

**2008 Summer Flounder Recreational
Interim Coastwide Management Measures
Supplemental Environmental Assessment**

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1.0 EXECUTIVE SUMMARY

This Supplemental Environmental Assessment (EA) updates the previously approved EA (attached) for the summer flounder recreational management measures, which were implemented on June 1, 2007, as well as the previously approved EA for the summer flounder recreational management measures for the 2006 fishing year. This supplement was necessary because the 2007 summer flounder Total Allowable Landings (TAL) and thereby, the recreational harvest limit, was increased following a change in the rebuilding period for summer flounder from that which was previously approved by the National Marine Fisheries Service (NMFS). Authorization for the extended rebuilding period came from the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Because the Council recommended and NMFS implemented state-by-state conservation equivalency measures for the 2007 fishery that were based on the increased TAL, the coastwide measures contained in the proposed rulemaking were unnecessary for the year. However, the coastwide measures become the regulatory default on January 1, 2008, when conservation equivalency expires.

Because the coastwide measures previously proposed by NMFS were based on the lower TAL and recreational harvest limit target, the measures would constrain the recreational harvest to approximately 55 percent of the recreational harvest limit. Thus, NMFS evaluated an additional alternative for a set of coastwide recreational management measures based on the increased TAL that are less restrictive while ensuring that the recreational harvest limit is not exceeded. These measures will remain effective from January 1, 2008, until replaced mid-year, which will be when the majority of the 2008 summer flounder recreational fishery will occur, by measures that are based on updated 2007 assessment information and a new recreational harvest limit target. It is noted that slightly less than 29 percent of the recreational summer flounder landings for 2008 are expected to occur under the interim measures presented here.

2.0 LIST OF ACRONYMS

<i>ASMFC</i>	Atlantic States Marine Fisheries Commission
<i>B</i>	Biomass
<i>EA</i>	Environmental Assessment
<i>EEZ</i>	Exclusive Economic Zone
<i>EFH</i>	Essential Fish Habitat
<i>EIS</i>	Environmental Impact Statement
<i>E.O.</i>	Executive Order
<i>F</i>	Fishing Mortality Rate
<i>FR</i>	<u>Federal Register</u>
<i>FRFA</i>	Final Regulatory Flexibility Analysis
<i>FMP</i>	Fishery Management Plan
<i>IRFA</i>	Initial Regulatory Flexibility Analysis
<i>M</i>	Natural Mortality Rate
<i>MA</i>	Mid-Atlantic
<i>MAFMC</i>	Mid-Atlantic Fishery Management Council
<i>MRFSS</i>	Marine Recreational Fisheries Statistics Survey
<i>MSFCMA</i>	Magnuson-Stevens Fishery Conservation and Management Act
<i>MSY</i>	Maximum Sustainable Yield
<i>mt</i>	metric tons
<i>NE</i>	New England
<i>NEFSC</i>	Northeast Fisheries Science Center
<i>NEPA</i>	National Environmental Policy Act
<i>NMFS</i>	National Marine Fisheries Service
<i>NOAA</i>	National Oceanic and Atmospheric Administration
<i>RIR</i>	Regulatory Impact Review
<i>RFA</i>	Regulatory Flexibility Analysis
<i>RSA</i>	Research Set-Aside
<i>SARC</i>	Stock Assessment Review Committee
<i>SAW</i>	Stock Assessment Workshop
<i>SDWG</i>	Southern Demersal Working Group
<i>SFA</i>	Sustainable Fisheries Act
<i>SSB</i>	Spawning Stock Biomass
<i>TAL</i>	Total Allowable Landings

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4.0 SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT

4.1 Purpose and Need of the Action

The purpose of this and the original action is to implement recreational management measures for the summer flounder fishery. The measures outlined in this supplement are necessary to ensure that recreational landings are constrained in the first half of the 2008 fishing year, until such time that new measures, based on updated 2007 stock assessment information, are developed and implemented to constrain landings to the 2008 recreational harvest limit.

The need for this action arose following an increase in TAL that resulted from the extending the summer flounder rebuilding timeframe. The coastwide management measures serve as the regulatory backstop on January 1, 2008 after the 2007 conservation equivalency measures expire. Coastwide measures were proposed as part of the normal recreational management measures rulemaking process in early 2007, however because of the increase in TAL, the measures require modification to be less restrictive while ensuring that the recreational harvest limit is not exceeded. These revised measures comply with the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the national standards for fishery conservation and management, the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), and the FMP amendments. Recreational management measures include minimum fish size, possession limits, and fishing seasons to ensure that the annual recreational fishing targets specified in the FMP for summer flounder are not exceeded.

The coastwide measures that are in the regulations (*i.e.*, status quo) are from the 2006 fishing year. These coastwide measures for the 2006 fishing year would be in effect on January 1, 2008, until 2008 fishing year recreational specifications are implemented. Thus, the current coastwide measures that will be in effect unless this action is implemented will be a 17-inch TL minimum fish size, a 4-fish per person possession limit, and no closed season.

5.0 MANAGEMENT ALTERNATIVES

5.1 Summer Flounder

5.1.1 Alternative 1 – Status Quo 2006 implemented Coastwide Measures (No Action)

These measures include a 17-inch total length (TL) minimum fish size, a 4-fish per person possession limit, and no closed season from the 2006 Recreational Management Measures Environmental Assessment (EA). These measures, when analyzed relative to 2005 landings and state regulations indicated that a 17-inch TL minimum fish size and 4-fish possession limit could constrain landings to the recreational harvest limit on a coastwide basis in 2006, the year for which these measures were developed and implemented. However, relative to the level of reduction necessary for the 2007

recreational fisheries, these measures are not sufficient to constrain recreational landings to the 2,421,460 fish recreational harvest limit.

5.1.2 Alternative 2 – (Non-preferred: Initially Proposed 2007 Coastwide Measures)

These measures include a 19.0-inch total length (TL) minimum fish size, a 1-fish per person possession limit, and no closed season from the 2007 Recreational Management Measures EA. An examination of 2006 landings and state regulations indicates that an 19.0-inch TL minimum fish size and 1-fish possession limit would constrain landings to approximately 55 percent (1,331,803 fish) of the 2007 recreational harvest limit (2,421,460 fish) on a coastwide basis assuming the same effort and fish availability as in 2006.

5.1.3 Alternative 3 – Modified Coastwide Measures (Preferred)

These measures include an 18.5-inch total length (TL) minimum fish size, a 4-fish per person possession limit, and no closed season. These measures were analyzed within the previous EA and are now being changed from a 17-inch TL minimum fish size, a 4-fish per person possession limit, and no closed season to constrain recreational landings within the recreational harvest limit.

An examination of 2006 landings and state regulations indicates that an 18.5-inch TL minimum fish size and 4-fish possession limit would constrain landings to approximately 90 percent (2,181,735 fish) of the 2007 recreational harvest limit (2,421,460 fish) on a coastwide basis assuming the same effort and fish availability as in 2006.

The 2008 recreational harvest limit will not be finalized until December 2007. However, using the information and assumptions regarding effort and fish availability utilized for the 2007 coastwide measures' effectiveness, these measures can be demonstrated to constrain the recreational fishery within the Council's recommended 2008 TAL of 15.77 million lb. It remains to be seen if this recommendation will be modified or implemented unchanged by NMFS; however, a 15.77 million-lb TAL, if implemented, would yield a recreational harvest limit of 6.308 million-lb. If converted to numbers of fish using the average weight utilized for the 2007 recreational harvest limit calculations (2.74 lb per fish), the recreational harvest limit would be 2,302,190 fish. The above listed coastwide measures would constrain harvest to approximately 95 percent of the potential 2008 recreational harvest limit. Approximately 14 percent of summer flounder landings occur in the first half of any given year. Therefore, it is unlikely that the eventual recreational harvest limit would be exceeded under these measures. These restrictions are equal to or more restrictive than the conservation equivalency measures implemented by all but two states, New York and Rhode Island, for the 2007 fishing year.

6.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES

The affected environment and fisheries information does not change with this

supplemental EA. Please refer to the 2007 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures EA for a full description of the affected environment and fisheries.

7.0 ENVIRONMENTAL CONSEQUENCES AND REGULATORY ECONOMIC EVALUATION OF ALTERNATIVES

The Alternative 3 measures were within the range of alternatives analyzed within the 2007 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures EA. The status quo measures (*i.e.*, a 17-inch minimum fish size, 4 fish possession limit, year round season) were analyzed in the EA for the 2006 recreational management measures. The following text briefly summarizes the analytical conclusions from the EAs for the 2006 and the 2007 recreational management measures:

7.1 Biological Impacts

The status quo, when developed for the 2006 fishery, the coastwide measures as developed for 2007, and the revised coastwide measures for 2007 were all expected to achieve the necessary reduction in recreational landings to ensure the respective target (*i.e.*, number of fish comprising the recreational harvest limit) were not exceeded for the year in which they were developed. However, the status quo measures (*i.e.*, a 17-inch minimum fish size, 4 fish possession limit, and year round season) developed for the 2006 fishery is no longer expected to constrain recreational landings to the 2007 recreational harvest limit of 2,421,460 fish. While the 2007 recreational harvest limit will be replaced in 2008 by a revised limit, based on updated 2007 landings and assessment data, it remains the performance metric against which alternatives are evaluated for the first third to first half of the 2008 fishing year, until measures designed to constrain landings to the new limit are implemented. The measures of Alternative 2 (*i.e.*, a 19.0-inch total length (TL) minimum fish size, a 1-fish per person possession limit, and no closed season) would constrain landings to approximately 55 percent of the 2007 recreational harvest limit. While this would achieve the objective of constraining harvest within the 2007 recreational harvest limit, the measures of Alternative 3 are preferred because they also ensure that the 2007 recreational harvest limit would not be exceeded but are more liberal, allowing for approximately 90 percent of the recreational harvest limit to be attained. Alternatives 2 and 3, in keeping within the respective target, no adverse impacts to the summer flounder stock are expected. By ensuring that the recreational harvest limit is not exceeded, the fishing mortality objectives (*i.e.*, F target) will not be exceeded and thus, the long-term sustainability of the summer flounder stock is expected to remain optimal and the stock will continue to rebuild towards the established biomass target.

7.2Habitat Impacts

None of the alternatives would have adverse impacts because the gear used in recreational fishing (*i.e.*, rod and reel and handline) does not typically alter bottom

structure. Therefore, there are no differences among the impacts of the three alternatives because none of the alternatives are expected to have adverse impacts.

7.3 Impacts on Endangered and Other Protected Species

It was concluded in both the 2006 and 2007 EAs that there would be no effect on endangered or threatened species or critical habitat in any manner not considered in prior consultations. This is due, in part, to the type of gear used in the recreational summer flounder fishery. Rod and reel and handline gear have few interactions with ESA-listed species. Thus, an increase in recreational effort would not increase interactions with listed species. Because the potential for interaction with recreational fishing is low, there are no expected differences in impacts among the alternatives.

7.4 Socioeconomic Impacts

The status quo measures, as presented in the 2006 EA (Alternative 1), would provide the most liberal recreational management measures and thereby have the lowest socioeconomic impacts on anglers, however the status quo are not sufficient to ensure the mortality objectives of the FMP and regulations are met. The coastwide measures proposed for 2007 (Alternative 2) would be expected to have the lowest socioeconomic impact to anglers, charter/party boat operations, communities, and businesses that support the recreational summer flounder fishery. The minimum fish size is the largest of the alternatives and is paired with the lowest daily bag limit. The preferred measures of Alternative 3 would have the lowest socioeconomic impacts of the three alternatives while ensuring that the recreational harvest limit is not exceeded. Alternative 3 measures provide for the maximum recreational harvest opportunity while ensuring the recreational harvest limit is not exceeded. As such, Alternative 3 maximizes the potential revenues and social well-being of recreational anglers, charter/party vessels, and recreational fishing associated communities, and businesses while ensuring the requirements of the FMP, regulations, and rebuilding program are met.

7.5 Cumulative Effects

The previous EAs concluded that none of the alternatives would have any significant effect on the managed resources individually or cumulatively when considered in conjunction with other anthropogenic activities.

Please refer to sections 7.1 and 7.5 of the attached EAs for a full discussion of the direct impacts, indirect impacts, and cumulative impacts.

8.0 ESSENTIAL FISH HABITAT (EFH) ASSESSMENT

Because the proposed alternatives in this document are not expected to cause large changes in fishing effort, and because the principal gears used in the recreational fishery for these three species only minimally impact EFH, it is concluded that the proposed action will not have any adverse impact on EFH, nor affect critical habitat in any manner

not considered in prior consultations. Since the proposed recreational management measures for each species are a balance between meeting the FMP objectives of improving yield while ensuring that overfishing does not occur, and due to the lack of direct evidence to suggest that fishing effort on bottom habitats will actually increase due to this action, it is expected that this action will continue to minimize the adverse effects of this fishery on EFH to the extent practicable, pursuant to section 305(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act.

9.0 OTHER APPLICABLE LAWS

9.1 NEPA (Finding of No Significant Impact)

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 CFR 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not expected to jeopardize the sustainability of any target species that may be affected by the action, as described in section 7.0 of the original EAs for the 2006 and 2007 fishing years. As specified in the FMP, this proposed action is intended to maintain recreational landings to achieve the $F = 0.276$ target for summer flounder.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

The proposed action is not expected to jeopardize the sustainability of any non-target species. The alternative that is being considered is designed to constrain recreational landings to the recreational harvest limit specified through the FMP for the 2008 fishing year until new measures are developed and implemented to constrain landings to the target that will be revised in December 2007. The alternative contains only changes to existing recreational management measures for summer flounder, including the minimum recreational fish size, recreational possession limit and recreational season. Bycatch of non-target species in the recreational fishery using rod and reel or handline is not expected to be substantial.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?

The proposed action as described in section 7.0 of the original EAs for the 2006 and 2007 fishing years is not expected to cause damage to the ocean, coastal habitats, and/or EFH as defined under the Magnuson-Stevens Act and identified in the FMP. The area affected by the proposed action in the summer flounder, scup, and black sea bass fisheries has been identified as EFH for species managed by the Northeast Multispecies; Atlantic Sea Scallop; Spiny Dogfish; Atlantic Mackerel, Squid, and Butterfish; Atlantic Surfclam and Ocean Quahog; Bluefish; Atlantic Billfish; Spiny Dogfish; Monkfish; Atlantic Tunas, Swordfish and Sharks; Calico Scallop; Wreckfish; King and Spanish Mackerel; Atlantic Coast Red Drum; Shrimp; Stone Crab; Snapper-Grouper of the South Atlantic; Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic; and Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic FMPs. The primary gear utilized in the recreational harvest of summer flounder is rod and reel or handline. Although quantification of specific gear types on various bottom habitats is poorly understood, rod and reel and handlines are generally not associated with adverse impacts because the gear does not alter bottom structure.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

The proposed action is not expected to have a substantial adverse impact on public health or safety. The alternative contains only changes to existing management measures (*i.e.*, recreational minimum fish size, recreational possession limit, and recreational seasons). The management measures selected to achieve the recreational harvest limits provide a reasonable balance among size limits, possession limits and seasons, so as not to compromise public health or safety.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

The proposed action is not reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat for these species. The interaction between protected species and the gear used in the recreational summer flounder recreational fishery is minimal. As stated in section 6.3 of the original EAs for the 2006 and 2007 fishing years, the activities to be conducted under the proposed annual recreational specifications are within the scope of the FMP and do not change the basis for the determinations made in previous consultations.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area. As specified in the FMP, this proposed action is intended to reduce recreational landings to achieve the $F = 0.276$ target for summer flounder. The alternatives contain only changes to existing recreational

management measures for summer flounder, including the minimum recreational fish size, recreational possession limit, and recreational season. Bycatch of non-target species in the recreational fishery using rod and reel or handline is not expected to be substantial. The proposed action will likely ensure biodiversity and ecosystem stability over the long-term as the species continues to rebuild.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

As discussed in section 7.0 of the original EAs for the 2006 and 2007 fishing years, the proposed action is not expected to result in significant social or economic impacts, or in significant natural or physical environmental effects. Therefore, there are no significant social or economic impacts interrelated with significant natural or physical environmental impacts.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Measures contained in this supplemental EA are not expected to be controversial. The proposed action would implement measures for a portion of the upcoming fishing year until superseded by new measures designed to achieve the 2008 recreational harvest limits for summer flounder, as specified through the FMP. The proposed action is based on measures contained in the FMP, which have been in place for many years.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

This action merely revises the proposed annual management measures for the upcoming fishing year to achieve the recreational harvest limits for summer flounder in 2008, as specified through the FMP. These recreational fisheries are not known to be prosecuted in any unique areas such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. Therefore, the proposed action is not expected to have a substantial impact on any of these areas.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The impacts of the proposed measures on the human environment are described in section 7.0 of the original EAs for the 2006 and 2007 fishing years. The proposed action merely revises the annual management measures for the upcoming fishing year to achieve the recreational harvest limits for summer flounder, as specified through the FMP. The measures contained in this action are not expected to have highly uncertain, unique, or unknown risks on the human environment.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

As discussed in section 7.5 of the original EAs for the 2006 and 2007 fishing years, the proposed action is not expected to have individually insignificant but cumulatively significant impacts. The proposed actions, together with past and future actions, are not expected to result in significant cumulative impacts on the biological, physical, and human components of the environment.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

The impacts of the proposed measures on the human environment are described in section 7.0 of the original EAs for the 2006 and 2007 fishing years. The proposed action merely revises the annual management measures for the upcoming fishing year to achieve the recreational harvest limits for summer flounder, as specified through the FMP. The summer flounder recreational fishery is not known to be prosecuted in any areas that might affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause the loss or destruction of significant scientific, cultural, or historical resources. Therefore, the proposed action is not expected to affect any of these areas.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

This action proposes annual management measures for the upcoming fishing year to achieve the recreational harvest limits for summer flounder, as specified through the FMP. There is no evidence or indication that these fisheries have ever resulted in the introduction or spread of nonindigenous species. None of the specifications are expected to alter fishing methods or activities in the recreational fishery. Therefore, it is highly unlikely that the proposed specifications would be expected to result in the introduction or spread of a non-indigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

This action merely revises the annual management measures for the upcoming fishing year to achieve the recreational harvest limits for summer flounder, as specified through the FMP. None of the specifications are expected to alter fishing methods or activities in the recreational fishery. The proposed action is based on measures contained in the FMP, which have been in place for many years. None of these specifications result in significant effects or do they represent a decision in principle about a future consideration.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for the protection of the environment?

This action proposes annual management measures for the upcoming fishing year to achieve the recreational harvest limits for summer flounder, as specified through the FMP. None of the specifications are expected to alter fishing methods or activities such that they threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. In fact, the proposed measures have been found to be consistent with other applicable laws (see sections 9.2 - 9.9 of the original EAs for the 2006 and 2007 fishing years).

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The proposed action is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species. The alternative being considered is designed to achieve the recreational harvest limit specified through the FMP. The alternative contains only changes to existing recreational management measures for summer flounder, including the minimum recreational fish size, recreational possession limit, and recreational season for each of the species. Furthermore, bycatch of target and non-target species in the recreational fishery using rod and reel or handline is not expected to be substantial. Therefore, the proposed action is not expected to result in any cumulative adverse effects to target or non-target species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment as supplemented prepared for the 2007 Summer Flounder, Scup, and Black Sea Bass Recreational Specifications, it is hereby determined that the proposed actions in this specification package will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment as supplemented. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

Northeast Regional Administrator for Fisheries, NOAA

Date

9.2 ENDANGERED SPECIES ACT (ESA)

None of the recreational management alternatives contained in this document are expected to alter fishing methods or activities. Therefore, this supplemental action is not expected to affect endangered or threatened species or critical habitat in any manner not

considered in previous consultations on the fisheries. No additional formal or informal consultation was required for this action.

10.0 LIST OF AGENCIES AND PERSONS CONSULTED

This supplemental EA was prepared by Michael Ruccio of the NMFS Northeast Region Sustainable Fisheries Division. Michael Pentony of NMFS's Northeast Region and Sarah Thompson of the NMFS Northeast Region Regulatory Effectiveness Group provided guidance and review of drafts during the document's preparation. The NMFS Northeast Region NEPA coordinator, David Tomey, provided review and comment on the document during preparation of the final draft.