

FRAMEWORK ADJUSTMENT 5
TO THE
SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS
FISHERY MANAGEMENT PLAN

**(Includes Regulatory Impact Review,
and Initial Regulatory Flexibility Analysis)**

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Mid-Atlantic Fishery Management Council
in cooperation with
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Executive Summary

This framework adjustment to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan was prepared by the Mid-Atlantic Fishery Management Council and is intended to improve management of these fisheries, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA) in 1996.

The Mid-Atlantic Fishery Management Council (Council) specifies a total allowable landing (TAL) level for the summer flounder, scup, and black sea bass fisheries in order to achieve the fishery conservation and management goals of the Magnuson-Stevens Act. Under the current management system for these species, this specification is conducted every year for TALs that apply only to the following year. The administrative procedures involved in the specification of TALs include documentation of environmental impact assessments as required under the Magnuson-Stevens Act and the National Environmental Protection Act of 1969 (NEPA). However, a thorough review of the likely impacts of proposed TALs to the human environment could be conducted on a less frequent basis while still satisfying regulatory mandates and achieving the target fishing mortality rates.

As such, this document proposes to establish an allowance for multiple-year specification of TALs for summer flounder, scup, and black sea bass. Specifically, a framework adjustment to the FMP is proposed that would allow for specification of TALs for the summer flounder, scup and/or black sea bass fisheries in any given year for the following one to three years. As a result, all of the environmental and regulatory review procedures currently required under the Magnuson-Stevens Act, and other applicable law, including NEPA would be conducted and documented during the year in which specifications are set for the following one to three years. Additionally, if multi-year TALs are implemented, the proposed action would not require an annual review by the Council of the TALs prior to their implementation in years two and three. This modification to the FMP should relieve administrative demands on Council and NOAA Fisheries imposed by the annual specification process. Additionally, longer term specifications should provide greater regulatory consistency and predictability to the commercial and recreational fishing sectors.

Due to the administrative nature of the regulations that would result from the proposed action, the action proposed in this document is categorically excluded from the requirement to prepare an environmental assessment, in accordance with NOAA Administrative Order 216-6 section 6.03c.3(i).

1 INTRODUCTION

Under section 302(h) of the Magnuson-Stevens Act, as amended by the SFA, Regional Fishery Management Councils (Councils) prepare and submit Fishery Management Plans (FMPs) for fisheries under their authority that require conservation and management. The summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) fisheries are managed under the Summer Flounder, Scup and Black Sea Bass FMP that was prepared cooperatively by the Council and the Atlantic States Marine Fisheries Commission (Commission). Amendment 12 to the FMP added a framework adjustment procedure that allows the Council to add or modify management measures through a streamlined public review process. The action proposed in this document would modify the existing Summer Flounder, Scup and Black Sea Bass FMP via this framework adjustment process.

Specification by the Council of annual TALs for the summer flounder, scup, and black sea bass fisheries is consistent with requirements of section 302(h)(5) of the Magnuson-Stevens Act as it relates to optimum yield. Under the current management system for these species, the specification of TALs to achieve this optimum yield is conducted every year for TALs that apply only to the following year. The administrative burdens placed on Council and NOAA Fisheries resources by the annual specification process could be relieved by a framework adjustment that would establish an allowance for multiple-year specification of TALs. As such, the intent of the action proposed in this document is to establish this allowance for the specification of multi-year TALs (two or three years) for summer flounder, scup, and black sea bass. Under the proposed action, multi-year specifications would occur without an annual review prior to the implementation of the TALs in years two and three. In addition, any management measures implemented by an earlier amendment or framework that is not specifically referenced in this framework is intended to continue in force.

2 PURPOSE AND NEED FOR ACTION

This framework adjustment is needed in order to streamline the administrative and regulatory processes involved in specifying TALs for the summer flounder, scup, and black sea bass fisheries, while, at the same time, maintaining consistency with the Magnuson-Stevens Act as amended by the SFA. In particular, the proposed management action, if implemented, would allow for specification of TALs for the summer flounder, scup and/or black sea bass fisheries in any given year for the following one to three years. Under the current management system, specification of commercial quotas and recreational harvest limits for the summer flounder, scup, and black sea bass fisheries occurs on an annual basis.

2.1 History of FMP Development

The Council first considered the development of an FMP for summer flounder in late 1977. During the early discussions, the fact that a significant portion of the catch was taken from state waters was considered. As a result, on 17 March 1978 a questionnaire was sent by the Council to east coast state fishery administrators seeking comment on whether the plan should be

prepared by the Council or by the states acting through the Commission.

It was decided that the initial plan would be prepared by the Commission. The Council arranged for NOAA Fisheries to make some of the Council's programmatic grant funds available to finance preparation of the Commission's plan. New Jersey was designated as the state with lead responsibility for the plan. The state/federal draft was adopted by the Commission at its annual meeting in October 1982. The original Council Summer Flounder FMP was based on the Commission's management plan. NOAA Fisheries approved the original FMP on 19 September 1988.

Amendment 1 to the FMP was developed in the summer of 1990 solely to protect the 1989 and 1990 year classes by imposing a minimum net mesh size comparable to the 13" minimum fish size included in the original FMP. On 15 February 1991 the Council was notified that NOAA Fisheries had approved the overfishing definition for summer flounder contained in Amendment 1, but had disapproved the minimum net mesh provision.

Amendment 2, which was fully implemented in 1993, was a comprehensive amendment designed to rebuild a severely depleted summer flounder stock. Amendment 2 was approved by NOAA Fisheries on 6 August 1992. It contained a number of management measures to regulate the commercial and recreational fisheries for summer flounder. These included a rebuilding schedule, commercial quotas, recreational harvest limits, size limits, gear restrictions, and permit and reporting requirements. Amendment 2 also established the Summer Flounder Monitoring Committee, which meets annually to review the best available biological and fisheries data and make recommendations regarding the commercial quota and other management measures.

Amendment 3 to the Summer Flounder FMP was developed in response to fishermen's concerns that the demarcation line for the small mesh exempted fishery bisected Hudson Canyon and was difficult to enforce. Amendment 3 revised the Northeast exempted fishery line to 72°30.0'W. In addition, Amendment 3 increased the large mesh net threshold to 200 pounds during the winter fishery, 1 November to 30 April. Furthermore, Amendment 3 stipulated that otter trawl vessels fishing from 1 May through 31 October could only retain up to 100 pounds of summer flounder before using the large mesh net. Amendment 3 was approved by the Council on 21 January 1993 and submitted to NOAA Fisheries on 16 February 1993.

Amendment 4 adjusted Connecticut's commercial landings of summer flounder and revised the state-specific shares of the coastwide commercial summer flounder quota as requested by The Commission. Amendment 5 allowed states to transfer or combine the commercial quota. Amendment 6 allowed multiple nets on board as long as they were properly stowed and changed the deadline for publishing the overall catch limits and commercial management measures to 15 October and the recreational management measures to 15 February. Amendment 7 revised the fishing mortality rate reduction schedule for summer flounder.

The Council began the development of an FMP for black sea bass in 1978. Although preliminary work was done to support the development of an FMP, a plan was not completed.

Work on an FMP began again in January, 1990 when the Council and the Commission began the development of an FMP for black sea bass. However, the development of a black sea bass plan was delayed through a series of amendments to the Summer Flounder FMP and work on a separate Black Sea Bass FMP was not resumed until 1993.

In 1996, NOAA Fisheries requested that the black sea bass and scup regulations be incorporated into another FMP to reduce the number of separate fisheries regulations issued by the federal government. As a result, the Scup FMP and the Black Sea Bass FMP were incorporated into the summer flounder regulations as Amendment 8 and 9 (included EISs) to the Summer Flounder FMP, respectively. Amendment 8 established management measures for scup and Amendment 9 established a management program for black sea bass. Both of these were major amendments that implemented a number of management measures for scup and black sea bass including commercial quotas, commercial gear requirements, minimum size limits, recreational harvest limits, and permit and reporting requirements.

The Council was notified at a June, 1996 meeting that the Regional Director planned to disapprove the provision in Amendment 9 that would implement a state-by-state commercial quota. The official disapproval letter was dated July 16, 1996. In the letter, the Regional Director concluded that the state-by-state quota provision was not consistent with National Standard 7. Specifically, he stated that the provisions that apply to the area of north of Cape Hatteras, North Carolina would impose significant administrative and enforcement costs on NOAA Fisheries and the state of North Carolina. The letter referenced the fact that Cape Hatteras separates two distinct stocks of black sea bass, a northern stock that would be managed by Amendment 9 regulations and a southern stock regulated by the Snapper/Grouper FMP. The disapproval letter stated that the amendment failed to address how a commercial quota that bifurcated the state of North Carolina and only applied to the northern stock of black sea bass would be implemented. Based on these comments, the Council voted to replace the state-by-state quota system with a coastwide quota allocated in quarterly periods over the year.

Amendment 10 made a number of changes to the summer flounder regulations implemented by Amendment 2 and later amendments to the Summer Flounder, Scup and Black Sea Bass FMP. Specifically this amendment modified the commercial minimum mesh regulations, continued the moratorium on entry of additional commercial vessels, removed provisions that pertain to the expiration of the moratorium permit, prohibited the transfer of summer flounder at sea, and established a special permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size.

Amendment 11, approved by NOAA Fisheries in 1998, was implemented to achieve consistency among Mid-Atlantic and New England FMPs regarding vessel replacement and upgrade provisions, permit history transfer, splitting, and renewal regulations for fishing vessels issued Northeast Limited Access federal fishery permits.

Amendment 12 was developed to bring the Summer Flounder, Scup, and Black Sea Bass FMP into compliance with the new and revised National Standards and other required provisions of

SFA. Specifically, the amendment revised the overfishing definitions (National Standard 1) for summer flounder, scup, and black sea bass and addressed the new and revised National Standards (National Standard 8 - consider effects on fishing communities; National Standard 9 - reduce bycatch; and National Standard 10 - promote safety at sea) relative to the existing management measures. The amendment also identified essential habitat for summer flounder, scup, and black sea bass. In addition, Amendment 12 added a framework adjustment procedure that allows the Council to add or modify management measures through a streamlined public review process. Amendment 12 was partially approved on 28 April 1999.

The latest amendment, Amendment 13, which was approved on January 29, 2003, addressed the disapproved portions of Amendment 12 relating to the potential impacts of fishing gear on summer flounder, scup, and black sea bass EFH and contained a new EIS to replace the information for summer flounder, scup, and black sea bass.

It should be noted that any management measure implemented by an earlier amendment or framework not specifically referenced in this framework is intended to continue in force.

2.2 Management Objectives

The objectives of the FMP are:

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

2.3 Management Unit

The management units for summer flounder, scup, and black sea bass remain unchanged in this framework adjustment. Specifically, the management unit is summer flounder in U.S. waters in the western Atlantic Ocean from the southern border of North Carolina northward to the US-Canadian border, and scup and black sea bass in U.S. waters in the western Atlantic Ocean from Cape Hatteras, North Carolina northward to the U.S.-Canadian border.

2.4 Management Strategy

This document will describe and evaluate the potential impacts of a proposed management action to be implemented through the framework adjustment process. The proposed action should relieve administrative demands on Council and NOAA resources imposed by the current annual specification process. The Council intends to continue the management programs detailed in the Summer Flounder, Scup and Black Sea Bass FMP to achieve the management objectives established by the FMP.

3 PROPOSED MANAGEMENT MEASURES AND ALTERNATIVES

3.1 Proposed Management Measures

3.1.1 Description of the Proposed Action (Alternative 1 -Allow for Multi-year TAL Setting without Annual Review)

The proposed action would modify the FMP so that, within a given year, TALs for the summer flounder, scup and/or black sea bass could be specified for each of the following one to three years. All of the environmental and regulatory review procedures currently required under the Magnuson-Stevens Act and NEPA would be conducted and documented during the year in which specifications were set. These review procedures would consider impacts throughout the time span for which specifications were set. Multi-year TALs would not have to be constant from year to year, but would instead be based upon expectations of future stock conditions as indicated by the best available scientific information during the year in which specifications are set. In the event that multi-year TALs are implemented, annual review of updated information on the fishery by the Monitoring Committee and Council would not be required. As such, this alternative would not allow for adjustments to the TALs for years two and three in the years immediately prior to their implementation. Given the absence of an annual review/TAL adjustment process, environmental impact evaluation in the specification setting year would have to thoroughly consider the uncertainty associated with projected estimates of stock size in the two to three year time horizon. Accordingly, Council recommendations for multi-year TALs would have to be adequately conservative in order to accommodate this uncertainty. In addition, the Council would not be obligated to specify multi-year quotas, but would instead be allowed to specify quotas for as many as three years, if so desired.

3.2 Alternatives to the Proposed Action

3.2.1 Alternative 2 - No Action

Under this alternative, no adjustment to the current specification setting process would take place. As such, specification by the Council of an annual TAL for summer flounder, scup, and black sea bass fisheries would occur each year.

3.2.2 Alternative 3 - Allow for Multi-year TAL Setting with Annual Review

The proposed action would modify the FMP so that, within a given year, TALs for the summer flounder, scup and/or black sea bass could be specified for each of the following one to three years. All of the environmental and regulatory review procedures currently required under the Magnuson-Stevens Act, and NEPA would be conducted and documented during the year in which specifications were set. These review procedures would consider impacts throughout the time span for which specifications were set. Multi-year TALs would not have to be constant from year to year, but would instead be based upon expectations of future stock conditions as indicated by the best available scientific information during the year in which specifications are set. This alternative differs from the proposed action in that every year, a review of updated stock conditions for each management unit will be conducted by the Monitoring Committee, and their findings will be presented to the Council. As part of the Monitoring Committee's annual review process, the specified TAL will be evaluated based upon the updated scientific information on stock conditions and the established target fishing mortality or exploitation rates for each species. If no adjustment to the TAL is indicated following scientific review, then the existing environmental impact review will be considered adequate and the TAL will be implemented the following year. If, however, updates to stock conditions determine that a new TAL should be specified, then the Council will be presented with this information and a new specification setting process, with all associated environmental and regulatory review procedures will be initiated. In addition, the Council would not be obligated to specify multi-year TALs, but would be allowed to specify TALs for as many as three years, if so desired.

4 IMPACTS OF THE ALTERNATIVES

4.1 Biological and Ecological Impacts

4.1.1 Impacts on Fishery Resources

Impacts of the Proposed Action (Alternative 1)

Because the proposed action deals entirely with the administrative periodicity by which annual TALs are specified and would not affect fishing vessel effort, operations, species targeted, or areas fished, there would be no direct impacts of the proposed action on any fishery resources managed under the summer flounder, scup, and black sea bass FMP. Specification of multi-year TALs would include all of the environmental impact review procedures currently required under the Magnuson-Stevens Act, and other applicable laws, including NEPA. These review procedures collectively ensure that impacts on fishery resources be considered prior to implementation of the proposed harvest levels.

The absence of an annual review process by the Council for TALs in years two and three could increase the risk that harvest at specified TALs in a given year could exceed appropriate fishing mortality rates for the management units. This may occur if population biomass was to deviate substantially from projection estimates generated during the specification setting year. Conversely, population projections may underestimate stock size, which would lead to harvest below allowable levels. The risks associated with these potential outcomes would be carefully

considered by the Council when determining the appropriate TALs for years two and three in the specification setting year.

Impacts of the No Action Alternative (Alternative 2)

Under the No Action Alternative, the current (annual) specification setting system would be maintained. As described above this system includes an environmental impact review process that provides safeguards against negative impacts to fishery resources.

Impacts of Alternative 3

Alternative 3 differs from the proposed action in that it would include an annual review provision. Although this provision for an annual review reduces the risk of negative impacts to the fishery resources, it would also reduce administrative efficiency by increasing the chance that a previous specified TAL would be modified even for de minimus changes in TAL.

4.1.2 Impacts on Habitat

Due to the administrative nature of the proposed action, there would be no direct impacts of the proposed action on the habitat, including essential fish habitat (EFH), of any fishery resources managed under the Summer Flounder, Scup, and Black Sea Bass FMP. No impacts of the proposed action on fish habitat are expected since no change in fishing effort, specifically fishing effort employing fishing gears with the potential to cause adverse impacts to habitat, should result from an allowance for multi-year TAL setting. Furthermore, the specification of multi-year TALs would involve all of the environmental impact review procedures required under the Magnuson-Stevens Act and NEPA that occur under the current annual specification system. These review procedures collectively ensure that significant effects on habitat, including EFH, be considered in the implementation of harvest policy. Because the alternatives to the proposed action, including the No Action Alternative, merely present variations on either the periodicity of specification setting or the level of review of population-level data for the management units, there are no differences between the alternatives regarding impacts on habitat.

4.1.3 Impacts on Protected Resources

As noted above, the proposed action only affects the administrative process by which TALs are established, while preserving all of the environmental impact review procedures. Therefore, there would be no impacts, either direct or indirect, on protected resources (including whales, sea turtles, and other endangered or threatened species, or their critical habitats) associated with the proposed action. Because the alternatives to the proposed action, including the No Action Alternative, merely present variations on either the periodicity of specification setting or the level of review of population-level data for the management units, there are no differences between the alternatives regarding impacts on any protected resources.

4.2 Economic Impacts

Due to its administrative nature, no direct impacts on the economy are expected for the proposed action. Furthermore, the specification of multi-year TALs would involve all of the environmental impact review procedures required under the Magnuson-Stevens Act and other applicable laws that occur under the current annual specification system. These review procedures collectively ensure that significant economic effects be considered in the implementation of harvest policy. Because the alternatives to the proposed action present variations on either the periodicity of specification setting or the review of population-level data for the management units, there are no differences between the alternatives regarding impacts on the economy.

4.3 Social and Community Impacts

Due to the administrative nature of the proposed action, there would be no direct social or community impacts of the proposed action. Furthermore, the specification of multi-year TALs would involve all of the environmental impact review procedures required under the Magnuson-Stevens Act and other applicable laws that occur under the current annual specification system. These review procedures collectively ensure that significant social and community effects be considered in the implementation of harvest policy. Because the alternatives to the proposed action present variations on either the periodicity of specification setting or the review of population-level data for the management units, there are no differences between the alternatives regarding social and community impacts.

5 CONSISTENCY WITH APPLICABLE LAWS

5.1 Magnuson-Stevens Fishery Conservation and Management Act

5.1.1 Compliance with the National Standards

National Standard 1. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.

Impacts of the proposed action are limited to a simplification in the administrative process by which the Council specifies annual TALs for the summer flounder, scup, and black sea bass management units. The management measures associated with this action would have no direct impacts on the overfishing or optimum yield of any fishery resources. Current safeguards against overharvest (quota monitoring system and annual review of recreational harvest) will be maintained under the proposed action. By maintaining these safeguards, the proposed action is expected to comply with National Standard 1.

National Standard 2. Conservation and management measures shall be based upon the best scientific information available.

Specification of multi-year TALs will maintain all of the environmental impact review procedures currently required under National Standard 2. These review procedures will be

incorporated into specification documents in the specification setting year to be consistent with the best scientific information available.

National Standard 3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action has no effect on the management units of any stocks of fish included in an FMP for the Northeast Region.

National Standard 4. Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be:

- (1) Fair and equitable to all such fishermen.*
- (2) Reasonably calculated to promote conservation.*
- (3) Carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

The proposed action includes no change in the allocation of fishing privileges among various U.S. fishermen.

National Standard 5. Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The proposed action will affect no changes in the efficiency by which fishery resources are utilized. Economic allocation is not affected by this action and was not a factor in its development, nor in the selection of the proposed action from among the alternatives.

National Standard 6. Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The proposed action has no direct impact on any fishery, fishery resource, or catch. Variations among, and contingencies in, fisheries, fishery resources, and catches were considered in development of the proposed action such that an allowance for variation in annual TALs is stipulated for multi-year specifications.

National Standard 7. Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Improving the administrative process by which annual TALs are specified by the Council and NOAA Fisheries is the primary objective of this action. To that extent, specification of multi-year TALs will reduce the burden on Council and NOAA Fisheries which should contribute to a reduction in management costs and regulatory duplication. No direct effect on costs or

duplication is anticipated for fisheries at large under the proposed action.

National Standard 8. Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

- (1) Provide for the sustained participation of such communities; and*
- (2) To the extent practicable, minimize adverse economic impacts on such communities.*

The proposed action will have no effect on participation levels or economic impacts associated with fishing communities.

National Standard 9. Conservation and management measures shall, to the extent practicable:

- (1) Minimize bycatch; and*
- (2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

The proposed action has no bearing or relevance regarding the minimization of bycatch, as it is concerned solely with the administrative periodicity by which annual TALs are specified.

National Standard 10. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The safety of human life at sea is not affected by the proposed action as it is focused entirely on the administrative periodicity by which annual TALs are specified.

5.1.2 Compliance with Other Requirements of the Magnuson-Stevens Act

Section 303 of the Magnuson-Stevens Act contains 14 additional required provisions for FMPs, which are discussed below. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, must comply with these provisions.

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the National Standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law.

For a description of the proposed measures and management alternatives intended to improve the management of the fisheries affected by this action, see section 3 of this document. For a discussion of consistency with the National Standards, see section 5.1.1. For a discussion of the consistency with other applicable law, see sections 5.2-5.10.

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any.

The proposed action does not directly affect fishing vessels or the type or quantity of fishing gear used; therefore, a description of these aspects of the fisheries is not applicable. A thorough description of the species of fish involved is included in the FMP, specifically in section 3.0 of Amendment 13. Recreational interests, foreign fishing, and Indian treaty fishing rights are not affected by this action.

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification.

Maximum sustainable yield and optimum yield of summer flounder, scup, and black sea bass are not affected by the proposed action, as it is limited to a modification of the administrative periodicity by which annual TALs are specified.

(4) assess and specify--(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States.

The proposed action does not affect the capacity or extent to which fishing vessels of the U.S. would harvest the optimum yield of any fishery, the portion of such optimum yield which would not be harvested by U.S. fishing vessels and could be made available for foreign fishing, or the capacity and extent to which U.S. processors would process that portion of such optimum yield harvested by U.S. fishing vessels; therefore, a description of these aspects of the fisheries is not applicable to this action.

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors.

The proposed action does nothing to change the types or amounts of pertinent data that will be reported to the Secretary.

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery.

The proposed action does not affect the access of any fishing vessel to any fishery because of weather, ocean conditions, or any other potential concern.

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.

EFH is described and identified for the affected fisheries in the FMP (e.g., Amendment 13). The proposed action makes no changes to any EFH of any species. Section 4.1.2 describes the effects the proposed action, and the alternatives to the proposed action, is likely to have on the habitat, including EFH, of any fishery resources managed under the summer flounder, scup, and black sea bass FMP. Due to the administrative nature of the measures in the proposed action, there would be no direct impacts on any habitat or EFH; therefore, an EFH consultation is not required.

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan.

The proposed action contains no measures that will modify the nature and extent of data needed for effective monitoring and implementation of FMP objectives.

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--(A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.

The proposed action contains no measures that will affect participants in the summer flounder, scup, or black sea bass fisheries and fishing communities. Additionally, participants in fisheries conducted in adjacent areas will not be affected.

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship

of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery.

The proposed action makes no changes or has any affect on the approved overfishing definitions for any fishery managed under the Summer Flounder, Scup, and Black Sea Bass FMP.

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.

This action deals only with the administrative periodicity by which annual TALs are specified and has no effect on bycatch or bycatch mortality.

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish.

The proposed action has no affect upon any recreational fishing activity.

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors.

No harvesting sector of the summer flounder, scup, or black sea bass fisheries will be directly affected by the proposed action.

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

The proposed action includes no management measures that could reduce the overall harvest in a fishery, therefore, the allocation of harvest restrictions or recovery benefits among the commercial, recreational, and charter fishing sectors, beyond any allocations of such already made in the FMP, is not necessary.

5.2 National Environmental Policy Act

Due to the administrative nature of the regulations that would result from the proposed action, this action is categorically excluded from the requirement to prepare an environmental assessment, in accordance NOAA Administrative Order 216-6 section 6.03c.3(i).

5.3 Executive Order (E.O.) 12866 – Regulatory Impact Review (RIR)

An RIR is required by NOAA Fisheries for all regulatory actions that either implement a new FMP or significantly amend an existing FMP. An RIR is required by NOAA Fisheries for all regulatory actions that are part of the “public interest.” The RIR is a required component of the process of preparing and reviewing FMPs or amendments and provides a comprehensive review of the economic impacts associated with proposed regulatory actions. The RIR addresses many concerns posed by the regulatory philosophy and principles of E.O. 12866. The RIR serves as the basis for assessing whether or not any proposed regulation is a "significant regulatory action" under criteria specified by E.O. 12866.

The RIR must provide the following information: (1) A comprehensive review of the level and incidence of economic impacts associated with a proposed regulatory action or actions; (2) a review of the problems and policy objectives prompting the regulatory proposals; and (3) an evaluation of the major alternatives that could be used to meet these objectives. In addition, an RIR must ensure that the regulatory agency systematically and comprehensively consider all available alternatives such that the public welfare can be enhanced in the most efficient and cost effective manner.

Under the Regulatory Flexibility Act (RFA) of 1980, as amended by Public Law 104-121, new FMPs or amendments also require an assessment of whether or not proposed regulations would have a significant economic impact on a substantial number of small business entities. The primary purposes of the RFA are to relieve small businesses, small organizations, and small Government agencies from burdensome regulations and record-keeping requirements, to the extent possible.

This section of the Regulatory Amendment provides an assessment and discussion of the potential economics impacts, as required of an RIR and the RFA, of various proposed actions consistent with the purpose of this action.

5.3.1 Statement of the Problem and Need for Action

The administrative burdens placed on Council and NOAA Fisheries resources by the annual specification process could be relieved by a framework adjustment that would establish an allowance for multiple-year specification of TALs. The intent of the action proposed in this document is to establish an allowance for multi-year specification setting through a regulatory adjustment to the summer flounder, scup, and black sea bass fishery management plan (FMP).

5.3.2 Management Objectives

The management objectives for the FMP are found in section 2.2.

5.3.3 Description of the Affected Entities

This action deals only with the administrative periodicity of annual TAL setting and has no direct effect on entities participating in the fishery.

5.3.4 Description of the Alternatives

A complete description of the alternatives can be found in section 3.

5.3.5 Expected Economic Effects of the Alternatives

A complete evaluation of the expected economic effects of the alternatives is presented in section 4.2.

5.3.6 Determination of Significance under E.O. 12866

E.O. 12866 requires that the Office of Management and Budget (OMB) review proposed regulatory programs that are considered to be significant. A “significant regulatory action” is one that is likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, safety, or state, local, or tribal Governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

A regulatory program is “economically significant” if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be “economically significant.” Because none of the factors defining “significant regulatory action” are triggered by this proposed action, the action has been determined to be not significant for the purposes of E.O. 12866.

5.3.7 Administrative, Enforcement, and Information Costs

Because the proposed action deals solely with the periodicity of TAL setting, and does not affect fishing activities, no additional administrative, information, or fishing enforcement costs would be incurred.

5.4 Regulatory Flexibility Act

The objective of the RFA is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action would have a significant impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis must be prepared to identify the need for action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits. The RFA requires the Federal rulemaker to examine the impacts of proposed and existing rules on small businesses, small organizations, and small Governmental jurisdictions.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, and with annual receipts (gross revenues) not in excess of \$3,500,000 as small businesses. In addition, seafood processors with 500 or fewer employees, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and Government jurisdictions with a population of 50,000 or less are considered small entities.

If an action is determined to affect a substantial number of small entities, the analysis must include:

1. A description and estimate of the number of small entities and total number of entities in a particular affected sector, and a total number of small entities affected: and
2. Analysis of economic impact on small entities, including the direct and indirect compliance costs of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cash flow and liquidity, and ability of small entities to remain in the market.

Determination of significance is based on two criteria: Disproportionality and profitability. Disproportionality means small firms are placed at a significant competitive disadvantage relative to large firms. Profitability means that firms profits are significantly reduced. Because different classes of entities are not an issue here (all of the dealers can be defined as small entities), there are no entities that are disproportionately affected. The criteria of profitability is important in this case.

5.4.1 Reasons the Action is Being Considered

A complete description of the reasons the action is being considered can be found in section 2 of this document.

5.4.2 Management Objectives and Legal Basis

The legal basis for this action can be found in section 1, and the management objectives are identified in section 2.2.

5.4.3 Description of the Affected Entities

This action deals only with the administrative periodicity of annual TAL setting and has no direct effect on entities participating in the fishery.

5.4.4 Description of the Reporting, Record-keeping, and Compliance Requirements

This action deals only with the administrative periodicity of annual TAL setting and has no direct effect on reporting, record-keeping, or compliance requirements for fishery participants.

5.4.5 Identification of Relevant Federal Rules

There are no relevant Federal rules that duplicate, overlap, or conflict with this proposed action.

5.4.6 Description of the Alternatives

A complete description of the alternatives is presented in section 3.

5.4.7 Economic Impacts on Small Entities and Steps Taken to Minimize Significant Impacts

As indicated in section 4.2, there are no economic impacts associated with the proposed action. As such no steps are needed to minimize impacts.

5.5 Endangered Species Act (ESA)

Section 7 of the ESA requires Federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. The impacts of the proposed action on protected species are considered in section 4.1.3 and, based on the administrative nature of the action, the Council has concluded is that there would be no direct or indirect impacts on protected resources, including endangered or threatened species or their habitat.

5.6 Marine Mammal Protection Act (MMPA)

The impacts of the proposed action on protected species are considered in section 4.1.3 and, based on the administrative nature of the action, the Council has concluded that there would be no direct or indirect impacts on marine mammals, that the proposed action is consistent with the provisions of the MMPA, and that the proposed action would not alter existing measures to protect the species likely to inhabit the management units of the subject fisheries.

5.7 Paperwork Reduction Act (PRA)

The purpose of the PRA is to control paperwork requirements imposed on the public by the Federal Government. The authority to manage information and recordkeeping requirements is vested with the Director of OMB. This authority encompasses establishment of guidelines and

policies, approval of information collection requests, and reduction of paperwork burdens and duplications. The proposed action contains no collection of information requirements subject to the PRA.

5.8 Coastal Zone Management Act (CZMA)

Section 307(c)(1) of the Federal CZMA of 1972 requires that all Federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. Because this action deals solely with the administrative process of specification setting, it does not affect the coastal zone of any state and a consistency review is not necessary.

5.9 Data Quality Act

Pursuant to NOAA Fisheries guidelines implementing Section 515 of Public Law 106-554 (the Data Quality Act), all information products released to the public must first undergo a Pre-Dissemination Review to ensure and maximize the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. To facilitate the Pre-Dissemination Review, this document addresses the utility, integrity, and objectivity of the information included in the document and used as the basis for making decisions regarding the proposed action.

5.9.1 Utility

Utility means that disseminated information is useful to its intended users. “Useful” means that the content of the information is helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain or use.

The information presented in this document is helpful to the intended users (the affected public) by presenting a clear description of the purpose and need of the proposed action, the alternatives to the proposed action considered by the Council, and the analyses of the potential impacts of the proposed action to fishery resources, habitat, protected resources, and affected entities and communities so that intended users may have a full understanding of the proposed action and its implications.

This document is the first and only information product that provides the information described above. It includes the most current available relevant data, and provides these data in a form that is intended to be useful and accessible to the public.

This document will be made available to the public via several media: Online, through the Council web page; in hardcopy, available at the request of the public; and at Council meetings. Online, the document will be available in a standard format for such documents, that of “Portable Document Format,” or PDF.

5.9.2 Integrity

Integrity refers to security--the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Prior to dissemination, NOAA Fisheries information, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information.

All electronic information disseminated by NOAA Fisheries adheres to the standards set out in Appendix III, "Security of Automated Information Resources," of OMB Circular A-130; the Computer Security Act; and the Government Information Security Act. All confidential information (e.g., dealer purchase reports) is safeguarded pursuant to the Privacy Act; Titles 13, 15, and 22 of the U.S. Code (confidentiality of census, business, and financial information); the Confidentiality of Statistics provisions of the Magnuson-Stevens Act; and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics.

5.9.3 Objectivity

Objective information is presented in an accurate, clear, complete, and unbiased manner, and in proper context. The substance of the information is accurate, reliable, and unbiased; in the scientific, financial, or statistical context, original and supporting data are generated and the analytical results are developed using sound, commonly accepted scientific and research methods. "Accurate" means that information is within an acceptable degree of imprecision or error appropriate to the particular kind of information at issue and otherwise meets commonly accepted scientific, financial, and statistical standards.

This document is considered, for purposes of the Pre-Dissemination Review, to be a "Natural Resource Plan." Accordingly, the document adheres to the published standards of the Magnuson-Stevens Act; the Operational Guidelines, Fishery Management Plan Process; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act.

No analyses were conducted in support of the proposed action since the action involves administrative procedure only and will have no impacts outside of the administrative process of TAL specification.

The review process for this framework adjustment involves the Council, the NEFSC, the Northeast Regional Office, and NOAA Fisheries headquarters. The NEFSC'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 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.

5.10 E.O. 12898, 13132, and 13158

5.10.1 E.O. 12898 (Environmental Justice)

E.O. 12898 requires each Federal agency to 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. Because this action proposes changes only to the administrative procedures involved in annual TAL specification, this action does not have environmental justice implications under E.O. 12898.

5.10.2 E.O. 13132 (Federalism)

The Federalism E.O. established nine fundamental federalism principles to which Executive agencies must adhere in formulating and implementing policies having federalism implications. The E.O. also lists a series of policy making criteria to which agencies must adhere when formulating and implementing policies that have federalism implications. However, no federalism issues or implications have been identified relative to the actions proposed in this action and the associated regulations. The proposed action does not contain policies with federalism implications sufficient to warrant preparation of an assessment under E.O. 12612. States have been involved in the development of the proposed action through their involvement in the Regional Fishery Management Council process (i.e., all affected states are represented as voting members on at least one Council). This action was developed with the knowledge and cooperation of the state representatives of the Mid-Atlantic Council. No comments were received from any state officials relative to any federalism implications of the proposed action.

5.10.3 E.O. 13158 (Marine Protected Areas)

The Marine Protected Areas (MPAs) E.O. requires each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA to identify such actions, and, to the extent permitted by law and to the maximum extent practicable, in taking such actions, avoid harm to the natural and cultural resources that are protected by an MPA. The E.O. directs Federal agencies to refer to the MPAs identified in a list of MPAs that meet the definition of MPA for the purposes of the Order. The E.O. requires that the Departments of Commerce and the Interior jointly publish and maintain such a list of MPAs. As of the date of preparation of this action, the list of MPA sites has not been developed by the departments. No further guidance related to this Executive Order is available at this time.