



May 9, 2022

Ms. Janet Coit
Assistant Administrator, NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910
Via email: janet.coit@noaa.gov

Dear Ms. Coit,

Please consider these comments in response to the April 18, 2022 Proposed Rule on 2022 Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; particularly the proposed closure of the recreational scup fishery in Federal waters.

Recreational scup and black sea bass management has been particularly challenging over the last decade as both stocks have grown to over twice their biomass targets while recreational catch and effort estimates have changed significantly. For scup, the changes made to the Marine Recreational Information Program (MRIP) effort estimation significantly changed our understanding of the magnitude of the recreational fishery by more than doubling catch, instantly creating a management crisis in an otherwise healthy stock. While assessments and some aspects of the specifications process have incorporated these new estimates, many other aspects of management remain challenging due to these changes. We believe the proposed closure of the recreational scup fishery in Federal waters is unnecessary for the short and long-term health of the stock, ineffective and inefficient for controlling recreational harvest and fishing mortality in a meaningful way, and extremely damaging to the public's regard for marine fisheries management by NOAA Fisheries, the Mid-Atlantic Fishery Management Council (MAFMC), and the Atlantic States Marine Fisheries Commission (ASMFC).

There are two separate fishery management plan changes moving through the interstate and Federal process that will improve our ability to manage for the sustainable use of the scup fishery. Sector allocations were updated in the Commercial/Recreational Allocation Amendment to reflect the increased recreational take resulting from the change in MRIP methodologies, which was approved by the MAFMC and ASMFC in December 2021. This Amendment will increase the recreational scup fishery catch-based allocation from 22% of the Acceptable Biological Catch (ABC) to 35%. The second management action underway is referred to as the Harvest Control Rule Framework/Addendum (HCR), which is an important component of the Recreational Reform Initiative. This action seeks to better manage recreational fisheries by appropriately accounting for data uncertainties and incorporating assessment-based metrics into the decision-making process instead of relying almost solely upon past harvest performance (MRIP) comparisons with future recreational harvest limits (RHLs). The HCR could potentially be approved at the joint MAFMC/ASMFC meeting in June of 2022. Unfortunately, neither the revised sector allocations nor the HCR will be in place for the 2022 recreational scup fishing season.

The 2021 Management Track Assessment (data through 2019) for scup determined that the stock was not overfished, that overfishing was not occurring, and that the stock biomass was 1.96 times the biomass target. Yet in its proposed rule, NOAA Fisheries notes that a 56% reduction of the recreational scup fishery is required because harvest projections, based upon MRIP estimates, exceed the 2022 RHL of 6.08 million pounds. This purported need to reduce recreational harvest to avoid overfishing fails to incorporate the consistent underutilization of quota by the commercial sector. The commercial fishery has repeatedly underutilized its allocation, leaving an average of 34% of the coastwide quota over the last 6 years. Preliminary landings from 2021 are 12.93 million pounds of a 20.50 million pounds quota. The 2022 commercial scup quota is 20.38 million pounds and 2022 harvest-to-date during the Winter 1 Quota Period has so far underperformed relative to this time last year. If 2022 commercial landings do manage to match the 2021 landings, that would result in a 7.4 million pound commercial quota underage that would nearly cover the projected recreational overage of 7.8 million pounds under status quo recreational regulations.

Notably, of course, status quo recreational regulations for 2022 are not on the table (with or without NOAA Fisheries' proposed rule). The MAFMC and the ASMFC's approved coastwide 1-inch minimum size increase is projected to reduce recreational harvest by 33%. Taking into account this recreational harvest reduction, recent patterns of commercial landings and projected discards (2018-2019 ratios landings:discards), total catch should remain below the ABC, preventing overfishing and fulfilling the requirements of the MSA without the unnecessary impacts to anglers and dependent small businesses that would be created by a Federal waters closure.

This was believed to be sufficient by the Technical Committee, the Monitoring Committee, the Council and the Commission, especially given pending changes to both sector allocations and general recreational management. If the Federal rule-making process was faster and the revised commercial/recreational allocations were in place for 2022, this year's RHL would have been considerably larger and the "required" reduction would have been much smaller. While the exact values are not currently known, there is an example in the Allocation Amendment of what the revised 35% recreational scup allocation could do for the 2023 RHL; it increases it from 5.41 million pounds to 9.06 million pounds. A similar increase of 67% applied to the 2022 specifications would have produced a 10.1 million pound RHL and depreciated the called-for reduction to roughly 27%. The proposed rule's calculation also does not recognize an analysis conducted by the ASMFC Technical Committee to identify and adjust outliers in the MRIP harvest data for scup, which we understand could further reduce the required reduction. As noted in the proposed rule, a similar analysis was conducted for the MRIP black sea bass harvest data, which dampened that species' recreational harvest reduction for 2022 from 28% to 20.7%.

It is true that the GARFO Regional Administrator stressed that the 1 inch minimum size adjustment would not be sufficient to address the RHL overage at the December 2021 Joint Meeting and on other occasions. However, the imposition of a Federal waters closure of the recreational scup fishery is not only unnecessary for the health of the stock but of highly questionable efficacy. According to the Proposed Rule, the closure would only account for an additional 6% harvest reduction, well short of its goal. The rule further acknowledges that the actual reduction will be less than 6% as anglers switch to targeting scup exclusively in state waters (where the majority of the fishery already occurs) and Federally permitted for-hire vessels drop their open access scup permits to do the same.

While the harvest reduction from a Federal waters closure is unlikely to be realized, the impact to anglers and for-hire operations will be an increase in inefficiency—more time, more fuel, more discards, and less profit (for small businesses). Scup are a very important component of bottom fishing in New England and the Mid-Atlantic, in particular given the relative scarcity of legal sized fluke and highly restrictive black sea bass limits. During many trips targeting mixed bottom fish, anglers would expect to catch scup, fluke and black sea bass as these species often utilize the same bottom. The proposed rule would require anglers pursuing other species in Federal waters to discard all scup caught while fishing greater than 3 miles from shore, only to have those same anglers later fish within 3 miles for scup, likely generating more discards of species targeted earlier in the trip. The result of this rule is more effort and discarded fish and associated mortalities for all three highly sought-after species in the fishery management plan and further eroding of the public's confidence and compliance with marine recreational fishing regulations.

The impact of the proposed closure would be felt disproportionately among various jurisdictions, depending upon how much of their fishery occurs in Federal waters. The proposed rule acknowledges some of the impacts of the Federal waters closure and requested additional or alternative measures in lieu of a closure. We are aware that an 11 inch minimum size implemented throughout most state and Federal waters is projected to achieve the 56% reduction that is expected to restrain harvest to the 2022 RHL. An 11 inch minimum size would have a relatively small impact on anglers fishing from well-equipped private vessels, for-hire vessels, and in most larger bodies of water. However, the size limit change would have significantly greater, unintended impacts on small vessels fishing in sheltered coastal waters and shore-based anglers where the availability of larger fish is reduced. This impact would be felt disproportionately by subsistence fishermen from vulnerable communities, and therefore is a clear environmental justice (EJ) issue. Several states have implemented special shore fishing programs for scup that allow a smaller minimum size, including the state of RI during your tenure as State Director. These programs were developed as EJ initiatives before that term was coined. The states determined that raising the minimum size beyond what was implemented for 2022 would significantly impact the efficacy of these programs. This was a larger factor in the management decisions made for 2022. Additionally, these same communities are a significant component of some of the Party and Charter industry trips that occur, with people from these communities saving up to book trips in the hope of filling a cooler with fresh scup, and in this manner would be directly impacted by the Federal fishery closure.

Reasons for the opposition of the States to NOAA Fisheries' stated aim to reduce recreational scup harvest by 56% and the specific closure of the recreational fishery in Federal waters has been described above. A Federal closure will fail to significantly restrain scup harvest while increasing discards and disrupting fishery operations across multiple states. Consequently, it is with some disbelief among managers that it was included in the proposed rule. The timing of that rule, published on 4/18/2022, is so late as to make it impossible for most states to respond with appropriate, well-conceived measures, formulated with public feedback, that balance the impacts of restrictions among all recreational scup fishery stakeholders. It is also questionable how effective such measures will be in constraining recreational harvest given that a significant portion of the fishery will have been prosecuted before either the final Federal rule or any such late State rulemakings could be implemented.

The approval of a 1 inch minimum size limit increase coastwide for the recreational scup fishery by fishery managers from the MAFMC and ASMFC was a measured response to recent recreational overages, was recommended by State technical expertise given the status of this fish population, was based on current scup quota usage patterns, and also accounts for the uncertainty in MRIP data and its use as a stand-alone tool for fishery management. Pending

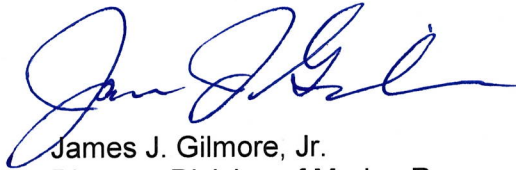
management actions will potentially address both sector quota allocations and recreational fisheries management but will not be implemented for the 2022 fishery. Recreational harvest reductions as a result of the size increase combined with underutilization of quota by the commercial fishery and recent fishery discard rates suggests that the ABC will not be exceeded. The closure of the recreational scup fishery in Federal waters is an unnecessary, ineffective, and disruptive measure that should be eliminated from the final rule. We hope you agree with this conclusion and help the states in seeking relief from the proposed Federal waters closure.

We thank you for your consideration and attention to this matter and we look forward to your prompt response.

Sincerely,



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