

Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201, Dover, DE 19901 Phone: 302-674-2331 | FAX: 302-674-5399 | www.mafmc.org Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: July 29, 2022

To: Council

From: Chris Moore, Executive Director

Subject: Executive Director's Report

The following materials are enclosed for review during the Executive Director's Report at the August 2022 Council Meeting:

1. 2022 Planned Meeting Topics

2. Status of Council Actions Under Development

3. Status of Completed Council Actions and Specifications

4. Staff Memo: Protected Resources Update

5. Email from Kelly Denit: Climate Governance Follow-up

6. Conceptual Outline: Fisheries Governance Policy/Guidance pursuant to MSA 304(f)

2022 Planned Council Meeting Topics

Updated:7/26/22

August 8-11, 2022 Council Meeting - Philadelphia, PA

- 2023 Summer Flounder, Scup, and Black Sea Bass Specifications-: Review (Joint with ASMFC SFSBSB Board)
- 2023 Bluefish Specifications and Recreational Management Measures: Review (Joint with ASMFC Bluefish Board)
- EAFM Summer Flounder Management Strategy Evaluation: Final Results and Recommendations (Joint with ASMFC SFSBSB Board)
- 2023 Illex Specifications: Approve
- Illex Research Track Assessment Process Report
- Illex Permit Amendment: Update
- 2023-2024 Butterfish Specifications: Approve
- Climate Change Scenario Planning: Update
- BOEM Guidance for Mitigating Impacts of Offshore Wind Energy Projects on Commercial and Recreational Fisheries
- Presentation: Community Offshore Wind Project
- New England Council Updates

October 4-6, 2022 Council Meeting - Dewey Beach, DE

- 2023 Implementation Plan: Review Draft (Executive Committee)
- Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment: Approve Alternatives for Public Hearing Document
- Ocean City Video Project: Review Results
- Private Recreational Tilefish Permitting and Reporting: Review Performance
- Joint Council-SSC Meeting
- Essential Fish Habitat Redo: Initiate Amendment
- Climate Change Scenario Planning: Review Final Scenarios and Discuss Applications
- Robert's Rules of Order Training
- NEFSC Fishery Monitoring and Research Division Update
- 2023 Spiny Dogfish Specifications: Approve

December 12-15, 2022 Council Meeting - Annapolis, MD

- 2023 Implementation Plan: Approve
- 2023 Spiny Dogfish Specifications: Approve
- 2023 Recreational Management Measures for Summer Flounder, Scup, and Black Sea Bass: Approve (Joint with ASMFC SFSBSB Board)
- Recreational Reform Initiative Technical Guidance Document: Discuss Next Steps
- Recreational Sector Separation and Catch Accounting Amendment: Discuss Next Steps

- Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment: Final Action
- Climate Change Scenario Planning: Review Final Scenarios and Discuss Applications
- EAFM Risk Assessment Comprehensive Review: Update
- Habitat Activities Update (Including Aquaculture)
- Offshore Wind Updates
- Ocean City Video Project: Review Results
- 2023-2025 Monkfish Specifications and Management Measures FW: Approve

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

2022 Council Meeting Topics At-a-Glance

	August	October	December
Mackerel, Squid, Butterfish and River Herring and Shad (RH/S)	 2023 Illex Specs 2023-2024 Butterfish Specs Illex Permits Amendment Update Illex Assessment Process Report 		
Recreational Reform			 Rec Reform Technical Guidance Doc: Discuss Next Steps Rec Sector Separation and Catch Accounting Amd: Discuss Next Steps
Summer Flounder, Scup, Black Sea Bass (SF/S/BSB)	SF/S/BSB 2023 Specs Review		SF/S/BSB 2023 Rec Mgmt Measures
Bluefish	Bluefish 2023 Specs and Mgmt Measures Review		
Tilefish		 Private Tilefish Permitting/ Reporting Update 	
Atlantic Surfclam and Ocean Quahog (SC/OQ)		 SC/OQ Species Separation Amd: Approve Public Hearing Doc 	• SC/OQ Species Separation Amd: Final Action
Spiny Dogfish		• 2023 Dogfish Specs	
Science Issues		 Joint Council-SSC Meeting	Ocean City Video Project: Review Results
EAFM	EAFM Summer Flounder MSE: Review Final Results		• EAFM Risk Assessment Comprehensive Review: Update
Habitat, Aquaculture, Wind	 BOEM Guidance for Mitigating Impacts of Offshore Wind Presentation: Community Offshore Wind 	EFH Redo Amd: Initiate	 Habitat Update Offshore Wind Update
Protected Resources			
Other	 Climate Change Scenario Planning: Update New England Council Updates 	 2023 Implementation Plan: Draft Deliverables NEFSC Fishery Monitoring and Research Division Update 	 2023-2025 Monkfish Specs and Mgmt Measures 2023 Implementation Plan: Approve Climate Change Scenario Planning: Final Scenarios and Discuss Applications

Acronyms/Abbreviations

Amd	Amendment	MSE	Management Strategy Evaluation
EAFM	Ecosystem Approach to Fisheries Management	Rec	Recreational
FW	Framework	RH/S	River Herring and Shad
GRAs	Gear Restricted Areas	SC/OQ	Atlantic Surfclam and Ocean Quahog
HCR	Harvest Control Rule	SF/S/BSB	Summer Flounder, Scup, Black Sea Bass
Mgmt	Management	Specs	Specifications
MSB	Mackerel, Squid, Butterfish	SSC	Scientific and Statistical Committee

Actions Referenced in this Document

- Mackerel Rebuilding 2.0 Amd: Atlantic Mackerel Rebuilding 2.0 Amendment
- Rec HCR FW/ Addenda: Recreational Harvest Control Rule Framework/Addenda
- Rec Reform Technical Guidance Doc: Recreational Reform Initiative Technical Guidance Document
- Rec Sector Separation and Catch Accounting Amd: Recreational Sector Separation and Catch Accounting Amendment
- **SC/OQ Species Separation Amendment:** Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment



Status of Council Actions Under Development

AS OF 7/26/22

FMP	Action	Description	Status	Staff Lead
Summer Flounder, Scup, Black Sea Bass and Bluefish	Recreational Reform Initiative Technical Guidance Document	The Council and Policy Board agreed to develop a technical guidance document to address the following topics: (1) identifying and smoothing MRIP outlier estimates, (2) use of preliminary current year MRIP data, and (3) maintaining status quo recreational measures. Some of these topics have been partially developed through the Harvest Control Rule Framework/Addenda. No additional progress has been made on a technical guidance document due to prioritization of the Harvest Control Rule. https://www.mafmc.org/actions/recreational-reform-initiative	The Council and Commission will discuss next steps for this document in December 2022.	Beaty
	Recreational Sector Separation and Catch Accounting Amendment	This joint MAFMC/ASMFC amendment considers (1) options for managing for-hire recreational fisheries separately from other recreational fishing modes and (2) options related to recreational catch accounting, such as private angler reporting and enhanced vessel trip report requirements for for-hire vessels. https://www.mafmc.org/actions/recreational-reform-initiative	The Council and Commission will discuss next steps for this amendment in December 2022.	Dancy
Surfclam and Ocean Quahog	Surfclam and Ocean Quahog Species Separation Requirements Amendment	As surfclams have shifted toward deeper water in recent years, catches including both surfclams and ocean quahogs have become more common. Current regulations do not allow surfclams and ocean quahogs to be landed on the same trip or in the same tagged cage. The Council is developing and Amendment to modify species separation requirements in these fisheries in the short-term. In addition, staff/NEFSC will explore longer term solutions for monitoring (such as electronic monitoring testing on the clam survey). https://www.mafmc.org/actions/scoq-species-separation	In development; the Council is scheduled to review the public hearing document in October.	Coakley/ Montañez

FMP	Action	Description	Status	Staff Lead
Omnibus	Omnibus Amendment for Data Modernization	This action will address any regulatory changes needed to fully implement the Agency's Fishery-Dependent Data Initiative (FDDI).	The Council last received an update at the October 2018 meeting. In 2019 the Council took final action on the Commercial eVTR Omnibus Framework jointly with the NEFMC in support of FDDI.	GARFO/NEFSC
Monkfish	Framework for 2023-2025 Specifications and other Management Measures	Includes potential changes to mesh size, days at sea usage, and trip limits. Joint FMP with New England.	NE Council Lead, Development ongoing, anticipated final action in December.	Feeney (NE), and Didden

Timeline and Status of Recent MAFMC Actions and Amendments/Frameworks Under Review

As of 7/26/2022

The table below summarizes the status of actions after they have been approved by the Council. For information about the status of Council actions under development, please see the document titled "Status of Council Actions Under Development."

Title	Action Number	Council Approval	Initial Submission	Final Submission	NOA Published	Proposed Rule Published	Approval/ Disapproval Letter	Final Rule Published	Regs Effective	Notes
Excessive Shares Amendment	SCOQ Amd 20	12/9/19	4/24/20	9/25/20						Deeming regs approved 2/10/22
MSB FMP Goals/Objectives and Illex Permits Amendment	MSB Amd 22	7/16/20	3/15/21	4/12/22	6/7/22					Deeming regs approved May 19, 2022
Black Sea Bass Commercial State Allocation Amendment	SFSBSB Amd 23	8/4/21	11/19/21							Waiting on edits from GARFO/NEFSC review.
Tilefish Multi-Year Specifications Framework	Tilefish FW 7	8/11/21	7/10/21	4/22/22						
Summer Flounder, Scup, Black Sea Bass Commercial/ Recreational Allocation Amendment	SFSBSB Amd 22	12/14/21	5/1/22	6/24/22						Deeming regs approved 7/19/2022.
MSB Rebuilding 2.0 Amendment	TBD	6/8/22								Needs to be in place January 2023
Recreational Harvest Control Rule Framework	TBD	6/7/22								

Timeline and Status of Current and Upcoming Specifications for MAFMC Fisheries As of 7/26/22

Current Specifications	Year(s)	Council Approval	Initial Submission	Final Submission	Proposed Rule	Final Rule	Regs Effective	Notes
Golden Tilefish	2022-2024	8/11/21	10/7/21	4/22/22				Submitted under the Tilefish Multi-Year Specifications Framework 7
Blueline Tilefish	2022-2024	4/7/21	10/20/21	5/5/22				SIR complete, proposed rule expected soon.(status quo measures).
Surfclam and Ocean Quahog	2021-2026	8/12/20	9/2/20	2/24/21	2/17/21	5/13/21	6/14/21	
Longfin Squid	2021-2023	8/10/20	10/14/20	7/2/21	5/26/21	7/22/21	7/22/21	
Butterfish	2021-2022	8/10/20	10/14/20	7/2/21	5/26/21	7/22/21	7/22/21	
Illex Squid	2022	4/6/22	5/18/22	6/30/22	na			SIR for 2022 ABC Increase to 40,000 MT, rule expected soon
Atlantic Mackerel (including RH/S cap)	2022	8/11/21	N/A	N/A	N/A	1/12/22	1/7/22	Emergency actions locked 2022 catch to near 2021 catch.
Chub mackerel	2023-2025	6/8/22						
Bluefish	2022-2023	8/9/21	10/18/21		12/2/21	2/2/22	2/2/22	
Summer Flounder, Scup, Black Sea Bass	2022-2023	8/9/21	10/4/21	11/5/21	11/24/21	12/23/21	1/1/22	Revisions expected for 2023
Spiny Dogfish	2021-2022	10/6/20	12/7/20	2/3/21	3/4/21	5/1/21	5/1/21	
Spiny Dogfish	2022 trip limit adjustment	10/6/21	12/30/21		2/25/22	4/7/22	5/1/22	Includes federal trip limit increase to 7,500 pounds (states may still be evaluating whether to match increase)

Recreational Management Measures

Current Management Measures	Year(s)	Council Approval	Initial Submission	Final Submission	Proposed Rule	Final Rule	Regs Effective	Notes
Summer flounder rec measures	2022	12/14/21	2/11/22	2/24/22	4/18/22	6/9/22	6/9/22	
Black sea bass rec measures	2022	12/14/21	2/11/22	2/24/22	4/18/22	6/9/22	6/9/22	
Scup rec measures	2022	12/14/21	2/11/22	2/24/22	4/18/22	6/9/22	6/9/22	
Bluefish rec measures	2022-2023	12/13/21	1/23/20	3/19/20	5/25/20	6/29/20	6/29/20	Reviewed in 2021. No changes from prevous year's measures.



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MEMORANDUM

Date: July 28, 2022

To: Chris Moore, Executive Director

From: Karson Cisneros, Staff

Subject: Update on Protected Resources Issues

Right Whales

The Atlantic Large Whale Take Reduction Team (TRT) is currently working on phase two of the Atlantic Large Whale Take Reduction Plan (ALWTRP) which focuses on reducing the risk of entanglement to right, humpback, and fin whales in U.S. East Coast gillnet, Atlantic mixed species trap/pot, and Mid-Atlantic lobster and Jonah crab trap/pot fisheries. The TRT met May 9-13 with the goal of developing recommended measures for Phase 2 which are meant to contribute to achieving the Agency's overall coast-wide goal of approximately 90% risk reduction. At their May meeting the TRT identified several potential collections of measures to be further analyzed to develop team recommendations. The results of these analyses are tentatively scheduled to be presented to the TRT on September 8th as a briefing webinar and phase 2 final recommendations are scheduled to be developed at a September 19th and 22nd two-day meeting.

The Council will plan to hold a Protected Resources (PR) Committee meeting the week before the September 19th and 22nd TRT meeting in order to inform the Council representation on the TRT before final recommendations are made. The PR Committee meeting date will be finalized when the TRT meeting date is confirmed.

Atlantic Sturgeon

In 2021, NOAA Fisheries released a "batched" Biological Opinion which considered the effects of several fishery management plans on ESA-listed species. The Biological Opinion specifies several requirements necessary to minimize the impacts of any incidental take. These include a requirement that NOAA Fisheries convene a working group to address Atlantic sturgeon bycatch in the Federal large mesh gillnet fisheries.

At their June Meeting, the Council received an overview of the Draft Atlantic Sturgeon Bycatch Action Plan released in May 2022. The draft action plan outlines that some reduction in sturgeon catch will be necessary however it is not currently clear how much reduction will be required, and the Final Action Plan (expected September 2022) may or may not specify an exact reduction Page 1 of 2

amount. The plan outlines that the NEFMC and MAFMC can either initiate an action for 2023 to address sturgeon catch reduction, or NMFS will, and the implementation deadline is May 2024.

The PR Committee will plan to meet as needed prior to either the October or December Council meeting to review the finalized sturgeon Action Plan once released and discuss potential initiation of an action at the Council level. This PR Committee conversation can inform the Council's discussions related to the 2023 implementation plan.

Sea Turtles

At the April Meeting, the Council received an update from NOAA Fisheries staff on their public outreach efforts related to sea turtle bycatch, gear research, and potential mitigation measures in trawl fisheries in the Greater Atlantic Region. Background information, descriptions of gear designs, research results, type of information needed, and recordings from informational webinars can be found on their website. Stakeholder feedback throughout the outreach consisted of clarifying questions and concerns about the sea turtle bycatch estimates, data used, and research results. Comments were also received on the geographical range of the measures, tow duration issues, fishery definitions, and economic impacts.

NOAA Fisheries staff indicated that there is more research to be done and they are approximately a year away from the proposed rule stage.

July 2022 Court Ruling: 2021 NMFS Biological Opinion

A recent Court ruling <u>linked here</u> has found that NMFS violated the ESA by failing to satisfy the MMPA's "negligible impact" requirement before setting the authorized level of lethal take in its incidental take statement (ITS). NMFS also breached the time requirements mandated by the MMPA in the 2021 Final Rule related to right whale take reduction measures. The Court will thus hold the 2021 Biological Opinion and the 2021 Final Rule to be invalid. This document goes on to say that the Court will offer the parties the opportunity for further briefing to articulate alternatives that the Court may select.

At this time, it is unclear how this ruling will impact the ongoing sturgeon and whale actions and timelines given that they are both linked to the 2021 Biological Opinion that has been declared invalid.

From: Kelly Denit - NOAA Federal < kelly.denit@noaa.gov >

Sent: Wednesday, June 1, 2022 4:09 PM

To: NMFS FMC Exec Directors <nmfs.rfmc@noaa.gov>

Cc: Pentony, Mike < Mike < a href="mailto:Michael.Pentony@noaa.gov">Mike < a href="mailto:Michael.Pentony@noaa.gov">Mike < a href="mailto:Michael.Pentony@noaa.gov">Mike <a href="mailto:Michael.P

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Subject: Climate Governance Follow-up

Council EDs,

I wanted to follow up with you all regarding our project to develop guidance on NMFS's use of MSA section 304(f) (Governance). Recall the focus of this project is to develop clear and transparent guidance on how NMFS, acting on behalf of the Secretary of Commerce, will apply its existing authority under 304(f) in the face of shifting stocks and emerging fisheries.

We believe it is important to continue our work on this project and are mindful of the concerns you raised regarding the ongoing east coast scenario planning project. While NMFS's Governance project will be focused on agency decision-making, we intend to coordinate with the east coast scenario planning project and to inform the guidance we develop as much as possible by the important work being done there.

We have adjusted our proposed timeline so Councils can provide comments after July 30. We have also expanded our timeline to highlight that our monitoring of, and coordination with, the east coast scenario planning project will be as open and ongoing as possible within the constraints of meeting our target for completion. Attached is a conceptual outline to clarify the scope of the project.

If you have thoughts on what could be included in the process and criteria for determining when and how to review and/or adjust management authority, we would welcome your input. Please submit comments to marian.macpherson@noaa.gov.

Cheers, Kelly

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Kelly Denit (she/her)

Director, Office of Sustainable Fisheries NOAA Fisheries | U.S. Department of Commerce Office: (301) 427-8517

www.fisheries.noaa.gov

Conceptual Outline: Fisheries Governance Policy/Guidance pursuant to MSA 304(f) 6/1/2022

I. Overview and Objective

In anticipation of an increasing number of fish stocks shifting in geographic distribution, new fisheries emerging, and other demographic shifts in fisheries, NOAA Fisheries has identified as a top priority a need to develop national policy on assigning, reviewing, and/or revising management authority for newly emerging or unmanaged stocks and currently managed stocks that move across Fishery Management Council (Council) boundaries or occur under the authority of more than one Council. This conceptual outline provides an initial framework for developing a policy for applying Magnuson Stevens Fishery Conservation and Management Act (MSA) § 304(f) in these circumstances.

II. Issue to be addressed

Scientific studies and stock assessments have identified cases of some species distributions shifting within and across Council jurisdictions, driven by climate change and other causes. Many important commercial and recreational fish stocks have already shifted their distributions in response to environmental conditions, biological conditions, and condition of the stock, and more are predicted to follow.

The MSA assigns geographic areas of authority for each of the eight Regional Fishery Management Councils. (§302(a)(1)). In situations where a fishery extends beyond the geographic area of any one Council, the MSA authorizes the Secretary of Commerce to either designate a Council to prepare the FMP, or require the relevant Councils to prepare the FMP jointly. (§304(f)(1)). To date, NOAA Fisheries and the Councils have addressed management of fisheries that span multiple Council jurisdictions on a case by case basis. However, given that the distributions of species are expected to continue to shift across council jurisdictions in the future, preparing in advance for these situations, and having established processes and criteria in place for addressing them, will give NOAA Fisheries and the Councils a more transparent, orderly, and responsive approach for addressing these changes.

Establishing clear a policy that (1) sets forth criteria for determining when there is a need for a change in governance for a stock/species (i.e., move to a different Council or be jointly managed), and (2) establishes a process for assigning or re-assigning management authority to one or more Councils and for transitioning management to the new governance structure would further this objective.³

¹ Pursuant to MSA §304(f)(2), NMFS has specified these exact geographic boundaries in terms of latitude and longitude at 50 CFR 600.105.

² For a review of NMFS's management of fisheries that span multiple Councils' jurisdictions, see NOAA Technical Memorandum NMFS-OSF-10 September 2021 (Morrison). Link: https://repository.library.noaa.gov/view/noaa/32347
³ We note that NMFS has existing guidance pertaining to whether a fishery is in need of conservation and management at 50 CFR 600.305.

III. Proposed Approach and Request for Feedback

A. Framework for Policy Development

Potential sections of the policy are listed below. The outputs of the west coast scenario planning effort and ongoing East Coast scenario planning process⁴ will inform development of the following proposed components:

- 1. Overview of the 304(f)(1) Secretarial authority.
- 2. Identification of criteria that NOAA Fisheries would use to trigger a process for assigning shared or revised governance.
- 3. A process and criteria that NOAA Fisheries will use for recommending Secretarial determination of Council authority (outcome could include no change, shift authority to different Council, or joint management).
- 4. Issues pertaining to transitioning to a revised governance (e.g., options for adjusting existing regulations and management measures under development such as phase-ins and grandfather periods).

B. Issues to be considered

- 1. What criteria should trigger a need to revise governance? (e.g., biological, socio-economic, including community access to underdeveloped fisheries off their coasts).
- 2. What criteria should be used to decide appropriate governance?
 - Possibilities could include stock distribution, level of catch in relevant management
 areas (e.g., state vs Fed, Council area), level of catch relevant to representation in
 management bodies (e.g., a substantial portion of the catch is now coming from a state(s)
 that is not on the current Council), location of processors, community dependence,
 equity and fairness.
 - What elements (e.g., "Principles of Governance") would be necessary for Secretarial action to change governance? (e.g., should there be required elements of equity, biology).
- 3. What process and timelines should be established for NMFS action on revising governance?

C. Timeline and engagement plan for policy development

- May 2022: Presentation to CCC.
- July 30, 2022: Soft deadline for CCC comments NMFS will initiate drafting, but will continue to accept comments if Councils provide them after this date (comments can be sent to marian.macpherson@noaa.gov)
- Oct 2022: Provide update at CCC meeting
- Winter/Spring 22/23: Ongoing monitoring of Scenario Planning Project with target of reviewing completion of "Application Phase"; incorporate outcomes into draft policy, as appropriate
- Spring 2023: Provide draft policy to CCC
- Fall 2023: Deadline for CCC and Council comments
- Summer 2024: Finalize and rollout Policy to CCC

⁴ For more information – please see https://www.mafmc.org/climate-change-scenario-planning