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## MEMORANDUM

**Date:** November 30, 2018  
**To:** Council and ASMFC Summer Flounder, Scup, and Black Sea Bass Board  
**From:** Julia Beaty, Council staff  
**Subject:** Summer flounder, scup, and black sea bass framework on conservation equivalency, Block Island Sound transit, and slot limits

### 1. INTRODUCTION AND BACKGROUND

This document summarizes the alternatives under consideration through a framework adjustment to the Mid-Atlantic Fishery Management Council's (Council's) Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and the Atlantic States Marine Fisheries Commission's (Commission's) complementary addendum to their FMP.<sup>1</sup> Fisheries for these three species are managed cooperatively by the Council and the National Marine Fisheries Service (NMFS) in federal waters (3-200 miles) and the Commission and member states in state waters (0-3 miles).

The Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (the Board) plan to take final action on this framework/addendum during their joint meeting on December 11, 2018. Eight states held public hearings on the Commission's addendum in November 2018. Public comments received through those hearings and the written comment period will be summarized at the joint meeting on December 11, 2018.

The alternatives considered through this action address recreational black sea bass conservation equivalency, conservation equivalency rollover for black sea bass and summer flounder, transit in Block Island Sound, and slot limits for all three species (section 2). A summary of the potential impacts of these alternatives is included in section 3 of this document.

The management alternatives considered through this action aim to increase the diversity of tools available for managing all three species, as well as reduce conflict between state and federal regulations. State and federal waters measures for the same species are not always identical. For example, federal waters are sometimes closed to certain fisheries when state waters are open. In addition, possession limits and minimum fish sizes sometimes differ between state and federal

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<sup>1</sup> The Commission's draft addendum XXXI is available at:  
[http://www.asmfc.org/uploads/file/5bd8a9afSF\\_Scup\\_BSB\\_DraftAddendumXXXI\\_PublicComment\\_Oct2018.pdf](http://www.asmfc.org/uploads/file/5bd8a9afSF_Scup_BSB_DraftAddendumXXXI_PublicComment_Oct2018.pdf)

waters. Discrepancies between state and federal regulations can be confusing for fishermen, which can result in noncompliance. They also create challenges for enforcement. The conservation equivalency and Block Island Sound transit alternatives address situations where state and federal waters differ and could help address some of these issues.

The Council and Commission FMPs require uniform coastwide management measures for black sea bass in state and federal waters; however, the fisheries vary by state in terms of availability, seasonality, and other factors. As a result, this one size fits all approach has had disproportionate impacts on some states. Since 2011, the Commission has adopted a series of addenda to allow states to temporarily deviate from this requirement and adopt measures that are more appropriate for their fisheries. This framework action considers alternatives which would allow the black sea bass federal waters measures to be waived through conservation equivalency in favor of the regulations of the states where anglers land their catch. This would help address the disproportionate impacts of uniform coastwide measures on some states.

This action does not consider implementing black sea bass conservation equivalency or slot limits for any of the three species in 2019. Rather, the alternatives would update the FMPs to allow these management tools to be used in future years.

## 2. MANAGEMENT ALTERNATIVES

The management alternatives considered through this framework action are summarized in the following sections and in **Error! Not a valid bookmark self-reference.**, below.

*Table 1: Management alternatives considered through this action.*

<b>Alternative Set</b>	<b>Alternatives</b>
<b>Conservation Equivalency</b>	1A: No action on black sea bass conservation equivalency
	1B: Black sea bass conservation equivalency
	1C: Black sea bass conservation equivalency with rollover
	2A: No action on summer flounder conservation equivalency
	2B: Conservation equivalency rollover for summer flounder
<b>Block Island Sound Transit</b>	3A: No action
	3B: Allow transit in a defined area for defined fishermen/vessels (must select one sub-alternative from 3B-1 and 3B-2, and one sub-alternative from 3B-3 and 3B-4)
	3B-1: RI-RI transit corridor
	3B-2: Striped bass transit area
	3B-3: Recreational fisheries only
	3B-4: Recreational and commercial fisheries
<b>Slot Limits</b>	4A No action
	4B Update Council’s FMP to allow slot limits to be used in recreational summer flounder, scup, and black sea bass fisheries

### 2.1. Alternative Set 1: Black sea bass conservation equivalency

#### 2.1.1. Alternative 1A: No action (conservation equivalency cannot be used for black sea bass)

The Council and Commission FMPs require uniform coastwide measures for the recreational black sea bass fishery, applying to state and federal waters. From 1996 to 2010, uniform

coastwide minimum fish size, season, and bag limits were used by the Council and Commission to help ensure that recreational harvest did not exceed the annual recreational harvest limit (RHL). In recent years, the Commission has implemented addenda to allow temporary deviations from this requirement in state waters. These addenda allowed for state-by-state flexibility – first through state shares in 2011 and then through an ad-hoc regional management approach from 2012–2018. Under this ad-hoc process, the Council and Board agreed to coastwide federal waters measures each year. Individual states or regions then worked through the Commission process to develop measures for state waters to ensure that recreational harvest did not exceed the RHL. The states of Maine through New Jersey implemented management measures in state waters that differed from the coastwide federal waters measures.

Under alternative 1A, the recreational black sea bass fishery would continue to be managed with uniform coastwide measures in federal waters. The Commission could continue to set recreational measures in state waters through addenda. The details of how this is carried out could vary year to year. The Board would have the option of discontinuing ad-hoc regional management and reverting to uniform coastwide measures or adopting an alternative approach.

### **2.1.2. Alternative 1B: Allow black sea bass conservation equivalency using the current summer flounder conservation equivalency process**

This alternative proposes updating the Council and Commission FMPs to allow conservation equivalency to be used for the recreational black sea bass fishery in future years based on the process currently used for summer flounder. Based on the timing of final action and rulemaking, it will not be possible to use conservation equivalency for black sea bass in 2019.

Under this alternative, the Council and Board would decide each year whether to use coastwide measures or conservation equivalency. If they agree to conservation equivalency, they must agree on a set of non-preferred coastwide measures consisting of a minimum fish size, possession limit, and season that, if implemented on a coastwide basis, would be expected to prevent harvest from exceeding the RHL. They would also agree to a set of precautionary default measures. The precautionary default measures are intended to be restrictive enough to deter states/regions from implementing measures which are not approved through the conservation equivalency process.

Individual states or regions would then develop proposed measures that, when taken as a whole, are the conservation equivalent of the non-preferred coastwide measures, meaning that they are expected to result in the same level of harvest as the non-preferred coastwide measures. An agreed upon management scheme would form the basis for the state or regional measures. For example, early in summer flounder management, the Commission's FMP designated state-by-state measures based on each state's proportion of total harvest in 1998. Recent addenda have deviated from this approach. Currently, regional (as opposed to state) measures are set to achieve the RHL. If alternative 1B is selected, the Board would determine the management program to implement conservation equivalency for black sea bass through a separate action. This program could vary year-to-year. The Board could agree to develop state or regional measures using a different approach than that used for summer flounder (e.g., different regional alignment or data used to set measures). This action does not specify allocations or other methodologies that would be used to develop state and/or regional measures. It does not specify whether states will individually craft measures or if states will form regions with similar management measures.

These details could vary for each year that conservation equivalency is used and will be determined by the Board through separate actions.

The Commission's Technical Committee reviews the state/regional proposals to determine if, as a whole, they are expected to prevent harvest from exceeding the RHL. The Board then considers the proposals for approval, taking into account the Technical Committee's recommendations. If the Board does not approve an individual proposal, that state or region may submit a revised proposal. If a state or region implements measures which are not approved by the Board, then the precautionary default measures would be enforced in that state or region.

After reviewing and approving the state/regional proposals, the Board submits a letter to NMFS certifying that the combination of state and regional measures is expected to prevent harvest from exceeding the RHL. NMFS then either approves or rejects the combination of proposals. If approved, NMFS waives the federal waters measures (i.e., the non-preferred coastwide measures) for the remainder of the calendar year in favor of the state or regional conservation equivalency measures. Federally-permitted vessels and vessels fishing in federal waters are then subject to the regulations in the states where they land their catch.

Table 2 outlines a potential timeline for black sea bass conservation equivalency based on the typical timeline for the summer flounder process.

### **2.1.3. Alternative 1C: Black sea bass conservation equivalency using the current summer flounder process and allowing conservation equivalency to roll over from one year to the next (when appropriate)**

This alternative proposes updating the FMPs to allow conservation equivalency to be used for the recreational black sea bass fishery in future years. It proposes establishing a process for black sea bass conservation equivalency based on the process currently used for summer flounder, and would also allow conservation equivalency to roll over from one year to the next with Board and Council approval. Conservation equivalency would roll over by default; however, each year, the Board and Council would need to affirm that roll over is appropriate for the next year.

This alternative is described in more detail below; however, NMFS recently indicated that they will not be able to approve and implement this alternative. They previously expressed support for consideration of this alternative; however, after further considering the implications in situations when the precautionary default measures must be implemented, this alternative was determined to be infeasible. If precautionary default measures need to be implemented under this alternative, NMFS would be required to develop rulemaking in the late spring with little advance notice, which would not allow for appropriate management measures to be in place until after the recreational fishing season in many states is well underway.

Under the current process for summer flounder, conservation equivalency expires at the end of the year, but the federal waters measures are not waived until the spring, after NMFS receives a letter from the Commission certifying that the combination of state and regional measures is expected to prevent harvest from exceeding the RHL (Table 2). Thus, from January 1 until NMFS completes the rulemaking process to waive the federal waters measures, the non-preferred coastwide measures from the previous year are technically in place in federal waters. This not only creates the potential for confusion but can also result in federal waters measures that are more restrictive than state waters measures.

Table 2: Timeline for implementing summer flounder conservation equivalency in recent years. The timeline can vary year to year. In years when the Commission develops an addendum to modify summer flounder conservation equivalency, the timeline can be delayed and additional steps are added to the Board’s process.

<p><b>August</b></p> <ul style="list-style-type: none"> <li>• Council recommends RHL to NMFS. Board takes final action on RHL for state waters.</li> </ul> <p style="text-align: center;"><b>October</b></p> <ul style="list-style-type: none"> <li>• Preliminary MRIP data for waves 1-4 (i.e. January - August) of the current year are available.</li> </ul> <p style="text-align: center;"><b>November</b></p> <ul style="list-style-type: none"> <li>• Monitoring Committee reviews MRIP data through wave 4 and recommends overall % reduction required or liberalization allowed and use of coastwide measures or conservation equivalency (including non-preferred coastwide and precautionary default measures).</li> </ul> <p style="text-align: center;"><b>December</b></p> <ul style="list-style-type: none"> <li>• Council/Board recommend conservation equivalency OR coastwide measures for the following year. If they select conservation equivalency, they also recommend non-preferred coastwide and precautionary default measures.</li> <li>• NMFS publishes final rule announcing subsequent year’s RHL.</li> </ul>	
<p style="text-align: center;"><b><u>If Conservation Equivalency is Recommended</u></b></p> <p style="text-align: center;"><b>January</b></p> <ul style="list-style-type: none"> <li>• States/regions submit conservation equivalency proposals to Commission staff.</li> <li>• Technical Committee evaluates proposals.</li> </ul> <p style="text-align: center;"><b>February</b></p> <ul style="list-style-type: none"> <li>• Board reviews and approves/disapproves proposals.</li> </ul> <p style="text-align: center;"><b>February/March</b></p> <ul style="list-style-type: none"> <li>• Council staff submits recreational measure package to NMFS. Package includes: <ul style="list-style-type: none"> <li>○ Overall % reduction required or liberalization allowed</li> <li>○ Non-preferred coastwide and precautionary default measures; and</li> <li>○ Recommendation to implement conservation equivalency.</li> </ul> </li> </ul> <p style="text-align: center;"><b>April</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes proposed rule for recreational measures announcing the overall % reduction required or liberalization allowed and the non-preferred coastwide and precautionary default measures.</li> <li>• Board submits letter to NMFS certifying that the combination of state/regional measures is not expected to result in harvest exceeding the RHL.</li> </ul> <p style="text-align: center;"><b>May</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes final rule announcing overall % reduction required and approval of conservation equivalency; or coastwide measures</li> </ul>	<p style="text-align: center;"><b><u>If Coastwide Measures Are Recommended</u></b></p> <p style="text-align: center;"><b>February/March</b></p> <ul style="list-style-type: none"> <li>• Council staff submits recreational measure package to NMFS. Package includes: <ul style="list-style-type: none"> <li>○ Overall % reduction required or liberalization allowed; and</li> <li>○ Coastwide measures.</li> </ul> </li> </ul> <p style="text-align: center;"><b>April</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes proposed rule for recreational measures announcing the overall % reduction required or liberalization allowed and coastwide measures.</li> </ul> <p style="text-align: center;"><b>May</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes final rule announcing overall % reduction required or liberalization allowed and coastwide measures.</li> </ul>

Under alternative 1C, conservation equivalency would roll over by default, but the Council and Board would still review the non-preferred coastwide and precautionary default measures each year to ensure that harvest would not exceed the RHL. If the fishery would not be expected to be constrained to the RHL, then new non-preferred coastwide and precautionary default measures would need to be developed for the upcoming year. Given the timing of recreational data availability from the Marine Recreational Information Program (MRIP), the Council and Board would continue to review preliminary recreational harvest estimates through August of the current year in December. The Board and the Board's Technical Committee would continue to review final recreational estimates early in the next year. The Commission would send a letter to NMFS by May 31, annually, certifying that the combination of state/regional measures is expected to prevent the RHL from being exceeded. If the Commission cannot make such a certification by May 31, conservation equivalency rollover would expire and NMFS would implement the non-preferred coastwide measures in federal waters for the remainder of the calendar year. NMFS recently expressed concerns that this timeline is not feasible because the final rule implementing the non-preferred coastwide measures would not be in place until the recreational fishing season in many states is well underway. This would pose challenges for ensuring that the RHL is not exceeded. For this reason, NMFS recently indicated that they will likely not be able to approve this alternative if it selected by the Council and Board as a preferred alternative.

## **2.2. Alternative Set 2: Summer flounder conservation equivalency rollover**

### **2.2.1. Alternative 2A: No action (conservation equivalency for summer flounder cannot roll over from one year to the next)**

Under the current process for summer flounder, conservation equivalency expires at the end of each year, and a federal rule must be developed each year to implement conservation equivalency and waive the federal waters measures, as described above. Under alternative 2A, there would be no change to the current summer flounder conservation equivalency process (Table 2).

### **2.2.2. Alternative 2B: Allow summer flounder conservation equivalency to roll over from one year to the next (when appropriate)**

Under alternative 2B, the conservation equivalency process for summer flounder would be modified so that conservation equivalency could roll over from one year to the next, as described in section 2.1.3 for black sea bass.

As with alternative 1C, NMFS recently indicated that they will not be able to approve and implement this alternative for summer flounder conservation equivalency rollover. They previously expressed support for consideration of this alternative; however, after further considering the implications in situations when the precautionary default measures must be implemented, this alternative was determined to be infeasible. Their concerns are described in more detail in section 2.1.3.

## **2.3. Alternative Set 3: Block Island Sound transit provisions**

### **2.3.1. Alternative 3A: No action (no Block Island Sound transit provisions)**

Under current regulations, when summer flounder, scup, or black sea bass fisheries are closed in federal waters but open in state waters, vessels may not transit federal waters while in possession of any of these species. This has been problematic in Block Island Sound during the fall closure

in federal waters for recreational black sea bass in recent years (Table 3). In most recent years, state waters in Rhode Island, Connecticut, and/or New York (depending on the year) were open to black sea bass fishing during the federal waters closure. Anglers fishing in state waters around Block Island must pass through federal waters to return to the mainland. Therefore, if they retained any black sea bass during the federal waters closure, they were in violation of the federal regulations while transiting federal waters, even if those fish were legally caught in state waters.

This has not been an issue for the recreational summer flounder fishery for several years as federal recreational regulations have been waived under conservation equivalency. It has not been an issue for the recreational scup fishery in recent years, as the federal waters scup season has been open year-round since 2012.

Similar issues can arise when the recreational minimum fish size and/or possession limit regulations are more restrictive in federal waters than in state waters. Anglers must abide by the federal regulations when in federal waters unless those measures are waived through conservation equivalency, as has been the case for summer flounder for several years.

In federal waters, vessels must have a federal open access party/charter permit to carry passengers for hire. Vessels must have a federal commercial moratorium permit to possess summer flounder, scup, or black sea bass above the recreational possession limits. Federal permits are not required for private anglers to harvest summer flounder, scup, and black sea bass.

Under alternative 3A, no change would be made to the current regulations. The current regulations require the following:

- Recreational fishermen without federal summer flounder, scup, or black sea bass permits (i.e., **private anglers**), in possession of any of the three species legally harvested from state waters may enter/transit/fish in federal waters, provided they remain in compliance with all federal regulations while in federal waters. Upon re-entering state waters (to continue fishing, and/or land), all such fishermen are subject to all applicable regulations of that state. If federal regulations for any of the three species are more restrictive than state-waters regulations, private anglers must abide by them while in federal waters. If federal waters are closed, they may not enter/transit/fish in federal waters. If the federal minimum fish size and/or possession limit are more restrictive, possession of any of the three species must be compliant with those federal measures in federal waters.
- **Non-federally permitted for-hire and commercial vessels** (i.e., state-permitted vessels without a federal open access party/charter permit or a federal commercial moratorium permit for summer flounder, scup, or black sea bass), in possession of any of the three species legally harvested from state waters may not enter/transit/fish in federal waters, given federal permit requirements.
- **Dual (state and federal) permitted for-hire and commercial vessels** in possession of any of the three species legally harvested from state waters may enter/transit/fish in federal waters, provided they remain in compliance with all federal regulations governing the recreational or commercial possession/harvest of those species while in federal waters. Upon re-entering state waters (to continue fishing and/or land), all such fishermen remain subject to the most restrictive regulations, either federal or state. If federal regulations are more restrictive, dual permitted for-hire and commercial vessels must abide by them wherever they

fish. If federal waters are closed, they may not enter/transit/fish in federal or state waters. If other federal measures (e.g., minimum size, possession limit, gear) are more restrictive, possession of any of the three species must be compliant with those federal measures in both state and federal waters.

Table 3: Federal recreational measures for black sea bass, north of Cape Hatteras, NC, 2007 - 2018.

Years	Minimum size (inches, total length)	Possession limit	Open season
2007-2008	12	25	1/1-12/31
2009	12.5	25	1/1-10/5
2010-2011	12.5	25	5/22-10/11 and 11/1-12/31
2012	12.5	25	5/19-10/14 and 11/1-12/31
2013	12.5	20	5/19-10/14 and 11/1-12/31
2014	12.5	15	5/19-9/18 and 10/18-12/31
2015-2017	12.5	15	5/15-9/21 and 10/22-12/31
2018	12.5	15	5/15-12/31

### 2.3.2. Alternative 3B: Block Island Sound transit provisions for summer flounder, scup, and black sea bass

Under this alternative, a transit area would be established through which non-federally permitted vessels in possession of any of the three species legally harvested from state waters could transit between the Rhode Island state waters surrounding Block Island and the coastal state waters of Rhode Island, New York, Connecticut, or Massachusetts. The boundaries of the transit area would be defined through alternative 3B-1 or 3B-2, described in more detail in sections 2.3.2.1 and 2.3.2.2, below. The vessels subject to the transit provisions (recreational or recreational and commercial) would be defined through alternative 3B-3 or 3B-4, described in more detail in sections 2.3.2.3 and 2.3.2.4, below.

Transit through the defined area would be allowed provided:

- Fishermen and harvest are compliant with all applicable state regulations.
- Gear is stowed in accordance with federal regulations.
- No fishing takes place from the vessel while in federal waters.
- The vessel is in continuous transit.

Transit through the defined area would be allowed for **non-federally permitted recreational fishermen (i.e., all private anglers)** in possession of any of the three species legally harvested from state waters, when federal regulations governing the recreational harvest of those species are more restrictive. Private anglers would still be allowed to transit all federal waters when abiding by any more restrictive federal regulations or when federal regulations are less restrictive than state regulations.

Transit through the defined area would be allowed for **non-federally permitted for-hire and commercial vessels** in possession of any of the three species legally harvested from state waters,



at all times. Non-federally permitted for-hire and commercial vessels would still be prohibited from possessing any of the three species in all other federal waters.

There would be no change to current federal regulations requiring all federally permitted vessels and dual (state and federal) permit holders to abide by the measures of the state(s) in which they harvest and land their catch, or the federal waters measures, whichever are more restrictive.

**2.3.2.1. Alternative 3B-1: Block Island Sound transit provisions for summer flounder, scup, and black sea bass apply in a defined north-south transit corridor from Rhode Island state waters around Block Island Sound to Rhode Island state coastal waters**

If alternative 3B is selected, one alternative for transit area must also be chosen (i.e., either alternative 3B-1 or 3B-2).

Under alternative 3B-1, the transit area would be bound by the following coordinates (Figure 1):

- NW (41°18'50"N, -71°32'56"W)
- NE (41°18'20"N, -71°31'27"W)
- SE (41°17'01"N, -71°32'25"W)
- SW (41°17'19"N, -71°33'19"W)

This alternative defines only the transit area. Transit provisions could apply to recreational vessels only, or both recreational and commercial vessels, depending whether alternative 3B-3 or 3B-4 is selected.

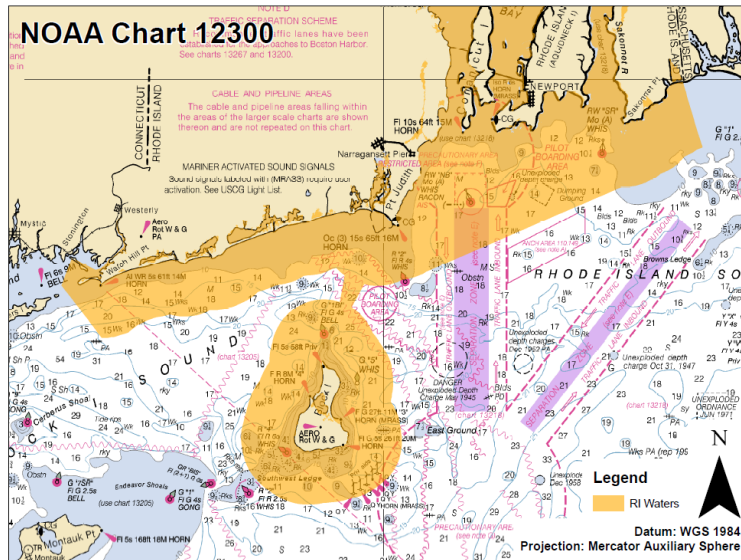


Figure 1: Transit area (orange corridor north of Block Island) under alternative 3B-1.

**2.3.2.2. Alternative 3B-2: Block Island Sound Transit Provisions for Summer Flounder, Scup, and Black Sea Bass Apply in the Existing Block Island Transit Zone for Striped Bass**

If alternative 3B is selected, one alternative for transit area must also be chosen (i.e., either alternative 3B-1 or 3B-2).

Under alternative 3B-2, the transit area would be identical to the area of the exclusive economic zone (EEZ) around Block Island where transit is currently allowed for striped bass. This area, as shown in Figure 2, is defined in the regulations as follows: “The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI” (50 CFR 697.7 (b)).

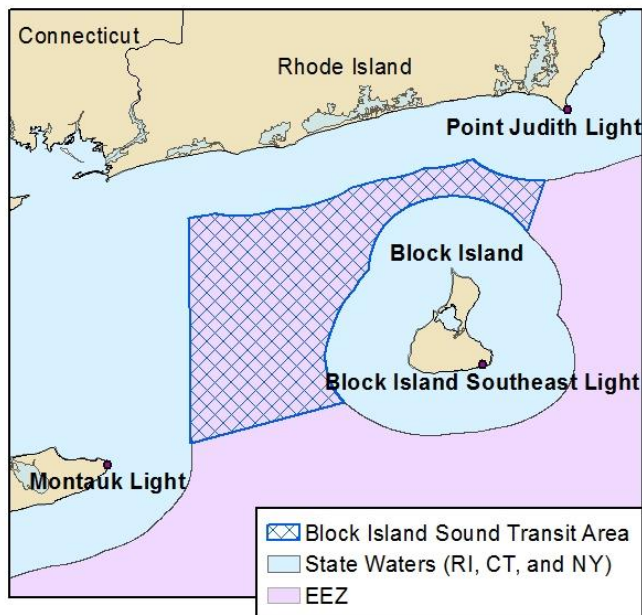


Figure 2: Block Island Sound transit zone for striped bass (blue hatched area).

This alternative defines only the transit area. Transit provisions could apply to recreational vessels only, or both recreational and commercial vessels, depending whether alternative 3B-3 or 3B-4 is selected.

### 2.3.2.3. Alternative 3B-3: Transit provisions apply to recreational fisheries only

If alternative 3B is selected, only one alternative for fisheries subject to transit provisions must also be chosen (i.e., either alternative 3B-3 or 3B-4).

Alternative 3B-3 would allow all non-federally permitted recreational fishermen (i.e., private anglers) and all non-federally permitted (i.e., state licensed or permitted) party/charter vessels in possession of any of the three species legally harvested from state waters to transit through the area defined through alternative 3B-1 or 3B-2.

These transit provisions would apply to private anglers only when federal regulations governing the recreational harvest of those species are more restrictive. These transit provisions would apply to all non-federally permitted (i.e., state licensed or permitted) party/charter vessels at all times.

These transit provisions would not apply to dual (state and federal) permitted for-hire vessels (i.e., those with federal charter/party permits) as all dual permit holders are always required to abide by the measures of the state(s) in which they harvest and land their catch, or the federal waters measures, whichever are more restrictive.

#### **2.3.2.4. Alternative 3B-4: Transit provisions apply to recreational and commercial fisheries**

If alternative 3B is selected, only one alternative for fisheries subject to transit provisions should be chosen (i.e., either alternative 3B-3 or 3B-4).

Alternative 3B-4 would allow all non-federally permitted recreational fishermen (i.e., private anglers), all non-federally permitted (i.e., state licensed or permitted) party/charter vessels, and all non-federally permitted commercial vessels in possession of any of the three species legally harvested from state waters to transit through the area defined through alternative 3B-1 or 3B-2.

These transit provisions would apply to private anglers only when federal regulations governing the recreational harvest of those species are more restrictive. These transit provisions would apply to all non-federally permitted (i.e., state licensed or permitted) party/charter and commercial vessels at all times.

These transit provisions would not apply to dual (state and federal) permitted for-hire and commercial vessels (i.e., those with federal charter/party permits and/or federal commercial moratorium permits) as all dual permit holders are always required to abide by the measures of the state(s) in which they harvest and land their catch, or the federal waters measures, whichever are more restrictive.

#### **2.4. Alternative Set 4: Recreational slot limits**

##### **2.4.1. Alternative 4A: No action (slot limits cannot be used in federal recreational summer flounder, scup, or black sea bass fisheries)**

Currently, the Council's FMP does not allow for specification of a maximum size limit for summer flounder, scup, or black sea bass. Therefore, slot limits may not be used as a management tool for these fisheries in federal waters. Under this alternative, there would be no change to the Council's FMP and maximum size limits could not be used in federal waters. Slot limits can currently be implemented through the Commission process without a change to the Commission's FMP (i.e., for summer flounder through conservation equivalency, and for black sea bass and scup for state waters only). For this reason, the complementary addendum being developed by the Commission does not include slot limit alternatives.

##### **2.4.2. Alternative 4B: Modify the Council's FMP to allow use of a maximum size limit for recreational summer flounder, scup, and black sea Bass fisheries in federal waters**

Under this alternative, the Council's FMP would be modified to allow specification of a maximum fish size. This would allow for use of regular slot limits, split slot limits, and trophy fish. A complementary change is not needed to the Commission's FMP as slot limits can already be used through the Commission process. For this reason, the complementary addendum being developed by the Commission does not include slot limit alternatives.

### **3. POTENTIAL BIOLOGICAL AND SOCIO-ECONOMIC IMPACTS OF ALTERNATIVES**

This section summarizes the potential impacts of the alternatives on summer flounder, scup, and/or black sea bass (depending on the alternative) as well as the potential socio-economic impacts of each alternative. This impacts analysis is preliminary. A full impacts analysis will be included in a future Council Environmental Assessment. The impacts are summarized in Table 4 and described in more detail in the following sections.

Table 4: Summary of expected impacts of the alternatives considered in this framework. A minus sign (–) signifies a negative impact, a plus sign (+) signifies a positive impact, and zero (0) indicates no impact or negligible impacts.

Alternative(s)		Impacts to summer flounder, scup, and/or black sea bass	Socio-economic impacts
Conservation Equivalency	1A No action	+*	-*
	1B and 1C Black sea bass conservation equivalency	+	+
	1C and 2B Conservation equivalency rollover for black sea bass and summer flounder, respectively	0	+
Block Island Sound Transit	3A No action	+*	-*
	3B-1 Transit allowed in RI-RI corridor		Mostly +
	3B-2 Transit allowed in striped bass transit area		
	3B-3 Transit allowed for recreational fisheries only	+	
3B-4 Transit allowed for recreational and commercial fisheries			
Slot Limits	4A No action	+*	Mostly -*
	4B Update Council's FMP to allow slot limits to be used in recreational summer flounder, scup, and black sea bass fisheries	-	+ and -

\*The impacts of all no action alternatives are expected to be similar to current impacts. For example, + would indicate continued positive impacts, not impacts that are more positive than current impacts.

### 3.1. Potential impacts black sea bass conservation equivalency

#### 3.1.1. Potential impacts of conservation equivalency on black sea bass

Under all black sea bass conservation equivalency alternatives (i.e., alternatives 1A - 1C), fishing effort and fishing mortality will continue to primarily be impacted by the RHL. Therefore, the impacts of these alternatives on black sea bass are not expected to be different than the impacts of the annual RHL. The expected impacts of the RHL are analyzed in a specifications document prepared by the Council each time an RHL is implemented or revised (e.g., MAFMC 2017). The RHL is based on the best available science and is intended to prevent overfishing. As such, the RHL is expected to have positive impacts on black sea bass. These positive impacts are expected to be maintained under all black sea bass conservation equivalency alternatives, including the no action alternative. These impacts are not expected to be different (i.e., not more positive) than the impacts of recreational management measures on the stock in recent years.

#### 3.1.2. Potential socio-economic impacts of black sea bass conservation equivalency

Over the past 5 years (i.e., 2013-2017), about 41% of the annual recreational harvest of black sea bass (in numbers of fish) from Maine through North Carolina occurred in federal waters,

according to MRIP estimates.<sup>2</sup> The proportion of harvest from state and federal waters varied by state (Table 5).

As described above, under current regulations (represented by alternative 1A), uniform coast-wide measures are required in federal waters. In recent years, the states of Maine through New Jersey implemented state waters measures that differed from the federal waters measures. In some cases, the differences between state and federal waters measures resulted in angler confusion, noncompliance, and state/federal water transit issues (e.g., in Block Island Sound). These could be considered negative socio-economic impacts. These negative impacts would be expected to persist under the no action alternative.

If conservation equivalency were to be used for the black sea bass recreational fishery (alternatives 1B and 1C), then the federal waters measures could be waived in favor of the measures of the state where anglers land their catch. This would alleviate many of the issues associated with different state and federal waters measures (e.g., angler confusion, noncompliance, state/federal water transit issues). In addition, conservation equivalency would allow anglers in both state and federal waters to fish under regulations that are tailored to the relevant characteristics of the fishery in their area. This could result in socioeconomic benefits due to increased angler satisfaction and decreased noncompliance.

Table 5: Percentage of black sea bass harvest (in numbers of fish) from state and federal waters by state during 2013-2015 according to MRIP data.<sup>3</sup>

<b>State</b>	<b>State waters</b>	<b>Federal waters</b>
<b>NH</b>	100%	0%
<b>MA</b>	92%	8%
<b>RI</b>	80%	20%
<b>CT</b>	93%	7%
<b>NY</b>	54%	46%
<b>NJ</b>	38%	62%
<b>DE</b>	7%	93%
<b>MD</b>	31%	69%
<b>VA</b>	33%	67%
<b>NC</b>	10%	90%
<b>Overall</b>	<b>59%</b>	<b>41%</b>

### **3.2. Potential impacts of conservation equivalency rollover for black sea bass and/or summer flounder**

Alternative 1C considers allowing conservation equivalency for black sea bass to rollover from one year to the next (if appropriate). Alternative 2B considers allowing conservation equivalency for summer flounder to rollover from one year to the next (if appropriate). The impacts of these

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<sup>2</sup> MRIP data downloaded November 26, 2018, based on the revised estimation methodologies accounting for changes to the Access Point Angler Intercept Survey and the transition from the Coastal Household Telephone Survey to the mail-based Fishing Effort Survey.

<sup>3</sup> Ibid.

alternatives are not expected to be different; therefore, the conservation equivalency rollover alternatives for the two species are considered together in the following sections.

### **3.2.1. Potential impacts of conservation equivalency rollover on black sea bass and summer flounder**

When considered separately from the use of conservation equivalency itself, the alternatives for conservation equivalency rollover for black sea bass (alternative 1C) and summer flounder (alternative 2B) are both administrative in nature. As such, they are not expected to result in any changes in fishing effort or fishing mortality and are not expected to have any direct or indirect impacts on black sea bass or summer flounder.

### **3.2.2. Potential socio-economic impacts of conservation equivalency rollover**

Under the current process for summer flounder (alternative 2A), conservation equivalency expires at the end of the year, but the federal waters measures are not waived until the spring after NMFS receives a letter from the Commission certifying that the combination of state and regional measures will prevent harvest from exceeding the RHL (Table 2). Thus, from January 1 until NMFS completes the rule-making process to waive the federal waters measures, the non-preferred coastwide measures from the previous year are technically in place in federal waters. This not only creates the potential for confusion but can also create a situation where federal waters measures are more restrictive than state waters measures. These could be considered negative socio-economic impacts.

Conservation equivalency rollover (alternatives 1C and 2B) could be beneficial for recreational fishermen as it would resolve these issues in years when conservation equivalency rollover is appropriate as the federal waters measures would remain waived from one year to the next.

As previously stated, NMFS has indicated that they will likely not be able to approve conservation equivalency rollover for black sea bass or summer flounder for the reasons described in section 2.1.3.

## **3.3. Potential impacts of Block Island Sound transit provisions**

### **3.3.1. Potential impacts of Block Island Sound transit provisions on summer flounder, scup, and black sea bass**

Compared to the no action alternative (alternative 3A), all the Block Island Sound transit alternatives (i.e., alternative 3B and sub-alternatives 3B-1 - 3B-4) are expected to lead to a slight increase in fishing effort for summer flounder, scup, and black sea bass in Rhode Island state waters off Block Island. Under these alternatives, in situations where federal waters measures are more restrictive than state waters measures (i.e., open seasons, possession limits, and/or minimum fish sizes, depending on the alternatives chosen), state-only permit holders would be able to fish in state waters off Block Island and return to the mainland in a defined transit area while complying with the state regulations. Under current regulations, fishermen must comply with the federal waters measures when they are in federal waters, including the federal waters that separate Rhode Island state waters around Block Island from state waters adjacent to the mainland.

The degree of the potential increase in fishing effort varies depending on the sub-alternatives chosen. For example, the combination of alternatives 3B-2 (transit allowed in the striped bass transit area) and 3B-4 (for recreational and commercial fishermen/vessels) would result in the

greatest potential increase in fishing effort because it would apply to the greatest area and likely involve the greatest number of fishermen/vessels of all the alternatives considered.

Although a slight increase in fishing effort is expected under these alternatives, fishing effort will continue to be primarily impacted by the annual RHL and commercial quota, which are set based on the best available science and are intended to prevent overfishing. Therefore, the impacts of these alternatives on summer flounder, scup, and black sea bass are not expected to be different than the impacts of the RHL and commercial quota, which are analyzed in a specifications document prepared by the Council each time an RHL or quota is implemented or revised (e.g., MAFMC 2017). Because these measures are based on the best available science and are intended to prevent overfishing, they are generally expected to have positive impacts on summer flounder, scup, and black sea bass. The Block Island Sound transit alternatives are not expected to change these impacts. These positive impacts are expected to be maintained under all Block Island Sound transit alternatives, including the no action alternative.

### **3.3.2. Potential socio-economic impacts of Block Island Sound transit provisions**

With the exception of the no action alternative (alternative 3A), the Block Island Sound transit alternatives would allow non-federally permitted recreational and/or commercial fishermen/vessels (depending on the sub-alternative chosen) to transit federal waters in a defined area while complying with the state waters measures for summer flounder, scup, and black sea bass. In situations where the federal waters recreational measures are more restrictive than the state waters measures, this could allow for a slight increase in fishing effort for and harvest of these species in the state waters around Block Island.

If alternative 3B-4 is selected, transit provisions would apply to commercial and recreational fishermen/vessels. Given federal commercial permit requirements, transiting would allow for an increase in effort by state-only licensed commercial fishermen from Rhode Island, and to a lesser extent, commercial fishermen from other states. As such, transit provisions could lead to increased revenues for commercial fishermen, for-hire operations, and associated industries, as well as increased fishing opportunities for commercial and/or recreational fishermen (depending on the sub-alternative selected). For these reasons, all Block Island Sound transit alternatives are expected to have positive socio-economic impacts, compared to the no action alternative (alternative 3A).

The no action alternative (alternative 3A) could be considered to have negative socio-economic impacts because, in all situations, non-federally permitted commercial and for-hire vessels which are legally authorized to harvest from the state waters around Block Island are unable to transit back to state waters adjacent to the mainland to offload. Also, in certain situations, it can require private anglers to comply with federal measures which are more restrictive than state waters measures because they must pass through federal waters to return from state waters around Block Island to the mainland.

For example, as previously described, in recent years, state waters in Rhode Island, Connecticut, and/or New York (depending on the year) have sometimes been open to recreational black sea bass fishing when federal waters were closed in the fall. Therefore, if anglers retained any black sea bass during the federal waters closure, they would be in violation of the federal regulations while transiting federal waters, even if those fish were legally caught in state waters. Alternative 3A can have similar implications for situations where the federal waters minimum fish size limit

and/or possession limit is more restrictive than the state waters measures. For these reasons, alternative 3A can have negative socio-economic impacts.

### **3.4. Potential impacts of recreational slot limits**

As previously stated, this framework does not consider implementing any specific slot limits. Rather, it proposes updating the Council's FMP to allow slot limits to be used in future years. The potential impacts of slot limits are summarized below, but will vary depending on the particular slot limit used.

#### **3.4.1. Potential impacts of slot limits on summer flounder, scup and black sea bass**

Slot limits are intended to reduce fishing mortality on larger fish. For some species, females reach larger sizes than males and bigger, older females tend to produce more offspring than younger fish. Thus, in theory, slot limits could have positive impacts on recruitment for some species by reducing fishing mortality on large females. The following sections summarize the potential impacts of slot limits on summer flounder, scup, and black sea bass based on past analyses and the life history of each species. However, it should be noted that actual impacts to these species will depend on the specific slot limits implemented. Specific slot limits are not considered through this action.

##### ***Impacts to summer flounder***

In 2009, the Monitoring Committee analyzed a range of slot limit options for the recreational summer flounder fishery using for-hire catch data from 2008. The analysis also considered a range of bag limits and options for trophy fish in combination with slot limits. The results indicated that, compared to a standard minimum size limit, the slot limit options considered would “certainly result in greatly increased numbers of fish harvested” due to the higher availability of smaller fish compared to larger fish. Although discards may decrease under certain slot limits, total removals (i.e., harvest and discards) would likely increase due to the increase in harvest. An increase in removals in numbers of fish would increase the fishing mortality rate. Under some slot limit options, marginal benefits to spawning stock biomass (SSB) were predicted; however, these benefits were eliminated when a trophy class was considered in combination with slot limits (Wong 2009).

A management strategy evaluation analysis by Wiedenmann et al. (2013) also found that slot limits could result in an increase in the number of summer flounder harvested per angler, as well as a small reduction in the total number of female summer flounder harvested. They found that slot limits generally resulted in lower harvest and more discards by weight, and higher and more frequent annual catch limit overages, compared to minimum size limits.

In summary, these two studies suggest that total removals in numbers of fish may increase under slot limits, the fishing mortality rate may increase, and any increases in SSB may be minor. For these reasons, slot limits could have negative impacts on the summer flounder stock, especially under current conditions (i.e., overfishing is occurring and SSB is below the target level).<sup>4</sup>

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<sup>4</sup> At the time of writing this document, the summer flounder stock was considered to be experiencing overfishing, but not overfished, according to a 2016 stock assessment update. A new benchmark stock assessment is currently in development, with a peer review taking place in late November 2018. The new benchmark assessment may change the current understanding of summer flounder stock status.



### ***Impacts to scup***

An analysis of slot limits for scup has not been performed. Female and male scup have similar growth rates (NEFSC 2015); therefore, unlike summer flounder, slot limits would not have disproportionate impacts on females compared to males.

Scup reach a maximum length of at least 18 inches and a maximum age of at least 14 years; however, few scup older than 7 years are caught in the mid-Atlantic (Northeast Data Poor Stocks Working Group 2009, NEFSC 2015). In theory, slot limits should be most beneficial for longer-lived species and scup are not a particularly long-lived species.

For all these reasons, the scup stock may not notably benefit from slot limits. In addition, if slot limits lead to increased harvest in numbers of fish, as suggested by Wong (2009) and Wiedenmann et al. (2013) for summer flounder, then slot limits could lead to an increased fishing mortality rate, compared to a traditional minimum size limit. Given that the biomass of scup is estimated at more than double the target and overfishing is not occurring according to the 2017 assessment update (NEFSC 2017b), an increased fishing mortality rate may not have major negative impacts on the stock, depending on the degree of the increase. In summary, the impacts of slot limits on the scup stock could be negligible or slightly negative.

### ***Impacts to black sea bass***

An analysis of slot limits for black sea bass has not been performed. Most black sea bass transition from female to male when they reach about 7.5 inches in length; thus, larger, older fish tend to be males and slot limits could disproportionately impact males compared to females.

Multiple studies suggest that the black sea bass stock is somewhat resilient to the removal of large males due to the contribution of smaller, secondary males (i.e., mature males without the bright coloration or nuchal humps of dominant males) to spawning (NEFSC 2017a). For example, Blaylock and Shepherd (2016) concluded the black sea bass stock from Maine through Cape Hatteras, North Carolina is more resilient to exploitation than a typical protogynous hermaphrodite species (i.e., a species that transitions from female to male) because not all larger individuals are males and secondary males contribute to spawning.

Some Council, Board, Monitoring and Technical Committee, and Advisory Panel members have expressed concerns that larger black sea bass may experience higher mortality rates than smaller black sea bass due to barotrauma. Consequently, they have said the use of slot limits for black sea bass could lead to an increase in discard mortality because slot limits would increase discards of larger fish compared to traditional minimum size limits.

In addition, if slot limits lead to increased harvest in numbers of fish, as suggested by Wong (2009) and Wiedenmann et al. (2013) for summer flounder, then slot limits could lead to an increased fishing mortality rate, compared to a traditional minimum size limit. Given the current high biomass of black sea bass (more than double the biomass target according to the 2016 benchmark stock assessment; NEFSC 2017a), and given that overfishing is not occurring, an increased fishing mortality rate may not have major negative impacts on the stock, depending on the degree of the increase. In summary, the impacts of slot limits on the black sea bass stock could be negligible or negative.

### ***Impacts of standard minimum size limits***

The Monitoring Committee has concluded in the past that standard minimum fish size limits are one of the most powerful tools to constrain recreational harvest to the RHL. In years when a decrease in harvest is needed, increasing the minimum size limit can have a greater impact on harvest than decreasing the season or possession limit. For this reason, use of a standard minimum size limit can have positive impacts on the summer flounder, scup, and black sea bass stocks as it can be an effective tool to constrain harvest and prevent overfishing. Some negative impacts are possible due to the potential to concentrate fishing effort on larger, older fish which may have greater contributions to spawning than smaller fish (depending on the species); however, in general, the impacts of traditional minimum size limits on summer flounder, scup, and black sea bass are mostly positive. The no action alternative (alternative 4A) would represent a continuation of these positive impacts.

#### **3.4.2. Potential socio-economic impacts of slot limits**

To the extent that traditional minimum fish size limits are an effective tool to prevent overfishing, they have positive socio-economic impacts by helping to ensure availability of fish to anglers. However, as described above, compared to slot limits, traditional minimum fish sizes can result in both higher discards and lower harvest in numbers of fish (Wong 2009, Wiedenmann et al. 2013). These could be considered negative socio-economic impacts. The no action alternative (alternative 4A) would represent a continuation of these negative impacts.

As summarized above, Wong (2009) and Wiedenmann et al. (2013) suggested that total summer flounder removals in numbers of fish may increase under slot limits, compared to traditional minimum size limits. The same may be true for scup and black sea bass; however, slot limits have not been analyzed for these species. This could result in socio-economic benefits as it could allow anglers to retain more fish and would increase angler satisfaction. However, if the increase in removals is great enough to negatively impact the stock(s) and significantly increase the risk of overfishing, this could result in longer-term negative socio-economic impacts if it leads to reduced availability or requires more restrictive management measures in future years.

An analysis by the Monitoring Committee suggested that, given differences in availability of smaller summer flounder, slot limits could result in a disproportionate increase in harvest from shore, compared to for-hire and private/rental boats, assuming other regulations were unchanged (Wong 2009). Due to this increase in harvest, slot limits could have greater positive socio-economic impacts for anglers fishing from shore than anglers fishing from boats. The same may be true for scup. A small percentage of recreational black sea bass harvest comes from the shore mode.

The impacts of slot limits depend, in part, on the particular slot implemented. For example, slot limits that allow retention of smaller fish could allow greater harvest from shore, compared to other modes, and in certain states (e.g., Maryland and North Carolina where bays are important recreational fishing areas), compared to others. Slot limits at larger sizes could disadvantage the shore mode and those states compared to others (Wong 2009). For example, over the past 10 years (i.e., 2008-2017), the shore mode generally accounted for less than 20% of the summer

flounder harvest in each state. North Carolina is a notable exception, where it accounted for about 43% of the summer flounder harvest in numbers of fish.<sup>5</sup>

Based on Wong 2009, the Monitoring Committee concluded that a very narrow slot limit would be necessary to constrain summer flounder harvest to the RHL. Narrow slot limits could be more challenging to enforce and could lead to greater noncompliance than wider slot limits or a standard minimum size. For these reasons, slot limits could have some negative socio-economic impacts in years when RHLs are low and harvest must be constrained. Wider slots could be possible under higher RHLs.

In addition, slot limits would require anglers to discard fish above a certain size. This could be unappealing to some anglers, which could decrease angler satisfaction and may increase the potential for noncompliance, compared to a traditional minimum size limit. These would be considered negative socio-economic impacts. Allowance of a trophy fish in combination with a slot limit could address these concerns.

In summary, the socio-economic impacts of slot limits could be mixed (i.e., both positive and negative) and would depend on the particular slot limits used.

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<sup>5</sup> MRIP data downloaded November 26, 2018, based on the revised estimation methodologies accounting for changes to the Access Point Angler Intercept Survey and the transition from the Coastal Household Telephone Survey to the mail-based Fishing Effort Survey.