

**Summer Flounder, Scup, and Black Sea Bass
2022-2023 Specifications**

**Supplemental Information Report (SIR) and Fishery Specifications
Document**

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**Prepared by the
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in cooperation with
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Acronyms and Abbreviations

ABC	Acceptable Biological Catch
ACL	Annual Catch Limit
ACT	Annual Catch Target
APA	Administrative Procedure Act
ASMFC	Atlantic States Marine Fisheries Commission (Commission)
Board	ASMFC Summer Flounder, Scup, and Black Sea Bass Board
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Commission	Atlantic States Marine Fisheries Commission (ASMFC)
Council	Mid-Atlantic Fishery Management Council (MAFMC)
CZMA	Coastal Zone Management Act
EA	Environmental Assessment
EFH	Essential Fish Habitat
EO	Executive Order
ESA	Endangered Species Act
F	Fishing mortality rate
FMP	Fishery Management Plan
FR	Federal Register
GARFO	Greater Atlantic Regional Fisheries Office
MAFMC	Mid-Atlantic Fishery Management Council
MC	Monitoring Committee
MMPA	Marine Mammal Protection Act
MRIP	Marine Recreational Information Program
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSY	Maximum Sustainable Yield
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
NOAA	National Oceanic and Atmospheric Administration
OFL	Overfishing Limit
PBR	Potential Biological Removal
PRA	Paperwork Reduction Act
RHL	Recreational Harvest Limit
SIR	Supplemental Information Report
SSB	Spawning Stock Biomass
SSC	Scientific and Statistical Committee

1.0 Introduction

This document supports implementation of acceptable biological catch (ABC) levels, recreational and commercial annual catch limits (ACLs), annual catch targets (ACTs), commercial quotas, and recreational harvest limits (RHLs) for the summer flounder, scup, and black sea bass fisheries for 2022-2023. These measures are based on 2021 management track assessment updates and corresponding recommendations from the Scientific and Statistical Committee (SSC), Monitoring Committee (MC), Mid-Atlantic Fishery Management Council (Council), and the Atlantic States Marine Fisheries Commission's (Commission's) Summer Flounder, Scup, and Black Sea Bass Management Board (Board). The proposed measures are described in detail in Section 5.0.

Catch and landings limits for these species do not roll over from one year to the next. Commercial quotas and RHLs must be in place by January 1 of each year to meet the Fishery Management Plan (FMP) objectives and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

The proposed catch and landings limits for 2022-2023 are expected to have similar impacts as those analyzed in two previous Environmental Assessments (EAs): the 2020-2021 Summer Flounder Specifications EA (MAFMC 2019; 84 FR 54041) and the 2020-2021 Scup and Black Sea Bass Specifications EA (MAFMC 2020a; 85 FR 29345). Those documents were prepared using the 1978 CEQ NEPA Regulations. These documents are collectively referred to hereafter as "the 2020-2021 Specifications EAs."

Sections 1.0 through 8.0 are components of a Supplemental Information Report (SIR) which demonstrates compliance with the National Environmental Policy Act (NEPA). As described in section 2.0, an SIR is used to determine whether a proposed action will require further analysis beyond a prior NEPA analysis for a related action. Section 9.0 demonstrates compliance with other applicable laws, including the MSA.

Summer flounder, scup, and black sea bass are cooperatively managed by the Council and the Commission. The Council and the Board meet jointly each year to consider the recommendations of the SSC and the MC, as well as input from Advisory Panel (AP) members, and other information, before making recommendations for ABCs, ACLs, commercial quotas, RHLs, and other commercial and recreational management measures for all three species. These annual recommendations are also referred to as specifications. The Council submits these recommendations to the NMFS Greater Atlantic Regional Administrator to consider for implementation. The Regional Administrator then reviews the recommendations and may revise them, if necessary, to achieve FMP objectives and to meet statutory requirements.

Summer flounder, scup, and black sea bass catch and landings limits are established on an annual basis for up to three years at a time, based on stock size projections for upcoming years and advice from the SSC and MC. The MSA requires that the Council's SSC provide recommendations for ABC, prevention of overfishing, and maximum sustainable yield (MSY). The Council's catch limit recommendations cannot exceed the ABCs recommended by the SSC. The MC is responsible for developing recommendations to the Council on management measures, including ACLs and ACTs, to achieve the recommended catch limits for each species. The ACTs may be set equal to or less than the ACLs to account for management uncertainty. Sector-specific landings limits are

implemented in the form of a commercial quota and RHL after deducting projected dead discards from the sector-specific ACLs.

2.0 Purpose of this Supplemental Information Report and the Proposed Action

The purpose of this SIR is to determine if the recommended summer flounder, scup, and black sea bass catch and landings limits for 2022-2023 (section 5.0) require further analysis beyond that presented in the 2020-2021 Specifications EAs.

The proposed action would implement 2022-2023 specifications for these three species based on management track stock assessments with data through 2019. Catch and landings limits for these species were previously implemented for 2020-2021 based on prior recommendations of the Council and Board. For summer flounder, 2020-2021 catch and landings limits were adopted by the Council and Board in March 2019 and analyzed in the 2020-2021 Summer Flounder Specifications EA (MAFMC 2019; 84 FR 54041, effective October 9, 2019). Black sea bass and scup 2020-2021 catch and landings limits were adopted by the Council and Board in October 2019 and analyzed in the 2020-2021 Scup and Black Sea Bass Specifications EA (MAFMC 2020a; 85 FR 29345, effective May 15, 2020).

In December 2019, the Council adopted revisions to its ABC control rule and risk policy to allow a greater acceptable risk of overfishing at most biomass levels, up to a maximum 49% probability of overfishing (85 FR 81152, effective December 15, 2020). The 2021 specifications implemented through the 2020-2021 Specifications EAs were modified to account for this change in the risk policy. The revised 2021 specifications were analyzed via an SIR (MAFMC 2020b; 85 FR 82946, effective 01/01/2021). Therefore, the revised 2021 specifications differ slightly from the preferred action for 2021 analyzed in the two previous EAs; however, the revised 2021 specifications fall within the range of those analyzed in the 2020-2021 Specifications EAs. The 2021 revisions only accounted for the change in the risk policy and a change in how expected discards are factored into the black sea bass specifications.

The SSC met on July 22, 2021 to review the 2021 management track assessment results and associated stock projections and recommend 2022-2023 ABCs for summer flounder, scup, and black sea bass. These assessments added one additional year of data to the stock assessment models for scup and black sea bass and two additional years for summer flounder. The 2021 management track assessments did not result in a notable change in our understanding of stock status for any of the three species.

The MC met on July 27, 2021 to recommend ACLs, ACTs, commercial quotas, and RHLs based on the SSC's recommended ABCs. The Monitoring Committee also reviewed the commercial management measures which can be modified through the specifications process and recommended no changes.

At their joint August 9, 2021 meeting, after reviewing recent fishery trends and considering the advice of the SSC, MC, and AP, the Council and Board recommended 2022-2023 commercial and recreational catch and landings limits that were in agreement with the MC recommendations. This action proposes these recommended limits, which are described in section 5.0.

As previously stated, this SIR is supported by the information and analysis presented in the 2020-2021 Specifications EAs referenced above. Additional information is also provided in the SIR which supported the revisions to the 2021 specifications due to the risk policy change. The proposed catch and landings limits described in this document for scup and black sea bass are within the range of limits previously analyzed in the 2020-2021 Specifications EA. The proposed summer flounder catch and landings limits are close to the range of limits previously analyzed and are expected to have impacts similar to the previously analyzed limits. As described in more detail below, a review of recent fishery information and the assessment updates indicates that there have been no substantial changes in the fishery or other new information that would alter the range of impacts previously considered in the 2020-2021 Specifications EAs (see section 6.0).

In making a determination on the need for additional analysis under NEPA, we have considered and have been guided by the Council on Environmental Quality (CEQ) NEPA regulations and applicable case law. The CEQ's regulations state that "[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 Code of Federal Regulations (C.F.R.) § 1502.9(d)(1). Consistent with 40 C.F.R. 1502.9(d)(4) and 1501.3(b) we have determined that any changes to the proposed action or new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement.

3.0 Original Action: 2020-2021 Catch and Landings Limits

3.1 Summer Flounder

3.1.1 Original Preferred Alternative for Summer Flounder

In 2019, the Council and Board approved summer flounder specifications for 2019-2021 after considering advice from the SSC, MC, and AP. These specifications were based on the results of a benchmark stock assessment developed and peer reviewed in 2018 (NEFSC 2019a). The assessment incorporated data through 2017, including the revised time series of recreational catch provided by MRIP.¹

At their February 2019 meeting, the MC recommended commercial and recreational ACLs for 2019-2021 based on the SSC's recommended ABCs and the commercial/recreational allocations. Specifically, they divided the projected landings component of the ABC provided with the ABC projections based on the FMP-specified allocation (60% of the total allowable landings to the commercial fishery and 40% to the recreational fishery). They divided the projected discards component of the ABC provided with the ABC projections based on the most recent 3-year average of discards by sector (2015-2017; Table 1). The MC recommended setting the sector-specific ACTs equal to their respective ACLs with no deduction for management uncertainty.

¹ In July 2018, MRIP released revisions to their time series of recreational catch and landings estimates based on adjustments for a revised angler intercept methodology and a new effort estimation methodology (i.e., a transition from a telephone-based effort survey to a mail-based effort survey). The revised estimates of catch and landings for most years are several times higher than the previous estimates for shore and private boat modes.

At their March 2019 meeting, the Council and Board accepted the 2019-2021 ABCs recommended by the SSC along with the MC’s commercial and recreational catch and landings limit recommendations. They recommended a commercial quota of 11.53 million pounds and an RHL of 7.69 million pounds for each of the three years (2019-2021, Table 1).

The 2019 catch and landings limits were revised mid-year based on these recommendations and analyzed via a SIR, while the 2020-2021 limits were analyzed in the 2020-2021 Summer Flounder Specifications EA and implemented via an October 9, 2019 final rule (84 FR 54041). As previously stated, the 2021 specifications were revised in 2020 to account for a change in the Council’s risk policy (MAFMC 2020c; 85 FR 82946, effective 01/01/2021). The revised 2021 commercial quota and RHL are shown in Table 7.

Table 1: 2020-2021 summer flounder catch and landings limits analyzed in the 2020-2021 Summer Flounder Specifications EA. All values for 2020 and 2021 are the same except for the OFLs. The 2021 limits were revised via an SIR in 2020. The revisions to the 2021 measures are not included in this table but are shown in Table 7.

Measure	2020		2021		Basis
	mil lb	mt	mil lb	mt	
OFL	30.94	14,034	31.67	14,367	Stock projections
ABC	25.03	11,354	25.03	11,354	SSC recommendations based on risk policy
ABC landings Portion	19.21	8,715	19.21	8,715	Stock projections
ABC discards portion	5.82	2,639	5.82	2,639	Stock projections
Expected commercial discards	2.00	907	2.00	907	34% of ABC discards portion, based on 2015-2017 average % discards by sector
Expected recreational discards	3.82	1,732	3.82	1,732	66% of ABC discards portion, based on 2015-2017 average % discards by sector
Commercial ACL	13.53	6,136	13.53	6,136	60% of ABC landings portion (FMP allocation) + expected commercial discards
Commercial ACT	13.53	6,136	13.53	6,136	No deduction from ACL for management uncertainty
Commercial quota	11.53	5,229	11.53	5,229	Commercial ACT, minus expected commercial discards
Recreational ACL	11.51	5,218	11.51	5,218	40% of ABC landings portion (FMP allocation) + expected recreational discards
Recreational ACT	11.51	5,218	11.51	5,218	No deduction from ACL for management uncertainty
RHL	7.69	3,486	7.69	3,486	Recreational ACT, minus expected recreational discards

3.1.2 Other Alternatives Analyzed for Summer Flounder

The 2020-2021 Summer Flounder Specifications EA also analyzed alternatives for commercial quotas and RHLs that were 25% higher (alternative 2 in the EA) and 25% lower (alternative 3)

than those described in the previous section (alternative 1, the preferred alternative). All alternatives analyzed in the EA are summarized in Table 2. No major changes to the stock or fisheries were anticipated for upcoming years; therefore, a moderate range above and below the status quo and preferred alternative was considered reasonable.

As previously stated, these alternatives were developed prior to the recent changes in the Council risk policy. They were also developed prior to the 2021 management track assessment which incorporated two additional years of data compared to the prior assessment.

The 2022-2023 specifications proposed in this document are slightly higher than the previously alternative 2 and are expected to have similar impacts to those analyzed under this alternative (see section 6.0).

Table 2: Landings limit alternatives previously analyzed for summer flounder in the 2020-2021 Specifications EA.

Alternative	Commercial quota (mil lb)	RHL (mil lb)
Alternative 1 (Status Quo/Preferred)	11.53	7.69
Alternative 2 (least restrictive)	14.41	9.61
Alternative 3 (most restrictive)	8.65	5.77

3.2 Scup

3.2.1 Original Preferred Alternative for Scup

In 2019, the Council and Board approved scup specifications for 2010-2021 after considering advice from the SSC, MC, and AP. These specifications were based on the results of an operational stock assessment which was peer reviewed and accepted in August 2019 (NEFSC 2019b). This assessment incorporated fishery catch and fishery-independent survey data through 2018, including revised recreational catch data provided by MRIP for 1989-2018.² The ABCs were based on an SSC-modified OFL CV of 60% and the Council’s risk policy (that has since been updated) for a species with a typical life history and biomass level above B_{MSY}, resulting in a 40% probability of overfishing. The ACLs were based on the commercial/recreational allocation specified in the FMP. The ACTs were set equal to the ACLs, with no deduction for management uncertainty. The commercial quota and RHL were set by subtracting expected discards from the ACTs. Expected discards were calculated based on the 3-year average percent of dead discards attributable to each sector.

The 2020-2021 specifications adopted in 2019 meeting are shown in Table 3. They were implemented via final rule May 15, 2020 (85 FR 29345), replacing the interim 2020 measures adopted in mid-2019 (84 FR 54041).

² See previous footnote on the revisions to MRIP data.

Table 3:2020-2021 scup specifications implemented through the 2020-2021 Scup and Black Sea Bass Specifications EA. The 2021 limits were revised via an SIR in 2020. The revised 2021 values are not shown in this table but are shown in Table 8.

Management measure	2020		2021		Basis
	mil lb	mt	mil lb	mt	
OFL	41.17	18,674	35.30	16,012	Assessment projections
ABC	35.77	16,227	30.67	13,913	SSC recommendations based on risk policy
ABC discards portion	7.03	3,190	7.26	3,295	Assessment projections
Commercial ACL	27.90	12,657	23.92	10,852	78% of ABC (per FMP)
Commercial ACT	27.90	12,657	23.92	10,852	No deduction from ACL for management uncertainty
Expected commercial discards	5.67	2,574	5.86	2,659	80.7% of ABC discards (avg. % of dead discards from commercial fishery, 2016-2018)
Commercial quota	22.23	10,083	18.06	8,194	Commercial ACT minus discards
Recreational ACL	7.87	3,570	6.75	3,061	22% of ABC (per FMP)
Recreational ACT	7.87	3,570	6.75	3,061	No deduction from ACL for management uncertainty
Expected recreational discards	1.36	616	1.40	636	19.3% of the ABC discards (avg. % of dead discards from rec. fishery, 2016-2018)
RHL	6.51	2,954	5.34	2,424	Recreational ACT minus discards

3.2.2 Other Alternatives Analyzed for Scup

In addition to the catch and landings limits summarized above (represented by alternative 1B in the EA, the preferred alternative), the 2020-2021 Specifications EA also analyzed the potential impacts of implementing the 2018-2019 catch and landings limits in 2020-2021 (alternative 1A, the status quo alternative), as well as commercial quotas and RHLs that were 25% higher (alternative 1C) and 25% lower (alternative 1D) than the preferred alternative. These alternatives are summarized in Table 4. No major changes to the stock or fisheries were anticipated for upcoming years; therefore, a moderate range above and below the status quo and preferred alternative was considered reasonable.

As shown in Table 4 the commercial quota and RHL under alternatives 1A, 1C, and 1D would be identical in 2020 and 2021, but would vary across the two years under alternative 1B. The Council and Board recommended varying catch and landings limits across 2020-2021 as their preferred alternative. The other scup alternatives (i.e., alternatives 1A, 1C, and 1D) were not preferred and were included for comparison purposes only. They include constant catch and landings limits across the two years for ease of comparison.

The proposed 2022-2023 specifications fall within this range, between alternatives 1B and 1D. Therefore, the impacts of the revisions proposed in this document are expected to fall within the range of impacts described for these two options (see section 6.0).

Table 4: 2020-2021 scup commercial quota and RHLs analyzed through the 2020-2021 Scup and Black Sea Bass Specifications EA.

Alternative	Commercial quota (mil lb)		RHL (mil lb)	
	2020	2021	2020	2021
1A (status quo)	23.98		7.37	
1B (preferred)	22.23	18.06	6.51	5.34
1C (least restrictive)	29.98		9.21	
1D (most restrictive)	16.67		4.88	

3.3 *Black Sea Bass*

3.3.1 **Original Preferred Alternative for Black Sea Bass**

In 2019, the Council and Board approved black sea bass specifications for 2010-2021 after considering advice from the SSC, MC, and AP. These specifications were based on the results of an operational stock assessment which was peer reviewed and accepted in August 2019 (NEFSC 2019b). This assessment incorporated fishery catch and fishery-independent survey data through 2018, including revised recreational catch data provided by MRIP for 1989-2018.³ The ABCs were based on an SSC-modified OFL CV of 100% and the Council’s risk policy (that has since been updated) for a species with a typical life history and biomass level above B_{MSY} , resulting in a 40% probability of overfishing. The ACLs were calculated by applying the commercial/recreational allocation specified in the FMP to the amount of the ABC expected to be landed, which was estimated based on the most recent 3 year average proportion of total dead catch that came from landings vs. dead discards. The ACTs were set equal to the ACLs, with no deduction for management uncertainty. The commercial quota and RHL were set by subtracting expected discards from the ACTs. Expected discards by sector were calculated based on the 3-year average percent of dead discards attributable to each sector.

The 2020-2021 specifications adopted in 2019 meeting are shown in Table 5. They were implemented via final rule May 15, 2020 (85 FR 29345), replacing the interim 2020 measures adopted in mid-2019 (84 FR 54041).

As previously stated, the 2021 specifications were further revised to account for changes to the Council’s risk policy and based on an improved method for calculating expected discards for black sea bass.

³ See previous footnote on the revisions to MRIP data.

Table 5: 2020-2021 black sea bass catch and landings limits analyzed in the 2020-2021 Scup and Black Sea Bass Specifications EA. All values for 2020 and 2021 are the same except for the OFLs. The 2021 limits were revised via an SIR in 2020. The revisions to the 2021 measures are not included in this table but are shown in Table 9.

Measure	2020 & 2021		Basis
	Mil lb.	MT	
OFL	2020: 19.39 2021: 17.68	2020: 8,795 2021: 8,021	2019 operational stock assessment projections
ABC	15.07	6,835	SSC recommendation based on Council risk policy
ABC landings portion	11.39	5,164	76% of ABC, based on avg. 2016-2018 discards as % of catch
ABC discards portion	3.68	1,671	24% of ABC, based on avg. 2016-2018 discards as % of catch
Expected commercial discards	1.40	637	38% of ABC discards, based on avg. 2016-2018 % of discards by sector
Expected recreational discards	2.28	1,034	62% of ABC discards, based on avg. 2016-2018 % of discards by sector
Commercial ACL	6.98	3,167	49% of ABC landings portion (per FMP) + expected commercial discards
Commercial ACT	6.98	3,167	Commercial ACL, with no deduction for management uncertainty
Commercial quota	5.58	2,530	Commercial ACT minus expected commercial discards
Recreational ACL	8.09	3,668	51% of ABC landings portion (per FMP) + expected recreational discards
Recreational ACT	8.09	3,668	Recreational ACL, with no deduction for management uncertainty
RHL	5.81	2,634	Recreational ACT minus expected recreational discards

3.3.2 Other Alternatives Analyzed for Black Sea Bass

In addition to the catch and landings limits summarized above (represented by alternative 2B in the EA, the preferred alternative), the 2020-2021 Specifications EA also analyzed the potential impacts of implementing the 2018-2019 catch and landings limits in 2020-2021 (alternative 2A, the status quo alternative), as well as commercial quotas and RHLs that were 25% higher than the preferred alternative (alternative 2C) and 25% lower than the status quo alternative (alternative 2D). These alternatives are summarized in Table 6. No major changes to the stock or fisheries were anticipated for upcoming years; therefore, a moderate range above and below the status quo and preferred alternative was considered reasonable.

The proposed 2022-2023 specifications fall within this range, between alternatives 2B and 2C. Therefore, the impacts of the revisions proposed in this document are expected to fall within the range of impacts described for these two options (see section 6.0).

Table 6: 2020-2021 black sea bass commercial quota and RHLs analyzed through the 2020-2021 Scup and Black Sea Bass Specifications EA.

Alternative	Commercial quota (mil lb, both years)	RHL (mil lb, both years)
Alternative 2A (Status quo)	3.52	3.66
Alternative 2B (preferred)	5.58	5.81
Alternative 2C (least restrictive)	6.98	7.26
Alternative 2D (most restrictive)	2.64	2.74

4.0 New Information/Circumstances

Determining whether a supplemental NEPA analysis is required involves a two-step process. First, one must identify new information or circumstances. Second, if there is new information, one must analyze whether it is significant to the analysis of the action and relevant to environmental concerns and bearing on the action or its impacts.

As previously stated, the following new information and circumstances, compared to the information considered in the 2020-2021 Specifications EAs, are relevant to this action:

- Revisions to the Council’s ABC control rule and risk policy (used to revise the 2021 specifications for all three species through a previous SIR),
- 2021 management track stock assessments for all three species, including an additional one (scup and black sea bass) or two years of data (summer flounder) compared to the previous assessments for each species, and
- An additional two years of fishery data (2019 and 2020).

This new information is briefly summarized below and also discussed in Sections 2.0, 5.0, and 6.0.

4.1 Revised Council Risk Policy

The risk policy specifies the Council’s acceptable level of risk of overfishing (i.e., the probability of overfishing, P*) for managed stocks and works in conjunction with the ABC control rule to account for scientific uncertainty when determining the ABC.

The Council revised their risk policy in late 2019. These revisions were implemented in 2020 and were used to modify the 2021 specifications for summer flounder, scup, and black sea bass. The revised risk policy allows for increased risk of overfishing under most biomass levels compared to the previous risk policy (Figure 1). The change is greatest for stocks with biomass above the target level (B_{MSY}). The revised risk policy allows a maximum P* of 49% for stocks at or above 150% of the target level (previously a maximum of 40% for stocks at or above the target level). The rationale behind these revisions is described in more detail in the EA and final rule available here: <https://www.mafmc.org/actions/risk-policy-framework>.

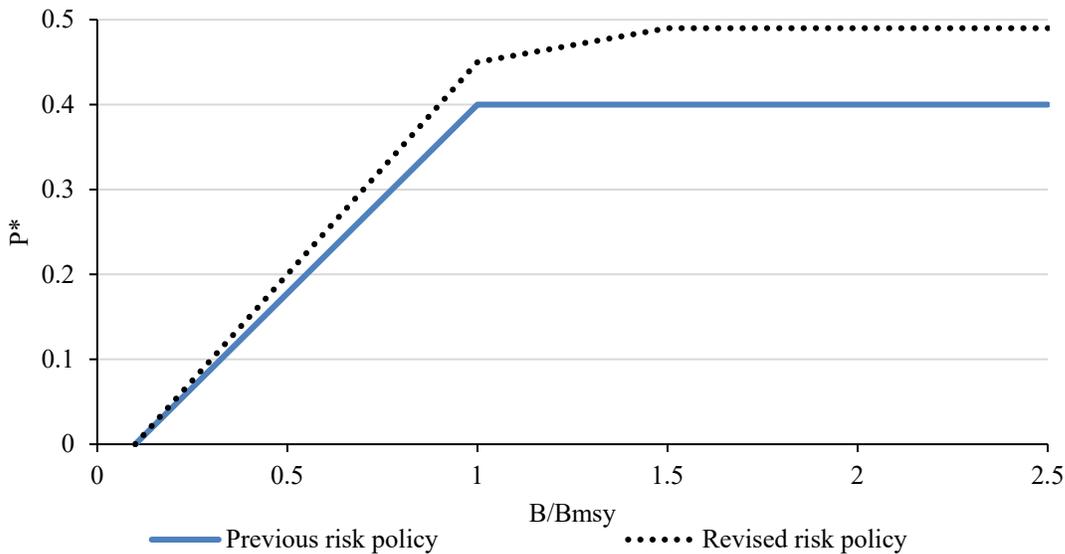


Figure 1: Acceptable probability of overfishing (p^*) at different biomass levels under the Council’s previous and revised risk policies.

4.2 Management Track Stock Assessments and Recent Catch and Landings

4.2.1 Summer Flounder

Stock Status and Biological Reference Points

In June 2021, the Northeast Fisheries Science Center (NEFSC) provided a management track assessment for summer flounder with data through 2019 (NEFSC 2021). The 2021 management track assessment results indicate that the summer flounder stock was not overfished and overfishing was not occurring in 2019. SSB has generally decreased since 2003 and was estimated to be 104.49 million lb (47,397 mt) in 2019, about 86% of the updated biomass target reference point $SSB_{MSY\ proxy} = 121.73$ million lb (55,217 mt). This estimate is 72% above the overfished threshold of $\frac{1}{2} SSB_{MSY\ proxy} = \frac{1}{2} SSB_{35\%} = 60.87$ million lb (27,609 mt; Figure 2), meaning that although the stock was below the target level, the stock was not overfished in 2019.

Fishing mortality on the fully selected age 4 fish ranged between 0.744 and 1.622 during 1982-1996 and then decreased to 0.245 in 2007. Since 2007 the fishing mortality rate (F) has increased, and in 2019 was estimated at 0.340, 81% of the updated fishing mortality threshold reference point ($F_{MSY\ proxy} = F_{35\%} = 0.422$; Figure 3, meaning overfishing was not occurring in 2019).

The average recruitment from 1982 to 2019 was 53 million fish at age 0. Recruitment was below-average from 2011-2017, ranging from 31 to 45 million fish and averaging 36 million fish. The driving factors behind this period of below average recruitment have not been identified. The 2018 year class is above average at an estimated 61 million fish, which is largest recruitment estimate since 2009, while the 2019 year class is below average at 49 million fish.

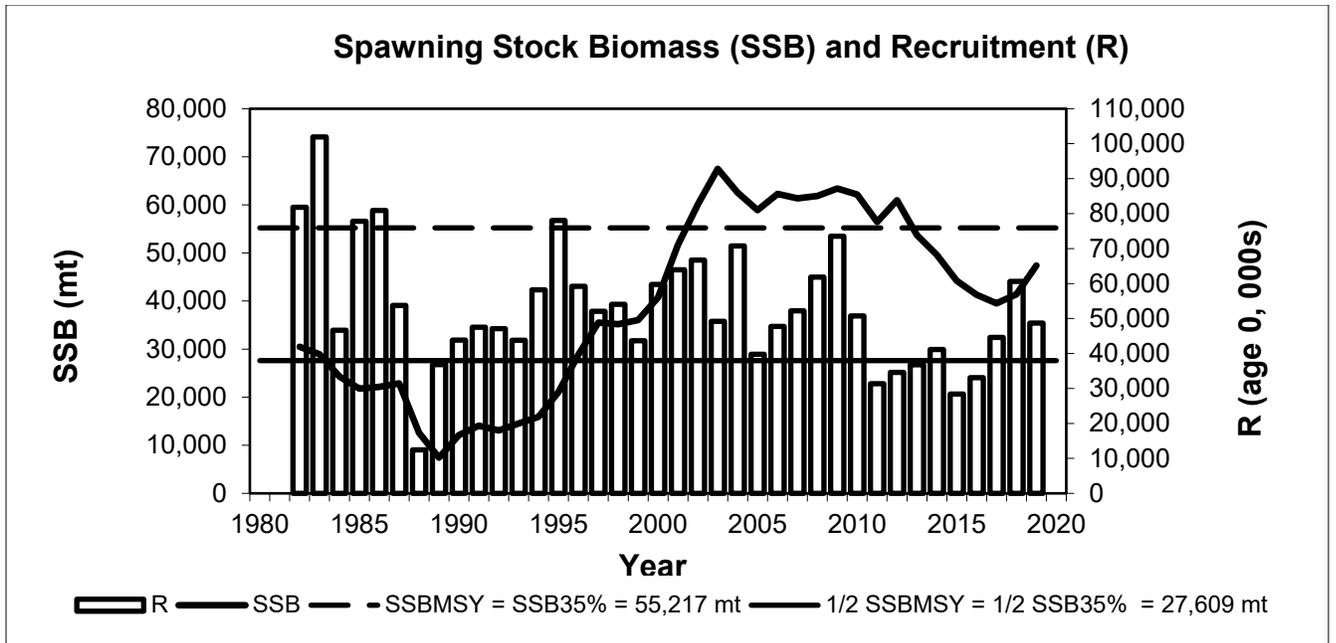


Figure 2: Summer flounder spawning stock biomass (SSB; solid line) and recruitment at age 0 (R; vertical bars), 1982-2019. The horizontal dashed line is the updated target biomass reference point. The horizontal solid line is the updated threshold biomass reference point.

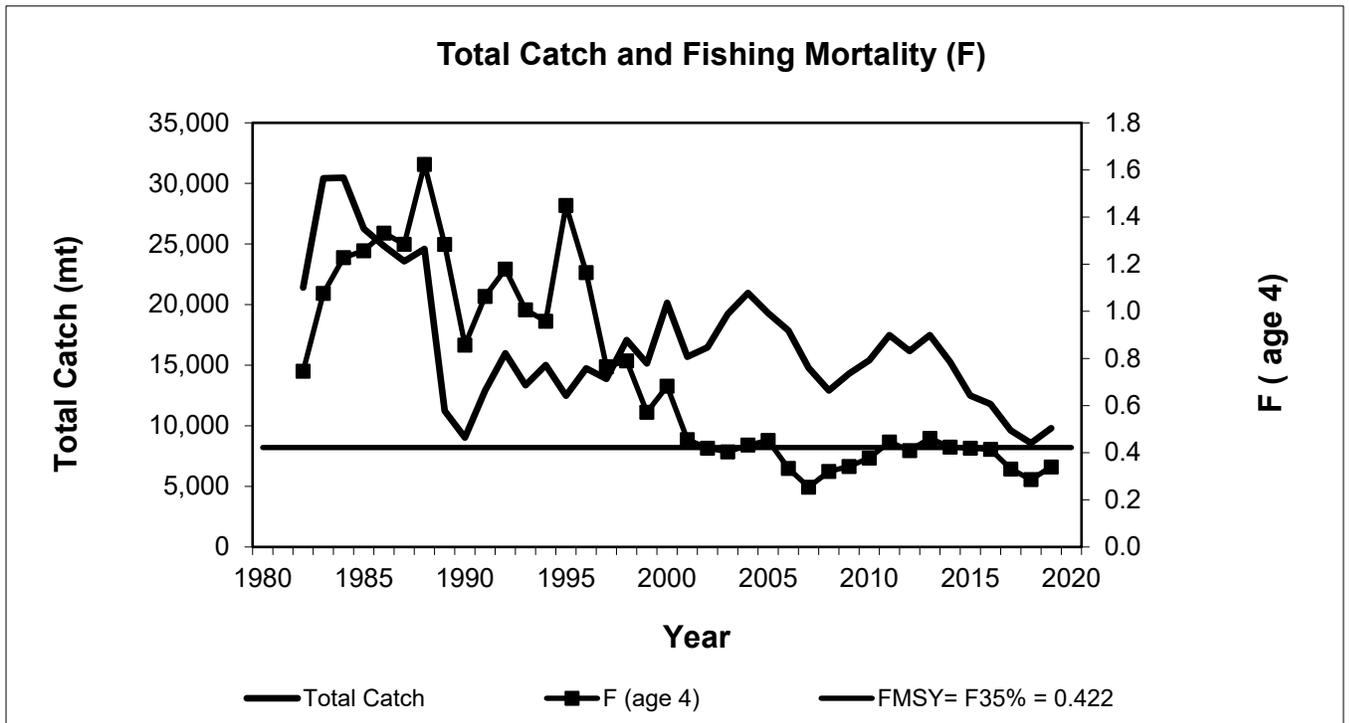


Figure 3: Total fishery catch (metric tons; mt; solid line) and fully-recruited fishing mortality (F, peak at age 4; squares) of summer flounder, 1982-2019. The horizontal solid line is the updated fishing mortality reference point.

Recent Catch and Landings

Commercial landings in 2020 were approximately 9.11 million pounds (4,132 mt), about 79% of the commercial quota of 11.53 million pounds (Table 7). This underage is likely due in large part to market related impacts of COVID-19. Commercial dead discard estimates are not available for 2020 due to data gaps resulting from the suspension of the observer program from mid-March through mid-August 2020. As such, it is not currently possible to evaluate commercial catch against the 2020 commercial ACL. At this time, it is not clear whether alternative methodologies will be developed to generate 2020 commercial discard estimates for summer flounder and other species.

Preliminary commercial landings data through September 22, 2021 indicate that 59% of the 2021 coastwide commercial quota has been landed.

The mail and telephone surveys that collect recreational fishing effort data on continued largely uninterrupted in 2020; however, the COVID-19 pandemic disrupted the Access Point Angler Intercept Survey (APAIS). All New England and Mid-Atlantic states suspended APAIS sampling starting in late March or April 2020. States resumed sampling between May and August 2020, depending on the state. NMFS used imputation methods to fill gaps in 2020 catch data with data collected in 2018 and 2019. These proxy data match the time, place, and fishing mode combinations that would have been sampled had the APAIS continued uninterrupted. Proxy data were combined with observed data to produce 2020 catch estimates using the standard estimation methodology. For summer flounder, these estimates using imputed data show that approximately 10.06 million pounds (4,565 mt) of summer flounder were harvested in 2020, which is about 131% of the 2021 RHL of 8.32 million pounds. Recreational dead discard estimates in weight are not available for 2020 as the method for estimating the weight of discards relies on age and length information that is not complete at this time.

NMFS has indicated that when complete 2021 recreational data become available in 2022, they will evaluate the effects of including 2021 data (for example, alongside 2019 data and instead of 2018 data) in the imputation. Because these effects are unknown, the agency cannot predict whether it will seek to revise its 2020 catch estimates.

Based on preliminary MRIP data, 1.24 million pounds of summer flounder were harvested by recreational anglers from Maine through North Carolina through June 2021, corresponding to about 15% of the RHL (accessed September 2021).

Table 7: Summer flounder commercial and recreational fishery performance relative to quotas and RHLs, 2016-2020. Recreational data show pre-revision MRIP estimates for 2016-2018 to allow comparison to past RHLs, and 2019-2020 are evaluated with the new MRIP estimates given that RHLs in these years were set with the new assessment which incorporated the revised MRIP data. As described above, the 2020 MRIP harvest estimate is partially based on imputed values.

Year	Com. Landings (mil lb)	Com. Quota (mil lb)	Com. Percent Overage(+)/ Underage(-)	Rec. harvest (old MRIP estimates)	Rec. harvest (new MRIP estimates)	RHL (mil lb)	Rec. Percent Overage(+)/ Underage(-)
2016	7.80	8.12	-4%	6.18	13.24	5.42	+14%
2017	5.87	5.66	+4%	3.19	10.08	3.77	-15%
2018	6.17	6.44	-4%	3.35	7.60	4.42	-24%
2019	9.06	10.98	-17%	N/A	7.80	7.69	+1%
2020	9.11	11.53	-21%	N/A	10.06	7.69	+31%
2021	--	12.49	--	N/A	--	8.32	--

4.2.2 Scup

Stock Status and Biological Reference Points

A scup management track stock assessment was peer reviewed and accepted in June 2021 (NEFSC 2021). Similar to the 2019 operational stock assessment, this assessment retained the model structure of the previous benchmark stock assessment, completed in 2015 (NEFSC 2015). The 2021 management track assessment incorporated fishery catch and fishery-independent survey data through 2019 which is one additional year compared with the 2019 assessment considered in the 2020-2021 Specifications EA. According to the 2021 assessment, the scup stock north of Cape Hatteras, North Carolina extending north to the US-Canada border was not overfished and overfishing was not occurring in 2019. Spawning stock biomass (SSB) was estimated to be about 389 million pounds (176,404 mt) in 2019, about 2 times the SSB_{MSY} proxy reference point of 198.458 million pounds (90,019 mt, Figure 4), meaning that the stock was not overfished in 2019. Fishing mortality on fully selected age 4 scup was 0.136 in 2019, about 68% of the F_{MSY} proxy reference point of 0.200 (Figure 5), meaning that overfishing was not occurring in 2019. The 2015 year class is estimated to be the largest in the time series at 415 million fish, while the 2017-2019 year classes are estimated to be below average, with the 2019 year class as the smallest in the time series (Figure 4).

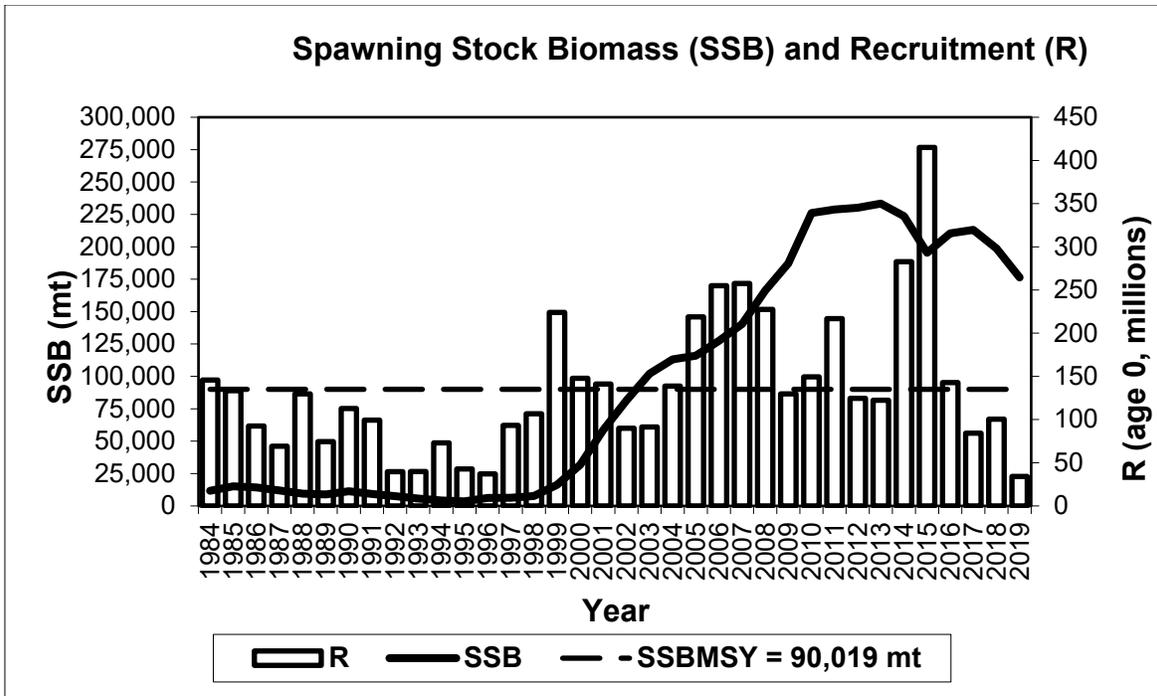


Figure 4: Scup SSB and recruitment at age 0, 1984-2019 from the 2021 management track stock assessment.

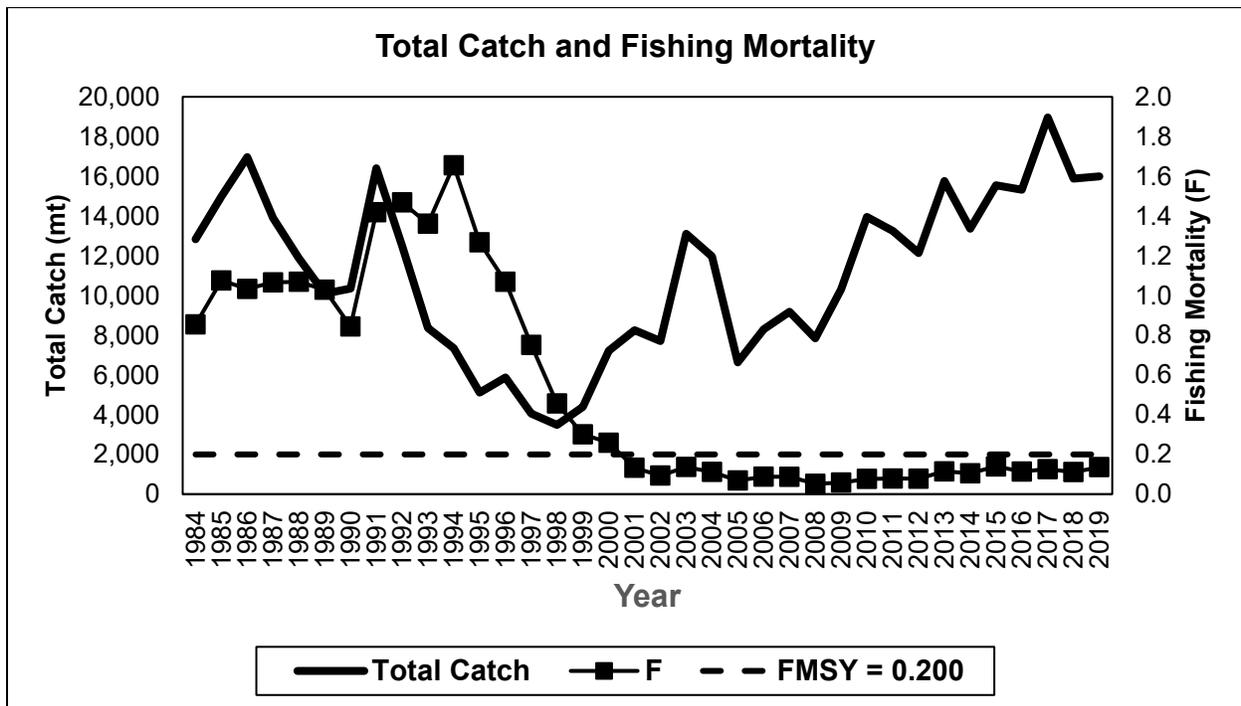


Figure 5: Scup total catch and fishing mortality, 1984-2019 from the 2021 management track stock assessment.

Recent Catch and Landings

As described above in more detail for summer flounder, the COVID-19 pandemic impacted data collection in both the recreational and commercial fisheries. While effort and markets were impacted by COVID-19 to various degrees, data collection for commercial landings from seafood dealers continued uninterrupted. However, 2020 commercial discard estimates will be affected by missing observer data. The MRIP program used imputation methods to fill gaps in 2020 recreational catch data with data collected in 2018 and 2019.

In 2020, the commercial scup fishery landed 13.58 million pounds (6,160 mt) of scup, about 61% of the 2020 commercial quota of 22.23 million pounds (10,083 mt, Table 8). Commercial dead discard estimates are not available for 2020 due to data gaps resulting from the suspension of the observer program from mid-March through mid-August 2020. As such, it is not currently possible to evaluate commercial catch against the 2020 commercial ACL. At this time, it is not clear whether alternative methodologies will be developed to generate 2020 commercial discard estimates.

Recreational landings in 2020 were 12.91 million pounds (5,856 mt) which was 198% of the 2020 RHL of 6.51 million pounds. As described above, the 2020 MRIP estimates are partially based on imputed data. Recreational dead discard estimates in weight are not available for 2020 as the method for estimating the weight of discards relies on age and length information that is not complete at this time.

The Council and Board agreed to leave the recreational bag, size, and season limits unchanged in 2020 despite an expected RHL overage. This was viewed as a temporary solution to allow more time to consider how to fully transition the management system to use of the revised MRIP data, including ongoing considerations related to the commercial/recreational allocation and the Recreational Reform Initiative.

The commercial scup quota is allocated among three quota periods: Winter I (January 1 – April 30, allocated 45.11% of the annual quota), Summer (May 1 – September 30, allocated 38.95% of the annual quota), and Winter II (October 1 – December 31, allocated 15.94% of the annual quota).⁴ Based on preliminary 2021 dealer data, about 63% of the 2021 Winter I commercial scup quota was landed. As of September 22, 2021, 54% of the Summer commercial scup quota had been landed.

Based on preliminary MRIP data, 7.49 million pounds of scup were harvested by recreational anglers from Maine through North Carolina through June 2021, corresponding to about 123% of the RHL (accessed September 2021).

⁴ Prior to 2018, October was included in the summer quota period. The allocation percentages were the same as shown above.

Table 8: Scup commercial and recreational landings relative to quotas and RHLs (in millions of pounds), 2016-2020. The RHL overage/underage evaluation is based on recreational harvest estimates using the old MRIP-estimation methodology through 2018. In 2019 the RHL was based on the old MRIP estimates and harvest was estimated using the revised MRIP estimates so are not comparable, however 2019 estimates in the old MRIP units were generated by GARFO. In 2020, the RHL and harvest both used the revised MRIP estimates and can be compared. As described above, the 2020 MRIP harvest estimate is partially based on imputed values.

Year	Com. landings	Com. quota	Quota underage	Rec. harvest (old MRIP estimates)	Rec. harvest (new MRIP estimates)	RHL	RHL overage/underage
2016	15.76	20.47	-23%	4.26	10.00	6.09	-30%
2017	15.44	18.38	-16%	5.42	13.53	5.50	-1%
2018	13.37	23.98	-44%	5.61	12.98	7.37	-24%
2019	13.78	23.98	-43%	5.40	14.12	7.37	--
2020	13.58	22.23	-39%	N/A	12.91	6.51	+98%
2021	--	20.50	--	N/A	--	6.07	--

4.2.3 Black Sea Bass

Stock Status and Biological Reference Points

A black sea bass management track stock assessment was peer reviewed and accepted in June 2021 (NEFSC 2021). This assessment retained the model structure of the 2016 benchmark stock assessment (NEFSC 2017) and incorporated fishery data and fishery-independent survey data through 2019. Data from 2020 were not incorporated due to significant gaps in some data sets as a result of the COVID-19 pandemic and the time required to consider how to best address those gaps.

A comparison of the 2019 SSB and F estimates to the reference points suggests that the black sea bass stock north of Cape Hatteras, North Carolina was not overfished and overfishing was not occurring in 2019. SSB in 2019 was estimated at 65.63 million pounds (29,769 mt, adjusted for retrospective bias), 2.1 times the updated biomass reference point (i.e., $SSB_{MSY\ proxy} = SSB_{40\%} = 31.84$ million pounds/14,441 mt). The average fishing mortality rate on fully selected ages 6-7 fish in 2019 was 0.39 (adjusted for retrospective bias), 85% of the updated fishing mortality threshold reference point (i.e., $F_{MSY\ proxy} = F_{40\%} = 0.46$). The 2019 estimates of F and SSB were adjusted for internal model retrospective error (Figure 6). Figure 7 and Figure 8 show the time series of estimated SSB, recruitment, fishing mortality, and catch without retrospective adjustments.

The 2011 year class was estimated to be the largest in the time series at 170.4 million fish. The 2015 year class was the second largest at 93.8 million fish. Recruitment of the 2017 year class as age 1 in 2018 was estimated at 14.9 million, well below the 1989-2019 average of 39 million fish. However, the 2018 year class was above average at an estimated 46.2 million fish (79.4 million with the retrospective adjustment) at age 1 in 2019 (Figure 7).

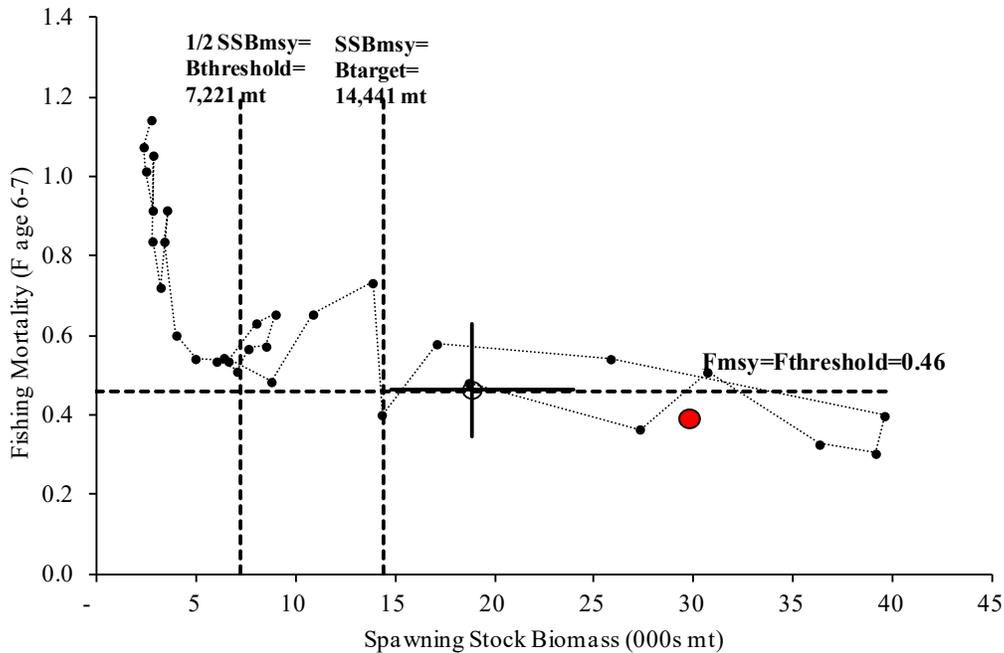


Figure 6: Estimates of black sea bass spawning stock biomass (SSB) and fully-recruited fishing mortality (F, peak at ages 6-7) relative to the updated 2021 biological reference points. Open circle with 90% confidence intervals shows the assessment point estimates. The filled circle shows the retrospectively adjusted estimates. Source: 2021 management track assessment.

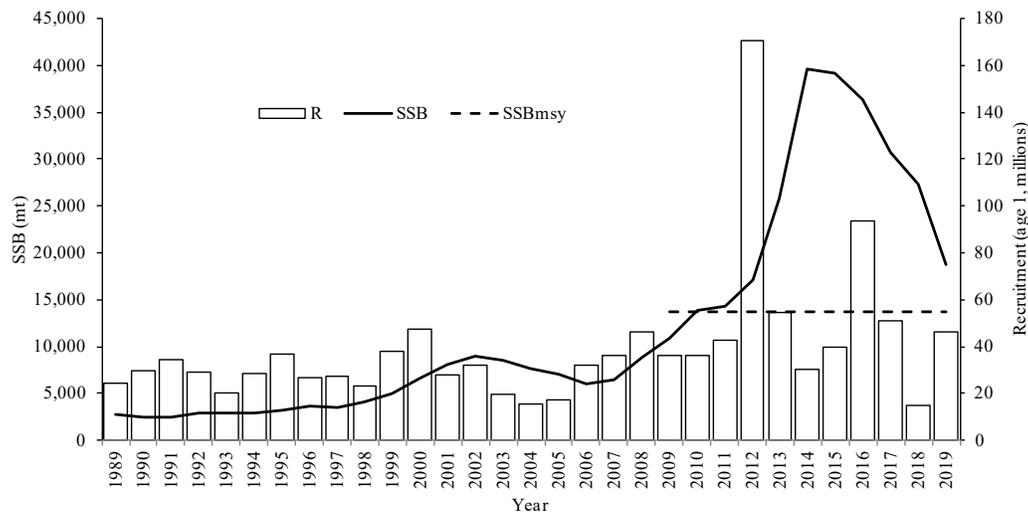


Figure 7: Black sea bass spawning stock biomass (SSB; solid line) and recruitment at age 0 (R; vertical bars) by calendar year. The horizontal dashed line is the updated SSB_{MSY} proxy = $SSB_{40\%}$ = 14,441 mt. Source: 2021 management track assessment. Note that SSB and recruitment estimates were adjusted for a retrospective pattern in the stock assessment. The un-adjusted values are shown in this figure. Adjusted SSB in 2019 for comparison against the SSB_{MSY} proxy reference point is 29,769 mt. The adjusted recruitment value for 2019 is 79.4 million.

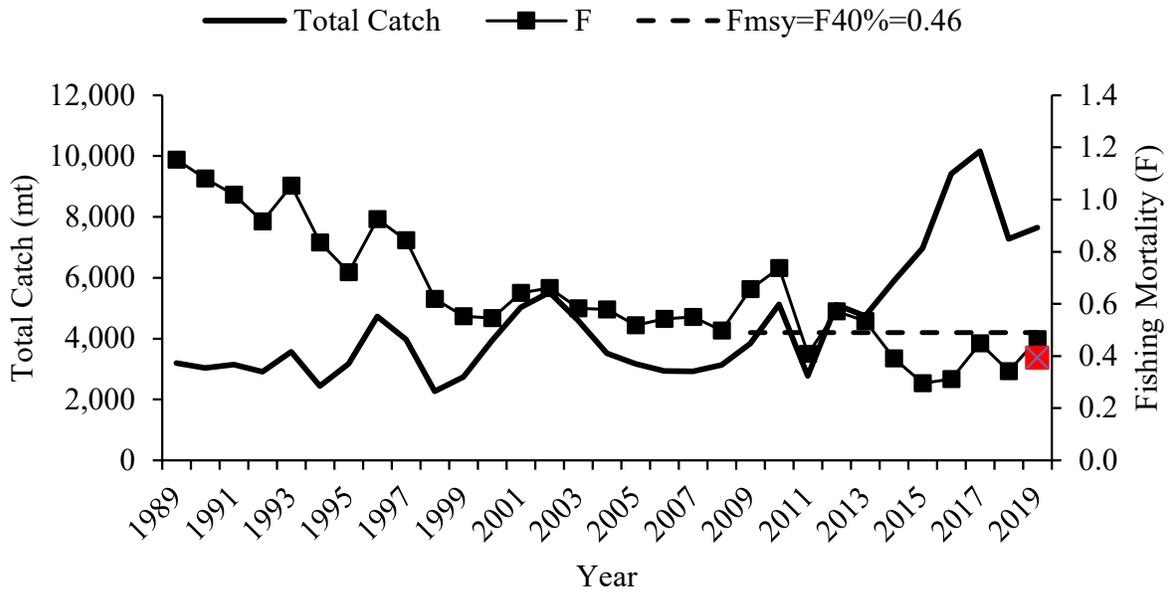


Figure 8: Total fishery catch (metric tons; mt; solid line) and fishing mortality (F, peak at age 6-7; squares) for black sea bass. The horizontal dashed line is the updated F_{MSY} proxy = $F_{40\%} = 0.46$. The red square is the retrospectively adjusted fishing mortality value for 2019. Source: 2021 management track assessment.

Recent Catch and Landings

As described above in more detail for summer flounder, the COVID-19 pandemic impacted data collection in both the recreational and commercial fisheries. While effort and markets were impacted by COVID-19 to various degrees, data collection for commercial landings from seafood dealers continued uninterrupted. However, 2020 commercial discard estimates will be affected by missing observer data. The MRIP program used imputation methods to fill gaps in 2020 recreational catch data with data collected in 2018 and 2019.

Commercial and recreational black sea bass landings increased each year from 2018 through 2020. Commercial landings totaled about 4.21 million pounds in 2020, the highest level since the start of the joint Council/Commission management program in 1998. Commercial landings typically closely follow the commercial quota and the 2020 quota (5.58 million pounds) was higher than any previous quota (Table 9). The 2020 commercial quota was not fully landed in large part due to impacts of the COVID-19 pandemic on market demand.

Based on data reported through September 15, 2021, about 3.30 million pounds of black sea bass have been landed by commercial fishermen from Maine through Cape Hatteras, NC in 2021, corresponding to 54% of the 2021 commercial quota (6.09 million pounds).

Recreational landings are more variable than commercial landings. In 2020, recreational landings totaled 9.05 million pounds, the highest level since 2016 and 2017, which are years with harvest estimates identified by the SSC and Monitoring Committee as implausibly high outliers. Recreational landings in 2020 were about 56% greater than the RHL (5.81 million pounds; Table 9). This recreational overage was not unexpected as the Council and Board agreed to leave the recreational bag, size, and season limits unchanged in 2020 despite an anticipated RHL overage.

This was viewed as a temporary solution to allow more time to consider how to fully transition the management system to use of the revised time series of MRIP data released in 2018, including ongoing considerations related to the commercial/recreational allocations and many changes to recreational fisheries management under consideration through the ongoing Recreational Reform Initiative.⁵ The Council and Board also agreed to leave the recreational bag, size, and season limits unchanged in 2021 for similar reasons, despite a similar anticipated RHL overage in 2021.

Based on preliminary MRIP data accessed in September 2021, 5.00 million pounds of black sea bass were harvested by recreational anglers from Maine through North Carolina through June 2021, corresponding to about 79% of the RHL.

Table 9: Black sea bass commercial and recreational landings relative to quotas and RHLs (in millions of pounds), 2016-2020, and quota and RHL for 2021. The RHL overage/underage evaluation is based on recreational harvest estimates using the old MRIP-estimation methodology through 2018 and the revised MRIP estimates for 2020. 2019 estimates in the old MRIP units were generated by GARFO. RHLs prior to 2020 should not be compared to harvest in the new MRIP units because those RHLs did not account for revisions to the data. As described above, the 2020 MRIP harvest estimate is partially based on imputed values.

Year	Com. landings	Com. quota	Quota overage/underage	Rec. harvest (old MRIP estimates)	Rec. harvest (revised MRIP estimates)	RHL	RHL overage/underage
2016	2.59	2.71	-4%	5.19	12.05	2.82	+84%
2017	4.01	4.12	-3%	4.16	11.50	4.29	-3%
2018	3.46	3.52	-2%	3.82	7.92	3.66	+4%
2019	3.53	3.52	0%	3.47	8.61	3.66	-5%
2020	4.21	5.58	-25%	--	9.05	5.81	+56%
2021	--	6.09	--	--	--	6.34	--

5.0 Proposed New Action

The proposed new action would implement 2022 and 2023 specifications for summer flounder, scup, and black sea bass based on the 2021 management track stock assessment and the Council and Board’s August 2021 recommendations, as described in more detail below.

The SSC met on July 22, 2021 to review the 2021 management track assessment results and associated stock projections and recommend 2022-2023 ABCs for summer flounder, scup, and black sea bass. The MC met on July 27, 2021 to recommend ACLs, ACTs, commercial quotas, and RHLs based on the SSC’s recommended ABCs. The Monitoring Committee also reviewed the commercial management measures which can be modified through the specifications process and recommended no changes.

⁵ More information on the Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment is available at: <https://www.mafmc.org/actions/sfsbsb-allocation-amendment>. More information on the Recreational Reform Initiative is available at: <https://www.mafmc.org/actions/recreational-reform-initiative>

At their joint August 9, 2021 meeting, after reviewing recent fishery trends and considering the advice of the SSC, MC, and AP, the Council and Board recommended 2022-2023 commercial and recreational catch and landings limits that were in agreement with the MC recommendations.

5.1 Proposed New Action for Summer Flounder

After reviewing the 2021 management track stock assessment for summer flounder, the SSC recommended 2022-2023 ABCs based on a 60% OFL CV (as they have used for this species in previous years) and the Council's risk policy with an associated 44%-46% probability of overfishing. The SSC recommended constant and annually varying ABCs for 2022 and 2023.

The MC reviewed the SSC's recommendations as well as input from AP members and concluded that no changes were needed from their previous methodology for setting ACLs, ACTs, commercial quotas, and RHLs for 2022-2023. The Council and Board met jointly in August 2021 to consider 2022-2023 specifications and adopted the averaged ABC approach.

For the averaged ABC approach, the expected discards and landings were averaged across the two years given minor differences in these projections, to ensure that all limits would be held constant over the two years. Based on the allocation percentages in the Fishery Management Plan (FMP), 60% of the amount of the ABC expected to be landed is allocated to the commercial fishery, and 40% to the recreational fishery (Figure 9). The method used to predict commercial and recreational dead discards when setting 2022-2023 catch and landings limits was unchanged from that described in the 2020-2021 Specifications EA. Dead discards were apportioned based on the dead discards contribution from each fishing sector using a 3-year moving average percentage. Due to data issues related to COVID-19, dead discard data were not available for 2020 and the split of projected dead discards between the commercial and recreational fisheries were developed using 2017-2019 data from the management track assessment. On average over these years, 41% of dead discards were attributable to the commercial fishery and 59% to the recreational fishery. The allocated landings for each sector are added to the expected sector-specific dead discards to arrive at the commercial and recreational ACLs. Any deductions for management uncertainty would be deducted from the sector-specific ACLs to arrive at the sector-specific ACTs, however the Council and Board agreed with the MC recommendation to set ACTs equal to the ACLs. Expected dead discards are subtracted from the sector ACTs to derive the commercial quota and RHL (Table 10).

The MC recommended no changes to the 2021 commercial management measures for summer flounder, including the commercial minimum fish size and gear requirements. The Council and Board approved all the SSC and MC's recommendations in August 2021. The resulting catch and landings limits are listed in Table 10.

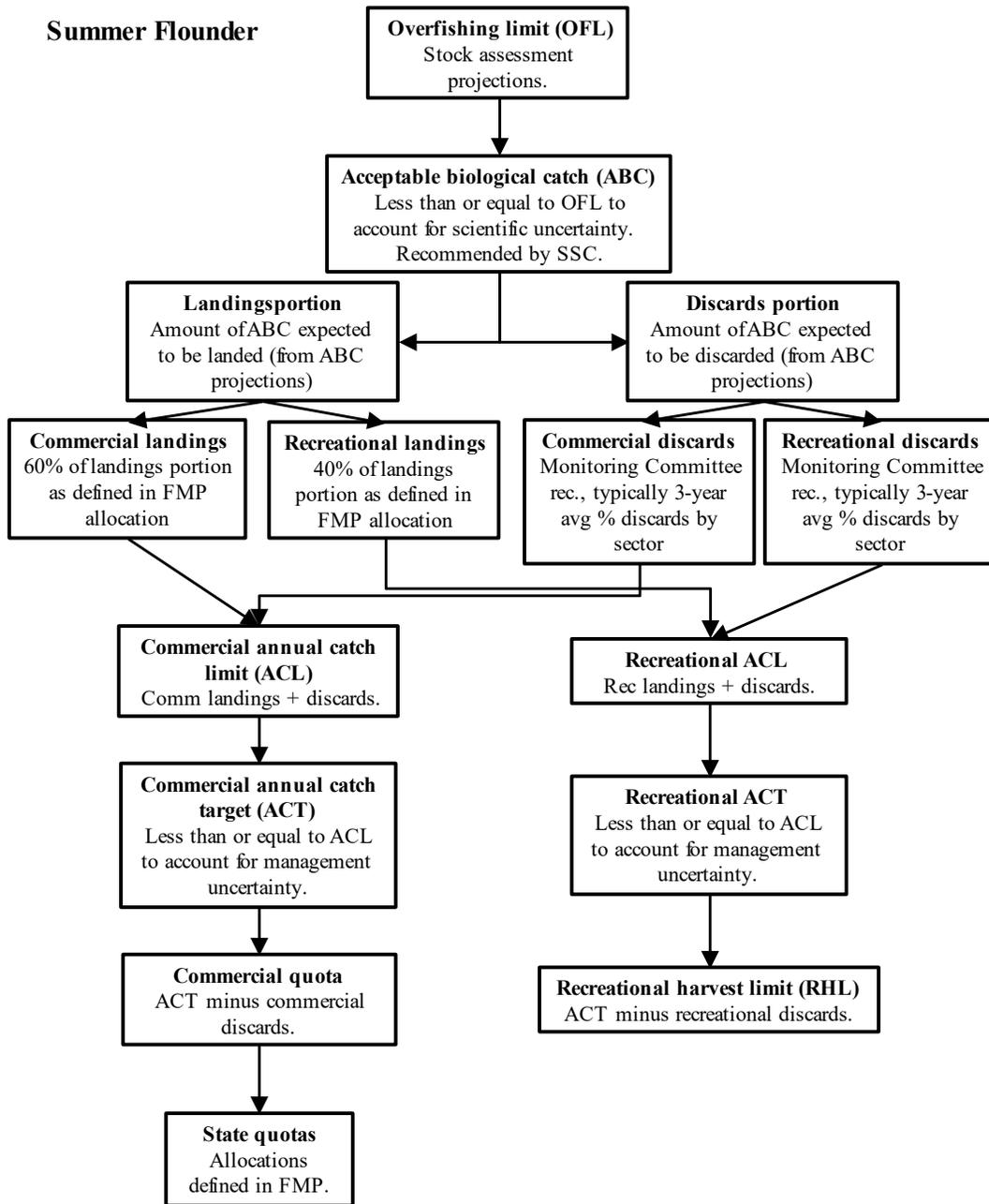


Figure 9: Flowchart for summer flounder catch and landings limits.

Table 10: Recommended 2022-2023 specifications for summer flounder. Numbers may not add precisely due to unit conversions and rounding.

Measure	Averaged ABCs				Basis
	2022		2023		
	mil lb	mt	mil lb	mt	
OFL	36.28	16,458	34.98	15,865	Management track stock assessment projections
ABC	33.12	15,021	33.12	15,021	SSC recommendations based on risk policy
ABC Landings Portion	25.89	11,743	25.89	11,743	ABC projections provided by the NEFSC; average approach includes averaged 2022-2023 expected landings
ABC Dead Discards Portion	7.23	3,279	7.23	3,279	ABC projections provided by the NEFSC; average approach includes averaged 2022-2023 expected dead discards
Expected Commercial Dead Discards	2.95	1,336	2.95	1,336	41% of ABC dead discards portion, based on 2017-2019 average % dead discards by sector
Expected Recreational Dead Discards	4.28	1,942	4.28	1,942	59% of ABC dead discards portion, based on 2017-2019 average % dead discards by sector
Commercial ACL	18.48	8,382	18.48	8,382	60% of ABC landings portion (FMP allocation) + expected commercial dead discards
Commercial ACT	18.48	8,382	18.48	8,382	Equal to the ACL; no deduction for management uncertainty
Commercial Quota	15.53	7,046	15.53	7,046	Commercial ACT, minus expected commercial dead discards
Recreational ACL	14.64	6,639	14.64	6,639	40% of ABC landings portion (FMP allocation) + expected recreational dead discards
Recreational ACT	14.64	6,639	14.64	6,639	Equal to the ACL; no deduction for management uncertainty
RHL	10.36	4,697	10.36	4,697	Recreational ACT, minus expected recreational dead discards

5.2 *Proposed New Action for Scup*

After reviewing the 2021 management track stock assessment for scup, the SSC recommended 2022-2023 ABCs based on a 60% OFL CV (as they have used for this species in previous years) and the Council's risk policy for a stock above 1.5 times SSB_{MSY} , with an associated 49% probability of overfishing. To ensure that the probability of overfishing remained below 50% in each year, the SSC was required to recommend annually varying ABCs for 2022 and 2023 and could not recommend a constant ABC across the two years which was the average of the varying ABCs.

The MC reviewed the SSC's recommendations as well as input from AP members and concluded that no changes were needed from their previous methodology for setting ACLs, ACTs, commercial quotas, and RHLs for 2022-2023.

As specified in the FMP, 78% of the ABC is allocated to the commercial fishery as a commercial ACL and 22% is allocated to the recreational fishery as a recreational ACL (Figure 10). The method used to predict commercial and recreational scup dead discards when setting 2022-2023 catch and landings limits was unchanged from that described in the 2020-2021 Specifications EA. Dead discards are apportioned based on the dead discards contribution from each fishing sector using a 3-year moving average percentage. Due to data issues related to COVID-19, dead discard data were not available for 2020 and the split of projected dead discards between the commercial and recreational fisheries were developed using 2017-2019 data from the management track assessment. On average over these years, 83% of dead discards were attributable to the commercial fishery and 17% to the recreational fishery. These expected discard estimates are subtracted from the sector specific ACLs to derive a commercial quota and RHL (Table 11).

The MC recommended no changes to the 2021 commercial management measures for scup, including the commercial minimum fish size and gear requirements. The Council and Board met jointly in August 2021 to consider 2022-2023 specifications and approved all the SSC and MC's recommendations. The resulting catch and landings limits are listed in Table 11.

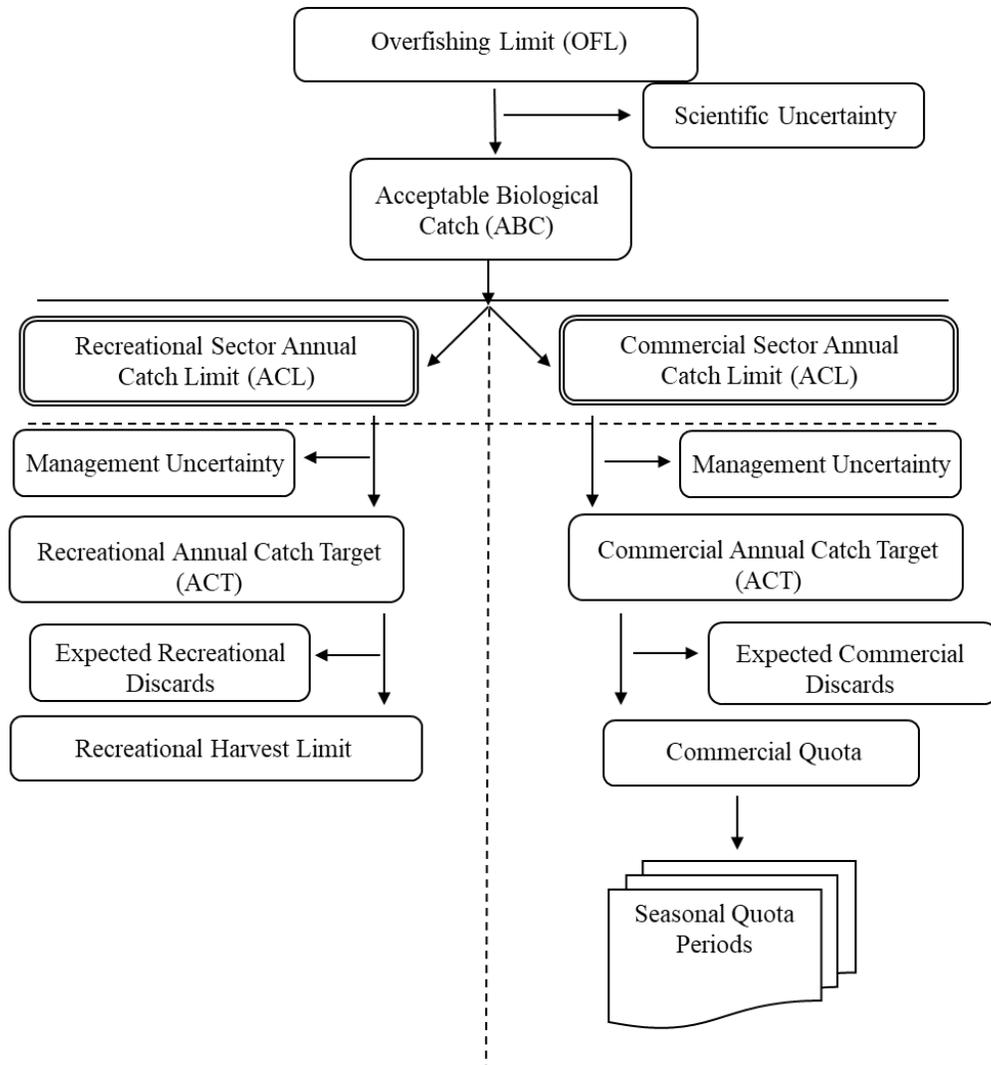


Figure 10: Scup catch and landings limit calculation methodology.

Table 11: Recommended 2022-2023 scup specifications. Numbers may not add precisely due to unit conversions and rounding.

Measure	2022		2023		Basis
	mil lb	mt	mil lb	mt	
OFL	32.56	14,770	30.09	13,648	Assessment projections
ABC	32.11	14,566	29.67	13,460	SSC recommendations based on risk policy
ABC discards	5.65	2,564	6.39	2,900	Assessment projections
Com. ACL	25.05	11,361	23.15	10,499	78% of ABC (per FMP)
Com. ACT	25.05	11,361	23.15	10,499	Equal to the ACL; no deduction for management uncertainty
Expected com. discards	4.67	2,117	5.28	2,394	82.6% of ABC discards (avg. % of dead discards from commercial fishery, 2017-2019)
Com. quota	20.38	9,245	17.87	8,105	Commercial ACT minus discards
Rec. ACL	7.06	3,205	6.53	2,961	22% of ABC (per FMP)
Rec. ACT	7.06	3,205	6.53	2,961	Equal to the ACL; no deduction for management uncertainty
Expected rec. discards	0.99	447	1.12	506	17.4% of the ABC discards (avg. % of dead discards from rec. fishery, 2017-2019)
RHL	6.08	2,757	5.41	2,455	Recreational ACT minus discards

5.3 Proposed New Action for Black Sea Bass

After reviewing the 2021 black sea bass management track stock assessment, the SSC recommended 2022-2023 ABCs based on a 100% OFL CV and the Council’s risk policy for a stock above 1.5 times SSB_{MSY} , with an associated 49% probability of overfishing, aligning with their recommendations for this species from previous years. To ensure that the probability of overfishing remained below 50% in each year, the SSC recommend annually varying ABCs for 2022 and 2023. They could not recommend a constant ABC across the two years based on the average of the varying ABCs as this would have resulted in a greater than 50% probability of overfishing in 2023.

The SSC’s recommended 2022-2023 ABCs also rely on stock projections that assume total dead catch in 2020 and 2021 will be equal to the respective ABCs with an adjustment for a 2020 recreational harvest overage and an assumed 2021 recreational harvest overage. Specifically, it was assumed that 2021 recreational harvest would be the same as estimated 2020 recreational harvest given that the bag, size, and season limits were the same across both years. Total dead catch in 2020 and 2021 was assumed to be the ABC plus the difference between the 2020 recreational harvest estimate and the 2020 or 2021 RHL. This assumption results in an ABC overage of about 25% in both 2020 and 2021. The SSC agreed that this is a reasonable assumption due to recreational harvest that significantly exceeded the RHL in 2020 and is likely to also exceed the 2021 RHL given the scale of recent harvest (Table 9) and the virtually unchanged recreational bag, size, and season limits during 2018-2021. As previously stated, the Council and Board acknowledged that a 2021 RHL overage was likely when they agreed to leave the bag, size, and

season limits unchanged. They recommended this as a short-term approach to prevent major negative impacts to the recreational sector while further considering how management may need to adapt to the revised MRIP data (e.g., through the ongoing Commercial/Recreational Allocation Amendment) and other improvements to recreational fisheries management under consideration through the Recreational Reform Initiative.

The MC reviewed the SSC's recommendations as well as input from AP members and concluded that no changes were needed from their previous methodology for setting ACLs, ACTs, commercial quotas, and RHLs for 2022-2023.

The method used to predict commercial and recreational black sea bass dead discards when setting 2022-2023 catch and landings limits differs from that described in the 2020-2021 Specifications EA but is the same as that used for the revised 2021 specifications. This method was revised for the 2021 specifications because frequent ACL overages in both sectors occurred under the prior method. Under this new method, it is assumed that dead discards as a proportion of total dead catch in each sector will be equal to the average proportions over the last three years (i.e., commercial dead discards will be 36% of commercial catch and recreational dead discards will be 23% of recreational catch based on NEFSC data for 2017-2019; as previously stated, complete information on 2020 discards in weight is not currently available). The calculations also account for the required 49% commercial, 51% recreational allocation of the amount of the ABC that is expected to be landed. When the Monitoring Committee first developed this method in 2019, they noted that commercial black sea bass landings tend to closely follow changes in the quota and that dead discards tend to scale up or down with increases or decreases in landings. A similar trend is evident in the recreational fishery, though the relationship is not as strong as in the commercial fishery. The Monitoring Committee noted that sector-specific dead discards as a proportion of sector-specific dead catch were relatively consistent during recent years, even under varying landings limits and highly variable recreational harvest estimates (including 2016 and 2017, years with outlier recreational estimates). Therefore, they agreed that it would be appropriate to use a recent three-year average of the proportion of total dead catch in each sector that is discarded when calculating the black sea bass catch and landings limits. This differs from the previous method in that it starts with sector-specific assumptions about discards, rather than first starting with an assumption about the proportion of the total ABC which will be landed vs. discarded.

These expected discard estimates are added to the landings-based ABC allocations to derive the commercial and recreational ACLs. They are subtracted from the commercial and recreational ACTs to derive a commercial quota and RHL (Table 12).

The MC recommended no changes to the 2021 commercial management measures for black sea bass, including the commercial minimum fish size and gear requirements. The Council and Board met jointly in August 2021 to consider 2022-2023 specifications and approved all the SSC and MC's recommendations. The resulting catch and landings limits are listed in Table 12.

Black Sea Bass

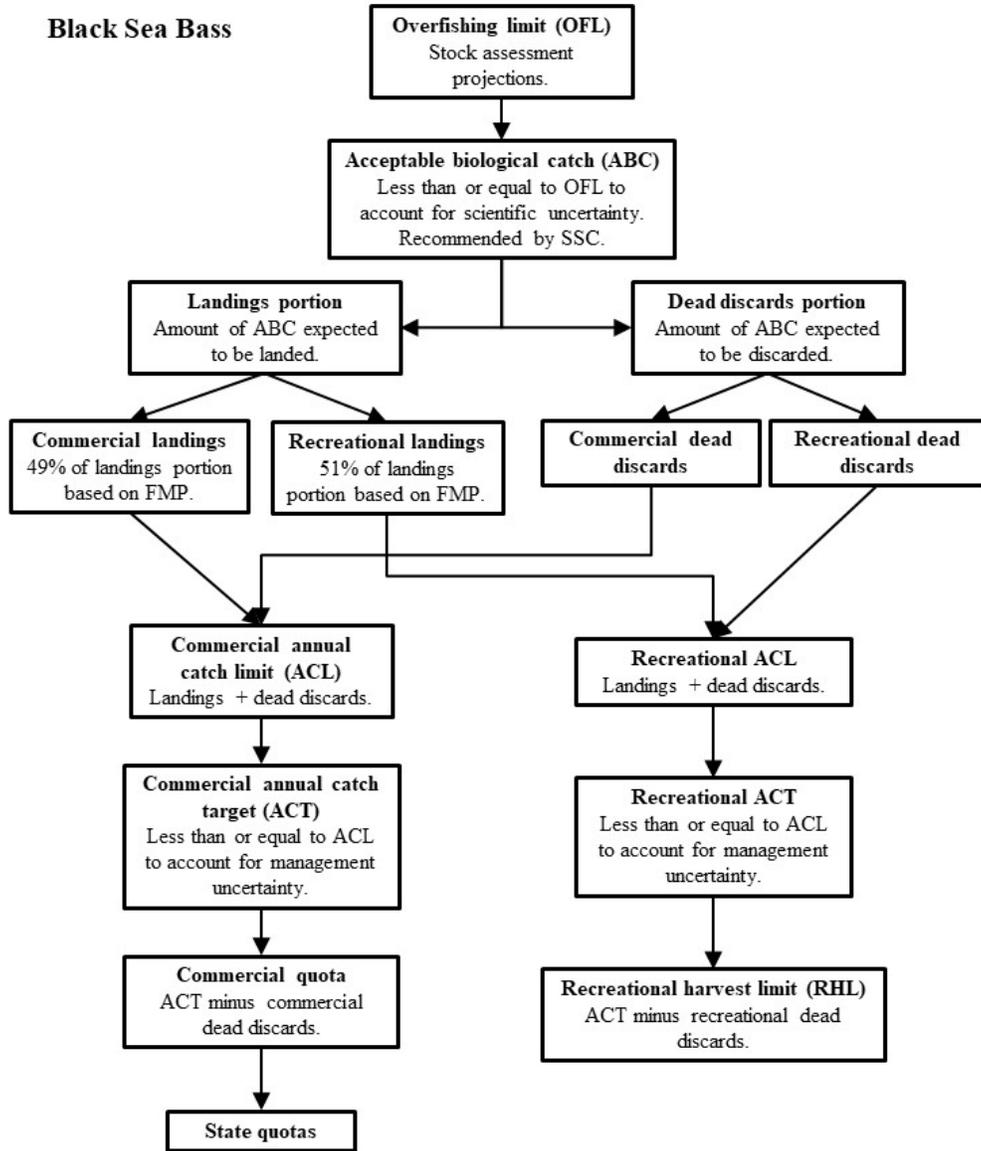


Figure 11: Flowchart for black sea bass catch and landings limits.

Table 12: Recommended 2022-2023 specifications for black sea bass. Numbers may not add precisely due to unit conversions and rounding.

Mgmt Measure	2022		2023		Basis
	mil lb	mt	mil lb	mt	
OFL	19.26	8,735	17.01	7,716	Stock assessment projections
ABC	18.86	8,555	16.66	7,557	SSC recommendations based on risk policy
Expected com. dead discards	3.63	1,649	3.21	1,456	Calculated based on assumption that com. dead disc. would be 36% of com. catch in all 3 years (2016-2018 and 2017-2019 avg.)
Expected rec. dead discards	2.02	917	1.79	810	Calculated based on assumption that rec dead disc would be 20% of rec catch in 2021 (2016-2018 avg) and 23% of rec catch in 2022 & 2023 (2017-2019 avg)
ABC landings	13.20	5,990	11.66	5,291	ABC - expected com. and rec. dead discards
Com. ACL	10.10	4,583	8.93	4,048	49% of ABC landings portion + expected com. disc.
Com. ACT	10.10	4,583	8.93	4,048	Equal to the ACL; no deduction for management uncertainty
Com. quota	6.47	2,934	5.71	2,592	Com. ACT minus expected com. dead discards
Rec. ACL	8.76	3,972	7.74	3,509	51% of ABC landings portion + expected rec. disc.
Rec. ACT	8.76	3,972	7.74	3,509	Equal to the ACL; no deduction for management uncertainty
RHL	6.74	3,055	5.95	2,699	Rec. ACT minus expected rec. dead discards

6.0 NEPA Compliance and Supporting Analysis

In this section, the proposed 2022-2023 catch and landings limits are compared to those considered through the 2020-2021 Specifications EAs in terms of their expected impacts. The methods, assumptions, and data sources used in this analysis are described in more detail below and are consistent with those applied in the 2020-2021 Specifications EAs.

CEQ requirements indicate that a supplemental NEPA analysis must be prepared if a new proposed action is substantially different from a previously completed but related action. However, not every change to a proposed action, including the presence of new information, necessitates the development of a new or supplemental NEPA analysis. NOAA Fisheries provided guidance to Councils on the use of “non-NEPA documents” to help determine whether a new or supplemental NEPA document is necessary or if a non-NEPA document (SIR) may be used to demonstrate that an original NEPA document sufficiently considered and analyzed the proposed actions and its effects. At this time, it appears that an SIR would be appropriate given the information discussed below.

6.1 *Summer Flounder*

The proposed specifications for summer flounder represent a small (7.8%) increase in the RHL and commercial quota compared with the limits under alternative 2 (least restrictive) analyzed in the 2020-2021 Summer Flounder Specifications EA.

The impacts of the proposed action are expected to be similar to those previously described for the range of alternatives in the Summer Flounder EA. Specifically, because the proposed catch and landings limits for 2022-2023 fall close to the previously analyzed alternative 2 in the Summer Flounder EA, the impacts of the proposed action are expected to be similar to the impacts described for alternative 2, as described below.

With the proposed increase in landings limits, it is expected that effort and associated catch in the commercial and recreational fisheries may slightly increase in 2022-2023, though for several reasons there is uncertainty about the extent to which this may be realized. In the commercial summer flounder fishery, as previously described, the 2019 commercial quota was increased in mid-2019 by approximately 50%. This impacted the commercial landings trajectory for 2019 and the ability of the fishery to fully utilize the quota, given that a major portion of the season had already occurred, and in addition, not all states were able to adjust their measures for the second half of the fishing year. In 2020, it was thought to be more likely that the fishery would achieve or approach the newly revised limits given their implementation for the full year. However, 2020 effort and catch were impacted by the ongoing Covid-19 pandemic and resulting market declines and about 79% of the commercial quota was harvested. According to NMFS dealer data, as of September 22, 2021, about 59% of the commercial quota has been harvested. Based on recent landings trends and the additional increase in quota, it is not expected that the fishery would exceed its limits in 2022-2023 and may have a slight underage of the commercial quota.

For the recreational 2022-2023 summer flounder fishery, changes in effort are expected to be dependent on any changes to the recreational management measures. From 2019-2021 recreational measures were kept mostly status quo given that 2019 projected harvest was similar to the 2020 RHL and 2020 data were limited due to Covid-19 related survey issues. A slight increase in the RHL for 2022-2023 could theoretically provide an opportunity to liberalize measures to increase harvest. However, it is not known at this time what changes if any may be made to recreational measures in 2022-2023 and what recreational effort may result. Based on recent trends and available data, it is expected that recreational effort will remain similar to 2019-2021 levels with the possibility of a slight increase if measures are liberalized.

Alternative 1 in the 2020-2021 Summer Flounder Specifications EA was expected to result in moderate positive impacts on **target species (summer flounder)**, due to the expectation that these limits would maintain the positive stock status for summer flounder and prevent overfishing. Alternative 1 was based on the February 2019 recommendations of the SSC and designed to maintain biomass levels above the overfished threshold and to prevent overfishing, under the existing stock projections and using the Council's prior risk policy. The proposed 2022-2023 specifications are based on updated projections and SSC recommendations also designed to maintain biomass levels above the overfished threshold and to prevent overfishing. Because of this, the proposed action is expected to result in moderate positive impacts on target species similar to alternative 1 although the limits are numerically closest to the limits under alternative 2.

As described in section 6.1.2 of the 2020-2021 Summer Flounder Specifications EA, non-target species generally comprise a low portion of the summer flounder catch, with the exception of little skate and spiny dogfish. According to the most recent scientific information, these species have a positive stock status (i.e., they are not experiencing overfishing and are not overfished). Alternative 2 was expected to increase fishing effort in a manner that could result in no impact to slight negative impacts, depending on the non-target stock and actual resulting levels of interactions. The limits proposed in this document could lead to a range of effort changes from no change to a slight to moderate effort increase relative to status quo levels, similar to the extent described under the previously analyzed alternative 2. Thus, the impacts to non-target species are expected to be similar to alternative 2 and would likely vary from slight negative to slight positive depending on the realized change in effort and the stock status of impacted non-target species.

Impacts to the **physical environment and Essential Fish Habitat (EFH)** are expected to be similar to those described under alternative 2 in the 2020-2021 Summer Flounder Specifications EA. Alternative 2 was not expected to result in a temporal or spatial expansion of the summer flounder fishery or different methods of prosecuting the fishery; however, continued fishing under alternative 2 was expected to result in slight negative impacts to habitat. The proposed 2022-2023 specifications are therefore expected to have continued slight negative impacts on habitat due to continued fishing effort, and no changes are expected to the areas, timing, or methods of fishing that may modify habitat impacts.

Recreational gear types can have minor negative impacts on **protected species**; however, the impacts of the summer flounder specifications alternatives on protected species are driven primarily by commercial bottom trawl gear, since this gear type is responsible for most of the catch, and is among the most likely gear types to impact protected species in the affected environment for this action (section 6.3 of the Summer Flounder Specifications EA).

Alternative 2 in the 2020-2021 Summer Flounder Specifications EA was expected to have negligible to moderate negative impacts on protected species, with slight to moderate negative impacts likely on non-ESA listed marine mammals, and negligible to moderate negative impacts likely for ESA-listed species. For ESA-listed species, any action that could result in take is expected to have negative impacts, even if those actions reduce interactions. Under the MMPA, the impacts vary based on the stock condition and the potential for each alternative to impact fishing effort. Interaction risks for protected species are strongly associated with amount, time, and location of gear in the water, and it was determined in the 2020-2021 EA that alternative 2 was not expected to meaningfully change these factors. For additional information and rationale to support this conclusion see section 7.3.1 of the EA.

The proposed action for 2022-2023 is expected to have similar impacts to those of alternative 2 in the previous EA, meaning the impacts to protected species are expected to range from negligible to moderate negative, with slight to moderate negative impacts likely on non-ESA listed marine mammals, and negligible to moderate negative impacts likely for ESA-listed species.

Alternative 1 was expected to result in short-term slight negative impacts to moderate positive socioeconomic impacts to **human communities**. Slight negative to moderate positive impacts were expected for the recreational fishery, depending on any potential changes in management measures associated with the RHL. Slight to moderate positive impacts were expected for the commercial fishery. In the long term, the measures under alternative 1 were expected to prevent

overfishing, thus contributing to long-term positive social and economic impacts via stock rebuilding. Alternative 2 included a commercial quota and RHL that would have been 25% higher than the 2019 landings limits. This alternative was expected to result in uncertain moderate positive short-term impacts to human communities due to increased fishing opportunities and revenues. In the long term, this alternative could have had negative impacts to human communities given the potential for exceeding the OFL and contributing to the stock becoming overfished in future years.

The proposed action for 2022-2023 in this document is expected to have impacts in between these two alternatives in the previous EA, but much closer to those of alternative 1. The long-term moderate negative impacts associated with alternative 2 in the EA were largely driven by the increased risk of overfishing, and the proposed revisions for 2022-2023 in this document are consistent with the recommendations of the SSC and are not expected to contribute to overfishing or to the stock becoming overfished. Therefore, the expected long-term impacts of the proposed revisions are consistent with alternative 1 in the EA, in that these measures are expected to result in long-term positive social and economic impacts via prevention of overfishing and stock rebuilding. In the short term, the proposed revisions are expected to have impacts ranging from no impact to moderate positive.

Overall, the proposed 2022-2023 specifications for summer flounder are not expected to alter the biological, EFH, or socioeconomic impacts previously described in the EA.

6.2 Scup

The proposed limits for scup are within the range of those analyzed in the 2020-2021 Scup and Black Sea Bass Specifications EA, with the commercial quotas falling below the preferred alternative (1B) and above the most restrictive alternative (1D) and the RHLs falling very similar to the 2020 and 2021 RHLs under the preferred alternative (1B). Therefore, the expected impacts of the proposed 2022-2023 specifications fall within the range of impacts described for these two options, likely closer to the impacts described for alternative 1B.

Under all scup alternatives (1A-1D), it was assumed that commercial landings in 2020-2021 would be similar to the 2015-2018 average of 15.40 million pounds, which is lower than the 2020-2021 commercial quotas under all scup alternatives and is also lower than the proposed 2022-2023 quotas. It was not assumed that commercial landings would reach the commercial quota under any alternative because the commercial fishery has not harvested the full quota since 2007. Commercial scup harvest appears to be limited more by market demand than by the quota. This was expected to continue to be the case under all alternatives analyzed for 2020-2021 scup catch and landings limits. Based on this assumption, even under the most restrictive alternative (1D), commercial harvest would not meet the commercial quota. However, recreational harvest estimates for 2015-2018 based on the revised MRIP data were higher than the 2020-2021 RHLs under all scup alternatives. For the purposes of analyzing the impacts of the 2020-2021 RHLs in the scup specifications EA, it was assumed that under all scup alternatives, measures would be put in place to constrain harvest to the RHL. The impact of the revised MRIP estimates could not be accurately predicted prior to completion of the operational stock assessment in the summer of 2019. This left the Council and Board with little time to consider how to most appropriately respond to changes in MRIP estimates before they must be used in management. In addition, the scup stock is healthy with SSB estimated to be about 2 times the SSB_{MSY} proxy reference point in 2018. Because of this situation, the Council and Board set status quo recreational management

measures in state and federal waters in 2020 and 2021 to allow time to transition to management based on the new MRIP estimates. This transition is still ongoing, namely through continued development of the Summer Flounder, Scup, and Black Sea Bass Commercial/ Recreational Allocation Amendment and the Recreational Reform Initiative. Recreational measures have not been set for 2022-2023; however, for the purposes of analyzing the impacts of the RHLs in this action, it was assumed that measures would be put in place to constrain harvest to the RHL, consistent with the previous specifications EA.

Based on the assumptions described above, the proposed 2022-2023 specifications, which fall between the scup alternatives 1B and 1D, would be expected to result in status quo levels of commercial scup fishing effort and landings. The proposed RHLs would be expected to result in a reduction in recreational harvest described for alternative 1B. Under all scup alternatives and the proposed specifications in this document, it is not expected that fishing effort would substantially shift or expand in geographic area or seasonality.

Alternatives 1B and 1D were both expected to result in moderate positive impacts on **target species (scup)** in 2020-2021, due to the expectation that conditions under these limits would maintain the positive stock status for scup and prevent overfishing. Alternative 1B was based on the recommendations of the SSC and designed to maintain biomass levels above the overfished threshold and to prevent overfishing, under the existing stock projections and using the Council's prior risk policy.

The proposed specifications in this document are based on the recommendations of the SSC. These recommendations are based on the updated management track assessment with one additional year of data compared with the previous EA. As such, the impacts to scup from the proposed limits are likely to fall between those described for alternatives 1B and 1D in the prior EA; however, they are expected to be more in line with impacts under alternative 1B given that they are expected to prevent overfishing and maintain a positive stock condition and moderate positive impacts on the stock are still expected overall.

Alternatives 1B and 1D were expected to have impacts on **non-target species** ranging from slight negative to moderate positive, as these alternatives would generally maintain the existing stock status of each non-target species. As described in section 7.1.1 in the 2020-2021 Scup and Black Sea Bass Specifications EA, alternatives 1A-1D were not expected to result in a change in the stock status of any non-target species; therefore, they were all expected to have impacts on non-target species that range from slight negative for non-target species which currently have a negative stock status (i.e., bluefish and those tautog regions that are overfished and/or experiencing overfishing) to moderate positive for non-target species with a currently positive stock status (i.e., spiny dogfish). As previously mentioned, the proposed specifications in this document are expected to have impacts on non-target species that fall between alternatives 1B and 1D which had the highest potential for positive impacts to non-target species relative to the other alternatives.

Impacts to the **physical environment and EFH** are expected to be similar to those described under alternatives 1B and 1D in the 2020-2021 Scup and Black Sea Bass Specifications EA. The scup fisheries operate in areas that have been fished for many years by many fisheries. As previously stated, the proposed 2022-2023 specifications are expected to result in status quo levels of commercial fishing effort and a reduction in recreational fishing effort. The expected levels of commercial and recreational fishing effort under all scup alternatives are unlikely to further

degrade habitat beyond its current state. Continued commercial and recreational fishing effort under all scup alternatives, including reduced levels of recreational fishing effort, was expected to result in slight negative impacts to habitat due to continued interactions between fishing gear and physical habitat. The proposed 2022-2023 specifications are expected to have slight negative impacts that fall between alternatives 1B and 1D. No changes are expected to the areas, timing, or methods of fishing that may modify habitat impacts.

Impacts on **protected species** are expected to be similar to those described under alternatives 1B and 1D in the 2020-2021 Scup and Black Sea Bass Specifications EA. The continued operation of the commercial and recreational scup fisheries under all alternatives is expected to result in some level of continued interaction risk for protected species. Any interaction with an ESA-listed species or an MMPA protected species which is not at a sustainable level (i.e., PBR level has been exceeded), is considered a negative impact, even under reduced levels of fishing effort; therefore, all scup alternatives are expected to have slight negative impacts for those species. Some MMPA and ESA-listed species have not had documented interactions with the primary commercial scup gear types (e.g., large whales (except minke) and bottom trawls) and alternatives 1A-1D were expected to have negligible impacts for those species. None of the scup alternatives were expected to result in an increase in fishing effort; therefore, new or elevated interactions to non-ESA listed marine mammal species in good condition were not expected.

In summary, similar to alternatives 1B and 1D, the 2022-2023 scup catch and landings limits proposed in this document are expected to have potential impacts on protected species ranging from slight negative to slight positive, with slight negative to slight positive impacts likely on non-ESA listed marine mammals and negligible to slight negative impacts likely for ESA-listed species.

As previously stated, it was assumed that commercial landings would not reach the commercial quota under any alternative in the previous EA because the commercial fishery has not harvested the full quota since 2007. Therefore, identical to alternatives 1B and 1D, the revised limits in this document are expected to result in moderate positive **socioeconomic impacts** for the commercial fishery by maintaining similar levels of commercial revenues as recent years. Alternatives 1B and 1D from the previous EA were expected to result in a decrease in recreational harvest and moderate negative socioeconomic impacts for the recreational fishery. The magnitude of the moderate negative socioeconomic impacts of the proposed 2022-2023 limits to the recreational fishery are expected to be very similar to alternative 1B.

Overall, the proposed 2022-2023 scup catch and landings limits are not expected to alter the biological, EFH, or socioeconomic impacts previously described in the EA.

6.3 Black Sea Bass

The proposed 2022-2023 catch and landings limits for black sea bass are within the range of those analyzed in the 2020-2021 Scup and Black Sea Bass Specifications EA, falling between alternative 2B (the preferred alternative at the time for 2020-2021) and alternative 2C (the least restrictive alternative in the EA). The proposed 2022 commercial quota and RHL are 16% higher than alternative 2B in the previous EA and 7% lower than alternative 2C. The proposed 2023 commercial quota and RHL are 3% higher than alternative 2B in the previous EA and 18% lower than alternative 2C. Therefore, the impacts of the proposed specifications are expected to fall

within the range of impacts described for these two options. The range of alternatives considered in the previous EA was designed to cover a range of possible environmental outcomes.

Under all black sea bass alternatives in the previous EA, it was assumed that commercial landings would be very close to the commercial quota. This assumption was based on past trends in the fishery. With the exception of 2020, annual commercial landings have been very close to the commercial quota since 2007. The 2020 underage was driven by COVID-19 impacts on markets. Similarly, the EA assumed that recreational harvest would be constrained to the RHLs under each alternative. However, the revised MRIP harvest estimates are significantly higher than the RHLs analyzed in the previous EA and the proposed 2022-2023 RHLs. For example, average recreational harvest during 2018-2020 was 8.52 million pounds per year, compared to the previously analyzed RHLs of 2.64 - 6.98 million pounds (section 3.3) and the proposed 2022-2023 RHLs of 6.74 and 5.95 million pounds, respectively. The impact of the revised MRIP estimates could not be accurately predicted prior to completion of the operational stock assessment in the summer of 2019. This left the Council and Board with little time to consider how to most appropriately respond to changes in MRIP estimates before they had to be used in management. In addition, the black sea bass stock is healthy with SSB estimated to be more than double the target level in both the 2019 operational stock assessment and the 2021 management track assessment. Because of this situation, the Council and Board set status quo recreational management measures in state and federal waters in 2020 and 2021 to allow time to transition to management based on the new MRIP estimates. This transition is still ongoing, namely through continued development of the Summer Flounder, Scup, and Black Sea Bass Commercial/ Recreational Allocation Amendment and the Recreational Reform Initiative. Recreational measures have not been set for 2022-2023; however, for the purposes of analyzing the impacts of the 2022-2023 RHLs, the potential for measures to be put in place to constrain harvest to the RHL was considered, consistent with the 2020-2021 Specifications EA. Consideration was also given to the potential for no change in recreational fishing effort, harvest, and fishing mortality if recreational management measures remain status quo in 2022-2023. This range of outcomes was considered given uncertainty regarding the preferred approach for 2022-2023 recreational management measures and ongoing considerations related to the transition to the new MRIP estimates (namely the ongoing Commercial/Recreational Allocation Amendment and the Recreational Reform Initiative). It should be emphasized that, as previously stated, actual levels of recreational fishing effort, fishing mortality, and harvest in 2022-2023 are uncertain as the preferred approach to 2022 recreational management measures will be determined later this year and the approach for 2023 will be determined in late 2022.

As described in more detail in the 2020-2021 Scup and Black Sea Bass Specifications EA, alternative 2B (preferred) was expected to result in moderate positive impacts on **target species (i.e., black sea bass)** as it was expected to maintain biomass above the target level and was not expected to result in overfishing. Alternative 2C (least restrictive) was also not expected to result in the black sea bass stock becoming overfished in 2020 or 2021; however, the impacts on the fishing mortality rate were uncertain. Depending on the scale and geographic distribution of the expected increase in fishing effort under alternative 2C, it was considered possible that the black sea bass stock could experience overfishing in 2020 or 2021. Therefore, the expected impacts of alternative 2C on black sea bass ranged from slight negative (if overfishing occurred) to slight positive (if overfishing did not occur). However, updated information suggests that overfishing likely did not occur in 2020 or 2021. The 2021 management track stock assessment suggested that fishing mortality remained below the target level through 2019. In addition, the impacts of the

COVID-19 pandemic on the fisheries were unforeseen when the 2020-2021 Specifications EA was written in 2019. As previously stated, commercial landings did not reach the full quota in 2020. It remains to be seen if the 2021 commercial quota will be fully landed. A recreational overage occurred in 2020 and is also expected in 2021. However, assumptions about recreational overages were incorporated into the 2022-2023 ABC projections. The F values associated with those projections are below the revised F threshold value. Therefore, based on this new information, it is not expected that the catch and landings limits under alternative 2C would result in overfishing.

The proposed catch and landings limits are based on the recommendations of the SSC and are designed to maintain biomass levels above the overfished threshold and to prevent overfishing. Therefore, as with alternative 2B, they are expected to have moderate positive impacts on the black sea bass stock by maintaining the current positive stock status. As previously stated, modifications to the Council's risk policy became effective in 2020, such that a higher acceptable probability of overfishing is now allowed for most biomass levels. The revised risk policy was not considered in the 2020-2021 Specifications EA. Due to changes in the risk policy, the preferred alternative in the 2020-2021 Specifications EA (alternative 2B) had a 40% probability of resulting in overfishing, while the proposed 2022-2023 specifications have a 49% probability of overfishing due to the very high (i.e., more than double the target level) biomass of black sea bass. Therefore, the 2022-2023 specifications represent slightly less positive impacts than alternative 2B in the 2020-2021 Specifications EA due to a 9% higher risk of overfishing. However, moderate positive impacts on the stock are still expected as the 2022-2023 specifications are still expected to have a less than 50% chance of resulting in overfishing.

Neither alternatives 2B or 2C were expected to result in a change in the stock status of any **non-target species**; therefore, they were expected to have slight negative impacts on those non-target species with currently negative stock status and slight positive impacts on non-target species with currently positive stock status. These impacts were expected to be similar under all previously analyzed black sea bass alternatives, including the least restrictive alternative (i.e., alternative 2C), which could have allowed for a notable increase in commercial fishing effort. An increase in recreational fishing effort was not expected as the revised MRIP harvest estimates in recent years are higher than the RHL under alternative 2C. As described in 2020-2021 Scup and Black Sea Bass Specifications EA, the expected levels of fishing effort under alternatives 2B and 2C were not expected to change the stock status of any commercial or recreational non-target species. As previously stated, the proposed 2022-2023 specifications fall between alternatives 2B and 2C. Therefore, as with alternatives 2B and 2C, they are also expected to have slight negative impacts on those non-target species with currently negative stock status and slight positive impacts on all non-target species with currently positive stock status.

Alternatives 2B and 2C were expected to have slight negative impacts on **physical habitat and EFH** due to continued interactions between fishing gear and physical habitats. None of the potential changes in fishing effort under these alternatives were expected to result in additional impacts beyond those caused in recent years by the black sea bass fisheries and many other fisheries which operate in the same areas. They were not expected to result in impacts to habitats previously unimpacted by fishing. However, some level of commercial and recreational fishing effort would continue to occur and fishing gears would continue to impact physical habitat. For these reasons, alternatives 2B and 2C were expected to have slight negative impacts to physical habitat. For the same reasons, the proposed 2022-2023 specifications, which fall in between

alternatives 2B and 2C, are also expected to have slight negative impacts to physical habitat. No changes are expected to the areas, timing, or methods of fishing that may modify habitat impacts.

The expected impacts of the black sea bass alternatives on **protected species** were based on expected changes in fishing effort with different gear types. Bottom trawl gear and pots/traps are the predominant gear types used in the commercial black sea bass fishery. As interactions between these gear types and ESA listed species and/or MMPA protected species have been observed, operation of the commercial black sea bass fishery has the potential to interact with these species. Based on documented interactions between hook and line gear (the predominant recreational gear type) and some protected species, the recreational fishery also has the potential to interact with certain protected species (see section 6.3.3 of the 2020-2021 Scup and Black Sea Bass Specifications EA for more information).

Alternative 2B (previously preferred) was expected to have moderate negative to slight positive impacts on non-ESA listed marine mammals, depending on the species/stock and whether its PBR level would be exceeded as a result of the expected increase in fishing effort, which is uncertain. Alternative 2B was expected to have negligible to high moderate negative (i.e., more negative than moderate negative, but less negative than high negative) impacts on ESA-listed species, depending on the species. Due to the higher levels of fishing effort expected under alternative 2C (least restrictive) compared to alternative 2B, alternative 2C was expected to have high (but not significant) negative to slight positive impacts on non-ESA listed marine mammals and negligible to high (but not significant) negative impacts on ESA-listed species, depending on the species and the scale of the actual increase in interactions, which is uncertain. As previously stated, the proposed 2022-2023 specifications fall within the range of alternatives 2B and 2C. Therefore, the 2022-2023 specifications could have impacts on non-ESA listed marine mammals that range from negligible to high (but not significant) negative.

Alternatives 2B (preferred) and 2C (least restrictive) were expected to result in notable increases in commercial landings of and commercial revenues from black sea bass compared to recent years. Black sea bass are a valuable commercial species; therefore, these expected increases in commercial landings and revenues were expected to result in moderate positive **socioeconomic impacts** for the commercial fishery under both alternatives 2B and 2C. The proposed 2022-2023 specifications are also expected to have moderate positive socioeconomic impacts as they fall between alternatives 2B and 2C.

The expected socioeconomic impacts of alternatives 2B and 2C for the recreational fishery differed from those for the commercial fishery. Due to the use of the revised MRIP data, which shows much higher recreational harvest than the previous estimates, notable reductions in recreational harvest would have been needed to prevent RHL overages under alternative 2B. Alternative 2C would have either required a slight reduction or no change in harvest, depending on annual considerations about expected harvest in the upcoming year. As previously stated, the Council and Board agreed to maintain status quo recreational management measures in 2020 and 2021; therefore, the socioeconomic impacts of the 2020 RHL were likely similar to the impacts described for alternative 2C in the 2020-2021 Specifications EA. As alternative 2B was expected to require a moderate decrease in recreational harvest compared to recent levels to prevent RHL overages, it was expected to result in reduced recreational fishing opportunities, reduced for-hire revenues, and reduced angler satisfaction. Therefore, alternative 2B was expected to result in moderate negative socioeconomic impacts for the recreational fishery. Alternative 2C was expected to result in

socioeconomic impacts for the recreational fishery that range from slight negative (if a slight reduction in harvest was required) to slight positive (if recreational harvest remained status quo). The proposed 2022-2023 specifications fall between alternatives 2B and 2C; however, the Council and Board have not yet agreed to a preferred approach to recreational management measures in 2022-2023. If they adopt restrictions to constrain harvest to the 2022 and 2023 RHLs, then socioeconomic impacts to the recreational fishery could be similar to those described for alternative 2B (i.e., moderate negative). If they maintain status quo measures in 2022 and/or 2023 or require a slight reduction in harvest, the socioeconomic impacts could be similar to those described under alternative 2C (i.e., slight negative to slight positive).

Overall, the proposed 2022-2023 black sea bass catch and landings limits are not expected to alter the biological, EFH, or socioeconomic impacts previously described in the EA.

6.4 Summary of NEPA Compliance

As described above, the basis for deriving these specifications did not fundamentally change from those analyzed through the 2020-2021 Specifications EAs. The same underlying stock assessment models and very similar projections of spawning stock spawning biomass were used in development of the ABCs. The SSC applied many of the same parameters and the Council's revised risk policy for each species to derive the ABCs. The only difference in deriving the ABCs for each species is the slight increase in the acceptable risk of overfishing associated with the revised risk policy and the assumed 2020 and 2021 recreational overages which factored into the black sea bass ABC projections. Similar methods were applied as previously to derive the associated sector-specific catch and landings limits for each species, with the exception of the change in black sea bass discard projection methodology described in section 5.3.

At the time of development of the 2020-2021 Specifications EAs, it was known that the Council was in the process of reviewing and considering revisions to its risk policy; however, final action had not yet occurred. The Specifications EAs, while not specifically considering potential risk-policy related changes, attempted to account for a range of possible interim year changes that might be recommended based on new information. The proposed action falls within the previously analyzed range for each species, and the new information does not change the outcome of the impacts previously assessed within that range.

There are no other proposed changes to the management of commercial and recreational fisheries other than the total catch and landings limits considered in this document. No additional analyses are required beyond what is described above in this section.

7.0 Public Participation

The public had the opportunity to provide comments during the development of the 2020-2021 Specifications EAs. The public also had the opportunity to review and comment on the proposed 2022-2023 specifications during the SSC meeting held on July 22, 2021; during the MC Meeting held on July 27, 2021; during the AP Meetings held on June 21, 2021 and July 29, 2021; and during the Council/Board meeting held on August 9, 2021.

This document will be subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act and may be improved based on comments received.

8.0 Conclusion

After considering the proposed action, new information, and new circumstances, the Council has preliminarily determined that the proposed action and its effects fall within the scope of the 2020-2021 Summer Flounder Specifications EA and the 2020-2021 Scup and Black Sea Bass Specifications EA. Thus, it is not necessary to create a new NEPA analysis because 1) the impacts of this action do not differ substantially from what was originally considered in the EAs analyzing a range of 2021 commercial quotas and RHLs; and (2) no new information or circumstances exist that are significantly different from when the EA Finding of No Significant Impact was signed on September 23, 2019 (for summer flounder) and April 9, 2020 (for scup and black sea bass). The Specifications EAs thus remain valid to support the proposed action.

9.0 Compliance with Applicable Laws

9.1 Magnuson-Stevens Fishery Conservation and Management Act (MSA)

Section 301 of the MSA requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The actions taken in this specification document are confined to processes defined within the FMP; therefore, as actions within the FMP have been deemed consistent with the National Standards, these specification actions are similarly consistent. The most recent FMP amendments and framework adjustments address how the management actions implemented comply with the National Standards. First and foremost, the Council continues to meet the obligations of National Standard 1 by adopting and implementing conservation and management measures that will continue to prevent overfishing, while achieving, on a continuing basis, the optimum yield for summer flounder, scup, black sea bass, and the U.S. fishing industry, including ACLs and measures to ensure accountability for those limits. The Council uses the best scientific information available (National Standard 2) and manages summer flounder, scup, and black sea bass throughout their range (National Standard 3). These management measures do not discriminate among residents of different states, (National Standard 4), they do not have economic allocation as their sole purpose (National Standard 5), they account for variations in these fisheries (National Standard 6), they avoid unnecessary duplication (National Standard 7), they take into account the fishing communities (National Standard 8), and they promote safety at sea (National Standard 10). The actions taken are consistent with National Standard 9, which addresses bycatch in fisheries. The Council has implemented many regulations that have indirectly acted to reduce fishing gear impacts on EFH. By continuing to meet the National Standards requirements of the MSA through future FMP amendments, framework actions, and the annual specification setting process, the Council will ensure that cumulative impacts of these actions will remain positive overall for the ports and communities that depend on these fisheries, for the Nation as a whole, and for the resources.

9.2 National Environmental Policy Act (NEPA)

The Council has preliminarily determined that the proposed action and its effects fall within the scope of 2020-2021 Summer Flounder Specifications EA and the 2020-2021 Scup and Black Sea Bass Specifications EA, and that these analyses remain valid for this action. Thus, there is no need to supplement these analyses and their Findings of No Significant Impact.

9.3 *Marine Mammal Protection Act (MMPA)*

None of the specifications proposed in this document are expected to alter overall effort or fishing methods beyond what has been previously analyzed. Therefore, this action is not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries. Further information on the potential impacts of the fishery and the proposed management action on marine mammals can be found in the Specifications EAs for the 2020-2021 summer flounder, scup, and black sea bass catch limits. These analyses found that the overall catch limits and associated management measures were not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

9.4 *Endangered Species Act (ESA)*

Section 7 of the ESA requires federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species.

Pursuant to section 7 of the ESA, NMFS issued a Biological Opinion (Opinion) on May 27, 2021, that considered the effects of the NMFS' authorization of ten FMPs, NMFS' North Atlantic Right Whale Conservation Framework, and the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2, on ESA-listed species and designated critical habitat. The ten FMPs considered in the Opinion include the: (1) American lobster; (2) Atlantic bluefish; (3) Atlantic deep-sea red crab; (4) mackerel/squid/butterfish; (5) monkfish; (6) Northeast multispecies; (7) Northeast skate complex; (8) spiny dogfish; (9) summer flounder/scup/black sea bass; and (10) Jonah crab FMPs. The American lobster and Jonah crab FMPs are permitted and operated through implementing regulations compatible with the interstate fishery management plans issued under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, the other eight FMPs are issued under the authority of the MSA.

The 2021 Opinion determined that the proposed action may adversely affect, but is not likely to jeopardize, the continued existence of North Atlantic right, fin, sei, or sperm whales; the Northwest Atlantic Ocean distinct population segment (DPS) of loggerhead, leatherback, Kemp's ridley, or North Atlantic DPS of green sea turtles; any of the five DPSs of Atlantic sturgeon; Gulf of Maine DPS Atlantic salmon; or giant manta rays. The Opinion also concluded that the proposed action is not likely to adversely affect designated critical habitat for North Atlantic right whales, the Northwest Atlantic Ocean DPS of loggerhead sea turtles, U.S. DPS of smalltooth sawfish, Johnson's seagrass, or elkhorn and staghorn corals. An Incidental Take Statement was issued in the Opinion. The Incidental Take Statement includes reasonable and prudent measures and their implementing terms and conditions, which NMFS determined are necessary or appropriate to minimize impacts of the incidental take in the fisheries assessed in this Opinion.

9.5 *Coastal Zone Management Act (CZMA)*

Section 307(c)(1) of the CZMA of 1972, as amended, requires that all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. The CZMA provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. Responsible management of coastal zones and fish stocks must involve mutually supportive goals. NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each state (Maine, New Hampshire,

Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina). The Council has developed these management measures and will submit them to NMFS; NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each state.

9.6 *Administrative Procedure Act (APA)*

Section 553 of the Administrative Procedures Act establishes procedural requirements applicable to informal rulemaking by federal agencies. The purpose of these requirements is to ensure public access to the federal rulemaking process and to give the public adequate notice and opportunity for comment. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.

9.7 *Information Quality Act*

Utility of Information Product

The information presented in this document is helpful to the intended users by presenting a clear description of the purpose and need of the proposed action, the measures proposed, and the impacts of those measures. A discussion of the reasons for selecting the proposed action is included so that readers may have a full understanding of the proposed action and its implications. The intended users of the information contained in this document include individuals involved in the summer flounder, scup, and black sea bass fisheries, (including commercial and recreational fishermen and fishery managers) and other individuals interested in the management of the fisheries. The information contained in this document should be helpful to individuals affected by the proposed measures. This information will enable these individuals to adjust their management practices and make appropriate business decisions. Until a proposed rule is prepared and published, this document, as well as the briefing materials, recordings, and meeting summaries from the August 2021 Council/Board meeting, are the principal means by which the information contained herein is available to the public. The information provided in this document is based on the most recent available information from the relevant data sources. The information contained in this document, as well as in the EAs off which it builds, includes detailed and recent information on the summer flounder, scup, and black sea bass resources.

The action described in this document was developed to be consistent with the FMP, MSA, and other applicable laws through a multi-stage process that was open to review by affected members of the public. The public had the opportunity to provide comments during the development of the 2020-2021 Specifications EAs. The public also had the opportunity to review and comment on the proposed 2022-2023 specifications during the SSC meeting held on July 22, 2021; during the MC Meeting held on July 27, 2021; during the AP Meetings held on June 21, 2021 and July 29, 2021; and during the Council/Board meeting held on August 9, 2021.

This document will be subject to public comment through proposed rulemaking, as required under the APA and may be improved based on comments received. The *Federal Register* notice that announces the proposed rule and the final rule and implementing regulations will be made available in printed publication, on the website for the Greater Atlantic Regional Fisheries Office (www.greateratlantic.fisheries.noaa.gov) and through Regulations.gov. The *Federal Register* documents will provide metric conversions for all measurements.

Integrity of Information Product

This information product meets the standards for integrity under the following types of documents: Other/Discussion (e.g., Confidentiality of Statistics of the MSA; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the MMPA).

Prior to dissemination, information associated with this action, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. All electronic information disseminated by NMFS adheres to the standards set out in Appendix III, “Security of Automated Information Resources,” of Office of Management and Budget Circular A-130; the Computer Security Act; and the Government Information Security Act. All confidential information (e.g., dealer purchase reports) is safeguarded pursuant to the Privacy Act; Titles 13, 15, and 22 of the U.S. Code (confidentiality of census, business, and financial information); the Confidentiality of Statistics provisions of the MSA; and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics.

Objectivity of Information Product

For purposes of the Pre-Dissemination Review, this document is considered to be a “Natural Resource Plan.” Accordingly, the document adheres to the published standards of the MSA; the Operational Guidelines, FMP Process; the EFH Guidelines; the National Standard Guidelines; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act. This information product, and the assessments off which it builds, use information of known quality from sources acceptable to the relevant scientific and technical communities. Several sources of data were used in the development of the 2020-2021 Specifications EAs and this SIR document. These data sources included, but were not limited to, historical and current commercial landings data from commercial dealers, historical and current recreational landings data from MRIP, Vessel Trip Report data, and fisheries independent data collected through the NMFS bottom trawl surveys. The analyses contained in this document, and in the EAs off which this document builds, were prepared using data from accepted sources. The analyses have been reviewed by members of the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee and/or by the Council’s SSC where appropriate.

Conservation and management measures considered for this action were selected based upon the best scientific information available. The analyses important to this decision used the most recent data available, including, but not limited to, the best available information on the number of permits, both active and inactive, in the fisheries, the catch (including landings and discards) by those vessels, the landings per unit of effort, and the revenue produced by the sale of those landings to dealers. Specialists (including professional members of technical teams, committees, and Council staff) who worked with these data are familiar with the most current analytical techniques and with the available data and information relevant to the fishery.

The policy choice is clearly articulated in Section 2.0 of this document, and the proposed measures are described in section 5.0. The supporting science and analyses, upon which the policy choice was based, are summarized and described in sections 4.0, 5.0, and 6.0 of this document and in the 2020-2021 Summer Flounder Specifications EA and the 2020-2021 Scup and Black Sea Bass

Specifications EA. All supporting materials, information, data, and analyses within this document have been, to the maximum extent practicable, properly referenced per commonly accepted standards for scientific literature to ensure transparency. The review process used in preparation of this document involves the Council, the Northeast Fisheries Science Center, the Greater Atlantic Regional Fisheries Office, and NOAA Fisheries Service Headquarters. The Northeast Fisheries Science Center's technical review is conducted by senior level scientists with specialties in population dynamics, stock assessment methods, population biology, and the social sciences. The Council review process involves public meetings at which affected stakeholders have opportunity to provide comments on the document. Review by staff at the NMFS Greater Atlantic Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of the action proposed in this document and clearance of any rules prepared to implement resulting regulations is conducted by staff at NOAA Fisheries Service Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget. In preparing this action, NMFS must comply with the requirements of the MSA, NEPA, the Administrative Procedure Act, the Paperwork Reduction Act, the CZMA, the ESA, the MMPA, the Information Quality Act, and Executive Orders 12630 (Property Rights), 12866 (Regulatory Planning), 13132 (Federalism), and 13158 (Marine Protected Areas). The Council has preliminarily determined that the proposed action is consistent with the National Standards of the MSA and all other applicable laws.

9.8 *Paperwork Reduction Act (PRA)*

The Paperwork Reduction Act (PRA) concerns the collection of information. The intent of the PRA is to minimize the federal paperwork burden for individuals, small businesses, state and local governments, and other persons, as well as to maximize the usefulness of information collected by the federal government. The Council is not proposing measures under this regulatory action that require review under PRA. There are no changes to existing reporting requirements previously approved under this FMP. This action does not contain a collection-of-information requirement for purposes of the PRA.

9.9 *Regulatory Flexibility Act*

9.9.1 *Basis and Purpose of the Rule and Summary of Preferred Alternatives*

This action is taken under the authority of the MSA and regulations at 50 CFR part 648. Section 2.0 describes the purpose and need for this action. As described in more detail in section 5.0, the proposed action includes 2022-2023 catch and landings limits for summer flounder, scup, and black sea bass based on the recommendations of the SSC, the Council, and the Board. For summer flounder, this includes a commercial quota of 15.53 million pounds and a recreational harvest limit of 10.36 million pounds. For scup, this includes commercial quotas of 20.38 million pounds in 2022 and 17.87 million pounds in 2023 and recreation harvest limits of 6.08 million pounds in 2022 and 5.41 million pounds in 2023. For black sea bass, the proposed action includes commercial quotas of 6.47 million pounds in 2022 and 5.71 million pounds in 2023 and recreational harvest limits of 6.74 million pounds in 2022 and 5.95 million pounds in 2023.

The Regulatory Flexibility Act, enacted in 1980 and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The Regulatory Flexibility Act recognizes that the size of a business, unit of government,

or nonprofit organization can have a bearing on its ability to comply with federal regulations. Major goals of the Regulatory Flexibility Act are to: 1) increase agency awareness and understanding of the impact of their regulations on small business; 2) require that agencies communicate and explain their findings to the public; and 3) encourage agencies to use flexibility and to provide regulatory relief to small entities.

The Regulatory Flexibility Act emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities, as well as consideration of alternatives that may minimize negative impacts to small entities, while still achieving the objective of the action. When an agency publishes a proposed rule, it must either, (1) certify that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification with a factual basis demonstrating this outcome, or (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis that describes the impact of the proposed rule on small entities.

The sections below provide supporting analysis to assess whether the proposed regulations will have a “significant impact on a substantial number of small entities.”

9.9.2 Description and Number of Entities to Which the Rule Applies

The entities (i.e., the small and large businesses) that may be affected by this action include fishing operations with federal moratorium (commercial) permits and/or federal party/charter permits for summer flounder, scup, and/or black sea bass. Private recreational anglers are not considered “entities” under the Regulatory Flexibility Act, thus economic impacts on private anglers are not considered here.

For Regulatory Flexibility Act purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR §200.2). A business primarily engaged in fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual receipts not in excess of \$11 million, for all its affiliated operations worldwide.

Vessel ownership data⁶ were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be affected by this action.

Commercial affiliates potentially regulated by this action include those affiliates that reported revenues from summer flounder, scup, and/or black sea bass in 2018-2020 and also reported that the majority of their revenues in 2020 came from commercial fishing. Some of these affiliates may have also participated in for-hire fishing. A total of 711 commercial affiliates were identified as being potentially regulated by this action, 706 (99%) of which were identified as small businesses and 5 (1%) were identified as large businesses based on their average revenues in 2018-2020.

⁶ Affiliate data for 2018-2020 were provided by the NMFS NEFSC Social Science Branch. This is the latest affiliate data set available for analysis.

A total of 361 affiliates reported that the majority of their revenues in 2020 came from for-hire fishing. Some of these affiliates may have also participated in commercial fishing. All 361 of the for-hire affiliates were categorized as small businesses based on their average 2018-2020 revenues. It is not possible to determine what proportion of their revenues came from fishing for an individual species. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as recreational species in the Mid-Atlantic and southern New England, revenues generated from these species are likely important for many of these affiliates at certain times of the year.

9.9.3 Economic Impacts on Regulated Entities

The expected impacts of the proposed action were analyzed by employing quantitative approaches to the extent possible. Effects on profitability associated with the proposed measures should be evaluated by looking at the impact of the measures on individual business entities' costs and revenues. Changes in gross revenues were used as a proxy for profitability. Where quantitative data were not available, qualitative analyses were conducted.

Expected Impacts on Commercial Entities

The 706 potentially regulated commercial fishing small business affiliates had average total annual revenues of \$634,503 and \$52,227 on average in annual revenues from commercial landings of summer flounder, scup and/or black sea bass during 2018-2020. On average, these species accounted for 8% of the total revenues for these 706 small business affiliates.

The 5 potentially regulated large business affiliates had average total annual revenues of \$82.8 million and \$438,853 on average in annual revenues from commercial landings of summer flounder, scup, and/or black sea bass during 2018-2020. On average, these species accounted for less than 1% of the total revenues for these 5 large business affiliates.

Due to the higher dependence on summer flounder, scup, and black sea bass for the small commercial businesses compared to the large businesses, the small businesses may feel the effects of this action to a greater extent than the large businesses. Likewise, as shown in Table 13, the smaller of the small businesses (based on average annual total revenues) tended to have a greater reliance on these species than the larger small businesses. These smaller affiliates may feel the effects of this action to a greater extent than the larger small businesses which derive a lower proportion of their annual revenues from these three species.

Although summer flounder, scup, and black sea bass contributed to 8% of the annual revenues for the small business on average and less than 1% for the large businesses, some individual businesses had a higher dependence on these species. For example, 214 of the 706 small commercial businesses (30%) received at least 50% of their average total annual incomes from commercial summer flounder, scup, and black sea bass landings during 2018-2020 according to the affiliate database. The affiliates with a higher dependence on these species will experience the effects of this action to a greater extent than those with a lower dependence on them.

The economic impacts of the preferred alternatives on all potentially regulated commercial affiliates were evaluated primarily based on expected changes in revenues. Actual revenues in 2022-2023 will depend on a variety of factors, including the commercial quotas and other management measures (e.g., possession limits); management measures for other commercially-

harvested species; availability of summer flounder scup, black sea bass, and other species; market factors (e.g., price of these species compared to alternative species), weather, and other factors.

As described in more detail in section 6, the proposed action for summer flounder is expected to result in a slight to moderate increase in commercial landings compared to current levels. The proposed 2022-2023 commercial quota (15.53 million pounds) represents an 24% increase over the 2021 quota (12.49 million pounds), and approximately a 35% increase over 2020 reported landings (11.53 million pounds).

The proposed action for scup is expected to result in similar levels of commercial landings and revenues as over the past several years. Commercial scup landings appear to be influenced more by market facts than the annual commercial quota. The proposed scup quotas for 2022 (20.38 million pounds) and 2023 (17.87 million pounds) represent a less than 1% decrease and a 13% decrease from 2021 (20.50 million pounds), respectively; however, they will not decrease to the extent that they are expected to impact commercial landings, which have been below the quotas since 2007. In general, the proposed 2022-2023 scup quotas are expected to have moderate positive impacts for both the small and large commercial fishing business identified above because they are expected to result in revenues similar to those over the past several years.

The proposed action for black sea bass is expected to have generally moderate positive socioeconomic impacts for all participants because it would allow for commercial landings and revenues that are similar to recent years. For example, the proposed 2022 quota (6.47 million pounds) is 6% higher than the 2021 quota (6.09 million pounds) and the proposed 2023 quota is 6% lower than the 2021 quota. All potentially regulated small and large commercial fishing businesses are expected to benefit from the preferred black sea bass alternative.

Table 13: Average annual total revenues during 2018-2020 for the commercial small business affiliates likely to be affected by the proposed action, as well as average annual revenues from commercial landings of summer flounder, scup, and/or black sea bass. Only those businesses which reported commercial fishing revenue in 2020 are shown.

Avg. annual total revenue (millions of \$)	Count of affiliates	2018-2020 avg. total annual revenues	2018-2020 avg. total annual revenues from summer flounder, scup, and/or black sea bass	Summer flounder, scup and/or black sea bass revenues as proportion of total revenues
<0.5	566	\$91,688	\$24,913	27%
0.5 to <1	63	\$736,172	\$127,431	17%
1 to <2	39	\$1,388,581	\$132,056	10%
2 to <5	24	\$3,327,182	\$258,010	8%
5 to <11	8	\$8,004,646	\$126,371	2%
11+	6	\$25,273,394	\$398,269	2%
All	706	\$634,503	\$52,227	8%

Expected Impacts on Recreational Entities

As previously stated, 361 for-hire fishing affiliates were identified as small businesses which may be regulated by this action and reported revenues from any fishing activity in 2020. All these affiliates were categorized as small businesses based on their revenues in 2020. These 361 small

businesses had average total annual revenues of \$233,155 and average annual revenues from for-hire fishing of \$230,815, accounting for 95% of total revenues on average. Annual average revenues from for-hire fishing ranged from less than \$10,000 for 102 affiliates to over \$1,000,000 for 16 affiliates.

As previously stated, it is not possible to derive what proportion of the overall revenues for these for-hire affiliates came from fishing activities for an individual species. Nevertheless, given the popularity of summer flounder, scup and black sea bass as recreational species in the Mid-Atlantic and New England, revenues generated from these species are likely important to many of these firms, at least at certain times of the year.

For-hire revenues are impacted by a variety of factors, including regulations and demand for for-hire trips for summer flounder, scup, black sea bass, and other potential target species; weather; the economy; and other factors. Recreational measures to achieve the 2022-2023 RHLs are not yet known as they will be considered later in 2022 and in late 2023.

Depending on information about recreational effort trends in 2021 available to develop 2022 measures, recreational measures in 2022 could be unchanged from 2021, or could be restricted to constrain harvest to the RHLs if recent information suggests that reductions are needed. If restrictions are implemented, given the popularity of these species in this region, this could result in a decrease in for-hire trips, decreased for-hire revenues, and overall slight to moderate negative impacts to recreational for-hire businesses. These impacts would be greater in magnitude for the for-hire businesses which depend more heavily on summer flounder, scup and/or black sea bass. As previously stated, it is not possible to determine the relative importance of these species compared to other species for the potentially regulated for-hire affiliates.

9.9.4 Analysis of Non-Preferred Alternatives

When considering the economic impacts of the alternatives under the Regulatory Flexibility Act, consideration should also be given to those non-preferred alternatives which would result in higher net benefits or lower costs to small entities while still achieving the stated objective of the action. The Council and Board did not consider any alternatives other than those described above for the proposed 2022-2023 specifications. The proposed specifications follow previously implemented methods and the FMP, are based on the best available scientific information, and are intended to prevent overfishing.

10.0 Preparers and Persons Consulted

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