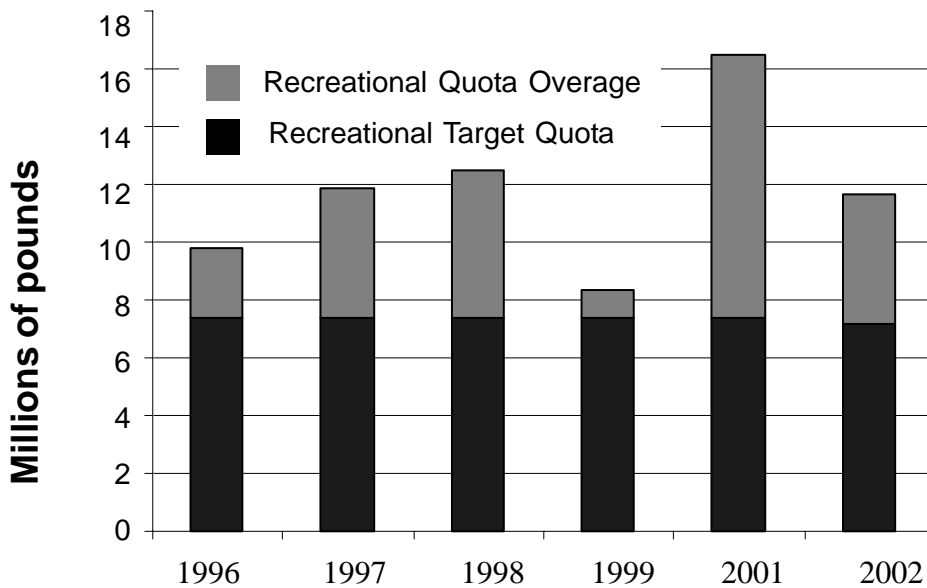


In response to the Recreational Fishing Alliance/United Boatmen petition for rulemaking seeking to amend the current allocation of the Total Allowable Landings of summer flounder

Recent summer Flounder Catch by recreational anglers



Submitted by: Garden State Seafood Association, National Fisheries Institute - Scientific Monitoring Committee, Long Island Commercial Fishing Association, North Carolina Fisheries Association, Montauk Inlet Seafood Inc., Lund's Fisheries, Southeastern Fisheries Association, Maryland Watermen's Association, Groundfish Group/Associated Fisheries of Maine, Cold Springs Dock, Atlantic Capes Fisheries, Inc., East Coast Fisheries Federation, Fishermen's Dock Cooperative, Belford Seafood Cooperative and Rhode Island Seafood Council.

Introduction

Petitioners the Recreational Fishing Alliance and United Boatmen (RFA/UB) seek to amend the current allocation of the summer flounder quota between the recreational anglers and the commercial fishing industry. Such an allocation adjustment would cost the commercial fishing industry in the Mid-Atlantic region and southern New England and all of those other businesses that depend in full or in part on the summer flounder fishery tens of millions of dollars. It would have no impact on the summer flounder resource other than allowing the continuation of the chronic recreational overharvesting of one of our most valuable fisheries. Such an allocation adjustment also flies in the face of at least four of the national standards for fishery conservation and management as required in the Magnuson – Stevens Fishery Conservation and Management Act.

The summer flounder fishery

Before commenting on the merits of their petition, we thought it would be helpful if we provided a brief background on the summer flounder fishery in general and in New Jersey (“home” of United Boatmen and the Recreational Fishing Alliance) in particular.

To set the stage, in **The Fisheries of the United States in 1880** G. Brown Goode reported that there were over 6,000 vessels in use on the East coast in the fishery industries. In aggregate this fleet displaced 200,000 tons, with an average vessel displacement of 30 tons. Over 100,000 people were employed as “fishermen” and “shoremen.” (1883). In Mr. Goode’s words, “*This report constitutes Section II of the Special Report of the Food Fishes and Fishery Industries of the United States,*” He goes on “*New England was settled in 1620 by colonists chiefly from the western counties of England, who selected that portion of the coast on account of its peculiar fitness for the prosecution of the fisheries and by the middle of the seventeenth century there was a considerable fleet of ketches and snows engaged in the cod fishery on the off-shore banks, where—especially on the banks of Newfoundland—France, Spain, Portugal and England already had a fleet of several hundred large vessels. Just before the war of the Revolution New England had 665 vessels and 4,405 men employed in its fisheries.*” Commercial harvesting of fish and shellfish has been one of the principal sources of employment and income in coastal communities on the East Coast for well over two centuries.

In **The summer flounder chronicles: Science, politics, and litigation, 1975—2000**, NMFS biologist Mark Terceiro wrote “*Small scale, coastal fishing by trawlers and pound nets during May to November has occurred in the Mid-Atlantic region since at least 1880 (Hildebrand and Schroeder, 1928; Neville et al., 1939). Large scale, offshore commercial exploitation of summer flounder began around 1920, when trawlers from New Jersey initiated exploratory winter fishing off the coasts of Virginia and North Carolina (Pearson, 1932). The fishery expanded during the 1920s and 1930s, with about 50 large trawlers participating in the offshore winter trawl fishery by 1935 (Eldridge, 1962). By 1940, commercial landings of summer flounder had reached 4,900 mt (10.8 million lb), and landings were consistently between 9,000 to 10,000 mt (20.0 to 22.0 million lb) during 1952 to 1961 (Table 1)*¹ The commercial summer flounder fishery has been in existence in the Mid-Atlantic and southern New England for almost a century, and it has existed on a “large scale” since at least 1920.

¹ In Table 1, Mr. Terceiro presents the commercial landings of summer flounder in the years from 1940 to 1999 both state-by-state and in aggregate. Using his data, in this period the average annual commercial landings were 17,574,000 pounds.

Today the summer flounder fisheries—both recreational and commercial—are managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. Commercial controls include a number of effective limits on fishing² and a strictly enforced quota. If the annual commercial quota is exceeded, the amount overharvested is subtracted from the commercial quota in the following year. Recreational controls are limited in scope and, obviously, in effectiveness. There are no controls on the number of participants allowed in the fishery and no payback provisions if the recreational sector exceeds its “target” quota in any particular year.

Each year 60% of the overall quota is allocated to the commercial fishery and 40% is allocated to the recreational fishery.

The overall quota is determined by estimating the biomass and the condition of the entire stock throughout its range. A number of fisheries dependent and fisheries independent methodologies are used in this estimation. The overall quota is then allocated on a state by state basis.

In years subsequent to those when the commercial quota is exceeded, the summer flounder stock is “made whole” by reducing the commercial harvest by an amount equal to the overharvest. In the years when the recreational quota is exceeded, there are no such provisions. Thus the entire quota is reduced in subsequent years. Accordingly, commercial fishermen absorb 60% of the “cost” of recreational overharvesting in subsequent years while recreational fishermen are accountable for only 40% of their overharvest.

Thanks to a high level of cooperation between the various state fisheries agencies and the commercial industry, commercial summer flounder landings are collected in “real time” and are closely controlled. As a result, in recent years the commercial harvest has been in very close accordance with the commercial quota. There has been no or negligible commercial overharvesting.

The recent history of the recreational harvest is illustrated in the following chart:

Year	Allowable Recreational Harvest	Recreational Harvest	Over harvest
1996	7.41 million lbs	9.82 million lbs	+2.41 mil lbs
1997	7.41 million lbs	11.86 million lbs	+4.45 mil lbs
1998	7.41 million lbs	12.48 million lbs	+5.07 mil lbs
1999	7.41 million lbs	8.37 million lbs	+0.96 mil lbs
2000	7.41 million lbs	16.48 million lbs	+9.07 mil lbs
2001	7.16 million lbs	11.64 million lbs	+4.48 mil lbs

TOTAL 6-YEAR RECREATIONAL OVER HARVEST = 26.44 MILLION LBS

From 1996 to 2001, the failure of the recreational anglers to remain within their target quota directly “cost” the commercial fishermen in the Mid-Atlantic and southern New England approximately \$15 million (60% of 26 million pounds at a dollar a pound). The direct total economic impact of this recreational overharvest (assuming a 6:1 multiplier) approached \$100 million. The indirect cost of the recreational overharvest—reduced production in the fishery due to the reduced spawning stock biomass—would raise these estimates significantly.

² See discussion following on “National Standard 4 Claim”

As a result of this recent chronic recreational overharvesting, the Atlantic States Marine Fisheries Commission is considering a recreational “payback” provision similar to that which the commercial harvesters have complied with since the plan’s inception (a committee of the Commission voted at a meeting on June 9 to postpone taking any action on this measure). Obviously such a payback would make summer flounder management much more equitable, would yield significant benefits to both the recreational and the commercial fisheries, and would almost certainly force recreational anglers to adhere stringently to the requirements of the management program that they have been ignoring since 1996.

In spite—or perhaps because—of the recreational sector’s ongoing inability to control its own fishing efforts, the petitioners, in what seems a somewhat perverse shift in reality, are now claiming that they should be further rewarded for these years of excessive overharvesting at the expense of the commercial industry, which has already been penalized for the recreational anglers’ lack of control.

New Jersey’s Recreational Fishing “Activism”

Considering that both of the organizations filing this petition are New Jersey based, we think it also pertinent to briefly discuss a recreational angling attitude that seems to be unique to the Garden State and in large part responsible for the RFA/UB petition..

Mr. Tom Fote, who is representing the New Jersey public on the Atlantic States Marine Fisheries Commission and is also Vice President of a self-described “*not for profit organization dedicated to making the striped bass a gamefish*” called Stripers Forever, has written “*It is only in modern times, when some anglers could catch more than they would consume, that we began to have a commercial fishery. Yet recreational anglers and subsistence fishermen are often treated like the new guys in town, not the historical users.*”³

The above quote by Mr. Fote typifies the attitude among various recreational angling groups and individuals which has apparently led to this misguided attempt to distort the process in place for the management of summer flounder by the same Commission on which Mr. Fote represents the public of New Jersey and by the Mid-Atlantic Fisheries Management Council. Mr. Fote attempts to create the false impression that there exists some type of recreational entitlement to various fish stocks based on the fact that commercial fishing is a modern phenomena made possible only because anglers in past years became capable of catching more fish than they could personally consume. This false sense of entitlement, based on glaringly obvious historical misinterpretations, is rampant in the RFA/UB petition, most blatantly in their assumption that the commercial harvesters permitted to participate in the summer flounder fishery are end users of fishery resources who should be treated as if they were equivalent to individual recreational anglers rather than the first step in a chain of commerce that delivers fisheries resources that belong to everyone to tens of millions of non-fishing consumers, the actual end users.

Unfortunately, this misguided, mean spirited and elitist attitude is not restricted to the summer flounder and striped bass fisheries. The petitioners have attempted, sometimes successfully, and are continuing to attempt to place restrictions on the commercial harvest in various other fisheries as well. These restrictions would be to the severe detriment not only of the commercial fishing industry, but to

³ A New Direction in Fisheries Management - a Two Year Review, Tom Fote, Jersey Coast Anglers Association Newsletter, 02/01

the non-fishing public and to the coastal economy. The various highly migratory species, menhaden and Atlantic mackerel (which are among our best sources of the omega 3 fish oils) have also been their targets.

The Recreational Fishing Alliance/United Boatmen (RFA/UB) Petition

In considering such convoluted and complex proposals as presented in the petition, we've found it helpful to reduce them to the greatest extent possible to their underlying elements. Doing this, we find that:

1. Segments of the recreational fishing community in the Mid-Atlantic region want to catch more summer flounder than is "allowed" under the current management program.
2. These same anglers and their representatives want to avoid being penalized for catching more summer flounder than the current management program allows; something that is currently being proposed by the ASMFC.
3. These same anglers and their representatives have concluded that their preferred strategy for accomplishing both 1 and 2 above is by reallocating an additional 10% of the overall summer flounder quota that is currently earmarked for seafood consumers (via commercial harvesters) to the recreational anglers.

In their petition RFA/UB contend, while pointing out repeatedly that they have no additional data beyond that which formed the scientific basis for the current allocation split, that the analysis underlying the allocation ratio is faulty and that the statistical manipulations they have performed on the same data are not; that the economic benefits accruing to the recreational angling segment of the fishery by their proposed "adjustment" of the allocation will outweigh the economic damage done to the commercial segment of the fishery; and that by reallocating 10% of the quota to recreational anglers a mythical conservation benefit will accrue to the fishery as well.

The petitioners begin by stating "*The current allocation ratio has disadvantaged and harmed the recreational summer flounder fishing sector, and will continue to do so in the future*" with seemingly no regard to the obvious fact that any allocation ratio would by definition disadvantage one user group while benefiting another. We'll point out here, however, that recreational angling in recent years in the Mid-Atlantic has been characterized by extremely high catch levels in virtually every relevant fishery. This list includes the striped bass, summer flounder, bluefish, scup, croaker and black sea bass fisheries, among others. While we are in agreement with the petitioners that summer flounder are among the most popular recreational fishing species, there is a great deal of interchangeability in the recreational fisheries. The vast majority of recreational anglers are primarily interested in fishing. The species sought is secondary. This is most easily demonstrated by the fact that when summer flounder stocks were at such a depressed level that landings—both recreational and commercial—were severely curtailed, there was no corresponding reduction in overall angling effort. People simply went fishing for something else.

The petitioners further state "*The allocation of 60% of the TAL of summer flounder to approximately 1,400 commercial permit holders and 40% of the TAL of summer flounder to between 3 and 4 million recreational fishermen is not only unfair and inequitable but it is also an inefficient utilization of the summer flounder resource.*" This idea that commercial fishermen are fishing for themselves is a common misconception (and often, we suspect, a heavy-handed attempt at "spin") which ignores

the fact that, unlike recreational anglers, commercial harvesters are not end-point consumers but rather the first step in a chain of dock operators, processors, wholesalers, retailers and restaurateurs who supply, in the case of fresh summer flounder, in the neighborhood of 100 million consumers in the Northeast. Furthermore, to cite the fact that there are only 1,400 commercial permit holders, as limited by federal regulation, and an unlimited number of recreational fishermen (at this point estimated at between 3 and 4 million) as justification for reallocation in favor of the recreational fishermen flies in the face of common sense. It's obvious that, in the absence of any controls on the number of participants in a fishery, other management measures are bound to be less than completely effective at controlling the overall harvest. Hence commercial permits are limited and the summer flounder fishery is closed to new entrants. Yet anyone can participate in the recreational fishery, and as the stocks improve the number of recreational participants increases, as does the level of their participation. How can this be considered a valid argument for increasing the recreational allocation? If it were, the commercial allocation would of necessity be reduced to 0% in every recovering fishery.

The petitioners also state "*The current allocation is also the source of purported overages for which certain managers seek paybacks.*" In actuality, the source of the overages (which the petitioners label "*purported*" yet provide no proof that they aren't accurately assessed) is the unwillingness or the inability of the recreational harvesters to control their harvest to conform with the recreational target quota.. Regardless of whether their portion is 50 or 60 or 70 or whatever percent of the overall quota, they will not stay within it unless the management establishment devises some mechanism to make them accountable (as the proposed "payback" surely would). Increasing the recreational quota by 10% would not have eliminated recreational overharvesting in any year.

Regarding this recreational overharvesting, it's interesting to note that the petitioners disingenuously state that "Rather than overfishing, it is 'fishing with the flow,' which means recreational landings that are consistent with fish availability."⁴ Were the commercial fleet permitted to fish with the same flow, they could just as or more easily overharvest their quota. Should this be considered a justification for increasing the commercial quota?

And then "*According to MRFSS, between 3 and 4 million anglers target summer flounder from Maine through North Carolina. This proposed amendment would result in significant social and economic benefits to the recreational summer flounder fishing sector which includes anglers, party and charter boat businesses, boat builders, fishing tackle manufacturers, bait and tackle retailers, marinas, and many other businesses in our fishing communities.*" The significant—though unspecified—benefits to the recreational summer flounder fishing sector would be more than outweighed by the significant damage inflicted on individuals and businesses in or dependent on the commercial sector, ranging from the working fishermen through the various support industries and culminating in the retailers, whether seafood markets or restaurants. But, as pointed out above, the recreational sector has many other alternative fisheries to pursue while commercial summer flounder fishermen are, because of limited entry in virtually all east coast fisheries, severely limited or lacking in options. And there is no local or even regional replacement for summer flounder at the retail level, necessitating the importation of replacement products.

Finally, the RFA/UB petitioners attempt to make the case that the data used in determining the recreational and commercial quota shares was not the best available. Again quoting Dr. Terceiro in the

⁴ RFA/UB Petition, pg 11

Summer Flounder Chronicles, “A consistently estimated annual time series of recreational catch and effort is available from 1981 onwards.” This was a result of the adoption of the Marine Recreational Fisheries Statistics Survey (MRFSS). Prior to this the data on the recreational summer flounder fishery was apparently judged to be less than adequate for purposes of quota setting. In fact, Dr. Terceiro writes “subsequent research... suggests that such estimates (as those preceding the adoption of the MRFSS) are probably overestimated by 100%.” Yet, in spite of this recognition of the inadequacy of pre-MRFSS data, in computing the quota split the recreational harvest from 1980 was included. As indicated in Table 1 of the RFA/UB petition, the 1980 recreational harvest was 25% greater than the recreational harvest in any subsequent year, and leaving it out of the calculations would probably have reduced the recreational quota share below the present 40%.

The RFA/UB Petition and the National Standards established in the Magnuson-Stevens Fisheries Conservation and Management Act

(1) The RFA/UB Petition Violates National Standard 5

“National Standard 5: Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.”

The National Standard 5 includes the requirement “...that no such measure shall have economic allocation as its sole purpose.” 16 U.S.C. 1851(a)(1). Clearly, the Petitioner’s objective to “amend the current allocation” claiming that “the current allocation ratio has disadvantaged and harmed the recreational summer flounder fishing sector...” is based solely on economic allocation (see Petition, page 1).

The Petitioner cleverly attempts to divert attention from this statutory requirement by focusing the NS 5 argument on the perceived misuse of the summer flounder resource (see Petition, page 2). Unfortunately for the Petitioner, this argument is also steeped in economic re-allocation and represents a violation of the statute.

(2) The RFA/UB Petition Fails Test of National Standard 1 Claim

“National Standard 1: Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”

The Petitioner suggests the current summer flounder allocation fails to provide the greatest benefit to the Nation based solely on the number of existing commercial fishing permits (see Petition, page 2). This argument is completely invalid for several reasons including but not limited to: (A) 1400 commercial permit holders provide access to the resource for millions of consumers across the country, including recreational fishermen; (B) the number of new entrant commercial vessels was effectively capped during 1992-1997 (Amendment 2), and again in 1997 (Amendment 10) and the moratorium remains in effect today; and (C) Amendment 12 (1999) brought the FMP into compliance with the requirements of the Sustainable Fisheries Act (SFA) and *all* the National Standards.

(3) The RFA/UB Petition Fails Test of National Standard 4 Claim

National Standard 4: *Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

The Petitioner's claim the current allocation violates NS 4 is unfounded. First, pursuant to U.S.C. 1851(a)(4) the argument of fairness and equitability actually cuts *against* the Petitioner. The Petitioner neglects to provide a detailed accounting of the Petitioner's own excessive over harvest since the implementation of recreational harvest limits in 1993.

A review of Petitioner's Table 1 (see Petition, page 13) and a MAFMC memorandum dated November 28, 2000 to the Summer Flounder Monitoring Committee (See Moore, 2000) elucidates a history of chronic and excessive recreational over harvest of the summer flounder resource.

Clearly, the recreational sector has a history of harvesting significantly more fish than is permitted under the FMP. Furthermore, these overages are deducted not from the recreational sector allocation directly but from the overall TAL estimate which has the effect of reducing the commercial sector allocation. By comparison, commercial over harvest is deducted from the offending State's commercial allocation in the following year.

The Petitioners claim that "Petitioners' members have been disadvantaged and harmed by the current allocation of 60% of the TAL of summer flounder to the commercial fishing sector and 40% of the TAL of summer flounder to the recreational fishing sector and, will continue to be disadvantaged and harmed in the future due to smaller possession limits, larger minimum size requirements, shorter seasons, delayed season openings and early season closures." Yet it's obvious from the above that "smaller possession limits, larger minimum size requirements, shorter seasons, delayed season openings and early season closures" are due not to the 40% share of the total summer flounder TAL going to the recreational sector, but rather to the inability of the recreational sector to be constrained by the reasonable management measures in the FMP. We will note here the obvious fact that any fishing restrictions placed on participants in either the recreational or commercial fisheries will be ineffective to a greater or lesser degree in the absence of any restrictions placed on the number of participants in the fishery who are to be restricted. As the above data clearly indicate, no matter what limits in size, number or season are in effect, if the number of anglers is unlimited the harvest will be as well, regardless of whether an additional 10% of the TAL is allocated to the recreational sector or not (note that the recreational overages ranged from 13% to 122%).

Second, the Petitioner claims the current allocation is not reasonably calculated to promote conservation. We would argue that the condition of the summer flounder resource today is robust compared to the condition of the resource when the FMP was implemented in 1992. In fact, Moore (2000) estimated the recreational fishing trips directed at summer flounder *in-*

creased 43% in 2000, relative to 1999. This fact reflects the increased participation in the recreational sector with improved summer flounder stock condition.

Furthermore, the Petitioner's own hometown newspaper reflects the record-breaking recreational summer flounder harvest during the same period upon which the Petitioner is basing his "complaint." The following are taken from John Geiser's angling column in the Asbury Park Press, Asbury Park, New Jersey:

"This season is no fluke, it's one for the record books – This season is going into the record books as the year of the big fluke, and new names are being written into the annals." (July 21, 1998);

"The year of the big fluke needs only a record-breaking flatfish to make it complete (September 15, 1998)";

"The record-breaking fluke has not been caught yet – but the gap is narrowing. (September 22, 1998)".

Based on the Petitioner's own factual record of recreational over harvest during the past 6—years equal to 26.44 million pounds—and the record-breaking summer flounder harvest as reported in the local media, it is impossible to justify the Petitioner's claims of NS 4 violations and of extreme disadvantage and harm to the recreational sector.

Finally, NMFS must acknowledge for the record that there has never been a limit on the number of participants in the recreational fishing sector that can fish for summer flounder. This fact is partially responsible for the chronic over harvest exhibited by recreational anglers. Despite serious recreational over harvest the Petitioner neglects to elucidate the suite of management restrictions on the commercial sector that provides conservation benefit to the stock. These include but are not limited to:

- Direct deduction of commercial over harvest in the following year;
- Commercial permit moratorium;
- Permit limitations on maximum vessel size/horsepower/tonnage;
- Minimum mesh size throughout the net;
- Minimum fish size;
- Reduced tow times during periods of high turtle abundance;
- Closed seasons;
- Trip limits; and
- Prohibition on transfer of summer flounder at sea.

(4) The RFA/UB Petition Fails Test of National Standard 8 Claim

National Standard 8 Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The Petitioner claims the allocation violates NS 8 16 U.S. C. 1851(a)(8) due to a lack of consideration of the impacts on fishing communities and resulting “significant adverse economic impacts” (see Petition, page 3). Though the Petitioner includes an impressive list of businesses that are allegedly suffering economic impacts from restrictions on summer flounder fishing, he provides absolutely no economic impact analysis upon which to base this assumption beyond wild speculation.

Furthermore, the Petitioner neglects to indicate the FMP actually allows for “Conservation Equivalency” (since 1999, see Beal 1999; Whalon & Moore, 2000) to allow individual states to tailor regulations so as to minimize the impacts of a one-size-fits-all approach on each State’s recreational community. Clearly, this provision permits the FMP to consider the impacts on communities and runs counter to Petitioner’s claims for remedy.

Finally, the Petitioner again fails to consider there are absolutely no limitations on the number of participants that can pick up a fishing rod and catch summer flounder throughout the entire range of the species. Thus, there is no causal link between unlimited recreational participation (and associated chronic over harvest of the resource) and alleged severe economic impacts sufficient to warrant a violation of NS 8.

(5) The RFA/UB Petitioner Fails to Justify Remedy

The Petitioner’s state “Establishing an equal 50% allocation would help prevent future disadvantage and harm to individual anglers...” (see Petition, page 6) but neglects to quantify “disadvantage and harm” to the sector and justify why 50% is the appropriate remedy. Obviously, any amount of re-allocation would benefit the recreational sector (and we continue to assert our firm belief that any such action would be unjustified...) but arbitrarily selecting 50% of the allocation is utterly groundless and proves the Petitioner’s complete lack of justification for the remedy.

(6) The RFA/UB Petition Provides No New Information

A petition for rulemaking must meet the test of providing new information upon which to justify agency action on the petition and remedy request. Unfortunately for this Petitioner, there is no new information presented here that remotely supports either the petition or the remedy.

The Petitioners provides merely a rehashing of the current database using outdated sources combined with alternative assumptions pre-determined to improve the recreational sectors’ economic allocation argument. For example, the Petition contains the following sources of “new” information upon which to base its claims for remedy: (1) angling statistics from 1962 & 1968; (2) a 1970 angling survey; (3) Northeast angling surveys from 1973-74; (4) a 1981 stock assessment conducted by the NEFSC; and (5) the 1984 volume of “Fisheries Statistics of the United States”.

We offer the following evidence in support of our claim that the petition lacks any new and relevant information...”In a widely read recreational angling column in a New Jersey newspaper, “Dusty” Rhodes, a spokesman for the petitioners, was quoted as saying “Our petition is based on the data and information used by NMFS, the council and the commission,... We used absolutely no new data. Our entire analysis is based on data already published by the government.”⁵

Where the inherent lack of any new information in the Petition is not reason enough for the agency to reject the request outright, the “WHAT IF SCENARIO” (see Petition {6}, page 12) clearly is. The Petitioner’s attempt here to warn the agency to the reasonableness of a proposed 50:50 split based on speculative catch history and underestimates of summer flounder biomass is absurd, not to mention contrary to the best available scientific information used to calculate the original allocation.

(7) The RFA/UB Petitioner Fails “Test of Consistency”

First, the Petitioner neglects to clarify that the allocation in question was implemented after deliberations by the MAFMC and the ASMFC using the best available information (see FMP Amendment 2, 1992). The very same Petitioners that argue for adjusting the allocation 11-years after the fact did not exercise their right to oppose the original allocation at the time of implementation. In fact, the allocation did not become a problem until the recreational sector began to exceed its allocation. Thus, the agency and the MAFMC must conclude that the original allocation was correct and both the petition and remedy must be rejected.

Second, we note for the record and for purposes of consistency and integrity (or lack thereof...) that Petitioners requesting de facto 50:50 treatment pursuant to the summer flounder FMP are some of the same organizations vigorously lobbying to prevent *any* commercial harvest of the robust striped bass resource in the EEZ and in the waters off New Jersey. These organizations and individuals have also actively worked to prohibit menhaden reduction and bait fishing vessels from operating in New Jersey State waters.

(8) *Conclusion*

For all the aforementioned reasons, we hereby request the NMFS reject the Petition for Rulemaking to amend the current allocation of the total allowable landings of summer flounder.

The following (XX) commercial fishing related businesses along the East Coast of the United States thank you for the opportunity to comment on the petition to re-allocate summer flounder landings. We anticipate your response to our comments in the Federal Register.

Respectfully submitted

Cc: Dan Furlong, Ricks Savage, Vince O’Shea, John Nelson

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