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February 4, 2022

MEMORANDUM

TO: Marine Fisheries Commission
Finfish Advisory Committee

FROM: Lee Paramore, Northern District Manager
Fisheries Management Section

SUBJECT: Meeting of the Marine Fisheries Commission's Finfish Advisory Committee, January 13, 2022. Recommendations for the Southern Flounder Fishery Management Plan Amendment 3

The Marine Fisheries Commission's (MFC) Finfish Advisory Committee (AC) held a meeting on January 13, 2022 via webinar.

The following Advisory Committee members were in attendance: Brent Fulcher, David Mense, Allyn Powell, Randy Proctor, Sam Romano, Ken Siegler, William Tarplee, Tom Roller (Absent – Thomas Brewer, Jeff Buckel, Scott Whitley)

Staff: Tina Moore, Chris Stewart, Anne Markwith, Mike Loeffler, Steve Poland, Kathy Rawls, Deborah Manley, Corrin Flora, Hope Wade, Carter Witten, Lara Klibansky, Lee Paramore, Drew Cathey, Casey Knight, Brandi Salmon, Alan Bianchi, Daniel Ipock, David Behringer, Alexander Batchelder, Ami Staples, Charlton Godwin, Chris Nealon, Daniel Zapf, Dee Lupton, Jessie Bissette, Kevin Brown, Mclean Seward, Nolen Vinay, Shelby White, Tracey Bauer, Trey Baranyai, Jason Rock, Justin Lott, Lorena de la Garza, Chris Batsavage, Jason Walsh

Public: David Sneed, Michael Waine, Bill Gorham, Meredith Wanie

Finfish AC Chair Tom Roller called the meeting to order at 6:05 p.m.

A call for attendance was performed and attendance recorded. The Finfish AC had 8 members present and quorum was met.

APPROVAL OF THE AGENDA AND APPROVAL OF THE MINUTES

A motion was made to approve the agenda by Ken Siegler. Second by David Mense. The motion passed without objection.

**A motion was made by Randy Proctor to approve the minutes from the Finfish AC meeting held on October 14, 2021. Second by Sam Romano.
Motion passed 6-0 with 2 abstentions from new members.**

MARINE FISHERIES COMMISSION UPDATE

Lara Klibansky, MFC Liaison, welcomed the new and re-appointed members on the Finfish Advisory Committee (AC). She noted the MFC Office staff are here to support advisors, when issues are under review, they can reach out to us with any questions.

At the November MFC meeting the commission approved annual nominees on obligatory seats to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, and South Atlantic Fishery Management Council. The MFC also approved the goal and objectives of the Fishery Management Plan (FMP) for Interjurisdictional Fisheries. In February the MFC is scheduled to approve to send to advisory committees for your review in March the Striped Bass FMP Amendment 2 and in April the FMP for Interjurisdictional Fisheries.

The Southern Flounder FMP Amendment 3 being reviewed tonight was also approved for AC review and public comment closes on Jan. 14, 2022. There was a recorded listening session for this plan and any input is welcome on the quality and ideas for continuing with this format. During the November MFC meeting the commission selected their preferred options for the Shrimp FMP Amendment 2 and approved to the send the plan for DEQ Secretary and Legislative review. The Shrimp FMP Amendment 2 is scheduled for final approval in February. The Coastal Habitat Protection Plan was also approved at the November MFC meeting. This is a departmental plan. The MFC, Coastal Resources Commission, and Environmental Management Commission must give approval to the plan; in November all three approved.

There were no questions from AC members following the update. As a final note, AC members were reminded to have copies of the southern flounder decision document ready as a reference to the various issue papers in the full FMP and that it would help guide them through discussions.

PRESENTATION ON SOUTHERN FLOUNDER FISHERY MANAGEMENT PLAN AMENDMENT 3

Mike Loeffler and Anne Markwith presented the DMF recommendations for Amendment 3. Stopping for AC questions at each break.

Sustainable Harvest Issue Paper

Commercial Quota – Mobile Gears and Pound Nets

An AC member questioned if it was possible to break out gears into just mobile and fixed gears and not have allocation split across recreational and commercial sectors. A member noted that all mobile gears are mobile whether they are commercial or recreational. Suggested that this would bring mobile versus fixed gear allotment to 50/50 parity. A member also suggested that a subcommittee of stakeholders for each gear category be formed to provide input on how to catch fish they are allotted. Staff noted that the MFC has already directed the division on allocation between commercial and recreational sectors moving from the current 70/30 split to a 50/50

commercial and recreational split by 2024. If the AC wanted the MFC to act on this type of proposal, a recommendation could be made to ask them to consider this.

It was asked what the other AC's recommended on the commercial quota management area issue. Staff noted that both the Southern and Northern AC supported the Division recommendation of 1.1.A and 1.2.A for monitoring the commercial quota with two management areas for mobile gears and three for fixed gears. The AC inquired into how the lines for management areas were chosen and why they are different for mobile and fixed gears. Staff explained the lines for fixed gears lay out very well with the current pound net sets and boundaries are established and understood in that fishery. For mobile gears it was important to consider established ITP management boundaries and lines. This aids in management for any potential area closures due to sturgeon or turtle takes and makes established lines clear for enforcement. Further questions inquired about how the movement of flounder may impact landings in each management area and why mobile gears are not managed in three areas like fixed gears. Staff clarified that allocations are set within areas based on historical landings and the management by area does not shift harvest from one area to another (each area maintains its proportion of harvest). Further sub-dividing would complicate quota monitoring and enforcement. Mobile gears were only divided into two areas due to their ability to move as fish move as opposed to pound nets that are dependent on weather to make the fish move. A follow-up question was asked about pound nets in southern region and where they occurred. Staff noted all pound nets in the southern region occur in Core Sound. Staff clarified those pound nets were designated to the southern region based on how the fishery performs with timing of fish movement and also based on feedback from industry. There was some discussion on situations where a user falls into the category of both a commercial or recreational fisher and operates within the mobile gear categories where they could be commercial one day or recreational the next and whether situations like this create an issue. Staff clarified this issue is only specific to the commercial sector and landings captured on trip tickets. Users such as giggers would only be able to operate and harvest as commercial during the open season for that sector and gear. A committee member noted that the pound net fishery is dependent on the timing of fish movement to be effective and that is a primary reason for the current lines. The member stated that focus for this issue needs to be on how to fairly divide the allocation that is available. The division proposal did a good job of that based on proposed management areas. A member also expressed concern that SPR target is too high and not sure the fishery can attain those values, but the burden needs to be spread out as evenly as possible across sectors.

Commercial Sub-allocation

A member voiced concern that the 72% reduction was beyond what is required, and that the allocation should be based on historical data. Using historical data is the precedence in how these matters have been handled in other fisheries and this did not happen at the special MFC meeting where the MFC voted on allocation. Member gave example of how ASMFC recently updated allocations based on the new MRIP estimates for the summer flounder fishery and noted that good management should be based on scientific data. Other discussion noted that it is possible even at a 50/50 allocation that the recreational sector is still not going to meet the 72% reduction.

Recreational Season

Questions were raised on the design of MRIP and its utility in quota monitoring. A member asked if there was any consideration to just having a 45-day season broken into shorter periods of

open dates during the year to allow harvest estimates to be calculated between openings. Staff noted that multiple options were considered including a spring and fall season but those still result in very truncated seasons and could potentially marginalize tourists if overages are hit in the fall. A single season (i.e. six-week season) provides the best way to estimate landings using MRIP. Staff also noted how the current seasons have been a learning experience with changes in fishing behavior and that exploring openings during different times of year is something that can be explored as more quota becomes available. A member asked if a spring season were allowed, would this be separate amount or added to current quota. Staff clarified that any southern flounder landings in a spring season would be subtracted from the fall should that occur. Another member suggested spreading out landings by only allowing harvest during certain days of the week. Staff noted that this was explored but also noted that punctuated seasons counters the design of MRIP and may result in limited intercepts and inability to estimate landings with good precision.

Commercial Trip Limits

A question was asked regarding how harvest triggers would be set for the implementation of trip limits and whether unused quota could be rolled into next year. Staff noted triggers are not currently set and that the AC can bring forward recommendations for both triggers and how to handle overages and underages. Staff also stressed that the division does not currently support any rollover for unused quota due to the current depleted state of the stock.

Recreational Bag Limit

It was noted that a one fish bag limit may not be popular but may help with the derby fishing that was observed this past season. The committee was interested in any information on changes in effort and angler success. Staff confirmed data indicated both effort and success per trip have increased with the shortened seasons. We are now seeing more people catch the 4-fish bag limit. Landings were high again in 2021 even with shortened season. It was asked if a 4-week season and a 2 fish bag limit may meet the reduction. Staff noted that various seasons and bag limits have been considered and that this is something that could be looked at but based on analysis, a one fish limit is the only viable option that maintains the TAL. The committee noted that the one fish limit has not been favorable based on public feedback. A question was asked related to the size of fish and if larger fish are also seen in the commercial fishery. Staff noted that the data on size of fish in commercial fishery from this most recent season is just now available and will be investigated.

Recreational Commercial Gear License

Based on question from AC, staff clarified that any landings from RCGL gear come off of the recreational TAL. There was also clarification that RCGL nets are not used exclusively for flounder, however the division has required the removal of large mesh gill nets during times when the flounder season is closed. The only exceptions are for specific fisheries that don't typically encounter flounder like the winter blue catfish fishery in Albemarle Sound.

Increased Recreational Access Issue Paper

Some concern was expressed that the idea of allowing additional access during a rebuilding period could further jeopardize the stock. This may not be the right timing to consider this. Staff noted that there has been much deliberation about this topic and the public brought up a desire to

potentially still harvest ocellated flounder in the ocean. The limited March opening may allow some access to ocellated flounder with very minimal impact to southern flounder. Could be considered as a more viable option down the road. A committee member asked what years were used for the analysis and noted in recent years his catches have resulted in more southern flounder in the ocean than what he has seen in past. Staff responded that analysis was based on 2017. There was also an inquiry about law enforcement and returning from the ocean to inshore waters with ocellated flounder in possession. Marine Patrol noted that the angler would need to verify where they were fishing if asked and you would not be able to stop and fish inshore if you had ocellated fish in your possession.

Inlet Corridors Issue Paper

No questions or discussion during presentation.

Adaptive Management Issue Paper

No questions or discussion during presentation.

Slot Limits Issue Paper

Inquiry on how implementing a slot limit would impact the gig fishery. Staff noted that it would be hard to have a slot limit with a gig fishery. Would it be possible to do a slot limit for each sector, possibly even gear specific (this could also allow some of larger fish to be donated for science)? Staff noted that the current issue paper is set up to discuss a recreational slot limit but you could take it to any sector. One of the issues with the slot limit analysis is that we don't see a large proportion of bigger fish so it is hard to meet meaningful reductions with a slot limit due to the truncated length frequencies of harvest. We also would like to keep slots consistent across any gears to alleviate issues with enforcement. Some additional discussion by the committee was that slot limits are not intended as an action to extend the season, but rather to allow larger fish to escape and spawn and potentially harvest more smaller males. Some members felt there was a need to consider a slot limit on smaller fish but we keep moving the slot option to larger fish and this is the wrong way to go. Staff noted that in future we may have more data on size of releases from ongoing work with Catch-U-Later app to gather information on lengths of discarded fish.

Phase out of Large Mesh Gill Nets

A member noted that majority of removals from this gear are harvested and that discards are not that significant. Discards in the recreational fishery are much higher and far more impactful to stock. The idea to eliminate is driven by a dislike of the gear and not based on data. There was discussion on economics of eliminating this gear. Ability to move into other gears such as pound nets would be cost prohibitive. Staff agreed it is economically not feasible that gill netters would move into the pound net fishery. Member noted that hook and line mortality on releases is 9% and 1 in 9 fish are discarded. Based on discards, it is possible the weight of dead discards could exceed recreational harvest. The committee inquired about bycatch in gill nets and specifically the bycatch of other species. Staff noted that this information is provided in the plan. A member noted that when looking at bycatch it is important to consider what is marketable bycatch and

what is not. Staff then summarized this information on bycatch as outlined in the plan and directed the committee to the plan for a table summarizing the data they were requesting.

Carry Forwards from Amendment 2

No comments from the AC.

PUBLIC COMMENT

Per the AC Chair and after discussion with the committee, the public comment portion of the agenda occurred in the middle of the presentation and discussion of the plan with the AC for the benefit of members of the public. There was no public comment offered.

DISCUSSION AND VOTE ON RECOMMENDATIONS TO THE MARINE FISHERIES COMMISSION FOR SOUTHERN FLOUNDER FISHERY MANAGEMENT PLAN AMENDMENT 3

Sustainable Harvest Issue Paper

Commercial Quota – Mobile Gears and Pound Nets

**Motion by David Mense to accept division recommendation Option 1.1.A and 1.2.A.
Second by Allyn Powell.**

No additional discussion on this motion.

The motion passed 6-0 with one abstention.

Commercial Sub-allocation

Motion by Ken Seigler to set the allocation for pound nets at 186,000 pounds and an allocation based on gear (fixed or mobile) divided equally between the user groups achieving 50/50 parity by February 23, 2022.

Motion failed for lack of a second.

**Motion by Brent Fulcher support option 2.1 Sub allocations based on 2017 landings.
Second by Allyn Powell.**

AC members discussed the benefit of doing Option 2.1 Sub allocations based on 2017 landings versus the Division recommendation of Option 2.2 Maintain the current sub-allocations for pound net fishery. Committee members noted that the 2017 allocation kept the cuts fair without giving one gear preference over the other. The shift in allocation is not based on science and is not a resource issue but a preference issue.

The motion passed 6-0 with one abstention.

Recreational Season

Motion by David Mense to support the division recommendation Option 3 of a single recreational season. Second by Bill Tarplee.

No additional discussion on this issue.

The motion passed 6-0 with one abstention.

Commercial Trip Limits

**Motion by Brent Fulcher support Option 4C Status quo, no trip limits.
Second by Sam Romano.**

Discussion that doing anything other than status quo would not be fair, in particular those who fish more gear will be disadvantaged. Example given for those who have many pound nets versus those who fish just a few. Additional concern expressed that this could create unnecessary discards.

The motion passed 5-0 with two abstentions.

Recreational Bag Limit

**Motion by David Mense support division recommendation Option 5.A. 1 fish/person/day.
Second by Allyn Powell.**

The AC recognized this will not be well received. Question of whether the bag limit could be changed with adaptive management and staff noted that we would not be able to increase the bag limit to increase harvest short of an assessment update. Based on overages to date, there is no viable alternative. A member expressed interest in additional analysis with a two-fish bag limit. Comment that we should have a longer season if we are forced to a one fish bag limit. Discussion then ensued on the timing of the next assessment and when that may happen. Staff noted that other states have recently made regulatory changes and would likely want several years of data to evaluate success. Staff indicated that if we continue to see positive signs in the stock it may possible to adjust timeline but yet to be determined. A committee member expressed concern that we are managing to a very high SPR that may not be attainable. If discards in the recreational fishery keep increasing, there may not be any fishery. Questioned if current conditions, environmental or otherwise, could support the levels of harvest we saw 20 years ago.

The motion passed 3-2-2.

Recreational Commercial Gear License

Motion by Brent Fulcher support Option 6A: Allow RCGL to harvest flounder when commercial and recreational fisheries both open. Second by Ken Seigler.

This is a license allowed by the General Assembly and we should continue with it. We need a free and open fishery that does not restrict based on gear preference.

The motion passed 5-2.

Increased Recreational Access Issue Paper

Motion by Ken Siegler to support Option 1: Status quo, manage as one group.

Second by Sam Romano. Motion was withdrawn.

Motion by Brent Fulcher to recommend the commission to design an ocean caught recreational ocellated flounder fishery that will not hinder the present southern flounder fishery established in Amendment 3.

Second by Ken Seigler.

Initially some discussion/concern that any harvest will take away from recreational harvest of southern flounder. Staff clarified that ocellated flounder harvested would not count against the southern flounder quota. More discussion on the size and availability of summer flounder and ocellated flounder from year to year and by region. Members noted a robust gulf flounder fishery in southern portion of state. After discussion, the original motion was withdrawn. Additional discussion ensued after the second motion. It was discussed that the division would work with ASMFC to establish an ocellated season that would be separate from the southern flounder season. Some concern expressed that this fishery could potentially result in additional southern flounder discards.

The motion passed 6-0 with two abstentions.

Inlet Corridors Issue Paper

Motion by Allyn Powell to support Option 1: Status quo, do not establish inlet corridor during spawning migration. Second by David Mense.

No additional discussion on this motion.

The motion passed 6-0 with 1 abstention.

Adaptive Management Issue Paper

Motion Brent Fulcher to support Option 2: do not adopt. Second by Sam Romano. Motion failed, 4-4-0.

Motion by William Tarplee support Option 1 Adopt adaptive management framework. Second by David Mense. Motion failed 4-4-0.

A member expressed concern that we are overmanaging the fishery and this only serves to potentially increase restrictions (shorten season etc.) without an option to relax any regulations prior to a new assessment that likely will not be completed until 2027. Other discussion questioned whether the director may already have this authority under proclamations. Staff clarified that not all options under adaptative management can be implemented by proclamation unless the plan provides the framework to do so. Additional comments ensued that the reasons for adaptive management would be that it provides needed flexibility to manage. Additional concern expressed that adaptive management as presented, while it does provide a useful tool for management, particularly between assessments, only serves to offer more restrictions. It should be able to go either way, but it doesn't.

No motion was passed on this issue.

Slot Limits Issue Paper

Motion by David Mense to support Option 1 Status quo, no slot limit. Second by Allyn Powell

Comment was made that there was ample literature on this species to not support a slot limit.

The motion passed 4-0 with 4 abstentions.

Phase out of Large Mesh Gill Nets

Motion by Ken Seigler to support Option 2: Status quo, allow large mesh gill nets to harvest southern flounder during the commercial season. Second by Allyn Powell.

It was noted that it needs to be fair and equitable across user groups and gears. The mortality rate for gill nets is sufficiently low and can be a sustainable gear. A lot of other species captured with gill nets would be lost if this gear is phased out. The impact is far beyond flounder and we should not eliminate just because of a dislike for the gear. There is a need to account for socioeconomic impact of this measure. Given the magnitude of the recreational removals and the already shortened seasons, the pound net fishery is likely to be destroyed. Gill nets at least have the flexibility to continue under such a restricted fishery.

The motion passed 5-2, with 1 abstention.

PLAN AGENDA ITEMS FOR THE NEXT MEETING

Based on the MFC update, the Striped Bass FMP Amendment 2 will be provided to this MFC AC committees in March. The AC will receive notification of any meeting dates after the February MFC meeting.

The meeting was adjourned at 10:54 p.m.