Mid-Atlantic Fishery Management Council
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P. Weston Townsend, Chairman | Michael P. Luisi, Vice Chairman
Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: November 30, 2023

To: Chris Moore, Executive Director

From: Kiley Dancy and Hannah Hart, Staff

Subject: Summer Flounder Commercial Minimum Mesh Size Regulations and Exemptions: Overview and Staff Recommendations

On Tuesday, December 12, the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) will consider multiple summer flounder mesh regulations issues. Background information, a list of meeting materials, and staff recommendations are provided below for the Council and Board's discussion of this agenda item.

Background

Throughout 2023, staff and a Council contractor have evaluated and collected public comment on several summer flounder commercial mesh regulations. These mesh regulations include 1) the current 5.5-inch diamond or 6.0-inch square required minimum mesh size, 2) the summer flounder Small Mesh Exemption Program (SMEP), and 3) the summer flounder flynet exemption.

These summer flounder mesh regulations can be modified through specifications, and depending on the specific changes proposed, modifications may not require a separate action. However, if more complex changes are considered, and/or if more intensive exploration of potential changes is needed, a framework action/addendum may be needed. At this meeting, the Council and Board may choose to 1) make no changes to these measures, 2) recommend specific changes (if within the range of what can be modified via specifications) with the option of specifying a phase-in period, 3) identify additional information to inform reconsideration of one or more of these issues in August, or 4) initiate an action to further consider modifications.

Additional information on each of these regulations and the evaluation of them is provided in the meeting materials listed below.

Meeting Materials

Materials listed below are provided for the Council and Board's discussion of this agenda item. As noted below, some materials will be posted at a later date.

1) Briefing document: Summer Flounder Commercial Minimum Mesh Size Review (November 30, 2023)

2) Report: Investigation And Recommendation of the Mid-Atlantic Fishery Management Council's Summer Flounder Small Mesh and Flynet Exemption Programs
3) Summary of November 13-14, 2023 Monitoring Committee meeting (Part 1: summer flounder commercial mesh issues)
4) Summary of public comments received on summer flounder mesh issues (comments received through November 29, 2023)

The following materials will be posted to the meeting page once they are available:

5) Summary of December 4, 2023 Advisory Panel meeting
6) Any additional public comments received by the supplemental comment deadline of December 7, 2023

Staff Recommendations

Summer Flounder Commercial Minimum Mesh Size

Staff agrees with the Monitoring Committee (MC) recommendation that there is not enough evidence at this time to suggest that a change in the commercial minimum mesh size is warranted. Observer data analysis and industry feedback suggests that a square mesh option is still needed. From the 2018 mesh size study, the length at 50% retention (L50) for the 6-inch square mesh is just below the commercial minimum mesh size. While an increase in square mesh size would be expected to decrease discards of undersized summer flounder, it is not clear to what degree this might occur without additional analysis of alternative square mesh sizes, as the 2018 study did not test square mesh sizes other than 6.0 inches. It is also not clear how such a change would affect retention of legal sized fish. The benefits of such a change may be marginal relative to the high expected costs to industry associated with such a regulation change, but it is difficult to determine this without additional information. Staff supports the MC recommendation to consider adding additional selectivity studies as a research priority for summer flounder, in particular exploring a wider range of square mesh sizes and further comparing selectivity between square and diamond mesh options. If future modifications to mesh size regulations are considered, staff also recommend a more comprehensive evaluation of the economic impacts be considered prior to adopting a change.

Small Mesh Exemption Program

Staff supports the MC recommendation to conduct additional analysis, particularly on the biological impacts to summer flounder, of the industry-proposed change[1] to the small mesh exempted area if considered a priority by the Council and Board. While some changes to the SMEP can be made through specifications, the current proposal is a more complex change in the exempted area than a simple shift of the line. This likely would require a framework action/addendum to complete. A separate action, if prioritized, could allow for additional resources to be dedicated to analysis as well as a more thorough consideration of how the SMEP area should intersect with or overlap with the deep-sea coral protected areas and scup Gear Restricted Areas (GRAs).

[1] For details on the suggested change, see the Investigation and Recommendation of the Mid-Atlantic Fishery Management Council's Summer Flounder Small Mesh and Flynet Exemptions Program report and the public input summary document.

Staff also reiterates the MC recommendation to explore alternative data sources and methods for analyzing use of this exemption going forward. Additional details on the current method used to evaluate the use of this exemption are provided in the Investigation and Recommendation of the Mid-Atlantic Fishery Management Council's Summer Flounder Small Mesh and Flynet Exemption Programs report.

Flynet Exemption

The current flynet exemption, as written, was developed in the 1990s to address a specific gear used in a specific fishery in a region focusing on North Carolina but generally extending north to Cape Henlopen, Delaware. As noted in the report in the briefing materials, the flynet exemption is being used beyond the original intent of the regulation. Unlike the SMEP, the flynet exemption does not have a defined area for where the exempted gear can be used, nor are there LOA or special permit requirements associated with the exemption. There is limited information to identify where, how, and when the exemption is being used aside from observer data and input collected from industry. Staff agrees with the MC that the regulatory definition of a flynet is likely in need of updating to reflect changes in the fisheries and gear configurations that have occurred since the initial implementation of this exemption.

The MC supported the regulatory definition changes <u>if</u> they were expected to modernize the definition in line with current practice and not expected to result in major changes in fishing activity or use of this exemption. However, as noted in the mesh exemptions report, it is difficult to fully evaluate the impacts of the industry-proposed change[2] based on currently available information. There are several different trawl gear types that may fall under an expanded definition of a flynet, and more information is needed to assess whether the proposed change may lead to greater retention and/or discards of summer flounder with flynet type gear. Additional evaluation is needed regarding the extent of use of flynet-type gear, as well as the target species, location, and timing of fishing. The number of vessels that would be newly exempt from the minimum mesh regulations may have a wide range depending on the exact wording of a revised definition and the gear types it may apply to.

Similar to the SMEP, while some changes to the flynet exemption can be made through specifications, a definition change may require a framework action depending on the scope of change. If the Council and Board support further consideration of definition changes, staff recommend initiating a framework action to consider the implications, and hosting additional dialogue with industry as part of the process. A framework may allow for a more thorough analysis to identify which specific gear types and fisheries may be affected by this change, and how that may relate to potential changes in summer flounder retention and discards.

Staff also recommends exploring additional data sources and analysis methodologies that can be used, either currently or under a modified program, to better track the use of such an exemption.

[2] For details on the suggested change, see the Investigation and Recommendation of the Mid-Atlantic Fishery Management Council's Summer Flounder Small Mesh and Flynet Exemptions Program report and the public input summary document.

Summary

Staff recommend no changes to the current commercial minimum mesh size.

For the mesh exemptions, if the Council and Board support further exploration of either one, staff recommend that a framework action/addendum be initiated to ensure adequate resources and thorough, transparent consideration of these issues. If the Council and Board are interested in further analysis of changes to both the SMEP and the flynet exemption, staff recommend combining these issues into a single framework action to address both issues. Discussions with and public comments from industry representatives have made it clear that there is some overlap in the fisheries of interest for both of these exemptions, and that revisions to the flynet exemption may impact whether changes to the SMEP are needed. Additionally, the industry-proposed change to the small mesh exemption area includes partial alignment with the scup southern GRA. Given the Council and Board's recent interest in a framework action to consider changes to the scup GRAs, a framework/addendum to consider the summer flounder mesh exemptions in conjunction with the scup GRAs could be beneficial.