



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114  
p: (617) 626-1520 | f: (617) 626-1509  
[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



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Director

April 3, 2023

Mr. Michael Pentony, Regional Administrator  
NOAA Fisheries, Greater Atlantic Region  
55 Great Republic Drive  
Gloucester, MA 01930

Re: Comment on Proposed Rule NOAA–NMFS–2023–0019

Dear Mr. Pentony,

Please consider this comment in response to NOAA Fisheries' proposed rule for federal management measures for the summer flounder, scup and black sea bass fisheries for fishing year 2023 (88 FR 19046), specifically the change to the recreational scup open season from year-round to May 1–December 31.

The proposed federal January 1–April 30 recreational scup closure (in addition to reducing the possession limit by 10 fish to 40 fish) was initially recommended by the Mid-Atlantic Fishery Management Council (MAFMC) and approved by the Atlantic States Marine Fisheries Commission (ASMFC) in December 2022 as part of an action to achieve a mandatory 10% reduction in coastwide harvest for 2023. Because these changes to the federal regulations were not projected to achieve the full reduction, the states were also required to further modify their regulations through the ASMFC process to achieve the remaining reduction. Since that time, the states have selected and begun to implement a suite of ASMFC-approved state waters regulations that are projected to achieve the required reduction. This, in conjunction with some states' concerns about disproportionate impacts along the coast from the closure, led the ASMFC to recommend that NOAA Fisheries reconsider the federal seasonal closure. The MAFMC will consider its response to the ASMFC motion this week.

During your anticipated review of the need and appropriateness of implementing a January 1–April 30 federal recreational scup closure, I ask that you consider the following in addition to whether the coastwide reduction is achieved by the states' measures.

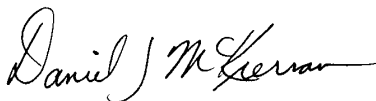
- The regional approach for recreational scup management has most often meant that the southern states largely align their rules with the federal measures while the northern states amend their regulations to shoulder most of the burden needed to achieve but not exceed the recreational harvest target. When the motion was made to amend the federal measures for 2023 it was, as was stated by my ASMFC Board proxy during the meeting, with the expectation that this history would repeat itself, and all states would thereby contribute to the coastwide reduction. While ultimately many of the southern states have chosen not to implement the proposed federal closure (or minimum size) in state waters, its enactment in federal waters will ensure a more meaningful contribution to the coastwide reduction due to the harvest location of

most scup landed within their states. Though it is argued that these states' harvest and implementation of measures is inconsequential to the coastwide target, the disparity in recreational regulations between that southern and northern states—not just for scup but also black sea bass—is highly significant to those involved in these fisheries.

- The states of Massachusetts through New Jersey, where more than 99% of all recreationally harvested scup are landed, have all selected state waters measures that include a closure during January–April to help achieve the required reduction. While not being implemented until 2024, these closures are being credited to the states' 2023 projected reductions, and it would be inappropriate for the states to roll back the measures before they take effect next year. Assuming state measures are not revised again before spring 2024, having federal waters closed during the same period next year will promote compliance and enforcement with the states' measures. Additionally, the Recreational Demand Model cannot analyze federal waters measures separately from state measures, and the harvest reduction associated with the states' combined measures assumes application of the states' closures in federal waters.
- All states from Massachusetts through North Carolina are closed to recreational black sea bass harvest during the months of January–April (with the rare exception of those that opt into the February access program, which has been limited to Virginia in recent years). Given the overlap of these species' fisheries, the scup closure will help limit non-compliance with the black sea bass retention prohibition and reduce regulatory discarding of sea bass, including fish generally caught at depth during this time of year and more susceptible to barotrauma. Reductions in recreational black sea bass discard mortality could translate into more harvest opportunities for this species which is subject to much more stringent regulations than scup.
- A closure during January–February when Marine Recreational Information Program (MRIP) sampling does not occur in the management unit (except in North Carolina) avoids the inherent inequity of a “free” (i.e., not accounted for with regards to harvest limits) two months of fishing only for those states with access to the resource at that time of year.

In closing, I encourage you to enact the federal recreational scup measures as proposed, including a May 1–December 31 open season, 40 fish possession limit, and 10” minimum size. Thank you for the opportunity to comment.

Regards,



Daniel J. McKiernan  
*Director*

Cc:

MA Marine Fisheries Advisory Commission  
Robert Beal, Toni Kerns, ASMFC  
Chris Moore, MAFMC  
Emily Keiley, NOAA Fisheries