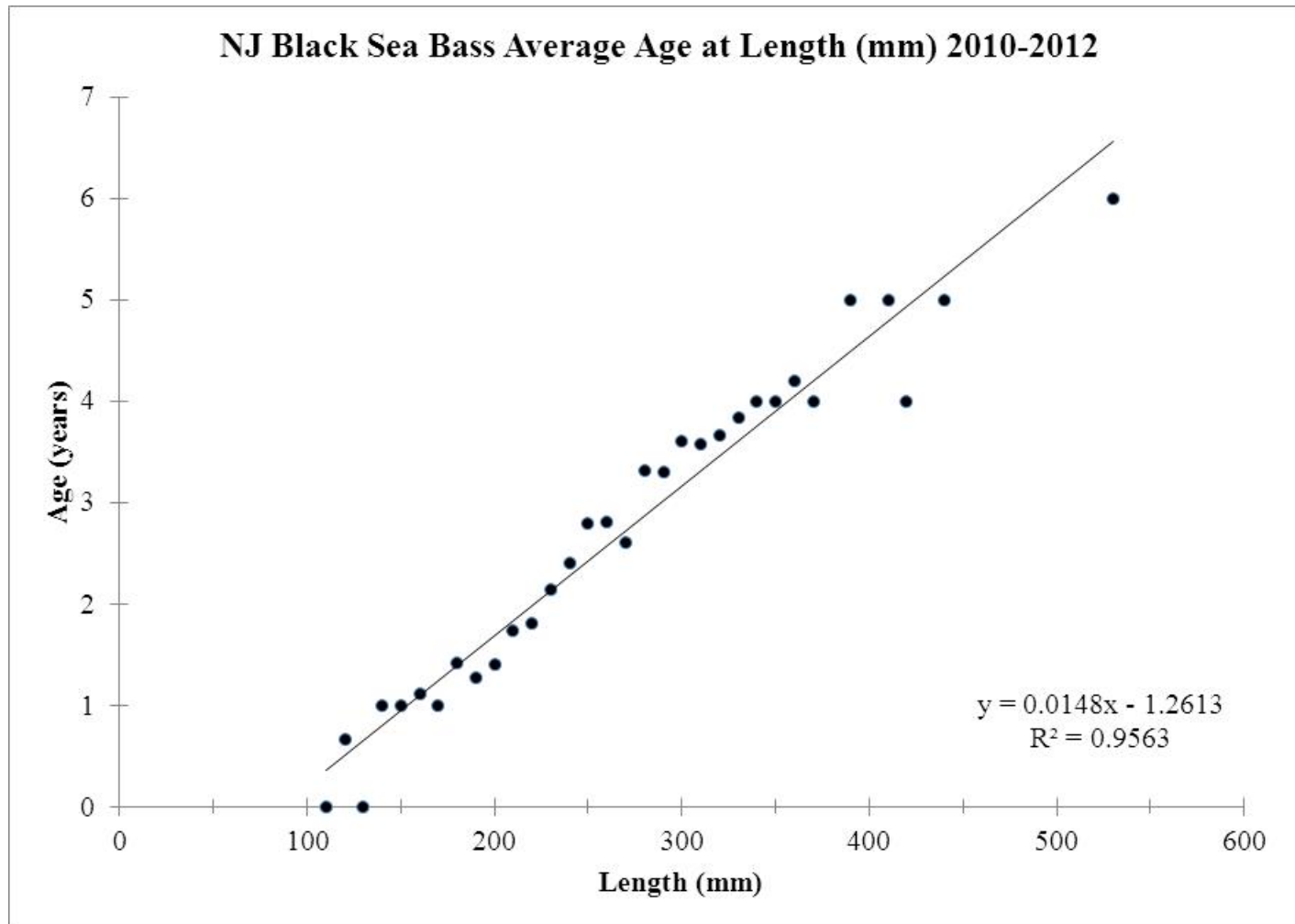
**Table 1.** Annual abundance indices (mean stratified number and weight [kg] per tow) of scup, summer flounder, and black sea bass taken in bottom trawl surveys of New Jersey coastal waters, 1989-2012. Means are based on data pooled for five surveys each year (January, April, June, August, October [+ Dec in 1989]).

Year	No. Samples	Scup		Summer Flounder		Black Sea Bass	
		Number	Weight	Number	Weight	Number	Weight
1989	193	72.75	2.75	1.33	0.58	1.58	0.25
1990	171	74.72	3.77	2.43	1.04	1.42	0.26
1991	189	200.61	6.17	3.32	1.38	4.10	0.57
1992	191	222.70	7.16	3.98	1.77	2.32	0.33
1993	187	256.91	5.21	7.19	2.69	3.01	0.49
1994	186	86.45	3.30	2.39	1.04	0.64	0.13
1995	188	27.13	2.08	7.24	3.00	1.84	0.26
1996	189	30.81	1.04	8.06	3.53	2.90	0.62
1997	187	52.09	3.82	13.80	7.49	40.21	0.62
1998	188	220.05	4.88	8.05	4.09	4.36	0.29
1999	186	209.10	10.30	9.66	5.03	2.48	0.30
2000	187	262.66	6.67	6.35	3.64	7.14	1.76
2001	186	163.37	4.32	4.80	2.68	5.52	1.25
2002	188	568.07	25.73	14.45	9.97	25.23	2.86
2003	188	804.08	10.19	8.54	6.06	5.43	1.34
2004	187	449.12	11.70	9.22	5.96	3.29	0.60
2005	186	147.98	4.19	9.63	4.22	1.21	0.23
2006	186	943.63	16.52	9.10	5.03	4.54	0.50
2007	187	1185.54	38.27	7.98	4.94	15.64	1.95
2008	186	141.17	3.19	5.41	2.85	2.76	0.62
2009	186	205.66	6.04	7.33	3.90	6.64	1.21
2010	186	141.11	2.21	9.41	4.52	2.20	0.34
2011	186	101.74	5.13	5.84	3.27	3.62	0.55
2012	186	131.73	5.83	7.53	3.99	7.15	0.63

**Table 2.** Annual summer flounder aging results expressed in numbers of fish collected per year and average age at length for all years combined.



**Table 3.** Annual black sea bass aging results expressed in numbers of fish collected per year and average age at length for all years combined.



**Table 4a. New Jersey Commercial Summer Flounder Quota Summary: 2012**

Coastwide ACL (Rec and Com):	25,581,054
Commercial Discards:	459,000
Recreational Discards:	2,550,000
Research Set Aside (RSA):	677,162
Coastwide ACL Less RSA and Discards:	21,894,892
Coastwide Commercial Quota (60%):	13,136,935
NJ Annual Quota (16.72499% CCQ):	2,197,151
Previous year overage:	0
Total Adjusted Quota:	2,197,151
Total Landings:	2,270,310
Total over (-)/under ( ):	-73,159
Percent of Quota Harvested	103.33%

Season	Original Directed Quota	Adjusted Directed Quota	Directed Landings	Over/Under	By-Catch Quota	By-Catch Landings	Over/Under	Total Season Quota	Total Season Landings	Number of Directed Vessels: 2009/2010/2011/2012	Possible Closure Date	Trip Limits
1 Jan 1-Feb 8 (directed) Feb 9 Feb 18 (by catch) Feb 19 - Feb 29 (closed)	559,202		674,171	-114,969	56,000	8,406	47,594	615,202	682,577	58/60/66/61	landing :: 100K/wk Feb 4 or Feb 11	3,000x2 or 5,000x1
2 Mar 1- Mar 3 (bycatch) Mar 4 - Apr 14 (directed) April 15- April 30 (bycatch)	219,687	152,312	155,465	-3,153	22,000	8,815	13,185	174,312	164,280	41/41/36	ave 30k/wk. Close 3/14.	1,500x3
3 May 1 - May 5 (bycatch) May 6 - Jun 30 (directed)	209,701	219,733	186,415	33,318	21,000	2,408	18,592	240,733	188,823	33/36/33		250x7 or 500x4
4 Jul 1-Aug 31 (directed)	209,701	261,611	271,009	-9,398	21,000	0	21,000	282,611	271,009	33/32/24		250x7 or 500x4
5 Sep 1 (bycatch) Sep 2 - Oct 31 (directed)	579,174	590,776	621,783	-31,007	58,000	0	58,000	648,776	621,783	67/43/	oct 27	750x4 or 3,000x1
6 Nov 1-Nov 3 (bycatch) Nov 4-Dec 31 (directed)	219,687	246,679	340,903	-94,224	22,000	0	22,000	268,679	340,903	44/57/38	Dec. 15 or 22, 2012	1,000x4 or 3,500x1
Total	1,977,436				219,715							
Adjusted Total	1,997,151		2,249,746		200,000	19,629			2,269,375			

**Table 4b. New Jersey Commercial Black Sea Bass Quota Summary: 2012**

Coastwide Landings ACT (Rec and Com):	3,600,000
RSA:	108,000
Coastwide Landings ACT Less RSA:	3,492,000
Coastwide Commercial Quota (CCQ):	1,711,080
NJ Annual Quota (20% CCQ):	342,216
Previous year overage:	0
Total Adjusted Quota:	342,216
Total Pounds Harvested:	310,427
Total over (-) / under ( ):	31,789
Percent of Quota Harvested:	90.71%

Season	Original Directed Quota	Adjusted Directed Quota	Directed Landings	Overage (-) / Underage	By-Catch Quota	By-Catch Landings	Overage (-) / Underage	Trip Limits	Total Quota	Total Landed	Total Overage (-) / Underage
Jan 1 to March 13 (directed) March 14 to April 15 (bycatch)	119,502		101,819	17,683	13,278	2,184	11,094	500x4 or 1,000x2	132,780	104,003	28,777
April 16 to June 30	63,447	92,224	70,232	21,992	7,050	0	7,050	500x2 or 1,000x1	99,273	70,232	29,041
July 1 to Sept 30	41,579	70,621	42,925	27,696	4,620	0	4,620	500x2 or 1,000x1	75,240	42,925	32,315
Oct 1 to Dec 31	83,466	115,782	93,267	22,515	9,274	0	22,515	500x2 or 1,000x1	125,056	93,267	31,789
Total	307,994		308,243		34,222	2,184			342,216	310,427	



**Table 4c. New Jersey Commercial Scup Landings Data: 2012**

Season	Quota	Coastwide Landings	NJ Landings	Percent of Quota Landed	NJ % of Coastwide Landings	Trip Limit
WINTER 1 Coastal (Jan.1 - Apr. 30)	12,589,558	5,190,370	615,771	41%	12%	50,000/trip with a max of 7 trips per week
SUMMER State Share(May 1 - October 31) 2.9% of coastal quota	315,241	6,349,749	40,877	28.79%	4.96%	5,000/trip up to 7 trips per week
WINTER 2 Coastal (Nov 1- Dec. 31)	11,635,321	2,350,393	308,348	20.20%	13%	8,000/day with a maximum of 7 trips per week.

**Appendix I. N.J.A.C. 7:25-18.1** Size, season, and possession limits. 2012

(a) For the purpose of this subchapter, the following common names shall mean the following scientific name(s) for a species or group of species, except as otherwise specified elsewhere in this subchapter.

<u>Common Name</u>	<u>Scientific Name</u>
Black Sea Bass	Centropristis striata
Scup (Porgy)	Stenotomus chrysops
Summer Flounder (Fluke)	Paralichthys dentatus

(b) A person shall not purchase, sell, offer for sale, or expose for sale any species listed below less than the minimum length, measured in inches, except as may be provided elsewhere in this subchapter, and subject to the specific provisions of any such section. Any commercially licensed vessel or person shall be presumed to possess the following species for sale purposes and shall comply with the minimum sizes below. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below.

<u>Species</u>	<u>Minimum Size (inches)</u>
Black Sea Bass	11
Scup (Porgy)	9
Summer Flounder	14

1. Total length for black sea bass shall be measured along the midline from the tip of the snout to the end of the central portion of the tail, not to include tail filaments.

(c) A person angling with a hand line or with a rod and line or using a bait net or spearfishing shall not have in his or her possession any species listed below less than the minimum length, nor shall such person take in any one day or possess more than the possession limits as provided below, nor shall such person possess any species listed below during the closed season for that species. Exceptions to this section as may be provided elsewhere in this subchapter shall be subject to the specific provisions of any such section. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below:

<u>Species</u>	<u>Minimum Size In Inches</u>	<u>Open Season</u>	<u>Possession Limit</u>
Black Sea Bass	12.5	May 19 – Sept 3 Sept 23-Oct 14 Nov 1 – Dec 31	25
Scup (Porgy)	9	Jan. 1—Feb. 28, and July 1—Dec. 31	50
Summer Flounder (Fluke)	17.5	May 5—Sept. 28	5

1. Total length for black sea bass shall be measured along the midline from the tip of the snout to the end of the central portion of the tail, not to include tail filaments.

(e) Except as provided in (e)2 and (f) below, a person shall not remove the head, tail or skin, or otherwise mutilate to the extent that its length or species cannot be determined, any species with a minimum size limit specified at (b) or (c) above or any other species of flatfish, or possess such mutilated fish, except after fishing has ceased and such species have been landed to any ramp, pier, wharf or dock or other shore feature where it may be inspected for compliance with the appropriate size limit.

1. A shark may be eviscerated and the head and tail removed prior to landing, provided that the alternate length as measured from the origin of the first dorsal fin to the precaudal pit (located just forward of the origin of the upper lobe of the caudal or tail fin) is not less than 23 inches in length. The fins may not be removed from a shark or dogfish, except after fishing has ceased and such shark or dogfish has been landed as specified in (e) above.

2. A person may use parts of one legal sized summer flounder as bait. The carcass of the fish minus the fillets, commonly known as the rack, of the summer flounder used must be retained by the person and counted as part of the person's daily bag limit for that day. The rack shall be kept fully intact so it can be measured for minimum size limit. One summer flounder caught on the person's current fishing trip can be used for this purpose. No parts of fish caught on previous fishing trips shall be in possession. No other species of flat fish or fish listed under (b) or (c) above shall be used for this purpose.

(f) Special provisions applicable to a Special Fillet Permit are as follows:

1. A party boat owner may apply to the Commissioner for a permit for a specific vessel, known as a Special Fillet Permit to fillet species specified at (c) above at sea;

2. For purposes of this section, party boats are defined as vessels that can accommodate 15 or more passengers as indicated on the Certificate of Inspection issued by the United States Coast Guard for daily hire for the purpose of recreational fishing;

3. The Special Fillet Permit shall be subject to the following conditions:

i. Once fishing commences, no parts or carcasses of any species specified in (c) above and no flatfish parts or carcasses shall be discarded overboard; of the species specified at (c) above, only whole live fish may be returned to the water;

ii. No carcasses of any flatfish or species listed at (c) above shall be mutilated to the extent that its length or species cannot be determined;

iii. All fish carcasses of species specified at (c) above shall be retained until such time as the vessel has docked and been secured at the end of the fishing trip adequate to provide a law enforcement officer access to inspect the vessel and catch;

iv. No fillet of any flounder or other flatfish shall be less than eight inches in length during the period of May 1 through October 31 or less than five inches in length during the period of November 1 through April 30;

v. No fish of any species less than the minimum size limit specified in (c) above shall be filleted and no fillet of any species listed below shall have the skin removed and no fillet shall be less than the minimum length in inches specified below.

<u>Species</u>	<u>Minimum Fillet or Part Length</u>
Black Sea Bass	5 inches
Scup	4 inches

vi. Fish carcasses from the previous trip shall be disposed of prior to commencing fishing on a subsequent trip;

vii. Violation of any of the provisions of the Special Fillet Permit shall subject the captain and permit holder to the penalties established pursuant to N.J.S.A. 23:2B-14 and shall result in a suspension or revocation, applicable to both the vessel and the owner of the Special Fillet Permit according to the following schedule:

(1) First offense: 60 days suspension;

(2) Second offense: 120 days suspension; and

(3) Third offense: Revocation of permit, rendering the vessel and the owner not eligible for permit renewal regardless of vessel ownership.

viii. In calculating the period of suspension or revocation applicable under (f)3vii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three-

year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.

ix. Upon receipt of the notice of suspension but prior to the suspension or revocation of the Special Fillet Permit, the permittee has 20 days to request a hearing from the Department. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1. If a request for a hearing is not received by the Department within 20 days of the permittee's receipt of the notice of suspension, the permit suspension or revocation will be effective on the date indicated in such notice.

(g) Any person violating the provisions of (b), (c), (d) or (e) above shall be liable to a penalty of \$ 30.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

(m) Wanton waste of fish is prohibited.

1. Fish of any species, taken by any means, which are purposely killed shall become part of the fisherman's daily possession limit and shall be removed from the waters from which they were taken and from adjacent lands. This subsection shall not apply to those fish which are released while still alive and subsequently die or to those fish taken inadvertently by net (bycatch) and subsequently die.

(n) Any person violating the provisions of (h) through (l) above shall be liable for a penalty of \$ 100.00 for each fish taken or possessed. Each fish taken or possessed shall constitute a separate and distinct offense.

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, minimum size limits and possession limits specified in this section by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Department shall publish notice of any such modification in the New Jersey Fish and Wildlife Digest and the New Jersey Register, and shall submit a news release to individuals on the Division outdoor writers' mailing list.

(q) All persons aboard any fishing vessel subject to this rule shall immediately comply with instructions and signals issued by a conservation officer, a marine police officer or other law enforcement officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for the purpose of enforcement of this rule. After any instructions, signals or other communication from an authorized law enforcement officer indicating the officer's intent to perform an inspection, it shall be unlawful for any person to dispose of fish, fish parts or any other matter in any manner until such time as the inspection is complete. Violation of this provision shall subject the violator to the penalties established pursuant to N.J.S.A. 23:2B-14.

(r) Pursuant to N.J.S.A. 23:10-21 and 21.1, any gear used in the violating of the provisions of this subchapter may be seized and forfeited to the Division.

## Appendix II. Commercial Regulations

### N.J.A.C. 7:25-18.12; Commercial fishing seasons, quotas, and trip limits.

(h) The following provisions are applicable to the commercial harvest of black sea bass:

1. After December 31, 2002, a vessel shall not land more than 100 pounds of black sea bass during the period of January 1 through March 31 or more than 50 pounds of black sea bass during the period of April 1 through December 31 in New Jersey on any one trip unless said vessel is in possession of a valid New Jersey Black Sea Bass Permit. The permit shall be issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.
  - i. Applicants for a New Jersey Black Sea Bass Permit shall complete and submit an application provided by the Department by December 31, 2002 that includes information on name, address, vessel name, vessel documentation or registration number, gear and landings criteria as specified in (h)1ii below. Applications for a New Jersey Black Sea Bass Permit received after the above date shall be denied.
  - ii. To be eligible for a New Jersey Black Sea Bass Permit, the vessel's owner shall meet the following criteria:
    - (1) The vessel shall have landed and sold a minimum cumulative total of 10,000 pounds of black sea bass in New Jersey during the period 1988 through May 3, 2001;
    - (2) The vessel shall have possessed a valid Federal Black Sea Bass Moratorium Permit or appropriate New Jersey gear license for each year of submitted landings documentation; and
    - (3) Documented proof of landings shall consist of one or more of the following:
      - (A) Weigh-out slips totaling the weight harvested;
      - (B) A notarized statement from the applicant and the purchaser(s) attesting to the weight harvested (a copy of the business records the statement(s) must accompany the application);
      - (C) Other documentation similar to that in (h)1ii(3)(A) or (B) above may be accepted at the discretion of the Commissioner after his or her review.
2. The New Jersey Black Sea Bass Permit shall be on board the vessel to which it is issued at all times. The permit is valid from the date of issuance and for any subsequent years unless revoked as part of a penalty action. The vessel, when engaged in a black sea bass fishery, may have on board the gear type(s) listed on that vessel's New Jersey Black Sea Bass Permit.
3. The owner of a vessel permitted pursuant to this sub-section not pending revocation or court action may transfer his or her Black Sea Bass Permit, upon application to the Department, as follows:
  - i. To his or her replacement vessel, provided the replacement vessel is not greater than 10 percent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced shall no longer be eligible for a black sea bass permit; or
  - ii. Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a Black Sea Bass Permit based on the harvesting history of the vessel being sold.
4. Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.
5. Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without prior approval of the Department.
6. A vessel possessing a valid Black Sea Bass Permit to commercially harvest black sea bass by angling or hook and line and when operating under the permit shall be subject to the following:
  - i. Crew size shall be limited to no more than five persons, including the captain; and
  - ii. The vessel shall not carry any passengers for hire. When carrying passengers for hire the Black Sea Bass Permit is not valid and the recreational possession limits and seasonal restriction as specified in N.J.A.C. 7:25-18.1 apply.
7. A vessel that does not possess a New Jersey Black Sea Bass Permit shall be permitted to land not more than 100 pounds of black sea bass during the period of January 1 through March 31, or not more than 50 pounds of black sea bass during the period of April 1 through December 31 on any trip provided the amount of black sea bass landed from any vessel

shall not exceed 10 percent, by weight, of the total weight of all species landed and sold. Vessels taking black sea bass by angling or hook and line that do not possess a New Jersey Black Sea Bass Permit shall be subject to the possession limits established in N.J.A.C. 7:25-18.1 and the seasonal by-catch limits and 10 percent criteria specified above.

8. Annual and seasonal black sea bass quotas and daily trip limits shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission.
  - i. The Commissioner, or his or her designee, shall implement annual and seasonal black sea bass quotas and daily trip limits determined by the Atlantic States Marine Fisheries Commission upon four days public notice. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.
  - ii. Ten percent of the New Jersey annual black sea bass quota shall be allocated each year for by-catch landings when any of the seasons for the directed commercial fishery defined in (h)8iii below are closed. The by-catch landings shall be divided between seasons as identified in (h)8iii below at the same percentage apportioned to each season specified at (h)8iii below.
    - (1) Any by-catch not landed during the season allocated shall be added to the directed fishery quota of the following season except during the last season.
    - (2) If any of the by-catch allowance has not been landed by December 1 in any calendar year the remaining amount shall be added to the directed black sea bass fishery quota.
  - iii. The balance of the New Jersey annual quota for the black sea bass fishery remaining after deducting the by-catch allowance specified in (h)8ii above shall be divided into seasons, percentage of the annual quota apportioned to each season, daily trip limits and number of allowable landings days in each week (Sunday through Saturday) as follows:
    - (1) January 1-April 15: 38.8 percent, 500 pound trip limit and a maximum of four days per week or 1,000 pound trip limit with a maximum of two days per week that a vessel may land black sea bass.
    - (2) April 16-June 30: 20.6 percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (3) July 1-September 30: 13.5percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (4) October 1-December 31: 27.1 percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (5) If a minimum of 50,000 pounds of the New Jersey black sea bass quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year.
    - (6) Any daily landings of black sea bass not exceeding 100 pounds during the period of January 1 through March 31 or 50 pounds during the period of April 1 through December 31 shall not be applied to maximum weekly landings days during any season as specified in (h)8iii(1) through (4) above, provided the amount of black sea bass landed from any vessel shall not exceed 10 percent by weight, of the total weight of all species landed and sold.
  - iv. No vessel shall have in possession or land and no dealer shall accept from any one vessel or person more than the lesser of the daily trip limit of black sea bass set by the National Marine Fisheries Service or the Atlantic State Marine Fisheries Commission in any one calendar day.
  - v. The Commissioner, or his or her designee, shall close the season for the commercial black sea bass fishery upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders.

- vi. Once the season has been closed for the directed commercial black sea bass fishery, no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or purchase any black sea bass landed in New Jersey in excess of the by-catch allowances specified in (h)1 and 7 above and provided the amount of black sea bass landed from any vessel shall not exceed 10 percent, by weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or buy any black sea bass landed in New Jersey.
  - vii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (h)7v above.
    - (1) The Commissioner, or his or her designee may set daily trip limits when reopening a prematurely closed season.
  - viii. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.
  - ix. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following season. The amount overharvested shall also be deducted from the following years seasonal quota in pounds and reallocated to the season from which it was deducted the previous year.
  - x. Any vessel participating in the black sea bass fishery shall notify the Department of the time and place of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the trip being called in. For example, "this will be my third landing this week." Notification shall include phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.
9. After December 31, 2002, no dealer shall accept or purchase any black sea bass from any vessel or harvester unless such dealer is in possession of a valid New Jersey Black Sea Bass Dealers Permit. A New Jersey Black Sea Bass Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:
    - New Jersey Black Sea Bass Dealers Permit
    - Nacote Creek Research Station
    - PO Box 419
    - Port Republic, NJ 08241
  10. After December 31, 2002, no dealer shall accept or purchase from any one vessel more than the amounts of black sea bass specified at (h)1 above unless said vessel is in possession of its valid New Jersey Black Sea Bass Permit.
  11. After December 31, 2002, any harvester or vessel landing black sea bass in New Jersey for the purpose of sale shall sell all black sea bass to a permitted New Jersey Black Sea Bass Dealer.
  12. All permitted New Jersey Black Sea Bass Dealers shall provide daily reports during the period January 1 through April 15 and weekly reports during the period April 16 through December 31 to the Division listing the amount of black sea bass landed on a daily basis and any other information that may be required by the Commissioner. If no black sea bass were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number listed on the reporting form no later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
  13. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
    - i. Failure to submit the required documentation to an application shall result in the denial of the permit.

- ii. Falsification or misrepresentation of any information on an application including documentation provided to verify the amount of black sea bass landed as specified in (h)1ii(3) above shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.
- iii. Failure to comply with the provisions of (h)6 above, criteria under which a vessel may harvest black sea bass by angling or hook and line, (h)8 above, exceeding daily trip limits and landing black sea bass after the season has been closed, (h)9 above, accepting or purchasing black sea bass without a New Jersey Black Sea Bass Dealers Permit, (h)10 above, accepting or purchasing from any non-permitted vessel more than the amount of black sea bass stipulated pursuant to (h)1 and 7 above, and (h)11 above, selling black sea bass to a non-permitted dealer shall result in the suspension during open season(s) or revocation of the vessel's and/or dealer's Black Sea Bass Permit according to the following schedule:
  - (1) First offense: 60 days suspension;
  - (2) Second offense: 120 days suspension;
  - (3) Third offense: permanent revocation;
- iv. In calculating the period of suspension or revocation applicable under (h)13iii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.
- v. Any person who has had his or her New Jersey Black Sea Bass Dealers Permit suspended or revoked shall not land or permit the landing of any black sea bass at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Black Sea Bass Dealers Permit.
- vi. Prior to revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(i) The following provisions are applicable to the commercial harvest of summer flounder:

- 1. A vessel shall not land more than 100 pounds of summer flounder during the period of May 1 through October 31 or more than 200 pounds of summer flounder during the period of November 1 through April 30 in New Jersey on any one trip unless said vessel is in possession of a valid New Jersey Summer Flounder Permit to participate in the directed fishery for summer flounder. Vessels fishing under the special terms of a quota transfer or combination program as provided in (i)3 below may be exempt from this requirement if such terms specify that a New Jersey Summer Flounder Permit is not necessary to land summer flounder in New Jersey. The permit shall be issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.
  - i. Applicants for a New Jersey Summer Flounder Permit shall complete and submit an application provided by the Department. Applicants applying to use hook and line shall submit their applications no later than May 31, 1994. Applicants applying for a New Jersey Summer Flounder permit for any other gear type shall submit their applications no later than January 1, 2000. Applications for a New Jersey Summer Flounder Permit received after the above dates shall be denied.
  - ii. To be eligible for a New Jersey Summer Flounder Permit, the vessel's owner shall meet the following criteria:
    - (1) The vessel shall have landed and sold at least 1,000 pounds of summer flounder in each of two years during the period of 1985-1992;
    - (2) The vessel shall have possessed a valid New Jersey otter trawl, pound net, or gill net license or a valid Federal summer flounder permit during each of the two years it qualified based upon the pounds of



summer flounder landed and sold in (i)1ii(!) above. Vessels providing documentation regarding the amount of summer flounder landed for two years between January 1, 1985 to November 2, 1988 or vessels providing documentation of harvest by hook and line are exempt from this requirement; and

- (3) Applicants shall provide weigh out slips to document the amount of summer flounder landed and copies of their New Jersey otter trawl, pound net or gill net license or Federal summer flounder permit for the respective years.

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

- (1) The owner of a vessel permitted pursuant to this subsection not pending revocation or court action may transfer his or her Summer Flounder Permit, upon application to the Department, as follows:

- (A) To his or her replacement vessel, provided the replacement vessel is not greater than 10 percent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced shall no longer be eligible for a New Jersey Summer Flounder Permit; or

- (B) Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a New Jersey Summer Flounder Permit based on the harvesting history of the vessel being sold.

- (2) Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.

- (3) Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without prior approval of the Department.

iv. A vessel possessing a valid New Jersey Summer Flounder Permit to commercially harvest summer flounder by angling or hook and line and when operating under the permit shall be subject to the following:

- (1) Crew size shall be limited to no more than five persons, including the captain; and

- (2) The vessel shall not carry any passengers for hire. When carrying passengers for hire the New Jersey Summer Flounder Permit is not valid and the recreational possession limits and seasonal restriction as specified in N.J.A.C. 7:25-18.1 apply.

v. A vessel that does not possess a New Jersey Summer Flounder Permit shall be permitted to land not more than 100 pounds of summer flounder during the period of May 1 through October 31, or not more than 200 pounds of summer flounder during the period of November 1 through April 30 on any trip provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight, of the total weight of all species landed and sold, except that vessels taking summer flounder by angling or hook and line shall be subject to the possession limits established in N.J.A.C. 7:25-18.1.

2. The annual summer flounder harvest quota for New Jersey shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries. All landings of summer flounder in New Jersey shall be applied to the New Jersey annual summer flounder quota unless New Jersey enters into an agreement with another state(s) to transfer or combine summer flounder commercial quotas, as provided for pursuant to (i)3 below and such agreement indicated otherwise.

- i. Ten percent, but no more than 200,00 pounds of the of the New Jersey annual summer flounder quota, shall be allocated each year for by-catch landings when any of the six seasons for the directed commercial fishery are closed. The by-catch landings shall be divided between the six seasons as identified at (i)2ii below at the same percentage as for the directed fishery specified at (i)2ii below or as modified by the Commissioner.

- (1) Any by-catch not landed during the season allocated shall be added to the directed fishery quota of the following season except during the last season.
  - (2) If any of the by-catch allowance has not been landed by December 1 in any calendar year the remaining amount shall be added to the directed summer flounder fishery quota.
  - (3) For the purpose of this section, all directed fishery seasons identified at (i)2i below shall start on the first Sunday of the applicable month.
- ii. The balance of the New Jersey annual quota for the summer flounder fishery remaining after deducting the by-catch allowance specified in (i)2i above shall be divided into seasons, percentage of the annual quota apportioned to each season, daily trip limits and number of allowable landings days in each week (Sunday through Saturday) as follows:
- (1) January-February: 28 percent, 3,000 pound trip limit and a maximum of two days a week or 5,000 pound trip limit and a maximum of one day a week that a vessel may land summer flounder;
  - (2) March - April: 11 percent, 1,500 pound trip limit and a maximum of three days per week that a vessel may land summer flounder;
  - (3) May-June: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;
  - (4) July-August: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;
  - (5) September - October: 29 percent, 750 pound trip limit and a maximum of four days that a vessel may land summer flounder, except as follows:
    - (A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 3,000 pounds;
  - (6) November - December: 11 percent, 1,000 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, except as follows:
    - (A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 3,500 pounds; and
  - (7) Any daily landings of summer flounder not exceeding 100 pounds during the period of May 1 through October 31 or 200 pounds during the period of November 1 through April 30 shall not be applied to maximum weekly landings days during any season as specified in (i)2ii(1) through (6) above, provided the amount of summer flounder landed from any vessel shall not exceed 10 percent by weight, of the total weight of all species landed and sold.
- iii. No vessel shall have in possession or land and no dealer shall accept from any one vessel more than the daily trip limit of summer flounder in any one calendar year.
- iv. Any vessel participating in a directed summer flounder fishery shall notify the Department of the time and place of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the tip being called in. For example, "This will be my third landing this week." Notification shall include a phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.

- v. If a minimum of 100,000 pounds of the New Jersey summer flounder quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year or until the quota specified in (i)2 above is landed, whichever occurs first.
- vi. The Commissioner, or his or her designee, shall close the season for the directed and/or by-catch commercial summer flounder fishing season upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all permitted New Jersey Summer Flounder Dealers and New Jersey Summer Flounder Permit holders.
- vii. Once the season has been closed for the directed commercial summer flounder fishery, no vessel shall land any summer flounder and no dealer shall accept any summer flounder landed in New Jersey in excess of the by-catch allowances specified in (i)1 above and provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any summer flounder and no dealer or person shall accept or buy any summer flounder landed in New Jersey.
- viii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated environmental events resulting in the quota not being landed by the projected date and at least one month remains in the current season, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (i)2vi above.
  - (1) The Commissioner, or his or her designee may set daily trip limits when reopening a prematurely closed season.
- ix. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.
- x. If the quota for any of the first five seasons is exceeded, the amount overharvested shall be deducted from the following season.
- xi. If the quota for any year is exceeded, the amount overharvested will be deducted from the following year's annual quota. The remaining annual quota will then be allocated as defined in (i)2i and ii above.
- xii. Beginning in 1994, the Department shall notify the holders of New Jersey Summer Flounder Permits of the season allocations no later than January 31 of the year to which the allocation applies. Notification shall be accomplished by first class mail to permit holders.
- xiii. All New Jersey Summer Flounder Permit holders shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than 15 working days following the end of the reported month at the following address:

New Jersey Summer Flounder Program  
 Nacote Creek Research Station  
 PO Box 419  
 Port Republic, NJ 08241

- (1) The monthly report shall include, but not be limited to, the following information: name, New Jersey Summer Flounder Permit number of the vessel, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which summer flounder are landed. New Jersey Summer Flounder Permit holders who also possess a Federal summer flounder permit and are required to report monthly to the Federal government may submit the "STATE" copy of their Federal log book in satisfaction of the New Jersey reporting requirements.
- (2) If no trips for summer flounder were taken and no summer flounder were landed during the month, a report to that effect shall be required.

3. Pursuant to Amendment 5 of the Mid-Atlantic Fishery Management Council's Summer Flounder Management Plan, the Commissioner may enter into agreements with other states to transfer or combine summer flounder commercial quotas. Such agreements shall specify the terms and conditions under which vessels not in possession of a New Jersey Summer Flounder Permit may land summer flounder in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.
4. No fish dealer shall accept any summer flounder from any vessel or harvester unless such dealer is in possession of a valid New Jersey Summer Flounder Dealers Permit. A New Jersey Summer Flounder Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:

New Jersey Summer Flounder Dealers Permit  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

5. No dealer shall accept from any vessel more than the amounts of summer flounder specified at (i)1 above unless said vessel is in possession of its valid New Jersey Summer Flounder Permit.
6. No vessel shall land and no dealer shall accept any summer flounder which have been frozen, filleted or processed in any way. Only whole, fresh summer flounder may be landed, except that by-catch amounts of summer flounder as specified in i(1) above may be landed frozen provided that each fish is individually frozen whole and can be individually weighed and measured without thawing.
7. Any harvester or vessel landing summer flounder in New Jersey for the purpose of sale shall sell all summer flounder to a permitted New Jersey Summer Flounder Dealer.
8. All permitted New Summer Flounder Dealers shall provide daily reports during the period January 1 through February 28 and weekly reports during the period March 1 through December 31 to the Division listing the amount summer flounder landed on a daily basis by size category and any other information that may be required by the Commissioner or as a result of any agreement with other states pursuant to (i)3 above. If no summer flounder were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division not later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
9. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
  - i. Failure to submit the application by May 31, 1994 for use of hook and line or to attach the required documentation to the application shall result in the denial of the permit.
  - ii. Falsification or misrepresentation of any information on an application including documentation provided to verify the amount of summer flounder landed as specified in (i)1ii(3) above shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.
  - iii. Failure to comply with the provisions of N.J.A.C. 7:25-18.14(i)2, minimum mesh sizes, (i)2iii above, landing, possession or accepting in excess of the daily trip limit for summer flounder, (i)2iv above, failure of notification of landing of summer flounder, (i)2vii above, landing summer flounder after the directed fishery and/or by-catch season has been closed, (i)2xiii above, failure to submit accurate and timely monthly reports, (i)5 above accepting more than by-catch amounts from non-permitted vessels, (i)6 above accepting any summer flounder other than fresh product, or N.J.S.A. 7:25-18.14(a), (b), (d), (e), (f) or N.J.S.A. 23:3-46 through 47 shall result in the suspension during open seasons or revocation of the vessel's New Jersey Summer Flounder Permit or the dealers New Jersey Summer Flounder Dealers Permit according to the following schedule:
    - (1) First offense: 60 days suspension;
    - (2) Second offense: 120 days suspension;

(3) Third offense: permanent revocation;

- iv. In calculating the period of suspension or revocation applicable under (i)9iii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.
- v. Any person who has had his or her New Jersey Summer Flounder Dealers Permit suspended or revoked shall not land or permit the landing of any summer flounder at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Summer Flounder Dealers Permit.
- vi. Prior to revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(k) The following provisions are applicable to the commercial harvest of scup:

- 1. Annual coastwide scup quotas and daily trip limits for the periods of January 1 through April 28 and November 1 through December 31, and an annual New Jersey scup quota for the period from May 1 through October 31 shall be determined by the Mid-Atlantic Fishery Management Council as implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission. All landings of scup in New Jersey during the period from May 1 through October 31 shall be applied to the New Jersey scup quota.
  - i. Any closure of the scup fishery by the National Marine Fisheries Service in adjacent Federal waters or any closure which includes New Jersey marine waters during the periods January 1 through April 28 and November 1 through December 31 would automatically close New Jersey to commercial landings of scup.
  - ii. The Commissioner, or his or her designee, shall implement annual and seasonal scup quotas and daily trip limits determined by the Atlantic States Marine Fisheries Commission upon two days public notice. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.
  - iii. The Commissioner, or his or her designee, shall close the season for the commercial scup fishery upon two days public notice of the projected date the New Jersey seasonal quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Scup Dealer Permit holders and Federal scup moratorium, permit holders that are New Jersey residents.
  - iv. Once the season has been closed for the commercial scup fishery, no vessel shall land any scup and no dealer shall accept any scup landed in New Jersey.
  - v. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (k)1iii above.
  - vi. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following year's quota for that season.
- 2. No vessel shall have in possession or land and no dealer shall accept from any vessel more than the lesser of the daily trip limits set by the National Marine Fisheries Service or the Atlantic State Marine Fisheries Commission for the season of January 1 through April 30 and November 1 through December 31 and no vessel shall have in possession or land and no dealers shall accept from any one vessel more than the daily trip limit of 5,000 pounds of scup during the season of May 1 through October 31 or as provided for in (k)2i above.

- i. If a minimum of 25 percent of the New Jersey scup quota is projected to remain unlanded as of October 1 in any calendar year, then there shall be a 10,000 pound trip limit for the remainder of the season or until the season is closed as provided in (k)1i above.
  - ii. The trip limit for scup shall be two trips per week (Sunday through Saturday) with landings not to exceed 50,000 pounds during any two-week period from January 1 through April 28 and a daily limit as established by the National Marine Fisheries Service from November 1 through December 31. During the period of January 1 through April 28, the daily trip limit will be reduced to 1,000 pounds when it is projected that 80 percent of the period quota will be harvested.
3. No fish dealer shall accept any scup from any vessel or harvester unless such dealer is in possession of a valid New Jersey Scup Dealer Permit. A New Jersey Scup Dealer Permit may be obtained by completing an application supplied by the Department and submitting it to:

New Jersey Scup Dealers Permit  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

4. A harvester or vessel shall not land scup for the purpose of sale or sell any scup unless such harvester or vessel is in possession of a valid scup moratorium permit issued by the National Marine Fisheries Service.
5. Any harvester or vessel landing scup in New Jersey for the purpose of sale shall sell all scup to a permitted New Jersey Scup Dealer.
6. All permitted New Jersey Scup Dealers shall provide weekly reports to the Division listing the amount of scup landed on a daily basis and any other information that may be required by the Commissioner or as a result of an agreement with other states pursuant to (k)9 below. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division no later than two days following the week's end or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
7. All scup moratorium permit holders landing scup in New Jersey shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than 15 working days following the end of the reported month at the following address:

New Jersey Scup Program  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

- i. The monthly report shall include, but not be limited to, the following information: name, scup moratorium permit number, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which scup are landed. Scup moratorium permit holders may submit the "STATE" copy of their Federal log book in satisfaction of the New Jersey reporting requirements.
8. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
- i. Failure to comply with the provisions (k)1iv above, landing or accepting scup after the season has been closed; (k)2 above, landing or accepting more than the daily trip limit; (k)3 above, accepting scup from a vessel without first having obtained a valid New Jersey Scup Dealer Permit; (k)4 above, landing for the purpose of sale or selling scup without first having obtained a valid scup moratorium permit; (k)5 above, selling scup to a non-permitted fish dealer; or (k)6 and 7 above, failure to submit accurate and timely reports, shall result in the suspension during the open seasons or revocation of the dealer's New Jersey Scup Dealer Permit according to the following schedule:

- (1) First offense: 60 days suspension;
- (2) Second offense: 120 days suspension;
- (3) Third offense: permanent revocation;

ii. In calculating the period of suspension or revocation applicable under (k)8i above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.

9. Pursuant to Amendment 8 of the Mid-Atlantic Fishery Management Council's Fishery Management Plan for the Summer Flounder and Scup Fishery, the Commissioner may enter into agreements with other states to transfer or combine scup commercial quotas. Such agreements shall specify the terms and conditions under which vessels may land scup in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.

#### **N.J.A.C. 7:25-18.14**

(l) Special provisions applicable to the commercial harvest of summer flounder are as follows:

1. The possession of more than 100 pounds of summer flounder during the period of May 1 through October 31 or the possession of more than 200 pounds of summer flounder during the period of November 1 through April 30 on board a vessel or landed from a vessel shall constitute a directed fishery for summer flounder.
2. A person utilizing an otter or beam trawl in the directed fishery for summer flounder shall not use a net of less than 5.5 inches stretched diamond mesh or 6.0 inches minimum stretched square mesh, inside measurement. The mesh size shall be applied throughout the body, extensions and cod end portions of the net upon adoption in the Federal Register of essentially the same criteria. Until such time, the mesh size shall be applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified above in this paragraph, on board a vessel engaged in a directed fishery for summer flounder is prohibited unless such net is not available for immediate use as defined in (b) above or is one of the following:

i. Vessels fishing in the fly net fishery are exempt from the minimum mesh size requirement. A fly net is a two seam otter trawl with the following configuration:

- (1) The net has large mesh webbing in the wings with a stretch mesh measure of eight inches to 64 inches;
- (2) The first body (belly) section of the net consists of 35 meshes or more of eight inches stretch mesh webbing or larger;
- (3) In the body section of the net the stretch mesh decreases in size relative to the wings and continues to decrease throughout the extensions to the cod end, which generally has a webbing of two inch stretch mesh.

(p) Special provisions applicable to a directed scup fishery are as follows:

1. The possession of more than 500 pounds of scup during the period of November 1 through April 30 and more than 200 pounds of scup during the period of May 1 through October 31 on board a vessel or landed from a vessel shall constitute a directed fishery for scup.

2. A person utilizing an otter or beam trawl in a directed fishery for scup shall not use a net of less than 5.0 inches stretched mesh inside measurement applied for a minimum of 75 continuous meshes forward of the terminus of the net.
    - i. Nets not large enough to accommodate the number of minimum meshes listed in (p)2 above shall not contain any meshes less than 5.0 inches stretched mesh inside measurement throughout the entire net.
  3. The possession of any net with a mesh less than the minimum specified in (p)2 above on board a vessel in a directed fishery for scup is prohibited unless it is not available for immediate use as defined in (b) above.
- (q) Special provisions applicable to a directed black sea bass fishery are as follows:
1. The possession of more than 500 pounds of black sea bass during the period of January 1 through March 31 or more than 100 pounds of black sea bass during the period of April 1 through December 31 on board a vessel or landed from a vessel shall constitute a directed fishery for black sea bass for the purpose of requiring minimum mesh sizes as defined in (q)2 below.
  2. A person utilizing an otter or beam trawl in a directed fishery for black sea bass shall not use a net of less than 4.5 inches stretched diamond mesh or 4.0 inches minimum stretched square mesh, inside measurement applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified in this paragraph on board a vessel in a directed fishery for black sea bass is prohibited unless it is not available for immediate use as defined in (b) above.
    - i. Nets not large enough to accommodate the number of minimum meshes listed in (q)2 above shall not contain any meshes less than 4.5 inches stretched diamond mesh or 4.0 inches stretched square mesh inside measurement throughout the entire net.





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE  
89 Kings Highway  
Dover, Delaware 19901

OFFICE OF THE  
DIRECTOR

Phone: (302) 739-9910  
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## Delaware Scup Compliance Report for 2013

May 1, 2013

### I. Introduction

Scup regulations were unchanged in 2012. Commercial landings and recreational landings remained low

### II. Request for *de minimis* status

Delaware does not have a directed commercial fishery for scup in state waters. One pound of scup was reported landed during the 2012 commercial fishing season (Table 1). Delaware is requesting *de minimis* status for commercial scup landings during the 2013 fishing season.

### III. Previous year's fishery and management program

#### A. Fishery – Independent Monitoring

Two trawl survey programs are conducted annually in Delaware's coastal waters to assess relative abundance of both juvenile and adult finfish. Information from these surveys is analyzed in order to determine catch at age for adults and young of the year, and catch per tow is calculated for estimating annual relative abundance.

#### B. Current Regulations (2013)

##### 1. Commercial regulations for the current year

Commercial regulations are the same as those in 2012. The minimum commercial size limit is 9 inches. The implementation of this size limit is an Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass Amendment 13 compliance requirement for *de minimis* status.

##### 2. Recreational regulations for the current year

Recreational regulations are the same as those in 2012. The minimum size limit is 8 inches, the creel limit is 50 fish per day, and there is no closed season.

#### C. 2012 Landings

##### 1. Commercial landings

One pound of scup was landed commercially in Delaware in 2012 (Table 1).

2. Recreational landings

Recreational landings of scup in Delaware have fluctuated from year to year. For example, the MRFSS catch estimate for 1991 was 438,432 scup landed by recreational fishers, whereas the 2002 estimate was only 552 (Table 2). The 2012 MRIP estimate for scup landed by recreational anglers in Delaware was 93 fish.

IV. **Planned Management Programs for 2013**

A. All management measures described above will remain in effect for 2013.

Table 1. Delaware commercial scup landings by gear type 1996 –2012.

Year	Pots	Gill Net	Hook and Line	Total
1996	37	2		<b>39</b>
1997			53	<b>53</b>
1998		2		<b>2</b>
1999				
2000			6	<b>6</b>
2001				
2002				
2003				
2004		2		<b>2</b>
2005				
2006				
2007			3	<b>3</b>
2008				
2009				
2010				
2011	9			<b>9</b>
2012	1			<b>1</b>

Table 2. Delaware recreational estimates of the number of scup landed (A+b1) 1990 – 2012.

<b>YEAR</b>	<b>LANDINGS</b>
1990	53,063
1991	438,432
1992	19,900
1993	5,073
1994	33,705
1995	818
1996	486
1997	5,837
1998	4,639
1999	284
2000	1,314
2001	1,045
2002	552
2003	1,175
2004	1,130
2005	3,719
2006	597
2007	1,686
2008	1,049
2009	969
2010	0
2011	40
2012	93

# MARYLAND'S 2012 ANNUAL COMPLIANCE REPORT FOR SCUP

Prepared for ASMFC

by:

Steve Doctor

Maryland Department of Natural Resources  
Fisheries Service  
Estuarine and Marine Fisheries Division

June 2013

## **I. Introduction**

Scup stock status was last assessed in December 2008 and summarized in the report of the Northeast Data Poor Stocks Working Group (NEFSC CDR 09-02). The review panel concluded that overfishing is not occurring, and that the stock is not overfished. A similar conclusion was reached with the 2011 update of the assessment. Maryland populations do not reflect the recent improvement in stock status; the fishery for scup off the coast of Maryland has not returned to levels seen in the 1950's through the 1970's. At that time, there was a substantial headboat fishery that caught large numbers of scup in September and October, three to seven miles offshore of Ocean City, Maryland. While juvenile scup are commonly caught in sea bass pots in the fall by commercial sea bass potters, larger fish are rarely encountered in the recreational or commercial fisheries off Maryland's coast in recent years.

## **II. De minimus** N/A

## **III. Previous calendar year's fishery and management program**

### Recreational Fishery

Harvest: Maryland's 2012 recreational scup harvest was 0 fish (May 22, 2013, National Marine Fisheries Service, Fisheries Statistics and Economics Division, Personal communication).

### Commercial Fishery

Harvest: Maryland's 2012 commercial scup harvest was 8,263 pounds harvested by otter trawl. (May 22, 2013, National Marine Fisheries Service, Fisheries Statistics and Economics Division, Personal communication). NMFS data are confidential. Most of these fish were harvested in the Winter II season.

## **Regulations**

### A. Minimum Size.

(1) Recreational. A recreational angler may not catch or possess a scup less than 8 inches in total length.

(2) Commercial. A commercial tidal fish licensee may not catch or possess scup less than 9 inches in total length.

#### B. Commercial Gear Restrictions.

##### (1) Trawls.

(a) Except for a person landing less than a total of 500 pounds of scup from November 1 through April 30 or 100 pounds of scup from May 1 through October 31, a person may not use a trawl with:

(i) Mesh less than 4 1/2 inch stretched mesh size;

(ii) More than 25 meshes in the codend with more than 100 continuous meshes of 5 inch mesh forward of the codend; or

(iii) Mesh size less than 4 1/2 inches throughout the trawl net for trawl nets with codends less than 125 meshes.

(b) A person may not use a roller rig trawl with a roller diameter in excess of 18 inches to catch scup.

##### (2) Pots and Traps. A pot or trap used to catch scup shall have:

(a) An escape vent of at least a:

(i) 3.1 inch diameter round opening, or

(ii) 2.25 inch square opening; and

(b) Hinges or fasteners on one panel or door made of one of the following degradable materials:

(i) Untreated hemp or jute string of 3/16 inch in diameter or smaller,

(ii) Magnesium alloy fasteners, or

(iii) Ungalvanized or uncoated iron wire of 0.062 inch in diameter or smaller.

#### C. Catch Limits.

(1) Commercial Catch Limits. A coastwide quota and daily catch limit to be shared by all Atlantic states will be established and published by National Marine Fisheries Service and the Atlantic States Marine Fisheries Commission.

(2) A commercial tidal fish licensee may not catch, possess, or land more pounds of scup daily than as set forth in §C(1) of this regulation.

(3) Recreational Catch Limits. An individual may not catch or possess more than 50 scup per day.

#### D. General.

(1) The Secretary may modify or set a season or catch limit by publishing notice in a daily newspaper of general circulation at least 48 hours in advance of the modification, stating the effective hour and date.

(2) The Secretary shall make reasonable effort to disseminate public notice through various other media so that an affected person has reasonable opportunity to be informed.

### **Monitoring Programs**

Scup data are collected from Maryland's Coastal Bays Finfish Investigation trawl and seine survey. A total of 140 trawl and 38 seine hauls are conducted annually. In 2012, two scup were caught by trawl and 0 scup were caught by seine.

#### **IV. Planned management programs for the current year (2013).**

Recreational Fishery: Same as 2012, described above.

Commercial Fishery: Same as 2012, described above.

Monitoring Programs: Same as 2012, described above.

#### **References**

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North Carolina Department of Environment and Natural Resources  
Division of Marine Fisheries  
Dr. Louis B. Daniel III  
Director

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

## 2012 North Carolina Scup Compliance Report

By

Tom Wadsworth

North Carolina Division of Marine Fisheries

June 1, 2013

### I. Introduction

North Carolina's commercial fishery for scup in the Atlantic Ocean north of Cape Hatteras was historically important, but landings have been relatively minor in recent years. The commercial fishery is prosecuted primarily with otter trawls from November through April. Commercial scup landings in North Carolina occur primarily as a result of bycatch in winter trawl fisheries for summer flounder and black sea bass. Historically, a directed trawl fishery would occur off North Carolina during years with extremely cold weather or abnormally low water temperatures. In recent years scup landed north of Cape Hatteras were caught in ocean waters from Virginia to New York. Recreational anglers in North Carolina fishing north of Cape Hatteras seldom catch scup. No significant changes in monitoring occurred in 2012 and no regulatory changes from 2011 occurred for the commercial or recreational fisheries.

### II. *De minimis* status

North Carolina does not request *de minimis* status for the 2012 fishing year.

### III. 2012 Scup Fishery and Management Program

#### A. Activity and Results of Fishery-Dependent Monitoring

Commercial fishing activity is monitored through fishery dependent sampling conducted under Title III of the Interjurisdictional Fisheries Act (IJFA) and has been ongoing since 1982. North Carolina Division of Marine Fisheries (NCDMF) staff sampled commercial catches of scup during dockside fishery dependent sampling of the winter trawl fishery. Information on areas fished and gear specifications as well as scup length and aggregate weight data was obtained from the catches (Assessment of North Carolina Commercial Finfisheries, NCDMF Completion Reports, 1984-2012). Winter trawls account for nearly all of the scup landings north of Cape Hatteras. A total of 7 scup from 1 winter trawl catch were measured in 2012. The scup measured ranged from 287 mm to 401 mm fork length (FL).

#### B. Activity and Results of Fishery-Independent Monitoring



No North Carolina fishery-independent finfish survey is designed to sample scup. Scup have not been caught in any of North Carolina's fishery independent surveys north of Cape Hatteras to date.

### C. Scup Regulations for 2012

The authority for management of scup in North Carolina is found in North Carolina Fisheries Rule 15A NCAC 3M .0512 – COMPLIANCE WITH FISHERY MANAGEMENT PLANS

- (a) In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans or to implement state management measures, the Fisheries Director may, by proclamation, take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:
- (1) Specify size;
  - (2) Specify seasons;
  - (3) Specify areas;
  - (4) Specify quantity;
  - (5) Specify means and methods; and
  - (6) Require submission of statistical and biological data.
- (b) Proclamations issued under this Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221.1.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.4;  
Eff. March 1, 1996;  
Amended Eff. October 1, 2008.*

Other Applicable Rules and Statutes: North Carolina General Statute (G.S.) 143B-289.52(e) authorizes the North Carolina Marine Fisheries Commission (NCMFC) to adopt temporary rules at any time within six months of the adoption of a fishery management plan requirement by the Atlantic States Marine Fisheries Commission (ASMFC) or a Regional Fishery Management Council in order to comply with or implement these requirements. This statute allows North Carolina to adjust management measures to be in compliance with the fishery management plan. G.S. 113-168.2 requires any person who engages in a commercial fishing operation in North Carolina coastal waters to hold a Standard Commercial Fishing License. This statute also requires dealers to purchase only from fishermen who possess a license to sell the type of fish being offered and to report those transactions on a form provided by the North Carolina Department of Environment and Natural Resources. G.S. 113-168.4 specifies that it is unlawful for any person who takes or lands any species of fish under the authority of the NCMFC from coastal waters by any means, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value without holding a license required to sell the type of fish being offered. Fisheries Rule 15A NCAC 3I .0114 requires a fish dealer to complete all mandatory items on a North Carolina Trip Ticket for each transaction and report it to the NCDMF by the tenth day of the following month. Through this system, North Carolina monitors and records landings of finfish, including scup, from both state and federal waters.

2011 Management Measures

#### Commercial Fishery

In accordance with, or as authorized under Fisheries Rule 15A NCAC 3M .0512, the following management measures were implemented in the commercial fishery for scup in the Atlantic Ocean north of Cape Hatteras in 2012:

Season: The Winter I harvest period was open in North Carolina from January 1 through April 30. The Summer harvest period was closed due to North Carolina's small commercial quota and minimal incidental catch during this harvest period. The Winter II harvest period opened on November 1 and closed on December 31, in accordance with the Fishery Management Plan (FMP).

Size Limit: The minimum size was 9 inches.

Possession Limit: No person was authorized to land or possess aboard a vessel more than 50,000 pounds of scup from January 1 through April 30 (Winter I Harvest Period). No person was authorized to land or possess aboard a vessel more than 8,000 pounds of scup per trip north of Cape Hatteras during the Winter II Harvest Period (November 1–December 31).

Allowable Gear: The minimum mesh size for the commercial scup fishery was 5 inches stretched mesh with a minimum length of 75 meshes from the terminus of the net. For small nets with a cod end less than 75 meshes, the entire net shall consist of 5-inch stretched mesh.

#### Recreational Fishery

The following management measures were implemented in 2012 in the Atlantic Ocean recreational fishery north of Cape Hatteras:

Season: The season was open throughout the year.

Size Limit: The minimum size limit for scup north of Cape Hatteras was 8 inches.

Possession Limit: The possession limit for scup north of Cape Hatteras was 50 fish per person, per day.

#### D. Scup Harvest by Commercial, Recreational and Non-Harvest Losses

The commercial harvest of scup north of Cape Hatteras in 2012 totaled 3,903 pounds. All of the landings were from the winter trawl fishery, using flounder trawl gear. Landings of scup in North Carolina north of Hatteras were less than previous years mainly due to the inability of participants in the winter trawl fishery to land their catches at ports accessed by Oregon Inlet. Many winter trawl landings are typically made at ports inside Oregon Inlet but in 2012 shoaling of the Inlet made it impassable to larger vessels.

The MRIP estimated that anglers in North Carolina north of Cape Hatteras harvested 148 scup weighing 195 pounds in 2012. Scup are seldom harvested in the recreational fishery north of Cape Hatteras. Most of the recreational harvest of scup in North Carolina occurs south of Cape Hatteras.

The NCDMF does not have estimates of non-harvest losses of scup. The Northeast Fishery Science Center (NEFSC) fishery observer data are used to estimate commercial discards of scup for the annual coastwide stock assessment. A discard mortality rate of 100% was assumed for the commercial fishery because there are no published estimates of commercial scup discard mortality rates. The MRIP estimated number of scup released by the recreational fishery was used to estimate recreational discards for the annual coastwide stock assessment. A 15% release mortality rate was assumed for the recreational fishery.

#### E. Review of Progress in Implementing Habitat Recommendations

No new implementation at this time.

#### IV. Planned Management Programs for the Current Fishing Year

##### A. Summary of Regulations That Will Be in Effect for the Current Fishing Year

The Fisheries Director used proclamation authority found in Fisheries Rule 15A NCAC 3M .0512 to implement Winter I trip limits and associated harvest periods during the winter 2013 season as a means of managing North Carolina's scup commercial quota. Winter II trip limits and associated harvest periods will be implemented in November and December.

No significant changes should occur in the 2013 scup commercial fishery regulations. The minimum size limit will remain at 9 inches in the Atlantic Ocean commercial fishery and the trip limit will remain at 50,000 pounds. The size limit in the recreational fishery in state waters north of Cape Hatteras will remain 8 inches and the possession limit will remain 50 fish per person, per day. However, the season will be limited to July 6 through September 26, 2013.

#### B. Summary of Monitoring Programs That Will Be Performed

Monitoring programs will be the same as the previous fishing year. Scup will be sampled during IJFA sampling of the winter trawl fishery.

#### C. Changes from the Previous Year

No changes in management of the commercial fisheries north of Cape Hatteras from 2012 are expected in 2013. However the recreational season was open year-round in 2012 but will limited to July 6 through September 26, 2013.

**Commonwealth of Massachusetts  
Division of Marine Fisheries**



**ATLANTIC STATES MARINE FISHERIES COMMISSION  
BLACK SEA BASS FISHERIES MANAGEMENT PLAN  
COMPLIANCE REPORT**

May 2013

Prepared by

Paul G. Caruso

Senior Marine Fisheries Biologist

## **I. Introduction**

The following represents the Commonwealth of Massachusetts Division of Marine Fisheries (MADMF) annual FMP compliance report as per the ASMFC Summer flounder, Scup and Black Sea Bass Fishery Management Plan. There were no significant changes in black sea bass monitoring for 2012 but both recreational and commercial regulations were changed. The recreational harvest increased approximately 191 %, with an estimated harvest of 567,184 fish (194,752 in 2011). Commercial daily possession limits were adjusted and allowed fishing days cut to extend the season length. The commercial fishery landed 248,463 pounds, or 112% of the allocated quota (221,936 lbs) in just a few legal fishing days.

## **II. Request for de minimus status**

Not applicable.

## **III. Review of previous year fishery and management program**

### **A. Activity and results of fisheries dependent monitoring**

There was no monitoring of the directed commercial fisheries for sea bass by our Fisheries Dependent Sampling Program in 2012, due to a lack of funding and personnel. For total harvest data we relied on the MDMF Quota Monitoring Project for commercial harvest and the Marine Recreational Information Program (MRIP) for recreational harvest and discard estimates.

There was no directed monitoring of the recreational black sea bass fishery by MDMF, although length frequency data was obtained for black sea bass observed during sampling of the party boat mode during MRIP monitoring of the For Hire industry.

### **B. Activity and results of fishery independent monitoring**

The 2012 fisheries independent monitoring program for black sea bass consisted of limited age and maturity sampling and local abundance data (stratified number and weight per tow) from our synoptic spring and fall otter trawl surveys. This coast-wide state waters survey of approximately 100 - twenty minute tows, has a random stratified design. The adult indices include data from all strata south of Cape Cod. See Figure 3 for a plot of the index values over time. In general adult abundance was much reduced from levels observed in the 2008-2011 time period.

## C. Regulations in effect in 2012

### 1. *Recreational Fisheries (322 CMR 8.06)*

- Permit required to conduct “for-hire vessel” fishing operations
- 14" minimum size
- Open seasons from May 22 to June 24 at 10 fish, June 25 to October 10 at 20 fish.

### 2. **Commercial Fisheries**

#### Permitting & Reporting Requirements (322 CMR 6.27 & 7.06)

- Black sea bass endorsement required to fish commercially.
- Regulated fishery permit required for use of fish pots, a limited entry fishery.
- Dealer authorization required to purchase sea bass.
- Annual reports required of commercial pot fishermen and dealers.

#### Gear Marking & Specifications (322 CMR 4.13, 6.12, 6.15 & 12.03)

- Year specific trap tag with permit number must be attached to trap’s cross member.
- Pot Limit of 200 combined sea bass and scup, or 350 if two permit holders fish from the same vessel.
- Two unobstructed escape vents or openings in the parlor section measuring at least 2 1/2” in diameter, @ 2” square, or 1 3/8” by 5 3/4” required.
- All buoys and traps must bear fisherman’s permit number.
- Use of floating line at the surface prohibited.
- Positively buoyant ground line prohibited.
- Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 overall length of the buoy line.
- Marking:
  - 1) Traps require a single buoy (7”x 7” or 5”x 11”); stick optional with no flag.
  - 2) Trawls: East end – double buoy and one or more 3’ sticks.  
West end – single buoy with 3’ stick and flag.
- All fish traps require ghost panel.
- Trawl maximum length: 2000 feet.
- Use of trawls is prohibited in the waters of Gosnold (M.G.L c.130 §37).
- All vessels must display buoy color scheme.
- No tending or lifting of pots from ½ hour after sunset to ½ hour before sunrise.

• Degradable Hinges and Fasteners. It is unlawful for any person to take or attempt to take fish from waters under the jurisdiction of the Commonwealth by use of pots without a panel or door with hinges and fasteners made of one of the following degradable materials:

- (a) untreated hemp, jute, or cotton string of 3/16" (4.8 mm) diameter or smaller;
- (b) magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or
- (c) ungalvanized or uncoated iron wire of 0.094" (2.4 mm) diameter or smaller.

Escape Vents.

- (a) It is unlawful for any person to take or attempt to take scup from waters under the jurisdiction of the Commonwealth by use of pots without at least two unobstructed escape vents or openings in the parlor portion of the pot measuring at least 3.1 inches in diameter or 2.25 inches square.
- (b) It is unlawful for any person to take or attempt to take black sea bass from waters under the jurisdiction of the Commonwealth by use of pots without at least two unobstructed escape vents or openings in the parlor portion of the pot measuring at least 2 1/2" in diameter, two inches square, or 1 3/8" by 5 3/4".

Directed Fishery Limits

- 12” minimum size.

Season (quota dependent)	Gear Type	Possession limit	No Fishing Days
Jan - Apr	All authorized gear types	100 lb	N/A
May 1 – 30	Fish pot & weir	200 lb	Monday, Thursday, Friday & Saturday
	All other authorized gear types	80 lb	
Aug 1 – Dec 30	Fish pot & weir	200 lb	Friday & Saturday
	All other authorized gear types	80 lb	

Additionally, the Commonwealth retained all of the other direct and indirect fisheries management measures that apply to black sea bass. Among those were:

- Commercial Fishing Permit required for the sale of all fish and shellfish.
- Limited entry permits for the lobster pot, fish pot, gillnet and mobile gear fisheries.
- Numerous area/time closures to otter trawling and gillnets including a seasonal closure for gillnets in waters south of Cape Cod which precludes a directed gillnet fishery for sea bass in state regulated waters and a prohibition on night trawling in Nantucket and Vineyard Sounds.
- Minimum mesh size restrictions for the trawl and gillnet fisheries. Requires trawl mesh size > 6.5 inches in cod end, 6" in net body except during squid season April 23 - June 9, but may be extended until June 15 dependent on discard and by-catch levels.

**D. 2012 Harvest**

Trends in the commercial harvest are plotted in Figure 1. Commercial landings were 248,463 pounds (112 % of quota) down from 264,165 pounds in 2011 because of an overage in 2011. There is no current estimate of local commercial losses from discard mortality because there is no local estimate of discarded commercial catch. However, since most commercial catches of black sea bass come from fisheries that operate in very shallow waters with gear types with assumed low levels of discard mortality, we assume that additional losses from discard of commercial catch are small relative to the total catch.

Recreational fishery harvest trends are plotted in Figure 2. Landings, in number (567,184 fish) were up substantially (191 %) from the 2011 estimated harvest. Total recreational losses from 2012 are estimated at 746,300 fish. This number was derived from the MRIP estimated type A and B1 catch (567,184 fish) plus 15 % of the B2 catch



(179,116 fish) representing an estimate of recreational catch/release mortality (Bugley and Shepherd).

#### **E. Progress in implementing habitat recommendations**

Not applicable.

### **IV. Planned 2013 Management Program**

#### **A. Regulations for 2013**

##### **1. Recreational Fisheries (322 CMR 8.06)**

- Permit required to conduct “for-hire” fishing operations
- 14" minimum size all modes
- 3 fish daily bag/possession limit from May 11 – to October 31
- Special LOA fishery for applying For Hire vessels – May 11 to June 14, 10 fish, June 15 to August 11 and September 1 – October 10, 20 fish

##### **2. Commercial Fisheries**

###### Permitting & Reporting Requirements (322 CMR 6.27 & 7.06)

- Black sea bass endorsement required to fish commercially.
- Regulated fishery permit required for use of fish pots, a limited entry fishery.
- Dealer authorization required to purchase sea bass. CMR 6.27 (2)
- Annual reports required of commercial pot fishermen and dealers.

###### Gear Marking & Specifications (322 CMR 4.13, 6.12, 6.15 & 12.03) – Status quo

- Year specific trap tag with permit number must be attached to trap’s cross member.
- Pot Limit of 200 combined sea bass and scup, or 350 if two permit holders fish from the same vessel.
- Two unobstructed escape vents or openings in the parlor section measuring at least 2 1/2” in diameter, two inches square, or 1 3/8” by 5 3/4” required.
- All buoys and traps must bear fisherman’s permit number.
- Use of floating line at the surface prohibited.
- Positively buoyant ground line prohibited.
- Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 overall length of the buoy line.
- Marking:
  - 3) Traps require a single buoy (7”x 7” or 5”x 11”); stick optional with no flag.
  - 4) Trawls: East end – double buoy and one or more 3’ sticks.  
West end – single buoy with 3’ stick and flag.
- All fish traps require ghost panel.

- Trawl maximum length: 2000 feet.
- Use of trawls is prohibited in the waters of Gosnold (M.G.L c.130 §37).
- All vessels must display buoy color scheme.
- No tending or lifting of pots from ½ hour after sunset to ½ hour before sunrise.

Directed Fishery Limits

- 12” minimum size.

Season (quota dependent)	Gear Type	Possession limit	No Fishing Days
YR	Weirs	None	10,000 lb set aside
January 1- March 31	All gears	100 lb	None
Aug 6 – quota attainment	Fish pots	300 lb	Monday/Thursday/ Friday/ Saturday
	All other authorized gear types	150 lb	

Additionally, the Commonwealth retained all of the other direct and indirect fisheries management measures that apply to black sea bass. Among those were:

- Commercial Fishing Permit required for the sale of all fish and shellfish.
- Limited entry permits for the lobster pot, fish pot, gillnet and mobile gear fisheries.
- Numerous area/time closures to otter trawling and gillnets including a seasonal closure for gillnets in waters south of Cape Cod which precludes a directed gillnet fishery for sea bass in state regulated waters, prohibition on night trawling in Nantucket and Vineyard Sounds and no trawling in Buzzards Bay.
- Minimum mesh size restrictions for the trawl and gillnet fisheries. Requires trawl mesh size > 6.5 inches in cod end, 6" in net body except during squid season April 23 - June 9, but may be extended until June 15 dependent on discard and by-catch levels.

Copies of all sea bass fishery directed regulations can be found in Appendix A.

**B. 2013 Monitoring Program**

The 2013 fisheries monitoring program for black sea bass will continue to derive fisheries independent indices of abundance from our synoptic trawl survey, and collect limited age and growth parameters and samples from the survey as well as the opportunistic sampling of commercial fishermen’s catch. MRIP sampling of the party

boat mode will continue, and age and growth samples will be opportunistically collected then as well.

For aggregate recreational catch and harvest data MDMF will continue to rely on the MRIP survey. For commercial catch data we will rely on the MDMF reporting system, yearly dealer reporting and regulated fisheries permit holder's yearly catch reports.

### **C. Changes from previous years monitoring program**

MDMF will sample all recreational fishery modes through the MRIP sampling program beginning in 2013.

### **V. Plan specific requirements**

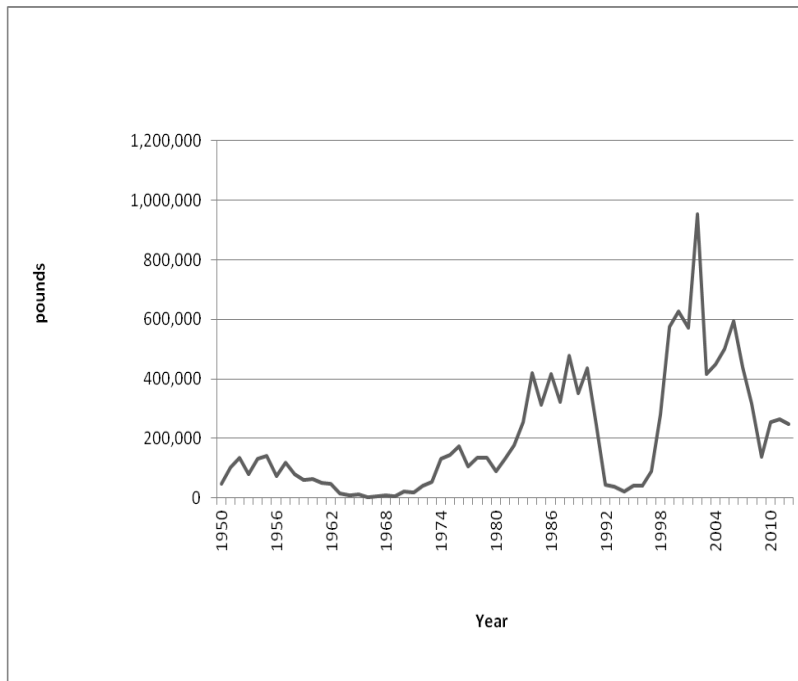
Not applicable.

### **VI. Law Enforcement Reporting requirements**

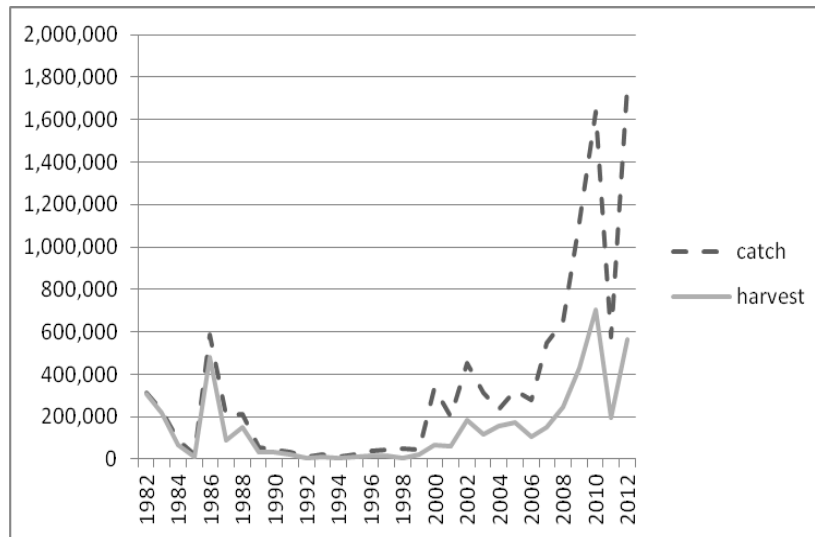
Not applicable.

## VII. Figures

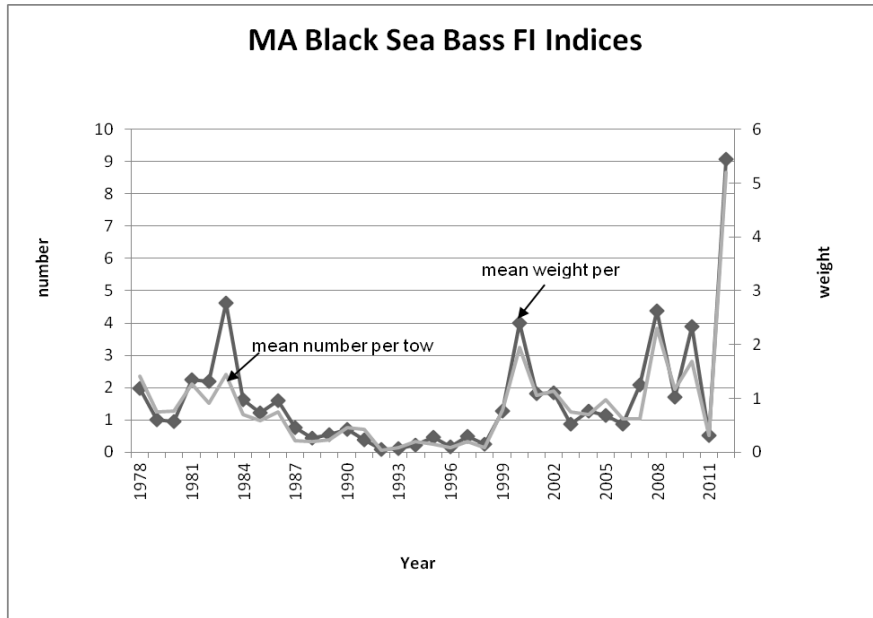
**Figure 1.** Commercial fishery harvest trends.



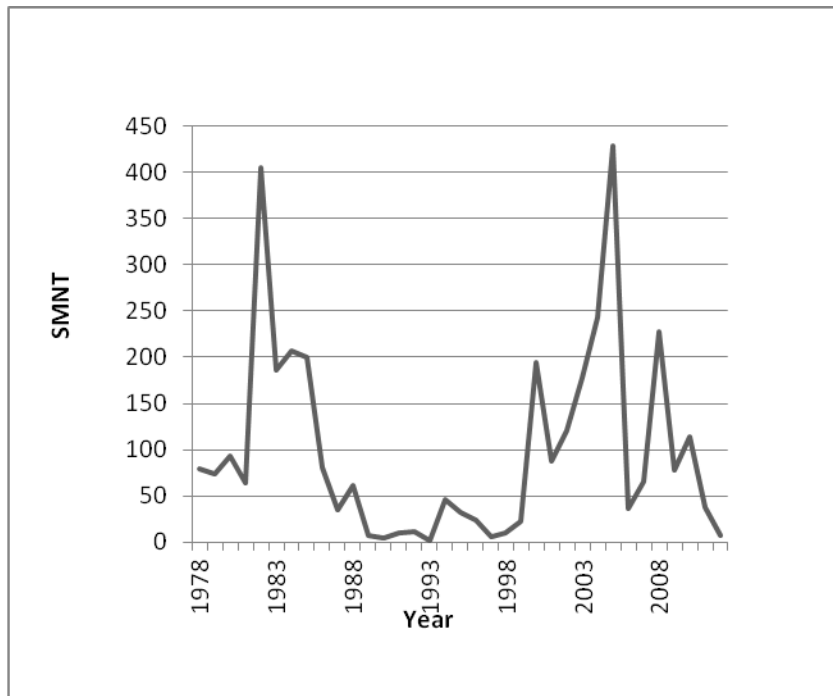
**Figure 2.** Recreational harvest trends.



**Figure 3.** Fisheries Independent Trawl Survey adult index trends.



**Figure 4.** Fisheries Independent Trawl Survey YOY index trends.





Rhode Island  
Department of Environmental Management

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**DIVISION OF FISH AND WILDLIFE**

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Jamestown, RI 02835

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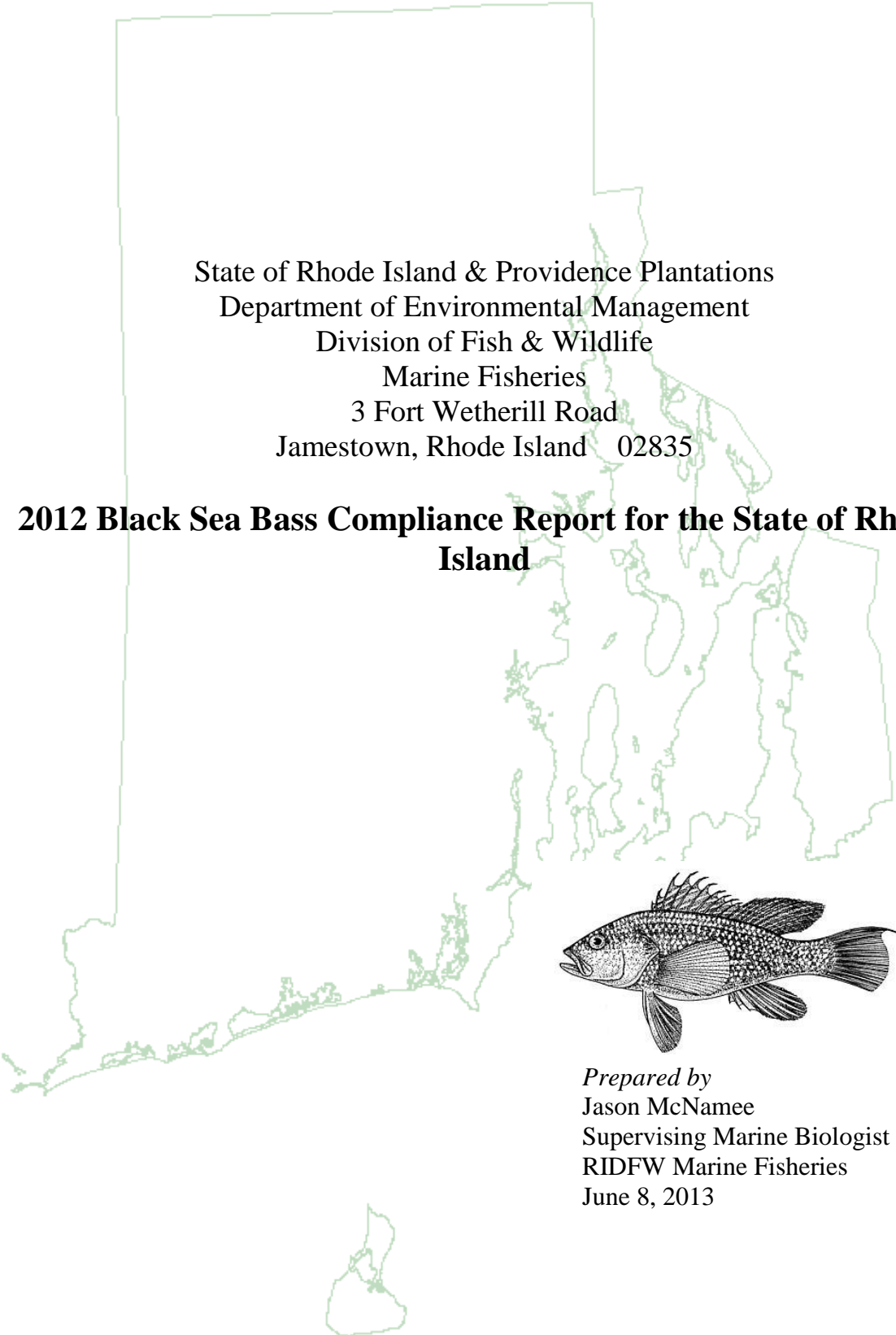
TO: Kirby Rootes-Murdy, ASMFC

FROM: Jason McNamee, RIDFW

DATE: June 8, 2013

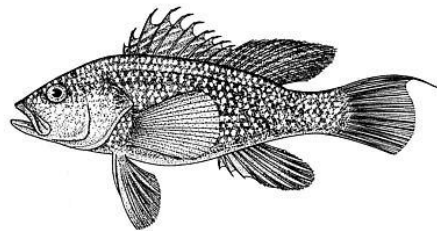
SUBJECT: Rhode Island Annual Compliance Report for Black Sea Bass

Please find Rhode Island's 2012 annual compliance report for black sea bass. If you have any questions, you may contact me directly at 401.423.1943.



State of Rhode Island & Providence Plantations  
Department of Environmental Management  
Division of Fish & Wildlife  
Marine Fisheries  
3 Fort Wetherill Road  
Jamestown, Rhode Island 02835

**2012 Black Sea Bass Compliance Report for the State of Rhode  
Island**



*Prepared by*  
Jason McNamee  
Supervising Marine Biologist  
RIDFW Marine Fisheries  
June 8, 2013

## **Rhode Island's 2012 Annual Compliance Report for Black Sea Bass**

### **I. Introduction**

Black sea bass continue to support active commercial and recreational fisheries in Rhode Island. Recreational catch increased from 85,913 pounds in 2011 to 226,132 pounds in 2012. Commercial landings increased from 185,709 pounds landed in 2011 to 187,806 pounds in 2012, which was 294 pounds under the state's quota. Fishery-independent monitoring suggested an increase in the relative biomass of black sea bass in Rhode Island waters. An average of 1.04 kg/tow of black sea bass were observed in 2012 during the fall component of the RIDFW seasonal trawl survey, up from 0.2 kg/tow observed the previous year. The black sea bass abundance index increased from 1.26 fish/tow in 2011 to 12.3 fish/tow in 2012, a dramatic increase.

Rhode Island provides regulations for both the commercial and recreational black sea bass fisheries. Recreational restrictions included a minimum size limit of 13", June 15 – December 31 season, and a 15 fish possession limit. The minimum size limit for the commercial fishery was 11" and the year was divided into four sub-periods during which a specified portion of the state's allocated share of the annual quota was available under various possession limits.

### **II. Request for *de minimis*, where applicable**

The state of Rhode Island does not wish to apply for *de minimus* status.

### **III. Previous calendar year's fishery and management program**

#### **A. Activity and results of fishery dependent monitoring**

The RIDFW Marine Fisheries Section utilizes the Standard Atlantic Fisheries Information System (SAFIS) reporting system to monitor landings of quota-managed species, including black sea bass. Based on information collected under this system, Rhode Island commercial black sea bass landings for 2012 were approximately 187,806 pounds.

Estimates of recreational fishery statistics for Rhode Island are obtained from the MRIP online data query (NMFS, Fisheries Statistics and Economics Division, Silver Spring, MD, pers. comm.). Recreational harvest (Type A + B1) of black sea bass in Rhode Island for 2012 was 226,132 pounds.

Trends in commercial and recreational harvest patterns for black sea bass landed in Rhode Island are depicted in Figure 1.

#### **B. Activity and results of fishery independent monitoring**

The RIDFW Marine Fisheries Section operates a seasonal trawl survey to monitor finfish resources (Olszewski 2012). Black sea bass biomass and abundance indices updated for



2012 were calculated as mean number per tow and mean weight per tow, respectively. Estimated relative biomass of black sea bass in RI for 2012 was 1.04 kg/tow, an increase from the 2011 estimate (0.2 kg/tow). The relative abundance demonstrated an increase from the previous year with an estimate of 1.43 fish/tow for 2011 compared to 12.3 fish/tow observed in 2012. Figure 2 shows the year-to-year variability in relative biomass and abundance of black sea bass observed in the fall component of the RIDFW seasonal trawl survey over time. It is important to note that analyzing the fall leg of the trawl survey may not be entirely appropriate for this species. The migratory patterns of this species only makes them susceptible to trawl gear while they are moving, therefore the fall survey may be offset from this movement and may miss the fish in any given year. A generalized linear modeling approach may benefit analysis of biomass and abundance for this species in the future.

- C. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

### **Commercial**

**Minimum Size** -- No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any black sea bass measuring less than eleven (11) inches total length whether caught within the jurisdiction of this State or otherwise.

**Seasons and Possession Limits** -- A state quota for black sea bass will be established annually and shall be the most recent amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission and/or the Secretary of the U.S. Department of Commerce as published in the Federal Register. The quota shall be available during the following seasons:

January 1 – April 30: Twenty-five percent (25%) of the quota established in this part shall be available from January 1 through April 30, unless modified pursuant to section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, per calendar day, more than 750 pounds of black sea bass during this period.

May 1 – June 30: Twenty-five percent (25%) of the quota established in this part shall be available from May 1 through June 30, unless modified pursuant to section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, per calendar day, more than 50 pounds of black sea bass during this period.

July 1 – October 31: Thirty-nine percent (39%) of the quota established in this part shall be available from July 1 through October 31, unless modified pursuant to section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, per calendar day, more than 50 pounds of black sea bass during this period. The commercial black sea bass fishery will be closed from August 1 through August 31.

November 1 – December 31: Eleven percent (11%) of the quota established in this part shall be available from November 1 through December 31, unless modified pursuant to

section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, per calendar day, more than 250 pounds of black sea bass during this period.

Any unused portion of the quota from a 'sub-period' will be equally distributed to the allocations of the remaining sub-periods. The over-harvest of a sub-period allocation will be deducted from the allocations of the remaining sub-periods. Annually, the quota allocations specified in section 7.14.1-2(a-d) shall be adjusted by the DFW to charge over-harvest of a sub-period allocation during a given year to the same sub-period of the following year.

### **Recreational**

**Minimum Size** -- No person fishing recreationally shall possess a black sea bass less than thirteen inches (13") total length and no person fishing recreationally shall possess, per calendar day, more than fifteen (15) black sea bass whether caught within the jurisdiction of this State or otherwise. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.

**Season** -- The recreational season for black sea bass in Rhode Island waters is open from June 15 through December 31, annually.

### **Gear Restrictions**

10.11.2 Black sea bass - Owners or operators of otter trawl vessels possessing: 500 pounds or more of black sea bass, from January 1 through March 31; or 100 pounds or more of black sea bass from April 1 through December 31, may only fish with nets that have a minimum mesh size of 4.5 inches diamond mesh. Inside measure, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for trawl nets with codends (including an extension) less than 75 meshes the trawl net must have a minimum mesh size of 4.5 inches diamond mesh throughout.

#### 11.12.2 Trap Construction - Escape Vents

All black sea bass traps (pots) must be constructed with two escape openings in the parlor portion of the trap. Openings may be circular, rectangular, or square, and must be a minimum of 2.5" in diameter if circular, 1- 3/8" X 5-3/4" if rectangular, 2"X 2" if square. Escape vents must be attached with biodegradable fasteners which allow vents or panels to fall away from the trap after loss. The hinges or fasteners of one panel or door must be made of one of the following degradable materials.

- (a) untreated hemp, jute, or cotton string 3/16" (4.8mm) or smaller;
- (b) magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners;
- (c) ungalvanized or uncoated iron wire of .094" (2.4mm) or smaller.

If "bungee" cord or other elasticized material is used to fasten the top, it must be secured to the trap with a degradable hog ring.

11.12.3 Buoy Lines -- The use of floating line within eight (8) feet of the surface of the water is prohibited on all scup pots, traps, or similar contrivances.

D. Harvest broken down by commercial (by gear type where applicable) and recreational, and non-harvest losses (when available).

i. Commercial

The commercial fishery sector landed 187,806 pounds of black sea bass in Rhode Island in 2012.

ii. Recreational

Recreational harvest (Type A + B1) is considered as the sum of landings (Type A) and dead discards (Type B1), following MRIP (formerly MRFSS) definitions. Recreational harvest of black sea bass in Rhode Island for 2012 was 226,132 pounds (PSE = 23.4; NMFS, Fisheries Statistics and Economics Division, Silver Spring, MD). In terms of numbers, 102,548 (PSE = 21.4) black sea bass were harvested from Rhode Island waters in 2012 by recreational anglers. Estimates of the amount of black sea bass that were released alive (Type B2) are available in terms of numbers only. In 2012, Rhode Island recreational fishermen released approximately 766,212 (PSE = 16.5) live black sea bass. Assuming a discard mortality estimate of 15%, 114,932 of the fish released alive would have died in 2012.

E. Review of progress in implementing habitat recommendations.

NA

#### **IV. Planned management programs for the current calendar year**

A. Summarize regulations that will be in effect.(copy of current regulations if different from III c.

i. Commercial

During the 2002 legislative session the Rhode Island General Assembly adopted the Commercial Fisheries Management Act, which implemented a new commercial fishing license system and ended the moratorium on the issuance of new commercial fishing licenses that had been in place since 1995 (RIDFW 2002). The regulations identify two endorsement categories for finfish, restricted and non-restricted. The RI Department of Environmental Management (DEM) has limited access to species listed in the restricted category to the current number of participants and currently issues new licenses to harvest species in the non-restricted category, which did not include black sea bass in 2012. The current list of species placed in the restricted and

non-restricted endorsement categories is updated annually, based on updated stock status information and fishery performance in the previous year.

The commercial fishery management plans will be modified in 2013 as follows:

Same as 2012

ii. Recreational

The recreational fishery management plans will be modified in 2013 as follows:

**7.14.2-1 – Legal Minimum Size -- No person fishing recreationally shall possess a black sea bass less than thirteen inches (13”) total length, and no person fishing recreationally shall possess, per calendar day, more than three (3) black sea bass whether caught within the jurisdiction of this State or otherwise, from June 15 through August 31, and shall possess not more than four (4) black sea bass from September 1 through December 31. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.**

**7.14.2-2 – Recreational Season -- The recreational season for black sea bass in Rhode Island waters is open from June 15 through December 31, annually.**

B. Summarize monitoring programs that will be performed.

i. Commercial

The RIDFW Marine Fisheries Section will continue to monitor landings of black sea bass and other quota-managed species using the Standard Atlantic Fisheries Information System (SAFIS) Reporting System.

ii. Recreational

Rhode Island recreational fishery statistics will continue to be collected and managed through the MRIP program. Information characterizing the catch of black sea bass from Rhode Island waters by recreational anglers will be obtained via the MRIP online data query. It is unclear at this point how the new MRIP program information will be used as far as monitoring recreational fisheries, but this program has begun to take a primary role in determining recreational landings data.

C. Highlight any changes from the previous year.

The recreational and commercial management plans have been modified as noted above.

## V. Plan specific requirements

No plan specific requirements for black sea bass

## VI. Law Enforcement Reporting Requirements

No law enforcement reporting requirements for black sea bass

## **VII. References**

Olszewski, S. 2012. Assessment of Recreationally Important Finfish Stocks in Rhode Island Waters. Rhode Island Division of Fish and Wildlife Coastal Fishery Resource Assessment Trawl Survey 2011 Performance Report. Project No. F-61-R-18.

Table 1. Landings and survey indices of black sea bass within Rhode Island.

Year	Commercial Landings (lbs)	Recreational Landings (lbs)	Total Landings (lbs)	RIDFW Trawl Survey (kg/tow)	
				Spring	Fall
1975	174,000				
1976	250,300				
1977	175,900				
1978	176,700				
1979	233,800				
1980	161,900				
1981	167,800	5,584	173,384	0.02	0.10
1982	312,300	335	312,635	0.01	0.01
1983	674,000	3,437	677,437	0.03	0.01
1984	562,800	7,412	570,212	0.02	0.07
1985	671,400	17,765	689,165	0.02	0.05
1986	607,700	16,067	623,767	0.10	0.16
1987	358,100	70,904	429,004	0.03	0.02
1988	220,900	10,703	231,603	0.00	0.01
1989	208,400	24,526	232,926	0.00	0.00
1990	198,273	9,341	207,614	0.00	0.01
1991	73,918	12,877	86,795	0.04	0.01
1992	140,879	15,875	156,754	0.00	0.09
1993	221,853	28,490	250,343	0.00	0.01
1994	86,616	26,208	112,824	0.00	0.04
1995	89,075	52,205	141,280	0.04	0.04
1996	157,084	54,403	211,487	0.01	0.01
1997	177,839	44,866	222,705	0.02	0.02
1998	134,888	25,060	159,948	0.00	0.00
1999	175,785	38,669	214,454	0.04	0.04
2000	101,493	352,518	428,808	0.03	0.10
2001	375,959	177,728	552,040	0.18	0.06
2002	341,604	132,322	473,926	0.03	0.27
2003	366,030	74,877	440,907	0.00	0.38
2004	418,939	79,926	498,865	0.10	0.47
2005	284,312	39,700	324,012	0.01	0.24
2006	271,690	67,194	338,884	0.11	0.05
2007	355,818	81,912	437,730	0.16	0.18
2008	216,698	83,047	299,745	0.002	0.42
2009	122,934	48,071	171,005	0.12	0.36
2010	190,979	278,062	469,041	0.043	0.19
2011	185,709	85,913	271,622	0.134	0.2
2012	187,806	226,132	413,938	0.2	1.04

Figure 1. Commercial and recreational landings of black sea bass in Rhode Island since 1950

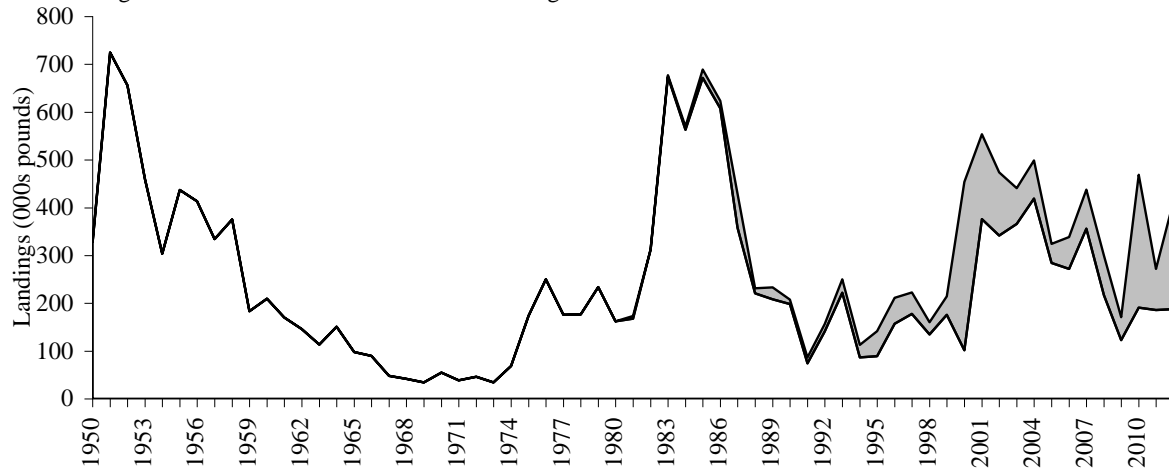
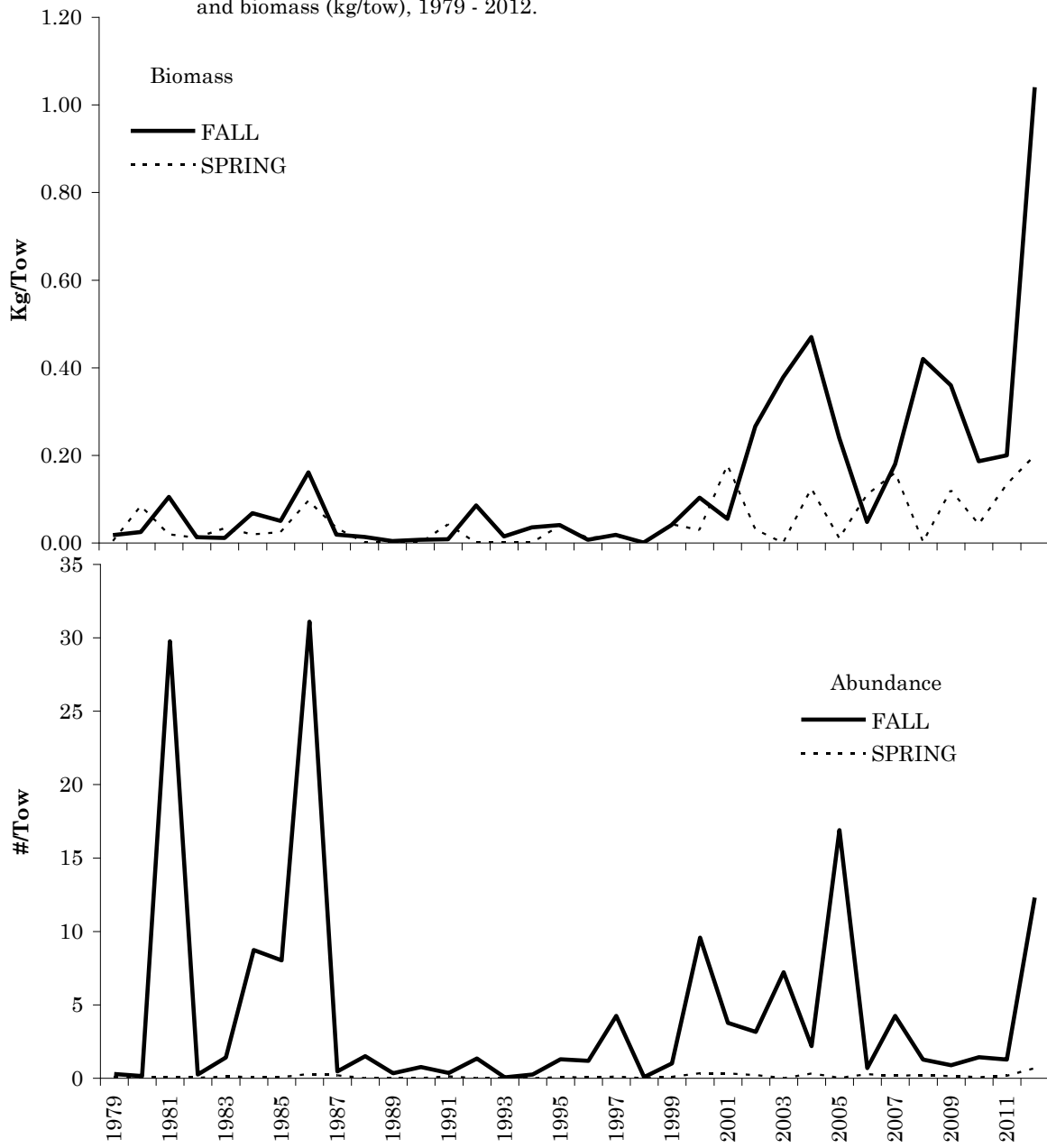


Figure 2. Rhode Island Division of Fish and Wildlife seasonal trawl survey, abundance (#/tow) and biomass (kg/tow), 1979 - 2012.





# New York State Department of Environmental Conservation

## Division of Fish, Wildlife & Marine Resources

### Bureau of Marine Resources

205 North Belle Mead Road, Suite 1, East Setauket, New York 11733

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Joe Martens  
Commissioner

## 2012 Compliance Report to the ASMFC for Black Sea Bass

### I. Introduction

### II. Request for *de minimis* Not applicable.

### III. Previous calendar year's fishery and management program

#### a. *Activity and results of fishery dependent monitoring*

Recreational: NYSDEC staff sampled head-boats targeting black sea bass throughout the fishing season and measured ALL kept and discarded fish from 112 individuals spread across 20 trips (17 different vessels, 6/5-9/27). Out of the 1,129 black sea bass that were caught, 553 fish were kept. This data was utilized to calculate the % liberalization/reduction associated with different regulatory changes.

#### *Activity and results of fishery independent monitoring*

Peconic Bay Small Mesh Trawl Survey: In 2012, 390 tows were conducted in the Peconic Bays, yielding 444 black sea bass. Both YOY (0.41) and 1+ (0.73) CPUE were time series maximums (1987-present). It should be noted that the PBSMT historically has not caught many black sea bass and that the black sea bass catches from 2011 and 2012 have been very high and account for almost 52% of all black sea bass caught for the entire time series. While 2011 catches were composed of mostly YOY fish, the 2012 catch showed large catches of both YOY and older fish (Fig. 1). The black sea bass data for the entire time series has been made available for stock assessment purposes.

#### b. *Regulations in effect*

Recreational Regulations: 13.0" minimum size limit  
15 fish possession limit  
Open season June 15 – December 31  
Commercial Regulations: 11" minimum size limit  
See quota distribution plan (Appendix A)

#### c. *Harvest*

Commercial: NY commercial fishermen landed 153,172.5 lbs. According to dealer reports, 60.1% were not coded to any specific gear. About 15% of landings were attributed to trawls, 12.2% to hook and line/hand line, 11.1% to pots and traps and the remaining 1.5% to other gears. According to New York State vessel trip reports, 50.1% of black sea bass harvest was by pots and traps, 23.8% by hook and line, 23.5% by trawl and 2.5% by other gears.

Recreational: NY recreational anglers harvested 254,451 black sea bass in 2012 according to MRIP. This is slightly fewer black sea bass than in 2011, despite regulatory liberalizations.

Due to regional overharvest in 2012, New York has enacted more restrictive regulations for the 2013 fishing season to meet a required 24% regional reduction.

See Table 1. for data on commercial and recreational summer flounder harvest in NY state from 2000 to the present.

#### d. *Implementation of habitat recommendations*

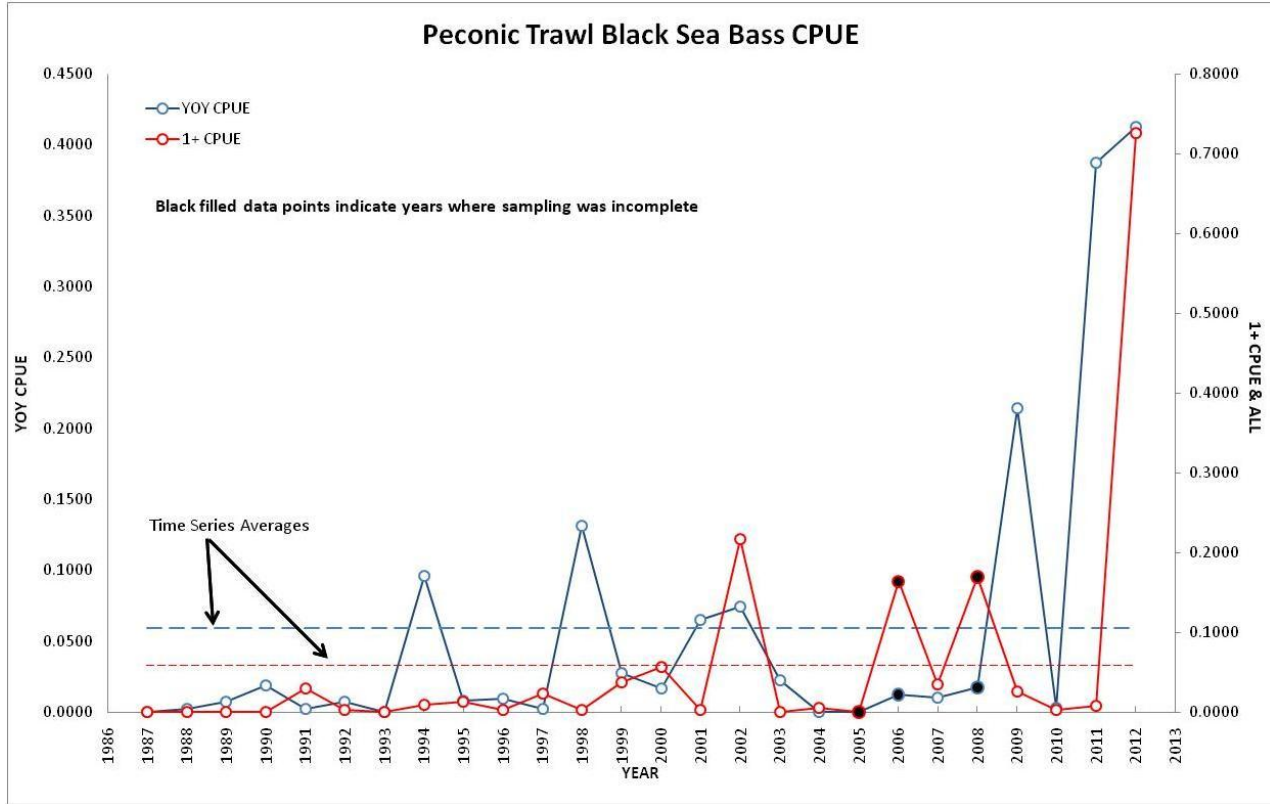
### IV. Planned management programs for the current calendar year

#### e. *Regulations in effect* See Appendix B

- f. Monitoring programs No changes anticipated
- g. Changes

Recreational (for 2013 fishing season): The minimum size limit remains at 13.0". The possession limit has been reduced to 8 fish from 15 in 2012. The season was reduced by 25 days to a new open season of July 10 – December 31.

**Fig 1.**



**Table 1.**

BLACK SEA BASS	COMMERCIAL		*GEAR					RECREATIONAL	
	YEAR	Live Lbs	Value	% Hook n Line/Hand Line	Not Coded	Pots & Traps	Trawls	Other	No. Fish Harvested (A+B1)
2000	138,537.0	\$ 264,953.00	16.1%	0.0%	12.3%	71.1%	0.5%	335,481	20.9
2001	248,796.0	\$ 395,109.97	9.1%	0.0%	9.1%	81.5%	0.3%	164,354	21.3
2002	286,719.0	\$ 700,607.31	9.0%	0.0%	12.6%	76.9%	1.5%	220,887	21.2
2003	227,381.0	\$ 556,904.00	14.9%	0.0%	9.0%	75.1%	1.0%	317,521	13.3
2004	233,491.0	\$ 549,415.50	4.8%	35.9%	6.2%	50.2%	3.0%	133,431	25.6
2005	244,074.0	\$ 714,783.00	12.4%	50.1%	9.7%	14.9%	12.8%	143,275	30.6
2006	312,305.0	\$1,037,948.00	7.1%	60.8%	5.2%	19.3%	7.5%	268,526	22.9
2007	270,403.8	\$ 989,377.29	9.6%	50.5%	12.7%	20.8%	6.5%	409,697	11.8
2008	201,930.3	\$ 701,810.10	5.6%	62.5%	15.0%	14.2%	2.7%	259,511	27.8
2009	124,022.3	\$ 428,001.72	8.4%	71.6%	10.0%	8.8%	1.2%	566,483	26.8
2010	201,708.0	\$ 617,542.39	6.3%	58.9%	16.5%	17.3%	1.0%	543,243	23.9
2011	183,207.3	\$ 623,134.52	8.4%	62.6%	14.5%	13.1%	1.4%	274,473	26.1
2012	153,172.5	\$ 527,212.21	12.2%	60.1%	11.1%	15.1%	1.5%	254,451	31.9

6/6/2013 ACCSP Confidential Commercial Landings (Dealer Reports)

\*Gear categories have been combined to protect individual confidentiality

**Appendix A.**

**Black Sea Bass Quota Distribution**

The 2012 black sea bass quota allocation provided by the United States Department of Commerce, National Marine Fisheries Service to the State of New York is **anticipated to be 123,200** pounds. DEC's quota distribution plan for black sea bass is as follows:

**2012 Black Sea Bass Quota Distribution**

	<b>Dates</b>	<b>Quota (lbs)</b>	<b>Initial trip limit</b>	<b>% Distribution</b>
Period 1	<b>January 8 - January 28</b>	6,160	50	5%
Period 2	<b>May 15 - June</b>	29,568	50	24%
Period 3	<b>July - August</b>	34,496		28%
	<i>July 1 to July 7</i>		100	
	<i>July 8 -</i>		50	
Period 4	<b>September - October</b>	29,568	50	24%
Period 5	<b>November - December</b>	23,408	50	19% (see #5)

The principles governing this determination are as follows;

- 1) Trip limits are established to distribute quota allocation over each period and to prevent closures if possible. Consequently, initial period trip limits may be set at modest levels.
- 2) If there is a year-end over-harvest that results in a deduction in the state's quota for the following year, the deduction may be taken proportionately from each period for which the assigned quota was exceeded.
- 3) Overharvest/underharvest from Period 1 will be deducted from/added to Period 5 November only. Overharvest/underharvest from Periods 2 through 4 will be rolled into the next period.
- 4) Any over or under harvest from Period 4 will roll into Period 5. The ASMFC Fishery Management Plan does not allow for one year's unused quota to be rolled over to the next year.
- 5) Period 5 allocation will be as follows: 9% (11,088 lbs) allocated for November, 10% (12,320 lbs) allocated for December. Every effort will be made to preserve 10% of the quota for December.
- 6) The final 2012 quota allocation is subject to change by adjustments made by the National Marine Fisheries Service.



NEW JERSEY DIVISION OF  
**Fish and Wildlife**  
P.O. Box 400  
Trenton, NJ 08625-0400  
David Chanda, Director

## Memorandum

TO: Toni Kerns, Director, Interstate Fisheries Management Program  
Atlantic States Marine Fisheries Commission

FROM: Peter Clarke, Assistant Fisheries Biologist  
NJ Division of Fish and Wildlife

DATE: 8 May 2013

SUBJECT: 2012 Summer Flounder, Scup and Black Sea Bass Compliance Report

Attached is the subject report. If you have any questions or need anything else please contact me.

STATE OF NEW JERSEY  
ASMFC Compliance Report for Summer Flounder,  
Scup and Black Sea Bass  
Calendar Year 2012

1. Introduction

This report has been prepared to satisfy Atlantic States Marine Fisheries Commission (ASMFC) compliance reporting requirements for summer flounder, scup and black sea bass. No significant changes in monitoring occurred. Several regulatory changes occurred. Daily commercial trip limits for summer flounder were changed for 2012. Dealers and fishermen were notified of any changes concerning trip limits, seasons and quotas for all three species. These changes are reflected in Tables 4a, 4b, and 4c. The summer flounder recreational fishing regulations were changed from 8 fish at 18 inches with an open season from May 7 through September 25 in 2011 to 5 fish at 17.5 inches with an open season from May 5 to September 28 in 2012. The scup recreational fishing season remained at 50 fish at 9 inches from January 1 through February 28 and July 1 through December 31 in 2012. The black sea bass recreational fishing season was open May 28 through September 11 and November 1 through December 31 with a minimum size limit of 12.5 inches and a possession limit of 25 fish per day in 2011. This changed in 2012 to an open season from May 19 to September 3, September 23 to October 14, and November 1 to December 31 with a minimum size of 12.5 inches and a 25 fish possession limit.

2. Request for de minimus status: Not Applicable.

3. Previous Calendar Years Fishery and Management (2011):

a. Fishery Dependent Monitoring

Commercial summer flounder, scup and black sea bass landings were monitored through daily and/or weekly SAFIS dealer reports listing landings by vessel. These reports are used to administer commercial quotas Tables 4a, 4b, and 4c.

Commercial landings were also available through the National Marine Fisheries Service. Recreational harvest was monitored through the Marine Recreational Information Program.

b. Fishery Independent Monitoring

Summer flounder, scup and black sea bass abundance and size composition have been monitored through New Jersey's Ocean Stock Assessment Survey since 1988. The survey is conducted five times a year. Annual survey indices expressed as #/tow and weight/tow for summer flounder, scup and black sea bass are listed on

Table 1. Summer flounder and black sea bass aging has been conducted since 2010. Results are expressed in number collected per year and average age at length and can be found in tables 2 and 3.

c. Copies of Regulations for 2012.

Commercial and recreational regulations are attached as Appendix I and II.

d. 2012 New Jersey Commercial and Recreational Harvest (pounds)

	<u>Commercial</u>	<u>Recreational</u>
<b>Summer Flounder</b>	2,269,375	2,946,167
<b>Scup</b>	978,531	107,650
<b>Black Sea Bass</b>	310,427	774,076

e. Habitat Recommendations: Not Applicable

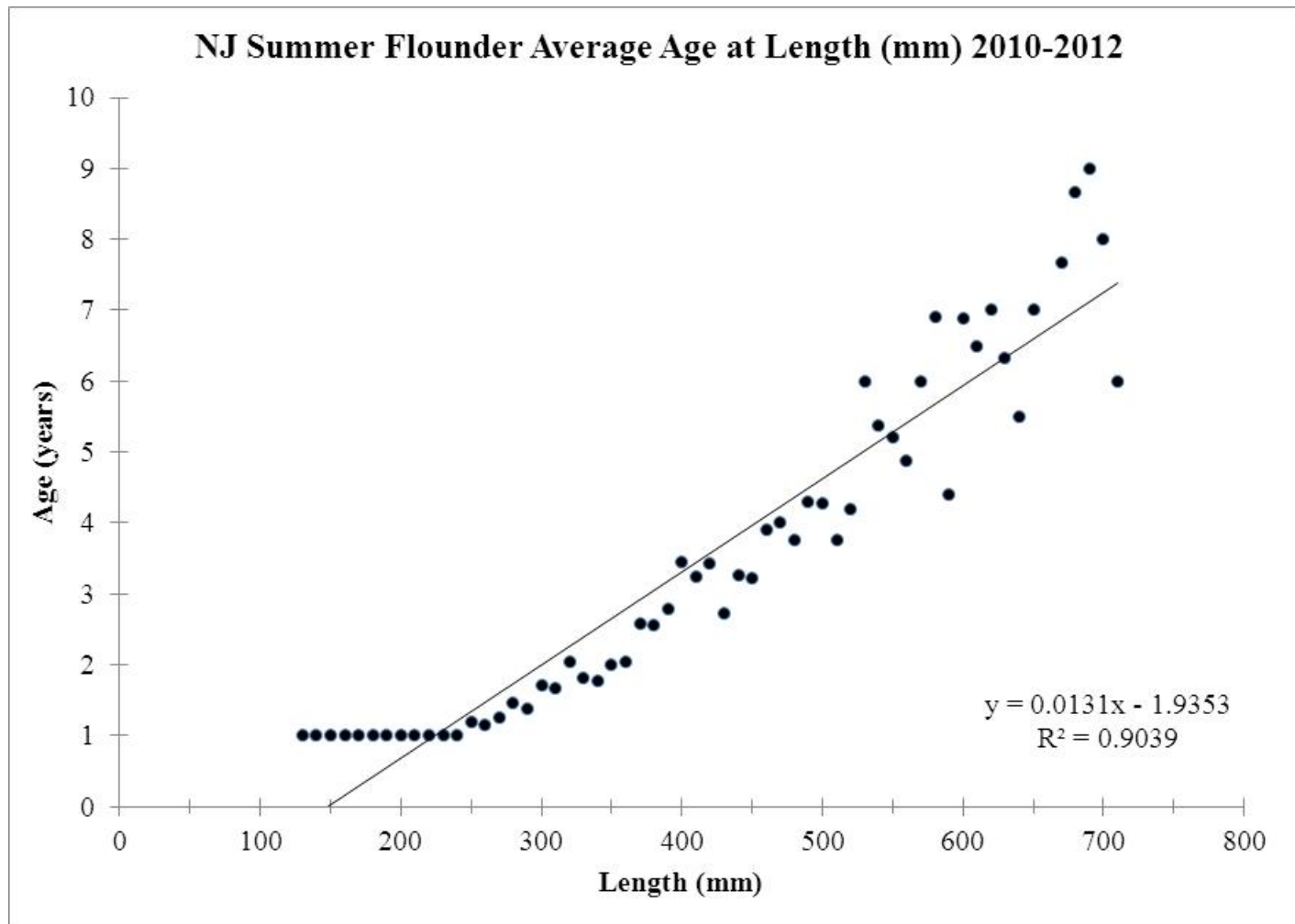
4. Planned Management Programs for 2013

Commercial landings of summer flounder, scup and black sea bass will continue to be monitored via SAFIS electronic dealer reporting for quota management. All New Jersey Summer Flounder, Scup, and Black Sea Bass Dealers were notified that the NJ Department of Environmental Protection will accept SAFIS reporting as an approved method to satisfy state reporting requirements beginning January 1, 2007. This action was taken to eliminate the duplicate reporting requirements that had been in effect. Trip limits and quotas will be modified as per ASMFC direction. Effective since 2007, black sea bass circular escape vent size increased from 2.375-inches to 2.5 inches and two escape vents are required in each pot. The recreational fishing regulations for summer flounder changed from 5 fish at 17.5 inches with an open season from May 5 to September 28 in 2012 to 5 fish at 17.5 inches with an open season from May 18 to September 16 in 2013. The recreational fishing regulations for black sea bass have changed from May 19 to September 3, September 23 to October 14, and November 1 to December 31 with a minimum size of 12.5 inches and a 25 fish possession limit in 2012 to May 19 to August 8, September 27 to October 14, and November 1 to December 31 in 2013. The recreational fishing regulations for scup have not changed from 2012 and will remain the same for 2013.

**Table 1.** Annual abundance indices (mean stratified number and weight [kg] per tow) of scup, summer flounder, and black sea bass taken in bottom trawl surveys of New Jersey coastal waters, 1989-2012. Means are based on data pooled for five surveys each year (January, April, June, August, October [+ Dec in 1989]).

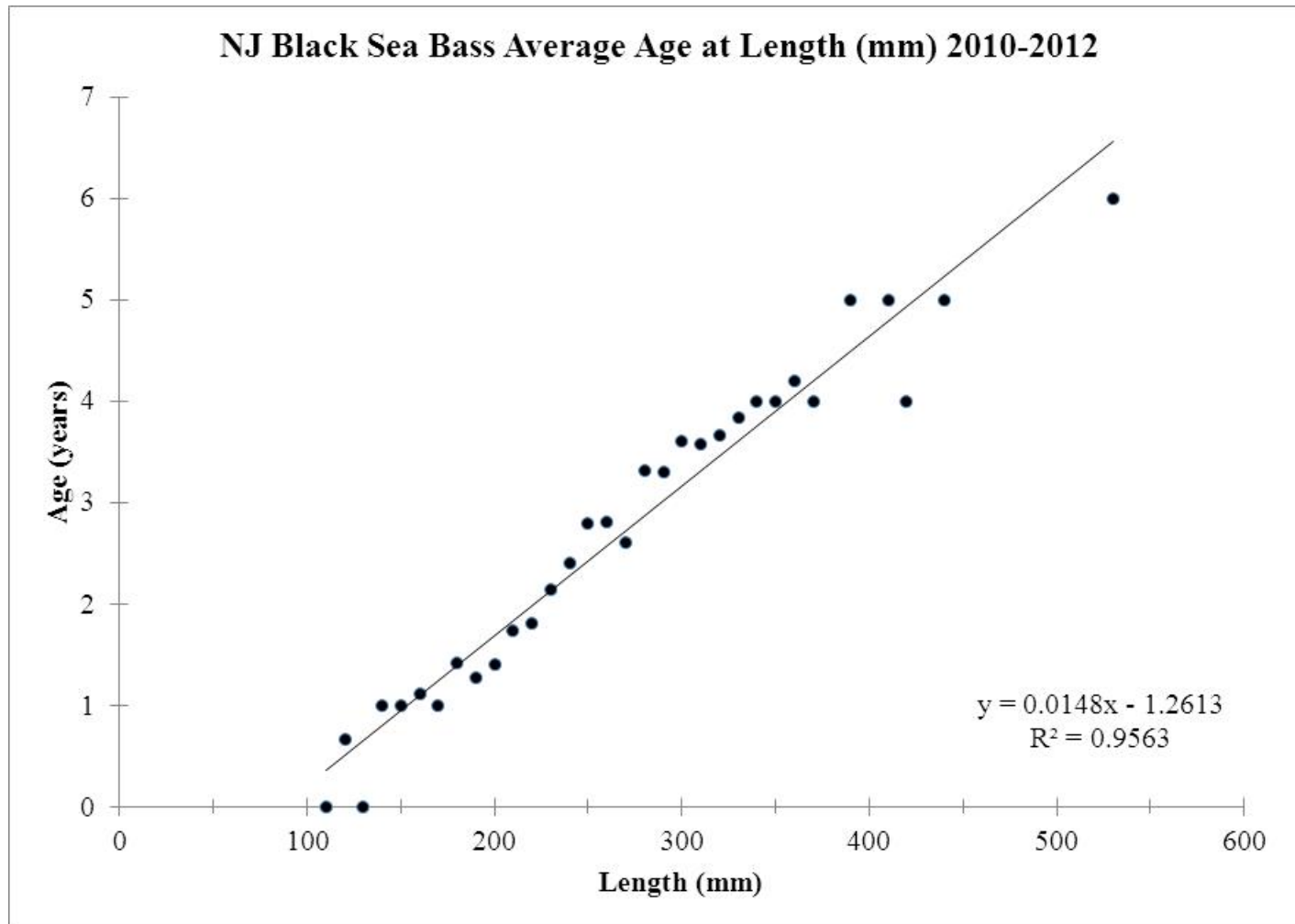
Year	No. Samples	Scup		Summer Flounder		Black Sea Bass	
		Number	Weight	Number	Weight	Number	Weight
1989	193	72.75	2.75	1.33	0.58	1.58	0.25
1990	171	74.72	3.77	2.43	1.04	1.42	0.26
1991	189	200.61	6.17	3.32	1.38	4.10	0.57
1992	191	222.70	7.16	3.98	1.77	2.32	0.33
1993	187	256.91	5.21	7.19	2.69	3.01	0.49
1994	186	86.45	3.30	2.39	1.04	0.64	0.13
1995	188	27.13	2.08	7.24	3.00	1.84	0.26
1996	189	30.81	1.04	8.06	3.53	2.90	0.62
1997	187	52.09	3.82	13.80	7.49	40.21	0.62
1998	188	220.05	4.88	8.05	4.09	4.36	0.29
1999	186	209.10	10.30	9.66	5.03	2.48	0.30
2000	187	262.66	6.67	6.35	3.64	7.14	1.76
2001	186	163.37	4.32	4.80	2.68	5.52	1.25
2002	188	568.07	25.73	14.45	9.97	25.23	2.86
2003	188	804.08	10.19	8.54	6.06	5.43	1.34
2004	187	449.12	11.70	9.22	5.96	3.29	0.60
2005	186	147.98	4.19	9.63	4.22	1.21	0.23
2006	186	943.63	16.52	9.10	5.03	4.54	0.50
2007	187	1185.54	38.27	7.98	4.94	15.64	1.95
2008	186	141.17	3.19	5.41	2.85	2.76	0.62
2009	186	205.66	6.04	7.33	3.90	6.64	1.21
2010	186	141.11	2.21	9.41	4.52	2.20	0.34
2011	186	101.74	5.13	5.84	3.27	3.62	0.55
2012	186	131.73	5.83	7.53	3.99	7.15	0.63

**Table 2.** Annual summer flounder aging results expressed in numbers of fish collected per year and average age at length for all years combined.





**Table 3.** Annual black sea bass aging results expressed in numbers of fish collected per year and average age at length for all years combined.



**Table 4a. New Jersey Commercial Summer Flounder Quota Summary: 2012**

Coastwide ACL (Rec and Com):	25,581,054
Commercial Discards:	459,000
Recreational Discards:	2,550,000
Research Set Aside (RSA):	677,162
Coastwide ACL Less RSA and Discards:	21,894,892
Coastwide Commercial Quota (60%):	13,136,935
NJ Annual Quota (16.72499% CCQ):	2,197,151
Previous year overage:	0
Total Adjusted Quota:	2,197,151
Total Landings:	2,270,310
Total over (-)/under ( ):	-73,159
Percent of Quota Harvested	103.33%

Season	Original Directed Quota	Adjusted Directed Quota	Directed Landings	Over/Under	By-Catch Quota	By-Catch Landings	Over/Under	Total Season Quota	Total Season Landings	Number of Directed Vessels: 2009/2010/2011/2012	Possible Closure Date	Trip Limits
1 Jan 1-Feb 8 (directed) Feb 9 Feb 18 (by catch) Feb 19 - Feb 29 (closed)	559,202		674,171	-114,969	56,000	8,406	47,594	615,202	682,577	58/60/66/61	landing :: 100K/wk Feb 4 or Feb 11	3,000x2 or 5,000x1
2 Mar 1- Mar 3 (bycatch) Mar 4 - Apr 14 (directed) April 15- April 30 (bycatch)	219,687	152,312	155,465	-3,153	22,000	8,815	13,185	174,312	164,280	41/41/36	ave 30k/wk. Close 3/14.	1,500x3
3 May 1 - May 5 (bycatch) May 6 - Jun 30 (directed)	209,701	219,733	186,415	33,318	21,000	2,408	18,592	240,733	188,823	33/36/33		250x7 or 500x4
4 Jul 1-Aug 31 (directed)	209,701	261,611	271,009	-9,398	21,000	0	21,000	282,611	271,009	33/32/24		250x7 or 500x4
5 Sep 1 (bycatch) Sep 2 - Oct 31 (directed)	579,174	590,776	621,783	-31,007	58,000	0	58,000	648,776	621,783	67/43/	oct 27	750x4 or 3,000x1
6 Nov 1-Nov 3 (bycatch) Nov 4-Dec 31 (directed)	219,687	246,679	340,903	-94,224	22,000	0	22,000	268,679	340,903	44/57/38	Dec. 15 or 22, 2012	1,000x4 or 3,500x1
Total	1,977,436				219,715							
Adjusted Total	1,997,151		2,249,746		200,000	19,629			2,269,375			

**Table 4b. New Jersey Commercial Black Sea Bass Quota Summary: 2012**

Coastwide Landings ACT (Rec and Com):	3,600,000
RSA:	108,000
Coastwide Landings ACT Less RSA:	3,492,000
Coastwide Commercial Quota (CCQ):	1,711,080
NJ Annual Quota (20% CCQ):	342,216
Previous year overage:	0
Total Adjusted Quota:	342,216
Total Pounds Harvested:	310,427
Total over (-) / under ( ):	31,789
Percent of Quota Harvested:	90.71%

Season	Original Directed Quota	Adjusted Directed Quota	Directed Landings	Overage (-) / Underage	By-Catch Quota	By-Catch Landings	Overage (-) / Underage	Trip Limits	Total Quota	Total Landed	Total Overage (-) / Underage
Jan 1 to March 13 (directed) March 14 to April 15 (bycatch)	119,502		101,819	17,683	13,278	2,184	11,094	500x4 or 1,000x2	132,780	104,003	28,777
April 16 to June 30	63,447	92,224	70,232	21,992	7,050	0	7,050	500x2 or 1,000x1	99,273	70,232	29,041
July 1 to Sept 30	41,579	70,621	42,925	27,696	4,620	0	4,620	500x2 or 1,000x1	75,240	42,925	32,315
Oct 1 to Dec 31	83,466	115,782	93,267	22,515	9,274	0	22,515	500x2 or 1,000x1	125,056	93,267	31,789
Total	307,994		308,243		34,222	2,184			342,216	310,427	

**Table 4c. New Jersey Commercial Scup Landings Data: 2012**

Season	Quota	Coastwide Landings	NJ Landings	Percent of Quota Landed	NJ % of Coastwide Landings	Trip Limit
WINTER 1 Coastal (Jan.1 - Apr. 30)	12,589,558	5,190,370	615,771	41%	12%	50,000/trip with a max of 7 trips per week
SUMMER State Share(May 1 - October 31) 2.9% of coastal quota	315,241	6,349,749	40,877	28.79%	4.96%	5,000/trip up to 7 trips per week
WINTER 2 Coastal (Nov 1- Dec. 31)	11,635,321	2,350,393	308,348	20.20%	13%	8,000/day with a maximum of 7 trips per week.

**Appendix I. N.J.A.C. 7:25-18.1** Size, season, and possession limits. 2012

(a) For the purpose of this subchapter, the following common names shall mean the following scientific name(s) for a species or group of species, except as otherwise specified elsewhere in this subchapter.

<u>Common Name</u>	<u>Scientific Name</u>
Black Sea Bass	Centropristis striata
Scup (Porgy)	Stenotomus chrysops
Summer Flounder (Fluke)	Paralichthys dentatus

(b) A person shall not purchase, sell, offer for sale, or expose for sale any species listed below less than the minimum length, measured in inches, except as may be provided elsewhere in this subchapter, and subject to the specific provisions of any such section. Any commercially licensed vessel or person shall be presumed to possess the following species for sale purposes and shall comply with the minimum sizes below. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below.

<u>Species</u>	<u>Minimum Size (inches)</u>
Black Sea Bass	11
Scup (Porgy)	9
Summer Flounder	14

1. Total length for black sea bass shall be measured along the midline from the tip of the snout to the end of the central portion of the tail, not to include tail filaments.

(c) A person angling with a hand line or with a rod and line or using a bait net or spearfishing shall not have in his or her possession any species listed below less than the minimum length, nor shall such person take in any one day or possess more than the possession limits as provided below, nor shall such person possess any species listed below during the closed season for that species. Exceptions to this section as may be provided elsewhere in this subchapter shall be subject to the specific provisions of any such section. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below:

<u>Species</u>	<u>Minimum Size In Inches</u>	<u>Open Season</u>	<u>Possession Limit</u>
Black Sea Bass	12.5	May 19 – Sept 3 Sept 23-Oct 14 Nov 1 – Dec 31	25
Scup (Porgy)	9	Jan. 1—Feb. 28, and July 1—Dec. 31	50
Summer Flounder (Fluke)	17.5	May 5—Sept. 28	5

1. Total length for black sea bass shall be measured along the midline from the tip of the snout to the end of the central portion of the tail, not to include tail filaments.

(e) Except as provided in (e)2 and (f) below, a person shall not remove the head, tail or skin, or otherwise mutilate to the extent that its length or species cannot be determined, any species with a minimum size limit specified at (b) or (c) above or any other species of flatfish, or possess such mutilated fish, except after fishing has ceased and such species have been landed to any ramp, pier, wharf or dock or other shore feature where it may be inspected for compliance with the appropriate size limit.

1. A shark may be eviscerated and the head and tail removed prior to landing, provided that the alternate length as measured from the origin of the first dorsal fin to the precaudal pit (located just forward of the origin of the upper lobe of the caudal or tail fin) is not less than 23 inches in length. The fins may not be removed from a shark or dogfish, except after fishing has ceased and such shark or dogfish has been landed as specified in (e) above.

2. A person may use parts of one legal sized summer flounder as bait. The carcass of the fish minus the fillets, commonly known as the rack, of the summer flounder used must be retained by the person and counted as part of the person's daily bag limit for that day. The rack shall be kept fully intact so it can be measured for minimum size limit. One summer flounder caught on the person's current fishing trip can be used for this purpose. No parts of fish caught on previous fishing trips shall be in possession. No other species of flat fish or fish listed under (b) or (c) above shall be used for this purpose.

(f) Special provisions applicable to a Special Fillet Permit are as follows:

1. A party boat owner may apply to the Commissioner for a permit for a specific vessel, known as a Special Fillet Permit to fillet species specified at (c) above at sea;

2. For purposes of this section, party boats are defined as vessels that can accommodate 15 or more passengers as indicated on the Certificate of Inspection issued by the United States Coast Guard for daily hire for the purpose of recreational fishing;

3. The Special Fillet Permit shall be subject to the following conditions:

i. Once fishing commences, no parts or carcasses of any species specified in (c) above and no flatfish parts or carcasses shall be discarded overboard; of the species specified at (c) above, only whole live fish may be returned to the water;

ii. No carcasses of any flatfish or species listed at (c) above shall be mutilated to the extent that its length or species cannot be determined;

iii. All fish carcasses of species specified at (c) above shall be retained until such time as the vessel has docked and been secured at the end of the fishing trip adequate to provide a law enforcement officer access to inspect the vessel and catch;

iv. No fillet of any flounder or other flatfish shall be less than eight inches in length during the period of May 1 through October 31 or less than five inches in length during the period of November 1 through April 30;

v. No fish of any species less than the minimum size limit specified in (c) above shall be filleted and no fillet of any species listed below shall have the skin removed and no fillet shall be less than the minimum length in inches specified below.

<u>Species</u>	<u>Minimum Fillet or Part Length</u>
Black Sea Bass	5 inches
Scup	4 inches

vi. Fish carcasses from the previous trip shall be disposed of prior to commencing fishing on a subsequent trip;

vii. Violation of any of the provisions of the Special Fillet Permit shall subject the captain and permit holder to the penalties established pursuant to N.J.S.A. 23:2B-14 and shall result in a suspension or revocation, applicable to both the vessel and the owner of the Special Fillet Permit according to the following schedule:

(1) First offense: 60 days suspension;

(2) Second offense: 120 days suspension; and

(3) Third offense: Revocation of permit, rendering the vessel and the owner not eligible for permit renewal regardless of vessel ownership.

viii. In calculating the period of suspension or revocation applicable under (f)3vii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three-

year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.

ix. Upon receipt of the notice of suspension but prior to the suspension or revocation of the Special Fillet Permit, the permittee has 20 days to request a hearing from the Department. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1. If a request for a hearing is not received by the Department within 20 days of the permittee's receipt of the notice of suspension, the permit suspension or revocation will be effective on the date indicated in such notice.

(g) Any person violating the provisions of (b), (c), (d) or (e) above shall be liable to a penalty of \$ 30.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

(m) Wanton waste of fish is prohibited.

1. Fish of any species, taken by any means, which are purposely killed shall become part of the fisherman's daily possession limit and shall be removed from the waters from which they were taken and from adjacent lands. This subsection shall not apply to those fish which are released while still alive and subsequently die or to those fish taken inadvertently by net (bycatch) and subsequently die.

(n) Any person violating the provisions of (h) through (l) above shall be liable for a penalty of \$ 100.00 for each fish taken or possessed. Each fish taken or possessed shall constitute a separate and distinct offense.

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, minimum size limits and possession limits specified in this section by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Department shall publish notice of any such modification in the New Jersey Fish and Wildlife Digest and the New Jersey Register, and shall submit a news release to individuals on the Division outdoor writers' mailing list.

(q) All persons aboard any fishing vessel subject to this rule shall immediately comply with instructions and signals issued by a conservation officer, a marine police officer or other law enforcement officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for the purpose of enforcement of this rule. After any instructions, signals or other communication from an authorized law enforcement officer indicating the officer's intent to perform an inspection, it shall be unlawful for any person to dispose of fish, fish parts or any other matter in any manner until such time as the inspection is complete. Violation of this provision shall subject the violator to the penalties established pursuant to N.J.S.A. 23:2B-14.

(r) Pursuant to N.J.S.A. 23:10-21 and 21.1, any gear used in the violating of the provisions of this subchapter may be seized and forfeited to the Division.

## Appendix II. Commercial Regulations

### N.J.A.C. 7:25-18.12; Commercial fishing seasons, quotas, and trip limits.

(h) The following provisions are applicable to the commercial harvest of black sea bass:

1. After December 31, 2002, a vessel shall not land more than 100 pounds of black sea bass during the period of January 1 through March 31 or more than 50 pounds of black sea bass during the period of April 1 through December 31 in New Jersey on any one trip unless said vessel is in possession of a valid New Jersey Black Sea Bass Permit. The permit shall be issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.
  - i. Applicants for a New Jersey Black Sea Bass Permit shall complete and submit an application provided by the Department by December 31, 2002 that includes information on name, address, vessel name, vessel documentation or registration number, gear and landings criteria as specified in (h)1ii below. Applications for a New Jersey Black Sea Bass Permit received after the above date shall be denied.
  - ii. To be eligible for a New Jersey Black Sea Bass Permit, the vessel's owner shall meet the following criteria:
    - (1) The vessel shall have landed and sold a minimum cumulative total of 10,000 pounds of black sea bass in New Jersey during the period 1988 through May 3, 2001;
    - (2) The vessel shall have possessed a valid Federal Black Sea Bass Moratorium Permit or appropriate New Jersey gear license for each year of submitted landings documentation; and
    - (3) Documented proof of landings shall consist of one or more of the following:
      - (A) Weigh-out slips totaling the weight harvested;
      - (B) A notarized statement from the applicant and the purchaser(s) attesting to the weight harvested (a copy of the business records the statement(s) must accompany the application);
      - (C) Other documentation similar to that in (h)1ii(3)(A) or (B) above may be accepted at the discretion of the Commissioner after his or her review.
2. The New Jersey Black Sea Bass Permit shall be on board the vessel to which it is issued at all times. The permit is valid from the date of issuance and for any subsequent years unless revoked as part of a penalty action. The vessel, when engaged in a black sea bass fishery, may have on board the gear type(s) listed on that vessel's New Jersey Black Sea Bass Permit.
3. The owner of a vessel permitted pursuant to this sub-section not pending revocation or court action may transfer his or her Black Sea Bass Permit, upon application to the Department, as follows:
  - i. To his or her replacement vessel, provided the replacement vessel is not greater than 10 percent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced shall no longer be eligible for a black sea bass permit; or
  - ii. Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a Black Sea Bass Permit based on the harvesting history of the vessel being sold.
4. Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.
5. Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without prior approval of the Department.
6. A vessel possessing a valid Black Sea Bass Permit to commercially harvest black sea bass by angling or hook and line and when operating under the permit shall be subject to the following:
  - i. Crew size shall be limited to no more than five persons, including the captain; and
  - ii. The vessel shall not carry any passengers for hire. When carrying passengers for hire the Black Sea Bass Permit is not valid and the recreational possession limits and seasonal restriction as specified in N.J.A.C. 7:25-18.1 apply.
7. A vessel that does not possess a New Jersey Black Sea Bass Permit shall be permitted to land not more than 100 pounds of black sea bass during the period of January 1 through March 31, or not more than 50 pounds of black sea bass during the period of April 1 through December 31 on any trip provided the amount of black sea bass landed from any vessel



shall not exceed 10 percent, by weight, of the total weight of all species landed and sold. Vessels taking black sea bass by angling or hook and line that do not possess a New Jersey Black Sea Bass Permit shall be subject to the possession limits established in N.J.A.C. 7:25-18.1 and the seasonal by-catch limits and 10 percent criteria specified above.

8. Annual and seasonal black sea bass quotas and daily trip limits shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission.
  - i. The Commissioner, or his or her designee, shall implement annual and seasonal black sea bass quotas and daily trip limits determined by the Atlantic States Marine Fisheries Commission upon four days public notice. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.
  - ii. Ten percent of the New Jersey annual black sea bass quota shall be allocated each year for by-catch landings when any of the seasons for the directed commercial fishery defined in (h)8iii below are closed. The by-catch landings shall be divided between seasons as identified in (h)8iii below at the same percentage apportioned to each season specified at (h)8iii below.
    - (1) Any by-catch not landed during the season allocated shall be added to the directed fishery quota of the following season except during the last season.
    - (2) If any of the by-catch allowance has not been landed by December 1 in any calendar year the remaining amount shall be added to the directed black sea bass fishery quota.
  - iii. The balance of the New Jersey annual quota for the black sea bass fishery remaining after deducting the by-catch allowance specified in (h)8ii above shall be divided into seasons, percentage of the annual quota apportioned to each season, daily trip limits and number of allowable landings days in each week (Sunday through Saturday) as follows:
    - (1) January 1-April 15: 38.8 percent, 500 pound trip limit and a maximum of four days per week or 1,000 pound trip limit with a maximum of two days per week that a vessel may land black sea bass.
    - (2) April 16-June 30: 20.6 percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (3) July 1-September 30: 13.5percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (4) October 1-December 31: 27.1 percent, 500 pound trip limit and a maximum of two days per week or 1,000 pound trip limit with a maximum of one day per week that a vessel may land black sea bass.
    - (5) If a minimum of 50,000 pounds of the New Jersey black sea bass quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year.
    - (6) Any daily landings of black sea bass not exceeding 100 pounds during the period of January 1 through March 31 or 50 pounds during the period of April 1 through December 31 shall not be applied to maximum weekly landings days during any season as specified in (h)8iii(1) through (4) above, provided the amount of black sea bass landed from any vessel shall not exceed 10 percent by weight, of the total weight of all species landed and sold.
  - iv. No vessel shall have in possession or land and no dealer shall accept from any one vessel or person more than the lesser of the daily trip limit of black sea bass set by the National Marine Fisheries Service or the Atlantic State Marine Fisheries Commission in any one calendar day.
  - v. The Commissioner, or his or her designee, shall close the season for the commercial black sea bass fishery upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders.

- vi. Once the season has been closed for the directed commercial black sea bass fishery, no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or purchase any black sea bass landed in New Jersey in excess of the by-catch allowances specified in (h)1 and 7 above and provided the amount of black sea bass landed from any vessel shall not exceed 10 percent, by weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or buy any black sea bass landed in New Jersey.
- vii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (h)7v above.
  - (1) The Commissioner, or his or her designee may set daily trip limits when reopening a prematurely closed season.
- viii. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.
- ix. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following season. The amount overharvested shall also be deducted from the following years seasonal quota in pounds and reallocated to the season from which it was deducted the previous year.
- x. Any vessel participating in the black sea bass fishery shall notify the Department of the time and place of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the trip being called in. For example, "this will be my third landing this week." Notification shall include phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.
- 9. After December 31, 2002, no dealer shall accept or purchase any black sea bass from any vessel or harvester unless such dealer is in possession of a valid New Jersey Black Sea Bass Dealers Permit. A New Jersey Black Sea Bass Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:
  - New Jersey Black Sea Bass Dealers Permit
  - Nacote Creek Research Station
  - PO Box 419
  - Port Republic, NJ 08241
- 10. After December 31, 2002, no dealer shall accept or purchase from any one vessel more than the amounts of black sea bass specified at (h)1 above unless said vessel is in possession of its valid New Jersey Black Sea Bass Permit.
- 11. After December 31, 2002, any harvester or vessel landing black sea bass in New Jersey for the purpose of sale shall sell all black sea bass to a permitted New Jersey Black Sea Bass Dealer.
- 12. All permitted New Jersey Black Sea Bass Dealers shall provide daily reports during the period January 1 through April 15 and weekly reports during the period April 16 through December 31 to the Division listing the amount of black sea bass landed on a daily basis and any other information that may be required by the Commissioner. If no black sea bass were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number listed on the reporting form no later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
- 13. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
  - i. Failure to submit the required documentation to an application shall result in the denial of the permit.

- ii. Falsification or misrepresentation of any information on an application including documentation provided to verify the amount of black sea bass landed as specified in (h)1ii(3) above shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.
- iii. Failure to comply with the provisions of (h)6 above, criteria under which a vessel may harvest black sea bass by angling or hook and line, (h)8 above, exceeding daily trip limits and landing black sea bass after the season has been closed, (h)9 above, accepting or purchasing black sea bass without a New Jersey Black Sea Bass Dealers Permit, (h)10 above, accepting or purchasing from any non-permitted vessel more than the amount of black sea bass stipulated pursuant to (h)1 and 7 above, and (h)11 above, selling black sea bass to a non-permitted dealer shall result in the suspension during open season(s) or revocation of the vessel's and/or dealer's Black Sea Bass Permit according to the following schedule:
  - (1) First offense: 60 days suspension;
  - (2) Second offense: 120 days suspension;
  - (3) Third offense: permanent revocation;
- iv. In calculating the period of suspension or revocation applicable under (h)13iii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.
- v. Any person who has had his or her New Jersey Black Sea Bass Dealers Permit suspended or revoked shall not land or permit the landing of any black sea bass at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Black Sea Bass Dealers Permit.
- vi. Prior to revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(i) The following provisions are applicable to the commercial harvest of summer flounder:

- 1. A vessel shall not land more than 100 pounds of summer flounder during the period of May 1 through October 31 or more than 200 pounds of summer flounder during the period of November 1 through April 30 in New Jersey on any one trip unless said vessel is in possession of a valid New Jersey Summer Flounder Permit to participate in the directed fishery for summer flounder. Vessels fishing under the special terms of a quota transfer or combination program as provided in (i)3 below may be exempt from this requirement if such terms specify that a New Jersey Summer Flounder Permit is not necessary to land summer flounder in New Jersey. The permit shall be issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.
  - i. Applicants for a New Jersey Summer Flounder Permit shall complete and submit an application provided by the Department. Applicants applying to use hook and line shall submit their applications no later than May 31, 1994. Applicants applying for a New Jersey Summer Flounder permit for any other gear type shall submit their applications no later than January 1, 2000. Applications for a New Jersey Summer Flounder Permit received after the above dates shall be denied.
  - ii. To be eligible for a New Jersey Summer Flounder Permit, the vessel's owner shall meet the following criteria:
    - (1) The vessel shall have landed and sold at least 1,000 pounds of summer flounder in each of two years during the period of 1985-1992;
    - (2) The vessel shall have possessed a valid New Jersey otter trawl, pound net, or gill net license or a valid Federal summer flounder permit during each of the two years it qualified based upon the pounds of

summer flounder landed and sold in (i)1ii(!) above. Vessels providing documentation regarding the amount of summer flounder landed for two years between January 1, 1985 to November 2, 1988 or vessels providing documentation of harvest by hook and line are exempt from this requirement; and

- (3) Applicants shall provide weigh out slips to document the amount of summer flounder landed and copies of their New Jersey otter trawl, pound net or gill net license or Federal summer flounder permit for the respective years.

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

- (1) The owner of a vessel permitted pursuant to this subsection not pending revocation or court action may transfer his or her Summer Flounder Permit, upon application to the Department, as follows:

- (A) To his or her replacement vessel, provided the replacement vessel is not greater than 10 percent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced shall no longer be eligible for a New Jersey Summer Flounder Permit; or
- (B) Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a New Jersey Summer Flounder Permit based on the harvesting history of the vessel being sold.

- (2) Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.

- (3) Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without prior approval of the Department.

iv. A vessel possessing a valid New Jersey Summer Flounder Permit to commercially harvest summer flounder by angling or hook and line and when operating under the permit shall be subject to the following:

- (1) Crew size shall be limited to no more than five persons, including the captain; and
- (2) The vessel shall not carry any passengers for hire. When carrying passengers for hire the New Jersey Summer Flounder Permit is not valid and the recreational possession limits and seasonal restriction as specified in N.J.A.C. 7:25-18.1 apply.

v. A vessel that does not possess a New Jersey Summer Flounder Permit shall be permitted to land not more than 100 pounds of summer flounder during the period of May 1 through October 31, or not more than 200 pounds of summer flounder during the period of November 1 through April 30 on any trip provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight, of the total weight of all species landed and sold, except that vessels taking summer flounder by angling or hook and line shall be subject to the possession limits established in N.J.A.C. 7:25-18.1.

2. The annual summer flounder harvest quota for New Jersey shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries. All landings of summer flounder in New Jersey shall be applied to the New Jersey annual summer flounder quota unless New Jersey enters into an agreement with another state(s) to transfer or combine summer flounder commercial quotas, as provided for pursuant to (i)3 below and such agreement indicated otherwise.

i. Ten percent, but no more than 200,00 pounds of the of the New Jersey annual summer flounder quota, shall be allocated each year for by-catch landings when any of the six seasons for the directed commercial fishery are closed. The by-catch landings shall be divided between the six seasons as identified at (i)2ii below at the same percentage as for the directed fishery specified at (i)2ii below or as modified by the Commissioner.

- (1) Any by-catch not landed during the season allocated shall be added to the directed fishery quota of the following season except during the last season.
  - (2) If any of the by-catch allowance has not been landed by December 1 in any calendar year the remaining amount shall be added to the directed summer flounder fishery quota.
  - (3) For the purpose of this section, all directed fishery seasons identified at (i)2i below shall start on the first Sunday of the applicable month.
- ii. The balance of the New Jersey annual quota for the summer flounder fishery remaining after deducting the by-catch allowance specified in (i)2i above shall be divided into seasons, percentage of the annual quota apportioned to each season, daily trip limits and number of allowable landings days in each week (Sunday through Saturday) as follows:
- (1) January-February: 28 percent, 3,000 pound trip limit and a maximum of two days a week or 5,000 pound trip limit and a maximum of one day a week that a vessel may land summer flounder;
  - (2) March - April: 11 percent, 1,500 pound trip limit and a maximum of three days per week that a vessel may land summer flounder;
  - (3) May-June: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;
  - (4) July-August: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;
  - (5) September - October: 29 percent, 750 pound trip limit and a maximum of four days that a vessel may land summer flounder, except as follows:
    - (A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 3,000 pounds;
  - (6) November - December: 11 percent, 1,000 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, except as follows:
    - (A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 3,500 pounds; and
  - (7) Any daily landings of summer flounder not exceeding 100 pounds during the period of May 1 through October 31 or 200 pounds during the period of November 1 through April 30 shall not be applied to maximum weekly landings days during any season as specified in (i)2ii(1) through (6) above, provided the amount of summer flounder landed from any vessel shall not exceed 10 percent by weight, of the total weight of all species landed and sold.
- iii. No vessel shall have in possession or land and no dealer shall accept from any one vessel more than the daily trip limit of summer flounder in any one calendar year.
- iv. Any vessel participating in a directed summer flounder fishery shall notify the Department of the time and place of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the tip being called in. For example, "This will be my third landing this week." Notification shall include a phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.

- v. If a minimum of 100,000 pounds of the New Jersey summer flounder quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year or until the quota specified in (i)2 above is landed, whichever occurs first.
- vi. The Commissioner, or his or her designee, shall close the season for the directed and/or by-catch commercial summer flounder fishing season upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all permitted New Jersey Summer Flounder Dealers and New Jersey Summer Flounder Permit holders.
- vii. Once the season has been closed for the directed commercial summer flounder fishery, no vessel shall land any summer flounder and no dealer shall accept any summer flounder landed in New Jersey in excess of the by-catch allowances specified in (i)1 above and provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any summer flounder and no dealer or person shall accept or buy any summer flounder landed in New Jersey.
- viii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated environmental events resulting in the quota not being landed by the projected date and at least one month remains in the current season, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (i)2vi above.
  - (1) The Commissioner, or his or her designee may set daily trip limits when reopening a prematurely closed season.
- ix. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.
- x. If the quota for any of the first five seasons is exceeded, the amount overharvested shall be deducted from the following season.
- xi. If the quota for any year is exceeded, the amount overharvested will be deducted from the following year's annual quota. The remaining annual quota will then be allocated as defined in (i)2i and ii above.
- xii. Beginning in 1994, the Department shall notify the holders of New Jersey Summer Flounder Permits of the season allocations no later than January 31 of the year to which the allocation applies. Notification shall be accomplished by first class mail to permit holders.
- xiii. All New Jersey Summer Flounder Permit holders shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than 15 working days following the end of the reported month at the following address:

New Jersey Summer Flounder Program  
 Nacote Creek Research Station  
 PO Box 419  
 Port Republic, NJ 08241

- (1) The monthly report shall include, but not be limited to, the following information: name, New Jersey Summer Flounder Permit number of the vessel, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which summer flounder are landed. New Jersey Summer Flounder Permit holders who also possess a Federal summer flounder permit and are required to report monthly to the Federal government may submit the "STATE" copy of their Federal log book in satisfaction of the New Jersey reporting requirements.
- (2) If no trips for summer flounder were taken and no summer flounder were landed during the month, a report to that effect shall be required.

3. Pursuant to Amendment 5 of the Mid-Atlantic Fishery Management Council's Summer Flounder Management Plan, the Commissioner may enter into agreements with other states to transfer or combine summer flounder commercial quotas. Such agreements shall specify the terms and conditions under which vessels not in possession of a New Jersey Summer Flounder Permit may land summer flounder in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.
4. No fish dealer shall accept any summer flounder from any vessel or harvester unless such dealer is in possession of a valid New Jersey Summer Flounder Dealers Permit. A New Jersey Summer Flounder Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:

New Jersey Summer Flounder Dealers Permit  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

5. No dealer shall accept from any vessel more than the amounts of summer flounder specified at (i)1 above unless said vessel is in possession of its valid New Jersey Summer Flounder Permit.
6. No vessel shall land and no dealer shall accept any summer flounder which have been frozen, filleted or processed in any way. Only whole, fresh summer flounder may be landed, except that by-catch amounts of summer flounder as specified in i(1) above may be landed frozen provided that each fish is individually frozen whole and can be individually weighed and measured without thawing.
7. Any harvester or vessel landing summer flounder in New Jersey for the purpose of sale shall sell all summer flounder to a permitted New Jersey Summer Flounder Dealer.
8. All permitted New Summer Flounder Dealers shall provide daily reports during the period January 1 through February 28 and weekly reports during the period March 1 through December 31 to the Division listing the amount summer flounder landed on a daily basis by size category and any other information that may be required by the Commissioner or as a result of any agreement with other states pursuant to (i)3 above. If no summer flounder were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division not later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
9. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
  - i. Failure to submit the application by May 31, 1994 for use of hook and line or to attach the required documentation to the application shall result in the denial of the permit.
  - ii. Falsification or misrepresentation of any information on an application including documentation provided to verify the amount of summer flounder landed as specified in (i)1ii(3) above shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.
  - iii. Failure to comply with the provisions of N.J.A.C. 7:25-18.14(i)2, minimum mesh sizes, (i)2iii above, landing, possession or accepting in excess of the daily trip limit for summer flounder, (i)2iv above, failure of notification of landing of summer flounder, (i)2vii above, landing summer flounder after the directed fishery and/or by-catch season has been closed, (i)2xiii above, failure to submit accurate and timely monthly reports, (i)5 above accepting more than by-catch amounts from non-permitted vessels, (i)6 above accepting any summer flounder other than fresh product, or N.J.S.A. 7:25-18.14(a), (b), (d), (e), (f) or N.J.S.A. 23:3-46 through 47 shall result in the suspension during open seasons or revocation of the vessel's New Jersey Summer Flounder Permit or the dealers New Jersey Summer Flounder Dealers Permit according to the following schedule:
    - (1) First offense: 60 days suspension;
    - (2) Second offense: 120 days suspension;

(3) Third offense: permanent revocation;

- iv. In calculating the period of suspension or revocation applicable under (i)9iii above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.
- v. Any person who has had his or her New Jersey Summer Flounder Dealers Permit suspended or revoked shall not land or permit the landing of any summer flounder at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Summer Flounder Dealers Permit.
- vi. Prior to revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(k) The following provisions are applicable to the commercial harvest of scup:

- 1. Annual coastwide scup quotas and daily trip limits for the periods of January 1 through April 28 and November 1 through December 31, and an annual New Jersey scup quota for the period from May 1 through October 31 shall be determined by the Mid-Atlantic Fishery Management Council as implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission. All landings of scup in New Jersey during the period from May 1 through October 31 shall be applied to the New Jersey scup quota.
  - i. Any closure of the scup fishery by the National Marine Fisheries Service in adjacent Federal waters or any closure which includes New Jersey marine waters during the periods January 1 through April 28 and November 1 through December 31 would automatically close New Jersey to commercial landings of scup.
  - ii. The Commissioner, or his or her designee, shall implement annual and seasonal scup quotas and daily trip limits determined by the Atlantic States Marine Fisheries Commission upon two days public notice. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.
  - iii. The Commissioner, or his or her designee, shall close the season for the commercial scup fishery upon two days public notice of the projected date the New Jersey seasonal quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Scup Dealer Permit holders and Federal scup moratorium, permit holders that are New Jersey residents.
  - iv. Once the season has been closed for the commercial scup fishery, no vessel shall land any scup and no dealer shall accept any scup landed in New Jersey.
  - v. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (k)1iii above.
  - vi. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following year's quota for that season.
- 2. No vessel shall have in possession or land and no dealer shall accept from any vessel more than the lesser of the daily trip limits set by the National Marine Fisheries Service or the Atlantic State Marine Fisheries Commission for the season of January 1 through April 30 and November 1 through December 31 and no vessel shall have in possession or land and no dealers shall accept from any one vessel more than the daily trip limit of 5,000 pounds of scup during the season of May 1 through October 31 or as provided for in (k)2i above.



- i. If a minimum of 25 percent of the New Jersey scup quota is projected to remain unlanded as of October 1 in any calendar year, then there shall be a 10,000 pound trip limit for the remainder of the season or until the season is closed as provided in (k)1i above.
  - ii. The trip limit for scup shall be two trips per week (Sunday through Saturday) with landings not to exceed 50,000 pounds during any two-week period from January 1 through April 28 and a daily limit as established by the National Marine Fisheries Service from November 1 through December 31. During the period of January 1 through April 28, the daily trip limit will be reduced to 1,000 pounds when it is projected that 80 percent of the period quota will be harvested.
3. No fish dealer shall accept any scup from any vessel or harvester unless such dealer is in possession of a valid New Jersey Scup Dealer Permit. A New Jersey Scup Dealer Permit may be obtained by completing an application supplied by the Department and submitting it to:

New Jersey Scup Dealers Permit  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

4. A harvester or vessel shall not land scup for the purpose of sale or sell any scup unless such harvester or vessel is in possession of a valid scup moratorium permit issued by the National Marine Fisheries Service.
5. Any harvester or vessel landing scup in New Jersey for the purpose of sale shall sell all scup to a permitted New Jersey Scup Dealer.
6. All permitted New Jersey Scup Dealers shall provide weekly reports to the Division listing the amount of scup landed on a daily basis and any other information that may be required by the Commissioner or as a result of an agreement with other states pursuant to (k)9 below. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division no later than two days following the week's end or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.
7. All scup moratorium permit holders landing scup in New Jersey shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than 15 working days following the end of the reported month at the following address:

New Jersey Scup Program  
Nacote Creek Research Station  
PO Box 419  
Port Republic, NJ 08241

- i. The monthly report shall include, but not be limited to, the following information: name, scup moratorium permit number, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which scup are landed. Scup moratorium permit holders may submit the "STATE" copy of their Federal log book in satisfaction of the New Jersey reporting requirements.
8. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:
- i. Failure to comply with the provisions (k)1iv above, landing or accepting scup after the season has been closed; (k)2 above, landing or accepting more than the daily trip limit; (k)3 above, accepting scup from a vessel without first having obtained a valid New Jersey Scup Dealer Permit; (k)4 above, landing for the purpose of sale or selling scup without first having obtained a valid scup moratorium permit; (k)5 above, selling scup to a non-permitted fish dealer; or (k)6 and 7 above, failure to submit accurate and timely reports, shall result in the suspension during the open seasons or revocation of the dealer's New Jersey Scup Dealer Permit according to the following schedule:

- (1) First offense: 60 days suspension;
- (2) Second offense: 120 days suspension;
- (3) Third offense: permanent revocation;

ii. In calculating the period of suspension or revocation applicable under (k)8i above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a permit holder who incurs more than one suspension in a three year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.

9. Pursuant to Amendment 8 of the Mid-Atlantic Fishery Management Council's Fishery Management Plan for the Summer Flounder and Scup Fishery, the Commissioner may enter into agreements with other states to transfer or combine scup commercial quotas. Such agreements shall specify the terms and conditions under which vessels may land scup in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.

#### **N.J.A.C. 7:25-18.14**

(l) Special provisions applicable to the commercial harvest of summer flounder are as follows:

1. The possession of more than 100 pounds of summer flounder during the period of May 1 through October 31 or the possession of more than 200 pounds of summer flounder during the period of November 1 through April 30 on board a vessel or landed from a vessel shall constitute a directed fishery for summer flounder.
2. A person utilizing an otter or beam trawl in the directed fishery for summer flounder shall not use a net of less than 5.5 inches stretched diamond mesh or 6.0 inches minimum stretched square mesh, inside measurement. The mesh size shall be applied throughout the body, extensions and cod end portions of the net upon adoption in the Federal Register of essentially the same criteria. Until such time, the mesh size shall be applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified above in this paragraph, on board a vessel engaged in a directed fishery for summer flounder is prohibited unless such net is not available for immediate use as defined in (b) above or is one of the following:

i. Vessels fishing in the fly net fishery are exempt from the minimum mesh size requirement. A fly net is a two seam otter trawl with the following configuration:

- (1) The net has large mesh webbing in the wings with a stretch mesh measure of eight inches to 64 inches;
- (2) The first body (belly) section of the net consists of 35 meshes or more of eight inches stretch mesh webbing or larger;
- (3) In the body section of the net the stretch mesh decreases in size relative to the wings and continues to decrease throughout the extensions to the cod end, which generally has a webbing of two inch stretch mesh.

(p) Special provisions applicable to a directed scup fishery are as follows:

1. The possession of more than 500 pounds of scup during the period of November 1 through April 30 and more than 200 pounds of scup during the period of May 1 through October 31 on board a vessel or landed from a vessel shall constitute a directed fishery for scup.

2. A person utilizing an otter or beam trawl in a directed fishery for scup shall not use a net of less than 5.0 inches stretched mesh inside measurement applied for a minimum of 75 continuous meshes forward of the terminus of the net.
    - i. Nets not large enough to accommodate the number of minimum meshes listed in (p)2 above shall not contain any meshes less than 5.0 inches stretched mesh inside measurement throughout the entire net.
  3. The possession of any net with a mesh less than the minimum specified in (p)2 above on board a vessel in a directed fishery for scup is prohibited unless it is not available for immediate use as defined in (b) above.
- (q) Special provisions applicable to a directed black sea bass fishery are as follows:
1. The possession of more than 500 pounds of black sea bass during the period of January 1 through March 31 or more than 100 pounds of black sea bass during the period of April 1 through December 31 on board a vessel or landed from a vessel shall constitute a directed fishery for black sea bass for the purpose of requiring minimum mesh sizes as defined in (q)2 below.
  2. A person utilizing an otter or beam trawl in a directed fishery for black sea bass shall not use a net of less than 4.5 inches stretched diamond mesh or 4.0 inches minimum stretched square mesh, inside measurement applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified in this paragraph on board a vessel in a directed fishery for black sea bass is prohibited unless it is not available for immediate use as defined in (b) above.
    - i. Nets not large enough to accommodate the number of minimum meshes listed in (q)2 above shall not contain any meshes less than 4.5 inches stretched diamond mesh or 4.0 inches stretched square mesh inside measurement throughout the entire net.



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE  
89 Kings Highway  
Dover, Delaware 19901

OFFICE OF THE  
DIRECTOR

Phone: (302) 739-9910  
Fax: (302) 739-6157

## **Delaware Black Sea Bass Compliance Report for 2013**

**June 1, 2013**

### **I. Introduction**

Delaware implemented a commercial quota system in 2003 as part of the compliance requirement detailed in the Atlantic States Marine Fisheries Commission's (ASMFC) fishery management plan (FMP), Amendment 13. Delaware allocated 96% of its 2012 commercial quota (85,348 pounds) to the pot fishery by use of individual fishing quotas (IFQ's), which were calculated for six individuals that qualified with historical landings criteria. Each 2012 pot fishery IFQ was 13,657 pounds. The remaining four percent of the quota was divided amongst 13 commercial hook and line fishers that qualified based on reported landings between 1994 through 2001. Each 2012 commercial hook and line IFQ was 262 pounds.

Delaware's recreational regulations were changed to match federal regulations in May 2012.

### **II. Previous year's fishery and management program**

#### **A. Fishery –Dependent Monitoring**

Commercial fishers qualified to land black sea bass in Delaware were required to call in their landings after each trip and within one hour of packing out the catch. An interactive voice response system (IVR) was established and maintained in order to track landings relative to individual quotas in real time. In addition, commercial harvesters are also required to submit monthly landings reports and these are used as a cross reference to the IVR reports.

#### **B. Fishery-Independent Monitoring**

Two trawl survey programs are conducted annually in Delaware's coastal waters to assess relative abundance of both juvenile and adult finfish. Information from these surveys is analyzed in order to determine catch at age for adults and young of the year, and catch per tow is calculated for estimating annual relative abundance.

#### **C. Current Regulations (2013)**

##### ***1. Commercial regulations for the current year***

Six individuals qualified, based on historical landings data, to participate in the black sea bass pot fishery and land black sea bass in Delaware under the state's IFQ quota system. Each individual was allocated 13,657 pounds. In addition, 13 people qualified for

allocation under the commercial hook and line category and each person was allocated 262 pounds of black sea bass that could be landed in Delaware for commercial purposes.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota. No individual overage occurred during 2012. An 11 inch minimum size restriction is in place for commercially landed black sea bass and all pots must have two rectangular escape vents measuring 1.375 inches by 5.75 inches in the parlor section of the pot; or a circular vent 2.5 inches in diameter; or a square vent with sides 2 inches inside measure.

#### 2. Recreational regulations for the current year

Recreational regulations are the same as those in 2012. The recreational regulations were changed by emergency regulation on May 18, 2012 to match the federal regulation released on May 17, 2012. The current regulations are a minimum size of 12.5 inches and a 15 fish daily creel limit during the January 1 through February 28 season, and a 25 fish daily creel limit during the May 19 through October 14 and the November 1 through December 31 seasons.

#### D. 2012 Landings

##### 1. Commercial landings

Total reported commercial landings for black sea bass were 81,976 pounds, which was 96% of the quota allocated to Delaware for the 2012 fishing season. Pot fishermen landed 96 percent of the reported commercial landings (Table 1).

##### 2. Recreational landings

Delaware's recreational harvest estimates for black sea bass are generated from the Marine Recreational Information Program (MRIP). The intercept sampling level has been enhanced three times (3X) the base NMFS allocation since 1998. Recreational anglers landed 36,292 black sea bass during the 2012 fishing season, a 15% decrease from 2011 landings (Table 2).

#### IV. Planned Management Programs for 2013

All management measures described above will remain in effect for 2013. Delaware's commercial quota has been adjusted to 108,500 pounds based on the ASMFC calculations of the state-by-state allocation program. Delaware implemented a regulation on May 10, 2006, that excludes the caudal filament as part of the total length measurement. In addition, the 2012 regulation change that matched Delaware's recreational open harvest season to the federal open harvest season remains in place. Delaware will change the daily creel limit to 20 fish for all seasons if the proposed federal regulation is approved in 2013.

Table 1. Delaware commercial black sea bass landing by gear types  
1990 – 2012.

<b>YEAR</b>	<b>POTS</b>	<b>GILL NETS</b>	<b>HOOK &amp; LINE</b>	<b>TOTAL</b>
1990	148,400	170	1,074	149,644
1991	187,400	76	2,166	189,642
1992	179,070	4	7,569	186,613
1993	83,665	26	2,103	85,794
1994	67,323	48	921	68,292
1995	145,254	187	6,712	152,153
1996	161,246		4,902	166,148
1997	148,743		7,779	156,522
1998	75,894	4	2,390	78,288
1999	82,442		2,785	85,227
2000	38,304	5	2,045	40,354
2001	20,029	0	1,845	21,874
2002	7,887	4	2,862	10,753
2003	89,650		1,089	90,739
2004	87,011		942	87,956
2005	62,622	389	543	63,554
2006	79,265		930	80,195
2007	62,734		756	63,490
2008	60,322		378	60,700
2009	49,878		381	50,259
2010	76,849		66	76,915
2011	82,087		349	82,436
2012	81,976		375	82,351

Table 2. Delaware recreational estimates of the number of black sea bass landed (A+B1), 1990 – 2012.

<b>YEAR</b>	<b>LANDINGS</b>
1990	112,557
1991	391,395
1992	195,532
1993	236,758
1994	66,328
1995	192,282
1996	69,584
1997	91,082
1998	51,628
1999	36,744
2000	146,350
2001	198,035
2002	607,419
2003	303,825
2004	111,985
2005	50,445
2006	128,841
2007	72,514
2008	24,695
2009	50,470
2010	22,448
2011	42,961
2012	36,292

# Maryland's 2012 Black Seas Bass (*Centropristis striata*) Compliance Report to the Atlantic States Marine Fisheries Commission

Prepared for ASMFC

by:  
Steve Doctor

Maryland Department of Natural Resources  
Fisheries Service  
Estuarine and Marine Fisheries Division

June 2013

## **I. Introduction**

The black sea bass stock was most recently assessed in December 2008 and summarized in the report of the Northeast Data Poor Stocks Working Group (NEFSC CDR 09-02). In this report, the review panel concluded that overfishing is occurring, but the stock is not overfished. This determination was reaffirmed during the 53rd Northeast Regional Stock Assessment in 2012. In Maryland, black sea bass are pursued almost exclusively in the Exclusive Economic Zone (EEZ) both recreationally and commercially.

Black sea bass recreational management has changed to allow for states to set their own regulations, conservation equivalency. The background for these changes and the framework for setting regulations is documented in Addendum XXII (March 2012). Maryland regulations remained consistent with current and previous federal recreational measures.

The black sea bass commercial fishery is managed by a state-by-state allocation system as mandated by Addendum XIX to the FMP. Maryland's commercial allocation under this addendum is 11% of the annual coastal commercial target.

## **II. Request for *De Minimis***

No de minimis status is requested.

## **III. Previous Year's Fishery and Management Programs**

### **A. Fishery Dependent Monitoring**

MDNR does not have any fishery-dependent monitoring programs for black sea bass. Data are occasionally collected from the recreational for-hire fishery, but no samples were collected in 2012.

### **B. Fishery Independent Monitoring**

Maryland's Coastal Bays Fisheries Investigation Trawl and Beach Seine Survey regularly encounter black sea bass. In 2012 black sea bass were collected in 31 of 140 trawls (22.1%) and four of 38 seines (10.5%). A total of 125 juvenile black sea bass were collected in trawl (92 fish) and beach seine (33 fish) samples conducted on Maryland's Coastal Bays in 2012. Black sea bass were ranked 16<sup>th</sup> out of 71 species in overall finfish abundance. The trawl and beach seine CPUEs were 5.2 fish/hectare and 0.9 fish/haul, respectively.

GM indices of relative abundance were calculated and compared with the 1989-2012 time series grand mean. The point estimate of the time series grand mean was used as an indicator of central tendency of abundance, against which the 95% CIs of the GM indices of relative



abundance were compared. The 2012 trawl and beach seine indices were both equal to the standardized grand means (Figures 1 and 2).

### Black Sea Bass Trawl Index Maryland Coastal Bays

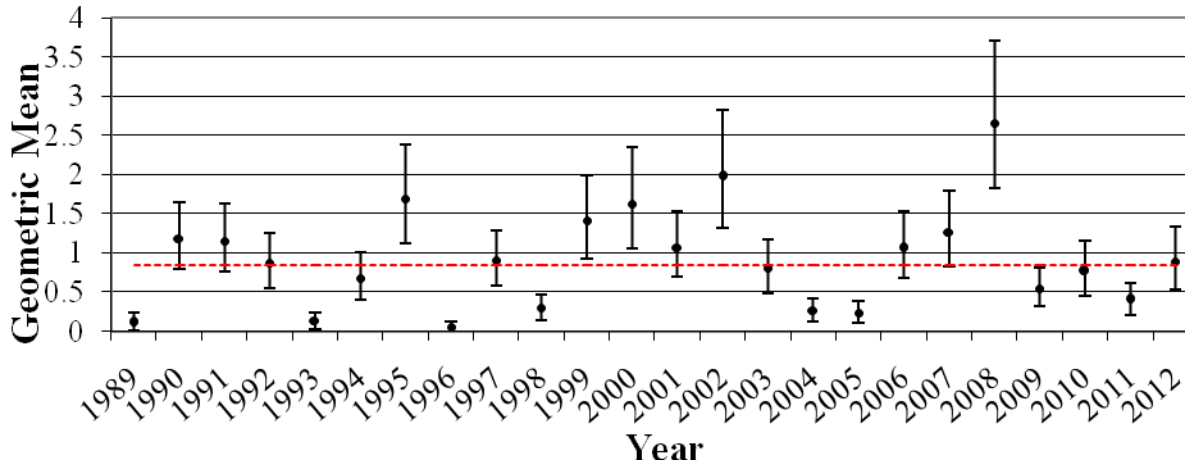


Figure 1. Black sea bass trawl index of relative abundance (geometric mean) with 95% confidence intervals (1989-2012). Dotted line represents the 1989-2012 time series grand mean. Protocols of the Coastal Bays Fishery Investigation Trawl and Beach Seine Survey were standardized in 1989 (n=140/year).

### Black Sea Bass Seine Index Maryland Coastal Bays

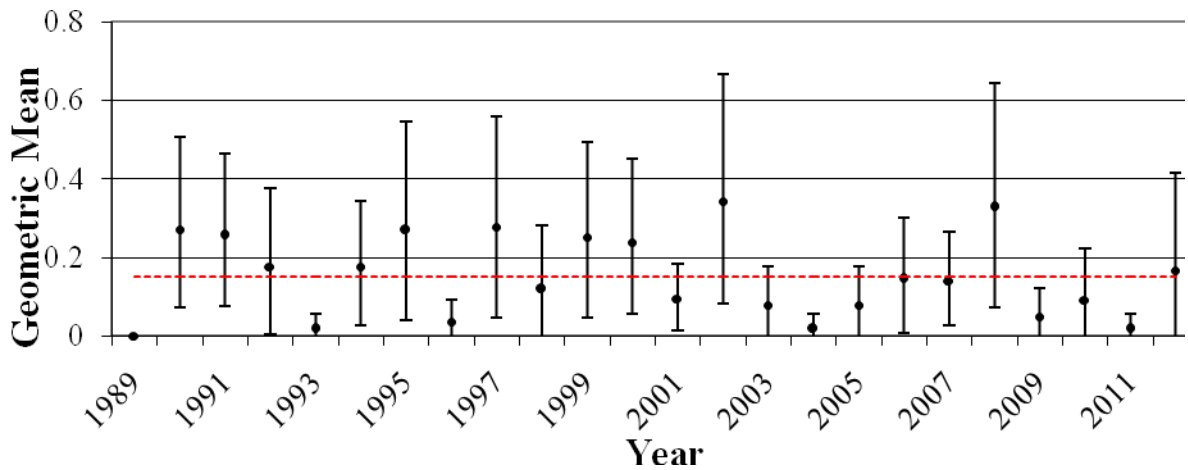


Figure 2. Black sea bass beach seine index of relative abundance (geometric mean) with 95% confidence intervals (1989-2012). Dotted line represents the 1989-2012 time series grand mean. Protocols of the Coastal Bays Fishery Investigation Trawl and Beach Seine Survey were standardized in 1989 (n=38/year).

### C. Previous Year's Fishery and Management Program

A Chesapeake Bay and Atlantic Coast Black Sea Bass FMP was developed in 1993 by the NOAA Chesapeake Bay Program. Maryland and Virginia have a cooperative management plan for black sea bass within the Chesapeake Bay.

The Code of Maryland Regulations (COMAR) pertaining to black sea bass (section 08.02.05.21) were reorganized and edited for consistency with our other commercial permits late in 2012. Before November 12, 2012, the regulations were as follows:

#### A. Recreational.

- (1) Minimum Size. A recreational angler may not catch or possess a black sea bass less than 12.5 inches in total length.
- (2) Catch Limit. A recreational angler may not catch or possess more than 25 black sea bass per day.
- (3) Season. The recreational season for catching black sea bass was May 22 to October 11 and November 1 through December 31. Federal waters were closed to harvest by NMFS for the November and December season in 2012.

#### B.. Commercial.

- (1) Minimum Size. An individual who harvests black sea bass for commercial purposes may not catch or possess a black sea bass less than 11 inches in total length.
- (2) Quotas.
  - (a) The annual quota for Maryland is 11 percent of the annual Atlantic coast quota determined by the National Marine Fisheries Service.
  - (b) The Maryland quota is allocated as follows:
    - (i) Sea bass pots—87 percent;
    - (ii) Trawl—11 percent;
    - (iii) Hook and line—1 percent; and
    - (iv) All other—1 percent.
  - (c) Adjustments to the allocation of the Maryland quota shall be made according to the number of individuals declared in each gear type.
  - (d) Individual quotas are allocated as follows:
    - (i) Except as provided in §B(2)(d)(ii) of this regulation, an individual who has declared for black sea bass pots in Maryland and that meets the requirements set forth in §D(1) of this regulation shall receive an equal share of the pot quota.
    - (ii) An individual who receives a black sea bass individual allocation from another jurisdiction and is declared for black sea bass pots in Maryland shall receive the equal share of the pot quota less the allocated pounds from the other jurisdiction.
    - (iii) An individual who has declared for black sea bass trawl in Maryland and meets the requirements set forth in §D(1) of this regulation shall receive a proportional allocation of the trawl quota equal to the individual's proportional share of the total Maryland harvest by declared trawl harvesters during the period 1996—2001.
    - (iv) An individual who has declared for black sea bass hook and line or other gear in Maryland and that meets the requirements set forth in §D(1) of this regulation shall receive an equal share of the hook and line or other gear quota.
  - (e) Quota Transfers.
    - (i) A Maryland black sea bass permit holder (permittee) may annually transfer not more than 30 percent of the permittee's individual quota in a maximum of

two transactions per year to another permittee upon notification of and approval by the Department.

(ii) A permittee with a pot catch allocation may catch up to an additional 30 percent of the transferor's quota in a maximum of two transactions per year if they receive a quota transfer.

(iii) A permittee with a trawl allocation may catch up to an additional 30 percent of the transferor's quota in a maximum of two transactions per year if they receive a quota transfer.

(3) Trawls.

(a) Except for an individual possessing less than 50 pounds of black sea bass per trip, an individual may not use a trawl to catch black sea bass with mesh less than 4 1/2 inches stretched mesh size throughout the net or a minimum of 75 meshes in the codend.

(b) An individual may not use a roller rig trawl with a roller diameter in excess of 18 inches.

(4) Pots and Traps. A pot or trap used to catch black sea bass shall have:

(a) An unobstructed escape vent of at least a:

(i) 2 3/8 inch diameter circular opening;

(ii) 2 inch by 2 inch square opening; or

(iii) 1 3/8 inch by 5-3/4 inch rectangular opening; and

(b) Hinges and fasteners on a panel or door made of one of the following degradable materials:

(i) Untreated hemp or jute string of 3/16 inch in diameter or less;

(ii) Magnesium alloy fasteners; or

(iii) Ungalvanized, uncoated iron wire of 0.094 inch diameter or smaller.

(5) Dealers.

(a) Any black sea bass harvested for commercial purposes from the Atlantic Ocean Waters of Maryland or from the waters of the Exclusive Economic Zone (EEZ) and landed in Maryland shall be sold to a federally permitted dealer.

(b) A dealer shall transmit information weekly, or as requested, on each black sea bass transaction through the Department-approved reporting system.

C. Commercial Catch Limits.

(1) An individual who possesses a Maryland black sea bass landing permit in accordance with §D of this regulation and lands more than the assigned permit allocation, including any quota transfers, shall have the overage deducted from the permit allocation for the following year.

(2) A vessel that does not have an individual on board who validly possesses a Maryland black sea bass landing permit may not catch, possess, or land more than 50 pounds of black sea bass per day.

D. Licenses and Permits.

(1) An owner of a vessel may obtain a Maryland black sea bass landing permit if, for at least 1 calendar year during the period of 1996—2001, the owner or vessel landed in the State at least 5,000 pounds of black sea bass and provides proof of eligibility to the Department.

(2) Proof of eligibility for a Maryland black sea bass landing permit as required in §D(1) of this regulation may be documented by records of the Department or records of the National Marine Fisheries Service.

- (3) An applicant for a Maryland Black Sea Bass Landing Permit shall declare by August 31 of each year for one of the following gear types:
- (a) Trawl;
  - (b) Pot;
  - (c) Hook and line; or
  - (d) Other.
- (4) Under the conditions described in this section, a pot individual quota or trawl individual quota may be harvested by either gear.
- (5) In accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, the Department may approve a permanent transfer of a Maryland black sea bass landing permit to an individual who:
- (a) Is not currently a permit holder;
  - (b) Has a federally permitted vessel used for commercial fishing for black sea bass; and
  - (c) Has not held a Maryland black sea bass landing permit for the prior 2 calendar years.
- (6) An individual in possession of a Maryland black sea bass landing permit shall record the harvest of black sea bass on the permit daily and shall return the permit to the Department at the end of the season.
- (7) A permittee may catch, possess, or land black sea bass for commercial purposes on a vessel other than the vessel declared on the permittee's permit if:
- (a) The permittee is in possession of the permit issued to the permittee; and
  - (b) The undeclared vessel is permitted by the National Marine Fisheries Service.
- (8) When a vessel is used to catch, possess, or land more than 50 pounds of black sea bass for commercial purposes from the waters of the Atlantic Ocean, the operator, permittee, or owner shall have in possession aboard the vessel a Maryland black sea bass landing permit issued by the Department while the vessel is engaged in fishing for and harvesting of black sea bass.
- (9) An operator means an individual who is not a permittee and acts as an agent of a permittee.
- (10) The name of the vessel on which the operator is working shall be declared on the Maryland black sea bass landing permit.
- (11) An operator may catch, possess, or land black sea bass for commercial purposes on a vessel owned by a permittee and in possession of that permittee's permit.
- (12) A vessel which is used to catch, possess, or land black sea bass for commercial purposes from the waters of the Exclusive Economic Zone (EEZ) of the Atlantic Ocean shall be permitted by the National Marine Fisheries Service in accordance with 50 CFR §648.4.
- (13) A person shall have a share of ownership in a federally permitted vessel in order to be issued a Maryland black sea bass permit.
- (14) The federally registered name of the permitted vessels or the State registration numbers shall be indicated at the time of application for the permit and declared on the Maryland black sea bass landing permit. Any change in ownership shall be reported to the Department, which will issue a revised permit card.
- (15) Two black sea bass quotas may be fished off any one federally permitted vessel, if two authorized individuals with Maryland black sea bass permits are on board.

E. General.

- (1) The Secretary may modify catch limits, quota, or open or close a season by publishing notice in a daily newspaper of general circulation at least 48 hours in advance of the modification, stating the effective hour and date.
- (2) The Secretary shall make a reasonable effort to disseminate public notice through various other media so that an affected individual has reasonable opportunity to be informed.
- (3) The Department shall make a reasonable effort to modify quotas to ensure that the Maryland portion of the coastwide quota is harvested and not exceeded.

On November 12, 2012, the following regulations became effective (please note no changes were made to the recreational regulations):

**B. Commercial.**

- (1) **Minimum Size.** An individual who harvests black sea bass for commercial purposes may not catch or possess a black sea bass less than 11 inches in total length, excluding the tail filament.
- (2) **Quotas.**
  - (a) The annual quota for Maryland is 11 percent of the annual Atlantic coast quota determined by the National Marine Fisheries Service.
  - (b) **Quota Allocation.**
    - (i) The total pounds of black sea bass that may be harvested by a black sea bass landing permit holder who applies for a permit for 2011 and subsequent years shall be based on the proportion of the total black sea bass harvest allocated to the permit holder in the previous year.
    - (ii) In addition to the quota allocation, as described in §B(2)(b)(i) of this regulation, the Department shall reallocate equitably among permit holders the quota of any permit holder who fails to apply for a permit for the following year, or who leaves the fishery without transferring the permit.
  - (c) A Maryland black sea bass landing permit holder (permittee) may annually transfer up to 100 percent of the permittee's individual quota to another permittee upon notification of and approval by the Department. However, an individual may not hold more than 20 percent of the total fishery allocation.
  - (d) An individual who possesses a Maryland black sea bass landing permit in accordance with §C of this regulation and lands more than the assigned permit allocation, including any quota transfers, shall have the overage deducted from the permit allocation for the following year.
- (3) **Daily Catch Limits.** A vessel that does not have an individual on board who possesses a valid Maryland black sea bass landing permit may not catch, possess, or land more than 50 pounds of black sea bass per day.
- (4) Black sea bass harvested for commercial purposes from Maryland waters of the Atlantic Ocean or from the waters of the Exclusive Economic Zone (EEZ) and landed in Maryland shall be sold to a federally permitted dealer.

**C. Licenses and Permits.**

- (1) A person shall be licensed to fish for commercial purposes in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, in order to catch, possess, or land black sea bass.

(2) A vessel which is used to catch, possess, or land black sea bass for commercial purposes from the waters of the Exclusive Economic Zone (EEZ) of the Atlantic Ocean shall be permitted by the National Marine Fisheries Service in accordance with 50 CFR §648.4.

(3) A permittee may catch, possess, or land black sea bass for commercial purposes on a vessel other than the vessel declared on the permittee's permit if in possession of the permit issued to the permittee, and the undeclared vessel is permitted by the National Marine Fisheries Service.

(4) Declaration.

(a) A tidal fish licensee shall declare their intent to fish for black sea bass by August 31 of each year.

(b) A tidal fish licensee who has not declared by August 31 of the current year, and who has not declared late in any of the 3 preceding years, may apply until September 14 of the current year, or the next business day if September 14 occurs on a weekend, to the Director of Fisheries Service, provided the licensee shows good reason why the application should be processed.

(c) An exception to the September 14 deadline will be considered only for an individual who can provide satisfactory documentation of a physical or mental incapacity that prevented that individual from meeting the declaration time period established in this subsection.

(d) The federally registered name or the State registration numbers of the permitted vessels owned by the permittee shall be indicated at the time of application for the permit and declared on the Maryland black sea bass landing permit.

(e) Any change in vessel ownership shall be reported to the Department so that a revised permit card may be issued.

(5) Black Sea Bass Landing Permit.

(a) No more than 14 black sea bass landing permits may be issued by the Department. The number of black sea bass landing permits is based on the reported catch and landing records of black sea bass in Maryland during 1996—2001.

(b) The Department may issue a permit to catch and land black sea bass in Maryland to a person who is licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, owns or has a share of ownership in a federally permitted vessel, and:

(i) Declared or was eligible to declare, in the previous year, an intent to fish for black sea bass in accordance with §C(4) of this regulation and has not transferred the permit; or

(ii) Received a black sea bass landing permit through a permanent business transfer in accordance with §C(6) of this regulation.

(6) Permanent Transfer of a Landing Permit. The Department may approve a permanent transfer of a Maryland black sea bass landing permit to an individual who applies to the Department requesting the transfer on forms provided by the Department.

(7) Temporary transfers of black sea bass landing permits are not permitted.

(8) Operators.

(a) An operator means an individual who is not a permittee and acts as an agent of a permittee.

(b) The name of the vessel on which the operator is working shall be declared on the Maryland black sea bass landing permit.

(c) An operator may catch, possess, or land black sea bass for commercial purposes on a vessel owned by a permittee and in possession of that permittee's permit.

(9) Regardless of the number of authorized individuals with Maryland black sea bass landing permits on board a federally permitted vessel, no more than two black sea bass quotas may be fished from one vessel per trip.

#### D. Gear Restrictions.

##### (1) Trawls.

(a) Except for an individual possessing less than 50 pounds of black sea bass per trip, an individual may not use a trawl to catch black sea bass with mesh less than 4-1/2 inches stretched mesh size throughout the net or a minimum of 75 meshes in the codend.

(b) An individual may not use a roller rig trawl with a roller diameter in excess of 18 inches.

##### (2) Pots and Traps. A pot or trap used to catch black sea bass shall have:

(a) An unobstructed escape vent of at least a:

(i) 2-1/2 inch diameter circular opening;

(ii) 2 inch by 2 inch square opening; or

(iii) 1-3/8 inch by 5-3/4 inch rectangular opening; and

(b) Hinges and fasteners on a panel or door made of one of the following degradable materials:

(i) Untreated hemp or jute string of 3/16 inch in diameter or less;

(ii) Magnesium alloy fasteners; or

(iii) Ungalvanized, uncoated iron wire of 0.094 inch diameter or smaller.

#### E. Reporting and Penalties.

(1) In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland, an individual in possession of a Maryland black sea bass landing permit shall record the harvest of black sea bass on the permit daily and submit the completed permit to the Department within 14 days from the end of the black sea bass season.

(2) A dealer shall transmit information weekly, or as requested, on each black sea bass transaction through the Department-approved reporting system.

(3) The Department may withhold quota allocation for a black sea bass landing permit for failing to comply with §E(1) of this regulation during the previous season.

(4) The Department may deny an application for a black sea bass landing permit for failing to comply with §E(1) of this regulation during the previous season.

#### F. General.

(1) The Secretary may modify catch limits, size limits, quotas, or open or close a season in order to comply with species management through the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Black Sea Bass, by publishing notice on the Fisheries Service website at least 48 hours in advance, stating the effective hour and date.

(2) The Secretary shall make a reasonable effort to disseminate public notice through various other media so that an affected individual has reasonable opportunity to be informed.

(3) The Department shall make a reasonable effort to modify quotas to ensure that the Maryland portion of the coastwide quota is harvested and not exceeded.

## **D. Harvest by Gear Type**

### **1. Commercial Landings**

In 2012 there were eleven pot fishermen and three trawlers that met the minimum requirements to receive a Maryland black sea bass landing permit. A permit is required to commercially land more than 50 pounds of black sea bass a day in Maryland. Maryland's 2012 commercial black sea bass harvest was 140,861 pounds (assessed May 22, 2013, National Marine Fisheries Service, Fisheries Statistics and Economics Division, Personal communication). NMFS data are confidential,

### **2. Recreational Landings**

Based on MRIP estimates, Maryland's 2012 recreational black sea bass harvest was 28,023 fish (PSE 44.2) with a combined weight of 35,588 pounds (accessed May 22, 2013, National Marine Fisheries Service, Fisheries Statistics and Economics Division, Personal communication).

## **E. Progress in Implementing Habitat Recommendations**

There were no habitat recommendations in the plan.

## **IV. Planned Management for 2013**

### **A. Summary of Regulations that will be in Effect**

The Code of Maryland Regulations (COMAR) pertaining to black sea bass (section 08.02.05.21) are online at URL: <http://www.dsd.state.md.us/comar/08/08.02.05.21.htm>. Maryland's recreational black sea bass regulations for 2013 include a 12.5 inch total length minimum size limit, 20 fish/day creel limit, and an open season from May 19 until October 14<sup>th</sup>, and November 1 through December 31<sup>st</sup> or as determined by NMFS. All other regulations will remain the same as in 2012.

Regulations were proposed in 2013 that remove the specific minimum size, season, and creel language from the regulation and replace it with authority to set those specifications through our public notice process. Currently, the Department issues a public notice after the management decision has been approved and then submits both emergency and proposed regulations with the limits specified in the public notice. There is a time period when the restrictions in the regulation and public notice are different and it can be confusing (regulation says one thing and the public notice something different). Those proposed regulations are expected to be withdrawn due to legislative concerns. A new regulatory process is expected to begin in 2013 that would not include authority to modify seasons, size, or creel by public notice, though we do not have the details of those changes at this time.

### **A. Summary of Monitoring Programs that will be in Effect**

Maryland will continue to monitor the abundance of juvenile black sea bass in the Coastal Bays Fisheries Investigation Trawl and Beach Seine Survey. Length data from the recreational harvest on selected head boats out of Ocean City, Maryland will be collected if time allows.

## **C. Highlights of Changes from the Previous Year**

No changes were necessary to maintain compliance with regulatory requirements.



## **V. Plan Specific Requirements**

Not Applicable

## **VI. Law Enforcement Requirements**

Not Applicable

## **References**

Northeast Data poor Stocks Working Group. 2009. The Northeast Data Poor Stocks Working Group Report, December 8012, 2008 Meeting. Part A. Skate species complex, Deep sea red crab, Atlantic wolfish, Scup, and Black sea bass. US Dept Commerce, Northeast Fisheries Science Center, Ref Doc. 09-02; 496p.

<http://www.nefsc.gov/publications/crd/crd0902/>

Northeast Fisheries Science Center. 2012. 53rd Northeast Regional Stock Assessment Workshop (53rd SAW) Assessment Report. US Dept Commerce, Northeast Fish Sci Cent Ref Doc. 12-05; 559 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026,

National Marine Fisheries Service, Fisheries Statistics and Economics Division. Commercial landings. December 29, 2012. [http://www.nero.noaa.gov/ro/fso/reports/reports\\_frame.htm](http://www.nero.noaa.gov/ro/fso/reports/reports_frame.htm). Accessed on May 22, 2013.

National Marine Fisheries Service, Fisheries Statistics and Economics Division. Marine Recreational Fisheries Statistical Survey. December 29, 2012. <http://www.st.nmfs.gov/st1/recreational/queries/custom/index.html>. Accessed on May 22, 2013.



North Carolina Department of Environment and Natural Resources  
Division of Marine Fisheries  
Dr. Louis B. Daniel III  
Director

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

## 2012 North Carolina Black Sea Bass Compliance Report

By

Tom Wadsworth

North Carolina Division of Marine Fisheries

June 1, 2013

### I. Introduction

North Carolina has a relatively important commercial fishery for black sea bass in the Atlantic Ocean north of Cape Hatteras. The commercial fishery is prosecuted primarily with otter trawls from November through April. Commercial black sea bass landings in North Carolina occur as a result of bycatch in winter trawl fishery for summer flounder as well as directed fisheries using fish pots and hook and line. The recreational black sea bass fishery in North Carolina north of Cape Hatteras is relatively minor. No new significant monitoring or regulatory changes occurred in 2012 for the commercial fishery. However, there was a change to the recreational fishery season in 2012.

### II. *De minimis* status

North Carolina does not request *de minimis* status for the 2012 fishing year.

### III. 2012 Black sea bass Fishery and Management Program

#### A. Activity and Results of Fishery-Dependent Monitoring

Commercial fishing activity is monitored through fishery dependent sampling conducted under Title III of the Interjurisdictional Fisheries Act (IJFA) and has been ongoing since 1982. North Carolina Division of Marine Fisheries (NCDMF) staff sampled commercial catches of black sea bass during dockside fishery dependent sampling of the winter trawl fishery. Information on areas fished and gear specifications as well as black sea bass length and aggregate weight data was obtained from the catches (Assessment of North Carolina Commercial Finfisheries, NCDMF Completion Reports, 1984-2012). In the past, winter trawls accounted for most of the black sea bass landings north of Cape Hatteras. However, in 2012 landings by winter trawl decreased while landing from fish pots and hook and line increased (winter trawl and fish pot landings were comparable). The decrease in winter trawl landings was likely due to the inability of winter trawl vessels to enter Oregon Inlet for part of the season. A total of 515 black sea bass from 13 winter trawl catches were measured in 2012. The black sea bass measured ranged from 276 mm to 546 mm with the majority between 300 mm and 450 mm. A total of 325 black sea bass were measured from five fish pot catches north of Hatteras ranging from 260 mm to 586 mm.

## B. Activity and Results of Fishery-Independent Monitoring

No North Carolina fishery-independent finfish survey is designed to sample black sea bass. Black sea bass are rarely caught in any of North Carolina's fishery independent surveys north of Cape Hatteras.

## C. Black sea bass Regulations for 2012

The authority for management of black sea bass in North Carolina is found in the following North Carolina Fisheries Rules:

### 15A NCAC 3M .0512 – COMPLIANCE WITH FISHERY MANAGEMENT PLANS

- (a) In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans or to implement state management measures, the Fisheries Director may, by proclamation, take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:
- (1) Specify size;
  - (2) Specify seasons;
  - (3) Specify areas;
  - (4) Specify quantity;
  - (5) Specify means and methods; and
  - (6) Require submission of statistical and biological data.
- (b) Proclamations issued under this Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221.1.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.4;  
Eff. March 1, 1996;  
Amended Eff. October 1, 2008.*

Other Applicable Rules and Statutes: North Carolina General Statute (G.S.) 143B-289.52(e) authorizes the North Carolina Marine Fisheries Commission (NCMFC) to adopt temporary rules at any time within six months of the adoption of a fishery management plan requirement by the Atlantic States Marine Fisheries Commission (ASMFC) or a Regional Fishery Management Council in order to comply with or implement these requirements. This statute allows North Carolina to adjust management measures to be in compliance with the fishery management plan. G.S. 113-168.2 requires any person who engages in a commercial fishing operation in North Carolina coastal waters to hold a Standard Commercial Fishing License. This statute also requires dealers to purchase only from fishermen who possess a license to sell the type of fish being offered and to report those transactions on a form provided by the North Carolina Department of Environment and Natural Resources. G.S. 113-168.4 specifies that it is unlawful for any person who takes or lands any species of fish under the authority of the NCMFC from coastal waters by any means, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value without holding a license required to sell the type of fish being offered. Fisheries Rule 15A NCAC 3I .0114 requires a fish dealer to complete all mandatory items on a North Carolina Trip Ticket for each transaction and report it to the NCDMF by the tenth day of the following month. Through this system, North Carolina monitors and records landings of finfish, including black sea bass, from both state and federal waters.

### Commercial Fishery

In accordance with, or as authorized under Fisheries Rule 15A NCAC 3M .0512, the following management measures were implemented in the commercial fishery for black sea bass in the Atlantic Ocean north of Cape Hatteras in 2011:

Season: Harvest seasons were established and adjusted by proclamation to constrain black sea bass landings to North Carolina's quota. The winter commercial fishing season for black sea bass north of Cape

Hatteras coincided with the winter commercial fishing season for summer flounder. The winter season opened on January 1 and closed on March 31. Landing periods were established throughout the winter season rather than for individual trips. For fish pots and hook and line, the spring and summer season opened April 1<sup>st</sup>-July 31<sup>st</sup>. The summer season established monthly trip limits for the fish pot and hook and line fisheries and trip limits for the trawl fisheries. The fall commercial season opened on November 1 and closed on December 31. Month long landing periods were established for the fall season rather than for individual trips.

Size Limit: The minimum size was 11 inches.

Possession Limit: Possession limits were 1,000, 2,000 and 2,500 pounds during the winter open season (January 1-March 31). The possession limits during the spring and summer open seasons were 1,000 pounds per month for the fish pot and hook and line fisheries. The possession limits was 500 pounds during the fall open season.

Allowable Gear:

Trawls: The following gear restrictions apply when 100 or more pounds of black sea bass are possessed on board a vessel:

1. No person may use or possess on deck:
  - (a) Trawl nets with a cod end (tailbag) less than 4 ½ inches (hung on a diamond) applied throughout the cod end for at least 75 continuous meshes forward of the terminus (end) of the net; or
  - (b) Trawl nets with a cod end less than 75 meshes (including an extension) with a mesh size less than 4 ½ inches (hung on a diamond) applied throughout the net.
2. Tailbag liners of any mesh size or double hung cod ends may not be used or possessed on deck of a vessel.
3. Rollers used in roller rig or rock hopper trawl gear shall be no longer than 18 inches in diameter.

Fish Traps/Pots: Black sea bass pots or traps must conform with the Federal rule requirements for escape vents specified in 50 CFR 648.144 (b)(2) and for degradable fasteners specified in 50 CFR 648.144 (b)(3)(i), (ii) and (iii). (See Section IV.H). Specifically:

1. Pot and trap escape vents: 2 ½ inches for circular, 2 inches for square, and 1-3/8 x 5-3/4 inches for rectangular escape vents. Must be 2 vents in the parlor portion of the trap.
2. Pot and trap degradable fastener provisions: a) untreated hemp, jute, or cotton string 3/16 inches (4.8 mm) or smaller; b) magnesium alloy timed float releases or fasteners; c) ungalvanized, uncoated iron wire of 0.094 inches (2.4mm) or smaller. The opening covered by a panel affixed with degradable fasteners would be required to be at least 3 inches x 6 inches.

Permits:

Finfish dealers may not buy more than 100 pounds of black sea bass caught north of Cape Hatteras per day per commercial fishing operation unless the dealer has a valid Black Sea Bass – North of Cape Hatteras Dealer Permit from the North Carolina Division of Marine Fisheries. Permits will be issued only to those licensed fish dealers holding a valid license as authorized in G.S. 113-169.3. Dealers must abide by all conditions of the Black Sea Bass-North of Cape Hatteras Dealer Permit as set out in Proclamation FF-43-2003, dated November 10, 2003. Dealers possessing a Black Sea Bass – North of Cape Hatteras Dealer Permit shall report daily by noon through FAX transmittal (252-726-3903) to the Division of Marine Fisheries black sea bass landings from the Atlantic Ocean for the previous day. In addition, federal regulations for Fisheries of the Northeastern United States specify in 50 CFR Part 648.4(a)(7) that “any vessel of the United States that fishes for or retains black sea bass in or from the EEZ north of 35°15.3’ N. lat., the latitude of Cape

Hatteras Light, NC, must have been issued and carry on board a valid black sea bass moratorium permit, except for vessels other than party or charter vessels that observe the possession limit established pursuant to §648.145.”

### Recreational Fishery

The following management measures were implemented in 2012 in the Atlantic Ocean recreational fishery north of Cape Hatteras:

Season: May 19 through October 14; the planned opening for November 1 through December 31 did not occur in 2012 because the coastwide annual catch limit (ACL) was exceeded (Attachments 1 and 2).

Size Limit: The minimum size limit for black sea bass north of Cape Hatteras was 12.5 inches.

Possession Limit: The possession limit for black sea bass north of Cape Hatteras was 25 fish per person, per day.

### D. Black sea bass Harvest by Commercial, Recreational and Non-Harvest Losses

The commercial harvest of black sea bass north of Cape Hatteras in 2012 totaled 61,187 pounds and 119,403 pounds were transferred to other states. The North Carolina quota for 2012 was 188,218 pounds. Landings of black sea bass in North Carolina north of Hatteras were less, and transfers higher, than previous years mainly due to the inability of participants in the winter trawl fishery to land their catches at ports accessed by Oregon Inlet. Many winter trawl landings are typically made at ports inside Oregon Inlet but in 2012 shoaling of the Inlet made it impassable to larger vessels.

The landings derived primarily from flounder trawls and fish pots but hook and line landings were also notable (Table 1).

Table 1. 2012 North Carolina commercial black sea bass landings north of Cape Hatteras, by gear

<u>Gear Type</u>	<u>Landings</u>	<u>Percent Landings</u>
Flounder Trawl	24,136	39.4
Rod-n-Reel	13,431	22.0
Other*	23,620	38.6
<u>Total</u>	<u>61,187</u>	<u>100.0</u>

\*all classified landings grouped; mostly fish pots but includes longlines, gill nets and flynets (in order of decreasing percentage)

The MRIP estimated that anglers in North Carolina north of Cape Hatteras harvested 3,423 black sea bass weighing 2,920 pounds in 2012.

The NCDMF does not have estimates of non-harvest losses of black sea bass. The Northeast Fishery Science Center (NEFSC) fishery observer data are used to estimate commercial discards of black sea bass for the annual coastwide stock assessment. A discard mortality rate of 50% was assumed for the commercial fishery. The MRFSS and MRIP estimated number of black sea bass released by the recreational fishery was used to estimate recreational discards for the annual coastwide stock assessment. The MRIP estimated number of black sea bass released by anglers in North Carolina north of Cape Hatteras was 139,965 fish. A 15% release mortality rate was assumed for the recreational fishery.

### E. Review of Progress in Implementing Habitat Recommendations

No new implementation at this time.

#### IV. Planned Management Programs for the Current Fishing Year

##### A. Summary of Regulations That Will Be in Effect for the Current Fishing Year

The Fisheries Director used proclamation authority found in Fisheries Rule 15A NCAC 3M .0512 to implement trip limits and associated harvest periods as a means of managing North Carolina's black sea bass commercial quota.

No significant changes should occur between 2012 and 2013 in the black sea bass commercial fishery regulations north of Cape Hatteras. The minimum size limit will remain at 11 inches in the Atlantic Ocean commercial fishery. For the recreational fishery in 2013, unlike in 2012 there was a January 1 through February 28 season with a bag limit of 15 fish. The rest of the season is the same as was planned for 2012 (May 19-October 14; November 1-December 31) but with a 20 fish bag limit per person, per day and it is assumed that the November 1 through December 31 portion of the season will be open in 2013 (it was closed in 2012).

##### B. Summary of Monitoring Programs That Will Be Performed

Monitoring programs will be the same as the previous fishing year. Black sea bass will be sampled during IJFA sampling of the winter trawl and fish pot fisheries.

##### C. Changes from the Previous Year

No significant changes in management of the commercial fishery from 2012 are expected in 2013. Different open seasons and bag limits from 2012 are in place for 2013, while the size limit remained the same.

Attachment 1

**FF-31-2012**

**PROCLAMATION**

**RE: BLACK SEA BASS – RECREATIONAL PURPOSES**

Dr. Louis B. Daniel III, Director, Division of Marine Fisheries, hereby announces that effective at **12:01 A.M., Saturday, May 19, 2012**, the following restrictions will apply to the **recreational black sea bass fishery north of Cape Hatteras (35° 15'N Latitude)**:

**I. SEASON** - The recreational fishing season for black sea bass in all coastal fishing waters north of Cape Hatteras (35° 15'N Latitude) is open in two segments as described below:

**A. 12:01 A.M. May 19 through midnight on October 14; and**

**B. 12:01 A.M. November 1 through midnight on December 31, 2012.**

**II. SIZE AND CREEL LIMITS**

A. **It is unlawful to possess black sea bass for recreational purposes less than 12 ½ inches in length.** Total length shall be measured along the lateral midline from the tip of the nose to the tip tail, **excluding the caudal fin filament.**

B. It is unlawful to possess more than 25 black sea bass per person per day taken for recreational purposes.

C. It is unlawful to possess black sea bass for recreational purposes in coastal fishing waters except according to the restrictions specified in I. above.

**III. GENERAL INFORMATION**

A. This proclamation is issued under the authority of N.C.G.S. 113-170.4; 113-170.5; 113-182; 113-221.1; 143B-289.52; and N.C. Marine Fisheries Rules 15A NCAC 03H .0103 and 03M.0512.

B. It is unlawful to violate the provisions of any proclamation issued by the Director under his delegated authority pursuant to N.C. Fisheries Rule 15A NCAC 03H .0103.

C. The intent of this proclamation is to allow North Carolina to comply with the requirements of the Mid-Atlantic Fisheries Management Council/Atlantic States Marine Fisheries Commission Summer Flounder, Scup and Black Sea Bass Fisheries Management Plan.

D. This proclamation supersedes Proclamation [FF-54-2011](#), dated May 19, 2011, which set out the 2011 black sea bass season.

April 25, 2012  
1:30 P.M.  
FF-31-2012

Attachment 2

**FF-54-2012**

**PROCLAMATION**

**RE: BLACK SEA BASS - RECREATIONAL-ATLANTIC OCEAN**

Dr. Louis B. Daniel III, Director, Division of Marine Fisheries, hereby announces that effective at **12:01 A.M., Thursday, November 1, 2012** the following restrictions will apply to the **recreational black sea bass fishery north of Cape Hatteras (35° 15'N latitude)**:

**I. SEASON CLOSURE**

A. It is unlawful to possess black sea bass taken from waters under the jurisdiction of North Carolina or the Mid-Atlantic Fishery Management Council **north of Cape Hatteras (35°15'N latitude) for recreational purposes.**

**B. This closure shall remain in effect until 12:01 A.M., January 1, 2013.**

**II. GENERAL INFORMATION**

A. This proclamation is issued under the authority of N.C.G.S. 113-170.4; 113-170.5; 113-182; 113-221.1; 143B-289.52 and N.C. Marine Fisheries Commission Rules 15A NCAC 03H .0103 and 03M .0512.

B. It is unlawful to violate the provisions of any proclamation issued by the Director under his delegated authority pursuant to N.C. Marine Fisheries Commission Rule 15A NCAC 3H .0103.

C. This action is necessary because the 2012 recreational harvest limit established for black sea bass has been exceeded. The intent of this proclamation is to prevent further overage to the coast-wide black sea bass quota and reduce the chance of additional closures in 2013.

D. This proclamation supersedes Proclamation [FF-31-2012](#), dated April 25, 2012 which set out the seasons for 2012.

October 26, 2012

9:30 A.M.

FF-54-2012



Attachment 3

**FF-68-2012**

**PROCLAMATION**

**RE: BLACK SEA BASS – RECREATIONAL PURPOSES**

Dr. Louis B. Daniel III, Director, Division of Marine Fisheries, hereby announces that effective at **12:01 A.M., Tuesday, January 1, 2013**, the following restrictions will apply to the **recreational black sea bass fishery north of Cape Hatteras (35° 15'N Latitude)**:

**I. SEASON** — The recreational fishing season for black sea bass in all coastal fishing waters north of Cape Hatteras (35° 15'N Latitude) will open from **12:01 A.M. January 1 through midnight on Thursday, February 28, 2013**.

**II. SIZE AND CREEL LIMITS**

**A. It is unlawful to possess black sea bass for recreational purposes less than 12 ½ inches in length.** Total length shall be measured along the lateral midline from the tip of the nose to the tip tail, **excluding the caudal fin filament.**

B. It is unlawful to possess more than 15 black sea bass per person per day taken for recreational purposes.

C. It is unlawful to possess black sea bass for recreational purposes in coastal fishing waters except during the season specified in I. above.

**III. GENERAL INFORMATION**

A. This proclamation is issued under the authority of N.C.G.S. 113-170.4; 113-170.5; 113-182; 113-221.1; 143B-289.52; and N.C. Marine Fisheries Commission Rules 15A NCAC 03H .0103 and 03M.0512.

B. It is unlawful to violate the provisions of any proclamation issued by the Director under his delegated authority pursuant to N.C. Fisheries Commission Rule 15A NCAC 03H .0103.

C. The intent of this proclamation is to allow North Carolina to comply with the requirements of the Mid-Atlantic Fisheries Management Council/Atlantic States Marine Fisheries Commission Summer Flounder, Scup and Black Sea Bass Fisheries Management Plan.

D. This proclamation supersedes Proclamation [FF-54-2012](#), dated October 26, 2012, which closed the season. The black sea bass (north of Hatteras) restrictions for the rest of 2013 will be determined at a later date

December 20, 2012

8:00 A.M.

FF-68-2012