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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822-70999-02]

RIN 0648-XF669

Fisheries of the Northeastern United States; Summer Flounder, Scup, Black Sea Bass Fisheries; 2018 and Projected 2019 Scup Specifications and Announcement of Final 2018 Summer Flounder and Black Sea Bass Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues revised scup specifications for the 2018 fishing year and projected specifications for 2019. Additionally, this action implements a summer flounder accountability measure for 2018. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act. This rule is intended to revise the 2018 scup catch limits based on updated scientific information to afford more opportunity to obtain optimum yield, update the summer flounder catch limits to account for previous overages, finalize the 2018 black sea bass specifications, and inform the public of projected scup specifications for the 2019 fishing year.

DATES: Effective *[insert date of publication in the FEDERAL REGISTER]*, through December

31, 2018.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA), 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.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

SUPPLEMENTARY INFORMATION:

General Background

Scup, summer flounder, and black sea bass are jointly managed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission as part of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). This action implements revised scup specifications for the 2018 fishing year and announces projected 2019 scup specifications. This rule also revises the 2018 summer flounder commercial annual catch limit (ACL) and subsequent state commercial quotas to account for an ACL overage in 2016, consistent with the FMP and regulations. The previously projected 2018 black sea bass specifications (82 FR 24078; May 25 2017) are announced as final in this action.

Final Scup Specifications

Background on how the Council derived the 2018 and 2019 scup specifications was outlined in the proposed rule (82 FR 51594; November 7, 2017) and is not repeated here. We are implementing the 2018 final and 2019 projected scup specifications as proposed.

The 2018 and 2019 annual catch targets (ACTs) implemented by this final rule are based on the 2019 acceptable biological catch (ABC) and setting the ACLs for 2019 equal to the ACTs.

The resulting 2018 commercial quota is 38 percent higher than what is currently in place for 2018. Similarly, the resulting 2018 recreational harvest limit is 41 percent higher. This rule makes no changes to the commercial scup management measures (e.g., mesh requirements, fishery seasons, etc.).

Table 1. Final Scup Specifications for 2018 and Projected for 2019

	Scup Specifications					
	2018 (Current)		2018 (Revised)		2019 (Projected)	
	million lb	mt	million lb	mt	million lb	mt
Overfishing Limit (OFL)	29.68	13,462	45.05	20,433	41.03	18,612
ABC	27.05	12,270	39.14	17,755	36.43	16,525
Commercial ACL	21.10	9,571	30.53	13,849	28.42	12,890
Commercial ACT	21.10	9,571	28.42	12,890	28.42	12,890
Commercial Discards	3.76	1,705	4.43	2,011	4.43	2,011
Commercial Quota	17.34	7,866	23.98	10,879	23.98	10,879
Recreational ACL	5.95	2,699	8.61	3,906	8.01	3,636
Recreational ACT	5.95	2,699	8.01	3,636	8.01	3,636
Recreational Discards	0.75	338	0.65	293	0.65	293
Recreational Harvest Limit	5.21	2,361	7.37	3,342	7.37	3,342

The 2018 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 2.

Table 2. Commercial Scup Quota Allocations for 2018 by Quota Period

		2018 Initial Quota	
Quota Period	Percent Share	lb	mt
Winter I	45.11	10,820,000	4,908
Summer	38.95	9,340,986	4,237
Winter II	15.94	3,822,816	1,734
Total	100.0	23,983,802	10,879
<i>Note: Metric tons are as converted from pounds and may not necessarily total due to rounding.</i>			

The current quota period possession limits are not changed by this action, and are outlined in Table 3. The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period’s allocation. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notice in the *Federal Register*. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 4.

Table 3. Commercial Scup Possession Limits by Quota Period

Quota Period	Percent Share	Federal Possession Limits (Per Trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

Table 4. Potential Increase in Winter II Possession Limits based on the Amount of Unused Scup Rolled over from Winter I to Winter II

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0-499,999	0-226,796	0	0	12,000	5,443
12,000	5,443	500,000-999,999	226,796-453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000-1,499,999	453,592-680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000-1,999,999	680,389-907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000-2,500,000*	907,185-1,133,981	6,000	2,722	18,000	8,165

* This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

Accountability Measure Quota Adjustment Announcements

Each year, NMFS publishes a notice to inform the public and the states of any commercial summer flounder, scup, or black sea bass overages that are deducted from a fishing year's allocations for the start of the fishing year. These overages are determined based on a review of catch and landings information for the previous full year of fishing information as well as any preliminary information in the current fishing year. In this case, the previous full year of fishing information for fishing year 2016 became available in late November 2017. This final rule is announcing a 2018 accountability measure for the summer flounder commercial fishery, as required by the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and in compliance with the regulations at § 648.103.

Summer Flounder

This final rule implements an accountability measure to address a 2016 commercial ACL overage in the summer flounder fishery. Although the 2016 commercial summer flounder quota was not fully harvested, our estimates indicate that the commercial summer flounder 2016 ACL (9.42 million lb; 4,275 mt) was exceeded by 191,218 lb (86.7 mt). This overage was due entirely to the fact that 2016 discard estimates were much higher than originally projected, accounting for 19.3 percent of the total commercial catch in 2016. Ultimately, this results in a 2016 ACL overage of 2 percent. As a result, the regulations require an automatic pound-for-pound payback from the 2018 summer flounder ACL (7.70 million lb; 3,491 mt), which results in a 2.5-percent decrease in the ACL compared to what was previously projected for the year (Table 5). Once the 2018 estimated discards (1.07 million lb; 485 mt) are subtracted from the adjusted ACL, the resulting 2018 commercial quota is reduced by 2.9 percent from the previously projected level. This final 2018 summer flounder commercial quota is 13.7 percent higher than the quota in place for 2017 (5.66 million lb; 2,567 mt).

Table 5. 2018 Final Summer Flounder Specifications

	million lb	mt
Commercial ACL/ACT ¹	7.51	3,404
Recreational ACL/ACT	5.53	2,508
Commercial Quota ¹	6.44	2,919
Recreational Harvest Limit	4.42	2,004

¹ Incorporates reductions for 2016 overages. The initial 2018 commercial ACL/ACT was 7.70 million lb (3,491 mt) and the initial 2018 commercial quota was 6.63 million lb (3,006 mt).

Table 6 summarizes the commercial summer flounder quotas for each state, incorporating the revised 2018 commercial ACL. This rule announces commercial state quota overage reductions necessary for fishing year 2018. Table 6 includes percent shares as outlined in § 648.102 (c)(1)(i), the resultant 2018 commercial quotas, quota overages (as needed), and the final adjusted 2018 commercial quotas. The 2017 quota overage is determined by comparing landings for January through October 2017, plus any 2016 landings overage that was not previously addressed in establishing the 2017 summer flounder specifications, for each state. For Delaware, this includes continued repayment of overharvest from previous years.

Table 6. Final State-by-State Commercial Summer Flounder Quotas for 2018

State	FMP Percent Share	2018 Initial Quota		2018 Adjusted Quota (ACL overage)		Overages through October 31, 2017		Final adjusted 2018 Quota, less overages	
		lb	kg	lb	kg	lb	kg	lb	kg
Maine	0.04756	3,152	1,430	3,061	1,388	0	0	3,061	1,388
New Hampshire	0.00046	30	14	30	13	0	0	30	13
Massachusetts	6.82046	451,998	205,023	438,973	199,115	37,816	17,153	401,157	181,962
Rhode Island	15.68298	1,039,326	471,430	1,009,375	457,845	13,002	5,898	996,373	451,947
Connecticut	2.25708	149,579	67,848	145,268	65,893	0	0	145,268	65,893
New York	7.64699	506,773	229,868	492,169	223,244	0	0	492,169	223,244
New Jersey	16.72499	1,108,381	502,753	1,076,440	488,265	0	0	1,076,440	488,265
Delaware	0.01779	1,179	535	1,145	519	49,638	22,515	-48,493	-21,996
Maryland	2.0391	135,133	61,295	131,239	59,529	0	0	131,239	59,529
Virginia	21.31676	1,412,682	640,782	1,371,972	622,316	0	0	1,371,972	622,316
North Carolina	27.44584	1,818,862	825,022	1,766,447	801,247	0	0	1,766,447	801,247
Total	100	6,627,096	3,006,000	6,436,120	2,919,375			6,384,158	2,895,805

Notes: Kilograms are as converted from pounds and may not necessarily add due to rounding. Total quota is the sum for all states with an allocation. A state with a negative number has a 2018 allocation of zero (0). Total adjusted 2018 quota, less overages, does not include negative allocations (i.e., Delaware's overage).

Delaware Summer Flounder Closure

Table 6 shows the amount of overharvest from previous years for Delaware is greater than the amount of commercial quota allocated to Delaware for 2018. As a result, there is no quota available for 2018 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the NMFS Greater Atlantic Region Administrator has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2018 calendar year, unless additional quota becomes available through a quota transfer and is announced in the *Federal Register*. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2018 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Black Sea Bass

Although the 2016 commercial quota was not fully harvested, the commercial black sea bass 2016 ACL (3.15 million lb; 1,428 mt) was exceeded by approximately 630,000 lb (286 mt). This overage was due entirely to the fact that 2016 discard estimates were much higher than originally projected, accounting for 40.3 percent of the total commercial catch in 2016. This results in a 2016 ACL overage of 20 percent. However, similar to last year's reconsideration of the 2017 commercial ACL accountability measure given the 2016 benchmark assessment, we will not implement an accountability measure for this overage. The assessment provided updated information on the condition of the stock indicating that the 2016 specifications, including estimated discards, could have been much higher if the assessment had been available when those catch limits were implemented. Because an accountability measure likely would not

have been triggered if catch limits had been consistent with our understanding of the stock’s status, implementing an accountability measure is unnecessary. Biomass remains well above the biomass target and the stock is not subject to overfishing. The final black sea bass specifications for 2018, unchanged from when first announced as projected, are outlined in Table 7. These specifications are consistent with the Council’s Scientific and Statistical Committee’s ABC recommendation and are sufficient to ensure the stock is not subject to overfishing or likely to be reduced below the biomass target.

Table 7. Final 2018 Black Sea Bass Specifications

	million lb	mt
Commercial ACL/ACT	4.35	1,974
Recreational ACL/ACT	4.59	2,083
Commercial Quota	3.52	1,596
Recreational Harvest Limit	3.66	1,661

Comments and Responses

On November 7, 2017, NMFS published the proposed scup specifications for public notice and comment. NMFS received three comments on the proposed rule. Two commenters were in opposition to the increase in the scup catch limits. One offered no reason for opposition, while the other noted concern over market instability and a drop in the price of scup should the market be flooded. This second commenter supported maintaining status quo measures for 2018. This increase in scup catch limit is intended to meet the objective of achieving optimum yield while also accounting for management uncertainty. As outlined in the EA of this action, scup landings have been well below the commercial quota since 2011. It is not anticipated that the commercial quota increase will result in a large increase in landings. The third commenter offered support for the catch limit increases, noting the benefits for both the commercial and recreational fisheries. No changes to the proposed scup specifications were made as a result of

these comments.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that these specifications are necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

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 final specifications are in place on January 1, 2018. This action establishes the final specifications (i.e., annual catch limits) for the scup, summer flounder, and black sea bass fisheries for the 2018 fishing year, which begins on January 1, 2018.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the EA in support of the specifications that is developed by the Council. A complete document was received by NMFS in early December 2017. Documentation in support of the Council's recommended specifications is required for NMFS 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 proposed rule published on November 7, 2017, with a 15-day comment period ending November 22, 2017. Publication of the summer flounder quotas at the start of the fishing year that begins January 1 of each fishing year is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association v. Daley*. Although there are currently established 2018 catch limits for summer flounder, this action adjusts overall quotas and state allocations to account for 2016 ACL overages. Without these

revised summer flounder specifications in place on January 1, 2018, individual states will not be held to the appropriately reduced limits and will be unable to set accurate commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. This is the very issue Judge Doumar sought to remedy by compelling NMFS to provide quota information on or before the start of the fishing year. Disproportionately large harvest occurring within the first weeks of 2018 would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season.

Furthermore, the revised 2018 scup catch limits increase fishing opportunities, so their timely implementation also relieves the restriction of potentially constrained fishing opportunity. This action will increase the coastwide 2018 scup quota by 31 percent and increases the 2018 scup recreational harvest limit by 41 percent, providing federally permitted vessels additional harvest opportunity.

If this final rule were delayed for 30 days, the scup fishery would forego some amount of landings and revenues during the delay period, as this rule relieves, in part, a quota-related restriction. In addition, NMFS would violate a standing court order regarding summer flounder quotas. For all of these reasons, a 30-day delay in effectiveness would be contrary to the public interest. As a result, NMFS is waiving the requirement.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial

certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

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

Dated: December 18, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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