

2017 Summer Flounder Recreational Specifications

Supplemental Information Report (SIR), Regulatory Impact Review (RIR), and Regulatory Flexibility Analysis

April 2017



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

Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901
(302) 674-2331 tel.
(302) 674-5399 fax

National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930
(978) 281-9315 tel.
(978) 281-9135 fax

Contents

Contents	2
Tables 2	
Acronyms and Abbreviations	3
1.0 Introduction.....	4
1.1 Specifications Process Background	4
1.2 Basis for the Proposed Action.....	5
2.0 Purpose of this Supplemental Information Report and the Proposed Action	7
3.0 Original Action	7
3.1 December 2015 EA: Original 2017 Summer Flounder Catch and Landings Limits	7
3.2 November 2016 SEA: Revised 2017 Summer Flounder Catch and Landings Limits	8
3.3 April 2016 SIR: 2016 Recreational Measures	8
4.0 Proposed New Action	9
5.0 New Information/Circumstances	10
6.0 NEPA Compliance and Supporting Analysis	11
7.0 Public Participation	12
8.0 Conclusion	12
9.0 Compliance with Applicable Laws	13
9.1 Magnuson-Stevens Fishery Conservation and Management Act (MSA)	13
9.2 National Environmental Policy Act (NEPA)	13
9.3 Marine Mammal Protection Act (MMPA).....	13
9.4 Endangered Species Act (ESA)	14
9.5 Coastal Zone Management Act (CZMA).....	14
9.6 Administrative Procedure Act (APA)	14
9.7 Information Quality Act (IQA)	14
9.8 Paperwork Reduction Act (PRA).....	17
9.9 Regulatory Impact Review (RIR)	17
9.10 Initial Regulatory Flexibility Analysis (IRFA)	19
10.0 Preparers and Persons Consulted	24
11.0 References.....	24

Tables

Table 1: 2016-2018 catch and landings limits for summer flounder, in millions of pounds.	8
Table 2: 2017-2018 catch and landings limits for summer flounder, in millions of pounds.	8
Table 3: Summer flounder recreational measures by state and region under conservation equivalency in 2016.	9

Acronyms and Abbreviations

ABC	Acceptable Biological Catch
ACL	Annual Catch Limit
AM	Accountability Measure
APA	Administrative Procedure Act
ASMFC	Atlantic States Marine Fisheries Commission (Commission)
Board	ASMFC Summer Flounder, Scup, and Black Sea Bass Board
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Commission	Atlantic States Marine Fisheries Commission (ASMFC)
Council	Mid-Atlantic Fishery Management Council (MAFMC)
CZMA	Coastal Zone Management Act
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EO	Executive Order
ESA	Endangered Species Act
FMP	Fishery Management Plan
FR	Federal Register
GARFO	Greater Atlantic Regional Fisheries Office
IRFA	Initial Regulatory Flexibility Analysis
IQA	Information Quality Act
MAFMC	Mid-Atlantic Fishery Management Council
MC	Monitoring Committee
MMPA	Marine Mammal Protection Act
MRIP	Marine Recreational Information Program
MSA	Magnuson-Stevens Fishery Conservation and Management Act (as currently amended)
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
NOAA	National Oceanic and Atmospheric Administration
OFL	Overfishing Limit
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
RHL	Recreational Harvest Limit
SEA	Supplemental Environmental Assessment
SIR	Supplemental Information Report
SSB	Spawning Stock Biomass
SSC	Scientific and Statistical Committee
TL	Total Length
U.S.	United States
VTR	Vessel Trip Report

1.0 Introduction

This document supports an action that would establish the 2017 recreational management strategy for summer flounder. Specifically, this action would continue the use of conservation equivalency to manage the recreational summer flounder fishery in 2017 and modify the non-preferred coastwide measures and precautionary default measures (possession limit, minimum size limit, and season) associated with conservation equivalency. The proposed measures are provided in more detail in Section 4.0.

1.1 Specifications Process Background

Summer flounder catch and landings limits (i.e., specifications) are established on an annual basis for up to three years at a time, based on stock size projections for upcoming years and advice from the Council's Scientific and Statistical Committee (SSC) and Monitoring Committee (MC). Overall 2017 catch and landings limits for summer flounder were first set in 2015, and then revised in 2016 based on updated stock status information. The original 2017 landings limits were analyzed in the 2016-2018 Summer Flounder, Scup, and Black Sea Bass Specifications Environmental Assessment (EA; "Specifications EA"; MAFMC 2015). Those 2017 specifications were then later revised, based on analysis described in the 2017-2018 Summer Flounder Supplemental Environmental Assessment (SEA or "Supplemental EA") completed in November 2016 (MAFMC 2016b). The current (revised) 2017 recreational harvest limit (RHL) is 3.77 million pounds, as published in the final rule dated December 22, 2016 (81 FR 93842).¹

Unlike fishery catch and landings limits, recreational measures are typically set for the single upcoming fishing year. For summer flounder, specific recreational management measures are typically considered several months after the catch and landings limits are approved for the upcoming fishing year (or years). This is because recreational catch and landings data from the Marine Recreational Information Program (MRIP) is lagged and becomes available in two-month "waves." The Council has determined that recommendations need to be made late in the year to allow for consideration of the most recent information possible. Thus, the specific recreational measures designed to achieve the RHL were not analyzed when the 2017-2018 Specifications SEA was prepared for consideration of the overall catch limits.

For each fishing year, the Council and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) identify a combination of recreational management measures that is likely to result in achieving, but not exceeding, the annual RHL. For summer flounder, the Council and Board choose annually between two management strategies: coastwide measures (i.e., identical possession, size, and seasonal limits for each state and for federal waters) or conservation equivalency (i.e., a combination of state- and region-specific measures that in combination would constrain coastwide harvest to the RHL), as detailed below.

Each year since 2001, the recreational summer flounder fishery has been managed under conservation equivalency, where individual states or regions recommend to the National Marine Fisheries Service (NMFS), through the Board, measures that are the conservation equivalent of a set of "non-preferred" coastwide measures. If NMFS agrees with the Board's assessment, those measures would be approved, following the provisions established in Framework Adjustment 2 to

¹ Available at: <https://www.federalregister.gov/d/2016-30876>.

the Fishery Management Plan (FMP) (MAFMC 2001). Under conservation equivalency, NMFS waives the federal recreational measures that would otherwise apply in federal waters (3-200 miles from shore) of the Exclusive Economic Zone (EEZ), or to vessels holding a federal recreational summer flounder permit. Federally permitted vessels, as well as vessels fishing in federal waters, are then subject to the recreational fishing measures implemented by the state in which they land.

To constrain recreational landings to the overall RHL, the Board established conservation equivalency guidelines that require each state to determine and implement an appropriate possession limit, size limit, and season to achieve the landings target for each state. Framework 6 to the FMP (MAFMC 2006) allows for regional conservation equivalency, where groups of adjacent states may form voluntary regions and develop the same regulations for all the states within the region, designed to achieve a pooled regional recreational harvest target. The Commission requires each state or region to submit its conservation equivalency proposal early in the relevant recreational fishing year. The Commission's Summer Flounder, Scup, and Black Sea Bass Technical Committee then evaluates the proposals and advises the Board of each proposal's consistency with respect to achieving the state or region landings target and the coastwide recreational harvest limit. After the Technical Committee evaluation, the Board meets to approve or disapprove each proposal.

The combination of state or regional measures must be "equivalent," in terms of conservation (i.e., expected to not exceed the recreational harvest limit), to a set of "non-preferred coastwide measures," which are recommended by the Council and the Board each year. The non-preferred coastwide measures must consist of a minimum fish size, possession limit, and season that if implemented on a coastwide basis, would be expected to constrain harvest to the harvest limit. These non-preferred measures are written into the federal regulations, but waived in favor of the state or region-specific measures.

The FMP also requires that the Council and Commission specify "precautionary default" measures when conservation equivalency is recommended. These are defined as the set of measures that would achieve at least the highest percent reduction in landings for any state, and would be required to be implemented by any state that either does not submit a summer flounder management proposal or whose measures do not achieve the required reduction. These measures are intended to be unappealing for any state to implement to deter states from deviating from the conservation equivalency guidelines. Any states or regions assigned the precautionary default measures would be allowed to re-submit revised management measures. In this case, the Commission would notify NMFS of any resubmitted proposals that were approved after publication of the final rule implementing the recreational specifications. NMFS would then publish a notice in the *Federal Register* to notify the public of any changes to a state's management measures.

1.2 Basis for the Proposed Action

At their joint December 2016 meeting, after considering the advice of the MC and the Council and Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panels, the Council and Board recommended that the 2017 recreational summer flounder fishery be managed under conservation equivalency. Based on that recommendation, this action proposes the continuation of conservation equivalency for the recreational summer flounder fishery in 2017 (which does not roll over in the regulations from year to year).

The 2017 summer flounder RHL is 3.77 million pounds, as analyzed in the 2017-2018 Summer Flounder Specifications SEA. Based on preliminary MRIP data,² 2016 summer flounder landings totaled 6.38 million pounds, which is 118% of the 2016 RHL. Thus, relative to 2016, a 41% reduction in landings (in pounds) would be required to constrain landings to the 2017 RHL, assuming similar effort, availability, and angler success in 2017. The MC and Technical Committee also looked at the last three years (2014-2016), a time period when management measures were consistent. During that time, the coastwide harvest estimates averaged about 6.2 million pounds. Relative to 2016, this would necessitate a 39% reduction to constrain landings to the 2017 RHL. However, the MC and Technical Committee have expressed several concerns regarding the typical methodology to project harvest and adjust measures for the subsequent year, and both committees are working toward improvements to the process that better consider uncertainty in the harvest estimates, as well as methods of adjustment intended to be more effective than the very fine-scale adjustments to measures that have become typical of the annual recreational process.

Through the Commission's process, each state (individually or as part of a region) is currently developing a conservation equivalency proposal. The Commission's Summer Flounder, Scup, and Black Sea Bass Technical Committee will evaluate these proposals and advise the Commission's Board of each proposal's consistency with respect to achieving the state or region landings target and the coastwide recreational harvest limit. The Commission's Summer Flounder, Scup, and Black Sea Bass Board will then review and approve state or region proposals.

In February 2017, the Board approved a specific strategy for addressing the needed reduction in landings for 2017 that each state and region will be required to abide by. Specifically, the Board approved Addendum XXVIII to their FMP (ASMFC 2017) which maintains the use of regional conservation equivalency for the 2017 recreational summer flounder fishery. Given the required reduction in landings, this Addendum requires a one-inch increase in size limit and reduced possession limits to stay within the 2017 RHL. These measures are broadly applied across all states to reduce harvest and provide for more coastwide consistency in regulations and methods to adjust regulations. The summer flounder regions, which are continued from 2016 (section 3.3), are: Massachusetts; Rhode Island; Connecticut through New York; New Jersey; Delaware through Virginia; and North Carolina. To achieve the reduction, the Addendum implements a one-inch increase in size limit from 2016 measures for all regions except for North Carolina. Additionally, all regions are required to constrain their possession limits to 4 fish or less and maintain 2016 season lengths. The approved management program also allows for the continuation of the Delaware Bay specific management measures for New Jersey anglers west of the COLREGS line,³ first implemented by New Jersey in 2016.

² As of February 17, 2017. Available from: <http://www.st.nmfs.noaa.gov/recreational-fisheries/access-data/run-a-data-query/queries/index>.

³ COLREGS lines of demarcation delineate those waters "upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972" (commonly called 72 COLREGS) and those "waters upon which mariners shall comply with the Inland Navigation Rules." The line for Delaware Bay is defined as "A line drawn from Cape May Light to Refuge Light; thence to the northernmost extremity of Cape Henlopen" (see 33 CFR 80.503).

This Supplemental Information Report (SIR) is supported by the information and analysis presented in the 2016-2018 Specifications EA and 2017-2018 SEA. The specific state, or region-specific, measures implemented under conservation equivalency are still being finalized; however, none of the proposed measures are expected to compromise the previously implemented catch and landings limits for this species, which were considered in the SEA. A review of recent fishery information indicates that there have been no substantial changes in the fishery or other new information that would alter the impacts previously considered in the SEA. No changes are proposed to the federal recreational measures for scup, and revised recreational measures for black sea bass are being proposed under a separate action in conjunction with revised overall catch limits.

2.0 Purpose of this Supplemental Information Report and the Proposed Action

The purpose of this SIR is to determine if the proposed recreational management strategy for summer flounder in 2017 will require further analysis other than that presented in the 2016-2018 Specifications EA and associated 2017-2018 Summer Flounder SEA, which established overall 2017 catch and landings limits for summer flounder. This action proposes to continue the use of conservation equivalency to manage the recreational summer flounder fishery in 2017. Summer flounder conservation equivalency does not roll over in the regulations and must be re-specified each year.

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 CEQ'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 (CFR) § 1502.09(c)). In addition, we considered the CEQ's "significance" criteria at 40 CFR § 1508.27 to determine if any new circumstances or information are "significant," which could require a new EA.

This document compares the current management measures and the proposed modifications in the context of the alternatives and analysis presented in the Specifications EA and Supplemental EA. We then consider whether there are any significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

3.0 Original Action

The sections below describe the original actions (the setting of summer flounder specifications for 2017 and the setting of recreational measures for 2016) in the context of the proposed action for the 2017 recreational fishery.

3.1 December 2015 EA: Original 2017 Summer Flounder Catch and Landings Limits

After considering the 2015 stock assessment update (Terceiro 2015) and advice from the SSC and Monitoring Committee, in August 2015, the Council and Board approved multi-year ABC and landings limits for summer flounder for 2016-2018. This included recreational and commercial ACLs (includes both landings and discards) as well as sector-specific RHLs and commercial

quotas (both include landings only). These measures, shown in Table 2, were analyzed in the 2016-2018 Specifications EA and implemented via a December 28, 2015, final rule (80 FR 80689).

Table 1: 2016-2018 catch and landings limits for summer flounder, in millions of pounds.

	2016	2017	2018
Acceptable Biological Catch (mil lb)	16.26	15.86	15.68
Commercial Quota (mil lb)	8.12	7.91	7.89
Recreational Harvest Limit (mil lb)	5.42	5.28	5.26

3.2 November 2016 SEA: Revised 2017 Summer Flounder Catch and Landings Limits

In July 2016, the Council received new scientific information about the status of the summer flounder stock in the form of a stock assessment update from the Northeast Fisheries Science Center (Terceiro 2016), which included revised biomass projections and estimates of the Overfishing Limit (OFL) for 2017 and 2018. After considering this new scientific information and associated SSC and MC recommendations, the Council and the Atlantic States Marine Fisheries Commission (ASMFC or Commission)’s Summer Flounder, Scup, and Black Sea Bass Board (Board) met in August 2016 to approve revised multi-year Acceptable Biological Catch (ABC) and landings limits for summer flounder for 2017 and 2018. This included recreational and commercial Annual Catch Limits (ACLs, which include both landings and discards) as well as sector-specific Recreational Harvest Limits (RHLs) and commercial quotas (both include landings only).

The 2017-2018 specifications, shown in Table 2, were analyzed in the November 2016 SEA. The specifications were implemented via a December 22, 2016, final rule (81 FR 93842). Previous proposed and final rules for these fisheries are available at <http://www.greateratlantic.fisheries.noaa.gov/regs/>.

Table 2: 2017-2018 catch and landings limits for summer flounder, in millions of pounds.

	2017	2018
Acceptable Biological Catch (mil lb)	11.30	13.23
Commercial Quota (mil lb)	5.66	6.63
Recreational Harvest Limit (mil lb)	3.77	4.42

3.3 April 2016 SIR: 2016 Recreational Measures

For the 2016 fishing year, the strategy of conservation equivalency was adopted by the Council and Board in December 2015, to constrain harvest to the 2016 RHL of 5.42 million lb. These measures were considered in an April 2016 SIR (MAFMC 2016a), drawing on analysis described in the 2016-2018 Summer Flounder, Scup, and Black Sea Bass Specifications EA (MAFMC 2015). The non-preferred coastwide measures associated with conservation equivalency for 2016 included an 18.0-inch total length (TL) minimum size, a 4-fish possession limit, and an open season from May 1-September 30.

For 2016, the precautionary default measures included a 20.0-inch TL minimum fish size, a 2-fish per person possession limit, and open season from May 1 through September 30.

In 2016, the Commission used a regional approach to conservation equivalency, which included the regional measures listed in Table 3. Regional conservation equivalency requires identical measures (i.e., minimum size, possession limit, and season length) for all states within a region.

Table 3: Summer flounder recreational measures by state and region under conservation equivalency in 2016.

Region	State	Min. Size (inches)	Possession Limit	Open Season
1	MA	16	5 fish	May 22-Sept. 23
2	RI	18	8 fish	May 1-Dec. 31
3	CT	18	5 fish	May 17- Sept. 21
		16 (41 designated shore sites)		
4	NY	18	5 fish	May 17- Sept. 21
		18	5 fish	
5	NJ ^a	16 (1 shore site)	2 fish	May 21- Sept. 25
		17 (NJ Delaware Bay)	4 fish	
6	DE	16	4 fish	Jan. 1- Dec. 31
	MD			
	PRFC			
	VA			
6	NC	15	6 fish	Jan. 1- Dec. 31

^a While New Jersey is technically its own region for the purposes of establishing separate measures in Delaware Bay, the non-Delaware Bay measures in New Jersey are intended to be consistent with the New York-Connecticut region.

4.0 Proposed New Action

For 2017, the proposed action is a continuation of recreational conservation equivalency for summer flounder, with modified non-preferred coastwide measures and precautionary default measures as described below. The recreational measures process and the conservation equivalency requirements of the FMP would remain as described in Section 1.0. The Council and Board chose to continue the use of conservation equivalency to allow for more customized measures at a state or regional level that are likely to meet the needs of anglers in each area, compared to coastwide measures which would be advantageous to anglers in some areas and unnecessarily restrictive in others.

Precautionary Default Measures

The precautionary default measures would be imposed by the Board in any state or region that did not abide by the conservation equivalency guidelines (i.e., did not implement the agreed upon adjustments or implemented measures not expected to achieve a sufficient reduction). Due to the 30% decrease in the RHL between 2016 and 2017, the Council and Board recommended modifications to the precautionary default measures used in 2016 (a 20.0-inch TL minimum size, 2-fish per person possession limit, and open season of May 1 through September 30). For 2017, the Council and Board recommended precautionary default measures consisting of a 20.0-inch minimum size, a 2-fish per person possession limit, and an open season from July 1-August 31. The MC recommended these measures as being sufficiently precautionary to deter states from not implementing the required management strategy.

Non-Preferred Coastwide Measures

The combination of regional recreational measures under conservation equivalency for 2017 should be designed to achieve the same level of conservation as would a set of non-preferred coastwide measures (see Section 3.0) developed to adhere to the overall recreational harvest limit. Again, due to the substantial reduction in the harvest limit between 2016 and 2017, the Council and Board recommended revisions to the non-preferred coastwide measures used for the past several years (i.e., an 18.0-inch TL minimum size, 4-fish per person possession limit, and open season of May 1 through September 30). For 2017, the Council and Board recommended non-preferred coastwide measures consisting of a 19-inch minimum fish size, a 4-fish per person possession limit, and an open season from June 1-September 15.

The non-preferred coastwide measures approved by the Council and Board represent a slight deviation from the non-preferred coastwide measures recommended by the MC. Specifically, the measures are identical except for a 4-fish possession limit recommended by the Council and Board, while the MC had recommended a 3-fish possession limit.

Due to the long-term complexity of state and regional measures, which often vary by fishing mode and time of the year, it is no longer possible to predict the impacts of coastwide measures with a high degree of confidence. The MC thus used proxy estimates based on what would be expected to achieve a reduction in the high-harvest states of Connecticut, New York, and New Jersey, which had regionally consistent size and possession limits in 2016. The percentage reduction achieved by more restrictive measures in these three states would be expected to be somewhat higher if the measures were implemented on a coastwide basis, because of the larger impact such measures would likely have on the remaining states. Based on this evaluation (using 2016 recreational data through Wave 5), the MC determined that harvest in the states of Connecticut-New Jersey would be reduced by approximately 38% under the Council and Board recommended non-preferred coastwide measures, and about 41% under the MC recommended measures. Again, the reduction on a coastwide level would likely be higher, but the exact amount of additional reduction is not readily quantifiable. Based on the MC and Technical Committee's analysis of MRIP data from 2014-2016, suggesting reductions in landings ranging from 39% to 41%, the non-preferred coastwide measures recommended by the Council and Board are anticipated to constrain recreational landings to the overall 2017 RHL.

5.0 New Information/Circumstances

Determining whether a supplemental NEPA analysis is required involves a two-step process. First, one must identify new information or circumstances. Secondly, if there is new information, one must analyze whether it is significant to the analysis of the action and relevant to environmental concerns and bearing on the action or its impacts.

The Council considered information that became available since the analysis supporting the implementation of 2017-2018 catch and landings limits, including preliminary 2016 recreational catch and landings data, and MC and Advisory Panel recommendations on modifications to the current recreational management measures in 2017. This new information is summarized in Sections 1.0, 4.0, and 6.0. The primary new information considered in development of the proposed action was preliminary 2016 recreational landings. As described in section 1.0, preliminary 2016 landings indicate that the 2016 RHL was exceeded by approximately 18%. The

2016 landings are considered as a starting point for adjustments to achieve the 2017 RHL. Taking into consideration the 30% reduction in the RHL between 2016 and 2017, ultimately a coastwide reduction in landings of approximately 41% is needed to achieve but not exceed the 2017 RHL. For this reason, the 2016 non-preferred coastwide measures and precautionary default measures are not expected to be appropriate for 2017, and must be adjusted as proposed in this action (section 4.0). In addition, state measures will be adjusted through the Board's process in order to constrain landings to the 2017 RHL.

Because the proposed adjustments to the recreational measures are intended to achieve the previously implemented 2017 RHL, none of this information alters the impacts previously considered in the 2017-2018 Summer Flounder Specifications SEA. None of the new information indicates that there have been any substantial changes in the circumstances under which the original action was implemented. No updated stock assessment information has become available since the 2017-2018 Specifications SEA was finalized. As described in that SEA, the most recent assessment information (Terceiro 2016) indicates that the summer flounder stock is not overfished, but the stock is experiencing overfishing. Available data do not indicate any recent substantial shifts in availability or fishing effort since the finalization of the SEA. The proposed action uses existing information to support the continuation of conservation equivalency for the recreational summer flounder fishery.

6.0 NEPA Compliance and Supporting Analysis

In this section, the current management measures are compared to the proposed 2017 measures in terms of their expected impacts. The methods, assumptions, and data sources used in this analysis are described in more detail below and are consistent with those applied in the 2016-2018 Specifications EA and the 2017-2018 Summer Flounder Specifications SEA.

This action does not propose any specific preferred management measures at the state or regional level, only an overall management strategy for 2017 and a set of non-preferred coastwide and precautionary default measures that essentially serve as backup measures. The use of conservation equivalency allows for customized measures at a state or regional level that are likely to meet the needs of anglers in each area, as opposed to coastwide measures which would be advantageous to anglers in some areas and unnecessarily restrictive in others. The management strategy proposed for summer flounder in 2017 is the same as that applied in 2016, except with more restrictive management measures applied in individual states and regions to constrain landings to the 2017 RHL. The state-specific measures for 2017 are currently being developed by the ASMFC and will be detailed in a letter to the Greater Atlantic Regional Fisheries Office (GARFO) certifying that the combination of state and regional measures will constrain landings to the 2017 harvest limit. The Board has determined that the regional configuration will remain the same as that used in 2016. In addition, the Board has approved a mandatory 1-inch increase in size limits in all states except for North Carolina, and a restricted possession limit of no more than 4 fish in any given state or region (see Section 4.0). The Board has indicated that their proposed set of state measures is intended to achieve but not exceed the 2017 RHL.

Both the use of conservation equivalency and the alternative, the proposed non-preferred coastwide measures, are intended to achieve the previously analyzed 2017 recreational harvest limit. For this reason, the impacts of this action are not expected to differ from those previously analyzed in the 2017-2018 Summer Flounder Specifications SEA. A failure to modify the non-

preferred coastwide measures from those currently in place would result in the continuation of non-preferred measures that are not expected to constrain landings to the harvest limit (if they were implemented). This would be inconsistent with the requirement to constrain landings to the RHL, and would likely have negative impacts on the managed resource due to an increased risk of overfishing.

The previously identified impacts include positive expected biological impacts, as harvest limits were set consistent with the advice of the SSC in order to prevent overfishing. Positive impacts were also expected on habitat (including Essential Fish Habitat, or EFH) and protected resources because the measures are intended to constrain catch within the established harvest limit, and the decrease in the harvest limits for 2017 were expected to result in less fishing time and gear being present in the water for a shorter duration, likely decreasing interactions between fishing gear and habitat and fishing gear and protected resources. Negative short-term and positive long-term economic impacts were expected relative to the *status quo* alternative and baseline conditions. This is because decreases in landings limits were expected to potentially lead to more restrictive management measures and reduced economic opportunities in 2017 for the commercial fishery and party/charter recreational operations, as well as reduced angler satisfaction. However, because the measures are intended to prevent overfishing, they were expected to contribute to long-term positive social and economic impacts.

The continuation of conservation equivalency proposed in this action would allow for implementation of state or regional measures that are appropriate for each region, the combination of which is expected to constrain landings to the 2017 RHL, the impacts of which were analyzed in the 2017-2018 Summer Flounder SEA. Therefore, the use of conservation equivalency as a management tool is not expected to alter the biological, EFH, or socioeconomic impacts previously described in the SEA.

7.0 Public Participation

The public had the opportunity to provide comments during the development of the 2016-2018 Specifications EA as well as the 2017-2018 Summer Flounder Specifications SEA. The public also had the opportunity to review and comment specifically on 2017 recreational management measures during the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meeting held on November 9-10, 2016, during the Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meeting held on November 17, 2016, and during the Council/Board meeting held on December 12-15, 2016. The Commission's recreational measures process provides separate public comment opportunities on specific state or regional measures and strategies. This document will be subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act and may be improved based on comments received.

8.0 Conclusion

After considering the proposed action, new information, and new circumstances, the Council has preliminarily determined that the proposed action and its effects fall within the scope of 2017-2018 Summer Flounder Specifications SEA. Thus, it is not necessary to create a new NEPA analysis because: (1) the preferred recreational management strategy is proposed in order to constrain landings to the harvest limit, and the impacts of this action do not differ substantially from what was originally considered in the SEA analyzing the 2017 harvest limit; and (2) no new information

or circumstances exist that are significantly different from when the SEA Finding of No Significant Impact was signed on December 9, 2016. The Specifications EA and supporting Supplemental EA thus remain valid to support the proposed action.

9.0 Compliance with Applicable Laws

9.1 Magnuson-Stevens Fishery Conservation and Management Act (MSA)

Section 301 of the Magnuson Stevens Act (MSA) requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The actions taken in this specification document are confined to processes defined within the FMP; therefore, as actions within the FMP have been deemed to be consistent with the National Standards, these specification actions are similarly consistent. The most recent FMP Amendments address how the management actions implemented comply with the National Standards. First and foremost, the Council continues to meet the obligations of National Standard 1 by adopting and implementing conservation and management measures that will continue to prevent overfishing, while achieving, on a continuing basis, the optimum yield for summer flounder, scup, and black sea bass and the U.S. fishing industry, including annual catch limits and measures to ensure accountability for those limits. The Council uses the best scientific information available (National Standard 2) and manages all three species throughout their range (National Standard 3). These management measures do not discriminate among residents of different states, (National Standard 4), they do not have economic allocation as their sole purpose (National Standard 5), the measures account for variations in these fisheries (National Standard 6), they avoid unnecessary duplication (National Standard 7), they take into account the fishing communities (National Standard 8), and they promote safety at sea (National Standard 10). Finally, actions taken are consistent with National Standard 9, which addresses bycatch in fisheries. The Council has implemented many regulations that have indirectly acted to reduce fishing gear impacts on EFH. By continuing to meet the National Standards requirements of the MSA through future FMP amendments, framework actions, and the annual specification setting process, the Council will insure that cumulative impacts of these actions will remain positive overall for the ports and communities that depend on these fisheries, for the Nation as a whole, and for the resources.

9.2 National Environmental Policy Act (NEPA)

The Council has preliminarily determined that the proposed action and its effects fall within the scope of 2017-2018 Summer Flounder Specifications SEA and the EA that it is based off, and that these analyses remain valid for this action. Thus, there is no need to supplement these analyses and their Findings of No Significant Impact.

9.3 Marine Mammal Protection Act (MMPA)

None of the specifications proposed in this document are expected to alter overall effort or fishing methods beyond what has been previously analyzed. Therefore, this action is not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries. Further information on the potential impacts of the fishery and the proposed management action on marine mammals can be found in the Specifications EA for the 2016-2018 management measures and the 2017-2018 Summer Flounder Specifications SEA. These analyses found that the overall catch limits and associated management measures were not expected to affect marine

mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

9.4 *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 result in an increase in fishing effort or a substantial change in the way the fishery currently operates. Accordingly, based on the information available at this time, the proposed action is not expected to be likely to jeopardize any ESA-listed species or alter or modify any critical habitat. Further information on the potential impacts of the fishery and the proposed management action on ESA listed species can be found in the Specifications EA for the 2016-2018 management measures and the 2017-2018 Summer Flounder Specifications SEA. This EA found that the overall catch limits and associated management measures were not expected to affect ESA listed species or critical habitat in any manner not considered in previous consultations on the fisheries.

9.5 *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. Responsible management of 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). The Council has developed these management measures and will submit them to NMFS; NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each state.

9.6 *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.

9.7 *Information Quality Act (IQA)*

Utility of Information Product

The information presented in this document is helpful to the intended users 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 summer flounder, scup, and black sea bass fisheries, (including fishermen and fishery managers) and other individuals interested in the management of the fisheries. 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, as well as in the EA it builds off of, includes detailed and recent information on the summer flounder, scup, and black sea bass resources.

The action described in this document was developed to be consistent with the FMP, MSA, and other applicable laws, through a multi-stage process that was open to review by affected members of the public. In addition to the opportunity for comment during the development of the EA, the public had the opportunity to review and comment on summer flounder recreational management measures during the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meeting held on November 9-10, 2016, during the Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meeting held on November 17, 2016, and during the Council/Board meeting held on December 12-15, 2016. This document will be subject to public comment through proposed rulemaking, as required under the APA and may be improved based on comments received. 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 Regulations.gov. The *Federal Register* documents will provide metric conversions for all measurements.

Integrity of Information Product

This information product meets the standards for integrity under the following types of documents: Other/Discussion (e.g., Confidentiality of Statistics of the MSA; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the MMPA.)

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 MSA; 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 MSA; 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 2016-2018 specifications EA and the 2017-2018 Summer Flounder Specifications SEA. These data sources included, but were not limited to, historical and current commercial landings data from the Commercial Dealer database, historical and current recreational landings data from the Marine Recreational Information Program, 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 SEA that this document builds off of, were prepared using data from accepted sources. The analyses have been reviewed by members of the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee and/or by the Council's SSC where appropriate.

Conservation and management measures considered for this action were selected based upon the best scientific information available. The analyses important to this decision used the most recent data available. 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, 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 2.0 of this document, and the proposed measures are described in section 4.0 of this document. The supporting science and analyses, upon which the policy choice was based, are summarized and described in sections 4.0 and 6.0 of this document and in the 2017-2018 Summer Flounder Specifications EA. All supporting materials, information, data, and analyses within this document have been, to the maximum extent practicable, properly referenced per commonly accepted standards for scientific literature to ensure transparency. The review process used in preparation of this document involves the Council, the Northeast Fisheries Science Center, the Greater Atlantic Regional Fisheries Office, and NOAA Fisheries Service Headquarters. The Northeast Fisheries Science 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 MSA, 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 preliminarily determined that the proposed action is consistent with the National Standards of the MSA and all other applicable laws.

9.8 Paperwork Reduction Act (PRA)

The Paperwork Reduction Act (PRA) concerns the collection of information. The intent of the PRA 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. The Council is not proposing measures under this regulatory action that require review under PRA. There are no changes to existing reporting requirements previously approved under this FMP. This action does not contain a collection-of-information requirement for purposes of the PRA.

9.9 Regulatory Impact Review (RIR)

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 to review regulatory programs that are considered to be “significant.” Section 6.0 reviews the impacts associated with the proposed actions and found that the expected impacts remain unchanged from those analyzed in the 2017-2018 Summer Flounder Specifications SEA. 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.

Description of Management Objectives

A complete description of the purpose and objectives of this action is found under Section 2.0 of this document. This action is taken under the authority of the MSA and regulations at 50 CFR part 648.

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 action seeks to continue the management strategy of conservation equivalency for the recreational summer fishery in 2017 so that the recreational fishery may achieve, but not exceed, the 2017 recreational harvest limit. The proposed action is consistent with the joint recommendations of the Council and the ASMFC. There are no expected adverse impacts on yield, management compatibility, or enforcement.

Affected Entities

A description of the entities affected by this action, specifically the stakeholders of the summer flounder fishery, is presented in Section 6.0 of the 2016-2018 Specifications EA that this SIR builds off of. A description of ports and communities is found in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP, available at: <http://www.mafmc.org/fisheries/fmp/sf-s-bsb>. Additional information on "Community Profiles for the Northeast US Fisheries" can be found at:

<http://www.nefsc.noaa.gov/read/socialsci/communityProfiles.html>.

Problem Statement

The purpose of the measures proposed in this action is described in Section 2.0 of this document.

Description of the Alternatives

The proposed action is described in Section 4.0 of this document. This option does not substantially differ from the range of alternatives previously analyzed under the 2017-2018 Specifications SEA. A full description of those previously analyzed alternatives analyzed in this section is presented in section 5.0 of the SEA. A full description of the commercial quota and recreational harvest limit derivation process is presented in Sections 4.0 and 5.0 of the 2016-2018 Specifications EA.

As described in Section 6.0, the impacts of the proposed action are not expected to be different from those described in the 2017-2018 Summer Flounder Specifications SEA that this SIR builds off, since the recreational measures proposed in this document are intended to achieve the 2017 RHL analyzed in the SEA. The proposed action would implement conservation equivalency for the summer flounder recreational fishery, meaning that recreational measures are implemented by individual states. Recreational conservation equivalency measures have not been finalized by the ASMFC yet. Nonetheless, as indicated under the Board approved Addendum XXVIII to their FMP (ASMFC 2017), it would be required that more restrictive measures are implemented when compared to 2016, due to the need to reduce overall harvest to achieve the 2017 RHL.

More specifically, Addendum XXVIII proposes requiring a 1-inch increase in size limit in each state/region except NC and a possession limit of 4-fish or less (season length would remain unchanged) when compared to 2016 measures (see Table 3). These measures would reduce the number of summer flounder that recreational anglers would be allowed to keep, which would have an adverse impact on recreational angler satisfaction. This would reduce economic benefits derived from angler-trips that target summer flounder, which is consistent with economic theory and past angler valuation studies in general including summer flounder, although the magnitude of the reduced benefits is uncertain. Some anglers who choose to reduce their effort in 2017 because of these recreational measures are likely to transfer their effort to other species (e.g., scup, black sea bass, spot, bluefish, weakfish, striped bass, tautog, pelagics, etc.) resulting in very little change in

overall fishing effort. However, recreational harvest restrictions for many of the other species in the Northeast are becoming more binding each year, resulting in fewer substitute landing opportunities, particularly for anglers fishing aboard headboats where passengers are primarily limited to bottom fishing. Furthermore, because the conservation equivalency measures are intended to prevent overfishing, they were expected to contribute to long-term positive social and economic impacts.

When comparing the preferred conservation equivalency strategy and the non-preferred coastwide measures for 2017, the non-preferred coastwide measures would be more restrictive in most states for at least one measure (size limit, possession limit, or season) when compared to conservation equivalency measures. It is expected that conservation equivalency will provide benefits to recreational entities when compared to the non-preferred coastwide measures, which would consist of a single possession limit, season, and size limit implemented along the entire coast. While the non-preferred coastwide measures would be expected to constrain harvest to the RHL on a coastwide basis, this management strategy would not allow each state to adapt to the needs of their anglers, and would likely impose reduction burdens that vary widely among the states. Conservation equivalency allows for the customization of measures that spreads the conservation burden more equitably among the states. In other words, conservation equivalency minimizes the severe adverse impacts that could occur in some states under the non-preferred coastwide measures. Coastwide measures would remove the flexibility of individual states to tailor measures to their unique fisheries and thus would likely result in more negative impacts to recreational entities in many states.

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. There should not be substantial distributional issues. The cumulative impacts of management and regulations are not expected to substantially change from those described in the underlying 2017-2018 Specifications SEA. There are no other expected social concerns.

Determination of Executive Order 12866 Significance

The proposed action does not constitute a significant regulatory action under EO 12866 for the following reasons. The proposed action will not have an annual effect on the economy of more than \$100 million and is not predicted to have any adverse impact on fishing vessels, purchasers of seafood products, ports, recreational anglers, and operators of party/charter 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 summer flounder, scup, and black sea bass commercial and recreational management measures, and as such does not raise novel legal or policy issues. As such, the Proposed Action is not considered significant as defined by EO 12866.

9.10 Initial Regulatory Flexibility Analysis (IRFA)

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. An IRFA was prepared to further evaluate the economic impacts of the various alternatives presented in this document on small business entities.

The sections below provide the supporting analysis to assess whether the proposed regulations will have a significant impact on a substantial number of small entities.

9.10.1 Basis and purpose of the rule

This action is taken under the authority of the MSA and regulations at 50 CFR part 648. A complete description of the purpose and need and objectives of this proposed rule is found under section 4.0. As described in section 4.0 of this document, the proposed action would maintain the current conservation equivalency management approach for the recreational summer flounder fishery. The purpose of this rule is to implement recreational management measures designed to achieve, but not exceed, the previously established 2017 recreational harvest limit for summer flounder.

9.10.2 Description of Regulated Entities

The small entities that would be affected by this action include recreational for-hire operations holding federal summer flounder party/charter permits. The Small Business Administration defines a small business in the commercial fishing industry as a firm with total annual receipts (gross revenues) not in excess of \$11.0 million. A small business in the recreational for-hire fishery is a firm with receipts of up to \$7.5 million.

The proposed recreational management strategy (conservation equivalency) for summer flounder includes closed seasons in addition to daily fish possession limits and minimum size limits. For purposes of this analysis it assumed that for-hire businesses are directly affected by all three types of recreational fishing restrictions. According to the FMP, it is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

- (i) Possess summer flounder in excess of the possession limit established pursuant to §648.106.
- (ii) Fish for summer flounder other than during a season specified pursuant to §648.105.
- (iii) Sell or transfer summer flounder to another person for a commercial purpose.

As the for-hire owner and operator can be prosecuted under the law for violations of the proposed regulations, for-hire business entities are considered directly affected in this analysis. Anglers are not considered “entities” under the RFA and thus economic impacts on anglers are not discussed here.

The affected entities are described in detail in section 8.11.1.6 of the 2016-2018 Specifications EA. Recent landing patterns among ports are presented in the 2016-2018 Specifications EA in section 6.4.3 and an analysis of permit data is found in section 6.4.4. A description of the summer flounder, scup, and black sea bass fisheries is presented in section 6.0 of the EA and section 3.0 of Amendment 13 to the FMP (MAFMC 2002). A description of ports and communities that are dependent on summer flounder, scup, and black sea bass is found in section 3.4.2 of Amendment 13 to the FMP. Additional information on "Community Profiles for the Northeast US Fisheries" can be found at

<http://www.nefsc.noaa.gov/read/socialsci/communityProfiles.html>.

9.10.3 Number of Regulated Entities

A business primarily engaged in for-hire fishing activity is classified as a small business if it has combined annual receipts not in excess of \$7.5 million. In order to identify firms, vessel ownership data,⁴ which have been added to the permit database, were used to identify all the individuals who own fishing vessels. With this information, vessels were grouped together according to common owners. The resulting groupings were then treated as a fishing business, for purposes of identifying small and large firms.

According to the vessel ownership data (see description of data set above) 411 for-hire affiliate firms generated revenues from fishing recreationally for various species during the 2013-2015 period; all of those business affiliates are categorized as small business. It is not possible to derive what proportion of the overall revenues for these for-hire firms came from specific fishing activities (e.g., summer flounder, scup, black sea bass, bluefish, groundfish, tilefish, weakfish, striped bass, tautog, pelagics). Nevertheless, given the popularity of summer flounder as a recreational species in the Mid-Atlantic and New England regions, it is likely that revenues generated from summer flounder fishing is important for some, if not all, of these firms. The three-year average (2013-2015) combined gross receipts (all for-hire fishing activity combined) for these small entities was \$53,592,318, ranging from less than \$10,000 for 121 entities (lowest value \$78) to over \$1,000,000 for 10 entities (highest value \$2.7 million).

9.10.4 Economic Impacts on Regulated Entities

The proposed action is a continuation of conservation equivalency for summer flounder recreational fishery in 2017, meaning that recreational measures are implemented by individual states. States provide their proposed measures to the Commission, and the Commission then certifies to NMFS that, collectively, they provide the same level of catch (or conservation) as the coastwide measures. Summer flounder are available in different sizes and seasons up and down the Atlantic coast; thus, this system allows states to provide the most fishing opportunity within the constraints of the recreational harvest limit. Conservation equivalency generally provides

⁴ Affiliate database for 2013-2015 was provided by the NMFS NEFSC Social Science Branch.

benefits to recreational entities when compared to the alternative management strategy, which would consist of a single possession limit, season, and size limit implemented along the entire coast. Coastwide measures would remove the flexibility of individual states to tailor measures to their unique fisheries and thus would likely result in more negative impacts to recreational entities in many states.

As described in the SEA, there is a 30% decrease in the recreational harvest limit between 2016 and 2017. Thus, more restrictive management measures (e.g., lower possession limits, greater minimum size limits, and/or shorter seasons compared to 2016) will be necessary in 2017 to ensure that recreational landings do not exceed the 2017 recreational harvest limit (3.77 million pounds). For this reason, the summer flounder recreational measures under the preferred management strategy (conservation equivalency) are expected to reduce recreational satisfaction when compared to 2016.

As indicated in section 9.9 above, conservation equivalency measures have not been finalized by the ASMFC yet. However, Addendum XXVIII proposes requiring a 1-inch increase in size limit in each state/region except NC and a possession limit of 4-fish or less (season length would remain unchanged) when compared to 2016 measures. On a state-by-state basis, conservation equivalency would result in an increase in size limit in all but one state (North Carolina) and the possession limit will be reduced by at least one fish in all states (for example, the possession limit would go from 8 to 4 fish in Rhode Island and from 6 to 4 fish in North Carolina). These measures would reduce the number of summer flounder that recreational anglers would be allowed to keep, which would have an adverse impact on recreational angler satisfaction and demand for party/charter trips. The extent to which passenger demand will be affected by these measures is difficult to predict. However, it is likely that the proposed action will have some adverse impacts on a substantial number of small party/charter business entities; but the magnitude of impacts is uncertain.

As described in section 9.9, the adverse economic impacts of the non-preferred coastwide measures are expected to be higher than those under conservation equivalency as they would not allow for the customization of measures that spreads the conservation burden more equitably among the states. In other words, conservation equivalency minimizes the severe adverse impacts that could occur in some states under the non-preferred coastwide measures.

While all business entities that hold for-hire permits for summer flounder could be directly affected by the proposed regulations, not all business entities that hold for-hire permits actively participate in a given year. Those who actively participate (i.e., land fish) are the entities that are directly impacted by the regulations. Latent fishing power (in the form of unfished permits) represents a potential considerable force to alter the impacts on a fishery, but it is not possible to predict how many of these latent business entities will or will not participate in this fishery in 2017. There is no information regarding how the proposed action (conservation equivalency) for summer flounder will affect the demand for party/charter boat trips. Currently, the market demand for this sector is relatively stable; however, it is likely that given the need for more conservative management measures under a lower harvest limit, the demand for party/charter boat trips may decrease. This would likewise be expected under the alternative to the proposed action (coastwide measures). Some anglers who choose to reduce their effort in 2017 because of these recreational measures are likely to transfer their effort to other species (e.g., scup, black sea bass, spot, bluefish,

weakfish, striped bass, tautog, pelagics, etc.) resulting in very little change in overall fishing effort. However, recreational harvest restrictions for many of the other species in the Northeast are becoming more binding each year, resulting in fewer substitute landing opportunities, particularly for anglers fishing aboard headboats where passengers are primarily limited to bottom fishing.

10.0 Preparers and Persons Consulted

For questions or to obtain a copy of the document, please contact:

Kiley Dancy, Fishery Management Specialist, Mid-Atlantic Fishery Management Council, kdancy@mafmc.org or 302-526-5257.

Preparers:

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

José Montañez, Fishery Management Specialist, Mid-Atlantic Fishery Management Council, Dover, Delaware.

Persons consulted:

Emily Gilbert, Fishery Policy Analyst, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

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

Eric Thunberg, Chief, Social Sciences Branch, NMFS Northeast Fisheries Science Center, Woods Hole, Massachusetts.

11.0 References

ASMFC (Atlantic States Marine Fisheries Commission). 2017. Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Alexandria, VA. Available at www.asmfc.org.

MAFMC (Mid-Atlantic Fishery Management Council). 2001. Framework Adjustment 2 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Available at: http://www.mafmc.org/s/SFSCBSB_FW_2.pdf.

MAFMC (Mid-Atlantic Fishery Management Council). 2006. Framework Adjustment 6 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Available at: http://www.mafmc.org/s/SFSCBSB_FW_6.pdf.

MAFMC (Mid-Atlantic Fishery Management Council). 2015. Final Environmental Assessment for 2016-2018 Summer Flounder, Scup, and Black Sea Bass Specifications. 169p. Available at <https://www.greateratlantic.fisheries.noaa.gov/regs/2015/November/15sfcsbsb20162018specsprea.pdf>.

MAFMC (Mid-Atlantic Fishery Management Council). 2016a. 2016 Summer Flounder, Scup, and Black Sea Bass Recreational Specifications Supplemental Information Report (SIR). 31 p.

MAFMC (Mid-Atlantic Fishery Management Council). 2016b. 2017-2018 Summer Flounder Specifications Supplemental Environmental Assessment. 50 p. Available at: <https://www.greateratlantic.fisheries.noaa.gov/regs/2016/December/16sfsbsb2017specssupplementalea.pdf>.

Terceiro M. 2015. Stock assessment update of summer flounder for 2015. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 15-13; 18 p. doi: 10.7289/V57D2S4G.

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