

November 18, 2009

Patricia A. Kurkul
Regional Administrator, NMFS
Northeast Regional Office
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Gloucester, MA 01930
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RE: Comments on 2010 Summer Flounder, Scup and Black Sea Bass Specifications

Dear Regional Administrator Kurkul:

Please accept the following comments on behalf of United Boatmen (UB) regarding the 2010 summer flounder, scup and black sea bass specifications. UB is disturbed that at a time when the recreational fishing community should be seeing increased access to these important fisheries, they are instead faced with continued restricted access to rebuilt or healthy fisheries, particularly scup and black sea bass which are considered to be fully rebuilt. It is high time that management of rebuilt fisheries moves from rebuilding or “saving” troubled fisheries once they are rebuilt and towards “sustaining” those fisheries. We would ask that NMFS adhere to National Standard 1, which clearly states: “Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.” Clearly neither the Scup nor the Black Sea Bass fisheries are being managed in such a way as to be “achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”

Summer Flounder

UB supports the Science and Statistical Committee (SSC) recommendation of 25.48 million pound summer flounder TAC for 2010. Progress continues to be made in the fishery and the SSC recommendation reflects this progress. The fact that a new assessment model that utilizes age-specific natural mortality, a significantly reduced retrospective pattern for fishing mortality and spawning stock biomass above average recruitment from the 2009 year class leads UB to believe there is ample scientific justification to support a 25.48 TAC for 2010.

Regulatory discarding in the recreational sector continues to be an issue and UB encourages the Council and Commission to work towards a return to size limits in the Summer Flounder fishery that accurately reflect the traditional size of Summer Flounder encountered by recreational anglers up and down the coast, while preserving the ability of states to manage those fisheries in such a way as to account for the unique nature of and the significant differences between one states fishery versus another.

Scup

UB would like to comment on the recommendation by the SSC to set the upper limit for 2010 scup TAC at 17.094 million pounds by agreeing with and supporting the comments on this topic submitted by The Recreational Fishing Alliance (RFA), which are copied below.

“RFA would like to specifically comment on the recommendation by the SSC to set the upper limit for the 2010 scup TAC at 17.094 million pounds. RFA recognizes that this recommendation represents a 10% increase over the 2009 TAC of 15.54 million pounds. Furthermore, RFA understands that the Magnuson Stevens Fishery Conservation and Management Act (MSA) prohibits the regional fishery management councils from setting annual catch limits that exceed the recommendations of their SSC. However, considering the scup stock is fully rebuilt and not undergoing overfishing, this provision is not mandatory at this time. This point was clarified most recently in a letter from Dr. Jane Lubchenco to the New England Fishery Management council. The letter reads, “*Because Atlantic herring is not subject to overfishing, a mechanism for specifying annual catch limits (ACLs) does not need to be implemented until 2011.*” Similar to Atlantic herring, scup is not subject to overfishing and therefore, TAC/TAL are not bound by the SSC. RFA believes the 2010 TAC could have been set higher even with the high degree of scientific uncertainty and that the MAFMC legally could have exceeded the artificially low SSC recommendation.

The Scup Monitoring Committee estimates the scup spawning stock biomass in 2008 to be 414.5 million pounds, which is double the MSY spawning stock biomass of 202.9 million pounds. By this description alone, the stock is rebuilt and has been so for the past 4 years. Other positive indicators of the stock status include above average recruitment in 2008 and a fishing mortality rate less than 0.1. By all accounts, this stock is fully rebuilt and continues to show signs of recovery. Ironically, the TAC has failed to increase at a rate that would be expected with this success.

The 2008 Data Poor Stocks Working Group reviewed the scup rebuilding target and found that it had been exceeded since 2005. This finding indicates that the stock has met rebuilding requirements and is no longer subject to a rebuilding program. **RFA wants to point out that scup has been successfully rebuilt for 4 years.** Moreover, the scup stock has in fact continued to increase every year since that time. Considering the successful rebuilding and maintenance of the scup fishery, RFA questions the overly precautionary increase to the 2010 scup TAC. When will the fishing community see the benefits of their conservation efforts? The goal has been reached, not just in the terminal year but 4 years ago. It is understood that there is uncertainty with the scup assessment and new modeling approaches used but scup spawning stock biomass is now estimated to be double the rebuilding goal. Even if the uncertainty associated with the assessment inflated the estimated stock size 100%, scup would still be fully rebuilt.....

.....This unnecessary precaution and deliberate denial of access to rebuilt fish stocks is a clear violation of National Standard 1 which aims to manage the nation’s marine resources at optimum yield. This level of harvest produces the greatest benefit to the nation in particular regards to food production and recreational opportunities. Since there are no conservation problems with the scup fishery and that there are no rebuilding requirements, the primary focus of management should be for food production and recreational opportunities.”

UB would ask that NMFS take the above comments from RFA on the Scup quota as mirroring UB’s position on this subject, and would like to add that UB believes that considering the scup stock is completely rebuilt, that the stock is not overfished, that in fact the stock has been at or above the rebuilt target for nearly 5 years, UB recommends the Scup quota for 2010 should be increased by NMFS and the Secretary of Commerce to more accurately reflect the status of the stock while still considering the recommended approach of incremental increases to the quota.

Black Sea Bass

Black sea bass has been fully rebuilt based on the findings of DPSWG assessment that utilized a statistical catch at age model over the previous approach that was based primarily on fishery independent survey indices. Since the black sea bass fishery is now rebuilt and no longer under any rebuilding requirements, management should focus on managing the fishery to achieve optimum yield as defined in National Standard 1. UB does not believe the SSC recommendation for 2010 black sea bass TAC/TAL is consistent with a harvest level that would produce optimum yield and therefore is in violation of MSA. The Black Sea Bass Monitoring committee presented a 2010 quota recommendation that is significantly higher than the SSC recommendation, which was criticized as being too conservative, based on the status and management history of the stock. The Monitoring committee recommendation was dismissed by NMFS based on inaccurate interpretation of MSA. Furthermore, UB would argue that, based on the SSC quota recommendation, the Peer Reviewed Stock Assessment for Black Sea Bass and the conclusions it reached were considered, and summarily dismissed by the SSC. While the information in that assessment was most certainly available to the SSC, the SSC overstepped its authority by setting a TAC/TAL for Black Sea Bass that considers only the precautionary statements in that assessment and none of the other conclusions contained in the Black Sea Bass Stock Assessment. To set a TAC/TAL at the same level as the lowest in a fisheries history AFTER the fishery is rebuilt in unconscionable.

UB is believes that NMFS included incorrect information in the Federal Registry notice (Docket No. 0908191244-91369-01). On page 57139 (Vol. 74, No. 212), the federal registry reads, *"The Council is bound by Magnuson-Stevens Act to set annual catch limits no higher than the ABC recommended by their SSC..."*. As mentioned above in RFA's comments regarding scup, Dr. Lubchenco clearly explained that the regional councils are not bound by the upper bounds of their respective SSC recommendation for stocks that are not overfished and are not experiencing overfishing. The black sea bass fishery is fully rebuilt. Therefore, the Council and NMFS are not legally bound by the SSC recommendations for 2010 black sea bass specifications. UB is disturbed that this incorrect information was included in the federal registry notice. The unfortunate consequence is that the Council and the fishing public are denied optimum yield from the black sea bass fishery. UB contends this is an egregious act that stands to have significant negative socioeconomic impacts on the recreational fishing community with absolutely no conservation benefit.

NOAA Fisheries must recognize their responsibilities under the Magnuson-Stevens Act National Standard 1 to "prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) of each fishery". By using the fishing mortality rate recommended by the SSC of $F=0.12$, we are fishing at approximately 28% of F_{msy} (0.42). By way of comparison, the South Atlantic Snapper Grouper Complex Amendment 15A defines optimum yield for their overfished Black Sea Bass fishery as 75% F_{msy} . Despite the National Standard 1 guidelines requirement that Optimum Yield must be evaluated and described in FMPs, this has not been done for the Black Sea Bass Fishery. However, it is unreasonable to believe that Optimum Yield is even close to being achieved by fishing at 28% of F_{msy} on a fully rebuilt stock that is not overfished when an overfished stock of the same species has OY defined as 75% of F_{msy} .

2010 recreational management measures must also consider in addition to the above the fact Magnuson states that MRFSS data should not be used without significant revisions (which are yet to

occur) beyond Jan. 1st, 2009. The fact that NMFS has violated both the MSA as well as the conclusions of the recent NRC review of MRFSS by using the current, “fatally flawed” MRFSS system to monitor the black sea bass fishery in real-time and base an in-season closure on that same “fatally flawed” data only serves to add insult to injury on the recreational fishing community when you consider that NMFS is using the current MRFSS data to further restrict the fishery in 2010 despite a rebuilt and healthy sea bass fishery.

Considering the fact that the black sea bass stock is completely rebuilt, that in fact the stock has been at or above the rebuilt target for nearly a decade, and that the fishery is not overfished, UB recommends that that no black sea bass quota for 2010 should be promulgated until a joint meeting of the SSC and Monitoring committee is held.

Respectfully submitted,

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