

**Summer Flounder Amendment
Draft Commercial Alternatives Discussion Document
MAFMC Demersal Committee and ASMFC Board Subcommittee, July 2017**

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Introduction

The Council’s Demersal Committee (Committee) will meet jointly with a subset of the Atlantic States Marine Fisheries Commission’s Summer flounder, Scup, and Black Sea Bass Board (Board) on July 11-12, 2017, to review draft commercial alternatives for the ongoing Comprehensive Summer Flounder Amendment. The objective of the meeting is to refine the draft alternatives by adding or eliminating alternatives as appropriate, providing direction and specificity to existing draft alternatives, and making other recommendations to the full Council and Board regarding

adoption of a range of alternatives for the public hearing document (scheduled for consideration at the August joint meeting).

Amendment Status and Current Timeline

Based on feedback received during the public scoping process in the fall of 2014, the Council and Board identified four general categories of issues to be addressed in the Comprehensive Summer Flounder Amendment:

1. Fishery Management Plan (FMP) goals and objectives,
2. Quota allocation between the commercial and recreational sectors,
3. Commercial management measures and strategies, and
4. Recreational management measures and strategies.

Due to timing issues associated with revisions to recreational catch and landings time series, **the Council and Board have indicated that they plan to delay development of alternatives for issues 2) and 4) above, packaging them as a separate amendment(s) and/or framework action(s)** in order to address issues 1) and 3) more quickly. Specifically, the current amendment timeline (as of May 2017) has one action being developed for commercial issues and FMP goals and objectives, with final action tentatively planned for Spring 2018 (see timeline below). Following completion of this action and release of revised recreational catch estimate time series, the Council and Board will develop alternatives for recreational issues and commercial/recreational allocation. The Council and Board may also pursue some recreational issues in the near term through a framework action and/or addendum.

At their joint May 2017 meeting¹, the Council and Board reviewed a draft range of alternatives for commercial fishery issues within the amendment, with the goal of prioritizing and providing feedback on the range of issues to be addressed. The Council and Board determined that moving forward, staff should prioritize analysis of the following issues: **1) permits and latent effort, 2) commercial allocation, and 3) landings flexibility**. Other issues, including safe harbor policies, commercial data collection and monitoring, and commercial summer flounder discards, are currently or will be taken up through other actions and initiatives, including possible Commission-only actions, Council-only actions, Greater Atlantic Regional Office initiatives, and other projects. Staff will continue to work with the commercial working group, the Fishery Management Action Team, the Demersal Committee, and the Board to further refine and analyze the alternatives.

A refined range of commercial fishery alternatives will be presented to the Council and Board in August 2017, for incorporation into a public hearing document and a Draft Environmental Impact Statement (DEIS). The Council must approve a DEIS prior to public hearings, and a refined range of alternatives will be needed to complete the DEIS.

¹ <http://www.mafmc.org/briefing/may-2017>

Current Commercial Issues/Goals and Objectives Timeline (as of May 2017):

February-April 2017	Commercial working group and FMAT develop draft commercial range of alternatives and initial analyses/background for Council and Board consideration; staff begins DEIS
May 10, 2017	Council and Board consider range of alternatives on commercial issues
June 28, 2017	Advisory Panel feedback on draft commercial alternatives
May-August 2017	Staff, FMAT and working groups refine alternatives and analysis, with Committee and Board input; continued work on DEIS
July 2017	Demersal Committee/Board subcommittee meeting to refine commercial alternatives
August 2017	Council and Board approve refined range of alternatives for inclusion in public hearing document
Oct./Nov. 2017	DEIS submitted to NMFS for preliminary review; draft public hearing document prepared
December 2017	Council and Board approve public hearing document
February 2018	Council approves DEIS based on options approved for public hearings (must approve DEIS prior to public hearings)
Winter/Spring 2018	DEIS final submission; Notice of public hearings; Public hearings and summarization of comments; 60-day NEPA/MSA comment periods
Spring 2018	Council/Board consideration of public comments; Staff prepares documents for final action
Spring 2018	Final action
Summer 2018	Final Environmental Impact Statement finalized and submitted; NMFS and other agencies review; final edits completed
Summer-Fall 2018	Rulemaking and comment periods (4-7 months from after EIS finalized)
Late Winter/Spring 2019	Final rule effective

Commercial Issues: Background and Draft Alternatives

Three sets of draft alternatives are presented in this document, including those for:

1. Permits and latent effort;
2. Commercial quota allocation, and;
3. Landings flexibility.

Each section pertaining to these alternative sets contains background information, commercial working group and Fishery Management Action Team (FMAT) comments and other considerations for alternatives, a list of draft alternatives, relevant data for that alternative set compiled to date, and discussion questions for the Committee.

1. Permits and Latent Effort

Permit capacity and latent effort were identified as issues to be addressed in the amendment. Previous suggestions and comments on this issue have included approaches such as creating a tiered permit system, addressing state-level permit requirements, preventing latent effort from developing through permit banks, and addressing transferability of permits. The Council and Board have not yet adopted a definition of latent effort or a specific approach to identifying latent

effort. This will be refined as alternatives development progresses, with input from the commercial working group, FMAT, and the APs.

The Council and Board’s intention is to consider possible reductions in permit capacity, rather than increases, to address perceived overcapacity in the commercial fishery. This means that **all requalification alternatives below would be applicable only to current moratorium permit holders** – in other words, any revised qualification criteria would apply only to the existing set of permits and would not allow additional moratorium rights to be issued.

The draft alternative set in this section is currently for **federal permits only**. Given the wide variation in state-specific permitting processes and requirements, it is not clear at this point whether the Council and Board intend to consider options for broader mandatory requirements (or voluntary guidelines) for state level summer flounder permits within the Commission’s FMP. State permit requirements are summarized in **APPENDIX III: State Permit Requirements**. A possible approach to addressing latent effort at the state level would be Commission-only action to address state permits following the completion of this amendment.

Current Federal Permit Requirements for Summer Flounder

There is a single limited access federal permit category for the summer flounder commercial fishery: summer flounder moratorium permits. There is no commercial open access permit category for summer flounder nor are there separate permits for incidental catch. In federal waters, a moratorium permit is required to fish commercially for summer flounder, meaning this permit is required to sell any amount of summer flounder.

To be eligible for a moratorium permit, a vessel must have been issued a moratorium permit in the previous year, or be replacing a vessel that was issued a moratorium permit after the owner retires the vessel from the fishery. All moratorium permits must be reissued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued (as described below).

The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. A limited access permit cannot be “split” from another limited access permit; generally, this means if two or more different limited access permits are on one boat they may not be divided and put on two or more boats.

Confirmation of Permit History

A CPH may be issued when a vessel that has been issued a limited access permit has sunk, been destroyed, or has been sold to another person without its permit history. Possession of a CPH will allow the permit holder to maintain landings history of the permit without owning a vessel. A CPH preserves the eligibility of an individual to apply for a limited access permit for a replacement vessel based on the previous qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in the federal regulations at §648.4. The CPH remains valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit.

Vessel Replacements and Upgrades

A permit holder can submit documentation of a replacement of one vessel or CPH with another vessel and the transfer of fishing histories and limited access permit eligibility from the old vessel or CPH to the new vessel. The qualifying vessel or CPH must be under the identical ownership as the replacement vessel. The vessel length and engine horsepower may be increased either through an upgrade or a replacement. A 10% increase in length overall and a 20% increase in engine horsepower are allowed.

Considerations for Permit and Latent Effort Alternatives

- **Federal control date:** On August 1, 2014, at the request of the Council, GARFO published a notice setting that date as the new control date for participants in the commercial summer flounder fishery ([79 FR 44737](#)). The establishment of the control date notified the public that the Council was considering an action to limit the number of federally permitted participants in the fishery in the future. The control date is intended to help the Council to identify latent effort in the summer flounder fishery. While the control date alone does not have a direct impact on participants, **the Council and Board could use it as a reference point as they consider if and how to limit the number of participants in the commercial summer flounder fishery.** The Council and Board may choose to use qualification criteria that do not rely on the new control date, or previous dates considered, including the January 26, 1990 control date for the summer flounder fishery. The Council and Board may also choose to take no further action to control entry or access to the summer flounder fishery.
- **Ongoing analysis:** The commercial issues working group is currently working to characterize federal and state permits over time, analysis to help discern “active” from “inactive” permits in recent years and approaches to defining those terms, the extent of dual state/federal permit holding, and permit holding in multiple states. The working group will look at data for landings and effort by permit at the federal level to see if there are natural breaks for reasonable permit tier categories, and to attempt to define and differentiate active vs. inactive permits. Working group members suggested looking at limited access permit holders with no landings in recent years as simple first step. Analysis will include effort metrics by permit (e.g., trips), in addition to landings, to account for differences in possession limits by state. Landings alone would not be an accurate reflection of availability or success.
- **Tiered permits:** Some working group members noted that a tiered permit system may help to more actively manage quota, particularly when quotas are smaller, and may also help address commercial discards. Such a system may make it easier to set appropriate trip limits for the directed fishery.
- **Gear-based permit tiers** may be difficult to analyze, at least at a state level, since gear type is not a required field for reporting in some states. As indicated in Figure 1, many states have a large proportion of “unknown” gear types accounting for summer flounder landings. At the federal level landings data by gear type may be more reliable but are still associated with some uncertainty. The working group cautions against making permit categories overly constraining. The ability to shift from one fishery and/or gear type to another provides flexibility to commercial fishing operations that makes them more able to adapt to changing regulatory environments.

Draft Alternatives: Permit and Latent Effort

The following is a list of draft alternatives and sub-alternatives to address this issue. The alternatives are currently broad and conceptual; **each of these requires further development and additional specificity**. All alternatives below would evaluate requalification **only from the existing pool of moratorium permit holders, and would not allow new entrants to obtain a permit based on the qualifying criteria**.

- **Alternative 1A: No Action/Status Quo**. This alternative would maintain the current single-tier, commercial moratorium permit system for the summer flounder fishery, with no requalification. Moratorium permits were established via Amendment 2 to the FMP (1993) and were issued to the owner or operator of a vessel that landed and sold summer flounder in the management unit between January 26, 1985 and January 26, 1990, OR the vessel was under construction for, or was being re-rigged for, use in the directed fishery for summer flounder on January 26, 1990 (provided the vessel had landed summer flounder for sale prior to implementation of Amendment 2).
- **Alternative 1B: Requalification of federal moratorium permits (retain existing single-tier system)**. This alternative would impose requalification criteria on current summer flounder moratorium permits. For example, permits would be requalified if they landed at least X pounds in any year from YEAR-X to YEAR-Y. Permits in CPH could requalify if they have the required landings. This alternative would not allow new entrants to qualify for a moratorium permit. Non-requalifying permits would be eliminated.

This alternative could have multiple sub-options or be expanded into multiple alternatives with varying qualification periods and landings/effort thresholds. For example, one option could be eliminating moratorium rights that have zero associated summer flounder landings for the past ten years. Other options could use different landings or effort thresholds. The working group is continuing to pull permit data and will examine permit data to evaluate any natural breaks or other quantitative methods of eliminating latent effort.

- **Alternative 1C: Create a tiered limited access federal permit system, with tiers based on landings and/or effort qualifying criteria**. This alternative would create two or more separate commercial federal permit categories based on tiered landings and/or effort qualifying criteria. These permits would be limited access (cannot be reacquired if dropped/lapsed). A permit tier could be created for incidental catch, which some current moratorium permits would qualify for. However, a limited access federal permit in some form would still be required for vessels to land summer flounder caught in federal waters (as is the case currently). **As with Alternative 1B, this alternative could have multiple sub-options or be expanded into multiple alternatives with varying qualification periods and landings/effort thresholds.**

With this alternative, specific trip limits, permit conditions, or other management measures should be considered that would be associated with each commercial permit type in a tiered permit system, in order to manage the tiers differently (if not managing permit tiers differently, the current single tier system would likely be preferable to maintain). However, trip limits are currently set by individual states, so the intersection with state management measures needs to be considered if the quota allocation remains state-by-state and states continue to manage their

quota shares. If state permit requirements remain unchanged, there may also be conflicting permit conditions between state and federal permits that will require clarification.

- **Alternative 1D: Create a tiered limited access federal permit system, with tiers based on gear type.** This alternative would create two or more separate commercial limited access federal permit categories based on general gear type categories, with qualifying criteria based on landings and/or effort for each gear type tier. These tiers would be limited access (cannot be reacquired if dropped/lapsed). The vast majority of summer flounder landings are taken by bottom otter trawl gear (nearly 90% over 2011-2015; Table 3).

As with 1C above, in addition to creating gear-based permit tiers, the Council and Board may need to consider specific trip limits or other management measures by gear-based permit tier. The intersection with state management measures needs to be considered if the quota allocation remains state-by-state and states continue to manage their quota shares.

Relevant Data for Draft Alternatives: Permit and Latent Effort

In total, there are 944 federal Moratorium Rights IDs for summer flounder, meaning that 944 is the total number of federal summer flounder moratorium permits that could ever be held at a given time, based on the qualifying criteria in the FMP.

Permit data indicate that 789 commercial moratorium permits were **issued** in permit year 2016 (May 1, 2016 to April 30, 2017). In calendar year 2016, 344 federal permits had associated commercial summer flounder landings. Additional federal permit information was provided by GARFO in May 2017 (Table 1).

Table 1: Federal summer flounder moratorium permit characterization as of May 2017. Data sources: Commercial Fisheries Dealer Reports, GARFO permit database, and the GARFO Moratorium Rights Qualification System (MQRS) database accessed on 05/04/2017.

Summer Flounder Moratorium Rights as of May 2017	Permits	Comments/Explanation
Inactive status (Confirmation of permit history or history retention)	88	These permits have been removed from a vessel.
Active status	856	These permits are eligible to be issued.
Total moratorium rights IDs	944	This is the total number of federal summer flounder moratorium permits that could ever be held at a given time, based on the qualifying criteria in the FMP
Summer Flounder Federal Permits (<u>Permit Database</u>)- Permit year 2016 (May 1, 2016 to April 30, 2017)		
Summer Flounder Commercial Moratorium Permits Issued in 2016	789	This is the number of commercial permits that were issued in permit year 2016. Some of these would have been duplicates (i.e., a replacement vessel) or some would have been taken out of History Retention and put on a vessel. Not all of these permits had associated landings in 2016.
Commercial Fisheries <u>Dealer Database</u> Permit/Hull number Counts - Calendar year 2016 (Permit years 2015 and/or 2016)		
Federal summer flounder limited access commercial permitted vessels with dealer-reported summer flounder landings in CY2016	344	These vessels reported commercial summer flounder landings in calendar year 2016.
Number of federal summer flounder charter/party (open access) permitted vessels with dealer-reported commercial summer flounder landings in CY2016	46	These are vessels that have a Federal charter/party permit AND a state commercial license, selling to a federally permitted commercial dealer.
Number of distinct vessels (as identified by dealer-reported hull number) with dealer-reported summer flounder landings in CY2016	1,187	Includes both federally-permitted and state-only permitted vessels.

State permit information for the past five years was compiled by Commission staff and the Atlantic Coastal Cooperative Statistics Program (ACCSP) and is shown in Table 2. State permit data was provided by state marine fisheries agencies to Commission staff, and is provided along with ACCSP database information for known fishermen with summer flounder landings in each year 2012-2016.

Table 2: ACCSP summer flounder state commercial permit summary; 2012-2016. Delaware and Maine not provided for confidentiality reasons.

State	State Provided Permits ^a		Number of Known Fishermen in ACCSP Summer Flounder Landings ^e				
	Total Count	Active Count ^b	2016	2015	2014	2013	2012
MA	699	274	210	226	203	230	265
RI	1192	546	522	482	486	538	540
CT	N/A	N/A	67	70	68	64	62
NY ^c	491	416	191	199	222	225	234
NJ	177	89	68	61	68	60	51
MD	N/A	N/A	26	27	45	43	47
VA	175	175	114	117	160	47	58
NC ^d	166	138	251	201	222	191	186

^a “State-provided permits” indicates counts of total and active state commercial summer flounder permits that were provided to Commission staff by individual states. Maryland and Connecticut data had not been provided at time of this report.

^b States were asked to provide the number of “active” permits over the past five years, meaning there were summer flounder landings associated with that permit over the last five years. The exact method of pulling “active” permits was not necessarily consistent among states. Note that some states permit a vessel, while some states permit an individual.

^c “Active count” in the table above indicates active during the period of 2012-2016, but not necessarily active in each of those years. New York provided an additional breakdown of active permits over each individual year for 2012-2016:

Year	NY Active Count
2012	255
2013	242
2014	251
2015	234
2016	203

^d Some North Carolina landings by year would have been from non-North Carolina permit holders, leading to the “known fishermen” counts by year being higher than the number of “active” NC permits.

^e “Known fishermen” counts are derived from ACCSP database fisherman ID. “Unknown” fishermen not included. Among identified fishermen (people) in ACCSP Summer Flounder Landings for the period of 2012-2016:

- Approximately 93% had a single fishermen state permit, 6% had two fishermen state permits, and less than 0.5% had three or more fishermen state permits. This includes state permits only, as Federal permits are issued to vessels.
- Approximately 95% landed in a single state and the remaining 5% landed in two to four states.
- These percentages are similar in each year throughout the 5-year period.

Dealer data linked to Vessel Trip Report (VTR) data for 2011-2015 (Table 2) indicate that the bulk of the summer flounder landings in recent years were taken by fish bottom otter trawls (88 percent). Unknown or missing gear types in this dataset accounted for approximately 4.5% of landings, followed by hand lines (2.7%) and sink gill nets (1%). Other gear types accounted for 1% or less of landings (e.g., scallop trawls, pound nets, beam draws, sea scallop dredges, other dredges, and shrimp trawls).

Table 3: Gear type breakdown for summer flounder landings, 2011-2015 combined. Source: NMFS dealer data (AA tables) as of February 2017. Gear types accounting for less than 0.1% of landings are not shown.

Gear Type	% of Summer Flounder Landings	# Trips (5 year total)
TRAWL, OTTER, BOTTOM, FISH	88.20%	156,891
UNKNOWN	4.42%	72,707
HAND LINE, OTHER	2.74%	63,120
GILL NET, SINK, OTHER	0.97%	16,493
TRAWL, OTTER, BOTTOM, SCALLOP	0.72%	1,244
POUND NET, OTHER	0.57%	10,598
BEAM TRAWL, OTHER	0.54%	1,240
DREDGE, SCALLOP, SEA	0.43%	3,568
DREDGE, OTHER	0.40%	4,679
TRAWL, OTTER, BOTTOM, OTHER	0.34%	4,849
TRAWL, OTTER, BOTTOM, SHRIMP	0.21%	581

Figure 1 illustrates recent percentages of landings by gear type in each state, and that landings in several states (e.g., North Carolina, New Jersey, and Virginia) originate overwhelmingly from bottom trawl gear. Several states have a substantial amount of “unknown” gear type landings, indicating that data quality of the gear type variable varies by state and may not be reliable in each state within the management unit.

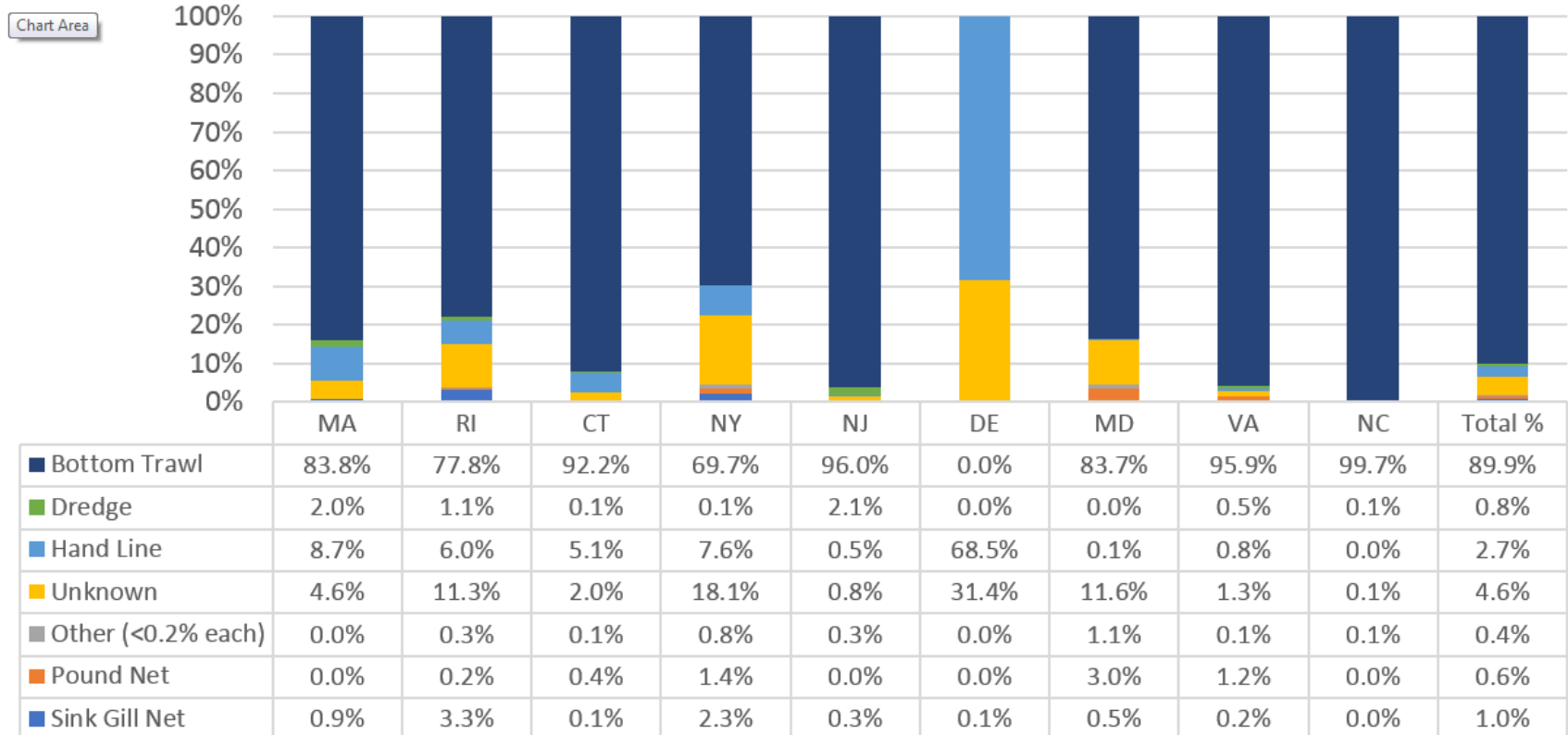


Figure 1: Percentage of commercial summer flounder landings in each state by gear type, Massachusetts through North Carolina, 2011-2015. Source: NMFS dealer data (AA tables) as of February 2017.

2. Commercial Allocation

The Council and Board have identified commercial allocation as a priority issue to be explored in the Comprehensive Summer Flounder Amendment. Previous suggestions/comments on this include support for *status quo* state-by-state allocations, concerns with historical accounting used to originally set the quotas, support for moving toward a “scup quota model,” requests to allow quota rollover and prevent quota underages, and varying opinions on interpreting the science related to distribution changes for summer flounder and whether and how this should be considered when potentially changing the quota allocation system.

Current Allocation

Amendment 2 (1993) specified the current state-by-state percentages based on the proportion of total commercial landings in each state during 1980-1989.² State-by-state allocations were developed to allow each state to develop specific management programs that were designed for the commercial fishery in their state. A simple annual coastwide system was determined to be infeasible because of the migratory patterns of summer flounder. Without some mitigating measures, fishermen at the southern end of the range could possibly catch all the quota before fishermen at the northern end of the range had access to the summer flounder.

In 1993, the state of Connecticut argued that during the early and mid-1980s, the state did not have the authority to collect landings data from offshore fishermen, nor did NMFS provide a port agent to the state. Thus, the state contended that their commercial landings during the allocation base years were underreported and that its quota share was too small. Amendment 4 (1993) increased Connecticut’s quota share from 0.95% to 2.26%.³ Amendment 5 (1993) allowed two or more states, with the consent of NMFS, to transfer or combine their summer flounder commercial quota. These transfers do not permanently affect the state specific share of the coastwide quota that each state receives each year.

States are required to adopt appropriate measures to manage their quota shares, and employ a variety of quota periods, trip limits, and other such measures to do so. Quota periods and other quota management measures vary from state to state (Table 3).

² Estimated landings by state and year for 1980-1989, as of the time of Amendment 2 development, can be found in Table 2 (pounds) and Table 72 (percentage) of the Amendment 2 document, available at: http://www.mafmc.org/s/SFSCBSB_Amend_2.pdf.

³ Revised 1980-1989 landings by state and year, and the resulting quota shares from Amendment 4 can be found in Table 1 of that document, at: http://www.mafmc.org/s/SFSCBSB_Amend_4.pdf.

Table 4: State-specific commercial quota management summary (as of April 2017).

State	Commercial Quota Management Summary
<i>Massachusetts</i>	Two quota periods (30% allocated to January 1-April 22; 70% to April 23-December 31). Landings or possession of fluke by commercial fishermen allowed from 6 AM to 8 PM daily only. Gear-specific season, open days and possession limits.
<i>Rhode Island</i>	Three quota periods (54% of quota allocated to January 1-April 30; 35% to May 1-October 31; 11% from November 1-December 31). Possession limits vary by period.
<i>Connecticut</i>	The harvest strategy is reassessed each year and modified based on annual quota and industry input. Currently, there are four quota periods: Winter I (January 1-March 31), April, Summer (May 1-October 31), Winter II (November 1-December 31). Quota period year-to-date targets include 25% through Winter I; 95% through April and Summer, and 100% through Winter II. Possession limits vary by period and may be adjusted if period target quota is projected to be landed.
<i>New York</i>	Seven quota periods: January-March (25%); April (10%); May (14%); June-July (27%); August-September (14%); October (5%); December (5%). Initial daily trip limit is 70 lb in period 1 and 50 lb in all other periods. Over/under harvest from period 1 rolls into period 7; over/under harvest from period 2 into period 6; over/under harvest from periods 3 through 5 are rolled into the next period.
<i>New Jersey</i>	Six landings periods with differing daily and/or weekly possession limits: January-February; March-April; May-June; July-August; September-October; November-December. Over/under harvest from any of the first five periods is added or deducted from the following period. 10%, but no more than 200,00 pounds, is allocated to bycatch landings when the directed fishery in a given period is closed. The bycatch allocation is divided between the six seasons at the same percentage as for the directed fishery.
<i>Delaware</i>	Delaware qualifies for <i>de minimis</i> status for the commercial summer flounder fishery; the fishery operates under a 200 pound trip limit year round.
<i>Maryland</i>	Managed under an IFQ system, where permit holders may land their allocation year-round with no possession limits. Non-permitted harvesters are subject to the relevant daily possession limits (100 lb per day from the Atlantic Ocean and 50 lb per day from the Chesapeake Bay and tributaries).
<i>Virginia</i>	Two landings periods and a separate allocation for tidal waters. Summer flounder harvest from Virginia tidal waters is limited to 300,000 pounds, 142,114 pounds of which is set aside for the Chesapeake Bay. Period 1 includes the first Monday in January-October 31 (70.7% of the quota after deducting tidal allocation). The second period (November 1-December 31) is allocated 29.3% of the quota, after the tidal allocation. Over/under harvest from the first period may be deducted or added to the second. Possession limits vary by period.
<i>North Carolina</i>	The North Carolina season for landing ocean-caught flounder opens January 1 each year. If 80 percent of the quota is projected to be taken, North Carolina ports are closed to landing of flounder taken from the ocean. The season reopens November 1 if there is remaining quota. If after reopening, if 100 percent of the quota is projected to be taken prior to the end of the year, the fishery is closed.

Considerations for Quota Allocation Alternatives

- **Quota rollover:** Rollover of unused quota from one year to the next could be explored at a coastwide, regional, or state level, in line with the preferred quota allocation and transfer system, but there are several constraints to consider, particularly for coastwide quota rollover. GARFO has indicated that carryover from one fishing year to the next may be difficult under the current system of catch and landings limits. A 2014 court ruling

(*Conservation Law Foundation v. Pritzker, et al.*⁴) found that consistency with the Magnuson Stevens Act requires any quota carryover, when combined with the total Annual Catch Limit (ACL) for the upcoming fishing year to be equivalent to or below the single year Acceptable Biological Catch (ABC) recommended by the Council's Scientific and Statistical Committee. For summer flounder, there is no buffer in place in the current system of catch and landings limits that would allow carryover from a previous year without exceeding the upcoming year's ABC. Thus, for carryover of the coastwide annual commercial quota to benefit the fishery, the SSC would need to annually modify the ABC to add the rollover from a prior year. This would likely require a modification to the Council's risk policy and may involve a 2-year lag in rollover given the timing of the specifications cycle, the timing of availability of final catch data, and administrative requirements. Any revised ABC could still not exceed the overfishing limit (OFL).

- **Migrations and seasonal distribution:** Summer flounder exhibit distinct seasonal migratory behavior, creating two distinct trawl fisheries; a winter offshore fishery and a summer inshore fishery (Figure 2; Table 7). Participants in the winter offshore fishery are largely high-tonnage vessels, while the summer inshore fishery generally consists of smaller vessels (Figure 3). Alternatives to the current system should consider equitable allocation of the commercial quota to northern and southern participants and between the smaller day boats and larger offshore vessels. Due to the seasonal nature of the fishery, quota systems covering a broader geographic area may benefit from division into smaller temporal units.
- **Impacts on ITQ Fisheries:** Moving away from a state-by-state quota system would represent a problem for states managing through ITQs (i.e., Maryland). There is a need to consider how each state currently handles their allocation.
- **Fleet mobility:** The importance of current summer flounder distribution would appear to vary substantially along the coast with varying fleet mobility.
- **Revisiting allocations:** The working group has noted that more regular revisiting of quota allocation is generally a good idea, and that the fishery is better off without allocations set in stone for the long term. There should be some thought given to a more standardized approach to reviewing and updating allocations, and what data are needed to do so more regularly, recognizing that stock conditions and distribution are dynamic.
- **Assumptions:** All of the alternatives below **assume the retention of the current process of subtracting projected commercial discards from the commercial ACL to arrive at a given year's commercial quota.** The alternatives below relate to how that landings-only commercial quota is then distributed in space and time. If the Council and Board wished to divide projected discards along the same lines as landings, this would likely require consideration of sub-ACLs (by quota period, state, etc.). The creation of sub-ACLs may require revisions to the summer flounder commercial Accountability Measures, to clarify the response to sub-ACL overages and overall ACL overages. Additional information on discards can be found in **Appendix I.**

⁴ April 4, 2014 opinion available at: <https://www.regulations.gov/document?D=NOAA-NMFS-2012-0059-0204>.

Draft Alternatives: Commercial Allocation

The following is a list of potential draft alternatives and sub-alternatives to address this issue. Each of these requires further development if carried forward.

- **Alternative 2A: No action/Status quo state-by-state allocation system.** This alternative would leave in place the current state allocation percentages. Currently, 60% of the annual Total Allowable Landings (TAL) are allocated to the commercial sector as a commercial quota. This coastwide quota is further divided on a percentage basis to each of the states (Maine-North Carolina) based on historical landings from the period **1980-1989**. The commercial quota is divided among the states based on the allocation percentages given in Table 5 and each state sets measures to achieve their state-specific commercial quotas. These allocations are included in both the Council and the Commission FMPs. When a state's quota has been landed, fishing for and/or landing summer flounder is prohibited in that state. Any quota overages by a state during the year are subtracted from the state's quota the following year.

Table 5: Current state-by-state percent share of commercial summer flounder allocation as established by FMP Amendments 2 and 4, based on landings data for 1980-1989.

State	Allocation (%)
ME	0.04756
NH	0.00046
MA	6.82046
RI	15.68298
CT	2.25708
NY	7.64699
NJ	16.72499
DE	0.01779
MD	2.03910
VA	21.31676
NC	27.44584
Total	100

- **Alternative 2B: Revised state-by-state allocations.** This alternative has several sub-options for various ways to revise the current state allocations, which may be modified as development of alternatives progresses.
 - **Alternative 2B-1 - Revised base year period.** This would revise the state-by-state allocation percentages based on a new set of base years. If using landings alone, this option would not be a substantial change from the current allocation given that state landings from 1993 to present generally reflect state-by-state quotas based on the current allocation (Table 6). In order to truly consider a new allocation, some metric of effort or Catch Per Unit Effort (CPUE) would likely need to be taken into account. However, most metrics would reflect individual state management measures and it may be difficult to account for this effect.
 - **Alternative 2B-2 - Based on “best years” system.** This alternative would be based on a state's best years of landings and/or effort over a certain time period, e.g., based on the best 5 years of landings for each state from 2005-2015 (for example). This alternative would face similar challenges to option 2B-1, in that landings in a state's “best years” are likely to reflect the state's quota or even quota overages. Thus, this

option may need a condition that years with overages would not be included. Like the option above, it is difficult to account for the effects of the current management regime.

- **Alternative 2B-3 - Combination of current allocation and recent distribution of summer flounder.** This alternative would reallocate the state quotas based on some combination of the current allocation and/or historical landings, and current distribution, e.g., 50% current state-by-state allocation, 50% recent distribution. For recent distribution, if this alternative is to be quantitatively developed, **there are major questions regarding what data to include, over what time period, and how this information would be associated with a given state to be translated into actual state allocations. Guidance is requested from the Committee on how to approach this issue.** If this option is pursued, some thought should be given to when and how this information and the resulting allocations would be revisited in the future if distributions and stock abundance continue to fluctuate. In addition, the working group notes that there are a wide range of percentage splits (other than 50/50) between current allocation and recent distribution that raises policy questions best addressed by the Council and Board.
- **Alternative 2C: Coastwide quota with seasonal periods:** The annual coastwide quota would be divided into seasonal quota periods, with no state- or region-specific quota allocation. This would allow fishermen to land in any port along the coast and all commercial landings (from state and federal waters) during a given period would count toward that quota period's allocation. Once that allocation is reached, landing of summer flounder would be prohibited for the remainder of the period. Information about landings by month and season are provided in Figures 2- 5, Table 7, Table 9, and Table 10. The seasonal quota periods could be developed using one of the following sub-options, or alternative options to be specified by the Council and Board:
 - **Alternative 2C-1: Trimester quota system:** This system could be allocated based on an even division of quota to three trimesters (33.33% of annual quota to each trimester) OR with varying percentages based on a set of base years. Table 11 shows the breakdown of landings by four-month period for 2011-2015.
 - **Alternative 2C-2: Bimonthly quota system.** This system could be allocated based on an even division of quota to each two-month period (16.67% of annual quota to each trimester) OR with varying percentages based on a set of base years. Table 12 shows the breakdown of landings by bimonthly period for 2011-2015.

Under these or other coastwide quota systems, associated management measures should also be developed. Trip limits specific to each quota period should be considered with a coastwide, seasonal system, designed appropriately to avoid derby-style fishing practices that may favor larger, more mobile vessels at the beginning of each period. Trip limits could be made responsive to a percentage of the allocation reached in each period, to allow for a continuous supply of product and equitable distribution of flounder to fishermen using both small and large vessels. For example, the limit could decrease when 50% of the period's quota was landed, and again when 90% of the period's quota was landed. Provisions for quota rollover between periods (within the same fishing year) could also be considered.

- **Alternative 2D: Scup quota model.** This alternative would mirror the system currently implemented for the commercial scup fishery, in which the total annual quota is allocated into three seasonal periods: Winter I, Summer, and Winter II. During the two winter periods, a coastwide quota system would be implemented in conjunction with a system of coastwide landings limits or other measures to constrain landings to the seasonal allocation. In the summer, state-by-state quotas would be implemented and managed by individual states within the management unit. This system, as developed for scup, ensures that both smaller day boats, which typically operate near shore in the summer months, and larger vessels, which typically operate offshore in the winter months, can land scup before the annual quota is reached. The commercial fishery would close coastwide (in federal and state waters) when the allocation for a given period is reached. The Regional Administrator would close the EEZ to fishing for summer flounder by commercial vessels when the quota has been landed, and states would be responsible for state waters closures.

Any overages during the winter periods would be subtracted from that period's allocation for the following year. Any quota overages by a state during the summer period would be subtracted from the state's share the following year. If the full Winter I quota is not harvested, unused quota is added to the quota for the Winter II period. The division of the winter season into two quota periods (Winter I and Winter II) is necessary given the current fishing year start date of January 1, as the start of the annual quota occurs on this date.

In May 2017, the Council and Board approved a framework action⁵ to modify the commercial quota period dates for scup, specifically, moving the month of October into the Summer quota period. This action is pending implementation. The proposed new quota periods for scup include: Winter I (January through April), Summer (May through September), and Winter II (October through December).

There are several sub-options for establishing allocations for such a scup quota model. **Each of these alternatives assumes the same quota period dates as those recently revised for scup.** An examination of summer flounder landings within these periods are shown in Table 13 and Figure 6. Alternative dates could be considered if requested by the Council and Board.

- **Alternative 2D-1: Allocation between quota periods based on recent landings by period.** Table 13 indicates that between 1997-2016 (past 20 years), summer flounder landings have been distributed as follows: **54.7% from January-April, 24.8% from May through September, and 20.5% from October-December.** Alternative base years could be considered.
- **Alternative 2D-2: State-by-state summer period allocations based on current state-by-state allocations.** This alternative would leave the current allocations (Table 5) in place for the summer period only (May through September).
- **Alternative 2D-3: State-by-state summer period allocations based on a revised set of recent base years.** This alternative would develop state-by-state quota options for the summer period (May through September) that vary from the current state-by-state allocations. Options for doing so are similar to options under Alternative set 2B.

⁵ <http://www.mafmc.org/actions/commercial-scup-quota-period-framework>.

- **Alternative 2E: Regional annual coastwide quota system.** This alternative would determine two or more appropriate regions for quota allocation, between Maine and North Carolina. Quota management on a regional basis would be similar to the way the state-by-state quota is managed currently, with any overages subtracted from the regional quota in the following year. This approach requires additional discussion with individual states and GARFO to determine whether it is feasible to monitor regional harvest in a timely and accurate manner, and who would be responsible for the quota accounting. This alternative would likely need associated region-wide management measures (e.g., trip limits and seasons). No specific regions have been proposed.
- **Alternative 2F: Quota allocations by permit category.** This alternative would rely on the approval of new permit categories (other than the single commercial moratorium permit currently in place). These categories could be based on **various landings tiers, gear type, or other division**. Quota would be allocated to each permit tier. Allocations to each category would then have to be managed to prevent quota overages and allow for a distribution of landings throughout the year. Without having specific alternatives for permit tiers, this allocation alternative is difficult to develop at this time.

Relevant Data for Draft Alternatives: Commercial Allocation

The tables and figures below summarize recent landings of summer flounder by season, state, and gear type.

Table 6 shows the percentages of summer flounder landings by state over a 5-year time period (2012-2016) and a 10-year time period (2007-2016). Maine and New Hampshire have reported no landings of summer flounder in the past five years. Note that the percentages for recent years are of the total harvest, not the total quota, so **a percentage that is over or under a state's current allocation does not necessarily mean that state was over or under their allocation on average.**

Table 6: Percentage of landings within the management unit from each state Maine-North Carolina, 2012-2016 and 2007-2016, and current state-by-state allocations. Source: ACCSP database. Specific poundage amounts not shown due to confidentiality issues with some states.

State	% of landings by state, 5-YR (2012-2016)	% of landings by state, 10-YR (2007-2016)	Current Allocation (1980-1989)
ME	0.00000%	0.00405%	0.04756%
NH	0.00000%	0.00001%	0.00046%
MA	7.05052%	6.95463%	6.82046%
RI	18.04914%	17.44612%	15.68298%
CT	2.48158%	2.42149%	2.25708%
NY	8.45865%	9.23102%	7.64699%
NJ	16.90554%	17.02198%	16.72499%
DE	0.01332%	0.01765%	0.01779%
MD	1.75850%	1.88532%	2.0391%
VA	27.59778%	24.01402%	21.31676%
NC	17.68497%	21.00370%	27.44584%
Total	100.00%	100.00%	100.00%

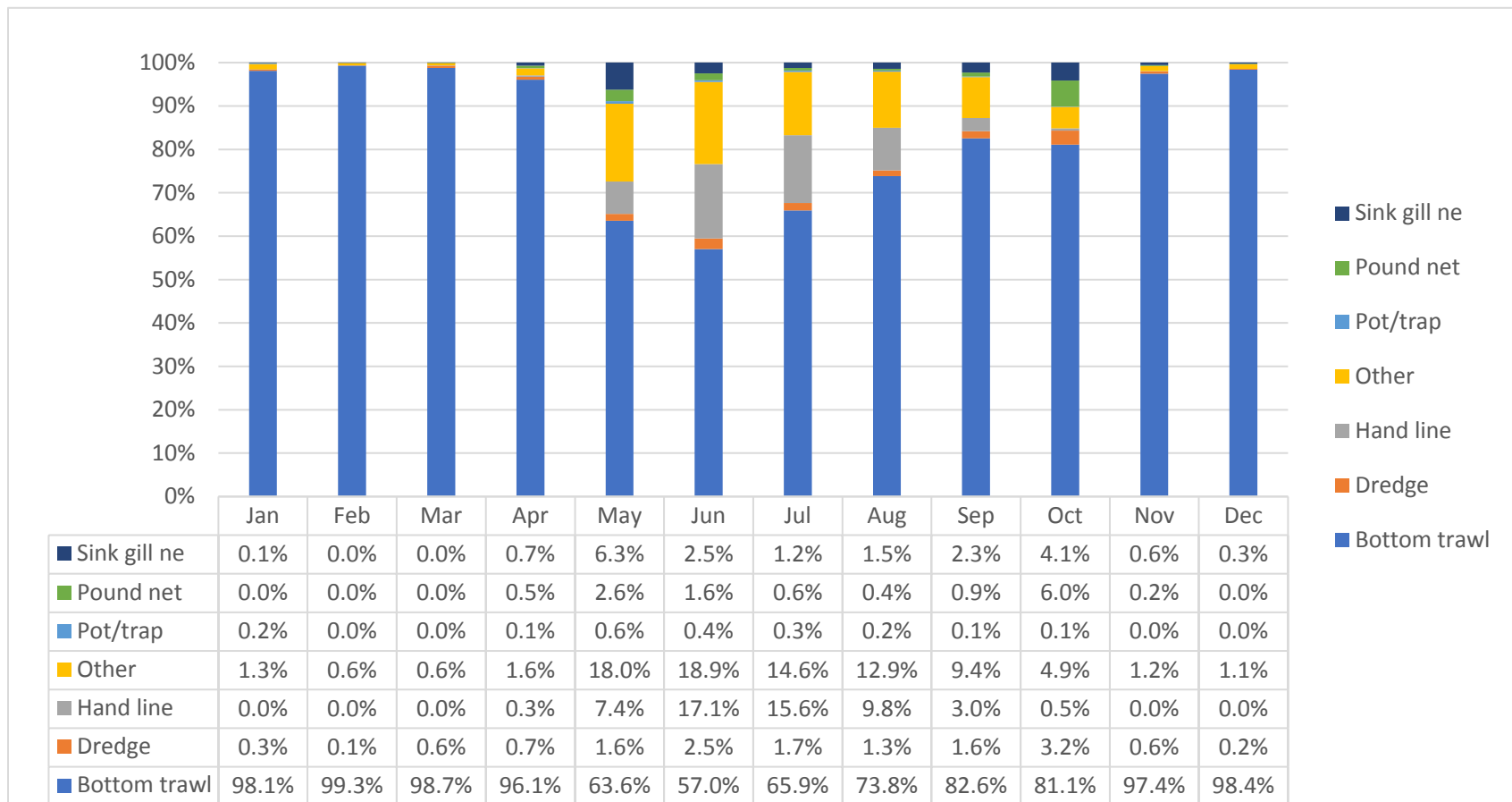


Figure 2: Percentage of commercial summer flounder landings in each month by gear type, Massachusetts through North Carolina, 2011-2015. Source: NMFS dealer data (AA tables) as of February 2017.

Table 7: Commercial summer flounder landings by distance from shore by month, as reported on VTRs, 2015-2016, ME-NC. Source: NMFS VTR data as of May 2017.

Month	Inland waters	Within 3 miles	State Waters Total	3-12 Miles	Beyond 3 miles	Federal Waters Total	Blank/Unknown	Total
Jan	0.0%	6.5%	6.6%	6.8%	79.1%	85.9%	7.5%	100.0%
Feb	0.1%	7.6%	7.7%	4.6%	80.8%	85.5%	6.9%	100.0%
Mar	0.6%	8.2%	8.8%	4.4%	77.8%	82.1%	9.1%	100.0%
Apr	0.4%	8.7%	9.1%	4.0%	81.3%	85.3%	5.6%	100.0%
May	1.2%	52.7%	53.9%	8.2%	27.0%	35.2%	10.9%	100.0%
Jun	0.1%	88.6%	88.7%	4.5%	4.1%	8.6%	2.7%	100.0%
Jul	0.1%	88.6%	88.6%	6.2%	3.5%	9.7%	1.6%	100.0%
Aug	0.1%	89.7%	89.9%	6.6%	1.9%	8.5%	1.7%	100.0%
Sep	0.1%	66.3%	66.4%	20.7%	8.4%	29.1%	4.5%	100.0%
Oct	0.1%	44.8%	44.8%	8.3%	43.6%	51.9%	3.3%	100.0%
Nov	0.0%	18.7%	18.7%	11.8%	65.2%	77.0%	4.3%	100.0%
Dec	0.0%	10.7%	10.7%	9.9%	73.6%	83.5%	5.8%	100.0%
Total	0.2%	22.2%	22.4%	7.0%	64.2%	71.2%	6.4%	100.0%

Table 8: Commercial summer flounder landings by distance from shore by state, as reported on VTRs, 2015-2016. Source: NMFS VTR data as of May 2017.

State	Inland waters	Within 3 miles	State Waters Total	3-12 miles	More than 12 miles	Federal Waters Total	Blank/Unknown	Total
ME	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NH	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
MA	0.0%	53.9%	53.9%	6.3%	38.6%	44.9%	1.2%	100%
RI	0.2%	39.5%	39.7%	6.2%	52.7%	58.9%	1.5%	100%
CT	0.0%	52.4%	52.4%	7.5%	37.6%	45.1%	2.5%	100%
NY	0.4%	54.9%	55.3%	10.8%	31.3%	42.1%	2.6%	100%
NJ	0.0%	34.4%	34.5%	12.3%	49.9%	62.3%	3.2%	100%
DE	0.0%	100.0%	100.0%	0.0%	0.0%	0.0%	0.0%	100%
MD	0.1%	34.0%	34.1%	3.3%	62.5%	65.9%	0.0%	100%
VA	0.7%	3.9%	4.6%	5.3%	80.8%	86.1%	9.4%	100%
NC	0.0%	5.9%	5.9%	5.1%	78.3%	83.4%	10.7%	100%
Total	0.2%	22.2%	22.4%	7.0%	64.2%	71.2%	6.4%	100%

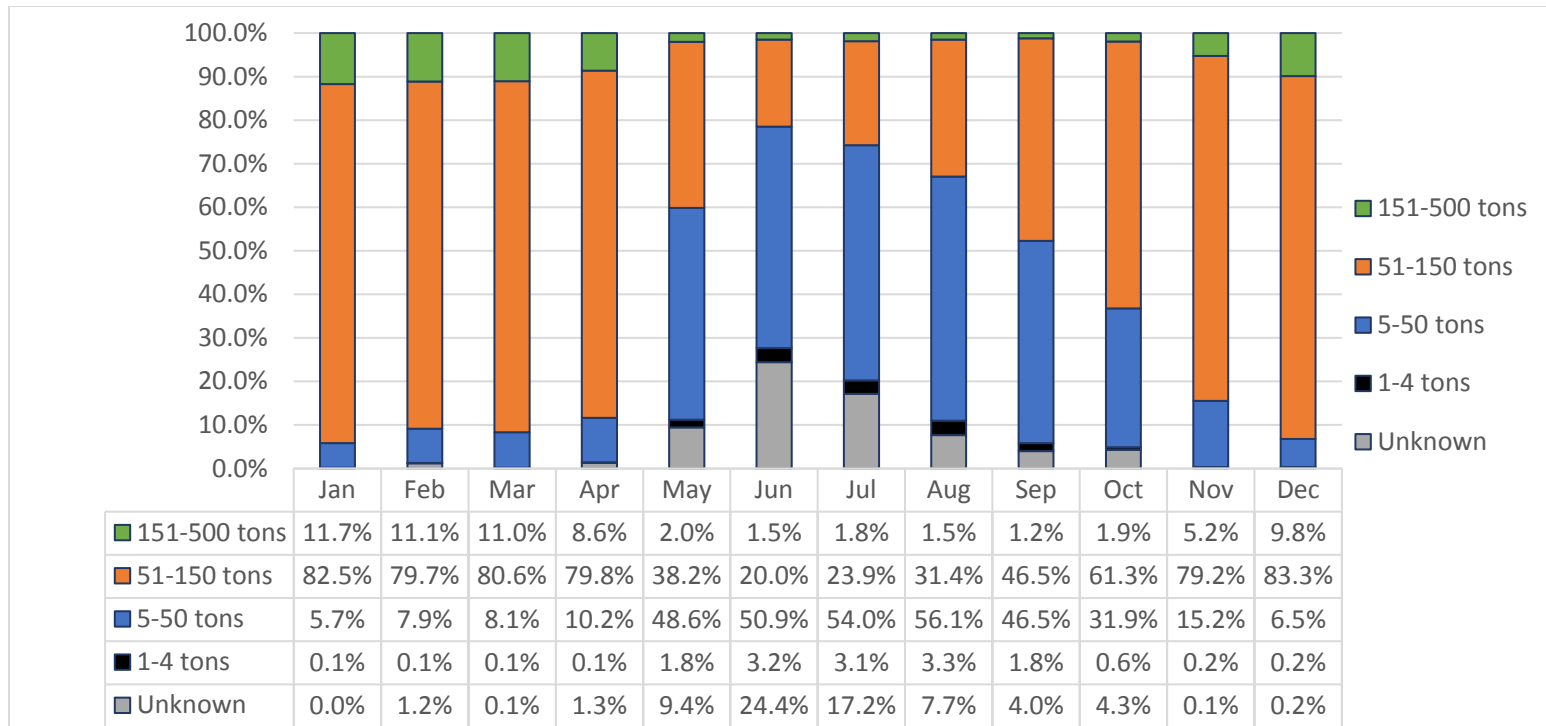


Figure 3: Average percent of commercial summer flounder landings by vessel ton class in each month, 2011-2015.

Table 9: Commercial summer flounder landings by state and month as the percentage of the total coastwide landings, 2011-2015. Note: based on state of landing, not accounting for any quota transfers. Color coding indicates highest percentage (dark green) to lowest percentage (dark red).

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Total
MA	0.56%	0.48%	0.27%	0.31%	0.11%	1.21%	1.67%	1.46%	0.53%	0.05%	0.08%	0.05%	6.78%
RI	0.31%	2.58%	3.05%	2.21%	1.39%	1.34%	1.36%	1.32%	0.88%	0.71%	1.28%	1.11%	17.54%
CT	0.24%	0.19%	0.30%	0.32%	0.15%	0.24%	0.24%	0.19%	0.14%	0.06%	0.08%	0.24%	2.40%
NY	0.77%	0.87%	0.39%	0.30%	1.43%	1.05%	1.03%	1.05%	0.89%	0.35%	0.15%	0.29%	8.57%
NJ	4.29%	0.72%	1.11%	0.37%	0.79%	0.72%	1.15%	0.69%	2.26%	1.65%	2.12%	0.75%	16.62%
DE	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%
MD	0.03%	0.06%	0.29%	0.17%	0.17%	0.10%	0.06%	0.22%	0.08%	0.20%	0.08%	0.19%	1.65%
VA	4.11%	2.37%	10.20%	5.23%	0.30%	0.09%	0.12%	0.05%	0.04%	0.30%	2.39%	5.12%	30.32%
NC	5.95%	4.86%	1.72%	0.54%	0.37%	0.02%	0.01%	0.03%	0.04%	0.05%	0.17%	2.35%	16.11%

Table 10: Commercial summer flounder landings by state and month as the percentage of each state's total landings, 2011-2015. Note: based on state of landing, not accounting for any quota transfers. Color coding indicates highest percentage (dark green) to lowest percentage (dark red).

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Total
MA	8.30%	7.11%	3.96%	4.52%	1.61%	17.84%	24.68%	21.48%	7.75%	0.80%	1.18%	0.76%	100%
RI	1.76%	14.68%	17.40%	12.63%	7.93%	7.64%	7.73%	7.54%	5.03%	4.04%	7.31%	6.30%	100%
CT	9.94%	7.79%	12.40%	13.45%	6.41%	10.12%	10.08%	7.93%	5.73%	2.61%	3.49%	10.05%	100%
NY	8.98%	10.20%	4.52%	3.51%	16.66%	12.22%	12.05%	12.23%	10.39%	4.14%	1.73%	3.38%	100%
NJ	25.84%	4.34%	6.68%	2.21%	4.77%	4.31%	6.91%	4.14%	13.62%	9.90%	12.76%	4.53%	100%
DE	0.03%	0.12%	3.93%	23.66%	4.17%	10.16%	15.72%	31.78%	9.17%	0.56%	0.16%	0.52%	100%
MD	2.11%	3.59%	17.52%	10.54%	10.27%	5.87%	3.34%	13.36%	4.78%	11.95%	4.96%	11.71%	100%
VA	13.56%	7.82%	33.62%	17.23%	0.98%	0.31%	0.40%	0.18%	0.14%	0.98%	7.90%	16.88%	100%
NC	36.91%	30.19%	10.66%	3.35%	2.29%	0.12%	0.07%	0.19%	0.25%	0.33%	1.04%	14.60%	100%
Coast	16.27%	12.13%	17.32%	9.45%	4.71%	4.77%	5.64%	5.01%	4.86%	3.37%	6.36%	10.10%	100%

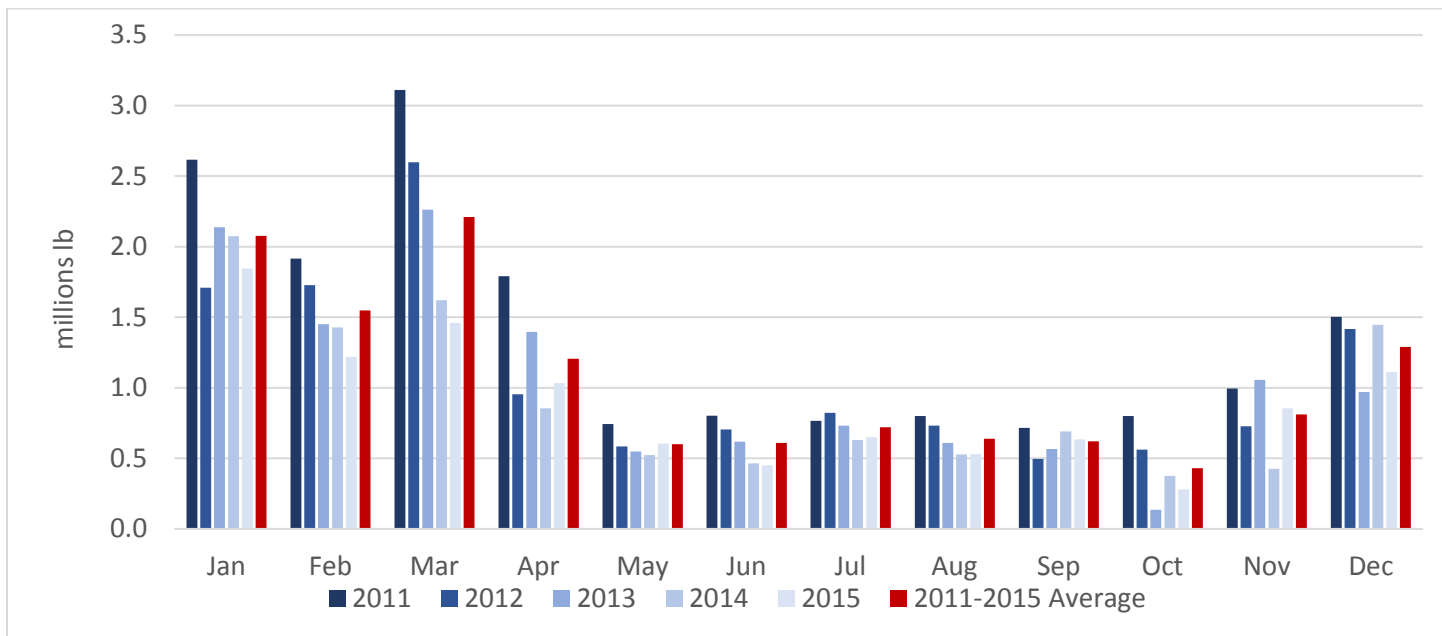


Figure 4: Commercial summer flounder landings by month, with monthly average, 2011-2015.

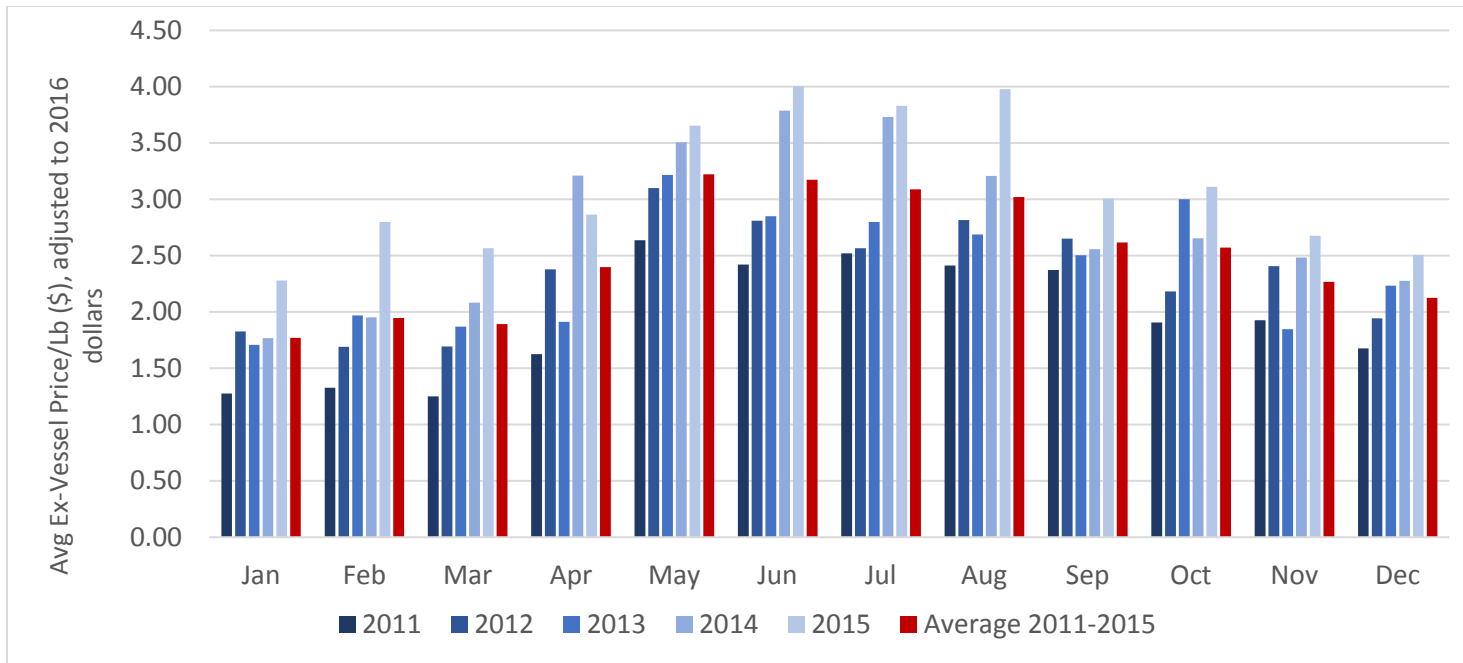


Figure 5: Average ex-vessel price per pounds (\$) for summer flounder by month, with monthly average, 2011-2015.

Table 11: Percentage of commercial summer flounder landings by trimester (based on even division of calendar year into 4-month periods), 2011-2015.

Year	January-April	May-August	September-December	Total
2011	56.98%	18.78%	24.24%	100%
2012	53.62%	21.83%	24.55%	100%
2013	58.05%	20.09%	21.86%	100%
2014	54.03%	19.40%	26.57%	100%
2015	52.08%	20.95%	26.97%	100%
Total	55.17%	20.13%	24.70%	100%

Table 12: Percentage of commercial summer flounder landings by bimonthly period (based on even division of calendar year into 2-month periods), 2011-2015.

Year	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec	Total
2011	27.38%	29.60%	9.34%	9.45%	9.15%	15.09%	100%
2012	26.37%	27.25%	9.90%	11.93%	8.11%	16.44%	100%
2013	28.74%	29.31%	9.35%	10.73%	5.62%	16.24%	100%
2014	31.65%	22.38%	8.93%	10.47%	9.64%	16.93%	100%
2015	28.71%	23.36%	9.89%	11.07%	8.57%	18.40%	100%
Total	28.40%	26.77%	9.48%	10.65%	8.24%	16.46%	100%

Table 13: Percentage of commercial summer flounder landings by current scup quota periods, 1997-2016. “Current” scup quota period dates reflect seasonal revision adopted by Council and Board in May 2017 (not yet implemented).

	Winter I (Jan-Apr)	Summer (May-Sep)	Winter II (Oct-Dec)	Total
1997	58.5%	32.2%	9.3%	100.0%
1998	50.8%	27.0%	22.2%	100.0%
1999	56.3%	25.0%	18.7%	100.0%
2000	57.0%	25.5%	17.5%	100.0%
2001	51.0%	24.0%	25.0%	100.0%
2002	53.3%	24.8%	21.9%	100.0%
2003	52.9%	22.0%	25.1%	100.0%
2004	52.1%	21.3%	26.6%	100.0%
2005	58.2%	22.5%	19.3%	100.0%
2006	56.6%	21.9%	21.6%	100.0%
2007	59.8%	27.3%	12.9%	100.0%
2008	55.5%	26.0%	18.5%	100.0%
2009	51.5%	26.7%	21.8%	100.0%
2010	50.0%	26.5%	23.4%	100.0%
2011	57.0%	23.1%	19.9%	100.0%
2012	53.6%	25.6%	20.7%	100.0%
2013	58.1%	24.6%	17.3%	100.0%
2014	54.0%	25.6%	20.3%	100.0%
2015	52.1%	26.9%	21.0%	100.0%
2016	57.1%	25.6%	17.3%	100.0%
Average	54.7%	24.8%	20.5%	100.0%

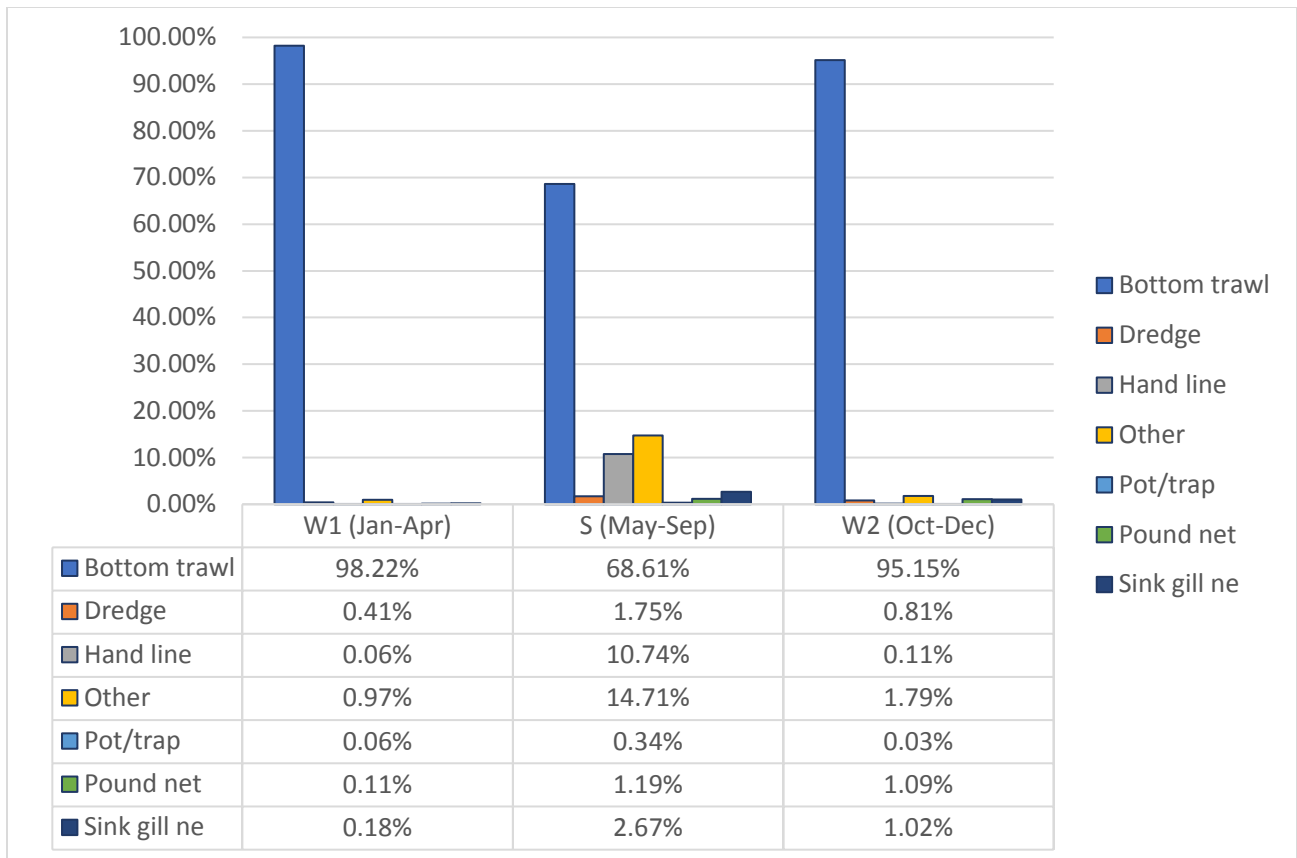


Figure 6: Commercial summer flounder landings by gear type as a percentage of total landings from each “scup” quota period, based on current scup quota period dates as revised May 2017, Maine through North Carolina, 2011-2015.

3. Landings Flexibility

The Council and Board have indicated that they will consider a policy for “landings flexibility,” a proposed system that would include a more open ability to land wherever a vessel prefers (not tied to emergencies or exceptional circumstances). There is some uncertainty about how such a system would work in practice, particularly in terms of enforcement and quota accounting.

A coastwide landings flexibility policy differs from “safe harbor” provisions, which this amendment will not address. “*Safe harbor*” refers to policies that allow a vessel to seek shelter in a non-home port due to safety concerns based on mechanical issues, injury, or weather. Each state within the management unit for summer flounder (Massachusetts through North Carolina) has some form of a ‘safe harbor’ policy, however these policies vary in scope and detail, and are not specified as part of the Commission’s Summer Flounder FMP. The Commission’s Law Enforcement Committee (LEC) has noted concerns about abuse of the safe harbor policies and related enforcement concerns. The LEC continues to discuss the various methods that states currently employ to handle safe harbor requests, as well as possible modifications to the system. The Council and Board have indicated that this is an issue most appropriate to be addressed by the states and the Commission.

A “landings flexibility” policy has been suggested as a means of addressing rising fishing costs, fuel use (for both environmental impact and cost reasons), increasing adaptability to market conditions, addressing safety concerns, adapting to a changing distribution of fish, and improving efficiency. It has been suggested that landings flexibility would reduce long steam times and associated operating costs associated with strict requirements to land fish in a specific state (or subset of states). With more flexibility in where they can offload fish, fishermen that fish farther from their home state could make multiple fishing trips before making the trip home. Many scoping commenters indicated that landings flexibility could be implemented without revising the current state-by-state quotas. Landings would apply to each state’s quota the same way they do currently, but the vessels could land them in whichever state they prefer.

However, concerns have been raised about potential equity and fairness issues, particularly regarding impacts to shoreside operations in states where large amounts of landings currently occur due to state-specific allocations. Certain states and ports would be likely to suffer under a system of landings flexibility, while others would benefit. Additional concerns have been raised about the potential for flooding markets. Currently states with cooperative landings agreements try to coordinate when fish is landed to avoid flooding the market.

In August 2016, the Council and Board discussed the policy of landings flexibility and discussed some concerns related to the practical aspects of such a system. For example, some New Jersey stakeholders previously believed that landings flexibility could be implemented with no need to change the allocations (using SAFIS to account for landings from the appropriate permit state). However, discussions with New Jersey DEP indicated that it may be extremely difficult for the state to allocate enforcement resources to resolve this issue. Without the Commission making landings flexibility a compliance measure, it is unlikely that states would have the proper enforcement capacity to implement it.

There is some concern about how monitoring of state and coastwide quotas would be conducted given that there is already a lag in accounting. Properly assigning landings to the appropriate state would potentially create a large administrative burden and extend the timeline for determining

final annual landings by state and coastwide. GARFO has indicated that it would likely be impossible to efficiently track landings by permit and attribute them to the correct state (without a quota transfer) with the level of timeliness and accuracy required of in-season commercial management.

Additionally, landings flexibility raises questions about how state level trip limits (or other state-specific measures) would be enforced if any vessel could land in any state. Presumably any vessel landing in a given state should be subject to that state's measures, however, given the potential for the landings to count against the "home" (permit) state's quota, this will need to be clarified. Consideration should be given to avoiding confusion and unnecessary complexity.

Considerations for Alternatives

- **Intersection with quota management:** The draft alternatives for a landings flexibility policy below assume the continuation of some type of state-by-state or regional quota management. If another quota allocation alternative is adopted, a landings flexibility policy may not be necessary. Multiple Council and Board members (and scoping commenters) have noted that moving to the "scup quota model" for summer flounder (state-by-state quotas in the summer; coastwide quotas in the winter) would eliminate the need for landings flexibility.
- **Quota Transfers:** If a landings flexibility policy were adopted, criteria and processes would need to be developed to clarify how quota would be transferred and accounted for, and on what timeline, to ensure timely and accurate quota monitoring and reporting. Amendment 5 (1993) outlines a program that allows the transfer of quota between states: "Two or more states, under mutual agreement and with the concurrence of the Regional Director, could transfer or combine their summer flounder commercial quota between their states. These transfers or combinations would not permanently affect the state specific share of coastwide quota that each state would receive each year, i.e., the state-specific share should remain fixed. The Regional Director may establish regulations and procedures for the implementation of the transfer or combination." Generally, in instances when states have come to mutual agreement on a quota transfer, both states submit a written request and acceptance to the NOAA Regional Administrator officially requesting the transfer of a specified quota amount from one state to the other and requesting that the accounting of state landings be adjusted accordingly. The Regional Administrator then confirms the transfer. **If a landings flexibility policy were implemented, and if part of that landings flexibility system involved quota transfer to the "home" state, this essentially means that quota transfers would then be mandatory under certain circumstances and not subject to mutual agreement. This needs additional consideration and detail regarding how this would work in practice.**

Draft Alternatives: Landings Flexibility

- **Alternative 3A: No action/Status Quo (no landings flexibility).** States would continue to allow vessels with the required permits land commercial caught in their states so long as they comply with the conditions of the permit. If the vessel does not have the required permits or is in violation of the permit condition, the vessel cannot land commercially caught summer flounder for sale.

- **Alternative 3B: Adopt a coastwide commercial landings flexibility policy.** This alternative would allow vessels to land summer flounder caught in federal waters at their preferred port. Landings could be counted toward the quota of the state associated with the permit, requiring a quota transfer or other appropriate quota accounting procedure. If a vessel is permitted to land in multiple states, some mechanism would be needed to ensure landings are attributed to the correct state. GARFO has indicated that it would be extremely difficult to impossible to accurately track landings by permit alone; **thus a quota transfer would likely need to occur after each instance of a vessel landing in a non-permitted state.** Additionally, a landing license or other special license may be required in order to transit state waters and land in a state where a vessel is not permitted to harvest summer flounder. It is not entirely clear what the requirements and conditions for such landing licenses would be under landings flexibility, since providing such a license (if needed) may essentially be made mandatory under this policy.
 - **Alternative 3B-1:** Allow the sale of summer flounder in landing state. Vessels could sell to permitted dealers in the state in which they land, however, a quota transfer would need to occur to attribute the landings to the vessel's permit state.
 - **Alternative 3B-2:** Require transport of summer flounder by land to the state associated with the vessel's permit (e.g., fisherman with a Virginia permit would land summer flounder in a New York port, then truck the fish down to Virginia, with both states then accounting for transfers). **Note: this alternative is unlikely to be feasible due to enforcement concerns** raised relative to trucking, as it can be difficult to track fish, and may weaken the ability to appropriately monitor and account for all landings, and ensure that all landings are sold to a permitted dealer.
- **Alternative 3C: Allow multiple state possession limits on board with appropriate permits:** Allow a vessel to possess multiple state possession limits at one time, according to multiple state permits held, while only allowing landing of the appropriate limit in the relevant permit state. In other words, a vessel can possess an amount of summer flounder equaling the combined possession limits from two permitted states, landing the first state's limit in that state and then transiting to state B to land that limit. This would only be allowed for two different permit states, not two ports within the same state. Accountability could include separating and labeling various state limits in the fish hold, enforcement call in requirement, documentation of licensure in each state from which a limit is claimed. **This could also be accomplished by mutual agreement/policy among participating states rather than as a coastwide policy.**

APPENDIX I: Supplemental Summer Flounder Commercial Fishery Information, June 2017

Current commercial regulations require a 14-inch total length minimum fish size in the commercial fishery. Trawl nets are required to have 5.5-inch diamond or 6-inch square minimum mesh in the entire net for vessels possessing more than the threshold amount of summer flounder (i.e., 200 lb from November 1-April 30 and 100 lb from May 1-October 31). A thorough review of summer flounder commercial management measures that can be modified through specifications was conducted in the fall of 2015. The report on those measures can be found at: http://www.mafmc.org/s/Tab11_SF-S-BSB-Commercial-Measures.pdf. The performance of the commercial and recreational fisheries relative to the catch and landings limits in recent years is shown in Table 11.

Table 14: Summary of catch limits, landings limits, and landings for commercial and recreational summer flounder fisheries from 2008 through 2018.

Management measures	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018 ^c
ABC (mil. lb) ^a	--	21.50	25.5	33.95	25.58	22.34	21.94	22.57	16.26	11.30	13.23
Commercial ACL (mil. lb) ^a	--	--	--	--	14.00	12.11	12.87	13.34	9.43	6.57	7.70
Commercial quota (mil. lb) ^b	9.32	10.74	12.79	17.38	12.73	11.44	10.51	11.07	8.12	5.66	6.63
Commercial landings (mil. lb.)	9.21	10.94	13.04	16.56	13.03	12.49	11.07	10.68	7.71	--	--
% of commercial quota landed	99%	102%	102%	95%	102%	109%	105%	96%	95%	--	--
Recreational ACL (mil. lb)	--	--	--	--	11.58	10.23	9.07	9.44	6.84	4.72	5.53
Recreational harvest limit (mil. lb) ^b	6.21	7.16	8.59	11.58	8.49	7.63	7.01	7.38	5.42	3.77	4.42
Recreational landings (mil. lb)	8.15	6.03	5.11	5.96	6.49	7.39	7.36	4.72	6.38	--	--
% of recreational harvest limit landed	131%	84%	59%	51%	76%	97%	105%	66%	118%	--	--

^aThe ABC is the annual Acceptable Biological Catch for the entire summer flounder fishery, and is divided into sector-specific Annual Catch Limits (ACLs) for the commercial and recreational fisheries. The ABC and ACLs include both landings and discards. ^bCommercial quotas and recreational harvest limits reflect the removal of projected discards from the sector-specific ACLs. For 2008-2014, these limits are also adjusted for Research Set Aside (RSA). Quotas and harvest limits for 2015-2018 do not reflect an adjustment for RSA due to the suspension of the program in 2014. ^cCurrently implemented; subject to change based on SSC review and subsequent Council and Commission review in July/August 2017.

Commercial Landings and Value

Commercial landings of summer flounder peaked in 1984 at 37.77 million pounds, and reached a low of 7.81 million pounds in 2016 (corresponding to 96% of the commercial quota) according to preliminary NMFS dealer data (Figure 7).

For the years 1994 through 2016, NMFS dealer data indicate that summer flounder total ex-vessel revenue (adjusted to 2016 dollars to account for inflation) from Maine to North Carolina ranged from a low of \$20.74 million in 1996 to a high of \$33.88 million in 2004. The adjusted mean price per pound for summer flounder ranged from a low of \$1.70 in 2011 (in 2016 dollars) to a high of \$3.54 in 2016. In 2016, 7.81 million pounds of summer flounder were landed generating \$27.65 million in total ex-vessel revenue (an average of \$3.54 per pound; Figure 7).

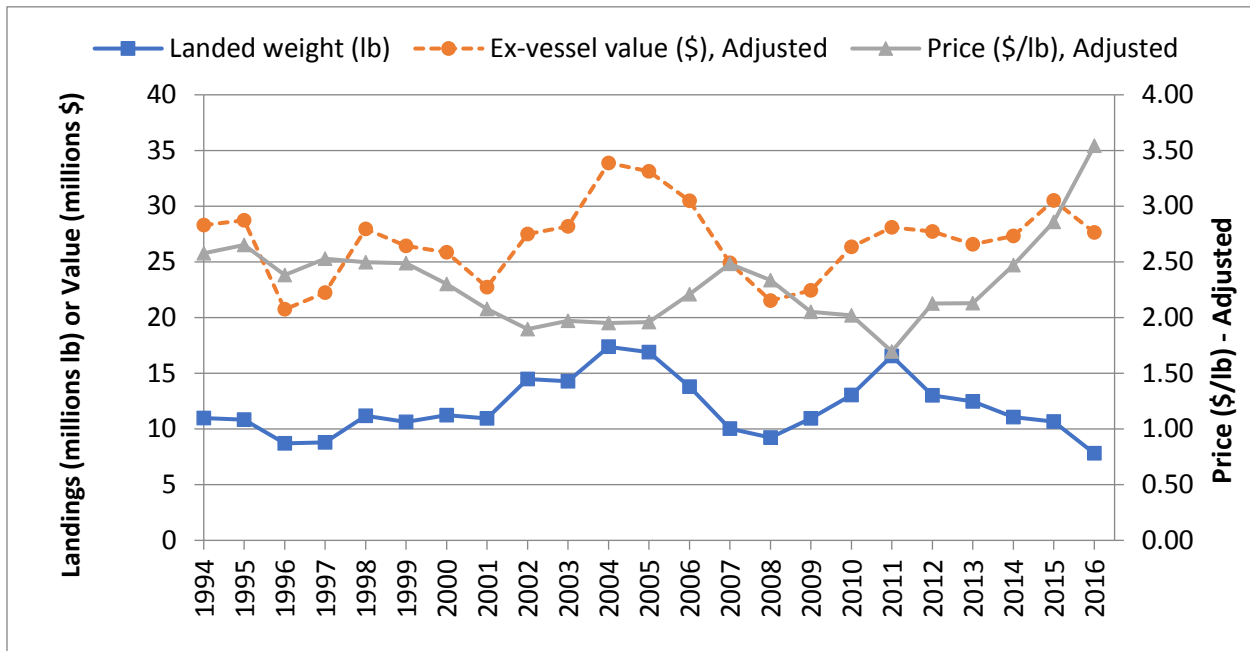


Figure 7: Landings, ex-vessel value, and price per pound for summer flounder, Maine through North Carolina, 1994-2016. Ex-vessel value and price are adjusted to real 2016 dollars. Source: NMFS dealer data as of May 2017.

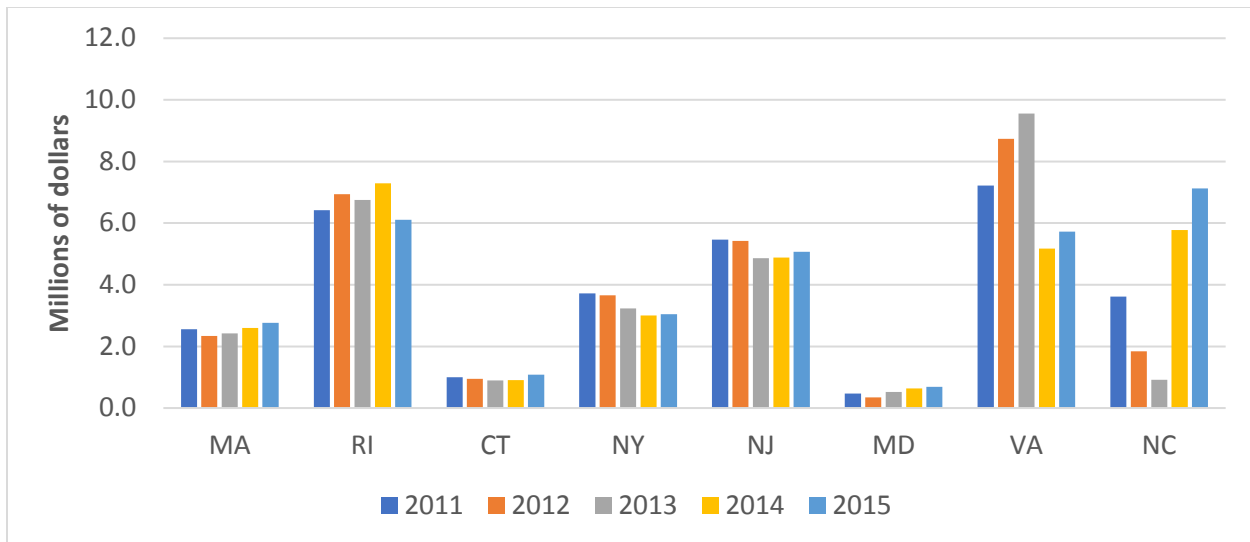


Figure 8: Total ex-vessel revenue (unadjusted) for summer flounder landings by state and year, 2011-2015. Delaware data is confidential and cannot be displayed. Source: NMFS dealer data as of February 2017.

Commercial Discards

Commercial summer flounder dead discards over the period 1993-2015 averaged approximately 1,200 mt, or about 20% of commercial landings. Over the same time period, commercial discards accounted for about 10% of the total catch (recreational and commercial) in weight (commercial landings accounted for ~55% of the catch, recreational landings for 30%, and recreational discards for 5%). In recent years, commercial discards have been below this average (Table 12). A time series (1993-2015) of landings and dead discards is shown in Figure 9. The current stock assessment for summer flounder (SAW/SARC 57)⁶ assumes a commercial discard mortality rate of 80%.

Table 15: Summer flounder estimated commercial discards and % of total summer flounder catch in weight, 2011-2015. Source: M. Terceiro, presentation to MAMFC SSC, July 2016.

	Commercial dead discards (mt)	% of total summer flounder catch in weight
2011	1,096	9%
2012	718	7%
2013	712	7%
2014	785	8%
2015	670	8%

⁶ <http://nefsc.noaa.gov/publications/crd/crd1316/>

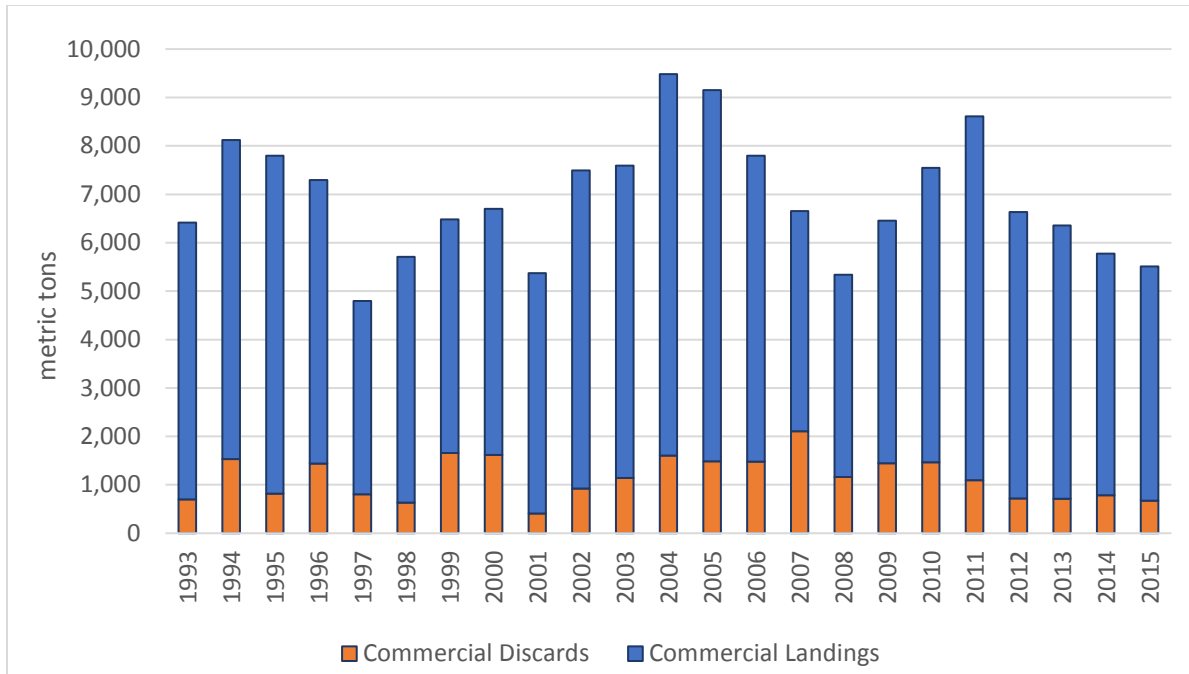


Figure 9: Summer flounder commercial discards and landings, 1993-2015. Source: 2016 summer flounder assessment update and M. Terceiro, personal communication.

According to the SAW/SARC 57 benchmark stock assessment, the reasons for discarding in the fish trawl and scallop dredge fisheries have been changing over time. For example, during 1989 to 1995, the minimum size regulation was recorded as the reason for discarding summer flounder in over 90% of the observed trawl and scallop dredge tows. During 2012-2016, minimum size regulations were identified as the discard reason in 51% of the observed trawl tows on average, quota or trip limits in 36% of the tows, high grading in 5%, and other reasons 8% (Table 13). The assessment also indicates that as a result of the increasing impact of trip limits, fishery closures, and high grading as reasons for discarding, the age structure of the summer flounder discards has also changed, with a higher proportion of older fish being discarded.

Table 16: Percentage of observed summer flounder discards by recorded discard reason, trawl and scallop gear, 2012-2016. Source: NEFOP data as of May 2017.

Discard Reason	% of trawl discards	% of scallop dredge discards
Unknown	0.0	0.1
No market	1.6	66.0
Market, too small	1.8	1.6
Market, too large	0.1	0.0
Market, will spoil	1.9	0.5
Special sample	0.1	0.0
Regs., unknown	1.1	0.4
Regs., too small	50.6	5.5
Quota filled	36.1	25.6
Poor quality	1.6	0.3
High Graded	5.3	0.2

Statistical Area

VTR data were used to identify all NMFS statistical areas that accounted for more than 1 percent of the summer flounder commercial catch over 2015-2016 (Table 14; Figure 10). Statistical area 616 was responsible for the highest percentage of the catch and landings. Statistical area 539 accounted for the highest number of trips that caught summer flounder (5,861 trips over these two years).⁸

Table 17: NMFS Statistical Area breakdown for summer flounder landings, discards, and overall catch, 2015-2016. Source: NMFS VTR Data. Areas with less than 1% of total catch not shown. Note: discards associated with VTRs are self-reported.

Statistical Area	% of Total Summer Flounder Catch	# of Trips Associated with Catch (two years)
616	25.94%	1,609
537	18.40%	4,244
613	17.33%	4,407
612	7.09%	3,143
622	4.77%	609
539	3.69%	5,861
626	3.30%	154
615	3.05%	821
621	2.75%	643
611	2.39%	4,124
614	1.64%	557
538	1.28%	1,003
526	1.16%	89
623	1.13%	63

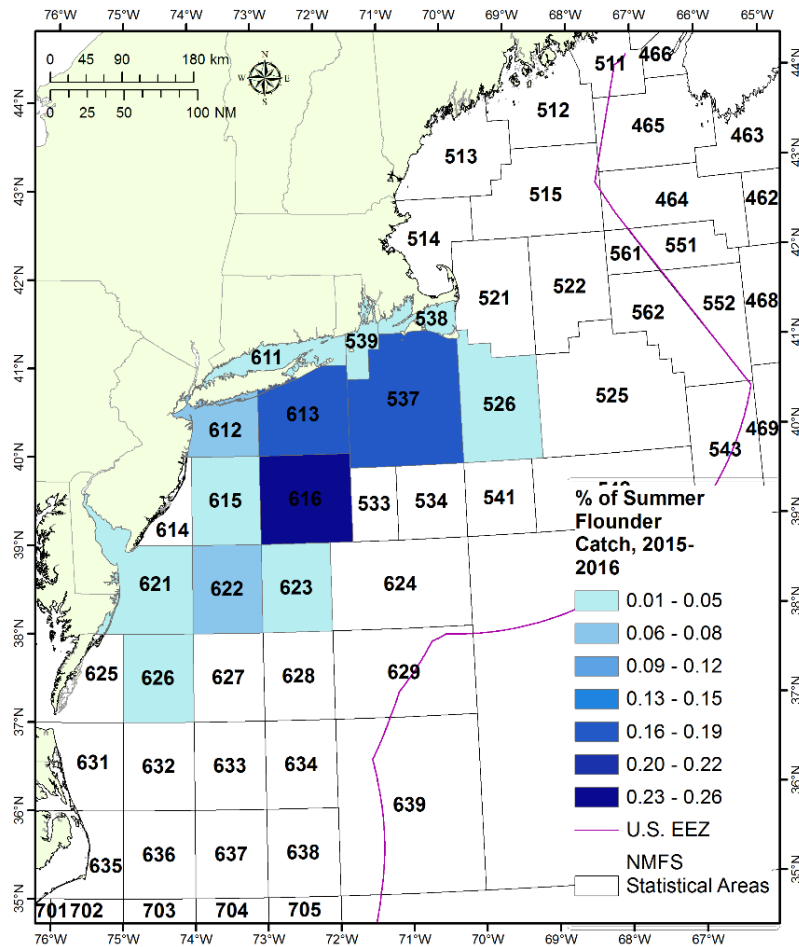


Figure 10: NMFS Statistical Areas, highlighting those that each accounted for more than 1% of VTR-reported commercial summer flounder catch, 2015-2016.

Ports

At least 100,000 lb of summer flounder were landed by commercial fishermen at each of 16 ports in seven states in 2016 (Table 15, Figure 11). These 16 ports accounted for approximately 85% of all 2016 commercial summer flounder landings. Point Judith, RI and Beaufort, NC were the leading ports in 2016 in terms of pounds of summer flounder landed, while Point Judith, RI was the leading port in terms of the number of vessels landing summer flounder (Table 15).⁵ The ports and communities that are dependent on summer flounder are fully described in Amendment 13 to the FMP (available at <http://www.mafmc.org/sf-s-bsb>). Detailed community profiles developed by the Northeast Fisheries Science Center’s Social Science Branch can be found at www.mafmc.org/communities/.

Table 18: Ports reporting at least 100,000 lb of summer flounder in 2016, and the corresponding percentage of total 2016 commercial summer flounder landings and number of vessels. Source: NMFS dealer data as of May 2017.

Port	Summer Flounder Landings (lb)	% of 2016 commercial summer flounder landings	Number of vessels
POINT JUDITH, RI	1,141,576	15	138
BEAUFORT, NC	1,068,695	14	62
HAMPTON, VA	884,459	11	65
PT. PLEASANT, NJ	501,223	6	49
NEWPORT NEWS, VA	447,319	6	38
BELFORD, NJ	417,596	5	24
MONTAUK, NY	344,737	4	68
HOBUCKEN, NC	270,669	3	12
WANCHESE, NC	270,121	3	20
NEW BEDFORD, MA	251,381	3	65
CAPE MAY, NJ	236,361	3	58
ORIENTAL, NC	220,502	3	10
CHINCOTEAGUE, VA	205,592	3	25
ENGELHARD, NC	189,583	2	9
STONINGTON, CT	110,718	1	19
LONG BEACH/BARNEGAT LIGHT, NJ	109,493	1	21

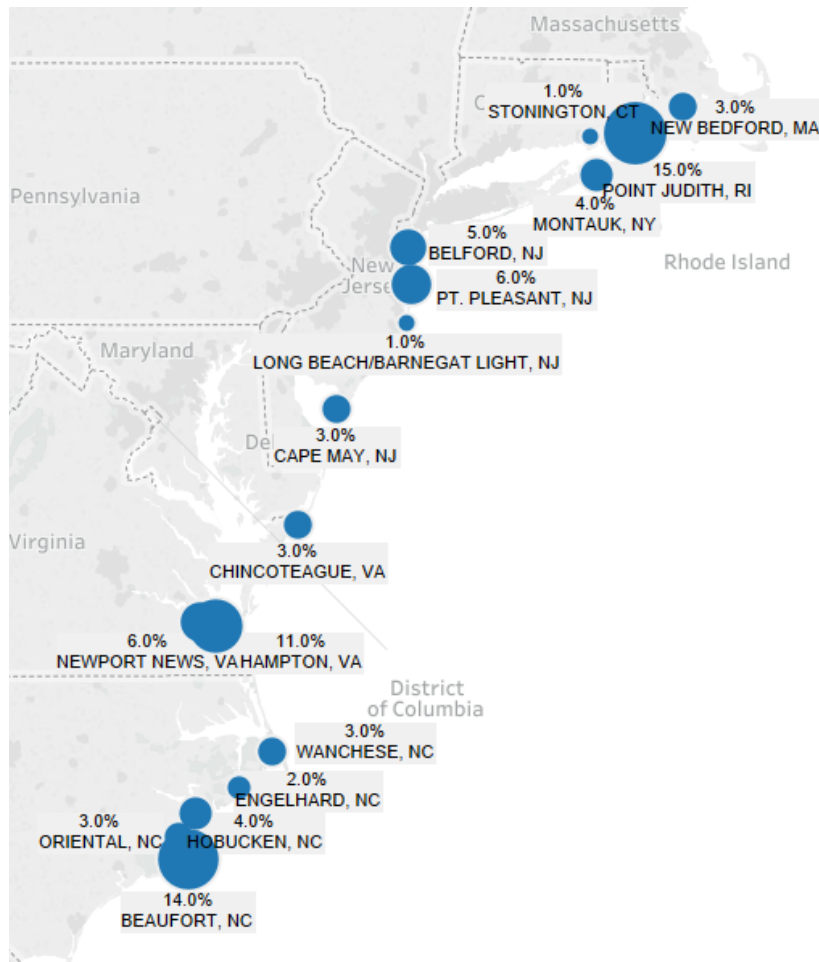


Figure 11: Ports reporting at least 100,000 lb of summer flounder in 2016 and percent of coastwide 2016 summer flounder landings. Source: NMFS dealer data as of January 2017.

Dealers

Over 200 federally permitted dealers from Maine through North Carolina bought summer flounder in 2016. More dealers bought summer flounder in New York than in any other state (Table 16). All dealers bought approximately \$27.65 million worth of summer flounder in 2016.

Table 19: Dealers reporting buying summer flounder, by state in 2016. C=Confidential.

State	MA	RI	CT	NY	NJ	DE	MD	VA	NC
Number Of Dealers	32	33	13	48	30	C	7	16	29

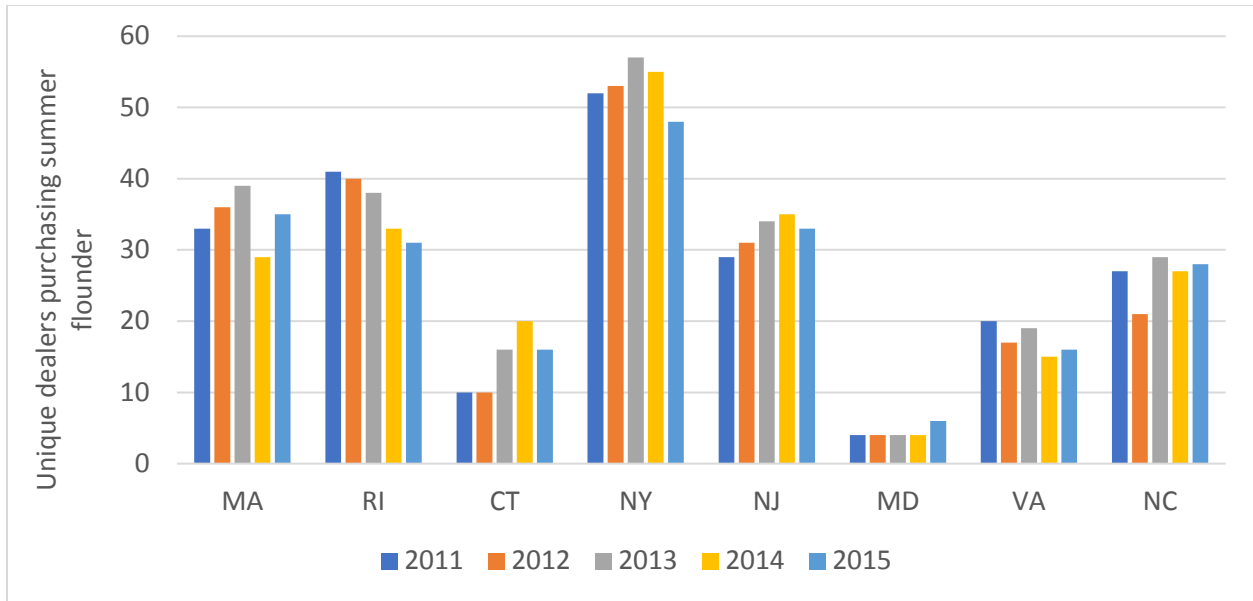


Figure 12: Number of unique dealers purchasing summer flounder from commercial vessels, by state and year, 2011-2015. Delaware data is confidential and cannot be displayed. Source: NMFS dealer data as of February 2017.

APPENDIX II: Summer Flounder Stock Status

The most recent benchmark summer flounder stock assessment was completed and reviewed during the 57th Stock Assessment Workshop and Stock Assessment Review Committee (SAW/SARC 57).⁷ This assessment uses a statistical catch at age model (the age-structured assessment program, or “ASAP” model). Stock assessment and peer review reports are available online at the Northeast Fisheries Science Center (NEFSC) website:

<http://www.nefsc.noaa.gov/saw/reports.html>.

In June 2016, the NEFSC completed a stock assessment update for summer flounder, which incorporated data through 2015 into the population model used for the previous benchmark assessment. The 2016 assessment update indicated that the summer flounder stock was not overfished, but that overfishing was occurring in 2015, relative to the biological reference points established through the SAW/SARC 57 assessment. The model-estimated spawning stock biomass (SSB) was estimated to be 79.90 million lb (36,240 mt) in 2015, 58% of the spawning stock biomass at maximum sustainable yield, $SSB_{MSY} = 137.56$ million lb (62,394 mt). The fishing mortality rate (F) in 2015 was 0.390, 26% above the fishing mortality threshold reference point $F_{MSYPROXY} = F_{35\%} = 0.309$ (Figure 13).⁴⁸

The 2016 assessment update indicates that while catch in recent years has not been substantially over the ABCs, the projected fishing mortality rates have been exceeded and projected spawning stock biomass has not been achieved. The assessment update shows a moderate internal model retrospective pattern with continued recent underestimation of F and overestimation of SSB. The assessment update indicates that the previous assessment had overestimated recruitment for several of the preceding years. These results appear to be largely driven by below average recruitment in each year from 2010-2015. The update shows that recruitment of age 0 fish was below the time series average (41 million fish at age 0; 1982-2015) each year from 2010 through 2015. Recruitment of age 0 fish in 2015 is estimated at 23 million fish.⁴

As the result of the 2016 assessment update, reductions in catch and landings limits were required for 2017 and 2018. Additional information about these cuts and why they were necessary can be found in a fact sheet posted on the Council’s website at: <http://www.mafmc.org/s/2016-08-24-Summer-Flounder-Fact-Sheet-2017-2018-Update.pdf>.

⁷ Northeast Fisheries Science Center. 2013. 57th Northeast Regional Stock Assessment Workshop (57th SAW) Assessment Summary Report. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 13-14; 39 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at: <http://nefsc.noaa.gov/publications/>.

⁸ Terceiro M. 2016. Stock Assessment of Summer Flounder for 2016. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 16-15; 117 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at <http://www.nefsc.noaa.gov/publications/>.

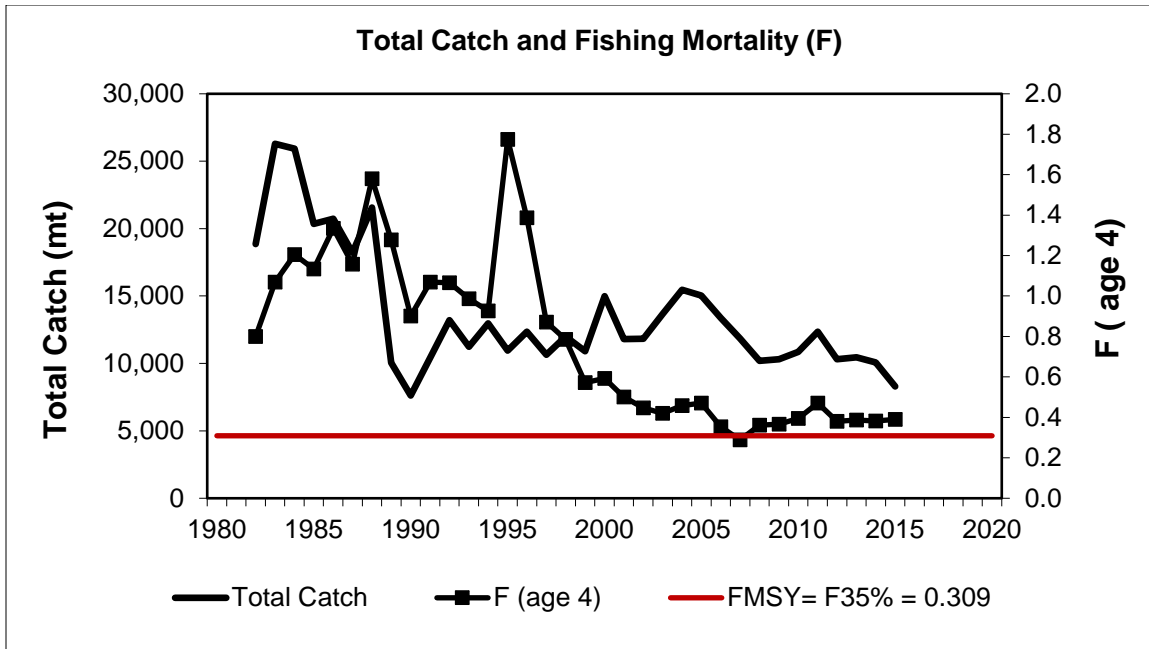


Figure 13: Total fishery catch and fully-recruited fishing mortality (F, peak at age 4) of summer flounder, 1982-2015. The horizontal dashed red line is the 2013 SAW 57 fishing mortality threshold reference point proxy.⁴

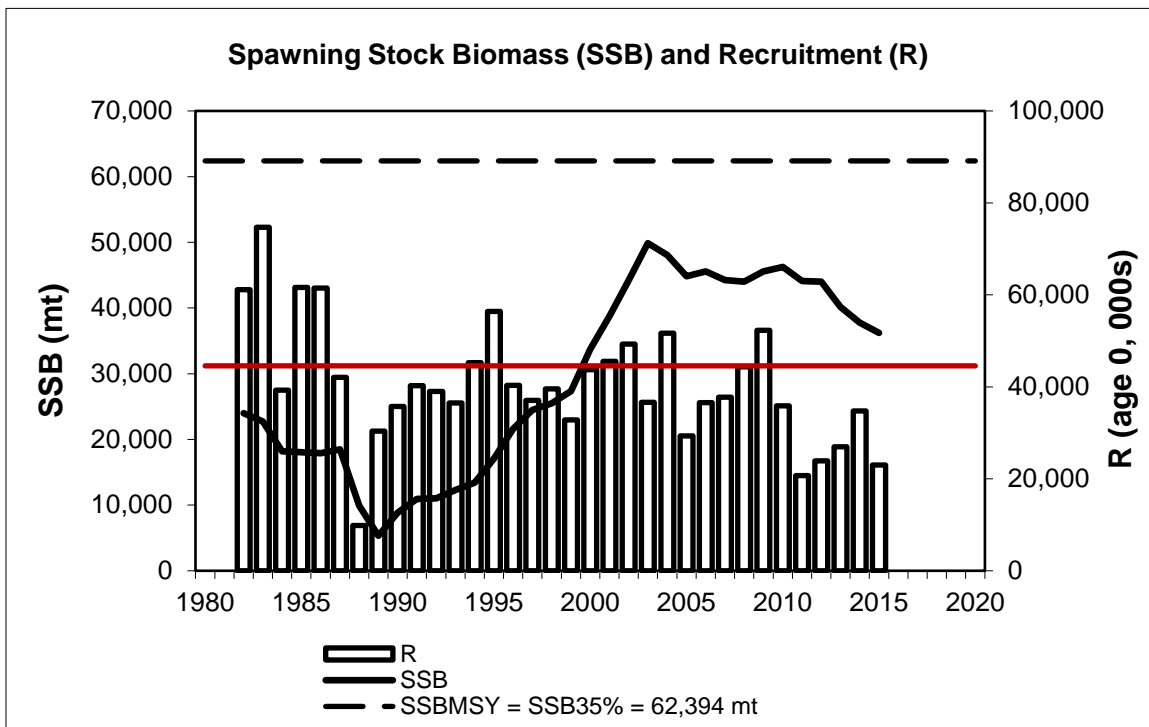


Figure 14: Summer flounder spawning stock biomass (SSB; solid line) and recruitment at age 0 (R; vertical bars) by calendar year, 1982-2015. The horizontal dashed line is the 2013 SAW 57 biomass target reference point proxy, the horizontal red line is the biomass threshold reference point proxy.⁴

APPENDIX III: State Permit Requirements

States have varying requirements for summer flounder permits, as summarized below (information as of April 2017).

Massachusetts

All persons who land and sell finfish in Massachusetts must have a commercial fishing permit from the Division of Marine Fisheries (DMF) and must sell only to permitted Massachusetts dealers. A limited entry summer flounder (fluke) permit endorsement, in addition to a Massachusetts commercial fishing permit, is required for any individual and/or vessel to commercially fish for summer flounder within the state waters of Massachusetts, or to harvest, process, or land any summer flounder for commercial purposes in Massachusetts. This endorsement is limited entry due to a moratorium on new fluke endorsements instated in 1999 to address a substantial increase in participation and landings. The fluke endorsement must be renewed annually.

DMF policy has largely been against transfer of summer flounder endorsements, in order to maintain the moratorium's effectiveness in reducing the total number of endorsements. However, DMF allows endorsement transfers between immediate family members (provided they meet the existing eligibility criteria) on a one-time basis, after which the endorsement becomes non-transferable. In addition, inshore trawl fishermen who sell their businesses (i.e., vessels, permits, etc.) may transfer a summer flounder endorsement if the other permits are active as inshore trawling could result in excessive summer flounder discards otherwise. For the offshore fishery, transfer of the summer flounder endorsement to the new permit holder is allowed when vessels and federal permits are sold.

Rhode Island

A Rhode Island (RI) commercial fishing license with a restricted finfish endorsement is required to take summer flounder for commercial purposes from Rhode Island waters. This endorsement is available only via an annual lottery or via renewal.

Rhode Island landing licenses are also required to transit through state waters for the purpose of landing at Rhode Island ports. For summer flounder, one must hold either a resident landing license or a non-resident restricted finfish landing license in order to transit state waters and land summer flounder at Rhode Island ports.

One additional requirement for commercial summer flounder in RI is, if in possession of more than 200 lbs of summer flounder, a state issued summer flounder exemption certificate is needed. There is a moratorium on issuance of new RI summer flounder exemption certificates, but they may be transferred under similar guidelines to federal summer flounder moratorium permits.

Connecticut

For the commercial possession or landing of summer flounder in Connecticut waters, Connecticut requires a Summer Flounder Quota-Managed Species Endorsement in conjunction with either of two limited access licenses or either of two open access licenses. Quota-Managed Species Endorsements were last issued in 2003 to those who qualified based on their commercial fishing history; new endorsements are not presently being issued. The endorsement must be renewed annually by March 31, or that privilege is permanently retired. Endorsements may only be transferred in conjunction with a limited-access license that qualifies for a transfer.

A Quota-Managed Species License Endorsement may be used in combination with either or both of the following limited-access commercial fishing licenses:

- Principal Commercial Fishing License (trawl gear, lobster pots.)
- General Commercial Fishing (Finfish) License (Commercial hook and line as well as other gears not typically relevant to the summer flounder fishery.)

These limited-access licenses are available only to those persons who held the license from June 1, 1995 to December 31, 2003, and who renewed the license by March 31 of the previous year. Holders of a limited access fishing license must also obtain/renew a Commercial Fishing Vessel Permit (see below) annually to maintain eligibility for the limited access license. Limited access licenses are transferable provided certain compliance and activity threshold requirements are met.

A Quota-Managed Species License Endorsement may also be used with either of the following open-access commercial fishing licenses:

- Commercial Landing Vessel Operator's License (authorizes licensee to operate a vessel used to land fish taken exclusively outside CT waters; fishing in CT waters is prohibited).
- Restricted Commercial Fishing License (commercial hook and line).

These open-access licenses are non-transferable and there is no annual renewal requirement.

Both of the limited-access licenses and the Commercial Landing Vessel Operator's License require that a Commercial Fishing Vessel Permit be issued for the fishing vessel being used by the licensee. The Commercial Fishing Vessel Permit is non-transferrable.

New York

In New York, a Food Fishing License allows the license holder to take and land food fish harvested from state waters and to land food fish taken from waters outside the state for commercial purposes.

To harvest summer flounder for commercial purposes in state waters, one must have a New York summer flounder commercial permit. To land summer flounder taken legally outside New York state waters for commercial purposes in New York, possession of a summer flounder landing permit is required. Licenses are non-transferrable and must be renewed annually. If the applicant is a corporation, the application must name a specific vessel and a separate permit must be obtained for each vessel fishing owned by the corporation. Such corporate permits must be carried on the specific vessel named in the permit when that vessel is being used to take summer flounder for commercial purposes.

Summer flounder Commercial Permits expire on the last day of December of each year. Applications for a summer flounder commercial permit will be accepted from November 15 until close of business April 15. Permittees must state their intent to be permitted to use only fixed gear (pound/trap net), only hook and line gear or for the use of all gear. The permit authorizes landings for that entire calendar year from that category of gear only. Permits are nontransferable except that the department may allow a one-time re-issuance of a summer flounder commercial harvesters permit to an immediate family member of a permitholder. Upon re-issuance, the former holder is no longer eligible for the permit, and all rights and responsibilities associated with the permit pass to the recipient.

New Jersey

A vessel must possess a valid New Jersey Summer Flounder Permit to participate in the directed fishery for summer flounder. Permits are issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.

Applications for hook and line permits were required to be submitted prior to May 31, 1994, and for any other gear type were required by January 1, 2000. Eligibility for a New Jersey Summer Flounder Permit was determined by the vessel's owner meeting the following criteria:

- The vessel landed and sold at least 1,000 pounds of summer flounder in each of two years during 1985-1992;
- The vessel possessed a valid New Jersey otter trawl, pound net, or gill net license or a valid Federal summer flounder permit during each of the two qualifying years described above. Vessels providing documentation regarding the amount of summer flounder landed for two years between January 1, 1985 to November 2, 1988 or vessels providing documentation of harvest by hook and line are exempt from this requirement.

The permit is valid from the date of issuance and for any subsequent years unless revoked as part of a penalty action. The vessel, when engaged in the directed summer flounder fishery, may only have on board the gear type(s) listed on that vessel's New Jersey Summer Flounder Permit.

The owner of a permitted vessel may transfer their Summer Flounder Permit, with approval by the NJ DEP, for vessel replacements and vessel sales. Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel. Replacement vessels may not exceed 10 percent larger in vessel length, gross registered tonnage and net tonnage and 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced is no longer eligible for a New Jersey Summer Flounder Permit. For vessel sales, the owner selling the vessel shall no longer be eligible for a New Jersey Summer Flounder Permit based on the harvesting history of the vessel being sold.

Vessels operating under a New Jersey Summer Flounder Permit to commercially harvest summer flounder by hook and line are limited to a crew size of no more than five persons, including the captain. The vessel may not carry any passengers for hire while commercial fishing. When carrying passengers for hire the New Jersey Summer Flounder Permit is not valid and the recreational possession limits and seasonal restrictions apply.

Delaware

Delaware meets the Commission's requirements for *de minimis* status for the commercial summer flounder fishery (states having commercial landings less than 0.1% of the coastwide total). There is no permit specific to summer flounder. A person may possess commercial sizes and quantities of summer flounder provided they hold a valid Delaware commercial food fishing license and a food fishing equipment permit for gill nets.

Maryland

Maryland uses catch shares to equitably distribute their summer flounder commercial quota among harvesters in Atlantic coastal waters, coastal bays and tributaries, Chesapeake Bay (primarily bycatch) and the Potomac River. The catch share system assigns a specific individual fishing quota

(IFQ) to each fisherman. Commercial fishermen without an IFQ are restricted to 100 lbs. per person per day in coastal waters and 50 lbs. per person per day in tidal waters (Chesapeake Bay).

An individual who possesses a Maryland summer flounder landing permit and lands more than the assigned permit allocation, including any quota transfers, shall have the overage deducted from the permit allocation for the following year. A permittee may annually transfer up to 100 percent of their individual quota to another permittee upon notification of and approval by the Department of Natural Resources (DNR). However, an individual may not hold more than 29 percent of the allocation for the total fishery.

Per Maryland regulations, no more than seven summer flounder landing permits may be issued by the DNR. The number of summer flounder landing permits is based on the reported catch and landing records of summer flounder in Maryland during 1998—2003. The name of the vessel on which the operator is working shall be declared on the Maryland summer flounder landing permit.

Individuals may apply for the permanent transfer of a Maryland Summer Flounder landing permit. Temporary transfers are not permitted. Regardless of the number of authorized individuals with permits on board any one federally permitted vessel, no more than two summer flounder quotas may be fished from one vessel per trip.

Virginia

A Commercial Fisherman Registration License is required to harvest and land summer flounder in Virginia waters. To land summer flounder harvest from outside of Virginia waters a Seafood Landing License, and a Summer Flounder Endorsement License (SFEL) are required. To qualify for a SFEL a vessel needed to have landed and sold at least 500 pounds of summer flounder in Virginia in at least one year during the period of 1993 through 1995. The SFEL was established in 1996. The licenses are transferable.

North Carolina

A license is required to land more than 100 pounds of summer flounder from the Atlantic Ocean in North Carolina. To be eligible for the license, the vessel must have been licensed by North Carolina, either through a resident or non-resident vessel license, or a land or sell license, during two of the three license years from July 1, 1992 to June 30, 1993, July 1, 1993 to June 30, 1994; or July 1, 1994 to June 30, 1995 and have landed 1,000 pounds or more of summer flounder each year for two of the three years.