

# RECREATIONAL HARVEST CONTROL RULE ADDENDA/Framework

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## PUBLIC COMMENT SUMMARY DOCUMENT

May 2022



Prepared by the Atlantic States Marine Fisheries Commission



**Sustainable and Cooperative Management of Atlantic Coastal Fisheries**

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## 1 INTRODUCTION AND COMMENT SUMMARY

### 1.1 OVERVIEW

This document summarizes public comments on the Recreational Harvest Control Rule Addenda and Framework. Through this action, the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) are considering potential modifications to the Fishery Management Plan (FMP) by considering changes to the process for setting recreational bag, size, and season limits (i.e., recreational measures) for summer flounder, scup, black sea bass, and bluefish. Key goals include providing greater stability and predictability in the recreational fishery management measures from year to year. Additional information can be found by accessing the draft addenda:

[http://www.asmfc.org/uploads/file/623a4c14HCR\\_DraftAddenda\\_PublicComment\\_March2022.pdf](http://www.asmfc.org/uploads/file/623a4c14HCR_DraftAddenda_PublicComment_March2022.pdf)

Eight virtual public hearings were held between March 16 and April 13, 2022, targeted toward certain states or regional groupings of states (Table 1). Hearings were attended by 164 people in total (excluding Council and Commission staff). Not all attendees provided comments.

Written comments were accepted from March 2, 2022 through April 22, 2022. In total 458 individuals or organizations either provided written comments (44) or sent in a form letter (414) on this action. Some of these commenters overlapped with those providing comments at hearings.

In total, 522 unique individuals and organizations provided comments during hearings verbally, through the live polling feature or in writing. Attempts were made so that individuals who provided multiple comments (e.g., in person and written, multiple in person, or multiple written comments)

were only counted once towards the tallies included later in this document. In some instances, individuals provided in-person comments on behalf of an organization and those organizations also submitted written comments. In those instances, the individual and the organization comments were counted as one comment. The tables below differentiated comments received from individuals, organizations, and via form letter to help provide a clear picture of the comments received.

All public hearing comments are summarized in Section 2 of this document and all written comments are included in Section 3.

Table 2 provides a summary of demographic information for those who provided comment on this action. In summary, 88.9% of the 522 individuals and organizations who provided comments were primarily affiliated with the recreational fishery, 0.6% with the commercial fishery, 0.6% with an environmental non-governmental organization, and the remaining 10% of commenters either had multiple affiliations, were classified as other, or did not identify their affiliation. About 80% of the comments associated with the recreational fishery came from the form letter.

**Table 1: Draft Addenda public hearing schedule.**

<b>Date and Time</b>	<b>Regional Grouping</b>
Wednesday, March 16, 6-8 pm	Virginia
Monday, March 21, 6-8 pm	Maine and New Hampshire
Thursday, March 24, 6-8 pm	Rhode Island
Monday, March 28, 1, 6-8 pm	New Jersey and Delaware
Thursday, March 31, 6-8 pm	Maryland and PRFC
Tuesday, April 5, 6-8 pm	Connecticut
Monday, April 11, 6-8 pm	New York
Wednesday, April 13, 6-8 pm	Massachusetts

**Table 2: Number of individuals and organizations who provided in-person and/or written comments by primary affiliation.**

<b>Affiliation</b>	<b>Individuals</b>	<b>Organizations</b>	<b>Percent of Total</b>
Private Angler	429	14	84.9%
For-hire (Party/Charter Boat)	11	4	2.9%
Recreational Fishing Industry	3	3	1.1%
Commercial	3	0	0.6%
Environmental Non-governmental Organization	0	3	0.6%
Multiple	1	1	0.4%
Other	1	2	0.6%
Did Not Identify	47	0	9.0%
<b>Total</b>	<b>495</b>	<b>27</b>	<b>522</b>

## 1.2 COMMENT SUMMARY

Public comments are summarized in the text and tables below grouped by topic: harvest control rule (HCR) approach, target metric for setting measures, conservation equivalency, accountability measure comparisons, general concerns and recommendations on HCR, preferences on HCR metrics, and general comments. Only those topics addressed by more than two individuals or organizations, or those directly related to specific alternatives are included in the summaries below. However, all comments are included in sections 2 and 3 of this document.

The five main HCR approaches received the most attention from commenters compared to all other topics. The percent change approach (option B) received the most support with a total of 460 individuals and organizations in favor of this management option. The fishery score (option C), biological reference point (option D), and biomass based matrix (option E) approaches received similar levels of support at around 16-23 individuals and organizations supporting each of these options. Option A, the no action approach, was by far the least popular option with only 7 individuals in support. Furthermore, 435 commenters stated that they were opposed to no action on this issue. While no comments were submitted in support of either of the sub-options for the percent change approach, one organization commented in opposition to sub-option B-2B.

Comments were also provided on the management issues in sections 3.2, 3.3, and 3.4 of the Draft Addenda. The options in section 3.2 consider which target metric would be used when setting measures appropriate for the set of stock conditions that define each bin under options C-E in section 3.1. Public opinion was evenly split between using a target level of dead catch (i.e., annual catch limit) or a target level of fishing mortality when setting measures for each of the bins, with seven organizations supporting the annual catch limit target and six organizations supporting the fishing

mortality target approach. The options in section 3.3 consider how the Commission's conservation equivalency policy would apply to the management options listed under section 3.1. A total of 40 individuals and organizations who commented on this issue were in support of no action (option A), in other words continuing to allow states to submit conservation equivalency proposals. A total of 28 commenters supported regional conservation equivalency (option B) and five commenters supported disallowing conservation equivalency (option C). The options in section 3.4 consider a change to one component of the reactive accountability measures (AM) under options A, B, C-1, and E-1 in section 3.1. Specifically, they address situations when a reactive AM has been triggered and biomass is above the threshold but below the target level. No one supported no action (option A) and seven commenters supported using fishing mortality compared to a fishing mortality threshold.

Members of the public also provided a wide variety of general concerns and recommendations on the harvest control rule. The majority of the comments could be condensed into reoccurring themes. Four organizations supported postponing action on the Harvest Control Rule Addenda/Framework to allow for more development of all management options and thorough analysis of the impacts of the options. Four commenters supported phasing in implementation of the harvest control rule and implementing the management program for just black sea bass as a pilot. Six commenters expressed serious concerns that implementation of any of the harvest control rule options B-E could lead to increased risk of overfishing. A total of 443 individuals and organizations supported the opportunity to reconsider options C, D and E once the models are complete and analyses have been completed to demonstrate the performance of each approach. Six organizations shared that they were not able to provide comprehensive comments on the proposed action because either they thought the management approaches hadn't yet been fully developed or they preferred to wait until the Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee released their review of the Draft Addendum/Framework. Six commenters spoke of the need to bring stability to recreational management and predictability in setting recreational regulations.

Many individuals and organizations also provided their preferences on which metrics should be used to inform a recreational harvest control rule. A total of 430 commenters supported using additional data besides recreational harvest estimates from the Marine Recreational Information Program (MRIP) when setting recreational bag, size and season limits. Support for utilizing each of the five metrics, sorted from least to most, included 16 in support of MRIP harvest compared to the recreational harvest limit, 36 in support of stock biomass, 38 in support of fishing mortality, 39 in support of recruitment, and 40 in support of biomass trend.

There were many general comments provided at hearings and in written form. While the comments were mostly unique and specific to different issues, some comments could be categorized into reoccurring themes. A total of 15 individuals and organizations shared strong concerns with MRIP data saying they thought MRIP data are either unbelievable, unreliable, or unfit for management. Two organizations commented that the recreational fisheries should be managed for optimum yield, as opposed to maximum sustainable yield. Three individuals commented that the minimum sizes should be reduced for one or more species affected by this action with the goal of reducing discards or protecting the larger fecund females.

**Table 3: Summary totals of comments received on the draft addenda. Totals should not be summed between rows as this would result in double counting of individuals and organizations who commented in multiple categories.**

Management Issue		Number of Form Letters/Individuals/Organizations			
Section 3.1 – Harvest Control Rule (HCR) Approach		Form Letter <sup>1</sup>	Individuals	Organizations	Grand Total
A	No Action	0	7	0	7
B	Percent Change Approach	414	31	15	460
C	Fishery Score Approach	0	12	4	16
D	Biological Reference Point Approach	0	13	4	17
E	Biomass Based Matrix Approach	0	18	5	23
Opposed to no action on this issue		414	13	8	435
Opposed to sub-option B-2B		0	0	1	1
Section 3.2 - Target Metric for Setting Measures		Form Letter	Individuals	Organizations	Grand Total
A	Recreational Harvest Limit	0	0	0	0
B	Annual Catch Limit	0	0	7	7
C	Fishing Mortality	0	0	6	6
Section 3.3 - Conservation Equivalency Policy		Form Letter	Individuals	Organizations	Grand Total
A	No Action	0	28	12	40
B	Regional CE allowed	0	23	5	28
C	CE is disallowed	0	3	2	5
Section 3.4 - Accountability Measures Comparisons		Form Letter	Individuals	Organizations	Grand Total
A	No Action - Catch compared to ABC	0	0	0	0
B	Fishing mortality compared to an F threshold	0	0	7	7

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<sup>1</sup> Form letters (more than 3 of the same comment) include comments stating support for an organization's comments; however, if the commenter provided additional comments/rationale for management beyond the organization's comments, then it was considered an individual comment.

Management Issue	Number of Form Letters/Individuals/Organizations			
General Concerns and Recommendations on HCR	Form Letter	Individual	Organization	Grand Total
Supported postponed action	0	0	4	4
Supported phasing in implementation and piloting HCR for black sea bass	0	1	3	4
Serious concerns that HCR could lead to overfishing	0	1	5	6
Supports reevaluation of options C, D and E once measures and models are finalized	414	14	15	443
Unable to comment because HCR options haven't been fully developed and/or require review by SSC	0	0	6	6
Supports stability and predictability in setting recreational regulations	0	5	1	6
Preferences on HCR Metrics	Form Letter	Individual	Organization	Grand Total
Supports using additional data besides MRIP harvest estimates to set bag/size/season limits	414	11	5	430
MRIP harvest compared to the RHL is an important metric	0	14	2	16
Recruitment is an important metric	0	31	8	39
Stock biomass is an important metric	0	30	6	36
Biomass trend is an important metric	0	33	7	40
Fishing mortality is an important metric	0	33	5	38
General Comments	Form Letter	Individual	Organization	Grand Total
Strong concerns with MRIP data; unbelievable/unreliable	0	6	9	15
Recreational fishery should be managed for optimum yield	0	0	2	2
Minimum size should be reduced to reduce discards and/or protect females	0	3	0	3

## 2 PUBLIC HEARING SUMMARIES

A summary of each public hearing is provided below. Comments are summarized by hearing and each individual's comments are paraphrased. An interactive polling feature was also used for these hearings, and the results from the polls are included within the tallies of all comments received on this action, which can be referenced in table 3.

### 2.1 VIRGINIA

Wednesday, March 16, 2022, 6:00 p.m.

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**Attendees: (29 excluding Council/Commission staff):** David Agee, Alex Aspinwall, Steve Atkinson, James Boltz, William Bradley, Skip Courtney, Nico Craig, John DePersenaire, Greg DiDomenico, Michelle Duval, Alexa Galvin, Pat Geer, Lewis Gillingham, Emily Keiley, Brooke Lowman, Shanna Madsen, John Mohan, Susanna Musick, William Pappas, Alexander Perez, Will Poston, Bob Pride, Jill Ramsey, Tyler Rowe, Somers Smott, Wes Townsend, Rick Vaughan, Wally Veal, Mike Waine.

**Summary:** The meeting started with an introduction and briefing from the hearing officer Pat Geer (VA). Following the presentation, several attendees asked clarifying questions. Five members of the public offered public comment on the HCR alternative sets. The majority of comments were focused on the concerns over the use of MRIP data to set regulations, and the desire for better accountability and regulations going forward. Several commenters want the states to retain the ability to use the Commission's conservation equivalency process. Questions from the public mainly focused on how measures are currently being set and how the different HCR options would approach the task of setting measures for the recreational sector. Additional questions focused on accountability measures and the role of conservation equivalency. Hearing officer Shanna Madson (VA) closed the meeting out.

#### Comments

- **Tyler Rowe (Charter Captain - Virginia):** The use of MRIP is a big concern for the charter industry when it comes to future regulations. The data collected is often skewed and unreliable. The managers and MRIP staff are not seeing what is really happening out on the water. Overall, the charter industry would like to see better regulations and accountability moving forward.
- **James Boltz (Charter Captain - Virginia):** I think that when you require a change in measures, it should be up to each state to determine what the new measures are. We want the states to have greater flexibility in setting their own measures. Here in Virginia, we were willing to shorten the summer black sea bass fishing season in order to allow for a February fishery.
- **Steve Atkinson (VA Saltwater Sportfishing Association - Virginia):** We appreciate the opportunity to provide input and make comments. If we get no clear resolution on this harvest control rule approach by 2023, then the right thing to do is ignore the MRIP numbers. I believe that it was mentioned that the black sea bass stock is twice the biomass target level and a healthy stock. Why would we want to use MRIP data, which we know is suspect, to determine management actions for black sea bass? I am sure I speak for others when I say I want a better approach.



- **Bob Pride (Recreational Angler and Tackle Shop Owner - Virginia):** The current timeline of completing regulations as late as March for the current fishing year is a problem for tackle shops, and we would like the process to be done earlier.
- **William Pappas (Charter Captain - Virginia):** The last minute closure of black sea bass hurt a lot of people, and the use of MRIP data is not appropriate. Who sets the RHL? If you're using the best information, then you would want to make sure you continually add information and update the information. The system is broken, and we need new approaches to set measures. It also isn't appropriate that Virginia has to battle with another state to make things better in Virginia when regional conservation equivalency is used.

## 2.2 MAINE AND NEW HAMPSHIRE

Monday, March 21, 2022, 6:00 p.m.

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**Attendees (9 excluding Council/Commission staff):** Clarisse Brown, Michelle Duval, Peter Fallon, Emily Keiley, Adam Nowalsky, Cheri Patterson, Will Poston, Wes Townsend, Megan Ware

**Summary:** The meeting started with an introduction and briefing from the hearing officer Cheri Patterson (NH). This hearing experienced low turnout and as a result there were only two individuals who provided had questions on the management issues. More time was needed by attendees to understand the content and provide feedback. Questions were asked about the data inputs for the various options, and what the Scientific and Statistical Committee's role in the process will look like going forward. Hearing officer Megan Ware (ME) provided closing remarks.

### Comments

No comment offered.

## 2.3 RHODE ISLAND

Thursday, March 24, 2022, 6:00 p.m.

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**Attendees: (15 excluding Council/Commission staff):** Chris Batsavage, Rick Bellavance, Dave Daly, Michelle Duval, Dan Farnham, Steve Haasz, Rich Hittinger, Raymond Kane, John Lake, Michael Lombardi, Jason McNamee, Will Poston, Peter Randall, Eric Reid, Wes Townsend.

**Summary:** The meeting started with an introduction and briefing from the hearing officer Jason McNamee. Following the presentation, several attendees asked clarifying questions. Three members of the public offered comments on the HCR option sets.

All comments supported change from the status quo recreational measure setting process, but commenters were unsure of which option to fully support. Concerns were raised over not knowing what measures would be under the different alternatives. One member from the public asked for clarification about how the target metric of recreational dead catch compared to recreational fishing mortality would be used. The same individual asked for an update on the progress of the models and when they could be used. Other questions included concerns about the influence of MRIP in this process through the modeling efforts, and a recommendation to clarify how accountability measures will work in future presentations. The hearing officer then closed the meeting out.

### Comments

- **Rich Hittinger (RI Saltwater Anglers Association – Rhode Island):** We will be submitting written comments at a later date, but one thing I wanted to say is that we strongly recommend some sort of change. We do not agree with option A, no action. What we see happening is that while a stock is healthy, we are still required to take a significant cut in measures, while fluke, which everyone sees as declining, is getting a liberalization in measures. We had many people asking what was happening with black sea bass and fluke at the fishing show we were at last weekend. It makes no sense at all to the people who are fishing, and that's why recreational management needs to be changed so it considers biomass. Currently, we will probably be interested in supporting option D, but we really need to look into more details of the options.
- **Rick Bellavance (RI Party and Charter Boat Association – Rhode Island):** I agree with Rich's comments in that the way we manage these fisheries isn't working. But I am uncertain about how the alternatives crafted in this document are going to change things or make things better. Using black sea bass as an example, biomass is at a good level and so under one of the HCR options would be listed as the best level. But if the current measures are considered the most liberal that would be horrible. I don't know what comment to provide without having any idea about how the measures are going to change. Is it possible to throw away current measures and start with new ones? How does this mesh with catch estimates? It's not clear in the document how that will work out, so it's hard to offer good input. I do think I'll like another option other than A, but I am not sure what to support right now.

- **Peter Randall (Mate on C-Devil II Sportfishing – Rhode Island):** This was a great presentation and I agree heavily with Rick. It's hard to visualize what the future will look like without seeing what measures would be. It would weigh heavily on our decisions.

## 2.4 NEW JERSEY AND DELAWARE

Monday, March 28, 2022, 6:00 p.m.

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**Attendees: (63 excluding Council/Commission staff):** Mary Benson, Dan Bias, Jeffrey Brust, George Burns, Nick Cicero, Michael Celestino, Joe Cimino, John Clark, Peter Clarke, Heather Corbett, Greg Cudnik, Dave Daly, Richard Danner, Robert Davis, John DePersenaire, Robert Degirarde, Alfred DiMartino, Michelle Duval, Andrew Fedkiw, Thomas Fote, Thomas Gordon, Paul Haertel, Brenden Harrison, Victor Hartley, Jim Hutchinson, Jeff Kaelin, Raymond Kane, Emily Keiley, Jim Lutz, John M, Michael Zaleski, Roy Miller, Brian Moroz, Steven Morris, Paul Mulholland, Adam Nowalsky, Will Poston, Joseph Procopio, James Rausch, Steven Reynolds, Brian Ribarro, Bob Rush, Bill Shillingford, Marc Sherry, Philip Simon, Thomas Smith, David Stormer, Mark Taylor, Jason Thomas, Wayne Thomas, Scott Thomas, Bob Topham, Bryson Torgovitsky, Wes Townsend, Arnold Ulrich, Ken Warchal, John Ward, Joseph White, Charles Williams, Ted Wood, Edward Yates, Harvey Yenkinson, Gerard Zagorski.

**Summary:** The meeting started with an introduction and briefing from hearing officers Joe Cimino (NJ) and John Clark (DE). Following the presentation, several attendees asked clarifying questions. Nine members of the public offered public comment on the HCR alternative sets.

The majority of comments supported option B due to concerns over the uncertainty and level of development of options C, D, and E. Overall, commenters did not want to see option A, status quo, continue. One commenter supported options C or D. Several comments addressed the concern of unpredictably in these fisheries and the continued struggle, if not inability, to make business plans.

A member from the public wanted to know if the predetermined measures will be available to the public before final action, to which staff responded that this would be unlikely unless final action was delayed. Other members wanted to know what would happen if the models and the option selected doesn't work and staff said that the PDT/FMAT has been discussing contingency plans for a bridged approach using traditional analytical methods to implementing pre-defined measures for the HCR options with bins. Other questions included the role of VTR data in the HCR process, how often biomass trends will be evaluated, and what the timeline for action is moving forward. The hearing officer, Joe Cimino (NJ), then closed the meeting out.

### Comments:

- **Philip Simon (Village Harbor Fishing Club – New Jersey):** I think that this is a problem that needs to be solved. One of the problems is that when you have a healthy stock, like black sea bass, and assuming you have constant fishing effort, the end result is that people catch them and we continue to go over the RHL. Then we have to put in a decrease and it's a constant cycle. I don't see this being solved by option A or B, and I would pick C or D. They have a better chance of dealing with the black sea bass situation. I'm not sure about option E. Page 37 of the

draft document demonstrates that option B calls for a reduction if it were implemented today. If you're happy with that, then go for option B.

- **John DePersenaire (Recreational Fishing Alliance – New Jersey):** I wanted to say that we are really supportive of the Council/Commission addressing this and bringing about a change to the recreational specifications setting. We are all frustrated by the situations that continue to occur in the black sea bass fishery. I wish the options were developed more at this point. It's hard for the public to determine which option works the best. I wish we could plug 2022 data in to see what the options would look like. It's hard for us to support anything but B. Relying on default measures which are not yet developed and won't be ready for final action makes me hesitant to support all of the other options.
- **Nick Cicero (Folsom Corp – New Jersey):** I would like to see our industry, the charter industry, be able to plan ahead. This also includes tackle shops, dealers, and the for-hire sector. We would like to have a greater lead time in planning our businesses out.
- **Bob Rush (United Boatmen of NJ – New Jersey):** I agree with Nick and John; MRIP has not been proven accurate. From a business perspective, we cannot keep operating this way. There is a lot of uncertainty around these new approaches. The lesser of the evils is option B.
- **Gerard Zagorski (New Jersey):** I echo Bob and John's comments. I think C, D, and E are viable, but due to uncertainty around them I am hesitant. A isn't an option, so I think option B. I would like to see if we could run some models or data to see how the other options would work out before final action.
- **Paul Hartel (Jersey Coast Anglers Association – New Jersey):** I agree with the others that due to the uncertainty, I support option B.
- **Victor Hartley (Keyport Princess – New Jersey):** I agree with Bob and Jim and support option B. Options C, D, and E are too underdeveloped.
- **Thomas Gordon (New Jersey):** I agree, and I want option B since C, D, and E are underdeveloped. I am also interested in efforts to improve survey data.
- **Harvey Yenkinson (MAFMC Advisory Panel Member – New Jersey):** I am concerned with the complexity of options that NOAA comes up with. We don't use common sense when making these decisions, and there is a lot of inaccurate information. In my opinion, the more we add these metrics into the pot then the more we go the wrong way. I am afraid that if we use a complex option that we are going to use a formula that is no longer sensible.

## 2.5 MARYLAND AND POTOMAC RIVER FISHERIES COMMISSION

Thursday, March 31, 2022, 6:00 p.m.

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**Attendees: (25 excluding Council/Commission staff):** Steven Anderson, C. Dollar, Steve Doctor, Michelle Duval, Lynn Fegley, Martin Gary, Lewis Gillingham, Sonny Gwin, Monty Hawkins, Harry Hornick, Emily Keiley, Scott Lenox, Michael Luisi, Kevin McMenamin, Randy Million, Mohamed Nabulsi, Adam Nowalsky, Denise Oden, Bert Olmstead, Eric Packard, Will Poston, Eric Reid, Lenny Rudow, Buddy Seigel, Angel Willey.

**Summary:** The meeting started with an introduction and briefing from the hearing officer Michael Luisi (MD). Following the presentation, several attendees asked clarifying questions. Two members of the public offered public comments.

Most comments offered did not support any one option, but instead expressed concerns over MRIP and how the RHL is set. One commenter supported option E due to no input for MRIP.

Questions from the public centered around clarification of how the RHL is calculated and the Commission CE options presented. The hearing officer, Michael Luisi (MD), then closed the meeting out.

### Comments

- **Lenny Rudow (Fish Talk Magazine & Recreational Angler - Maryland):** Option E eliminates the MRIP from consideration from the equation. I choose the options that do not include consideration of MRIP numbers because, when they're broken down, they're ridiculous. It's like they're built on a house of cards.
- **Kevin McMenamin (Annapolis Anglers Club, President - Maryland):** Having the RHL set on yield is more of a commercial approach, and it is a misnomer. My recreational anglers would like to see the RHL set more on abundance.
- **Buddy Seigel (Atlantic Coast Sportfishing Association, Ocean Pines Anglers - Maryland):** The question comes down to the general public not understanding the concept of what is being approached, how it's being approached. What they see at the local level is something very small, and trying to extrapolate that out doesn't make sense.

## 2.6 CONNECTICUT

Tuesday, April 5, 2022, 6:00 p.m.

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**Attendees:** (19 excluding Council/Commission staff): Mark Alexander, Bruce Calvin, Raymond Castano, Justin Davis, Greg Dubrule, Michelle Duval, Matthew Gates, Raymond Kane, TJ Karbowski, Emily Keiley, Louis Marrella, Richard McCarthy, Jerry Morgan, Michael Pirri, Michael Plaia, Will Poston, R. Stec, Mike Waine, Eric Zlokovitz.

**Summary:** The meeting started with an introduction and briefing from the hearing officer Justin Davis. Following the presentation, several attendees asked clarifying questions. Four members of the public offered public comments.

Most comments offered did not support any one option, but instead expressed concerns over MRIP and the lack of use of VTR data. One commenter supported option C.

Several questions from the public were received. They included clarification about the use of VTRs in the HCR process, how the CE process will work regarding the federal process, how the models will work, and how the projections will be used from the stock assessment. One member asked for the history of this action, and how we got to where we are today. Then the hearing officer Justin Davis provided closing remarks.

### Comments

- **Michael Pirri (Flying Connie - Connecticut):** If I had to pick now, I would support option C because it outperforms the other options in my opinion.
- **Greg DuBrule (Owner/Operator party boat Black Hawk - Connecticut):** I've been in the business for over 50 years. There are not a lot of people in this industry that come onto these things because they're disgusted by it. What other data besides MRIP do you use to come up with this? We have no confidence in MRIP, and that's why people don't want to participate. We've got professionals here that are out on the water. We fill out VTR reports, and then we find out they aren't even used. You'll get better information from locals out on the river than from MRIP staff. I want to protect these species, but the way you go about this stuff is so flawed it's unbelievable. As far as what option, it doesn't make a difference to me.
- **TJ Karbowski (Rock & Roll Charters - Connecticut):** I don't trust MRIP, I don't trust their motives, so I am trying to figure out their involvement with this action.
- **Mike Waine (American Sportfishing Association):** We were originally supportive of this, so I'll try to provide clarity on why this action is being taken. We proposed the idea to scale access to the resource based more on the status of the resource, considering its health rather than being reactive to catch estimates from MRIP. I just want to clarify that these approaches aim to look at information besides MRIP catch data.

## 2.7 NEW YORK

Monday, April 11, 2022, 6:00 p.m.

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**Attendees:** (28 excluding Council/Commission staff): Adam Nowalsky, Antoinette Clemetson, Jim Gilmore, Carl LoBue, Chris Batsavage, Chris Spies, Dan Farnham, Emerson Hasbrouck, Emily Keiley, James O'Connor, John DePersenaire, John Maniscalco, Joseph Beneventine, Ken Wojtak, Louis Morace, Matt Broderick, Maureen Davidson, Meghan Lapp, Melissa Dearborn, Michelle Duval, Mike Waine, Molly Masterton, Neil Delanoy, Nelson Breen, Paul Kim, Renato Vojka, Rick Vaughan, Tom Schlichter

### Summary:

The meeting started with an introduction and briefing from the hearing officer Maureen Davidson (NY). Following the presentation, several attendees asked clarifying questions. Three members of the public offered public comment on the HCR alternative sets. Two of these three members of the public preferred option B, while the third discussed her overall concerns with all of the alternatives, mostly related to how these options comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Questions from the public focused on how conservation equivalency would work with some of the options and whether changing percent reductions or suboptions from what is currently in the draft addendum would be allowed, if there was a desire to do so. The hearing officer Maureen Davidson closed the meeting out.

### Comments

- **Neil Delanoy (Executive Director of the Captree Boatman's Association / Charter Captain – New York):** Option B is probably the best way to go for now; there is too much uncertainty with the other options. Maybe someday we'll get there for the other options. I need to review the sub-options further, I will respond to them in a written comment.
- **John DePersenaire (Recreational Fishing Alliance - New Jersey):** We're in support of option B, because we feel it's the most developed option at this point, and the only real option we have the ability to understand what it's going to do prior to taking final action. We just don't feel comfortable supporting C, D, or E still knowing there's a lot of work to do with the modeling approach and figuring out what those pre-set measures will be. A lot of commercial fishermen were supportive of recreational reform, especially back during the allocation discussions, but no commercial fishermen have shown any support for this. We will also be submitting written comment.
- **Molly Masterton (Natural Resource Defense Council – New York):** NRDC is still thinking about how we can meet the stated goals of this effort and select between alternatives while still remaining within the framework of ACLs and accountability measures that Magnuson-Stevens has set up to prevent overfishing. We're pleased that these issues are receiving a full review by the SSC, to ensure they comply with MSA mandates and meet the scientific rigor that's key to managing these fisheries. Some of these alternatives would set measures over two-year cycles, which immediately raises questions in regards to ACLs and AMs. Under Magnuson, when an ACL is exceeded at the end of a fishing year, the Council is required to implement AMs to make

sure catch is brought under the ACL as soon as possible, so we need to think more about how these would work on the water. Also, we need to consider if any of these untested approaches increase management uncertainty. If there's a chance of increased management uncertainty, we could consider uncertainty buffers that I believe aren't currently implemented for these fisheries. We will also be submitting written comments through the NGO community.

## 2.8 MASSACHUSETTS

Wednesday, April 14, 2022, 6:00 p.m.

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**Attendees:** (18 excluding Council/Commission staff): Adam Nowalsky, Al Williams, Bob DeCosta, Daniel Mckiernan, Derek Perry, Emily Keiley, Ivy Fredrickson, John DePersenaire, Melissa Dearborn, Michael Pierdinock, Michelle Duval, Nichola Meserve, Raymond Kane, Rich Wood, Richard Nealley, Scott Steinback, Tiffany Hodkinson, Will Poston

**Summary:** The meeting started with an introduction and briefing from the hearing officer Nicola Meserve (MA). Following the presentation, several attendees asked clarifying questions. Three members of the public offered public comment on the HCR alternative sets, with all three preferring option B. Questions comprised the majority of public participation in this hearing.

Questions were primarily focused on obtaining further clarification on option B and its sub-options, and obtaining more information on the North Atlantic Recreational Fishing Survey that recently went out to the public. Other questions centered around how MRIP data is involved with the options and accountability measures, whether the sector allocations and consequently the RHL will still need to be adhered to if the recreational sector continues to grow, and what the predetermined measures were in options C, D, and E. The hearing officer Nichola Meserve closed the meeting out.

### Comments

- **Raymond Kane (Cape Cod Fishermen's Alliance – Massachusetts):** Massachusetts is caught behind the 8-ball. We don't get wave 6 results until the middle of February, and then the Commission/states need to turn around things quickly for May. The Mid-Atlantic Fishery Management Council needs to address this issue.
- **Michael Pierdinock (Stellwagen Bank Charter Boat Association, President - Massachusetts):** As an association, we had meetings and discussed this to help our membership to understand the concepts. We commend the efforts to get to this point and have it assembled to address our ongoing frustration with MRIP. We see it as an opportunity for the HCR to address these problems. We're for the concept of C, D, and E, but since we don't know the outcomes of the models we can't support them. We suggest implementing option B for two years then run models for C, D, and E and see what the outcome is. Then have those results go out for public comment. At least B uses MRIP estimates with the status of the stock to come up with decisions. For conservation equivalency, even internally within Massachusetts we have issues deciding conservation equivalency. We prefer state-level conservational equivalency.
- **John DePersenaire (Recreational Fishing Alliance – New Jersey):** The RFA is on the same page as Mike, we support option B. We see the applicability of C, D, and E for certain species and may be viable, but we are uncomfortable supporting an option without knowing what the



measures will be. We have this understanding that we can come back and revisit options once they're more fleshed out. We also support state-level conservation equivalency, as we see problems with regional.

- **Melissa Dearborn (Regal Marine Products, Inc., Owner; New York Fishing Tackle Trade Association, Vice President – New York):** We support option B, but will submit official written comments. I am also concerned about other individual's comments that a few percentage points of reduction or liberalization don't make a huge difference to the recreational sector. My perspective in running a business is that every day of a fishing season matters, and one percentage point can make the difference for a longer season.

### 3 WRITTEN COMMENTS

American Sportfishing Association Form Letter:

Dear Mr. Leaning,

As an avid angler who values catching summer flounder, scup, black sea bass and bluefish, I support using additional information besides recreational harvest data to establish bag, size and seasons that better reflect the status of the resource.

Therefore, I do not support status quo and urge managers to implement alternatives that use more than just recreational harvest data for determining measures.

However, choosing a specific alternative is difficult without knowing the outcomes of options C, D & E in terms of measures.

Option B is better than status quo and I support getting the opportunity to re-evaluate the other options (C, D and E) once measures or harvest levels for those alternatives are known.

Thank you for the opportunity to comment on this important issue.

From: Scott Jeffrey [mailto:eastendbt@gmail.com]

Sent: Friday, April 22, 2022 4:23 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule Comment

After reviewing the options provided it would seem best to me that option "D" would serve the recreational anglers best.

Having thirteen measures or reference points would serve best allowing the restrictions or regulations to be adjusted over time in smaller increments. Thirteen preset benchmarks also eliminates the guesswork by the authorities and allows the anglers to have a little more confidence in the system. The smaller increment changes would have less of an effect on the local economies but would allow for the fisheries to recover as planned.

--

Thank you,

Scott Jeffrey

East End Bait & Tackle

170 East Montauk Hwy  
Hampton Bays, NY 11946  
Ph: 631-728-1744  
scott@eastendbaitandtackle.com  
www.eastendbaitandtackle.com

From: kevin@annapolisanglersclub.com [mailto:kevin@annapolisanglersclub.com]

Sent: Friday, April 22, 2022 4:12 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

Hello ASMFC and MAFMC Commissioners.

As President of the Annapolis Anglers Club, I represent over 650 Recreational Anglers who are alarmed and concerned with the current Regulatory Process. The current process which heavily relies on MRIP estimates is highly mistrusted and widely criticized. I have distilled the many opinions I have heard in the past three years to one High Level Theme. Recreational Anglers are asking for Summer Flounder, Scup, Black Sea Bass and Bluefish to be managed for Sustained Abundance and not for Maximum Yield.

We do not support Option A (Status Quo) or Option B (almost Status Quo).

This approach has resulted in the Angler Angst noted above. We do support Options C, D and E. It is very difficult to evaluate these three specifically, but the most positive common theme is that they rely much less on just the MRIP Estimates. From the feedback that I have received, here is how I would grade the three remaining options.

#1 Option C

#2 Option E

#3 Option D

Completion of the modeling and impact estimates of these options are critical in order for all stakeholders to decide on which of these options to support. We hope that Fisheries Managers make the most conservative decisions to implement Maximum Sustainable Abundance of those Fisheries.

Thanks in advance for the opportunity to share these comments and for taking on the task of creating the next Framework for managing these Fisheries.

Kevin McMenamin

President – Annapolis Anglers Club

745 Rolling View Drive Annapolis MD 21409 kevin@annapolisanglersclub.com

(410) 340-5030 Mobile

From: Capt D [mailto:captdes@gmail.com]

Sent: Thursday, April 21, 2022 8:31 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest control Rule

To whom it may concern,

In regards to the proposed Harvest Control Rule, I currently support alternative B as an interim step until measures for the bins described in C/D/E is fully described. B does rely on stock status for highly abundant stocks to prevent more restrictive measures based on MRIP.

Respectfully submitted,

Captain Desmond OSullivan

Owner, Celtic Quest Fishing Fleet.

--

Captain Desmond O'Sullivan

From: flukeman@aol.com <flukeman@aol.com>

Sent: Tuesday, April 19, 2022 3:28 PM

To: Beaty, Julia <jbeaty@mafmc.org>

Subject: Fwd: Recreational Harvest Control Rule resources and public hearings

Julia,

It would be more visual and easier to understand, if you could apply, each year, the decisions as they are in Chart 3 of the guide to the past history, especially summer flounder. If I remember correctly, we started with 10 fish at 11 inches. Also please indicate the liberalization that could have occurred in that past timeframe.

Visually the chart is very negative. A recreational fisherman will see little hope (green) for the future. Yellow for caution, brown for worse than cautionary, and red for your done.

I still do not see where we are going to address the issues of discard mortality and harvesting of breeding females disproportionately to the population.

I have a problem with management resources not focusing on solving the problems but addressing minutiae. MANAGEMENT SHOULD REVIEW THEIR RESOURCES CONSUMED AND APPLY THE PARETO PRINCIPLE AND FOCUS ON CRITICAL FEW. ALOT OF PROBLEMS ARE SOLVED BY CREATING A LARGER PIE, FOR ALL TO SHARE.

Celebrating 25 years of negative progress.

Carl Benson

From: Capt. TJ Karbowski [mailto:[tedkarbowski@yahoo.com](mailto:tedkarbowski@yahoo.com)]

Sent: Thursday, April 21, 2022 7:42 AM

To: Comments <[comments@asmfc.org](mailto:comments@asmfc.org)>

Cc: Justin Davis <[justin.davis@ct.gov](mailto:justin.davis@ct.gov)>

Subject: [External] Comments: Harvest Control Rule

The Harvest Control Rule will be a welcome relief to all who make their living on the water and rely on realistic and common sense regulations. MRIP (specifically "new" MRIP) has turned the lives of for-hire business owners upside down during our "off seasons". We have been afraid to invest into our own businesses due to fear of not knowing if we would even have a business to return to just 6 short months away.

In short, since the start "new MRIP" our off-seasons have turned into living soap operas filled with drama, public meetings, zoom meetings, countless phone calls and emails, all the while causing extreme financial sacrifices to both our businesses and families. It is inconceivable to just walk away from a thriving business you have spent your entire life building knowing it is just a broken Government math problem that will make or break your entire career.

MRIP uses “weighting” and “bell curves”, both by their own admission are subjective, made up numbers that are as much as 90% off of the number they started from. Scup and sea bass stocks are at least double of target levels, yet due to ridiculous harvest numbers produced by MRIP we are under constant threat of being forced out of business.

I plead you to move forward with the Harvest Control Rule immediately.

Thank you,

Capt. TJ Karbowski

Rock & Roll Charters

Clinton, CT

203.314.3765

<https://rockandrollcharters.com/>

From: Burl Self [mailto:b\_e\_self@yahoo.com]

Sent: Wednesday, April 20, 2022 4:43 PM

To: Comments <comments@asmfc.org>

Subject: [External] harvest control rules

prioritize sports fishery on all species over commercial fishing.

Thanks

Best

Burl Self

Va Beach Va 703 201 9191

From: Eric Burnley [mailto:eburnle@aol.com]

Sent: Tuesday, April 19, 2022 4:09 PM

To: Comments <comments@asmfc.org>

Cc: JOHN CLARK <john.clark@delaware.gov>; Roy Miller <fishmaster70@comcast.net>

Subject: [External] Harvest Control Rule

My thoughts on the suggested harvest control rule for recreational fishing. Eric Burnley

Option A; This would not help the stock or the fisherman. We need to examine the various indicators and make an educated decision.

Option B; Estimated harvest is like betting on a horse race.

Option C; This also contains estimated harvest along with three reasonably solid data numbers.

Option D; Here we have the simplest equation. Stock size verses spawning stock biomass.

Option E: Stock size and trend in stock size. This option depends less on recreational harvest and I personally like that.

Right now we de[pend too much on MRIP numbers and they are bad data. Any option that depends less on them has got to be better than what we have now.

Eric Burnley

From: Brendan O'Neil [mailto:boneil202@gmail.com]

Sent: Monday, April 18, 2022 8:54 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

To who it may concern:

As a concerned angler who values catching summer flounder, scup, black sea bass and bluefish, I support using additional information besides recreational harvest data to establish bag, size and seasons that better reflect the status of the resource. Therefore, I do not support status quo and urge managers to implement alternatives that use more than just recreational harvest data for determining measures. However, choosing a specific alternative is difficult without knowing the outcomes of options C, D & E in terms of measures. Option B is better than status quo and I support getting the opportunity to re-evaluate the other options (C, D and E) once measures or harvest levels for those alternatives are known.

Thank you for the opportunity to comment on this important issue.

Regards,

Brendan O'Neil

Alexandria, VA

From: Ron Klasmeyer [mailto:ronklasmeyer3@gmail.com]

Sent: Monday, April 18, 2022 10:51 AM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

Mr. Dustin Colson Leaning,

For public comment:

It appears these rules will once again target recreational fishing which does not, according to the science, appear to be the problem. The data from Woods Hole which is referenced in the proposed rule shows that the commercial landings are almost double the recreational landings. The discards alone for commercial fishing is almost a quarter of all the recreational landings. If you were to follow the science, the rules would be targeted at the commercial fishing industry. While I understand the need to bring the regional recreational fishing more into alignment, get away from what may appear as arbitrary creel limits and size limits, the science does not point to recreational fishing as impacting the black bass or summer flounder populations.

Respectfully,

Ron Klasmeyer

Leonardtown, Maryland

From: william martin [mailto:williamhmartin341@gmail.com]

Sent: Friday, April 15, 2022 5:34 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

I strongly favor the updated harvest control rule favored by CCA

William H. Martin, Ph.D.

Towson MD

From: Chuck Wyatt [mailto:cwyatt650@aol.com]

Sent: Thursday, April 14, 2022 5:21 PM



To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

As a concerned angler, I support Option B at this time. I do not support status quo and urge managers to implement alternatives that use more than just recreational harvest data for determining measures. However, choosing a specific alternative is difficult without knowing the outcomes of options C, D & E in terms of measures. Option B is better than status quo and I support getting the opportunity to re-evaluate the other options (C, D and E) once measures or harvest levels for those alternatives are known. Thank you for the opportunity to comment on this important issue.

From: Neil [mailto:neil@lauraleecaptree.com]

Sent: Tuesday, April 12, 2022 9:27 AM

To: Comments <comments@asmfc.org>

Cc: Paul Risi <pjr587@aol.com>; captaindevito@gmail.com; ndelanoy@aol.com

Subject: [External] Harvest control rule

My name is Neil Delanoy, I am commenting on behalf of the Captree Boatmen's Association, New York State's largest for-hire fleet. We take over 300,000 anglers out every year, fishing the waters of Great South Bay and the Atlantic Ocean. I STRONGLY SUPPORT OPTION B at this time. I feel it considers the three most important factors, MRIP, RHL and stock status in formulating management measures.

Respectfully Submitted,

Neil Delanoy

Executive Director

Captree Boatmen's Association

From: Ken & Barbara [mailto:brooklyngirl10@optonline.net]

Sent: Sunday, April 10, 2022 4:32 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

To whom it may concern,

I would like to express my support for option B. Including stock assessments with harvest data makes sense and could smooth out some of the annual irregularities in the harvest data, especially when the stock is in

overall good shape. I am hopeful that there could then be more consistency in regulations from year to year to help in planning and advertising for our business.

Thank you,

Capt. Ken Holmes

Vessel Brooklyn Girl, Orient Pt, NY

From: Patrick Gillen [mailto:patrickg@optonline.net]

Sent: Sunday, April 10, 2022 10:53 AM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

I currently support alternative B as an interim step until measures for the bins described in C/D/E is fully described. B does rely on stock status for highly abundant stocks to prevent more restrictive measures based on MRIP.

Sincerely,

Patrick Gillen

Party/Charter boat Capt. Gillen from Captree, NY

From: Arthur James [mailto:amjretired@gmail.com]

Sent: Friday, April 8, 2022 11:13 AM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

I fish for fluke in the bays off eastern Nassau County. My vote is for a slot limit of 17 or 18" to 24" with a bag limit of three. No one needs to bring home more than three fluke. No one. I disagree with some findings that fluke are back in big numbers. (I have been fishing the bays and inlets since the mid 1970s.

Arthur James

26 Joludow Drive Massapequa Park, NY 11762 516 650-9916

From: Don Pirro [mailto:dpirro1@gmail.com]

Sent: Thursday, April 7, 2022 2:12 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

Dear Dustin and ASMFC,

Thank you for your efforts to improve the management of the precious resource of summer flounder, sea bass, bluefish, and scup. I am a long time avid angler who lives in Virginia and regularly fishes for these species from Virginia up through Massachusetts. I am a member of Coastal Conservation Association in VA and religiously practice conservation. I am also a scientist and consider myself to be an informed and involved member of society when it comes to fisheries management having also participated in the Marine Resource Education Program sponsored by the Gulf of Maine Research Institute. Here are my desired options to the Harvest Control Rule for these species:

As a concerned angler who values catching summer flounder, scup, black sea bass and bluefish, I support using additional information besides recreational harvest data to establish bag size and seasons that better reflect the status of the resource. Therefore, I do not support the status quo and urge managers to implement alternatives that use more than just recreational harvest data for determining measures. The intent of including other factors (as identified in Options C, D, E) like fishing mortality, biomass level and recruitment provide a more holistic evaluation of the status of the fishery so that regulations can better align with stock condition instead of just being reactive to the uncertainty and variability of MRIP which many have lost faith in. However, choosing a specific alternative based on additional science and data points is impossible without knowing the outcomes of options C, D & E in terms of measures and seeing examples to fully understand the impact. At this time I can only support Option B (which is better than status quo) but I do support having the opportunity to re-evaluate the other options (C, D and E) at some future time once measures or harvest levels for those alternatives are known.

Thank you for the opportunity to comment on this important issue that impacts so many.

Yours Truly,

Don Pirro

Centreville, VA

From: Chris Dollar [mailto:cdollarchesapeake@gmail.com]

Sent: Thursday, April 7, 2022 10:50 AM

To: Comments <comments@asmfc.org>

Cc: CAPT. CHRIS DOLLAR <cdollarchesapeake@gmail.com>

Subject: [External] Harvest Control Rule

Good morning,

I am a professional fishing outfitter, small business owner, and ardent marine fisheries conservationist. For the past 27 years I have made my livelihood from the Chesapeake's marine and other natural resources. Having experienced the "yo-yoing" of fishery stocks and management decisions, I firmly believe it is imperative that we move with deliberate pace toward a new 21st century paradigm with regard to fisheries management. To me that means that the ASMFC, MAFMC, state and federal resource agencies must take decisive action to reverse species' decline and manage game fish and forage primarily for abundance rather than maximum harvest.

With regard to the draft Recreational Harvest Control Rule framework/addenda being proposed for summer flounder, scup, black sea bass and bluefish, I support using additional information besides recreational harvest data to establish bag, size, and seasons that better reflect the status of the resource. That also means I am opposed to the status quo. I urge managers to implement alternatives that use more than just recreational harvest data for determining measures.

That said, picking a specific alternative is difficult without knowing the outcomes of options C, D and E in terms of measures.

Option B is better than status quo and I support getting the opportunity to re-evaluate the other options (C, D and E) once measures or harvest levels for those alternatives are known.

Thank you for the opportunity to comment on this important issue.

Capt. Chris D. Dollar

"Stay Healthy...Go Fishing!"

Outdoor Communications & Fishing Outfitter

(410) 991-8468

Tacklecove.com

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From: Bland [mailto:blanmail@comcast.net]

Sent: Monday, April 4, 2022 2:52 AM

To: Comments <comments@asmfc.org>

Cc: Joe Cimino <joseph.cimino@dep.nj.gov>; TOM FOTE <tfote@jcaa.org>; HEATHER CORBETT <heather.corbett@dep.nj.gov>; Peter J. Clarke <peter.clarke@dep.nj.gov>; Peter Hughes <phughes@atlanticcapes.com>; captadam@karenannii.com

Subject: [External] Harvest Control Rule

I am a NJ recreational fisherman who values catching summer flounder, scup, black sea bass and bluefish, I support using additional information besides recreational harvest data to establish bag, size and seasons that better reflect the status of the resource.

Therefore, I do not support status quo and urge managers to implement alternatives that use more than just recreational harvest data for determining measures.

However, choosing a specific alternative is difficult without knowing the outcomes of options C, D and E in terms of measures.

Option B is better than status quo and I support getting the opportunity to re-evaluate the other options (C, D and E) once measures or harvest levels for those alternatives are known.

Thank you for the opportunity to comment on this important issue.

Craig A. McIlrath

38 Mill Park Lane

Marlton, NJ 08053

blandmail@comcast.net

856-905-1711

From: teedle dowe [mailto:myfeb28@yahoo.com]

Sent: Sunday, April 3, 2022 3:37 PM

To: Comments <comments@asmfc.org>

Subject: [External] harvest control rule

Sea bass, not sure where your data on sea bass comes from. But I believe trying to control mother nature in anyway is not good. Years ago a moratorium was placed on stripe bass and around the same time weakfish numbers fell beyond belief ! While no one could catch the stripers , they where feasting on the weakies my belief.

Back to the sea bass , they eat most everything that swims, crab, squid, porgies, sea bass and lots of other bait fish. What will be left for flounder ,tautog and other fish to eat, very little. My point, trying to control this eating machine will hurt others in many many ways.

My concern and regards,

Ted

From: brimoroz [mailto:brimoroz@protonmail.com]

Sent: Monday, March 28, 2022 7:50 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

Hi,

I had a comment regarding the fisheries models under development that I felt wasn't appropriate for the webinar given then audience. There needs to be a bit more effort to help the public in these hearings understand the basics of how these models work (weighting, controlling uncertainties, flexibility, pros/cons e.g., future projections and/or sensitivity analysis etc...) Presenting solutions that depend on sophisticated models is useless without explaining the pros and cons of a model to folks who have little to no understanding of models or modeling. Many of them will poo-poo the idea of using a model-based approach because they don't understand it. I got the impression that folks in the audience think they can just plug in some numbers to these models/algorithms and then make their choice on whether they support the approach based on if they like the outcome or not--that is not how a model is used.

Thank you for your time,

Brian

From: Wayne.Thomas [mailto:Wayne.Thomas@kiewit.com]

Sent: Monday, March 28, 2022 7:46 PM

To: Comments <comments@asmfc.org>

Cc: Wayne.Thomas <Wayne.Thomas@kiewit.com>

Subject: [External] Harvest Control Rule

Dustin,

My comment or question would be as to the sensitivities in the models for adjustments to the legal harvest size limits... and would reducing the size of the harvest limit reduce catch and release mortality, save the bigger breeder fish, and actually help increase the fish populations.

I.e.,: What happens is the average father-son team go out fishing in the morning and catch a number of fish.. say summer flounder/fluke... that are just below the legal keeper length... they continue to fish for their keeper and continue to catch and release fish.. which some die upon release. Wouldn't the fish populations be better off if that 16.25" first flounder was their keeper; they are happy anglers and stopped returning "shorts" back into the waters only to have them die. The same thing happens with the 28" striped bass harvest limit and their catch-release mortality rates..

Again, the positive residual effect would be more of the larger fish which are better breeders would remain and also help support the population.

I know it seems counter-intuitive to lower the harvest size limits but in reality it's a positive move. Less fish (not only by number but also by weight/pound) would be brought to shore and those remaining would be the bigger/better breeders.

Thanks for tonight's presentation and consideration... and your efforts in this important topic.

Wayne

Wayne D. Thomas, PE

Vice President, Strathmere Nj Fishing & Environmental Association

1-201-832-3351

---

From: Eric Packard [mailto:ericp669@gmail.com]

Sent: Friday, March 25, 2022 6:50 AM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest Control Rule

As an avid angler who values catching summer flounder, scup, black sea bass and bluefish, I support using additional information besides recreational harvest data to establish bag, size and seasons that better reflect the status of the resource.

Therefore, I do not support status quo and urge managers to implement alternatives that use more than just recreational harvest data for determining measures.

However, choosing a specific alternative is difficult without knowing the outcomes of options C, D and E in terms of measures.

Option B is better than status quo and I support getting the opportunity to re-evaluate the other options (C, D and E) once measures or harvest levels for those alternatives are known.

Thank you for the opportunity to comment on this important issue.

Eric Packard

Artist (I fish sometimes, too)

---

From: Michael Shepherd [mailto:sheponfishing@yahoo.com]

Sent: Wednesday, March 16, 2022 4:52 PM

To: Comments <comments@asmfc.org>

Subject: [External] Harvest control rule

I am a recreational fisher in South Jersey and I appreciate the opportunity to emphasize the need to change the thinking concerning summer flounder regulations. I join the critics who have shown that current regulations requiring the harvest of the breeding females is a major factor in the decline of summer flounder.

We need be allowed slot fish inside the 17-18 minimums.

Mike Shepherd

609-350-0388





April 22, 2022

Dustin Colson Leaning  
FMP Coordinator  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street  
Suite 200  
Arlington, VA 22201

Julia Beaty  
Fishery Management Specialist  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Suite 201  
Dover, DE 19901

Dear Mr. Colson Leaning and Ms. Beaty:

Thank you for the opportunity to comment on the Harvest Control Rule (HCR) Framework/Addenda, a joint action that is a part of the Mid-Atlantic Fishery Management Council's (Council) and the Atlantic States Marine Fisheries Commission's (Commission) Recreational Reform Initiative. The American Saltwater Guides Association (ASGA) represents conservation-minded fishing guides, charter boat captains, small fishing-related businesses, and anglers, many of whom participate in fisheries impacted by this action. We have followed the development of this initiative for more than a year, recognizing the challenges presented by the current approach to managing recreational fisheries for several species jointly managed by the Council and Commission. While we commend the Council and Commission for their progress to date and do have feedback on specific aspects of the draft document, we continue to be concerned with the complexity of the alternatives provided for public feedback, an issue further exacerbated by the lack of Council Scientific and Statistical Committee (SSC) review prior to the solicitation of public comments.

While we appreciate the urgency of the task at hand, we are cautious of hastily implementing an untested management approach for four species without all of the necessary information and resources to avoid another challenging specifications cycle—all the while potentially increasing the risks of overfishing. Additionally, the larger process surrounding this effort continues to cause concern. The Commission is soliciting public comment while key aspects of this highly

complex document remain undeveloped—including the “critical”<sup>1</sup> Recreational Economic Model and the Recreational Fleet Dynamics Model<sup>2</sup>—and while the SSC is in the process of developing a report on the risks and uncertainties associated with the HCR approaches.<sup>3</sup> Asking the public to comment on these options without an understanding of the relative risks and benefits of each HCR approach—or the potential concrete measures that could result—limits the ability to provide constructive comment. Moreover, this process could potentially (further) undermine public faith in the fishery management process should a preferred alternative lead to an unanticipated and undesirable on-the-water regulatory outcome.

**Until the SSC releases its report, we are not in a position to comment on a preferred alternative for Section 3.1 of the Framework/Addenda, Management Options to Set Recreational Management Measures.** We do plan on submitting a more detailed public comment in the subsequent SSC HCR Report public comment period, which will be guided by our desire for the long-term sustainability of these stocks while also acknowledging the challenging reality that the black sea bass and scup stock biomasses are at 200 percent of the target, yet sizeable reductions continue to be required and implemented.<sup>4</sup> We hope this effort can find the correct balance for managing these healthy stocks within the confines of the Magnuson-Stevens Act (i.e., holding sectors accountable to science-based limits).

**For Section 3.2, Target Measure for Setting Measures, ASGA recommends Option B, Annual Catch Limit.** Setting measures to achieve a level of total dead catch (harvest and discards) would be an improvement for management and inject additional considerations into the measure-setting process. For example, accounting for discards would possibly encourage managers to make more explicit optimum yield considerations within a fishery. Option B does, however, contain a concerning sentence that we believe deserves additional clarification: “For this reason, the target level of catch for each bin may not always be equivalent to the recreational ACL under the no action alternative as a range of ACLs could fall under the same bin.”<sup>5</sup> We understand that by design three of these HCR approaches will have predetermined measures for a range of stock conditions; therefore, each bin will be expected to produce a range of catch. However, additional information and specific guidelines are necessary regarding the intention to adhere to the Recreational ACL and set a range of catch for each bin that will not lead to overfishing.

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<sup>1</sup> Mid-Atlantic Fishery Management Council. Overview of work, major accomplishments, and timeline recommendations. October 1, 2021.

<https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/616712674e13667ceb57b591/1634145031712/>

<sup>2</sup> Mid-Atlantic Fishery Management Council. Recreational Harvest Control Rule Framework/Addenda. January 26, 2022.

[https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/61f44ea1cbe85135c3b669cc/1643400867886/T ab04\\_Rec-HCR-FW\\_2022-02.pdf](https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/61f44ea1cbe85135c3b669cc/1643400867886/T ab04_Rec-HCR-FW_2022-02.pdf)

<sup>3</sup> Mid-Atlantic Fishery Management Council. February Meeting Motions. February 8-9, 2022.

[https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/620569fcbaa00808ea528741/1644521980583/2022-02\\_MAFMC-Motions.pdf](https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/620569fcbaa00808ea528741/1644521980583/2022-02_MAFMC-Motions.pdf)

<sup>4</sup> Atlantic States Marine Fisheries Commission. Draft Addendum XXXIV To The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Addendum II to the Bluefish Fishery Management Plan for Public Comment. February 2022.

[http://www.asmfc.org/files/PublicInput/HCR\\_DraftAddenda\\_PublicComment\\_March2022.pdf](http://www.asmfc.org/files/PublicInput/HCR_DraftAddenda_PublicComment_March2022.pdf)

<sup>5</sup> Ibid.

**For Section 3.3, Conservation Equivalency (CE), we support Option B, Regional Conservation Equivalency.** On the one hand, given that the HCR is an untested approach to managing recreational fisheries, we have significant concerns about applying CE at all given the additional uncertainty that it could bring to bear on management outcomes. On the other hand, we are cognizant of how diverse these fisheries are across their geographic ranges and understand that regulations for one region may not be effective or appropriate in another. Therefore, we support the regional use of conservation equivalency. One potential benefit for employing a regional approach for CE would be reduced staff workload. This possible extra bandwidth will be important to devoting all the necessary resources towards potentially implementing one of these HCR approaches.

We look forward to providing additional comments following our review of the SSC's findings, and appreciate your consideration of our views at this time.

Sincerely,



Will Poston  
Policy Associate  
American Saltwater Guides Association  
[will@saltwaterguidesassociation.org](mailto:will@saltwaterguidesassociation.org)  
(202) 577-8990



Willy Goldsmith, Ph.D.  
Executive Director  
American Saltwater Guides Association  
[willy@saltwaterguidesassociation.org](mailto:willy@saltwaterguidesassociation.org)  
(617) 763-3340

New York Fishing Tackle Trade Association  
P.O. Box 3210  
Patchogue, NY 11772  
nyftta@gmail.com

April 22, 2022

Dustin Colson Leaning, FMP Coordinator  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street, Suite 200A-N  
Arlington, VA 22201  
RE: Public Comments for Harvest Control Rule

The New York Fishing Tackle Trade Association (NYFTTA) represents both the retail and wholesale bait and tackle dealers in the New York Marine district. The livelihood of our members, our industry, depends upon healthy stocks of many species of fish. Our mission is not just to promote the sport of fishing, but also to do our part in conserving resources for the future. Conserving resources for the future is not just managing the fishery from a conservation or regulatory approach, but also accounting for the socioeconomic impact of such regulations and maintaining fair and equitable access.

For decades the recreational fishing community has abided by recreational measures that are put in place with the goal of restraining harvest within sustainable levels. Often times, these measures were restrictive, imposing economic hardship on the recreational industry. Yet, as a sustainable fishery is the ultimate goal for the future of the fishery and the recreational community, we did our part. Hardships have paid off and we have seen fisheries rebuild; fisheries no longer being overfished. In fact, some fisheries have been successful to the point that even under measures meant to control harvest, these fisheries are so abundant, that harvest goes over. And when these instances occur, even though we know recreational measures are not reflective of stock size, managers hands are tied with a plan that does not incorporate factors beyond harvest.

The options laid out in this draft addendum take a first step at incorporating other data with the RHL when setting recreational measures. These options have models that are still being developed and we have yet to see what they will look like. While we are in favor of incorporating other factors, such as the bio mass, not seeing the impact of the final models, makes it difficult to support a future course. That being said, NYFTTA reluctantly supports **Option B for the Percent Change Option**. This Option is a step in the direction of developing managing measures that more completely encompass the harvest of recreational fishing with the health of the stock. In the end, we need sustainable fisheries, and moving in this direction will allow the stakeholders to benefit when fisheries are healthy, as well as take more comprehensive action when fisheries are on the downturn.

However, supporting Option B is only supporting a concept. The devil is in the details of how this will be achieved, which is where the sub-options come into play. We **DO NOT support Sub Option B-2B**. This option has set percentages for both liberalization and reduction. This option poses the real possibility that a fishery could be at 99% of its target, but if “future 2-YR avg. RHL is less than the lower bound of the harvest estimate CI” a 40% reduction would be implemented. In this scenario, a mere 1% more in biomass would bring this reduction down to 20%. There is a huge difference in the economic impact a 20-point spread reduction would have to the recreational community and industry. In one of the recent public hearings, I overheard someone say that in the BSB fishery this year, the “.7%” of the 20.7% BSB fishery was trivial. I can understand that looking in from the outside, it could be perceived that that a couple of points is inconsequential, but this is far from true! To the industry, to the shop who as a seasonal business, and already has less than a half a year to make their livelihood, every day matters! Whether it is 1, 5, 10 or 15% more, it can make an enormous economic impact and help to find that balance where both the FISHERY and the INDUSTRY can sustain. Sub-

option B2-B has dangerous implications for the recreational industry. At this time, until these models are fully developed, we could only **lend support to Option B-1A**. Even in this sub-option we have concern, as it misses the mark when the biomass exceeds 150%. There should be a differential in the liberalization equation with an added benefit over that 150% mark. For the same reasons we disagree with a “set” percent in sub-option B-1B, we have reservations of the “set” percent of sub-option B-2A. We believe there needs to remain flexibility with smaller increments in the percentages of liberalizations/reductions.

While we support that we can do a better job setting recreational harvest measures by utilizing “innovative management tools” and additional factors beyond harvest, this is uncharted territory. We believe this should be a 2-year interim approach. The Harvest Control rule should sunset in two-years with the ability to revisit through public input if it was a success and whether it should continue, revert back to the current models or be replaced entirely with a new model.

In addition to being a representative of the NYFTTA, I also own Regal Marine Products, a wholesale bait and tackle distributor. Our customers, bait and tackle shops, range from NJ through Rhode Island. I am very in tune with the recreational industry and the economic impact that regulations have on not only each state, but the region as a whole. There is no doubt that changes in recreational measures have a direct economic correlation on the industry. When we look at recreational measures, they are there to support the recreational fishing community, to give access to the hundreds of thousands of fishermen who enjoy the sport of fishing. Please make no mistake that at the heart of that community lies an industry that supports them. We ask that you think about that balance, as the choices you make today, not only determine the sustainability of the fisheries, but us as an industry as well.

Respectfully Submitted by,

Melissa Dearborn

Dearborn

Melissa Dearborn  
Vice President, NYFTTA  
[melissa@regalbait.com](mailto:melissa@regalbait.com)

Respectfully Submitted by,

Melissa

Melissa Dearborn  
Owner, Regal Marine Products, Inc  
[melissa@regalbait.com](mailto:melissa@regalbait.com)



1075 Tooker Avenue  
West Babylon, NY 11704  
April 20, 2022

Duston Colson Leaning, Fishery Management Plan Coordinator  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street, Suite 200 A-N  
Arlington, VA 22201

RE: Harvest Control Rule

Dear Mr. Leaning:

With respect to *Draft Addendum XXXIV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan* and *Addendum II to the Bluefish Fishery Management Plan* (the "Draft Addenda"), I support Option A, *status quo*.

My support for the no-action option does not necessarily reflect on the intrinsic merits of the various Harvest Control Rule approaches, but is instead based on the lack of information, critical to the Harvest Control Rule debate and to the implementation of any control rule that may be adopted, provided to members of the Interstate Fishery Management Program Policy Board (the "Policy Board"), the Summer Flounder, Scup, and Black Sea Bass Management Board (the "Management Board"), the Mid-Atlantic Fishery Management Council (the "Council"), and to stakeholders and members of the general public.

While the Draft Addenda go into great detail outlining how the various control rule options would calculate management measures, and provide some detail on how such options might impact anglers, they leave out the most important information of all: How each control rule option might affect the long-term management and long-term health of the relevant fish stocks.

Without such information, it is impossible to provide intelligent comment.

In a properly managed fishery, the primary goals of fishery managers, and so of fishery management measures, are to prevent overfishing and maintain spawning stock biomass at, or rebuild spawning stock biomass to,  $B_{msy}$ . The Draft Addenda provide no guidance on the likelihood of measures developed pursuant to any of the Harvest Control Rule options successfully meeting such goals, nor do they rank the options in terms of management effectiveness or relative risk to the managed resource. Those are egregious omissions.

Below, I address the concerns which led me to select Option A in more detail.



I

**The need for the Harvest Control Rule has not been clearly established.**

The Draft Addenda state that “The goal of the Draft Addenda and the Council’s framework is to establish a process for setting recreational bag, size, and season limits for summer flounder, scup, black sea bass, and bluefish such that measures aim to prevent overfishing, are reflective of stock status, appropriately account for uncertainty in the recreational data, take into consideration angler preferences, and provide an appropriate level of stability and predictability in changes from year to year.” Most of those goals can and are being achieved under the current management program.

Even such contentious issues as uncertainty in the recreational data can be addressed within the current management system, as demonstrated by the use of “Thompson Tau outlier analysis”<sup>1</sup> to address uncertainty in recreational black sea bass data when establishing 2022 management measures. Admittedly, such Thompson Tau analysis does not directly address the issues of management stability and predictability, although such issues are closely tied to the uncertainty in recreational data, so additional management tools are arguably needed.

However, it is not clear that the Harvest Control Rule is needed to address the uncertainty and stability issues.

The uncertainty inherent in the annual estimates of recreational catch, landings, and effort falls within the general category of “management uncertainty,” as does angler behavior in response to management measures, weather conditions, other available fish stocks, and similar factors. Such management uncertainty certainly exists in each of the summer flounder, scup, black sea bass, and bluefish fisheries, yet the monitoring committees responsible for recommending annual management measures have consistently refused to acknowledge it, and instead set the management uncertainty value at zero, the one value that everyone knows is wrong.

By recognizing the existence of management uncertainty, and setting a recreational harvest target at an appropriate level below the recreational harvest limit, the Management Board and Council could create a buffer that would allow for management uncertainty, lead to more stable and predictable management measures, and significantly reduce incidents of “chasing the RHL,” while remaining within the current management structure.

The Draft Addenda note that “many recreational stakeholders expressed frustration that the black sea bass measures did not seem reflective of stock status as they have generally been more restrictive in recent years compared to when the stock was under a rebuilding plan, despite the stock currently being more than twice the target level and highly available to anglers.” There is no question that some stakeholders, particularly those connected to the recreational fishing industry, have expressed such

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<sup>1</sup> See Presentation to Atlantic States Marine Fisheries Commission Summer Flounder, Scup, and Black Sea Bass Management Board, ASMFC Winter Meeting, available at [http://www.asmfc.org/files/Meetings/2022WinterMeeting/SFSBSB\\_BoardPresentations\\_Jan22.pdf](http://www.asmfc.org/files/Meetings/2022WinterMeeting/SFSBSB_BoardPresentations_Jan22.pdf)



feelings. However, it then becomes necessary to ask whether a transient condition<sup>2</sup> in a single fish stock justifies overthrowing the current management system in favor of an untested Harvest Control Rule that will be used to manage all four recreational fisheries.

Nothing in the Draft Addenda suggest that such justification exists.

## II

### **The Harvest Control Rule is being moved forward with undue haste.**

The Harvest Control Rule discussion that took place at the Council's February 8, 2022 meeting made it clear that two statistical models deemed "critical for thorough analysis of the options," and which will "greatly improve the process for setting management measures under any of the options,"<sup>3</sup> will not be available until some time in 2023 (the exception is a single statistical model relating to the recreational summer flounder fishery, which is expected to be ready for use later in 2022).

Yet when questions arose at the February 8 meeting about the wisdom of moving forward without such supposedly "critical" models, Savannah Lewis, who then led the ASMFC's Plan Development Team, responded that "The word is 'critical,' not 'required,'" a comment that should raise concerns, particularly when it was followed up with an admission that such models were indeed "critical," but that moving ahead was justified by "what happened over the last three months," a clear reference to the controversy over more restrictive black sea bass regulations. The fact that a state fishery manager sitting on the Policy Board later noted that "Nobody wants to go through the process [of setting black sea bass regulations] again this year," further raises concerns that a desire to avoid further controversy is outweighing the need to establish a proper, well-considered foundation for the Harvest Control Rule and for 2023 regulations.

Until Michelle Duval, a Council member from Pennsylvania, successfully put a motion on the table asking that the Council's Scientific and Statistical Committee analyze all of the Harvest Control Rule options under various scenarios, and determine their relative risk with respect to managing fish stocks at different levels of abundance, both the Policy Board and Council were preparing to vote on a Harvest

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<sup>2</sup> The most recent benchmark stock assessment, along with subsequent stock assessment updates, identified an exceptionally strong black sea bass year class produced in 2011 (recruited at age 1 in 2012), and a second smaller, but still unusually strong, year class in 2015 (recruited at age 1 in 2016), which made a significant contribution to the current black sea bass abundance. However, recruitment has since returned to more typical levels (with the exception of the smallest-in-the-time series 2017 year class), and spawning stock biomass, while still twice the target level, has been in decline. That sets the stage for one of two likely alternatives: Either the SSB will continue to decline toward (and hopefully not below) the target level in the face of average recruitment, or additional strong year classes will be produced that maintain SSB at or close to current levels, in which case biologists performing the stock assessment are likely to increase their estimates of black sea bass productivity and revise  $B_{msy}$  upward. In either case, the likelihood of SSB remaining at or near 200 percent of  $B_{msy}$  in the long term is probably low.

<sup>3</sup> Memorandum from Joint PDT/FMAT for Recreational Reform to Mid-Atlantic Fishery Council and ASMFC Policy Board, dated October 1, 2021, pp. 1-2, available at [https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/616712674e13667ceb57b591/1634145031712/2021-10-21\\_Combined-Briefing-Materials.pdf](https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/616712674e13667ceb57b591/1634145031712/2021-10-21_Combined-Briefing-Materials.pdf)



Control Rule in June 2022, without having even that basic information, which is, of course, also not available to stakeholders commenting on the Draft Addenda.

It is poor policy to move ahead with a new and untested management approach before all of the information and statistical models needed to properly evaluate and implement such approach are available.

### **III**

#### **Will the Harvest Control Rule increase uncertainty in the management process?**

The Draft Addenda cited “uncertainty in the recreational fishery data” as one justification for adopting the Harvest Control Rule. What the Draft Addenda do not make clear is whether at least some of the Harvest Control Rule options would increase uncertainty in the management process.

The current management approach requires relatively few parameters. Managers be able to estimate both  $F_{msy}$  and the current spawning stock biomass to calculate the Overfishing Limit (which the Council’s Scientific and Statical Committee will then reduce, to account for scientific uncertainty, to produce the Acceptable Biological Catch), and an estimate of the previous year’s catch and landings, which is subject to some level of management uncertainty. The uncertainty associated with each parameter can negatively affect the effectiveness of the resulting management measures.

However, some of the Harvest Control Rule options rely on additional data. Option C, the “Fishery Score Approach,” would incorporate an estimate of current biomass, an estimate of  $B_{msy}$ , an estimate of the current fishing mortality rate, an estimate of  $F_{msy}$ , an estimate of recruitment, as well as an estimate of recreational landings. The point estimate used for each of those parameters is surrounded by a confidence interval. So the important question to ask is whether, by basing management measures on so many different parameters, each of which is subject to some level of uncertainty, the Harvest Control Rule could introduce a significantly higher level of uncertainty, and thus of risk, into the management process.

The Draft Addenda do not answer that question, nor do they answer such question with respect to Option D, the “Biological Reference Point Approach,” which is based on estimates of the current fishing mortality rate,  $F_{msy}$ , current biomass,  $B_{msy}$ , recruitment, recruitment trends, and recreational landings levels, or Option E, the “Biomass Based Matrix Approach,” which requires estimates of current biomass,  $B_{msy}$ , and biomass trends.

Without understanding how a Harvest Control Rule option increases uncertainty, and so possibly increases risk, in the management process, the suitability of such options cannot be properly evaluated.



#### IV

#### Does the Harvest Control Rule meet the minimum legal standards for fishery management measures?

The Magnuson-Stevens Fishery Conservation and Management Act<sup>4</sup> ("Magnuson-Stevens") establishes clear requirements for fishery management measures, many of which have been interpreted by the federal courts. While Magnuson-Stevens does not apply to the Atlantic States Marine Fisheries Commission ("ASMFC"), and the ASMFC's management actions are not subject to review pursuant to the federal Administrative Procedures Act,<sup>5</sup> such considerations are relevant to measures adopted by the Council and National Marine Fisheries Service ("NMFS").

It is not clear from the Draft Addenda, nor from private conversations that I have held with Council and NMFS staff, whether all of the Harvest Control Rule options would meet such legal standards. Two legal standards cause particular concern.

Magnuson-Stevens includes ten National Standards for Fishery Conservation and Management.<sup>6</sup> National Standard 1 states that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry."

That requirement has been interpreted by the federal courts to mean that any management measure must have at least a 50 percent probability of preventing overfishing to be legally acceptable. The court in *Natural Resources Defense Council v. Daley*,<sup>7</sup> a matter arising out of legally inadequate summer flounder management measures adopted by the Council, found that "at the very least, this means that 'to assure' the achievement of the target F, to 'prevent overfishing' and to 'be consistent with' the fishery management plan, the [total allowable landings] must have had at least a 50% chance of attaining [the target fishing mortality rate]."

Neither the Draft Addenda nor any comment that I have yet heard on the part of the Council or NMFS has provided clear assurance that management measures produced by each of the Harvest Control Rule options would meet that minimum legal standard.

Magnuson-Stevens also requires that regional fishery management councils "develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established [elsewhere in the statute]."<sup>8</sup>

While the Draft Addenda discuss how accountability measures might be applied to the various Harvest Control Rule options should recreational landings exceed such catch limits, nowhere do they state how management measures will be developed to prevent such catch limit to be exceeded in the first place. That causes particular concern with respect to Options C, D, and E, where management measures are

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<sup>4</sup> 16 U.S.C. 1801 *et seq*

<sup>5</sup> *New York v. Atlantic States Marine Fisheries Commission*, 609 F.3<sup>rd</sup> 524, (2<sup>nd</sup> Circuit, 2010)

<sup>6</sup> 16 U.S.C. 1851

<sup>7</sup> 209 F.3<sup>rd</sup> 747 (DC Circuit, 2000)

<sup>8</sup> 16 U.S.C. 1852(h)(6)



largely or completely divorced from the previous year's annual catch limit. It is difficult to believe that a court would be receptive to an argument that, while Magnuson-Stevens requires an annual catch limit to be established, it does not require a regional fishery management council to consider that catch limit when crafting management measures for the upcoming season.

The lack of assurances that management measures produced pursuant to any or all Harvest Control Rule options will both have a 50 percent probability of preventing overfishing and are likely to constrain recreational landings to the annual catch limit give rise to concerns that the Harvest Control Rule does not meet the minimum legal requirements established by Magnuson-Stevens.

## V

### **The Policy Board, Management Board, and Council should phase in implementation of the Harvest Control Rule, testing it first on black sea bass.**

While current management practices may not be perfect, they managed to rebuild the summer flounder, scup, and black sea bass stocks, which were once badly overfished. In the case of black sea bass and scup, spawning stock biomass was not merely rebuilt to the target levels, but to levels far above such targets. As noted in the first section of these comments, the few shortcomings of the current management approach can be remedied with relatively modest measures, without the need to radically change the management process.

That being the case, changes to the current management process should be done cautiously. It is difficult to understand why the Policy Board, Management Board, and Council are intent on radically altering the management paradigm for all four species at the same time, instead of engaging in a pilot program involving a single species, to determine whether the Harvest Control Rule works in practice, and not merely in theory.

That is particularly true because, even should the Harvest Control Rule fail to adequately constrain fishing mortality and maintain spawning stock biomass, there will likely be significant resistance, both from the angling industry and from Council and Policy Board members who have invested substantial effort and personal prestige in such Harvest Control Rule, to restoring the current approach to recreational fishery management.

Given that discontent over black sea bass management has provided much of the impetus for development of a Harvest Control Rule, it would make sense to limit initial implementation of the Harvest Control Rule, if implementation is to occur, to only that species. Spawning stock biomass is high enough that even if the management measures developed pursuant to any control rule fail to constrain recreational landings to sustainable levels, the black sea bass stock is likely to remain well above the biomass target until managers can address the issue.

If the Harvest Control Rule does not have an adverse impact on the black sea bass stock, its use could then be extended to summer flounder, scup and, once the stock is rebuilt, bluefish. But if the Harvest Control Rule fails to adequately constrain the recreational black sea bass harvest, managers will know



that more work must be done before it can be used to manage the scup and, more importantly, the summer flounder and bluefish stocks, which unlike black sea bass and scup, are already below their biomass targets.

## VI Summary

The Harvest Control Rule represents the most significant change to the management of bluefish and mid-Atlantic demersal species since the passage of the Sustainable Fisheries Act in 1996 and the 2000 court decision in *Natural Resources Defense Council v. Daley*. As such, it should not be adopted in haste, and certainly not until all of the information and statistical models needed to support the new management approach are in place.

Today, neither the models nor the information are available.

The Draft Addenda were released prematurely, out of an understandable desire to put the Harvest Control Rule in place for the 2023 season, whether it was fully ready or not. Such Draft Addenda thus lacked the information needed to make intelligent and informed choices with respect to the Harvest Control Rule options.

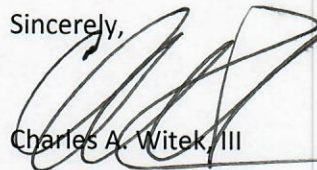
I support Option A, *status quo*, solely because, based on the information available, that is the only option that will clearly do no harm to the long-term health of mid-Atlantic fish stocks.

The haste with which the Draft Addenda were prepared and presented does no justice to the management process, the affected fish stocks, nor the Harvest Control Rule itself, which may well be the most appropriate approach to managing recreational fisheries in the mid-Atlantic. However, such appropriateness can't be determined given the information that is currently available.

I thus respectfully request that the implementation process be delayed until such information is available, at which time the Policy Board and Council can again seek comment, this time from a fully informed public, and determine whether the Harvest Control Rule is the right management tool for the species in question.

Thank you for considering my thoughts on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles A. Witek, III', written over a horizontal line.

Charles A. Witek, III



# NEW JERSEY COUNCIL OF DIVERS AND CLUBS

526 S. Riverside Drive  
Neptune, NJ 07753  
[www.scubanj.org](http://www.scubanj.org)

4/20/22

## HARVEST CONTROL RULE FOR RECREATIONAL MANAGEMENT

### DRAFT ADDENDUM XXXIV TO THE SUMMER FLOUNDER, SCUP AND BLACK SEA BASS MANAGEMENT PLAN & THE BLUEFISH MANAGEMENT PLAN FOR PUBLIC COMMENT

The NJ Council of Divers and Clubs is presently an organization of 14 sport diver clubs in New Jersey and nearby states. The following is testimony regarding the proposed recreational harvest control rules

The NJ Council of Divers and Clubs supports Option A No Action (Current Recreational Measures Setting Process). With the recreational fishery, many thousand of recreational fishermen are involved and the exact take cannot be determined because recreational fishermen do not report their catch to a central processing agency. I have never supported automatically doing something based on any formulae that does not allow fishery managers to consider the overall impact on the recreational fishery.

The NJ Council of Divers and Clubs believes that trying to define an exact procedure through Option B Percent Change Approach, Option C Fishery Score Approach, Option D Biological Reference Point Approach, and Option E Biomass Based Matrix Approach is not realistic because in most cases you will not have really good data on the recreational catch. The least harmful of the approaches is option B, except that 150% of the target stock seems very high and unrealistic to me.

The NJ Council of Divers and Clubs would support Conservation Equivalency Options to give states more flexibility for alternative measures.

Respectfully

[jf2983182@msn.com](mailto:jf2983182@msn.com)

Jack Fullmer

Legislative Committee

The NJ Council of Diving Clubs recently reorganized and changed its name to the NJ Council of Divers and Clubs to try to attract more membership from dive shops, dive boats as well as individual divers.



**RHODE ISLAND**  
**SALTWATER**  
**ANGLERS**  
**Association**



P.O. Box 299, Tiverton, Rhode Island 02878

401-826-2121

[www.RISAA.org](http://www.RISAA.org)

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April 22, 2021

Dustin Colson Leaning

Re: Harvest Control Rule

Dustin and Commission Members:

The Rhode Island Saltwater Anglers Association (RISAA) represents over 7500 saltwater anglers and 28 affiliate clubs in Rhode Island, Connecticut and Massachusetts. We have been following the discussions and developments related to "Recreational Reform" with much interest.

We have always based our positions on science based measures and continue to believe science must dictate management. RISAA also feels equally as strong that when the management tools clearly are failing then additional tools are needed to allow managers the ability to respond appropriately to changing fish stock status levels. In that line we have come to believe that the current recreational management tools need some form of improvement and therefore we are in favor of a change as proposed under the Harvest Control Rule. We are not in favor of Option A, Status Quo because we believe that it is important that managers have the ability to use important factors such as population status when establishing recreational management measures. We believe that Option B is a step in the right direction and would therefore be significantly better than Status Quo. Some of the other options may provide even better recreational management however since they were not presented in sufficient detail we are not sure what effect they may have on recreational management issues.

At the present time we would like to state for the record that we are opposed to Option A and would support Option B with further analysis of the other options.

Thank you,

Greg Vespe  
Executive Director  
Rhode Island Saltwater Anglers Association



39 Industrial Park Road, Unit C  
Plymouth, MA 02360  
[www.stellwagenbank.org](http://www.stellwagenbank.org)

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April 20, 2022

Dustin Colson Leaning, FMP Coordinator  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street  
Suite 200  
Arlington, Virginia 22201

**RE: Harvest Control Rule**

Dear Mr. Colson Leaning:

On behalf of the Stellwagen Bank Charter Boat Association (SBCBA) whose membership includes the for hire fleet, recreational anglers and commercial fisherman that fish the state and federal waters off the coast of Massachusetts, we offer the following comments to the Harvest Control Rule ("HCR"):

The SBCBA is pleased to see the proposed HCR alternatives that attempt to address the ongoing uncertainties and variability associated with MRIP data resulting in poor stock status as well as seasons and bag limits inconsistent with our observations on the water. The HCR alternatives attempt to provide other metrics less reliant on MRIP data to make fishery management decisions.

**Section 3.1. Management Options to Set the Recreational Management Measures.**

The SBCBA support Option B, the Percent Change Approach, as an interim approach until Options C, D and E can be developed further and scenario tested. Option B is the only option that has been tested by looking at what the management response would have been if Option B was implemented in previous years versus a fishery management action that occurred under the "no action alternative".

Once tested, Options C, D and E can be detailed to the recreational fishing community in order for the public to understand the differences in setting recreational measures across the alternatives that provides the public the opportunity to evaluate the trade-offs of each approach. Therefore, the SBCBA supports the opportunity to reconsider Options C, D and E once



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the outcomes are known and scenario testing has been completed to demonstrate the performance of these alternatives.

### **Section 3.3. Conservation Equivalency Options**

The SBCBA supports Option A that does not require conservation equivalency but allows use of such if necessary providing flexibility that may alleviate challenges associated with implementing a new HCR approach. The use of a conservation equivalency process provides an approach that works across a broad geographic range of fish availability and angler preferences.

### **Section 3.4 Accountability Measures Comparisons**

The SBCBA support Option B which would utilize fishing mortality relative to the fishing mortality threshold in response to the application of accountability measures. The document states that the most recent fishing mortality estimate considers more recent information than the information used to set a previous year's ACL. Therefore, Option B clearly represents the use of best available science which is consistent with the Magnusson Stevens Act, National Standard 2.

If you have any questions or comments please email or give us a call.

Very truly yours,

*Capt. Mike Pierdinock*  
Capt. Mike Pierdinock  
SBCBA, President  
[sbcbamp@gmail.com](mailto:sbcbamp@gmail.com)

*Capt. Timothy Brady*  
Capt. Timothy Brady  
SBCBA, Vice President  
[tbrady@maritime.edu](mailto:tbrady@maritime.edu)

*Capt. Rick Golden*  
Capt Rick Golden  
SBCBA, Secretary  
[1620anglers@gmail.com](mailto:1620anglers@gmail.com)

Cc: Michael Pentony, GARFO  
Russell Dunn, NMFS  
Dan McKiernan, MassDMF  
Ron Amidon, MassF&G



# **Jersey Coast Anglers Association**

## ***Working for Marine Recreational Anglers***

1594 Lakewood Road, Unit 13, Toms River, NJ 08755

TEL.: 732-506-6565 - FAX: 732-506-6975



4/21/22

ASMFC/MAFMC

The Jersey Coast Anglers Association represents approximately 75 fishing clubs throughout our state. We strongly support making a change in the way our summer flounder, scup, black sea bass and bluefish are managed. We believe that very few, if any, of our fisheries managers believe that the MRIP numbers are accurate and should be the only data used in determining quotas, seasons, bag limits and size limits. Until this point, their hands have been tied but now there is an opportunity for change that we hope will result in better fisheries management and fairer regulations for our recreational fishermen

Of the options available to consider, we strongly oppose option A which is status quo. We believe any of the other options would be better than that. Options C, D, and E are not fully developed so we can not support them at this time. Therefore, we urge you to implement Option B at this time and consider the other options once they are fully developed.

Respectfully submitted,

Mark Taylor, JCAA President



April 18, 2022

Dustin Colson Leaning  
FMP Coordinator  
1050 N. Highland St.  
Suite 200 A-N  
Arlington, Virginia, 22201

Dear Mr. Leaning,

The following comments are being submitted on behalf of the Marine Trades Association of New Jersey (MTA/NJ) regarding the Harvest Control Rule for Bluefish, Summer Flounder, Scup and Black Sea Bass. The MTA/NJ is in support of Option B in section 3.1 of the Recreational Harvest Control Rule Draft Addenda/Framework.

The MTA/NJ, established in 1972, is a non-profit trade organization comprised of over 300 marine-related businesses dedicated to advancing, promoting, and protecting the marine industry and waterways in the State of New Jersey. We represent hundreds of recreational businesses both large and small located in every county of the state.

It is largely agreed that the present recreational fishery management system used by the ASMFC and MAFMC has failed. Form over substance has dictated recreational management by the ASMFC and MAFMC for years to the detriment of the fishing community. Common sense and reality (such as stock status) are less significant than formulaic and non-adaptive management. Add to that an MRIP program that is distrusted by most of the recreational (and commercial) fishing community, and a reality-based component is needed. Option B offers an opportunity to inject the reality of stock status into the system to help level the uneven management road on which our recreational community, particularly our businesses, have suffered. Option A assures the same type of failure we have seen for years. The other options are too uncertain. Please consider adopting Option B.

Thank you for your consideration. If you have any questions, feel free to contact me at 732-292-1051 or [mdanko@mtanj.org](mailto:mdanko@mtanj.org).

Sincerely,

A handwritten signature in blue ink that reads "Melissa Danko".

Melissa Danko  
Executive Director  
Marine Trades Association of New Jersey



April 15, 2022

Dustin Colson Leaning, FMP Coordinator  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street  
Suite 200  
Arlington, VA 22201

Dear Mr. Colson Leaning,

Thank you for the opportunity to provide input on the Harvest Control Rule Draft Addenda/Framework for summer flounder, scup, black sea bass and bluefish. Our organizations represent the recreational fishing and boating industry and our nation's anglers, and we appreciate the continued efforts by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid Atlantic Fishery Management Council (MAFMC) to find solutions that are better suited for managing the recreational fishery.

The harvest control rule (HCR) alternatives aim to address numerous challenges currently facing recreational fishery management, including uncertainty in the MRIP data, the need to change measures (sometimes annually) based on those data, and recreational measures (bag, size and season) not reflecting stock status. Most recently, the 2022 fisheries specification process exemplified these challenges and demonstrates the need for alternative approaches to setting bag, size and season. As a result, we offer the following input on the HCR alternatives. While we believe several of the management alternatives presented hold tremendous potential for more efficiently managing both the recreational sector and our fisheries resources, we urge the ASMFC Policy Board and MAFMC to seriously consider which alternatives would be ready for implementation beginning in 2023.

### **Section 3.1 Management Options to Set the Recreational Management Measures.**

We support Option B, the Percent Change Approach, as an interim approach until options C, D and E can be developed further to include the setting of measures within the bin(s) and backtesting.

Option B is currently the only option that has been backtested by looking at what the management responses would have been if option B was implemented in previous years versus management actions that occurred under the no action alternative. This performance testing is critical to understanding the rest of the HCR options, but the modeling approaches are not developed enough to complete that analysis. Additionally, we have consistently maintained the importance of putting alternatives C, D and E in terms that the recreational fishing community understands to illustrate the differences in setting the recreational measures across the alternatives and provide the opportunity to evaluate the trade-offs of each approach. However, to date, that has not been accomplished for options C, D and E.

Nonetheless, we strongly support the opportunity to reconsider options C, D and E once the outcomes are known and analyses have been completed to demonstrate the performance of each approach.

### **Section 3.2 Target Metric for Setting Measures**

*The document states that the options in section 3.2 do not apply because we selected Option B in section 3.1, however we thought it would be prudent to provide input on section 3.2*

Primary: We support Option C, Fishing Mortality Target (F).

Secondary: We support Option B, Annual Catch Limit (ACL).

Selecting fishing mortality or ACL as the target for setting recreational measures incentivizes fishery managers to directly manage discards. Currently, when management measures are adjusted to achieve the RHL, the impacts on discards are poorly understood because of limited data on discarded fish. Setting measures on F or the ACL incentivizes fishery managers to collect length frequency data on discarded fish through both improvements to the MRIP sampling design and state volunteer angler surveys. The discard length frequency data is then used to better understand how changes to the management measures impact the number of discards.

### **Section 3.3 Conservation Equivalency Options**

We support Option A that allows the continued use of conservation equivalency. Option A provides flexibility that may alleviate challenges associated with implementing a new HCR approach. The conservation equivalency process exists because it is too challenging to establish one set of bag, size and season limits that work across a broad geographic range of fish availability and angler preferences. Option A does not require conservation equivalency but allows it if needed.

### **Section 3.4 Accountability Measures Comparisons**

We support Option B which would utilize fishing mortality relative to the fishing mortality threshold in response to the application of accountability measures. The document states that the most recent fishing mortality estimate considers more recent information than the information used to set a previous year's ACL. Therefore, option B clearly represents the use of best available science which is timelier and more consistent with National Standard 2.<sup>1</sup>

Thank you for considering our input. We appreciate the ASMFC Policy Board and Council for their continued support of the recreational management reform initiative and the Fishery Management Action Team for their work on the harvest control rule addenda/framework.

Sincerely,

Michael Waine  
Atlantic Fisheries Policy Director  
American Sportfishing Association

Jeff Angers  
President  
Center for Sportfishing Policy

Ted Venker  
Conservation Director  
Coastal Conservation Association

Chris Horton  
Senior Director of Fisheries Policy  
Congressional Sportsmen's Foundation

Lorna O'Hara  
Interim Executive Director  
Recreational Fishing Alliance

Clay Crabtree  
Federal Government Relations Director  
National Marine Manufacturers Association

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<sup>1</sup> <https://www.fisheries.noaa.gov/national/laws-and-policies/national-standard-2-related-resources>

April 22, 2022

Dustin Colson Leaning  
FMP Coordinator  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street, Suite 200  
Arlington, VA 22201

Julia Beaty  
Fishery Management Specialist  
Mid-Atlantic Fishery Management Council  
800 North State Street, Suite 201  
Dover, DE 19901

**Re: Recreational Harvest Control Rule Framework/Addenda**

Dear Mr. Colson Leaning and Ms. Beaty:

On behalf of the organizations below, we provide these comments on the Mid-Atlantic Fishery Management Council's (Council) and Atlantic States Marine Fisheries Commission's (Commission) Recreational Harvest Control Rule (HCR) Framework/Addenda for the summer flounder, scup, black sea bass, and bluefish recreational fisheries.<sup>1</sup> Our organizations support strong implementation of the core conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act, including requirements to prevent overfishing with annual catch limits and accountability measures.

Recognizing the unique management challenges presented by these recreationally important species, and the importance of continued discussions on how to improve recreational data collection, stock assessments, and the annual process for setting recreational management measures (e.g., season lengths, bag and size limits) we appreciate that the HCR Framework/Addenda is in some respects attempting to address these challenges and improve management outcomes. However, we have serious concerns that some of the management options presented could increase the risk of overfishing. There remains significant ambiguity regarding how the options would be implemented within the framework of ACLs and annual accountability as required by federal law.

Given that the HCR approach is a significant departure from current management for these important species, we think it appropriate to proceed with caution, rather than being driven by a goal of implementing changes in time for the 2023 fishing season. We strongly recommend that the Council and Commission pause further consideration of the Draft HCR Framework/Addenda pending the completion and full consideration of the Council's Scientific and Statistical Committee's (SSC) review of the potential effects of the five alternatives, and pending completion of the statistical models that will predict recreational harvest based on selected input controls, which at present are not anticipated to be available for use for most species until Fall 2022 or later. Prior to any action being taken, the Council and Commission must also be able to clarify how the option(s) comply with the controlling Magnuson-Stevens Act framework.

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<sup>1</sup> Atlantic States Marine Fisheries Commission, Draft Addendum XXXIV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Addendum II to the Bluefish Fishery Management Plan for Public Comment, Harvest Control Rule for Recreational Management ("Harvest Control Rule Draft Framework/Addenda") (February 2022).

Furthermore, we are concerned that such a significant change to management is being pursued via a framework action by the Council, rather than through a full fishery management plan (FMP) amendment. As the Council notes, framework actions or adjustments can be made for “minor changes and modifications to existing measures,”<sup>2</sup> while “issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of an FMP instead of a framework adjustment.”<sup>3</sup> Given the scope of the changes proposed and the novelty of the underlying concepts, we recommend the Council use the more inclusive and thorough FMP amendment process to consider the changes proposed.

We provide initial thoughts on the HCR management options below, however, it is challenging without more information to fully assess the options against our primary concern of constraining recreational catch to annual catch limits and preventing overfishing. We anticipate that the further development of statistical models, as well as the review by SSC, will provide additional clarity regarding our concerns. We hope further public comment will be considered at that time and prior to any final action.

### **Controlling Magnuson-Stevens Act Requirements**

Since its 2007 reauthorization, the Magnuson-Stevens Act (MSA) has required science-based annual catch limits (ACLs) as a means of ending and preventing overfishing.<sup>4</sup> Each Council is required to “develop annual catch limits for each of its managed fisheries” that may not exceed recommendations of its scientific and statistical committee or the established peer review process.<sup>5</sup> For each fishery management plan, the Council must “establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.”<sup>6</sup> These conservation requirements are controlling over other considerations in federally managed fisheries, and management measures must have, at minimum, a 50% probability of preventing overfishing.<sup>7</sup> Further, in the case of an overfished stock, the MSA’s rebuilding requirements dictate that a rebuilding allowable biological catch (ABC) and ACL must be set at a level that ends overfishing immediately<sup>8</sup> and reflect “the annual catch that is consistent with the schedule of fishing mortality rates . . . in the rebuilding plan.”<sup>9</sup>

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<sup>2</sup> Mid-Atlantic Fishery Management Council, “Council Actions” at <https://www.mafmc.org/council-actions>

<sup>3</sup> Mid-Atlantic Fishery Management Council, Framework Actions Summary (May 2014), available at: <https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/589e07cfdb29d65cd8f551bc/1486751696154/Frameworks.pdf>

<sup>4</sup> See Senate Report 109-229 (April 4, 2006) at 21 (explaining the need for enhanced science-based management and accountability to curb continued overfishing under the Sustainable Fisheries Act of 1996 framework: “This provision is intended to provide a transparent accounting mechanism to help ensure that each fishery is in compliance with the overfishing and rebuilding requirements of the [MSA].”).

<sup>5</sup> Magnuson-Stevens Fishery Management and Conservation Act (MSA) § 302(h)(6), 16 U.S.C. § 1852(h)(6)

<sup>6</sup> MSA § 303(a)(15); 16 U.S.C. § 1853(a)(15)

<sup>7</sup> *Natural Resources Defense Council v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) ([U]nder the Fishery Act, the Service must give priority to conservation measures” and “[i]t is only when two different plans achieve similar conservation measures that the Service takes into consideration adverse economic consequences.”); National Standard 1 Guidelines, 50 C.F.R. § 600.310 (f)(2)(i).

<sup>8</sup> 16 U.S.C. § 1854(e)(3)(A).

<sup>9</sup> 50 C.F.R. § 600.310(f)(3)(ii).

Effective implementation of accountability measures (AMs) on an annual basis is a critical counterpart to ACLs in preventing overfishing. Under the National Standard 1 Guidelines, the Council must determine as soon as possible after the fishing year if an ACL is exceeded. If an ACL is exceeded, the Council is required to implement AMs “as soon as possible,” such as overage adjustments (i.e., paybacks) or other corrective measures to ensure catch is brought down below the ACL.<sup>10</sup> In the case of multi-year measures, plans “must include a mechanism for specifying ACLs for *each year* with appropriate AMs to prevent overfishing [emphasis added].”<sup>11</sup>

We note that recent amendments made to the MSA by the Modern Fish Act of 2018 clarified that Councils have authority to use certain fishery management measures, such as harvest control rules and fishing mortality targets, for recreational fisheries. The text of Section 102 and a statutory rule of construction within the Modern Fish Act made clear that such measures are only to be implemented “in addition to” annual catch limits, accountability measures, and the rebuilding requirements of the MSA.<sup>12</sup>

### **Proposed Harvest Control Rule Options**

Should the Council and Commission decide to pursue any of the HCR options for the black sea bass, summer flounder, scup, and/or bluefish fisheries, we strongly recommend only pursuing HCR option(s) that can help improve and strengthen application of ACLs and AMs to the relevant fisheries. Options should be considered only if they can clearly show how the MSA’s primary requirement to prevent overfishing will be achieved. As currently drafted, none of the Options B-E appear to have this as a goal or likely outcome, as they would decrease emphasis on whether recreational landings are kept at or below the recreational harvest limit (RHL) on an annual basis, which means they may be more at risk of exceeding the recreational ACL and risking stock status.<sup>13</sup> Prior to proceeding with such a drastic change to management, the Council and NMFS must ensure that the ACL and AM requirements of the law will be carried out. While the Framework/Addenda does recognize that the Council is bound by the

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<sup>10</sup> *Id.* at § 600.310(g)(3).

<sup>11</sup> *Id.* at § 600.310(f)(4)(i), providing further that “[a] multiyear plan must provide that, if an ACL is exceeded for a year, then AMs are implemented for the next year consistent with paragraph (g)(3) of this section.”

<sup>12</sup> The Modernizing Recreational Fisheries Act or “Modern Fish Act,” Public Law 115-405 (2018), sec. 201, codified as 16 U.S.C. § 1852(h)(8). Section 103 of the Modern Fish Act also provided a rule of construction as follows: “Nothing in this Act shall be construed as modifying the requirements of sections 301(a), 302(h)(6), 303(a)(15), or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a), 1852(h)(6), 1853(a)(15), and 1854(e)), or the equal application of such requirements and other standards and requirements under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to commercial, charter, and recreational fisheries, including each component of mixed-use fisheries.”

<sup>13</sup> In addition to the NS1 guidelines, which describe the need for annual accountability to ACLs, recent analysis by the Gulf Fishery Management Council regarding accountability in potential carryover provisions may also be instructive. The Council’s SSC considered simulations of carryovers and determined that pound-for-pound paybacks on an annual basis are key to ensuring the health of fish stocks: “Generally, so long as unharvested quota is carried over and overharvested fish are paid back pound for pound in the following fishing year, there are unlikely to be long-term negative effects on a species’ rebuilding plan. However, if carryover is permitted for a species which also experiences quota overages, and those overages are not paid back, the spawning stock biomass (SSB) will deplete, regardless of whether the stock is in a rebuilding plan.” Gulf Fishery Management Council, Carryover Provisions and Framework Modifications (Draft Generic Amendment) at 8-9 (June 2019), <https://gulfcouncil.org/wp-content/uploads/E-6a-Draft-Generic-Amendment-for-Quota-Carryover-and-Framework-Modification.pdf>.

requirements of the MSA, including requirements for ACLs, accountability measures, and prevention of overfishing,<sup>14</sup> as currently written, the Framework/Addenda document fails to show how the options presented will comply with this statutory mandate.

Under status quo management (Option A), each of the species being considered have both a commercial and a recreational ACL, and managers achieve the recreational ACL through the use of an RHL, which is set equal to the ACL minus estimated discard mortality. Accountability measures are already implemented in a way to take advantage of existing flexibility within the National Standard 1 Guidelines.<sup>15</sup> Option A is the only option that has a clearly stated goal of constraining harvest annually to the RHL and ACL, both science-based tools that are key to preventing overfishing in the long-term. Despite that goal, both the black sea bass and scup recreational fisheries exceeded their RHL in 2021, and more recently, the Atlantic states were unable to agree upon measures that would meet the scup RHL for the 2022 fishing season, leading NOAA Fisheries to propose a federal recreational closure.<sup>16</sup> This indicates that there is room for improvement in status quo management of these fisheries, particularly regarding how managers are monitoring and predicting recreational catch and accounting for uncertainty. We note that some of the advancements being considered in this Framework/Addenda, such as the use of the Recreational Fleet Dynamics Model and/or the Recreational Economic Demand Model, could potentially also be used to supplement status quo management.

Options B-E, by contrast, each indicate a preference for setting management measures in two-year cycles to align with new assessment information, and evening out accountability measures over two years. While this may in some cases provide more predictability for the recreational fishing community, it does not allow managers to respond to increased fishing effort or concerning biomass trends in as nimble a fashion as annual measures. Some of the Options, particularly the Percent Change approach (Option B), also seem to further divorce management measures from ACLs with the use of predetermined catch reductions/increases. Under Option B, necessary harvest reductions for a predicted overharvest that falls beneath the confidence interval (e.g., 20% if stock biomass is between the target level and 150% of the target, or no reduction if stock biomass is greater than 150% of the target) may not correlate to or properly respond to the RHL, and thus may be more likely to result in overfishing.<sup>17</sup>

For Options B-E to be properly assessed and compared, we believe more clarification is needed to ensure that recreational landings would be constrained to an RHL and ACL to prevent overfishing on an annual basis as required by the MSA. Our comments on the options are thus preliminary in nature. Of Options B-E, the Biological Reference Point Approach (Option D) may hold the most promise for improvements to status quo management, as it puts forth a wide variety of possible management responses depending on different combinations of spawning stock biomass and fishing mortality, with liberalizations or

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<sup>14</sup> Draft HCR Framework/Addenda document, *supra* note 1, at 12.

<sup>15</sup> See, e.g., MAFMC Summary of Accountability Measures for Summer Flounder, Scup, and Black Sea Bass (December 2020), available at [https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5fc7f80aa37e3325c14d37a8/1606940682870/AMs+description\\_SF\\_scup+BSB\\_Dec2020.pdf](https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5fc7f80aa37e3325c14d37a8/1606940682870/AMs+description_SF_scup+BSB_Dec2020.pdf)

<sup>16</sup> NOAA Fisheries, Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2022, 87 Fed Reg. 22863 (May 18, 2022).

<sup>17</sup> Harvest Control Rule Draft Framework/Addenda at 19.



restrictions also considering recruitment and biomass trends.<sup>18</sup> This approach may allow for the most built-in precautionary management to prevent overfishing, and allow for managers to respond more nimbly to changes in stock status and fishing effort. Option D also includes mandatory reactive AMs to respond to declining stock status, which the other options do not. However, as with the other new options, we believe a great deal more clarification is needed.

### **Implementing ACLs and Accountability Measures for Options B-E**

We are particularly concerned by the Draft HCR Framework/Addenda's discussion on pages 32-33 of alternative "target metrics" for setting recreational measures. As discussed above, the current RHL-ACL framework is a critical component of preventing overfishing as required by the MSA. And, at least as explained in the Draft document, setting recreational measures based on a "Recreational Fishing Mortality Target," absent an RHL and ACL, would not comply with the ACL requirement.<sup>19</sup>

Additionally, it is important to consider that the consistent application of accountability measures is the linchpin of a functioning catch limit system. It is a primarily technical exercise to "set" a total allowable catch, but the implementation and use of AMs makes the difference between a "hard TAC," where fisheries are held accountable to meeting the science-based ACL, and a "soft TAC," where there is less accountability and overages of the TAC need not be paid back in the same way (i.e., TACs are viewed as a target rather than a limit). As the recreational sector continues to grow, it will be increasingly important to ensure that it is managed sustainably and with a focus on improving the accuracy and timeliness of data collection. Not only would reduced accountability for the recreational sector increase the risk of overfishing and stock depletion, but it will create a disparity with the commercial sector in the case of these mixed sector fisheries, likely leading to what are effectively de facto reallocations in some cases.

Lastly, the Draft HCR Framework/Addenda is an important opportunity to consider how management uncertainty can be better accounted for in setting catch levels. The potential relaxation of RHLs through these options, coupled with high management uncertainty, could lead to increasingly volatile seasons if those limits are exceeded and accountability measures are required to prevent overfishing. The National Standard 1 Guidelines require the use of buffers to account for management uncertainty.<sup>20</sup> Whether the Council and Commission opt to pursue any of the new management options or no action, it is critical to consider relative management uncertainty.

### **Additional Process Considerations**

If the Council and Commission pursue one of the HCR options currently proposed, we strongly suggest phasing in implementation of new measures and beginning with one fishery on a trial basis. The HCR approach represents a significant departure from how recreational fisheries for these four species have been managed to date, and the status of the stocks and recent management trends indicate that a precautionary approach is warranted. All four of the stocks being considered have once been overfished and subsequently rebuilt, while bluefish is still under its second rebuilding plan, and summer flounder is

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<sup>18</sup> Harvest Control Rule Draft Framework/Addenda at 25-28.

<sup>19</sup> MSA §§ 302(h)(6), § 303(a)(15); 16 U.S.C. §§ 1852(h)(6), 1853(a)(15)

<sup>20</sup> 50 C.F.R. § 600.310(f)(1)(v), (4)(i).

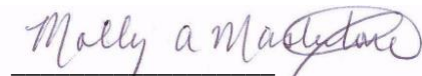
below its biomass target.<sup>21</sup> The black sea bass fishery, which is at double its target biomass level, may be the most appropriate fishery on which to trial new models and management approaches within the MSA framework.

This action could be highly significant for the health of the managed fish populations, the livelihoods of fishermen and anglers who depend on them, and for other regions following along. We re-emphasize that it is important to pause further consideration of this action until the SSC has completed its full review of the questions before it, the SSC and Commission/Council have further time to review the statistical models, and there is subsequent opportunity for public engagement through an iterative Council process. The Council should also prioritize improvements the Marine Recreational Information Program (MRIP) and other surveys, including consideration of the of the data collection, analysis, and integration recommendations set forth in the 2021 report by the National Academy of Sciences (NAS) to facilitate better annual and in-season management.<sup>22</sup>

\* \* \* \*

Thank you for the opportunity to comment on these important issues. Please do not hesitate to contact us if you have any questions.

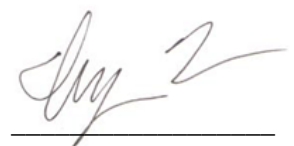
Sincerely,



Molly Masterton  
Director, U.S. Fisheries and Staff Attorney  
Natural Resources Defense Council



Erica Fuller  
Senior Attorney  
Conservation Law Foundation



Ivy Fredrickson  
Senior Staff Attorney  
Ocean Conservancy

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<sup>21</sup> Harvest Control Rule Draft Framework/Addenda at 8-10.

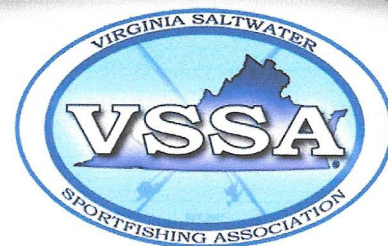
<sup>22</sup> National Academies of Sciences, Engineering, and Medicine 2021. Data and Management Strategies for Recreational Fisheries with Annual Catch Limits. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26185>.

# Virginia Saltwater Sportfishing Association, Inc (VSSA)

3419 Virginia Beach Blvd #5029

Virginia Beach, VA 23452

joinvssa.org



Steve Atkinson  
President

April 21, 2022

David Tobey  
Vice President

Dustin Colson Leaning  
FMP Coordinator

John Powers  
Secretary - Treasurer

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

## Board of Directors

RE: Harvest Control Rule

Mike Avery,  
Chairman

Dear Mr. Leaning

Curtis Tomlin,  
Advisor

The Virginia Saltwater Sportfishing Association was founded in 2015 and currently represents over 600 anglers and six fishing clubs in the Commonwealth of Virginia. VSSA submits the following comments on the Guide to the Recreational Harvest Control Rule Draft Framework/Addenda.

Ray Alley

Of the five (5) options offered for setting the recreational bag, size, and season limits we can only recommend only Option B at this time. VSSA strongly believes the harvest control rule options should consider more than just recreational harvest data from the questionable MRIP data when determining the recreational bag, size and seasons. Additionally, we believe more comprehensive data such as fishing mortality, recruitment, and in particular the biomass level mentioned in options C, D, & E are needed, but not until the actual outcomes and harvest levels, or the measures, for these alternatives can be quantified.

Steve Anderson

Steve Atkinson

Mike Avery

John Bello

Scott Gregg

Stan Gold

Jerry Hughes

John Powers

David Tobey

In summary, VSSA does not support status quo and we urge managers to implement alternatives that use more than just the recreational harvest data for determining measures. Additionally, we cannot choose a specific alternative until we know the outcomes of measures for options C, D & E. Option B is better than status quo and look forward to re-evaluating Options C, D and E, once the measures and harvest levels for those alternatives are known.

John Page Williams

Thank you for the opportunity to comment and considering our position on this important issue."

Respectfully,

  
John J. Bello

Chair – Government Relations Committee

Cc Patrick Geer - VMRC



April 22, 2022

Dustin Colson Leaning, FMP Coordinator  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street, Suite 200  
Arlington, VA 22201

**Re: Harvest Control Rule**

Dear Mr. Colson Leaning,

On behalf of *Wild Oceans*, an organization founded by anglers in 1973, I am pleased to provide comments on the Harvest Control Rule for Recreational Management Addenda/Framework, which would modify the Mid-Atlantic Fishery Management Council (MAFMC) and Atlantic States Marine Fisheries Commission (ASMFC) management plans for summer flounder, black sea bass, scup and bluefish.

Our organization firmly believes that the conservation of fishery resources must be first and foremost in order to secure a vibrant future for fishing. Health of the resource must be prioritized over fisheries access in management plans. Therefore, we are disappointed that the draft document was sent out for public comment before statistical models necessary for informing the options are ready for use<sup>1</sup> and before the completion of a scientific evaluation of overfishing risk associated with the various options. **Absent this information, we cannot support moving ahead with the Addenda/Framework at this time.**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires the federal councils to prevent overfishing. Specifically, National Standard 1 Guidelines call on the regional management councils to “establish an ABC [acceptable biological catch] control rule that accounts for scientific uncertainty in the OFL [overfishing limit] and for the Council’s risk policy, and that is based on a comprehensive analysis that shows how the control rule prevents overfishing. The Council’s risk policy could be based on an acceptable probability (at least 50 percent) that catch equal to the stock’s ABC will not result in overfishing.”<sup>2</sup> ABCs recommended by the Council’s Scientific and Statistical Committee (SSC) must prevent overfishing and must consider scientific uncertainty consistent with the Council’s risk policy.<sup>3</sup>

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<sup>1</sup> Holzer, J., Jiao, Y. and Jones, C. September 20, 2021. *Mid-Atlantic Fishery Management Council Sub-Group of the Scientific and Statistical Committee. Peer Review Report of Recreational Fishery Models.* [https://www.mafmc.org/s/05\\_Rec-Model-Peer-Review-Reports.pdf](https://www.mafmc.org/s/05_Rec-Model-Peer-Review-Reports.pdf)

<sup>2</sup> 50 CFR § 600.310 (f)(2)

<sup>3</sup> Memorandum from the Joint PDT/FMAT for Recreational Reform to the Mid-Atlantic Fishery Council and ASMFC Policy Board. *Overview of work, major accomplishments, and timeline recommendations.* October 1, 2021. [https://www.mafmc.org/s/03\\_FMAT-PDT-Memo-RecReform.pdf](https://www.mafmc.org/s/03_FMAT-PDT-Memo-RecReform.pdf)

Annual Catch Limits (ACLs) cannot exceed the ABC and must work in coordination with Accountability Measures (AMs) to prevent overfishing.<sup>4</sup>

To understand how each of the harvest control rule options perform under the MAFMC risk policy, the Council and ASMFC Policy Board passed a motion at their February joint meeting to:

Request that the SSC provide a qualitative evaluation, in time for final action at the June 2022 Council/Policy Board meeting, regarding the potential effect of each of the five primary alternatives in the Harvest Control Rule Addendum/Framework on the SSC's assessment and application of risk and uncertainty in determining ABCs. The intent is to provide the Council and Policy Board with information to consider the tradeoffs among the different alternatives with respect to the relative risk of overfishing, increasing uncertainty, fishery stability, and the likelihood of reaching/remaining at  $B_{MSY}$  for each approach at different biomass levels.<sup>5</sup>

Regrettably, this evaluation is not scheduled to be complete and available for public review until after the public comment period for this action closes.

Recreational fisheries are fundamentally different from commercial fisheries and warrant different approaches to the way they are monitored and managed. *Wild Oceans* supports the goal of the Addenda/Framework "to establish a process for setting recreational bag, size, and season limits for summer flounder, scup, black sea bass, and bluefish such that measures aim to prevent overfishing, are reflective of stock status, appropriately account for uncertainty in the recreational data, take into consideration angler preferences, and provide an appropriate level of stability and predictability in changes from year to year." However, meeting this goal should not come at the expense of holding the recreational sector to a lesser standard than commercial fisheries when it comes to conservation of the resource. A scientifically-robust evaluation of harvest control rule options should ensure stakeholders this is not the case.

Without the final report from the Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee and in the absence of statistical models deemed "critical for thorough analysis of the options," we cannot select a preferred option at this time. We urge both the ASMFC and the MAFMC to postpone final action until these tools become available and the public is granted adequate time to evaluate the Harvest Control Rule options with these resources in hand.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Pam Lyons Gromen". The signature is fluid and cursive, with the first name "Pam" being the most prominent.

Pam Lyons Gromen  
Executive Director

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<sup>4</sup> MSA § 303(a)(15)

<sup>5</sup> MAFMC. February 2022 Meeting Motions. [https://www.mafmc.org/s/2022-02\\_MAFMC-Motions.pdf](https://www.mafmc.org/s/2022-02_MAFMC-Motions.pdf)