This document summarizes input from the Fishery Management Action Team (FMAT) on three topics which the Council and Board agreed to remove from the Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment and consider pursuing through a separate action (i.e., a “harvest control rule” proposal, recreational accountability, and recreational catch accounting). A full summary of the May 2020 FMAT meetings is available here: https://www.mafmc.org/s/Tab03_SFSBSB-ComRecAllocationAmd_2020-06.pdf.

1. "Harvest control rule" based approaches

Under this approach, proposed by six recreational organizations (see pages 147-152 of this document for the full proposal), recreational “allocation” would not be defined as a set percentage of the total catch limit but as a specific combination of bag/size/season limits preferred by recreational fishermen in each state, which would become more restrictive when estimated biomass changes declines below the target level. The restrictions would occur in a pre-determined, stepwise manner. The commercial “allocation” would be the commercial quota preferred by the commercial industry when biomass is high and it would be reduced as biomass declines below the target level in proportion with the restrictions on the recreational fishery. This approach is largely conceptual at this stage and is not yet associated with specific proposed measures.

The FMAT and Council/Board previously discussed that this approach as currently configured may be less directly related to the allocation of catch between the commercial and recreational sectors and more related to how measures are determined for each sector. The FMAT previously recommended exploring how this proposal could be tied in more directly with allocation and whether it would be feasible under our current management system and legal constraints.

FMAT Comments and Recommendations:

The FMAT recommended removing this approach from consideration in this amendment and considering similar concepts through a separate action, likely the ongoing recreational reform initiative. The FMAT recognized that there is interest in further pursuing this approach from members of the public as well as Council/Board members; however, the FMAT still had a number of concerns about the applicability and feasibility of this proposal. Ultimately, for the reasons described below, the FMAT determined that a) this approach would likely not be consistent with the Magnuson-Stevens Act (MSA) without substantially revising its intent and design; b) this approach as currently conceptualized still does not have a strong connection to commercial/recreational allocations, and c) concepts from this proposal seem well-suited to consideration for the recreational management process, such as the ongoing recreational reform initiative. In addition, the FMAT discussed the potential for exploring ways to apply the tiered management concept from this approach to the dynamic allocation mechanisms category.

Magnuson-Stevens Act Compliance

The FMAT previously questioned whether this approach could be designed to comply with existing MSA requirements for catch limits and accountability measures. The MSA requires that
ACLs be set each year in pounds or numbers of fish, and that each ACL have associated AMs to prevent exceeding the ACL and to trigger a management response if an ACL is exceeded. At this meeting, the FMAT reiterated that under the MSA, the FMP needs to define a way to measure total removals (total dead catch) and to evaluate performance relative to an ACL set in numbers of fish or pounds. This does not mean it's impossible to start with preferred measures and translate those into catch, but managers are still required to demonstrate that catch associated with the measures is not expected to exceed each sector's ACL, and collectively not expected to exceed the ABC. Ultimately, managers must demonstrate that measures are expected to prevent overfishing.

This proposal as currently described does not appear consistent with these MSA requirements, unless each set of recreational measures and commercial quotas could be clearly associated with projected catch levels and the uncertainty and variability in that process could be appropriately accounted for. A major concern with this approach is the feasibility of accurately predicting catch levels at each of the various management measure thresholds, particularly for the recreational fishery. The FMAT has previously noted that even when recreational measures have remained similar across years, the resulting MRIP estimates can vary significantly. For both fisheries, total dead catch can vary substantially with external factors such as changing total and regional availability, recruitment events, or changing effort based on factors other than measures.

In addition, there could be substantial uncertainty with projecting discards for both sectors based on the commercial quotas and recreational management measures associated with each threshold. All these factors would pose challenges for justifying how this approach could constrain catch to the ACLs and ABC without additional management uncertainty buffers.

**Process/Analysis Considerations and Connection to Allocation**

The proposal suggests that there is a limit to how much access each sector “needs” (e.g., there is a range and maximum amount of fish that recreational anglers will want to take home, and there is a limit to where profit will be maximized for the commercial fishery). The proposal also suggests that measures or quotas under each threshold should consider state or regional variation in fishery needs. The FMAT noted that determining the needs of each sector under various threshold levels is likely to be a very involved and potentially political process, with heavy analysis and stakeholder input needs.

While some suggestions have been made for how to analyze and determine optimal commercial and recreational access levels at each biomass threshold, expertise outside of the FMAT and Council/Board would likely be required, particularly for establishing an economic basis for the commercial quota levels. In addition, it is still unclear how the balance of access for each sector would be negotiated. The discussion of measures at each threshold for each fishery would also need to reconcile those separate levels of access to ensure that overall catch/removals are still expected to be constrained to the ABC. For some species, such as black sea bass, it is unlikely that both sectors could operate at their preferred levels of access even under positive stock conditions without exceeding the ABC and/or OFL. A process for balancing/negotiating preferred levels of access between the commercial and recreational sectors could be very time and work intensive in terms of analysis and gathering stakeholder input and would potentially delay this action.
The FMAT also discussed that the step-wise approach proposes that higher levels of biomass correspond to higher levels of access, which could allow for liberalization of recreational measures. However, the very large recreational fishery capacity means that effort and catch also typically scales with biomass and availability, in some cases even under highly restrictive recreational measures. This complicates the assumption that recreational measures can liberalize when biomass increases. In addition, changes in the recreational fishery over the years (general effort increases, species-specific effort changes, legal/policy constraints, and improved technology for targeting fish) further complicate the assumption that past recreational measures can be used to estimate expected future catch. The FMAT also noted that it could be easier to agree on measures associated with good stock biomass conditions, but setting measures for lower biomass thresholds may be much more difficult.

Potential Application of Ideas Through a Separate Action
The FMAT agreed that there are several concepts in this proposal that would be worthwhile to explore in terms of application to the process of setting recreational measures. For example, the FMAT noted benefits of the transparency provided by a tiered management approach with clearly defined measures at each level. Additional exploration of the relationship between the effectiveness of recreational management measures and estimated biomass would also be worthwhile. Recreational reform is currently identified as a priority for the Council and Board, and an action to address recreational management is listed on the Council's 2020 implementation plan. The FMAT felt comfortable recommending removal of this option from this action given that there is a pre-existing process that appears to be more appropriate for its discussion.

The FMAT also suggested the possibility of creating a tiered allocation approach under "dynamic allocation approaches" (section 8). While this would not necessarily have the same basis and intent as this approach, some of the ideas discussed under this proposal could be transferable to an allocation framework where thresholds for different allocations could be created. This differs from a trigger-based allocation approach (section 8.2) given that it would not involve completely separate allocation tiers as opposed to a baseline allocation up to a certain point with excess quota allocated differently.

Public Comments:
One member of the public stated that this feels like an apples to oranges conversation, and that if both sectors are not held to the same standards, the commercial sector will get penalized. She stated that the recreational sector has gone way over their limits in recent years. When this happens, stock biomass can go down which impacts both sectors. She stated that this option seems likely to negatively impact the commercial fishery.

Another member of the public stated that although this approach would require difficult in-depth analysis, he supported its further evaluation.

2. Recreational accountability alternatives
The theme of increased recreational accountability was prominent in many scoping comments. For example, some comments suggested more frequent recreational overage paybacks and bringing back recreational in-season closures. The FMAT previously noted that large scale revisions to
recreational accountability may be outside the intended scope of this action as the FMAT understands it.

At the May joint meeting, the Council and Board discussed this issue and agreed to leave it in the range of alternatives until it becomes more clear what types of allocation alternatives will be considered. Some Board and Council members suggested that while the current AMs may be appropriate for the current allocations, alternatives that would drastically change the management approach may require modified or additional AMs.

**Current Recreational Accountability Measures**

Federal regulations include proactive AMs to prevent the recreational ACL from being exceeded and reactive AMs to respond when an ACL is exceeded. Proactive recreational accountability measures include **adjusting management measures (bag limits, size limits, and season) for the upcoming fishing year** that are designed to prevent the RHL and ACL from being exceeded. The NMFS Regional Administrator no longer has in-season closure authority for the recreational fishery if the RHL or ACL is expected to be exceeded. For reactive AMs, **paybacks of ACL overages may be required in a subsequent fishing year, depending on stock status and the magnitude of the overage**, as described below. ACL overages in the recreational fishery are evaluated by comparing the most recent 3-year average recreational ACL against the most recent 3-year average of recreational dead catch (i.e., landings and dead discards). If average catch exceeds the average ACL, then the appropriate AM is determined based on the following criteria:

1. If the stock is overfished ($B < \frac{1}{2} B_{MSY}$), under a rebuilding plan, or the stock status is unknown: The exact amount, in pounds, by which the most recent year’s recreational ACL has been exceeded, will be deducted in the following fishing year, or as soon as possible once catch data are available.

2. If biomass is above the threshold, but below the target ($\frac{1}{2} B_{MSY} < B < B_{MSY}$), and the stock is not under a rebuilding plan:
   - If only the recreational ACL has been exceeded, then adjustments to the recreational management measures (bag, size, and seasonal limits) would be made in the following year, or as soon as possible once catch data are available. These adjustments would take into account the performance of the measures and the conditions that precipitated the overage.
   - If the Acceptable Biological Catch ($ABC = $ recreational ACL + commercial ACL) is exceeded in addition to the recreational ACL, then a single year deduction will be made as a payback, scaled based on stock biomass. The calculation for the payback amount in this case is: $(\text{overage amount}) \times \frac{(B_{MSY} - B)}{\frac{1}{2} B_{MSY}}$.

3. If biomass is above the target ($B > B_{MSY}$): Adjustments to the recreational management measures (bag, size, and seasonal limits) would be considered for the following year, or as soon as possible once catch data are available. These adjustments would take into account the performance of the measures and the conditions that precipitated the overage.
**FMAT Comments and Recommendations:**

The FMAT recommended removing recreational AMs as a separate alternative and felt that recreational accountability could be considered within this action as it relates to other management alternatives being considered. For example, if the sector separation approach is pursued, different AMs may need to be developed as a part of that alternative. The current AMs were established through the Omnibus Recreational Accountability Amendment (Amendment 19 to this FMP, adopted in 2013). This amendment removed the in-season closure authority held by the NMFS regional administrator, which allowed for coastwide closures of the recreational fisheries if they were projected to exceed the RHL based on preliminary data. Amendment 19 also increased the flexibility in evaluation and response to recreational overages given the uncertainty associated with the MRIP data and tied overage responses to stock status as described above. The FMAT felt that much of the rationale for the changes made through Amendment 19 remains valid. For example, the timing of recreational data availability and the potential for revisions between preliminary and final estimates still pose challenges for in-season closures. One potential avenue for reconsideration of recreational AMs is through the recreational reform initiative.

**Public Comments:**

One member of the public commented that in-season closures or changes are tough on the for-hire industry and did not support bringing that back as an AM.

3. **Recreational catch accounting alternatives**

Examples of changes to recreational catch accounting recommended through scoping are listed below. The intent behind these recommendations is to reduce uncertainty in the recreational data. It is worth keeping in mind that MRIP is currently considered the best scientific information available for the recreational fisheries and will continue to be used for stock assessments and catch limit evaluations for the foreseeable future. MRIP is a national-level program and the Council and Commission have a very limited ability to influence changes to the MRIP estimates.

- **Mandatory private angler reporting:** Private angler reporting through smart phone apps has been explored in specific fisheries in other regions, and will soon be required in this region for blueline tilefish. Consideration could be given to the feasibility of private angler reporting for summer flounder, scup, and black sea bass given that these fisheries take place in state and federal waters, from shore and from private and for-hire vessels, and that there are millions of directed trips per year for each species (e.g., an estimated 8.7 angler trips for which summer flounder was the primary target, 2.7 million for which scup was the primary target, and 1.4 million for which black sea bass was the primary target in 2019). Given the scale of these recreational fisheries, mandatory private angler reporting may be a challenge to implement. Thorough consideration should be given to the potential levels of non-compliance and how this may impact the resulting data.

- **Tagging programs:** A few scoping comments suggested that anglers be issued tags for a specific number of fish each year. Tagging programs are used in some recreational fisheries, but they may be more appropriate for species with much lower harvest levels than summer flounder, scup, and black sea bass. The FMAT should consider the pros and cons of moving forward with this approach compared to a traditional possession limit, especially
considering the millions of participating anglers in the fisheries for these species. Ensuring that the program is fair and equitable is a challenge. For example, consideration would need to be given to who receives tags, how they are distributed, and how the program is administered.

- **Mandatory tournament reporting:** A few scoping comments recommended mandatory catch reporting for recreational fishing tournaments. During the May 2020 joint meeting, one Council/Board member questioned the value of mandatory reporting for tournaments given that tournament catch likely constitutes a very small percentage of total catch. An evaluation of summer flounder, scup, and black sea bass catch in tournaments has not been performed and may not be possible given that there does not seem to be a central list of non-HMS tournaments. Recreational catch from tournaments for summer flounder, scup, and black sea bass should be included in MRIP estimates but is not specifically designated as tournament catch.

- **Enhanced VTR requirements:** A few scoping comments recommended additional VTR requirements, such as requiring VTRs for for-hire vessels that do not have federal permits and reinstating “did not fish” reports for federal permit holders to better understand fishing effort.

**FMAT Comments and Recommendations:**

The FMAT recommended removing this issue from the amendment but supported the continued exploration of improving recreational data through other avenues. Although the FMAT felt that this alternative was outside of the scope of this allocation action, especially with implementation timeline concerns, they recognized that these recreational catch accounting and accountability topics were important issues. The FMAT also noted that recreational catch accounting is an issue that fisheries outside of this FMP are addressing so it may be more appropriate to pursue for multiple species outside of this amendment. One FMAT member asked about scoping comments related to this topic and whether the general sentiment was to address recreational catch accounting before considering changes to the allocations. Staff responded that several scoping comments suggested this, while other scoping comments voiced a general mistrust or need to improve MRIP with no additional comments regarding allocation.

**Public Comments:**

One member of the public is currently involved in helping with private angler reporting for blueline tilefish and noted that although it is a relatively small group of anglers, the process is already a large undertaking and felt that for summer flounder, scup and black sea bass, this concept should be held off for a later time.

A Council and Board member noted that since the FMAT recommended the removal of some alternatives it would be helpful if there were time allocated to have a specific discussion with the Council and Board to understand what potential management actions would be appropriate for those issues.

One member of the public commented that he had mentioned mandatory reporting for tournaments during scoping because he believes it would be important to have more information on that. He
added that less than 50% of permit holders are reporting in some cases. Because of this, he feels it is very important to either reinstate did not fish reports or attempt to determine for-hire effort in state waters. One FMAT member agreed that it would be worth exploring ways to identify or quantify tournament catch in the future, separate from this action. A Council and Board member wondered why it was important to estimate tournament catch separately from the current MRIP surveys or if there is evidence that tournament catch is not being captured adequately.