



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

(617) 626-1520 | [www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



MAURA T. HEALEY  
Governor

KIMBERLEY DRISCOLL  
Lt. Governor

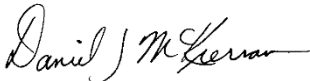
REBECCA L. TEPPER  
Secretary

THOMAS K. O'SHEA  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: March 13, 2024

SUBJECT: **Emergency Rulemaking on Recreational Summer Flounder, Scup, and Black Sea Bass Measures**

#### Overview

I intend to use my emergency rulemaking authority to revise the state's recreational summer flounder and scup measures to achieve mandatory harvest reductions and shift the state's recreational black sea bass season for 2024. I seek your support for a set of measures to ensure continuity from emergency rulemaking to the subsequent final rulemaking that will be necessary over the summer. My preferred approaches, as compared to the 2023 measures, are summarized below (Table 1).

**Table 1. DMF recommended options for recreational summer flounder and scup measures for 2024–2025 and recreational black sea bass measures for 2024.**

	Mode	Open Season	Bag Limit	Minimum Size
Summer Flounder	Private Vessel & For-hire Vessel	<del>May 21 – September 29</del> <b>May 24 – Sept 23</b>	5 fish	<del>16.5"</del> <b>17.5"</b>
	Shore			16.5"
Scup	Shore	May 1 – Dec 31	30 fish	9.5"
	Private Vessel			<del>10.5"</del> <b>11"</b>
	For-hire Vessel	May 1 – June 30	40 fish	<del>10.5"</del> <b>11"</b>
		July 1 – Dec 31	30 fish	
Black Sea Bass	All Modes	<del>May 20 – September 7</del> <b>May 18 – September 3</b>	4 fish	16.5"

#### Background and Rationale

As previewed during the February 2024 MFAC business meeting, there is a 28% coastwide recreational harvest reduction required for summer flounder, a 10% coastwide recreational harvest reduction required for scup, and a status quo coastwide harvest requirement for black sea bass in 2024 per the interstate

management plan.<sup>1</sup> Each summer flounder and scup recreational management region is taking an equivalent cut; for summer flounder, Massachusetts is its own region and can design its own regulations achieving the reduction, while for scup we work with Rhode Island, Connecticut, and New York to achieve a regional reduction through consistent rule changes. Regarding black sea bass, states are permitted to make small seasonal shifts not expected to increase harvest. Measures are being set for two years for summer flounder and scup, and one year for black sea bass.

DMF developed a range of options for public scoping (Tables 2–4). Scoping was conducted at a February 28 virtual meeting and a February 7–March 8 written comment period. The range of options was pre-approved by the Atlantic States Marine Fisheries Commission and we are now bound to select measures from within this range. Comment at the February 28 meeting was almost entirely from for-hire operators (roughly 20 in attendance) who were united in their support for certain options, whereas the limited written comment was more varied in terms of demographics and preferred options.

### *Summer Flounder*

Regarding summer flounder, for-hire operators unanimously supported Option 1, which achieves the required reduction by increasing the vessel-based size limit by 1” and removing nine days from the season (see Table 2). Their support for this option was predicated on maintaining the 5-fish bag limit. They view reductions in the bag limit as the most detrimental to their businesses with regards to booking clients (interestingly, despite data that few anglers in any mode are taking the 5-fish limit). A frequent patron of for-hire vessels agreed. Several written comments from private anglers supported Option 2; while amendable to the same size increase, they preferred to also take a 1-fish reduction in the bag limit to maintain a longer season (only two days shorter than the status quo). Another comment lamented the disparity in minimum size between the commercial and recreational sectors.<sup>2</sup>

I support summer flounder Option 1 as best meeting the needs of fishery participants at this time. There was near unanimous support for a 1” vessel-based size limit increase, and Option 1 maintains the bag limit with very little impact on season length, which nearly aligns with the temporal availability of summer flounder in Massachusetts waters. Massachusetts will still have one of the lower minimum sizes (and higher bags) across the coast, and at 17.5”, it is well within the range of past Massachusetts regulations (varying between 16” and 18.5” over the past 20 years). While shore harvest of summer flounder is minimal, retaining the 16.5” minimum size limit for this mode better aligns with the size availability of fish, contributes to environmental justice objectives, and mirrors other states’ shore-based programs.

There are two associated issues worthy of additional consideration. First, in general, the higher the minimum size limit is, the greater the expected discards. This bears out in the model projected results of the range of options. This was also acknowledged in public comment, but without much concern from a stock health perspective given our minimal contribution to coastwide recreational removals, the perception that release mortality is lower in Massachusetts than elsewhere, and that the relative difference in projected dead discards among the options is only in the hundreds of fish. However, angler satisfaction may decline as the ratio of kept-to-caught fish declines. It’s also important to keep in mind that when coastwide discards increase due to management measures, this may result in less of future years’ recreational catch allocation being directed towards the harvestable portion (i.e., the recreational harvest limit is lower than it would otherwise be due to higher projected discards). Second, the comment about the disparity between commercial and recreational minimum sizes is one we’ve heard before. We should

---

<sup>1</sup> My memo to the MFAC in February 2024 provides more detail on the basis of these determinations. Past meeting materials are available at: <https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources>

<sup>2</sup> This disparity results from the discrete management approaches at the federal/interstate level for the commercial and recreational fisheries. The commercial fishery is managed primarily by a minimum size limit (14”) and a quota system with real-time monitoring of landings, with the quotas being the lever that is pulled when a harvest reduction is needed. The recreational fishery, conversely, does not have a hard quota that closes the fishery when reached but a harvest target, with the minimum size, bag limit, and open season being the management measures that are modified prior to the upcoming season when a reduction is needed to align with the harvest target. Past management decisions as to how to reduce recreational harvest when needed have resulted in an increase in the recreational minimum size over time and the disparity with the commercial minimum size.

all be mindful that it is exactly this type of management decision—to achieve required reductions through the size limit as opposed to bag or season—that produces this discrepancy.

*Scup*

Regarding scup, for-hire operators again supported the option that achieves the required reduction by way of size limit increase (Option 1’s vessel-based ½” minimum size increase), whereas the few private angler comments we received were mostly in support of taking the reduction by way of the bag limit (Option 2’s 9 fish limit with 20 fish during the for-hire bonus season; see Table 3). While data indicate that few anglers take the scup limit, and private anglers appear satisfied with a lower limit as “enough for the dinner table”, the for-hire fleet is adamant that the bag limits associated with Option 2 will reduce interest in paying for a for-hire trip. In their interest, I support Option 1 as the least harmful way to achieve this reduction, as I have heard my counterparts throughout our scup region do as well. Here again, retaining a smaller minimum size limit for the shore mode better aligns with the size availability of fish and contributes to environmental justice objectives, especially for this much more frequently encountered and retained species from the shore. The prevalence of scup shore harvest contributes to Option 1 (which does not change the shore regulations) having a lower associated harvest reduction than Options 2 and 3.

*Black Sea Bass*

Regarding black sea bass, Option 2 (see Table 4) to shift the season to start on a Saturday was requested by members of the for-hire fleet, is consistent with past years’ approaches, was unopposed in public comment, still retains a season ending date after Labor Day in 2024, and has my full support.

**Enclosed**

[Written scoping comment](#)

**Table 2. Range of Massachusetts options for summer flounder recreational measures (for 2024–2025)**

	<b>Mode</b>	<b>Open Season</b>	<b>Bag Limit</b>	<b>Minimum Size</b>
2023 Rules	All Modes	May 21 – Sept 29	5 fish	16.5”
Option 1	Private & For-hire Vessels	May 24 – Sept 23	5 fish	17.5”
	Shore			16.5”
Option 2	Private & For-hire Vessels	May 24 – Sept 30	4 fish	17.5”
	Shore			16.5”
Option 3 (with season sub-options)	Private & For-hire Vessels	a) May 24 – Aug 27 or b) June 5 – Sept 2 or c) June 11 – Sept 15 or d) June 18 – Sept 29	3 fish	17”
	Shore			16.5”
Option 4 (with season sub-options)	For-hire	a) May 24 – Aug 26 or b) June 5 – Sept 2 or c) June 12 – Sept 15 or d) June 18 – Sept 29	5 fish	17.5”
	Private Vessels & Shore		2 fish	16.5”

**Table 3. Range of Massachusetts options for scup recreational measures (for 2024–2025)**

	<b>Mode</b>	<b>Open Season</b>	<b>Bag Limit</b>	<b>Minimum Size</b>
2023 Rules	Shore	May 1 – Dec 31	30 fish	9.5”
	Private Vessel	May 1 – Dec 31	30 fish	10.5”
	For-hire Vessel	May 1 – June 30	40 fish	10.5”
		July 1 – Dec 31	30 fish	
Option 1	Shore	May 1 – Dec 31	30 fish	9.5”
	Private Vessel	May 1 – Dec 31	30 fish	11”
	For-hire Vessel	May 1 – June 30	40 fish	11”
		July 1 – Dec 31	30 fish	
Option 2	Shore	May 1 – Dec 31	9 fish	9.5”
	Private Vessel	May 1 – Dec 31	9 fish	10.5”
	For-hire Vessel	May 1 – June 30	20 fish	10.5”
		July 1 – Dec 31	9 fish	
Option 3	Shore	April 1 – Dec 31	20 fish	10”
	Private Vessel	April 1 – Dec 31	20 fish	11”
	For-hire Vessel	April 1 – April 30	20 fish	11”
		May 1 – June 30	40 fish	
		July 1 – Dec 31	20 fish	

**Table 4. Range of Massachusetts options for black sea bass recreational measures (for 2024 only)**

	<b>Mode</b>	<b>Open Season</b>	<b>Bag Limit</b>	<b>Minimum Size</b>
2023 Rules/ Option 1	All Modes	May 20 – Sept 7	4 fish	16.5”
Option 2	All Modes	May 18 – Sept 3	4 fish	16.5”