

**BLACK SEA BASS SEASON MAY OPENING
FRAMEWORK ADJUSTMENT (Framework #8)**

SUPPLEMENTAL INFORMATION REPORT (SIR)

November 2014

**Prepared by Jason Didden for the
Mid-Atlantic Fishery Management Council (Council)
in cooperation with
the National Marine Fisheries Service (NMFS)**

Council Address

Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901

NMFS Address

NMFS Greater Atlantic Regional Office
55 Great Republic Drive
Gloucester, MA 01930

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(NOAA):**



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Acronyms, Abbreviations, Etc.

ACL	-Annual Catch Limit
AM	-Accountability Measure
CEQ	-Council on Environmental Quality
C.F.R.	-Code of Federal Regulations
Council	-Mid-Atlantic Fishery Management Council
CZMA	-Coastal Zone Management Act
EA	-Environmental Assessment
FMP	-Fishery Management Plan
MSA	-Magnuson-Stevens Fishery Conservation and Management Act (as currently amended)
MRIP	-Marine Recreational Information Program
mt	-Metric Ton (equals approximately 2204.6 pounds)
NEPA	-National Environmental Policy Act
NMFS	-National Marine Fisheries Service (also known as NOAA Fisheries)
NOAA	-National Oceanic and Atmospheric Administration
OMB	-Office of Management and Budget
SIR	-Supplemental Information Report
U.S.	-United States
VTR	-Vessel Trip Report

1.0 Introduction

This document supports an action that would amend the opening of the black sea bass recreational fishery in Federal waters (3-200 miles) north of Cape Hatteras, North Carolina, to May 15 instead of May 19, beginning May 15, 2015. This change was recommended by the Mid-Atlantic Fishery Management Council (Council) at its August 2014 meeting and would be implemented by the National Marine Fisheries Service (NMFS).

1.1 Current (2014) Black Sea Bass Season and Implementing Action

Along with other measures, the 2014 recreational black sea bass season measures were designed to constrain recreational harvest to the recreational harvest limit for black sea bass. The 2014 black sea bass recreational harvest limit is 2.26 million pounds (1,025 mt). The recreational black sea bass fishery north of Cape Hatteras, North Carolina, is open in Federal waters from May 19 to September 21 and October 18 to December 31. There is also a 12.5-inch total length (not including tail filament) minimum fish size and a 15-fish per person possession limit. These measures were implemented via a May 9, 2014, proposed rule and a July 7, 2014, final rule. The action was supported by a Supplemental Environmental Assessment that updated the previously approved "2014 and 2015 Summer Flounder, Scup, and Black Sea Bass Specifications Environmental Assessment," which analyzed the catch limits, commercial quotas, recreational harvest limits, and commercial management measures (called specifications) for summer flounder, scup, and black sea bass for the 2014 and 2015 fishing years. The 2015 recreational harvest limit has already been specified to be the same as 2014, i.e., 2.26 million pounds (1,025 mt), via a March 31, 2014, proposed rule and a May 22, 2014, final rule. Previous proposed and final rules for black sea bass may be accessed at <http://www.greateratlantic.fisheries.noaa.gov/regs/>.

1.2 Council Consideration of Modified 2015 Seasons

To mitigate the negative socioeconomic consequences of having January 1 – May 19 closed to black sea bass fishing, in 2014 the Council considered additionally opening the Federal waters black sea bass 2015 recreational season during January, February, and May 1-18. January and February openings were only considered for the Federal for-hire (i.e., charter/party) fishery because the Marine Recreational Information Program does not collect data on private angler fishing in January or February in the Northeast, but federally permitted charter/party vessels are required to submit vessel trip reports (VTRs). Fishery participants, including members of the black sea bass advisory panel, have noted that not many other species are available during these periods, and that adding fishing opportunities during these periods could be important for the overall business of relevant operations (for hire operators, bait and tackle stores, lodging, etc.).

Due to the cyclic timing of the specifications and rulemaking process, a framework adjustment was needed in order to consider implementing these changes for the 2015 fishing year. Typically, the final rule for recreational measures does not publish until late May, meaning that the normal specifications process does not allow modifications to the early part of each pending season. Changes for the early part of 2016 could still be made through the specifications process in late 2014, but not in time for the early part of 2015.

The Council conducted the requisite two framework meetings in June and August of 2014 to consider opening black sea bass in January, February, and May 1-18 in 2015 and beyond. Links to briefing materials, presentations, and recordings of these meetings are available at: <http://www.mafmc.org/meetings/>. A critical issue developed that if black sea bass catch was increased during January, February, and May 1-18, then catch during some other part(s) of the year would have to be reduced in order to constrain recreational harvest to the recreational harvest limit for black sea bass. As illustrated in Table 1, the recreational harvest limit was exceeded in 2 of the last 3 years for which complete data are available. Because of this zero-sum situation, and because of fairness concerns about opening Wave 1 to only for-hire operators, the Council decided to only make a change in May that would affect all participants. Also, because of concerns about higher May catches impacting fishing opportunities later in the year and differential impacts to participant states, the Council ultimately recommended a small incremental change in the May starting date, from May 19 to May 15 instead (which would apply for all recreational black sea bass fishing in Federal waters). While the extra four days in May would still have to be accounted for with less catch/fishing days later in the season, all participants would have access (depending on state regulations) and there would not otherwise be an impact on other seasons.

Table 1. Recreational Black Sea Bass Harvest Limits and Landings, 2012-2014

	Recreational Harvest Limit	Recreational Landings	ACL exceeded?	AM Implemented?
2011	835 mt	576 mt	No	n/a
2012	599 mt	1,143 mt	Yes	n/a
2013	1,024 mt	1,058 mt	No	n/a
2014	1,024 mt	n/a	n/a	Yes

2.0 Purposes of this Supplemental Information Report and the Proposed Action

The purpose of this supplemental information report is to determine if the proposed shifting of the opening of the black sea bass fishery will require further analysis other than that prepared in the 2014-2015 Specifications Environmental Assessment (EA) and recreational management measures supplemental Environmental Assessment.

Opening the black sea bass fishery on May 15, 2015, versus May 19, 2015, could be important for private and for-hire fishermen alike, as well as the businesses that service those potential fishermen. Early May is a time of the year when not too many other fisheries are open and/or available, and there could be associated socio-economic benefits to opening the black sea bass fishery on May 15, especially because a May 15 opening would add a full weekend of black sea bass fishing in 2015 (May 16-17). Thus the purpose of the proposed season modification is to improve recreational fishing opportunities by shifting the black sea bass opening.

In making a determination on the need for additional analysis under the National Environmental Policy Act (NEPA), we have considered and have been guided by the Council on Environmental Quality (CEQ) NEPA regulations and applicable case law. The Council on Environmental Quality's regulations state that "[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes *substantial* changes in the proposed action that are relevant to environmental concerns; or (ii) there are *significant* new circumstances or information relevant to environmental concerns *and* bearing on the proposed action or its impacts." 40 Code of Federal Regulations (C.F.R.) § 1502.09(c) (emphasis added). In addition, we have considered the Council on Environmental Quality's "significance" criteria at 40 C.F.R. § 1508.27 to determine whether any new circumstances or information are "significant," which could require a new environmental assessment.

We next describe and compare the current seasonal measures and the proposed modifications in the context of the recreational measures supplemental Environmental Assessment that supported the current measures. We then consider whether there are any significant new circumstances or information that are relevant to environmental concerns and that have a bearing on the proposed action or its impacts. For our consideration of new circumstances and information, we have consulted, among other sources, our files, databases, and other information available to us.

3.0 Proposed New Action

The sections below compare the current season to the proposed modified season.

3.1 Current Black Sea Bass Season

The 2015 black sea bass recreational harvest limit is 2.26 million pounds (1,025 mt) and nothing in this action proposes to change that limit (or other catch limits). The recreational black sea bass fishery north of Cape Hatteras, North Carolina would open in Federal waters from May 19 to September 21 and October 18 to December 31, 2015, unless and until these measures are changed through rulemaking. The season, size limits, and bag limits work together to constrain recreational harvest to the recreational harvest limit for black sea bass. There are also state-

specific limits designed to control catch regionally, which are detailed in the original rulemaking and supporting NEPA documents.

3.2 Changes to the Black Sea Bass Season

This action considers changing the black sea bass season opening to May 15, 2015, in Federal waters. The season would continue to open on May 15 of each year unless otherwise modified through another action. This action would thus add four days of black sea bass fishing in May compared to the measures currently in place. The ending date of the 2015 season will be determined in a subsequent action (see further details below in section 3.3).

3.3 Comparison of Current and Proposed Season Start Date Modification

We compared the impacts of the two different season start dates for conservation benefit and economic cost. The methods and data sources used in this analysis are consistent with those applied in the supplemental Environmental Assessment for the 2014 measures. The proposed extra four days would allow private and for-hire vessels to fish during a potentially productive time of year for black sea bass fishing. However, later in 2014 when the Council considers recreational seasons for the rest 2015, these four days will have to be offset by additional fishing restrictions later in 2015 in order to constrain recreational black sea bass catch to the recreational harvest limit. For this reason, there should be no biological impacts from this action – the total harvest of black sea bass should remain the same. Despite the zero-sum situation in terms of overall harvest, the Council determined that this decision would still result in a low positive impact for fishermen because there are likely more “other” fishing targets at later times of the year, so that adding black sea bass fishing opportunities in May would increase overall recreational fishing opportunities.

For example, if four days were cut from the time the season is open in September or October, there are more “other” fish to target in September or October (e.g., summer flounder, bluefish, striped bass, triggerfish, croaker, etc.). Tables 2 and 3 describe the distribution of black sea bass catch across states and Waves (each two month period starting with January-February is one “Wave”). Table 3 is used to determine trade-offs between states and waves when catch reductions must be made via closing days in different parts of the year, and shows that there is a one-to-one tradeoff between fishing days in May (part of Wave 3) and September/October (Wave 5). When managers determine the full 2015 black sea bass fishing season, they will use this (or similar) information to determine how to account to the proposed four extra days in May, most likely by reducing the Wave 5 (September-October) season by 4 days. The Council will make this decision at its December 2014 meeting.

While the Council theoretically could fail to account for the four extra May days when it sets the remainder of the 2015 season in December, there are two reasons why this would not lead to impacts on the black sea bass stock. First, under current law NMFS is obligated to approve regulations that will not lead to overfishing, so NMFS would be compelled to reduce fishing effort later in the season to account for the extra May days even if the Council did not. Second, there are existing accountability measures to ensure that any overages are addressed such that the

sustainability of the black sea bass stock is not impacted (via adjustments to future measures or paybacks depending on the status of the black sea bass stock and the extent of the overage – see Code of Federal Regulations §648.143). There are not expected to be any changes to administrative costs related to this action.

Table 2. Average percent of black sea bass landed (in number) by state and wave, 2006-2008, based on 2006-2008 MRIP landings data.

State	Wave 1	Wave 2	Wave 3	Wave 4	Wave 5	Wave 6
MA	0%	0%	37%	20%	43%	0%
RI	0%	0%	4%	24%	64%	7%
CT	0%	0%	2%	72%	1%	25%
NY	0%	0%	25%	29%	36%	10%
NJ	0%	0%	42%	17%	39%	3%
DE	0%	5%	52%	22%	20%	2%
MD	0%	1%	59%	10%	25%	6%
VA	0%	2%	43%	26%	17%	11%
NC ^a	2%	5%	25%	24%	31%	13%
Coast	0%	1%	36%	22%	36%	5%

^a North of Hatteras.

Table 3. Projected reduction in black sea bass landings (in percent) associated with closing one day per wave, based on 2006-2008 MRIP landings data.

State	Wave 1	Wave 2	Wave 3	Wave 4	Wave 5	Wave 6
MA	0.0%	0.0%	0.6%	0.3%	0.7%	0.0%
RI	0.0%	0.0%	0.1%	0.4%	1.1%	0.1%
CT	0.0%	0.0%	0.0%	1.2%	0.0%	0.4%
NY	0.0%	0.0%	0.4%	0.5%	0.6%	0.2%
NJ	0.0%	0.0%	0.7%	0.3%	0.6%	0.0%
DE	0.0%	0.1%	0.8%	0.4%	0.3%	0.0%
MD	0.0%	0.0%	1.0%	0.2%	0.4%	0.1%
VA	0.0%	0.0%	0.7%	0.4%	0.3%	0.2%
NC ^a	0.0%	0.1%	0.4%	0.4%	0.5%	0.2%
	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Coast	0.0%	0.0%	0.6%	0.4%	0.6%	0.1%

^a North of Hatteras.

4.0 New Information/Circumstances

The second part of the inquiry, determining whether a supplemental NEPA analysis is required, involves a two-step process. First, one must identify new information or circumstances. Second, if there is new information, one must analyze whether these are significant to the analysis of the action and relevant to environmental concerns and bearing on the action or its impacts. We did not identify any new information or circumstances related to this proposed action. No updated stock assessment information is available, and the stock is believed to be fully rebuilt. As normally occurs, the full recreational specifications will be established at the December 2014 Council Meeting. The proposed action uses existing information to support the modification to the recreational black sea bass fishing season in Federal waters.

5.0 NEPA Compliance and Supporting Analysis

Because the Council will account for the extra four May fishing days that result from the proposed season modification via season changes later in the same year, this action is not expected to have an impact on the target resource (black sea bass). The existing accountability measures also ensure that any overages will be addressed by seasonal modifications or paybacks depending on the status of the black sea bass resource and the extent of the overage (regardless of the final 2015 season). It is not expected that this proposed minor modification to the recreational black sea bass fishery would have any negative habitat, protected resource, or non-target impacts. By increasing fishing opportunities in May, this action should have low positive, but not significant, socio-economic impacts (while days will be lost later in the year, there are other fishing opportunities in those months to compensate). These impacts are within the range as previously analyzed in the supplemental Environmental Assessment for recreational specifications.

Implementation of the modified season, in combination with other past, present, and reasonably foreseeable future actions, is expected to slightly expand the benefits to the nation from effective management of the black sea bass fishery, but not to a significant degree.

6.0 Public Participation

The Council accepted comments at two Council meetings, in June 2014 and August 2014. While the Council received comments against the original options of opening the black sea bass season in January-February, and against opening the season from May 1-May 18, no comments were received or voiced against the proposed small additional four day May 15-May 18 opening. The comments against the original options voiced concern that adding too much catch early in the year would require too much of a change/reduction of seasons later in the year, which might disproportionately affect some fishermen that are accustomed to fishing later in the year. There was also concern that it would be unfair to only allow access to fishermen utilizing for-hire operations during a January-February for-hire only fishery. There was also concern about management being able to predict the changes in catches that could occur from season changes of the magnitude of the original options, and of management's ability to react to unforeseen catch patterns that might result from those original season changes. The currently proposed four day season changes were deemed to have minimal positive impacts, as described above.

7.0 Conclusion

After considering the proposed action, new information, and new circumstances, NMFS has determined that it is not necessary to create a new NEPA analysis because: (1) the minor modification of the black sea bass season and its impacts are not substantially different from what was originally considered and analyzed; and (2) no new information or circumstances exist that are significantly different from when the original Finding of No Significant Impact was signed on June 12, 2014. The specifications environmental assessment and its supplement for black sea bass recreational measures, thus remain valid to support the proposed action.

8.0 Compliance with Applicable Laws

8.1 Magnuson-Stevens Fishery Conservation and Management Act

8.1.1 Consistency with National Standards

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that regulations implementing any fishery management plan or amendment be consistent with the ten national standards listed below.

8.1.1.1 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 proposed action complies with the National Standard 1 requirements because it will not change the overall catch, which is determined by the Council's risk policy specifically to avoid overfishing while achieving optimum yield. The proposed action only makes a small shift in the time of year when fish are caught.

8.1.1.2 National Standard 2

Conservation and management measures shall be based on the best scientific information available.

The measures in this action are based on the best and most recent scientific information available including statistics from the Marine Fisheries Information Program (MRIP).

8.1.1.3 National Standard 3

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

Black sea bass is managed as two stocks, and the stock north of Cape Hatteras, North Carolina is managed by the Council as a unit throughout its range.

8.1.1.4 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 a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed measures are the same for all participants across states in federal waters (though states themselves may establish different seasons). The measures should not impact conservation, and do not create an allocation that could allow excessive accumulation of fishing privileges.

8.1.1.5 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 proposed measures are designed to improve overall fishing opportunities for participants, and as such should not impair efficient utilization of fishery resources.

8.1.1.6 National Standard 6

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

Changes in fisheries occur continuously, both as the result of human activity (for example, new technologies or shifting market demand) and natural variation (for example, oceanographic perturbations). In order to provide the greatest flexibility possible for future management decisions, the fishery management plan includes a Framework adjustment mechanism with a list of possible Framework adjustment measures that can be used to quickly adjust the plan as conditions in the fishery change.

8.1.1.7 National Standard 7

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The proposed measures are designed to improve overall fishing opportunities for participants, and as such should not add unnecessary costs or duplications.

8.1.1.8 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 impacts on such communities.

The proposed measures are designed to improve overall fishing opportunities for participants, and as such should not have adverse impacts on fishing communities.

8.1.1.9 National Standard 9

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The proposed action is not expected to have any impact on bycatch.

8.1.1.10 National Standard 10

Conservation and management measures shall, to the extent practicable, promote safety of human life at sea.

The proposed action is not expected to have any impact on safety at sea.

8.1.2 Magnuson-Stevens Act Fishery Management Plan (FMP) Requirements

REQUIRED PROVISIONS OF THE MAGNUSON-STEVENSONS ACT

Section 303 (a) of the MSA contains 15 required provisions for FMPs that are listed below. The requirement applies to the FMP as currently amended, and not the submission document for this proposed action. All of the items in this list are addressed in either previous amendments (<http://www.mafmc.org/fisheries/fmp/sf-s-bsb>), the original 2014/2015 specifications Environmental Assessment, the supplemental Environmental Assessment for 2014 recreational specifications, or the most recent stock assessment products, which are available at: <http://www.nefsc.noaa.gov/saw/reports.html>. Nothing in this action changes the consistency of the FMP with these required provisions, which are listed below:

- (1) *contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States;*
- (2) *contain a description of the fishery;*
- (3) *assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;*
- (4) *assess and specify – (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;*
- (5) *specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used;*
- (6) *consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery;*
- (7) *describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305 (b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;*
- (8) *in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;*
- (9) *include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on – (A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;*
- (10) *specify objective and measureable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;*

- (11) *establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority – (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided;*
- (12) *assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;*
- (13) *include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;*
- (14) *to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery;*
- (15) *establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability;*

DISCRETIONARY PROVISIONS OF THE MAGNUSON-STEVENSON ACT

Section 303b of the Magnuson-Stevens Act contains 14 additional discretionary provisions for Fishery Management Plans. They may be read on pages of 59 and 60 of National Marine Fisheries Service's redline version of the Magnuson-Stevens Act at: http://www.nmfs.noaa.gov/msa2007/MSA_Amended%20by%20Magnuson-Stevens%20Reauthorization%20Act%20%281-31-07%20draft%29.pdf. Given the limited scope of this action, there are no significant impacts related to such provisions.

8.2 National Environmental Policy Act (NEPA)

The Council has preliminarily determined that the 2014/2015 specifications Environmental Assessment and the Supplemental Environmental Assessment for the 2015 Recreational Measures remain valid for this action. Thus, there is no need to supplement these analyses and their Findings of No Significant Impact.

8.3 Marine Mammal Protection Act (MMPA)

None of the specifications proposed in this document are expected to alter overall effort or fishing methods. Therefore, this action is not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

For further information on the potential impacts of the fishery and the proposed management action on marine mammals, see the marine mammal sections of the supplemental Environmental Assessment for the 2014 recreational management measures, which found that the recreational black sea bass measures were not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

8.4 Endangered Species Act (ESA)

Section 7 of the Endangered Species Act requires Federal agencies conducting, authorizing, or

funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. The proposed action is not expected to cause an increase in fishing effort. Also, it will not cause a change in the way the fishery currently operates. Accordingly, based on the information available at this time, the Council believes that that the proposed action would not be likely to jeopardize any Endangered Species Act-listed species or alter or modify any critical habitat.

8.5 Coastal Zone Management Act (CZMA)

Section 307(c)(1) of the Coastal Zone Management Act (CZMA) of 1972, as amended, requires that all Federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. The CZMA provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. It is recognized that responsible management of both coastal zones and fish stocks must involve mutually supportive goals. NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each state (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina). Letters documenting NMFS' determination will be sent to the coastal zone management program offices of each state. Given the minor change involved and given that the Council includes representation from the relevant coastal states (and no CZMA issues were raised), it is expected that this action is consistent with the relevant states' CZM programs.

8.6 Administrative Procedure Act (APA)

Section 553 of the Administrative Procedures Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate notice and opportunity for comment. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.

8.7 Information Quality Act (IQA)

Utility of Information Product

The information presented in this document is helpful to the intended users (the affected public) by presenting a clear description of the purpose and need of the proposed action, the measures proposed, and the impacts of those measures. A discussion of the reasons for selecting the proposed action is included so that intended users may have a full understanding of the proposed action and its implications. The intended users of the information contained in this document include individuals involved in the black sea bass fishery, (e.g. fishermen and fishery managers), and other individuals interested in the management of the fishery. The information contained in this document should be helpful to individuals affected by the proposed measures. This information will enable these individuals to adjust their management practices and make appropriate business decisions. Until a proposed rule is prepared and published, this document is the principal means by which the information contained herein is available to the public. The information provided in this document is based on the most recent available information from

the relevant data sources. The information contained in this document and the environmental assessments it builds off includes detailed and recent information on the black sea bass resource. This document will be subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act and, therefore, may be improved based on comments received.

This document is available in several formats, including printed publication, and online through the Council's web page (www.mafmc.org). The *Federal Register* notice that announces the proposed rule and the final rule and implementing regulations will be made available in printed publication, on the website for the Greater Atlantic Regional Fisheries Office (www.greateratlantic.fisheries.noaa.gov), and through the Regulations.gov website. The *Federal Register* documents will provide metric conversions for all measurements.

Integrity of Information Product

The information product meets the standards for integrity under the following types of documents: Other/Discussion (e.g., Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 C.F.R. 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

Prior to dissemination, information associated with this action, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. All electronic information disseminated by NMFS adheres to the standards set out in Appendix III, "Security of Automated Information Resources," of Office of Management and Budget Circular A-130; the Computer Security Act; and the Government Information Security Act. All confidential information (e.g., dealer purchase reports) is safeguarded pursuant to the Privacy Act; Titles 13, 15, and 22 of the U.S. Code (confidentiality of census, business, and financial information); the Confidentiality of Statistics provisions of the Magnuson-Stevens Act; and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics.

Objectivity of Information Product

For purposes of the Pre-Dissemination Review, this document is considered to be a "Natural Resource Plan." Accordingly, the document adheres to the published standards of the Magnuson-Stevens Act; the Operational Guidelines, Fishery Management Plan Process; the Essential Fish Habitat Guidelines; the National Standard Guidelines; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act. This information product, and the assessments it builds off, use information of known quality from sources acceptable to the relevant scientific and technical communities. Several sources of data were used in the development of the specification package. These data sources included, but were not limited to, historical and current landings data from the Commercial Dealer database, vessel trip report (VTR) data, and fisheries independent data collected through the NMFS bottom trawl surveys. The analyses contained in this document and in the Environmental Assessment and supplemental Environmental Assessment that this document builds off of were prepared using data from accepted sources. The analyses have been reviewed

by members of the black sea bass monitoring committee and/or by the Council's Scientific and Statistical Committee where appropriate.

Despite current data limitations, the conservation and management measures considered for this action were selected based upon the best scientific information available. The analyses important to this decision used information from the most recent complete calendar years, generally through 2013. The data used in the specifications analyses provide the best available information on the number of permits, both active and inactive, in the fishery, the catch (including landings and discards) by those vessels, the landings per unit of effort (LPUE), and the revenue produced by the sale of those landings to dealers. No updates to that information were deemed appropriate for this action. Specialists (including professional members of plan development teams, technical teams, committees, and Council staff) who worked with these data are familiar with the most current analytical techniques and with the available data and information relevant to the fishery. The policy choice is clearly articulated in Section 2 of this document, and the proposed measures are described in section 3 of this document. The supporting science and analyses, upon which the policy choice was based, are summarized and described in section 3 of this document, and in the 2014/2015 specifications Environmental Assessment and the supplementary Environmental Assessment for the 2014 recreational measures. All supporting materials, information, data, and analyses within this document have been, to the maximum extent practicable, properly referenced according to commonly accepted standards for scientific literature to ensure transparency. The review process used in preparation of this document involves the responsible Council, the Northeast Fisheries Science Center (Center), the Greater Atlantic Regional Fisheries Office, and NOAA Fisheries Service Headquarters. The Center's technical review is conducted by senior level scientists with specialties in population dynamics, stock assessment methods, population biology, and the social sciences. The Council review process involves public meetings at which affected stakeholders have opportunity to provide comments on the document. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of the action proposed in this document and clearance of any rules prepared to implement resulting regulations is conducted by staff at NOAA Fisheries Service Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget. In preparing this action, NMFS must comply with the requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, the Administrative Procedure Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Information Quality Act, and Executive Orders 12630 (Property Rights), 12866 (Regulatory Planning), 13132 (Federalism), and 13158 (Marine Protected Areas). The Council has determined that the proposed action is consistent with the National Standards of the Magnuson-Stevens Act and all other applicable laws.

8.8 Paperwork Reduction Act (PRA)

The Paperwork Reduction Act (PRA) concerns the collection of information. The intent of the Paperwork Reduction Act is to minimize the Federal paperwork burden for individuals, small businesses, state and local governments, and other persons, as well as to maximize the usefulness of information collected by the Federal government. There are no changes proposed to the

existing reporting requirements previously approved under this FMP. This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

8.9 Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) “certify” that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification declaration with a “factual basis”, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

This document provides the factual basis supporting a certification that the proposed regulations will not have a “significant impact on a substantial number of small entities” and that an IRFA is not needed in this case. Certifying an action must include the following elements, and each element is subsequently elaborated upon below:

- A. A statement of basis and purpose of the rule
- B. A description and estimate of the number of small entities to which the rule applies
- C. Description and estimate of economic impacts on small entities, by entity size and Industry
- D. An explanation of the criteria used to evaluate whether the rule would impose significant economic impacts
- E. An explanation of the criteria used to evaluate whether the rule would impose impacts on a substantial number of small entities
- F. A description of, and an explanation of the basis for, assumptions used

A – Basis and purpose of the rule

The basis of the rule proposed in this action are the provisions of the MSA for Federal fishery management to prevent overfishing, and achieve optimum yield. Optimum yield is defined as the amount of fish which will achieve the maximum sustainable yield, as reduced by any relevant economic, social, or ecological factor. The proposed measure slightly modifies the black sea

bass fishing season with the purpose being to improve overall fishing opportunities for participants. The black sea bass fishery in Federal waters would open May 15, 2015, instead of May 19, 2015. Because the recreational harvest limit is fully utilized, adding four days of May fishing will have to be balanced by reducing fishing later in the year, likely in September or October. The exact changes later in the year will be made via the recreational specifications process that occurs in late 2014/early 2015. However, because more species besides black sea bass are available later in the year, slightly shifting the season toward May should improve overall fishing opportunities. Accountability measures that are already in place will ensure the overall sustainability of the resource.

B – Description and estimate of the number of small entities to which the rule applies

The small entities that would be affected by this action include for-hire operations that take people fishing. The following indented paragraphs are taken from the supplemental Environmental Assessment for the 2014 recreational measures, and still constitutes the best available information on affected small entities:

Data from the Northeast permit application database indicates that in 2012, the most recent year for which there is a complete set of data, there were 777 for-hire recreational fishing vessels permitted to take part in the summer flounder, scup, and/or black sea bass fisheries in the EEZ (see EA for additional details). However, the Northeast landings database (VTR Data) indicates that less than half of these vessel (346) actively participated in the summer flounder, scup, and/or black sea bass fisheries in the Northeast in 2012 (Table 27).

Based on the ownership data classification process described above, the 346 actively participating for-hire vessels were found to be owned by 326 unique fishing business entities. The vast majority of these fishing businesses were solely engaged in for-hire fishing, but some also earned revenue from shellfish and/or finfish fishing. The highest percentage of annual gross revenues though for all 326 fishing businesses was from for-hire fishing. In other words, the revenue from for-hire fishing was greater than the revenue from shellfishing and the revenue from finfish fishing for all 326 business entities. Therefore, all of the affected business entities are classified as for-hire business entities in this analysis.

According to the SBA size standards small for-hire fishing businesses are defined as firms with annual receipts of up to \$7 million. Average annual gross revenue estimates calculated from the most recent three years (2010-2012) indicate that none of the 326 business entities earned more than \$2.4 million from all of their fishing activities (for-hire, shellfish, and finfish). Therefore, all of the affected business entities are considered “small” by the SBA size standards and thus this action will not disproportionately affect small versus large entities.

C – Description and estimate of economic impacts on small entities

Because the proposed measures only involve a shift of four days of the black sea bass season from later in the season, when there are more other species to target, to earlier in the season when there are fewer other species to target, the impacts of this action should be minimal but positive in direction because overall fishing opportunities should be slightly increased, as further described above.

D/E – An explanation of the criteria used to evaluate whether the rule would impose significant economic impacts/ An explanation of the criteria used to evaluate whether the rule would impose impacts on a substantial number of small entities

Because, as described above, the proposed measures should have a minimal but positive impact on the affected entities, there would not be significant impacts.

F – A description of, and an explanation of the basis for, assumptions

Other than those described directly in the above analyses, the primary assumption utilized in the above analysis to conclude that impacts should be minimal but positive is that if fishermen cannot target black sea bass in September/October they will be able to target other species. Because water temperatures are warmer in September/October compared to mid-May, this is a reasonable assumption. Previous data have suggested that the trade-off in catch of black sea bass between May and September-October is approximately 1:1, so there should be no change in black sea bass fishing from shifting four days from September-October to May.

8.10 Regulatory Impact Review

INTRODUCTION

Executive Order 12866 requires a Regulatory Impact Review (RIR) in order to enhance planning and coordination with respect to new and existing regulations. This Executive Order requires the Office of Management and Budget (OMB) to review regulatory programs that are considered to be “significant.” Section 3.3 assesses of the costs and benefits of the Proposed Action and found the impacts to be low positive. The analysis included in this RIR further demonstrates that this action is not a “significant regulatory action” because it will not affect in a material way the economy or a sector of the economy.

Executive Order 12866 requires a review of proposed regulations to determine whether or not the expected effects would be significant, where a significant regulatory action is one that may:

- 1* Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

- 2* Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- 3* Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- 4* Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OBJECTIVES

The objectives of the Summer Flounder, Scup, and Black Sea Bass FMP are as follows:

- 1) Reduce fishing mortality in the summer flounder, scup, and black sea bass fisheries to ensure that overfishing does not occur;
- 2) Reduce fishing mortality on immature summer flounder, scup, and black sea bass to increase spawning stock biomass;
- 3) Improve the yield from the fishery;
- 4) Promote compatible management regulations between state and Federal jurisdictions
- 5) Promote uniform and effective enforcement of regulations; and
- 6) Minimize regulations to achieve the management objectives stated above.

Consistent with these objectives, this framework seeks to improve recreational fishing opportunities without increasing the probability of overfishing. There should be no adverse impacts on yield, management compatibility, or enforcement.

AFFECTED ENTITIES

A description of the entities affected by this action, specifically the stakeholders of the black sea bass fishery, is provided in the 2014-2015 Specifications Environmental Assessment (EA) and the recreational management measures' supplemental Environmental Assessment that this Supplemental Information Report builds off of. Additional description is provided in Section 8.9 above.

PROBLEM STATEMENT

The purpose of the measures proposed in this action are set forth in Section 2 of this document.

ANALYSIS OF ALTERNATIVES

Executive Order 12866 mandates that proposed measures be analyzed below in terms of: (1) changes in net benefits and costs to stakeholders, (2) changes to the distribution of benefits and costs within the industry, (3) changes in income and employment, (4) cumulative impacts of the regulation, and (5) changes in other social concerns. As described in Section 3, the proposed minor change should lead to low positive impacts to stakeholders, specifically people who fish for black sea bass and any businesses that support that activity. There should not be substantial distributional issues, and low positive impacts on income and employment related to slightly increased fishing opportunities. The cumulative impacts of management and regulations are not expected to change from those described in the underlying 2014-2015 Specifications Environmental Assessment (EA) and the recreational management measures' supplemental Environmental Assessment that this Supplemental Information Report builds off of. There are no other expected social concerns.

DETERMINATION OF EXECUTIVE ORDER 12866 SIGNIFICANCE

The Proposed Action is not predicted to have any adverse impact on fishing vessels, purchasers of seafood products, ports, recreational anglers, and operators of party/charter businesses. As described in Section 3, the Proposed Action is predicted to have low positive, but not significant impacts for recreational anglers and associated businesses. In addition, there should be no interactions with activities of other agencies and no impacts on entitlements, grants, user fees, or loan programs. The proposed action is also similar to actions taken each year that set black sea bass fishing seasons, and as such does not raise novel legal or policy issues. As such, the Proposed Action is not considered significant as defined by Executive Order 12866.

9.0 Preparers and Persons Consulted

Preparers:

Jason Didden, Fishery Management Specialist, Mid-Atlantic Fishery Management Council, Dover, Delaware.

Persons consulted:

Kiley Dancy, Fishery Management Specialist, Mid-Atlantic Fishery Management Council, Dover, Delaware.

Moira Kelly, Fishery Policy Analyst, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

Katherine Richardson, NEPA Policy Analyst, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

Jennifer Anderson, NEPA Coordinator, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

10.0 References

Mid-Atlantic Fishery Management Council (MAFMC). 2014. Final Environmental Assessment for 2014-2015 Summer Flounder, Scup, and Black Sea Bass Specifications. Prepared by Council Staff in cooperation with the National Marine Fisheries Service.

Mid-Atlantic Fishery Management Council (MAFMC). 2014. Supplemental Environmental Assessment for 2014-2015 Summer Flounder, Scup, and Black Sea Bass Recreational Measures. Prepared by Council Staff in cooperation with the National Marine Fisheries Service.

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