



## Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201, Dover, DE 19901  
Phone: 302-674-2331 | FAX: 302-674-5399 | www.mafmc.org  
Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman  
Christopher M. Moore, Ph.D., Executive Director

October 1, 2020

Mr. Michael Pentony  
Regional Administrator  
National Marine Fisheries Service  
Greater Atlantic Region  
55 Great Republic Drive  
Gloucester, MA 01930

Dear Mike:

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission's (ASMFC's) Summer Flounder, Scup, and Black Sea Bass Management Board (Board) have jointly proposed a revision to the management program for the February recreational black sea bass fishery. As described below, this change would simply update the values for initial expected February harvest by state based on the revised Marine Recreational Information Program (MRIP) data. All other aspects of the February recreational fishery program would remain unchanged.

This letter describes the Council perspective that this action is primarily administrative in nature and should be categorically excluded from requirements to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA).

### **Action Background**

The recreational black sea bass fishery is managed under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The FMP requires specification of an annual Recreational Harvest Limit (RHL; landings only) and recreational management measures (possession limits, size limits, and seasons) designed to ensure that coastwide (i.e., Maine through Cape Hatteras, North Carolina) harvest is constrained to the RHL. This is designed to prevent the recreational Annual Catch Limit (ACL; landings and discards) from being exceeded. The FMP also includes recreational accountability measures to correct for an ACL overage if one occurs.

During 2010-2012 and 2014-2017, the recreational black sea bass fishery was closed during wave 1 (January and February) in state and federal waters. In recent years, some recreational fishery stakeholders requested a wave 1 opening to allow for increased fishing opportunities in light of the positive stock status indicated by the 2016 benchmark stock assessment.

The Council and Board agreed to open the recreational black sea bass fishery in federal waters during February 1-28, 2018-2020 and gave states the option of opening their fisheries during February under specific constraints. Participating states were required to have a minimum fish size of 12.5 inches and a 15 fish possession limit, identical to the federal waters measures. Participating states were also required to account for expected February harvest when developing recreational management measures for the rest of the fishing year to help ensure that the coastwide RHL would not be exceeded as a result of the February opening. For 2018-2020, the Council and Board approved the initial expected values shown in Table 1. Participating states submitted proposals to the Technical Committee describing how they would

account for February harvest when setting their recreational management measures for the rest of the year. The proposals (as modified after Technical Committee feedback, if needed) were then sent to the Board for review and approval before they could be implemented.

During their joint meeting on August 11, 2020, the Council and Board agreed to maintain this same management program for the February 2021 recreational fishery with no changes except for updated values of initial expected harvest by state. These revised values rely on the same analysis used for the February 2018-2020 openings. The only change in the analysis is the use of the most recent MRIP data to reflect the best scientific information available and for consistency with other aspects of the management program, which has now largely transitioned to use of the updated MRIP data.

### **Description of the Action**

This action would maintain the same management program used for the recreational black sea bass February opening in 2018-2020 and would revise only the values of initial expected February harvest by state. As previously stated, states which choose to participate in this optional opening must use these values when developing state waters management measures for the rest of the year to ensure that their participation in this optional opening does not increase their annual recreational black sea bass harvest in such a way as to result in an overage of the coastwide RHL. All participating states must first put forward a proposal for how they will account for their initial expected February harvest. These proposals must be approved by the Board. States also have the option of re-adjusting their measures later in the year based on estimates of actual February harvest, rather than the initial predicted values. Proposals for these additional adjustments must also first be reviewed by the Technical Committee and approved by the Board. To date, only Virginia and North Carolina have participated in this optional opening.<sup>1</sup> Both states re-adjusted their management measures later in the year, when needed, after considering estimates of actual February harvest. No other states have yet indicated that they wish to participate in this optional opening in February 2021; however, there is some uncertainty in the scale of participation in 2021 as states will not be required to indicate their interest in participating in 2021 until a later date.

As described in more detail in the 2017 EA which analyzed the February 2018 recreational opening<sup>2</sup> and the 2018 EA which continued its use beyond 2018,<sup>3</sup> the initial expected February harvest values by state for 2018-2020 (Table 1) were calculated based an analysis that used VTR data from federally permitted for-hire vessels in January and February 2013, the last year the recreational fishery was open in wave 1 prior to 2018. As data from private anglers are lacking for this time of year (except for North Carolina), an assumption was made about the ratio of for-hire to private angler harvest. It was assumed that February 2013 private/rental boat and shore harvest was equal to for-hire harvest based on an evaluation of catch by mode in wave 6 (November and December) and wave 2 (March and April) during 2007-2016. Waves 2 and 6 were used for this aspect of the analysis because they were open to recreational fishing in recent years and were assumed to be most similar to wave 1, which was closed for several years prior to 2018. It was estimated that if a 15 fish possession limit and a 12.5 inch minimum size limit had been in place in February 2013, approximately 100,000 pounds of black sea bass would have been harvested, assuming similar levels of participation as in 2013. This 100,000 pounds was then divided

---

<sup>1</sup> More information on the February 2018-2020 openings in Virginia and North Carolina is available here: [https://www.mafmc.org/s/Feb2021\\_BSB\\_rec\\_memo\\_MC\\_May2020.pdf](https://www.mafmc.org/s/Feb2021_BSB_rec_memo_MC_May2020.pdf).

<sup>2</sup> Available at: [https://www.mafmc.org/s/2018-01-03\\_BSB-Feb-Rec-EA\\_Final-Draft.pdf](https://www.mafmc.org/s/2018-01-03_BSB-Feb-Rec-EA_Final-Draft.pdf).

<sup>3</sup> Available at: [https://www.mafmc.org/s/SFSBSB\\_2019\\_specs\\_EA.pdf](https://www.mafmc.org/s/SFSBSB_2019_specs_EA.pdf).

among states based on the proportion of recreational wave 1 catch by state according to federal for-hire VTR data from 1996-2009 and 2013.

This analysis was done in 2017. After considering information from the February 2018-2020 openings in Virginia and North Carolina and the advice of the Monitoring Committee, the Council and Board agreed to update this analysis with the most recent MRIP data (Table 1). They also agreed that states which have participated in this optional opening may use alternative estimates of initial expected harvest based on the results of monitoring programs implemented specifically for this opening. Currently, this would only apply to Virginia. They recommended no other changes to the analysis or the management program for the February recreational opening. As previously stated, MRIP data were used only to inform the assumption about the ratio of for-hire harvest compared to harvest from the private/rental and shore modes. Therefore, the only meaningful change in these estimates is based on a change in this assumption. Using updated MRIP data for waves 2 and 6 in 2010-2019, 90% of the estimated recreational black sea bass harvest from Maine through Cape Hatteras, North Carolina came from the private/rental and shore modes, compared to 10% from the for-hire mode. This results in a nearly five-fold increase in the total predicted February harvest if all states were to participate in the opening (Table 1, Table 2).<sup>4</sup> This is not an entirely surprising result given the recent changes in the MRIP estimation methodology which have resulted in much higher estimates of catch in the private/rental and shore modes compared the previous estimates.

Table 1: Previous and proposed revisions to values of initial expected February black sea bass harvest (in pounds) by state.

<b>State</b>	<b>Values used for 2018-2020</b>	<b>Proposed revisions</b>
<b>RI</b>	288	1,146
<b>CT</b>	57	158
<b>NY</b>	9,410	41,871
<b>NJ</b>	82,850	405,913
<b>DE</b>	1,297	6,418
<b>MD</b>	541	2,227
<b>VA</b>	5,496	24,891*
<b>NC</b>	62	1,369
<b>Total</b>	100,000	483,993

\*The Council and Board agreed that Virginia could use an alternative value based on the results of their 2018-2020 monitoring program for the February fishery.

---

<sup>4</sup> More details on the updated analysis are available here:  
[https://www.mafmc.org/s/Feb2021\\_BSB\\_rec\\_memo\\_MC\\_May2020.pdf](https://www.mafmc.org/s/Feb2021_BSB_rec_memo_MC_May2020.pdf).

Table 2: Estimated black sea bass harvest in pounds during February 2013, based on federal VTR data scaled up based on the average proportion of for-hire to private catch during 2010-2019 (i.e., 10:90).

<b>Factor</b>	<b>Value</b>
# vessels submitted federal VTRs	19
Average trips per vessel	3.68
Average number anglers per trip	28.94
Average # fish harvested per angler	11.46
Total harvested fish reported on VTRs	25,882
Total for-hire harvest (lb) <sup>a</sup>	48,399
<b>Estimated total for-hire and private harvest (lb)<sup>b</sup></b>	<b>483,993</b>

<sup>a</sup>These values represent total harvested fish as reported on VTRs multiplied by the average MRIP-estimated weight of landed fish for all modes in 2013 (i.e., 1.87 pounds).

<sup>b</sup>These values were calculated based on an assumption that total harvest was 10% for-hire, 90% private based on wave 2 (March-April) and wave 6 (November-December) MRIP data for 2010-2019.

### **Effects of the Action**

The recent recreational black sea bass February opening was first analyzed through a 2017 EA.<sup>5</sup> Continuation of this opening beyond 2018 was analyzed in a 2018 EA which addressed annual specifications for all three species in the FMP.<sup>6</sup> The associated impacts to the human environment were analyzed in these two EAs. This action does not modify the impacts previously analyzed. This action would simply update the values for initial expected February harvest by state to account for recent revisions to the MRIP data. The revised MRIP data are now used in most aspects of the management program, including the stock assessment and calculations of the catch and landings limits. The management program for the February opening was designed to ensure that fishing effort in February does not contribute to an RHL or ACL overage. The most notable impacts of the overall recreational management program for black sea bass continue to derive from the RHL and the management measures used to prevent harvest from exceeding the RHL.

Bringing the values for initial expected February harvest in line with the rest of the management program, as proposed through this action, is not expected to result in any changes to the previously analyzed impacts of the February opening. The basis and rationale for this analysis remains unchanged. Although the proposed revisions represent a notable increase compared to the previous values (Table 1), this would not allow for an increase in harvest in February. It simply changes the currency of the data. Recreational harvest during the entire year is now estimated with the new MRIP methodology; therefore, it would not be appropriate to leave the initial expected February harvest values unchanged as this could result in insufficient adjustments to measures later in the year to account for participation in the February opening. The revised values ensure consistency across the management program.

The proposed measures are not expected to result in a substantial change in any of the following: fishing, location, timing, effort, authorized gear types, or harvest levels. This is primarily an administrative action that continues the same management strategy used in 2018-2020 with updated values of initial expected February harvest by state so that these values align with the data used in other parts of the management

<sup>5</sup> Available at: [https://www.mafmc.org/s/2018-01-03\\_BSB-Feb-Rec-EA\\_Final-Draft.pdf](https://www.mafmc.org/s/2018-01-03_BSB-Feb-Rec-EA_Final-Draft.pdf).

<sup>6</sup> Available at: [https://www.mafmc.org/s/SFSBSB\\_2019\\_specs\\_EA.pdf](https://www.mafmc.org/s/SFSBSB_2019_specs_EA.pdf).

process (i.e., the most recent MRIP estimates). This action does not impact the locations fished or the gear used in the recreational black sea bass fishery.

On October 17, 2017, the Protected Resources Division issued a memorandum reinitiating consultation on the Biological Opinion for the Summer Flounder, Scup, and Black Sea Bass FMP and determined that allowing the fishery and associated research to continue during the re-initiation period will not violate Endangered Species Act sections 7(a)(2) and 7(d). The proposed action is not expected to lead to an overall substantial increase of fishing effort, or alter the spatial and/or temporal distribution of current fishing effort in a manner that would increase interaction rates with protected species in a meaningful way. Therefore, we have determined that the impacts of this action are consistent with the scope of the conclusions reached in the October 17, 2017, memorandum and the proposed action would not be likely to jeopardize the continued existence of any whale, sea turtle, Atlantic salmon, or sturgeon species.

### **Categorical Exclusion**

As indicated above, this action is primarily administrative in nature and should be considered for a categorical exclusion from requirements to prepare an EA or EIS under NEPA. Council staff will work with GARFO NEPA staff to finalize a determination on the level of NEPA analysis required.

Please contact me or Julia Beaty of my staff if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Moore', with a long horizontal flourish extending to the right.

Christopher M. Moore, Ph.D.  
Executive Director

cc: M. Luisi, W. Townsend, J. Beaty, A. Ferreira, E. Keiley, M. Ferguson