

**2007 Summer Flounder, Scup,
and Black Sea Bass Specifications
Supplemental Environmental Assessment**

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National Marine Fisheries Service

National Marine Fisheries Service
**One Blackburn Drive
Gloucester, MA 01930
(978) 281-9200 Tel.
(978) 281-9735 FAX**

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1.0 EXECUTIVE SUMMARY

This Supplemental Environmental Assessment (EA) updates the previously approved EA (attached) for the final rule that was implemented on December 14, 2006. This supplement was necessary because the recently Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) contained a change in the rebuilding period for summer flounder from that which was previously approved by the National Marine Fisheries Service (NMFS). Thus, NMFS evaluated an additional alternative for a revised Total Allowable Landings (TAL) for summer flounder to address the revised rebuilding period.

The purpose of this and the original action is to implement 2007 commercial management measures for the summer flounder fishery. 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. Management measures include commercial quotas, recreational harvest limits, and other measures to ensure that the annual fishing targets specified in the FMP for summer flounder are attained. The economic analyses presented for the various alternatives are principally for the commercial fishery. While general statements regarding potential changes in the recreational fishery due to changes in recreational harvest limits for summer flounder are made in this document, the effects of specific recreational management measures (i.e., bag limits, size limits, seasonal closures) will be analyzed when the Mid-Atlantic Fishery Management Council (Council) and Atlantic States Marine Fisheries Commission's (Commission) Summer Flounder, Scup and Black Sea Bass Board (Board) submit recommendations for 2007 recreational measures. A comprehensive document for the recreational specifications for summer flounder, scup, and black sea bass will be prepared after the December Council meeting.

Summer flounder is currently under a rebuilding plan. NMFS published a final rule containing the 2007 summer flounder TAL on December 14, 2006 (71 FR 75134). The 12.983 million lb TAL contained within that rule became effective on January 1, 2007.

In the interim since submitting the 2007 summer flounder TAL for publication and the effectiveness date, the Reauthorized Magnuson-Stevens Act was signed into law. Contained within the Reauthorized Magnuson-Stevens Act is the specific provision under section 120(a) that provides the Secretary the authority to extend the rebuilding time frame ending date for summer flounder from 2010, as originally required by the Magnuson-Stevens Act, to no later than January 1, 2013, provided that six specified criteria are met.

The Secretary has determined that these six criteria have been met and that there is good cause to extend the summer flounder rebuilding time frame to no later than January 1, 2013. Based on these determinations, the Secretary is proposing a preferred alternative of 17.112 million lb TAL, which is to be analyzed in this Supplemental EA. The 17.112 million lb TAL will be allocated as 10.27 million lb to the commercial sector and 6.84

million lb to the recreational sector. Thus, this Supplemental EA analyzes the impacts of the proposed 17.112 million lb TAL relative to the status quo TAL of 12.983 million lb.

The research set-aside (RSA) level is not being altered to ensure that the issuance of grants and exempted fishing permits required to conduct the research projects occurs in a timely manner. Thus, the RSA amount will remain at 389,490 lb of summer flounder.

This specifications package details all management alternatives for the summer flounder fishery evaluated for a one year period (2007). The 2007 specifications for scup and black sea bass are not proposed to be changed and are fully assessed in the attached EA.

Summer Flounder Alternatives

This alternative will serve as a Status Quo baseline for analysis in this Supplemental EA since it has already been implemented in the previous action. Under summer flounder alternative 6 (status quo/least restrictive alternative), the total allowable landings limit is 12.98 million lb for 2007. After deducting the RSA for summer flounder of 389,490 lb in 2007, the commercial quota is 7.56 million lb, and the adjusted recreational harvest limit is 5.04 million lb. This alternative has a 99 percent probability of not exceeding the overfishing threshold of F ($F_{\max}=0.276$). Alternative 6 is expected to result in positive biological impacts. There are no habitat or protected resources impacts associated with this alternative. In addition, no socioeconomic impacts are expected under this alternative.

Consistent with the revised rebuilding period reauthorized in the MSA, the preferred summer flounder alternative 7 recommends a total allowable landings limit of 17.112 million lb for 2007. After deducting the RSA for summer flounder of 389,490 lb in 2007, the commercial quota is 9.79 million lb, and the adjusted recreational harvest limit is 6.69 million lb. The TAL under this preferred alternative has a 75 percent probability of achieving an F of 0.203 in 2007, given the results of the updated stock assessment. Although the proposed TAL of 17.112 million lb TAL is an increase relative to the status quo TAL of 12.983 million lb, it is important to note as a matter of practicality that the proposed 17.112 million lb TAL is actually a decrease from the 23.59 million lb TAL, which was in effect throughout the 2006 fishing year (see attached EA). Overall, Alternative 7 is expected to meet rebuilding targets for the summer flounder stock within the revised rebuilding period and to result in positive biological impacts. In comparison to previously analyzed alternatives (see attached EA), there are no additional habitat or protected resources impacts associated with this revised 17.112 million lb TAL. Positive socioeconomic impacts will likely occur under this alternative relative to the status quo alternative due to the increase in total landings.

In addition, the Council recommended that the minimum fish size, mesh size, and other gear regulations for summer flounder remain in place for 2007.

Box ES-1. Overall qualitative summary of the expected impacts of various summer flounder alternatives considered in this document (2007). A minus sign signifies an expected negative impact, a plus sign signifies a positive impact, a zero is used for null impact, and “?” is used for uncertainty in an impact. Also note “S” is short-term and “L” is long-term.

Summer Flounder	Environmental Dimensions				
	Biological	EFH	Protected Resources	Economic	Social
Alternative 1 (See attached EA)	+	0	0	-(S)/(L)	-(S)/(L)
Alternative 2 (See attached EA)	+	0/+	0/+	-(S)/(L)	-(S)/(L)
Alternative 3 (See attached EA)	0/-(?)	0	0	0(S)/-(L)	0(S)/-(L)
Alternative 5 (See attached EA)	+	0	0	-(S)/(L)	-(S)/(L)
Alternative 6 (Status Quo)	0	0	0	0	0
Alternative 7 (Preferred)	+	0	0	-(S)/(L)	-(S)/(L)

Note: As discussed above, the no action (no TAL specified for 2007) alternative is presented as summer flounder alternative 4 in Section 5 of the attached EA but is not analyzed.

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SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT

4.0 INTRODUCTION AND BACKGROUND OF SPECIFICATION PROCESS

The following EA is supplemental to the attached EA, which was submitted on November 30, 2006. The sections below provide revised information for a new preferred alternative and its impacts based on the revision to the rebuilding period.

Summer flounder was under a 10-year rebuilding plan, which was established in 1999 through Amendment 12 of the FMP. NMFS published a final rule containing the 2007 summer flounder TAL on December 14, 2006 (71 FR 75134). The 12.983 million lb TAL contained within that rule became effective on January 1, 2007.

In the interim since submitting the 2007 summer flounder TAL for publication and the effectiveness date, the Reauthorized Magnuson-Stevens Act was signed into law. Contained within the Reauthorized Magnuson-Stevens Act is the specific provision under section 120(a) that provides the Secretary the authority to extend the rebuilding time frame ending date for summer flounder from 2010, as originally required by the Magnuson-Stevens Act, to no later than January 1, 2013, provided that several specific conditions are met. The Secretary must determine that:

- 1) Overfishing is not occurring in the summer flounder fishery and that a mechanism is in place to ensure that overfishing does not occur in the fishery; and stock biomass levels are increasing;
- 2) The biomass rebuilding target previously applicable to the summer flounder stock will be met or exceeded within the new time for rebuilding;
- 3) The extension period is based on the status and biology of the stock and the rate of rebuilding;
- 4) Monitoring will ensure rebuilding continues;
- 5) The extension meets the requirements of National Standard 1 found at section 301(a)(1) of the Magnuson-Stevens Act; and
- 6) The best scientific information available shows that the extension will allow continued rebuilding.

The Secretary has determined that these six criteria have been met and that there is good cause to extend the summer flounder rebuilding time frame to no later than January 1, 2013. Based on these determinations, the Secretary is proposing a preferred alternative of 17.112 million lb TAL. The 17.112 million lb TAL will be allocated as 10.27 million lb to the commercial sector and 6.84 million lb to the recreational sector. Thus, this Supplemental EA analyzes the impacts of the proposed 17.112 million lb TAL relative to the status quo TAL of 12.983 million lb.

The research set-aside (RSA) level is not being altered to ensure that the issuance of grants and exempted fishing permits required to conduct the research projects occurs in a timely manner. Thus, the RSA amount will remain at 389,490 lb of summer flounder.

The proposed specifications are needed to prevent overfishing and to achieve optimum yield. The purpose of the specifications is to establish an annual quota and other measures that will meet this need. Optimum yield is defined as the amount of fish which will provide the greatest overall benefit to the Nation in terms of food production and recreational opportunities and is based on the maximum sustainable yield for the managed species.

5.0 MANAGEMENT ALTERNATIVES

5.1 Summer Flounder

5.1.6 Alternative 6 – 12.98 million lb (Status Quo)

Alternative 6 is the status quo baseline for this supplemental EA since the 12.98 million lb TAL is currently in place and will be in effect on January 1, 2007. Note that the “true” No Action Alternative (Alternative 4 in the attached EA) was not a feasible alternative and thus, was not assessed in detail in the document.

Alternative 6 (Status Quo) for summer flounder is a constant TAL for 2007 through 2009 of 12.98 million lb (5.89 million kg). This constant TAL has a 99 percent probability of not exceeding the 2007 F_{max} target (0.276) and is projected to rebuild the summer flounder stock biomass to B_{MSY} by January 1, 2010. After deducting the RSA for summer flounder of 389,490 lb in 2007, the commercial quota is 7.56 million lb, and the adjusted recreational harvest limit is 5.04 million lb.

The current minimum fish size, minimum mesh regulations, and minimum mesh threshold will remain unchanged in 2007. The minimum fish size is 14"; the mesh size is a minimum of 5.5" diamond mesh or 6" square mesh applied throughout the body, extension(s), and codend portion of the net.

5.1.7 Alternative 7 - 17.112 million lb TAL (Preferred)

Consistent with the revised rebuilding period specified in the MSA reauthorization, Alternative 7 (Preferred) for summer flounder provides a revised TAL for 2007 of 17.112 million lb. This alternative has a 75 percent probability of achieving the F target ($F_{rebuild}$) necessary to ensure that the rebuilding target (B_{MSY} proxy) of 197 million lb spawning stock biomass, which was calculated for the original 10-year rebuilding period, is attained before January 1, 2013. The 17.112 million lb TAL will be allocated between the commercial and recreational components of the fishery in the same proportion as it was each year from 1993 to the present; 60 percent to the commercial fishery and 40 percent to the recreational fishery. In 2007, the commercial fishery would receive 10.27 million lb as a quota, and the recreational fishery would receive 6.84 million lb as a harvest limit. In addition, these quotas would be adjusted based on RSA deductions for summer flounder of 389,490 lb. After deducting the RSA for summer flounder of 389,490 lb in 2007, the commercial quota is 9.79 million lb, and the adjusted recreational harvest limit is 6.69 million lb.

The summer flounder commercial quota is allocated to each state based on 1980-1989 adjusted landings as detailed in Amendment 4 of the FMP. State commercial shares would range from negative quotas to 2.75 million lb in 2007.

The quotas presented in Box 5.1 account for a preliminary overage (as of July 31, 2006) of 0.05 million lb (0.02 million kg) in Delaware. The commercial quota and state shares

are provisional and would be adjusted in early 2007 to reflect noncompliance by the states, i.e., additional 2006 quota excesses would be deducted from the 2007 quota allocation.

In 1998, the Council and Board established a system whereby 15 percent of each state's quota for summer flounder would be set-aside to reduce discards after the closure of the directed commercial fishery and allow for summer flounder landings to continue throughout the fishing season. This program would continue in 2007. For fishermen to land the incidental catch allowance in a state, the Commission recommended that a state implement possession limits such that summer flounder on board cannot exceed 10 percent of other species on board for any trip set under the incidental catch allocation. Possession limits must be sufficiently restrictive to allow the incidental catch fishery to remain open for the entire year without exceeding the state's overall quota. In addition, the Commission recommended that states implement programs to collect additional data on discards in the commercial fishery.

Box 5.1. The amount of summer flounder allocated to the commercial fishery in each state based on coastwide quota alternatives and RSAs in 2007. Allocations account for overages as of July 31, 2006 and have been adjusted for RSA.

State	Percent	Quota Allocation (lb)*					
		Alternative 1**	Alternative 2**	Alternative 3**	Alternative 5**	Alternative 6***	Alternative 7****
ME	0.04756	5,517	1,445	6,570	6,732	3,596	4,772
NH	0.00046	53	14	64	53	35	46
MA	6.82046	791,157	207,208	942,162	965,504	515,627	654,285
RI	15.68298	1,819,189	476,455	2,166,410	2,220,082	1,185,633	1,573,553
CT	2.25708	261,816	68,571	311,788	319,512	170,635	209,994
NY	7.64699	887,033	232,319	1,056,337	1,082,508	578,112	619,123
NJ	16.72499	1,940,059	508,112	2,310,350	2,367,590	1,264,409	1,678,103
DE	0.01779	-45,295	-46,819	-44,902	-48,010	-49,184	-48,743
MD	2.0391	236,531	61,949	281,676	288,655	154,156	204,593
VA	21.31676	2,472,694	647,612	2,944,647	3,017,601	1,611,547	2,138,818
NC	27.44584	3,183,652	833,816	3,791,303	3,885,233	2,074,906	2,753,780
Total	100	11,597,701	3,037,500	13,811,307	14,156,000	7,560,000	9,788,325

*Total quota is the summation of all states having allocation. A state with a negative number has an allocation of zero (0).

**See attached EA for alternative description and analysis.

***Status Quo Alternative.

****Preferred Alternative.

The proposed summer flounder minimum fish size, minimum mesh, and minimum mesh threshold regulations described under the status quo alternative 6 for summer flounder also apply here.

7.0 ENVIRONMENTAL CONSEQUENCES AND REGULATORY ECONOMIC EVALUATION OF ALTERNATIVES

7.1 Summer Flounder Alternatives

7.1.5 Alternative 6 (Status Quo)

7.1.5.1 Biological Impacts

Alternative 6 is the status quo alternative and specifies a TAL of 12.98 million lb (a 7.56 million lb adjusted commercial quota; a 5.04 million lb adjusted recreational harvest limit; a 389,490 lb RSA) in 2007 for summer flounder. The TAL under this alternative as well as the other summer flounder alternative was allocated to the commercial and recreational sectors as described in section 5.0 of the attached EA, and the commercial quotas and the recreational harvest limits were adjusted as described in section 4.3 of the attached EA.

The TAL under this status quo alternative has a 99 percent probability of not exceeding the overfishing threshold of F. The updated 2006 assessment indicates that stock biomass levels are increasing, although stock growth has slowed. In addition, recruitment since 1988 has been estimated to have generally improved, although the 2003 and 2005 year classes were estimated to have been well below the median (33 million fish) at 24.5 million fish and 14.5 million fish, respectively.

As previously stated, the commercial fishery for summer flounder is primarily prosecuted with otter trawls. This fishery often harvests mixed species, including scup, black sea bass, squid, Atlantic mackerel, and silver hake. Given the mixed species nature of the summer flounder fishery, incidental catch of other species does occur. The TAL under this alternative was analyzed previously in the attached EA and was not expected to result in substantial biological impacts to the summer flounder stock or other fisheries in 2007 relative to 2006.

Under this alternative, the current minimum fish size, minimum mesh regulations, and minimum mesh threshold regulations remain unchanged in 2007. As such, these measures are not expected to result in biological impacts (positive or negative) to the summer flounder stock or other fisheries in 2007 relative to 2006.

The purpose of the discard set-aside measures established by the Commission is to decrease discards of sub-legal summer flounder, as well as reduce regulatory discards that could occur as a result of possession limits set by the states. A decrease in the amount of discards would increase the likelihood that the target exploitation rate would be achieved in 2007, because true incidental catch would now be landed and applied to the quota.

The overall summer flounder TAL for this alternative includes a maximum RSA of 389,490 lb for 2007. The results of the research conducted through the RSA program benefit both the summer flounder stock and the summer flounder fishery. The exemptions required under the research projects are analyzed in section 7.4.2 of the attached EA. Because landings under RSA projects count against the overall quota, the biological/ecological impacts do not change relative to 2006. In addition, potential

benefits could occur as new data or other information pertaining to this fishery are obtained for management or stock assessment purposes through the RSA program.

The status quo alternative implements an adjusted recreational harvest limit of 5.04 million lb in 2007. If recreational landings are the same in 2006 as in 2005 (10.02 million lb), the adjusted recreational harvest limits may constrain recreational landings in 2007. However, continued rebuilding to the B_{msy} level would be a positive impact on the summer flounder stock. As such, these recreational harvest limits are expected to result in positive biological impacts to the summer flounder stock in 2007.

7.1.5.2 Habitat Impacts

The principal commercial gear used to harvest summer flounder is the bottom otter trawl with the other major gear including the scallop dredge. The nature of impacts by these gears on the ocean bottom habitat is described in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP. Data on the extent of impacts by specific gear on various bottom types are not available. Although the specific consequences for habitat are unknown, it can be assumed that the extent of trawling and dredging impacts are related to fishing effort.

The status quo TAL under this alternative was analyzed in the attached EA. As such, these measures are not expected to result in biological impacts (positive or negative) to habitat in 2007 relative to 2006.

Under this alternative, the current summer flounder minimum fish size, minimum mesh regulations, and minimum mesh threshold remain unchanged in 2007. These actions are not expected to change effort in 2007 as compared to 2006 and thus, are not expected to increase adverse impacts on EFH.

Since the quota for this species meets the FMP objective of increasing yields while ensuring that overfishing does not occur, and due to the lack of evidence to suggest that fishing effort on bottom habitats will actually increase due to this action, this action minimizes the adverse effects of fishing on EFH to the extent practicable, pursuant to section 305 (a)(7) of the MSFCMA..

7.1.5.3 Impacts on Endangered and Other Protected Species

Commercial capture of summer flounder occurs predominately in the Mid-Atlantic mixed trawl fishery. Minor amounts of summer flounder are landed by the Mid-Atlantic commercial sea scallop dredge fishery, the hook and line fishery, and the pound net fishery. All of these are Category III fisheries as defined in the NMFS 2006 List of Fisheries, except the Mid-Atlantic mixed trawl fishery. Category III fisheries are not associated with any documented serious injuries or mortalities of marine mammals. There are no documented marine mammal species or stocks incidentally killed or injured in the Mid-Atlantic mixed trawl fishery. All fishing gears are required to meet gear

restrictions under the Atlantic Large Whale Take Reduction Plan (ALWTRP), Harbor Porpoise Take Reduction Plan (HPTRP), MMPA, and the ESA.

Under this alternative, the current summer flounder minimum fish size, minimum mesh regulations, and minimum mesh threshold regulations will remain unchanged in 2007. As such, these measures are not expected to change effort in 2007 as compared to 2006 and thus, are not expected to increase adverse impacts on endangered and other protected species.

Changes in overall fishing effort as a result of the summer flounder commercial quota are unknown. However, this document concludes that the status quo alternative will not affect endangered and threatened species in any manner not considered in prior consultations on these fisheries and will have no additional adverse impact on marine mammals in 2007 relative to 2006.

7.1.5.4 Socioeconomic Impacts

The proposed 2007 TAL of 12.98 million lb for summer flounder includes a preliminary adjusted commercial quota of 7.56 million lb; a preliminary adjusted recreational harvest limit of 5.04 million lb; and a maximum RSA of 389,490 lb for 2007. Since this is the status quo alternative, no impacts are expected for 2007 in relation to what is presently occurring.

Under this alternative, the current summer flounder minimum fish size, minimum mesh regulations, and minimum mesh threshold regulations will remain unchanged in 2007. As such, these measures are not expected to result in changes to the economic and social aspects of the fishery in 2007 relative to 2006.

Under this alternative, positive social and economic impacts will be realized in the long-term, once the stock is rebuilt to sustainable levels. The TAL under this status quo alternative has a 99 percent probability of not exceeding the 2007 F target (0.276), given the results of the updated stock assessment.

7.1.6 Alternative 7 (Preferred)

7.1.6.1 Biological Impacts

Alternative 7 specifies a revised TAL of 17.112 million lb in 2007 for summer flounder. The TAL under this alternative as well as the other summer flounder alternative was allocated to the commercial and recreational sectors as described in section 5.0 of the attached EA, and the commercial quotas and the recreational harvest limits were adjusted as described in section 4.3 of the attached EA.

The 2007 TAL under this alternative is 4.132 million lb greater (32 percent) than the summer flounder TAL under the status quo alternative (alternative 6) in 2007. The 2007 TAL under this alternative is 2.788 million lb less than the Council-preferred summer

flounder TAL of 19.9 million lb, which was analyzed in the attached EA. As such, the preferred summer flounder TAL of 17.112 million lb and the associated allocations are not expected to result in biological impacts to the summer flounder stock in 2007 since this alternative falls within the range of what was previously analyzed and found not to result in biological impacts. The proposed TAL is also considerably lower than the 2006 TAL that was implemented the previous year (Alternative 3 in the attached EA).

The TAL under this preferred alternative has a 75 percent probability of achieving the target F of 0.203 in 2007, which is necessary for stock rebuilding by January 1, 2013. This 75 percent probability is in comparison to the 99 percent probability of the status quo alternative (Alternative 6) of not exceeding the overfishing threshold of F . Although the probabilities of meeting the F target differ between the two alternatives, both alternatives have a high probability of meeting the objectives for the 2007 fishing year and within the revised rebuilding period. The updated 2006 assessment indicates that stock biomass levels are increasing, although stock growth has slowed. Spawning stock biomass declined 69 percent from 1983 to 1989 (22,582 mt to 7,025 mt), but with improved recruitment and decreased fishing mortality, it had increased to 47,498 mt by 2005. The biomass target previously applied will be met or exceeded within the new rebuilding time frame. NEFSC analysis indicates that the stock can rebuild within the extended time frame by maintaining a constant F strategy at the $F=0.203$ level for the remainder of the rebuilding period.

The proposed commercial TAL under this alternative is not expected to result in negative impacts to other fisheries relative to the status quo. The commercial fishery for summer flounder is primarily prosecuted with otter trawls. This fishery often harvests mixed species, including scup, black sea bass, squid, Atlantic mackerel, and silver hake. Given the mixed species nature of the summer flounder fishery, incidental catch of other species does occur. The 2007 TAL under this alternative is 2.788 million lb less than the Council-preferred summer flounder TAL of 19.9 million lb, which was analyzed in the attached EA. While it is not known with certainty how the proposed measures will affect fishing effort, the preferred summer flounder TAL of 17.112 million lb and the associated allocations are not expected to result in biological impacts to other fisheries in 2007 since this alternative falls within the range of what was previously analyzed and found not to result in biological impacts.

Under this alternative, the current minimum fish size, minimum mesh regulations, and minimum mesh threshold regulations remain unchanged in 2007. As such, these measures are not expected to result in biological impacts (positive or negative) to the summer flounder stock or other fisheries in 2007 relative to 2006.

The purpose of the discard set-aside measures established by the Commission is to decrease discards of sub-legal summer flounder, as well as reduce regulatory discards that could occur as a result of possession limits set by the states. A decrease in the amount of discards would increase the likelihood that the target exploitation rate would be achieved in 2007, because true incidental catch would now be landed and applied to the quota.

The results of the research conducted through the RSA program benefit both the summer flounder stock and the summer flounder fishery. The exemptions required under the research projects are analyzed in section 7.4.2 of the attached EA. Because landings under RSA projects count against the overall quota, the biological/ecological impacts do not change relative to 2006. In addition, potential benefits could occur as new data or other information pertaining to this fishery are obtained for management or stock assessment purposes through the RSA program.

The preferred alternative implements a recreational harvest limit of 6.84 million lb in 2007, which will be adjusted based on RSA deductions. If recreational landings are the same in 2006 as in 2005 (10.02 million lb), the adjusted recreational harvest limits may constrain recreational landings in 2007. The recreational limits under this alternative allow for more recreational landings in 2007 compared to the status quo alternative.

Although the TAL under the preferred alternative is greater than the status quo alternative, the summer flounder measures under the preferred alternative are expected to have positive impacts on the summer flounder stock and to meet the required rebuilding time frame.

7.1.6.2 Habitat Impacts

The discussion presented in section 7.1.5.2 (alternative 6 – status quo alternative) regarding the types of gear used in the summer flounder fishery, potential gear impacts on habitat, and impacts of quota changes also applies here.

The revised 2007 TAL under this alternative is 2.788 million lb less than the Council-preferred summer flounder TAL of 19.9 million lb, which was analyzed in the attached EA. It is difficult to predict precisely how this quota will affect fishing effort on EFH. Given the range of potential habitat impacts, depending upon whether fishing effort increases or decreases, the preferred alternative may have effects on EFH that range from the same as existing to impacts that are more or less than the existing impacts. Although the TAL under the preferred alternative is greater than the status quo alternative, a change in the proposed quota is not necessarily directly proportional to a change in fishing effort, since there are factors other than the TAL that affect fishing effort. For example, if species abundance has increased compared to past years' abundances, catch-per-unit-effort may increase as well, which results in the same number of tows landing the increased TAL. Thus, an increase in the TAL compared to the status quo alternative does not directly correlate into an increase in fishing effort and thus, into an increase in gear contacting the bottom habitat. Furthermore, NMFS has concluded that there is a lack of direct evidence to suggest that fishing effort for the summer flounder fishery on bottom habitats will actually increase due to proposed increases in quota.¹ Impacts on EFH from Alternative 7 may range from increased adverse impacts to impacts that are less than or

¹ EFH Consultation for 2005 and 2006 Fishing Year Specifications for the Summer Flounder Fishery and the 2005 Scup and Black Sea Bass Fisheries. November 1, 2004. Memorandum from Patricia A. Kurkul to the File.

equal to the existing impacts, relative to the status quo alternative. However, the preferred summer flounder TAL of 17.112 million lb and the associated allocations are not expected to result in significant impacts to habitat in 2007 since this alternative falls within the range of what was previously analyzed and found not to result in significant impacts to habitat. Therefore, the summer flounder measures under the preferred alternative are not expected to have substantial impacts on habitat.

Under this alternative, the current summer flounder minimum fish size, minimum mesh regulations, and minimum mesh threshold remain unchanged in 2007. These actions are not expected to change effort in 2007 as compared to 2006 and thus, are not expected to increase adverse impacts on EFH.

Since the quota for this species meets the FMP objective of increasing yields while ensuring that overfishing does not occur, and due to the lack of evidence to suggest that fishing effort on bottom habitats will actually increase due to this action, this action minimizes the adverse effects of fishing on EFH to the extent practicable, pursuant to section 305 (a)(7) of the MSFCMA.

7.1.6.3 Impacts on Endangered and Other Protected Species

The discussion presented in section 7.1.5.3 regarding the types of gear used in the capture of summer flounder in the commercial fishery also applies here.

The revised 2007 TAL under this alternative is 2.788 million lb less than the Council-preferred summer flounder TAL of 19.9 million lb, which was analyzed in the attached EA; however, other management measures remain unaffected. Maintaining the summer flounder minimum fish size, minimum mesh regulations, and minimum mesh threshold in place will not impact protected resources in 2007 as compared to impacts in 2006, because these measures are not expected to change fishing effort. Changes in overall fishing effort as a result of the summer flounder commercial quota are unknown. Although the TAL under the preferred alternative is greater than the status quo alternative, the summer flounder measures under the preferred alternative are not expected to have substantial impacts on protected resources. A change in the proposed quota is not necessarily directly proportional to a change in fishing effort, since there are factors other than the TAL that affect fishing effort. For example, if species abundance has increased compared to past years' abundances, catch-per-unit-effort may increase as well, which results in the same number of tows landing the increased TAL. Thus, an increase in the TAL compared to the status quo alternative does not directly correlate into an increase in fishing effort. Impacts on protected species from Alternative 7 may range from increased impacts to impacts that are less than or equal to the existing impacts, relative to the status quo alternative. However, the preferred summer flounder TAL of 17.112 million lb and the associated allocations are not expected to result in significant impacts to protected species in 2007 since this alternative falls within the range of what was previously analyzed and found not to result in significant impacts to protected species. Furthermore, the preferred summer flounder TAL is less than the TAL that was in effect for the 2006 fishing year (23.59 million lb) and found not to have any adverse

impacts on protected species. Therefore, the summer flounder measures under the preferred alternative are not expected to have substantial impacts on protected species during the 2007 fishing year.

7.1.6.4 Socioeconomic Impacts

The proposed revised 2007 TAL of 17.112 million lb for summer flounder is approximately 32 percent greater than the TAL under the status quo alternative (alternative 2).

The commercial landings level under this alternative represents a 32 percent increase in landings in 2007 relative to the status quo alternative. As a result of greater adjusted commercial quota for summer flounder, positive economic impacts on the summer flounder fishery are likely to occur, relative to the status quo alternative. Each state's allocation will increase under these commercial quotas (Box 5.1). Overall, the projected increase in landings in 2007 under this alternative will likely result in revenue increase relative to the status quo. However, it is possible that given the potential increase in summer flounder landings, price for this species may decrease if all other factors are held constant when compared to the status quo alternative. If this occurs, a decrease in the price for summer flounder may mitigate some of the revenue increases associated with greater quantities of summer flounder quota availability under this alternative, relative to the status quo alternative. More positive economic impacts under this alternative are expected when compared to the status quo.

Under this alternative the current summer flounder minimum fish size, minimum mesh regulations, and minimum mesh threshold regulations will remain unchanged in 2007. As such, these measures are not expected to result in changes to the economic and social aspects of the fishery in 2007 relative to 2006.

The recreational harvest limits under this alternative represent a 32 percent increase in landings in 2007, relative to the status quo alternative. If recreational landings are the same in 2006 as in 2005 (10.02 million lb), the adjusted recreational harvest limits will constrain recreational landings in 2007. As such, it is likely that more restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter seasons) be required to prevent anglers from exceeding the recreational harvest limit in 2007. It is expected that this alternative will likely increase recreational satisfaction for the summer flounder recreational fishery, relative to the status quo alternative. At the present time, there is neither behavioral nor demand data available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. In the summer flounder fishery, there is no mechanism to deduct overages directly from the recreational harvest limit. Any overages must be addressed by way of adjustments to the management measures. While it is likely that proposed management measures may restrict the recreational fishery for 2007, and these measures may cause some decrease in recreational satisfaction (i.e., low bag limit, larger fish size or closed season), there is no indication that any of these measures may lead to a decline in the demand for party/charter boat trips. Currently, the market demand for this sector is relatively stable.

Overall, it is expected that positive social and economic impacts may occur because of the increase in total landings (in 2007), relative to the status quo measures for summer flounder. In addition, positive social and economic impacts will be realized in the long-term, once the stock is rebuilt to sustainable levels. The TAL under this preferred alternative has a 75 percent probability of achieving the target F of 0.203 in 2007, given the results of the updated stock assessment.

7.5 Cumulative Impacts of Preferred Alternative

The final specifications are considered the most reasonable to achieve the fishery conservation objectives while minimizing the impacts on fishing communities as per the objectives of the FMP. This section supplements the cumulative effects analysis presented in the attached EA. For more detailed information regarding the definition of cumulative effects and descriptions of past, present, and reasonably foreseeable future actions, please refer to the attached EA.

The cumulative effects of the proposed quotas will be examined for the following five areas: targeted species, non-targeted species, protected species, habitat, and communities.

7.5.2 Targeted Fishery Resources

The above described conservation and management measures have prevented overfishing, while achieving, on a continuing basis, the optimum yield for summer flounder and the United States fishing industry. Summer flounder have seen improvements since management measures were implemented. For example, the summer flounder stock is at record levels, and the resource is no longer overfished and overfishing is not occurring. The fishing mortality rate estimated for 2005 is 0.53, a significant decline from the 1.32 estimated for 1994 and above the threshold F of 0.276.

The Council manages this species only in the EEZ. Any anthropogenic activities in the EEZ that did not consider this species could impact populations locally. Although anthropogenic projects such as beach replenishment and ocean dumping in the past have had effects on summer flounder, it is unlikely that any anthropogenic activity could significantly impact any population on more than simply a local level, since this species occurs over wide areas of the mid and north Atlantic.

Although it would increase overall fishing effort relative to the status quo alternative (Alternative 6), the proposed TAL is actually a reduction when compared to the 2006 TAL of 23.59 million lb of summer flounder, which was in effect throughout the 2006 fishing year. Thus, when added to the other actions, the revised 2007 TAL still would have a net positive cumulative effect on Summer Flounder since the reduced TAL relative to the 2006 TAL would provide for optimum yield and would not result in any significant cumulative impacts. The resultant cumulative effect over time would be to continue the rebuilding of the stock. Setting the proposed quota continues to support the

sustainability of this species as characterized in the Summer Flounder, Scup, and Black Sea Bass FMP.

7.5.3 Non-Target Species or Bycatch

National Standard 9 addresses bycatch in fisheries. This National Standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can impede efforts to protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation in two ways. First, bycatch can substantially increase the uncertainty concerning total fishing-related mortality, making it more difficult to assess the status of stocks, to set the appropriate optimal yield (OY) and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Second, bycatch may preclude other more productive uses of fishery resources.

The term "bycatch" means fish that are harvested in a fishery, but that are not sold or kept for personal use. Bycatch includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include any fish that are legally retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade. Bycatch does not include fish released alive under a recreational catch-and-release fishery management program. A catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch.

The commercial fishery for summer flounder is primarily prosecuted with otter trawls. These fisheries are managed principally through the specification of annual quotas. In addition, there are other management measures in place which affect discard rates in the summer flounder fishery (e.g., minimum size regulation, mesh size/mesh thresholds, and possession limits).

Given the mixed fishery nature of the summer flounder fishery, discards of targeted species and/or incidental species will occur. Landings data indicate that vessels that land summer flounder also harvest other species throughout the year. These fisheries are mixed fisheries, where squid, Atlantic mackerel, silver hake, skates, and other species are harvested with summer flounder, scup, and/or black sea bass.

The nature of the data makes it difficult to develop any definitive or reliable conclusions about discards for these fisheries especially during the periods or in areas where sea sampling has not occurred. It is difficult for the Council and Commission to modify or add management measures to further minimize discards if the data are not available to define the nature and scope of the discard problem or the data indicate that a discard problem does not exist.

The Council recognizes the need for improved estimates of discards for all of the fisheries managed under this FMP. The Council has requested increased at-sea sampling intensity over a broader temporal and geographical scope than is currently available.

The lack of discard data for summer flounder has hampered the ability of the Council and Commission to respond to potential discard problems in the commercial fisheries. The collection of additional data by NMFS will allow the Council and Commission to more effectively respond to discard problems by changes in mesh, threshold and minimum size regulations or by implementing season and area closures in response to changes in fishermen behavior or an increased level of discards.

There are also significant recreational fisheries for summer flounder. A large portion of the summer flounder that are caught is released after capture. It is estimated that 10 percent of the summer flounder that are caught and released by anglers die after release, i.e., the majority of the fish are released alive and are expected to survive after release. The fish that survive are not defined as bycatch under the SFA. The Council and Commission believe that information and education programs relative to proper catch and release techniques for summer flounder and other species caught by recreational fishermen should help to maximize the number of these species released alive.

Current recreational management measures could affect the discards of summer flounder. These measures include a possession limit, size limit, and season. The effects of the possession limit would be greatest at small limits and be progressively less at larger limits. The size limit would have similar effects, but the level of discarding will be dependent upon the levels of incoming recruitment and subsequent abundance of small fish. Seasonal effects would differ depending on the length of the season and the amount of summer flounder caught while targeting other species.

Although the revised 2007 TAL would increase overall fishing effort relative to the status quo alternative (Alternative 6), the revised TAL is actually a reduction when compared to the 2006 TAL of 23.59 million lb of summer flounder, which was in effect throughout the 2006 fishing year. Thus, when added to the other actions, the revised 2007 TAL still would have a net positive cumulative effect on non-target species since it is a reduction relative to the 2006 TAL. Therefore, the revised 2007 TAL is not expected to result in increased effort or greater catch rates of other species, and no cumulative effects to non-target species are anticipated.

7.5.4 Protected Species

There are numerous species which inhabit the environment within the management unit of this FMP that are afforded protection under the ESA of 1973 (i.e., for those designated as threatened or endangered) and/or the MMPA of 1972. Sixteen are classified as endangered or threatened under the ESA, while the remainder is protected by the provisions of the MMPA. The Council examined the list (section 6.3) of species protected by the ESA, the MMPA, or the Migratory Bird Act of 1918 that may be found in the environment utilized by the summer flounder, scup, and black sea bass fisheries.

Adverse effects to ESA/MMPA species are occurring, as discussed in Appendix B of the attached EA. These effects will continue to occur until further action on recovery plans and take reduction plans are implemented.

The 2006 LOF indicates that the Mid-Atlantic bottom trawl fishery is a Category II fishery. There are no documented marine mammal species or stocks incidentally killed or injured in the Mid-Atlantic bottom trawl fishery. The Atlantic mixed species trap/pot fishery is listed as a Category II fishery with incidental injuries and kills of fin whales occurring in the Western North Atlantic. Summer flounder are caught in the bottom trawl fishery and also smaller quantities are caught by the Mid-Atlantic commercial sea scallop dredge fishery, the hook and line fishery, and the pound net fishery. All three of these fisheries are also listed as Category III under the 2006 LOF, and none of them have documented marine mammal takes.

Although the revised 2007 TAL would increase overall fishing effort relative to the status quo alternative (Alternative 6), the revised TAL is actually a reduction when compared to the 2006 TAL of 23.59 million lb of summer flounder, which was in effect throughout the 2006 fishing year. Thus, when added to the other actions, the revised 2007 TAL still would have a net positive cumulative effect on protected resources since it is a reduction relative to the 2006 TAL. Therefore, the revised 2007 TAL is not expected to result in increased fishing effort or in increased gear interactions with any protected species, and no cumulative effects to protected species are anticipated. .

7.5.5 Habitat (Including EFH Assessment)

The principal commercial gear used to harvest summer flounder is the bottom otter trawl with the other major gear including the scallop dredge. The nature of impacts by these gears on the ocean bottom habitat is described in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP. Data on the extent of impacts by specific gear on various bottom types are not available. Although the specific consequences for habitat are unknown, it can be assumed that the extent of trawling and dredging impacts are related to fishing effort.

Although the revised 2007 TAL would increase overall fishing effort relative to the status quo alternative (Alternative 6), the revised TAL is actually a reduction when compared to the 2006 TAL of 23.59 million lb of summer flounder, which was in effect throughout the 2006 fishing year. Thus, when added to the other actions, the revised 2007 TAL still would have a net positive cumulative effect on habitat since it is a reduction relative to the 2006 TAL. Therefore, the revised 2007 TAL is not expected to result in increased fishing effort or increased interactions between fishing gear and bottom habitat. Thus, no cumulative effects to habitat are anticipated.

7.5.6 Communities

National Standard 8 requires that management measures take into account the fishing communities. The ports and communities that are dependent on summer flounder are

fully described in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP (section 3.4.2). To examine recent landings patterns among ports, 2005 NMFS dealer data are used. The top commercial landings ports for summer flounder, scup, and black sea bass by pounds landed are shown in Table 3 of the attached EA.

Overall, the ports and communities involved in the summer flounder fisheries will likely encounter some positive impacts from the revised quota for this species, relative to the status quo. However, it is possible that given the potential increase in summer flounder landings compared to the status quo, price for this species may decrease if all other factors are held constant. If this occurs, a decrease in the price for summer flounder may mitigate some of the revenue increases associated with greater quantities of summer flounder quota available and thus reducing positive impacts to ports and communities. With regard to the specific quota recommendations proposed in this document, impacts to the affected human environment are described in section 7.0. In addition, as previously stated, the proposed summer flounder measures are expected to produce positive biological and social and economic impacts in the long-term as the stock rebuilds to sustainable levels; thus, there would be no significant cumulative impacts to human communities.

7.5.11 Conclusions

Neither the proposed quota nor other management measures will have any significant effect on the target species or non-target species individually, or in conjunction with other anthropogenic activities. The proposed action, together with past and future actions are expected to result in some positive cumulative impacts on the biological, physical, and human components of the environment. As long as management continues to prevent overfishing and continue the rebuilding process, the fisheries and their associated communities will prosper.

The past and present actions, which include actions taken through the FMP, and subsequent amendments, frameworks, and specifications documents (not including those proposed in this document), have been used to develop the regulatory programs to manage the summer flounder fishery and have established effort levels and gear requirements. This has positively impacted non-target species, habitat (including EFH), and protected resources through reduced interactions, either through effort controls or gear requirements. These actions have been consistent with the national standards and have had indirect positive impacts on the managed resources. Through sustainable management of the resources, domestic businesses and human communities have benefited, although some indirect negative impacts on human communities have occurred due to reduced availability of the resources for some participants. The overall impacts of these past actions on the VECs have been indirectly positive.

Non-fishing activities which have occurred in the past and present, and may continue in the reasonably foreseeable future (i.e., offshore disposal of dredged materials, beach nourishment, marine transportation, etc.) are localized in nearshore areas and marine project areas where they occur. Therefore, the magnitude of those impacts on the

managed resource is expected to be limited. Non-fishing impacts such as agricultural runoff or those from natural disturbance (i.e., hurricane) may be much broader in scope, and those impacts may be of a larger magnitude. The impacts of these non-fishing activities on the productivity of the managed resources and on the other VECs is unquantifiable, although overall many of these actions would be expected to be indirectly negative. NMFS has several means under which it can review non-fishing actions of other Federal or state agencies that may impact NMFS' managed resources prior to permitting or implementation of those projects. This serves to minimize the extent and magnitude of indirect negative impacts those actions could have on resources under NMFS' jurisdiction.

In terms of RFF actions, the development of Amendment 14 and 15 to the FMP would continue to have indirect positive impacts of the managed resources, non-target species, habitat, protected resources, and human communities, as described above for all FMP related actions. Many of the non-fishing disturbances, anthropogenic or natural, would continue to impact the VECs in the RFF as well.

The impacts of this proposed action on the VECs are described above. This action builds on actions taken in the original FMP, subsequent amendments, and the annual specification process for the 2006 fishing year. When this action is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably foreseeable future actions, the specifications are not expected to result in any significant impacts, positive or negative. Based on the information and analyses presented in this document, including the attached EA, there are no significant cumulative effects associated with the proposed revised summer flounder specifications for 2007.

9.0 OTHER APPLICABLE LAWS

9.1 NEPA (FONSI)

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 C.F.R. 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 specifications presented in this document are not expected to jeopardize the sustainability of any target species affected by the action. The proposed quota specifications for summer flounder are consistent with the FMP objectives. The

preferred summer flounder TAL of 17.112 million lb for 2007 has a 75% probability of achieving the target F in the rebuilding plan by January 1, 2013. The proposed action will ensure the long-term sustainability of harvests from the summer flounder stock.

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

The proposed specifications presented in this supplement are not expected to jeopardize the sustainability of any non-target species. The proposed measures are not expected to alter fishing methods or activities. In addition, despite the increased TAL over the status quo alternative, the proposed specifications are not expected to increase fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year.

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 EA 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. In general, bottom-tending mobile gear, primarily otter trawls, has the potential to adversely affect EFH for the species detailed in section 6.2 of the attached EA. No adverse impacts to the marine habitats or EFH are expected. Similarly, none of the other measures included in the proposed action will have any adverse habitat impact.

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

None of the measures alters the manner in which the industry conducts fishing activities for the target species. Therefore, no changes in fishing behavior that would affect safety are anticipated. The overall effect of the proposed actions on this fishery, including the communities in which it operates, will not impact adversely public health or safety. NMFS will consider comments received concerning safety and public health issues.

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 specifications are not expected to alter fishing methods or activities. In addition, despite the increased TAL over the status quo alternative, none of the proposed specifications are expected to increase fishing effort or the spatial and/or temporal distribution of current fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year (see section 7.0). Therefore, this action is not expected to affect endangered or threatened species or critical habitat in any manner not considered in previous consultations on the fishery.

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. This action merely revises the proposed annual commercial quotas and other management measures in 2007 for the summer flounder fishery. The proposed specifications are not expected to alter fishing methods or activities. In addition, despite the increased TAL over the status quo alternative, the proposed specifications are not expected to increase fishing effort or the spatial and/or temporal distribution of current fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year.

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

The proposed action is not expected to have a substantial impact on the natural or physical environment. Commercial capture of summer flounder occurs predominately in the Mid-Atlantic mixed trawl fishery. In addition, a number of non-target species are taken incidentally in the prosecution of this fishery. However, despite the increased TAL over the status quo alternative, the specifications are not expected to alter fishing methods or activities and are not expected to increase fishing effort or the spatial and/or temporal distribution of current fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year. Therefore, there are no social or economic impacts interrelated with significant natural or physical environmental effects.

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

The impacts of the proposed measures on the human environment are described in section 7.0 of the EA. The proposed action merely revises the proposed annual commercial quotas and other management measures in 2007 for the summer flounder fishery. The proposed action is based on measures contained in the FMP, which have been in place for many years. In addition, the scientific information upon which the annual quotas are based has been peer reviewed and is the most recent information available. Thus, the measures contained in this action are not expected to be highly controversial.

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 commercial quotas and other management measures in 2007 for the summer flounder fishery. This fishery is 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 EA. The proposed action merely revises the annual commercial quota, recreational harvest limit, and other management measures in 2007 for the summer flounder fishery. Despite the increased TAL over the status quo alternative, the proposed specifications are not expected to alter fishing methods or activities and are not expected to increase fishing effort or the spatial and/or temporal distribution of current fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year. The measures contained in this action are not expected to have highly uncertain effects or to involve 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, the proposed action is not expected to have individually insignificant, but cumulatively significant impacts. The synergistic interaction of improvements in the efficiency of the fishery is expected to generate positive impacts overall. The proposed action, together with past, present, and future actions, is 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 EA. The proposed action merely revises the annual commercial quota, recreational harvest limit, and other management measures in 2007 for the summer flounder fishery. The summer flounder 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 a commercial quota, a recreational harvest limit, and other management measures in 2007 for the summer flounder fishery. There is no evidence or indication that this fishery has ever resulted in the introduction or spread of nonindigenous species. The proposed specifications are not expected to alter fishing

methods or activities. Despite the increased TAL over the status quo alternative, the proposed specifications are not expected to increase fishing effort or the spatial and/or temporal distribution of current fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year. Therefore, it is highly unlikely that the proposed action 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 proposed annual commercial quotas and other management measures in 2007 for the summer flounder fishery. Despite the increased TAL over the status quo alternative, the proposed specifications are not expected to increase fishing effort or the spatial and/or temporal distribution of current fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year. When new stock assessment or other biological information about this species becomes available in the future, then the annual specifications will be adjusted according to the overfishing definitions contained in the FMP. These specifications do not result in significant effects, nor 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 a commercial quota, a recreational harvest limit, and other management measures in 2007 for the summer flounder fishery. The proposed specifications are not 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 below).

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 impacts of the preferred alternatives on the biological, physical, and human environment are described in section 7.0. The cumulative effects of the proposed action on target and non-target species are detailed in this Supplemental EA. Despite the increased TAL over the status quo alternative, the specifications are not expected to increase fishing effort or the spatial and/or temporal distribution of current fishing effort relative to the 2006 specifications, which were in effect throughout the 2006 fishing year. The synergistic interaction of improvements in the efficiency of the fishery through implementation of annual quotas based on the overfishing definitions contained in the FMP is expected to generate positive impacts overall.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Supplemental Environmental Assessment prepared for the 2007 summer flounder fishery specifications, it is hereby determined that the proposed action in this specification package will not significantly impact the quality of the human environment as described above and in the Supplemental Environmental Assessment. 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.

Assistant Administrator for Fisheries, NOAA

Date

9.2 Endangered Species Act

Sections 6.3 and 7.5.4 of the attached EA should be referenced for an assessment of the impacts of the NMFS-proposed action on endangered species and protected resources. None of the specifications NMFS proposed in this document are expected to alter fishing methods or activities. Therefore, this action is not expected to affect endangered or threatened species or critical habitat in any manner not considered in previous consultations on the fisheries.

9.3 Marine Mammal Protection Act

Sections 6.3 and 7.5.4 of the EA should be referenced for an assessment of the impacts of the NMFS-proposed action on marine mammals. None of the specifications proposed in this document are expected to alter fishing methods or activities. Therefore, this action is not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

9.4 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) of 1972, as amended, provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. It is recognized that responsible management of both coastal zones and fish stocks must involve mutually supportive goals.

The Council must determine whether the FMP will affect a state's coastal zone. If it will, the FMP must be evaluated relative to the state's approved CZM program to determine

whether it is consistent to the maximum extent practicable. The states have 60 days in which to agree or disagree with the Council's evaluation. If a state fails to respond within 60 days, the state's agreement may be presumed. If a state disagrees, the issue may be resolved through negotiation or, if that fails, by the Secretary.

The Council determined that the action in this specifications package is consistent to the maximum extent practicable with the enforceable provisions of the approved coastal management programs as understood by the Council. This determination was submitted for review by the responsible state agencies on September 20, 2006, under section 307 of the Coastal Zone Management Act. Letters were sent to each of the following states within the management unit reviewing the consistency of the NMFS-proposed action relative to each state's Coastal Zone Management Program: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. To request a copy of the letter or a list of the CZM contacts for each state, contact Daniel T. Furlong at the Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904-6790, Telephone: (302) 674-2331, Fax: (302) 674-5399.

9.5 Administrative Procedure Act

Sections 551-553 of the Federal Administrative Procedure Act establish procedural requirements applicable to informal rulemaking by federal agencies. The purpose is to ensure public access to the federal rulemaking process and to give the public notice and an opportunity to comment before the agency promulgates new regulations.

The Administrative Procedure Act requires solicitation and review of public comments on actions taken in the development of a fishery management plan and subsequent amendments and framework adjustments. Development of this specifications document provided many opportunities for public review, input, and access to the rulemaking process. This proposed specifications document was developed as a result of a multi-stage process that involved review of the source document (2007 Specifications package) by affected members of the public. The public had the opportunity to review and comment on management measures during the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meeting held on July 18, 2006 and during the MAFMC meeting held on August 1-3, 2006 in Philadelphia, Pennsylvania. In addition, the public will have further opportunity to comment on this specifications package once NMFS publishes a request for comments notice in the Federal Register (FR).

9.6 Section 515 (Data Quality Act)

Utility of Information Product

The proposed document includes: A description of the 2007 specifications, the proposed changes to the implementing regulations of the FMP, description of the alternatives considered, and the reasons for selecting the proposed management measures. This action proposes commercial quotas and other management measures for summer

flounder, scup, and black sea bass in 2007. This proposed specifications document implements the FMP's conservation and management goals consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as well as all other existing applicable laws.

This proposed specifications document was developed as a result of a multi-stage process that involved review of the source document (2007 Specifications package) by affected members of the public. The public had the opportunity to review and comment on management measures during the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meeting held on July 18, 2006 and during the MAFMC meeting held on August 1-3, 2006 in Philadelphia, Pennsylvania.

The Federal Register notice that announces the proposed rule and the implementing regulations will be made available in printed publication and on the website for the Northeast Regional Office. The notice provides metric conversions for all measurements.

Integrity of Information Product

The information product meets the standards for integrity under the following types of documents:

Other/Discussion (e.g., Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

Objectivity of Information Product

The category of information product that applies for this product is "Natural Resource Plans."

In preparing specifications documents, the Council must comply with the requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, the Regulatory Flexibility Act, the Administrative Procedure Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Data Quality Act, and Executive Orders 12630 (Property Rights), 12866 (Regulatory Planning), 13132 (Federalism), and 13158 (Marine Protected Areas).

This specifications document has been developed to comply with all applicable National Standards, including National Standard 2. National Standard 2 states that the FMPs conservation and management measures shall be based upon the best scientific information available. Despite current data limitations, the conservation and management measures proposed to be implemented under this specifications document are based upon the best scientific information available. This information includes NMFS dealer weight data for 2005, which was used to characterize the economic impacts of

the management proposals. These data, as well as the NMFS Observer program database, were used to characterize historic landings, species co-occurrence in the summer flounder, scup, and black sea bass catch, and discarding. The specialists who worked with these data are familiar with the most recent analytical techniques and with the available data and information relevant to the summer flounder, scup, and black sea bass fisheries. Marine Recreational Fisheries Statistical Survey (MRFSS) data were used to characterize the recreational fishery for these species.

The policy choices (i.e., management measures) proposed to be implemented by this specifications document are supported by the available scientific information and, in cases where information was unavailable, proxy reference points are based on observed trends in survey data. The management measures contained in the specifications document are designed to meet the conservation goals and objectives of the FMP, and prevent overfishing and rebuild overfished resources, while maintaining sustainable levels of fishing effort to ensure a minimal impact on fishing communities.

The supporting materials and analyses used to develop the measures in the proposed rule are contained in the specifications document and to some degree in previous specifications and/or FMPs as specified in this document.

The review process for this specifications package involves the Mid-Atlantic Fishery Management Council, the Northeast Fisheries Science Center, the Northeast Regional Office, and NOAA Fisheries headquarters. The Center's technical review is conducted by senior level scientists with specialties in population dynamics, stock assessment methods, demersal resources, population biology, and the social sciences. The Council review process involves public meetings at which affected stakeholders have opportunity to provide comments on the specifications 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 specifications document and clearance of the rule is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

9.7 Paperwork Reduction Act

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. There are no changes to the existing reporting requirements previously approved under this FMP for vessel permits, dealer reporting, or vessel logbooks. This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

9.8 Impacts of the Plan Relative to Federalism/EO 13132

This specifications document does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order (EO) 13132.

9.9 Environmental Justice/EO 12898

This EO provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” EO 12898 directs each Federal agency to analyze the environmental effects, including human health, economic, and social effects of Federal actions on minority populations, low-income populations, and Indian tribes, when such analysis is required by NEPA. Agencies are further directed to “identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices.”

The proposed actions are not expected to affect participation in the summer flounder, scup, and black sea bass fisheries. Since the proposed action represents no change relative to the current level of participation in these fisheries, no negative economic or social effects are anticipated as a result (section 7.0). Therefore, the proposed action under the preferred alternative is not expected to cause disproportionately high and adverse human health, environmental or economic effects on minority populations, low-income populations, or Indian tribes.

11.0 LIST OF PREPARERS OF THE ENVIRONMENTAL ASSESSMENT

The summer flounder, scup, and black sea bass specifications were submitted to the NMFS by the MAFMC. This specifications package was prepared by the following members of the MAFMC staff: Jessica Coakley, Dr. José L. Montañez, Kathy Collins, and Dr. Eric Thunberg (NEFSC) assisted in documenting the analysis of permit data. Scott Steinback assisted in documenting demographic/economic information presented in Table 35.

12.0 LIST OF AGENCIES AND PERSONS CONSULTED

In preparing this specifications document, the Council consulted with the NMFS, New England and South Atlantic Fishery Management Councils, Fish and Wildlife Service, and the states of Maine through North Carolina through their membership on the Mid-Atlantic and New England Fishery Management Councils. In addition, states that are members within the management unit were consulted through the Coastal Zone Management Program consistency process. Letters were sent to each of the following states within the management unit reviewing the consistency of the proposed action relative to each state's Coastal Zone Management Program: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. To request a copy of the letter or a list of the CZM contacts for each state, contact Daniel T. Furlong at the Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904-6790, Telephone: (302) 674-2331, Fax: (302) 674-5399.

To ensure compliance with NMFS formatting requirements, the advice of NMFS Northeast Region personnel was sought, including Sarah McLaughlin, Michael Pentony, and Sarah Thompson.

