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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 170316276-7276-01]**

**RIN 0648-XF300**

**Fisheries of the Northeastern United States; Black Sea Bass Fishery; 2017 and Projected 2018 Specifications**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes revised black sea bass specifications for the 2017 fishing year and projected specifications for 2018. In addition, this rule proposes to remove an accountability measure implemented at the start of the fishing year designed to account for commercial sector overages in 2015. Updated scientific information regarding the black sea bass stock indicates that higher catch limits should be implemented to obtain optimum yield, and that the accountability measure is no longer necessary or appropriate. This action is intended to inform the public of the proposed specifications for the 2017 fishing year and projected specifications for 2018.

**DATES:** Comments must be received by 5 p.m. local time, on [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** An environmental assessment (EA) was prepared for this action and describes the proposed measures and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Specifications Document, including the

EA and the Regulatory Flexibility Act Analysis, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

You may submit comments on this document, identified by NOAA-NMFS-2017-0023, by either of the following methods:

*ELECTRONIC SUBMISSION:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0023](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0023),
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

- OR -

*MAIL:* Submit written comments to John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope, “Comments on the Proposed Rule for Revised Black Sea Bass Specifications.”

*INSTRUCTIONS:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Cynthia Hanson, Fishery Management

Specialist, (978) 281-9180.

## **SUPPLEMENTARY INFORMATION:**

### **General Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations outline the Council's process for establishing specifications.

Specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), and sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit).

Annual specifications may be proposed for three-year periods, with the Council reviewing the specifications each year to ensure that previously established multi-year specifications remain appropriate. Following review, NMFS publishes the final annual specifications in the *Federal Register*. The FMP also contains formulas to divide the specification catch limits into commercial and recreational fishery allocations, state-by-state quotas, and quota periods, depending on the species in question. Rulemaking for measures used to manage the recreational fisheries (minimum fish sizes, open seasons, and bag limits) for these three species occurs separately, and typically takes place in the spring of each year.

On December 28, 2015, NMFS published a final rule implementing the Council's recommended specifications for the black sea bass fishery (80 FR 80689). The Council intended to reconsider the specifications set for fishing year 2017 following completion of the next black sea bass benchmark assessment.

The assessment was completed in late 2016 and was peer reviewed by the Stock

Assessment Workshop/Stock Assessment Review Committee (SAW/SARC 62) in December 2016. The benchmark assessment was effective in determining stock status, biological reference points and proxies, and in projecting probable short-term trends. The assessment successfully cleared the SAW/SARC 62 peer review process, addressing many of the significant concerns raised during peer reviews of earlier assessments. The assessment indicates that the black sea bass stock north of Cape Hatteras is not overfished and overfishing is not occurring. The spawning stock biomass in 2015 was estimated to be 2.3 times higher than the target and the fishing mortality rate (F) was 25 percent below the  $F_{MSY}$  proxy. Table 1 outlines the updated biological reference points and 2015 stock information.

**Table 1. Updated Black Sea Bass Biological Reference Points (BRPs) and 2015 Stock Information**

	<b>Proxy</b>	<b>BRP (mil lb)</b>	<b>BRP (mt)</b>	<b>2015 (mil lb)</b>	<b>2015 (mt)</b>
$F_{MSY}$	$F_{40\%}$	0.36	0.36	0.27	0.27
<b>Stock Biomass Target</b>	$SSB_{40\%}$	21.3	9,667	48.9	22,176
<b>Stock Biomass Threshold</b>	$1/2SSB_{40\%}$	10.7	4,834	N/A	N/A

### **Proposed Specifications**

The Council’s Scientific and Statistical Committee (SSC) met on January 25, 2017, to discuss the assessment results and identify an updated acceptable biological catch (ABC) level for 2017, and project ABCs for the 2018 and 2019 fishing years. Based on the new information provided by the assessment, the SSC accepted the overfishing limits (OFLs) estimated by the assessment and recommended using a coefficient of variation (CV) associated with the OFL of 60 percent. This marked a change from the default 100-percent values that had been used in the past, which had resulted in more precautionary specifications. Using the Council’s risk policy with a CV of 60 percent around the OFL, the SSC recommended ABCs for the 2017 through

2019 fishing years (Table 2). The adjusted 2017 ABC is 57 percent higher than the currently established 2017 ABC; however, there is a pattern of declining ABCs over the next three years. This decline is in part due to the passage of the large 2011 year class out of the fishery. The SSC intends to review its ABC recommendation again next summer and determine if adjustments need to be made for 2018.

Following the SSC meeting, the Monitoring Committee met on January 26, 2017, to discuss ACLs, ACTs, commercial quotas, and recreational harvest limits for the 2017 through 2019 fishing years. The Monitoring Committee determined that no additional reductions were necessary to account for management uncertainty. Commercial landings have been very close to the quota over the last five years and recreational overages occurred when the stock was rapidly growing and availability to anglers was high, but the recreational harvest limits were set at levels not reflective of stock size. As a result, the Monitoring Committee recommended that ACTs for the commercial and recreational sectors should equal their respective ACLs. After removing the sector-specific estimated discards, the black sea bass commercial quotas and recreational harvest limits would be those shown in Table 2. The Monitoring Committee believed the calculation for projecting discards for 2017 is appropriate, but will reconsider discard projections and apportionments for 2018. The Monitoring Committee did not recommend any changes to the current commercial measures, including the 11-inch minimum fish size, mesh size requirements and seasonal possession limit thresholds, or pot/trap gear requirements. As previously mentioned, we are separately proposing an action to address 2017 black sea bass recreational management measures.

The Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board met jointly on February 15, 2017, to consider the SSC and Monitoring

Committees' recommendations, receive public comments on those recommendations, and to formalize recommendations for catch limit specifications and commercial and recreational management measures. The Council and Board ultimately adopted the Monitoring Committee's recommendations for 2017 ACLs, ACTs, quotas, and harvest limits; as well as the projected specifications for 2018. Due to the Marine Recreational Information Program (MRIP) transition timeline that would incorporate re-estimated historical catch estimates into stock assessments, currently scheduled for completion in 2018, the Council did not want to project specifications past 2018. The Council's recommendations represent a 53-percent increase in the 2017 commercial quota established in 2015 and a 52-percent increase in the 2017 recreational harvest limit. The Council will revisit its decision on the projected 2018 specifications following the SSC's review next summer. By providing projected specifications for 2018, NMFS hopes to assist fishery participants in planning ahead. Final 2018 specifications will be published in the *Federal Register* before the start of the 2018 fishing year (January 1, 2018) based on the Council's review.

**Table 2. Council-recommended Black Sea Bass Specifications for 2017 and Projected for 2018**

	<b>Black Sea Bass Specifications</b>					
	<b>2017 (Current)</b>		<b>2017 (Revised)</b>		<b>2018 (Projected)</b>	
	<b>mil lb</b>	<b>mt</b>	<b>mil lb</b>	<b>mt</b>	<b>mil lb</b>	<b>mt</b>
<b>OFL</b>	n/a	n/a	12.05	5,467	10.29	4,669
<b>ABC</b>	6.67	3,025	10.47	4,750	8.94	4,057
<b>Commercial ACL</b>	3.15	1,428	5.09	2,311	4.35	1,974
<b>Commercial ACT</b>	3.15*	1,428*	5.09	2,311	4.35	1,974
<b>Commercial Discards</b>	0.44	198	0.97	442	0.83	377
<b>Commercial Quota</b>	2.71*	1,226*	4.12	1,869	3.52	1,596
<b>Recreational ACL</b>	3.52	1,597	5.38	2,439	4.59	2,083
<b>Recreational ACT</b>	3.52	1,597	5.38	2,439	4.59	2,083
<b>Recreational Discards</b>	0.70	317	1.09	494	0.93	422
<b>Recreational Harvest Limit</b>	2.82	1,280	4.29	1,945	3.66	1,661

\*At the start of the fishing year, the 2017 commercial ACT and commercial quota were further reduced to 2.3 million lb (1,043 mt) and 1.86 million lb (845 mt), respectively, as accountability measures due to a perceived 2015 overage.

Consistent with the black sea bass regulations, the sum of the recreational and commercial sector ACLs is equal to the ABC for each fishing year. To derive the ACLs, the sum of the sector-specific projected discards are removed from the ABCs to derive the landing allowances. For black sea bass, 49 percent of the landing allowance for each fishing year is allocated to the commercial fishery and 51 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABCs by the allocation percentages to derive the sector ACLs. Although the derived ACLs are not split exactly according to the allocations specified in the FMP, the landing portions of the ACLs preserve the appropriate allocation split, consistent with the FMP. This process results in the commercial and recreational ACLs, commercial quotas, and recreational harvest limits shown in Table 2.

### **Reconsideration of the 2017 Accountability Measure for the Commercial Fishery**

In our final rule announcing the revisions to the summer flounder specifications for 2017 and 2018, we also announced an accountability measure (AM) applicable to the black sea bass commercial fishery. This AM was an automatic pound-for-pound payback, as required by the regulations, which resulted from overages in 2015. During that fishing year, the commercial fishery caught slightly more (3.8 percent) than their commercial quota, which generally would have resulted in just a pound-for-pound payback from their 2017 commercial quota. However, 2015 discard estimates were much higher than originally projected, accounting for 44.4 percent of the total commercial catch in 2015. As a result, the regulations require that the total overage (i.e., 849,000 lb (385 mt)) be taken from a future year's commercial ACL and the 2017 commercial quota was reduced by approximately 30 percent (i.e., from 2.71 million lb (1,230

mt) to 1.86 million lb (845 mt)).

The new 2016 benchmark assessment has provided updated information on the condition of the stock, particularly for 2015, the year when the overages occurred. If the current assessment had been available to set 2015 specifications, analysis indicates the 2015 ABC would have been more than double what was implemented and the 2015 ACL would not have been exceeded. Higher 2015 commercial discards, above those projected for the implemented 2015 ACL, were estimated and used in the assessment and did not impact the stock status. Even accounting for the unexpectedly high discards, fishing mortality in 2015 was the lowest in the time series, 25 percent below the overfishing threshold. The new 2016 stock assessment provides a much more comprehensive and robust picture of the stock in 2015, and represents the best available science to guide management decisions. As a result, the Council has recommended pursuant to 50 CFR 648.142(b) that the specific AM be removed. We agree that it is not necessary, and we intend to remove the AM from the 2017 commercial fishery.

As for the 3.8-percent overage (i.e., about 81,500 lb (37 mt)) of the commercial fishery's quota, which generally would have resulted in a pound-for-pound payback against the 2017 quota, preliminary 2016 catch data indicate that the fishery had approximately 209,400 lb (95 mt) of unharvested quota. Had we known of the 2015 commercial quota overage and implemented a pound-for-pound reduction in 2016, we would not have exceeded the 2016 quota. As is consistent with how we handle summer flounder catch accounting, that payback could have been accounted for in 2016 (i.e., total 2016 landings plus the 2015 overage amount did not exceed the 2016 commercial quota). As a result, this overage does not need to be applied to the 2017 quota.

As for AMs in the recreational fishery, with the new benchmark stock assessment

information, analysis indicates that recreational harvest limits during the last few years would have been significantly higher (i.e., approximately double those implemented) if they had been set using the recent assessment model, and previous overages would likely not have occurred to the same degree, if at all. Based on this new information, the Monitoring Committee determined that no AMs are necessary for 2017 in the recreational fishery.

### **Classification**

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

This proposed rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Mid-Atlantic Fishery Management Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an EA. According to the commercial ownership database, 609 affiliate firms landed black sea bass during the 2013-2015 period, with 603 of those business affiliates categorized as small businesses and 6 categorized as large businesses. Black sea bass represented approximately 2.58 percent of the average receipts of the small entities considered and 0.51 percent of the average receipts of the large entities considered over this time period.

The ownership data for the for-hire fleet indicate that there were 411 for-hire affiliate

firms generating revenues from fishing recreationally for various species during the 2013-2015 period, 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, given the popularity of black sea bass as a recreational species it is likely that revenues generated from black sea bass is important for some if not all of these firms.

The proposed measure would increase both the commercial quota and the recreational harvest limit by over 50 percent, resulting in positive economic impacts on regulated entities. Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

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

Dated: April 11, 2017.

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Alan D. Risenhoover,  
Acting Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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