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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 171023999-8070-02]

RIN 0648-BH35

**Fisheries of the Northeastern United States; Black Sea Bass Fishery; 2018 February
Recreational Season Modification**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing regulations to open a 2018 February recreational season in the Federal black sea bass fishery. This action provides additional recreational fishing opportunities in winter, while maintaining management measures to prevent overfishing consistent with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. This rule is intended to inform the public of this new 2018 recreational season.

DATES: Effective February 1 through February 28, 2018.

ADDRESSES: Copies of the Environmental Assessment (EA), Regulatory Flexibility Act Analyses, and other supporting documents for the action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

General Background

Black sea bass are jointly managed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) as part of the joint Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). States manage black sea bass within 3 nautical miles (4.83 km) of their coasts under the Commission's plan. The applicable Federal regulations govern vessels and individual anglers fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a Federal black sea bass charter/party vessel permit, regardless of where they fish. This rule applies to black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35 E. 13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, North Carolina) northward to the U.S./Canada border.

This action implements the addition of a Federal recreational black sea bass fishing season during February of 2018. Additional background information regarding the development of this action was provided in the proposed rule (83 FR 780; January 8, 2018) and is not repeated here. The Federal recreational measures for the remainder of 2018 are still in development and will be implemented through a separate rulemaking later this spring.

Final Action

This action implements a 28-day winter season for the 2018 recreational black sea bass fishery during the month of February. The current black sea bass recreational management measures of a 12.5-inch (31.75-cm) minimum size and 15-fish possession limit still apply during this February season. As explained in the proposed rule, this action responds to the favorable 2016 benchmark stock assessment for black sea bass, and is intended to increase recreational fishing access to a stable stock at a time of year when few other recreational species are available.

Two states, North Carolina and Virginia, have formally declared their intent to participate in the February 2018 recreational season. To confirm their participation, both states submitted a plan to offset their expected harvest during this winter season through their recreational management measures for remainder of the 2018 fishing year.

Commission-based measures implemented by states may vary by state, and differ from the Federal water measures. Because only Virginia and North Carolina have committed to participate in this winter season, the fishery will only be open for these states. Federal permit holders are required to adhere to the more restrictive set of measures irrespective of whether the vessel is fishing in state or Federal waters. Similarly, private anglers must adhere to the recreational measures implemented by the state in which the fish will be landed as all the state-implemented measures place restrictions on season, minimum fish size, and per-angler possession limit. For additional information on state-implemented management measures, please contact the marine fisheries management agency for the state in question or the Commission (www.asmfc.org; 703-842-0740).

Comments and Responses

The public comment period for the proposed rule ended on January 23, 2018. Thirteen comments were received from the public on this rule. Many of the comments expressed similar concerns.

Comment 1: One commenter was dissatisfied with the regulatory flexibility analysis (RFA) process and believed that more input from small businesses should have been taken into account during the development stage of this rule.

Response 1: Thorough RFA analyses were prepared for this action consistent with Small Business Administration guidance. The action was also discussed at several public Council and

Commission meetings where the concerns of small businesses were considered. This comment did not raise specific issues regarding the proposed rule or the economic impact analyses summarized in the initial RFA for this action. Rather, the commenter stated frustrations with the RFA process in general, stating that RFA regulations need to be updated and the small business community needs to be better included in policy discussions during their development. These are larger changes that are outside the purview of this action.

Comment 2: One commenter was in favor of this action and is looking forward to increased fishing opportunity.

Response 2: NMFS agrees and notes that increased opportunity is a key purpose of this action.

Comment 3: Several commenters opposed implementation of the proposed season, stating concerns over the reduction in the recreational harvest limit for the rest of the 2018 fishing year, the inability of northern states to adequately participate due to weather conditions, the unfavorable coastal distribution of black sea bass in February, and the feasibility of the season overall. Many of these commenters noted that better opportunities would be created by lengthening the existing seasons into April or October or changing the bag limits.

Response 3: The purpose of this action is to create more recreational fishing access and opportunity at a time when other options are limited or restricted in the winter. There are more varied recreational opportunities in the later months of the year. Only Virginia and North Carolina have committed to participate in this February season, so only those states will need to account for any catch during the rest of the 2018 fishing year. The expected harvest from these two states is expected to be minimal and will not appreciably reduce the quota available for the summer and fall fishery.

Comment 4: One commenter was upset about Federal agencies' varied interpretations and implementations of the National Environmental Policy Act (NEPA), arguing that state and local governments should play a larger role in cooperative actions to better represent the "human environment."

Response 4: A full environmental assessment (EA) was prepared consistent with applicable NEPA guidance and Council for Environmental Quality (CEQ) requirements. This action was also developed with full collaboration from state agencies through the Commission. No comments were received that raised specific concerns or that noted deficiencies with the prepared NEPA analyses in support of this action.

Comment 5: The Massachusetts Division of Marine Fisheries (MA DMF) submitted a comment raising concerns about the lack of data, reporting, and accountability during Wave 1 in the recreational fishery. They also expressed concern about the potential implications of this season on future recreational rulemaking for states at the Commission level, and Council decisions at the Federal level.

Response 5: The Council and Commission openly acknowledged these concerns during this action's development. Furthermore, NMFS agrees, which is why the 2018 fishing opportunity is restricted to February and is, by design, a small scale endeavor to increase access with minimum risk. The Council is considering options to address the noted reporting and accountability issues in its development of the Wave 1 recreational Letter of Authorization program for 2019 and future years. NMFS encourages MA DMF to continue raising these concerns with the Council and Commission during continued development of a Wave 1 recreational black sea bass fishery.

Comment 6: One commenter asked that we protect the livelihoods of commercial

fishermen.

Response 6: NMFS agrees and considers this a critical component of its overall mandate. However, this comment does not pertain to the subject action, which involves the recreational fishery.

Comment 7: One commenter claimed that black sea bass are intelligent and should not be farmed to extinction.

Response 7: The recent 2016 benchmark stock assessment showed that wild black sea bass populations are thriving at nearly three times the biomass target, and not at risk of extinction. Also, this action pertains to recreational fishing activities, not aquaculture or marine farming practices.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C.

553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the action is in place on or about February 1, 2018. This action implements an additional Federal black sea bass recreational season during February 2018. A delay in its effectiveness would reduce the length of the open winter season; unnecessarily disadvantaging recreational anglers that wish to participate, and limiting the fishing opportunity that this action was meant to create.

Furthermore, regulated parties do not require any additional time to come into compliance with this rule. Unlike actions that require an adjustment period, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the existing management measures for black sea bass while the charter/party operators are engaged in fishing activities during the new open season. This action has been discussed at multiple Council and Commission public meetings throughout its development and is expected by the recreational fishing sector.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on completion of the EA in support of the recommendations developed by the Council and Commission. Documentation in support of the Council's recommended specifications is required for us to provide the public with information from the environmental and economic analyses, as required in rulemaking, and to evaluate the consistency of the Council's recommendation with the Magnuson-Stevens Act and other applicable law. The Council's decision to recommend a February season was not final until December 13, 2017, and a complete document was finalized in late December 2017. Due to this tight timeline, we were unable to prepare this action early enough to allow for both an appropriate public comment period and a 30-day delay in effectiveness. The proposed rule published on January 8, 2018, with a 15-day

comment period ending January 23, 2018. This action creates an additional Federal recreational season for black sea bass and increases fishing opportunity and access in the winter that would otherwise be constrained under the current seasons. If this final rule were delayed for 30 days, the proposed 28-day recreational season would be severely shortened or may not become effective at all. This would diminish any opportunity created by opening a winter season, and would be contrary to the purpose of the action. For these reasons, a 30-day delay in effectiveness would be contrary to the public interest and is therefore waived.

Final Regulatory Flexibility Analysis

The final regulatory flexibility analysis (FRFA) included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the initial regulatory flexibility analysis (IRFA) and a summary of analyses completed to support the action. A public copy of the environmental assessment/IRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

NMFS received one comment on the RFA process in general, stating that RFA regulations need to be updated and the small business community needs to be afforded more inclusion in policy discussions during their development. However, this comment did not raise specific issues regarding the proposed rule or the economic analyses summarized in the IRFA. Refer to the "Comments and Responses" section of this preamble for more detail. No changes to the proposed rule are necessary as a result of the public comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This final rule affects small entities engaged in recreational fish harvesting operations within the black sea bass fishery. For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those affected by this action. Furthermore, multiple-permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. Because of this, some individually permitted vessels may be part of the same firm because they have the same owner for the purpose of this analysis.

In terms of the RFA, a business primarily engaged in for-hire fishing activity is classified as a small business if it has combined annual receipts not in excess of \$7.5 million. The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2014 through 2016. According to the ownership database, there were 406 for-hire permits that generated revenues from recreational fishing for various species during the 2014-2016 period. Of these permits, there were 328 that were not affiliated with any other ownership group. The remaining 78 for-hire vessels were comprised of affiliated ownership groups with between two and six for-hire vessels for a total of 359 for-hire affiliate firms; all of which are categorized as small businesses. Although it is not possible to derive what proportion of the overall revenues came from specific fishing activities, further analysis conducted by the Council and NMFS during the development of this action identified that in 2016 there were 291 for-hire entities that recreationally caught black sea bass. In 2013, the last year that a recreational black

sea bass fishery was open in January and February, 331 for-hire firms caught black sea bass recreationally; however, only 39 of those were active during the Wave 1 (January and February) period. While these are the best available estimates of potential participation in the February season implemented by this action, these numbers are not necessarily indicative of the number of entities that will actually participate. Overall, participation is expected to be low as only Virginia and North Carolina declared into the fishery, and general comments on the proposed rule suggest that businesses are primarily promoting and planning for the busier summer and fall seasons.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

NMFS is implementing the Council-recommended final rule to open a February recreational season in the 2018 black sea bass fishery to satisfy the Magnuson-Stevens Act requirements to ensure that fish stocks are not subject to overfishing, while allowing the greatest access to the fishery, and opportunity to achieve optimum yield. The objective of this action is to increase fishing opportunity while maintaining catch within the recreational harvest limit and annual catch limit.

As described in the proposed rule for this action, two other alternatives to the approved action were considered. Maintaining the status quo with no winter fishing did not take advantage of the favorable stock status or provide any additional access or opportunity in the recreational black sea bass fishery. Opening the fishery for both January and February could have created more recreational fishing opportunity in 2018; however, given the lack of recreational data

available, the time constraints involved, and the potential disproportionate impacts to state recreational fisheries later in the year, this alternative was not selected. The action described in this final rule was chosen as the best feasible way to increase recreational fishing opportunity in the black sea bass fishery in 2018 with the lowest potential negative impact.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared and will be sent to all holders of Federal charter/party permits issued for the black sea bass fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: www.greateratlantic.fisheries.noaa.gov.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 29, 2018.

Chris Oliver,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 648.146 [Suspended]

2. Section 648.146 is suspended.

3. Section 648.150 is added to subpart I to read as follows:

§ 648.150 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from February 1 through February 28, May 15 through September 21, and October 22 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2018-02025 Filed: 1/31/2018 8:45 am; Publication Date: 2/1/2018]