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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822-7822-01]

RIN 0648-XF669

Fisheries of the Northeastern United States; Scup Fishery; 2018 and Projected 2019 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revised scup specifications for the 2018 fishing year and projected specifications for 2019. Updated scientific information regarding the scup stock indicates that higher catch limits may be implemented to achieve optimum yield. This action is intended to inform the public of the proposed specifications for the 2018 fishing year and projected specifications for 2019.

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, 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-2017-0121, 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-2017-0121*,
2. Click the “Comment Now!” icon, complete the required fields, and
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 Scup 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* 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: Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

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 announces 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. The summer flounder and black sea bass specifications implemented through previous rulemaking remain unchanged by this action.

On December 28, 2015, NMFS published a final rule implementing the Council's recommended 2016-2018 specifications for the scup fishery (80 FR 80689). The Council intended to reconsider the specifications set for fishing year 2018 following the review of a scup assessment update provided in July 2017.

The assessment update indicated the scup stock is not overfished and overfishing did not occur in 2016, the most recent year for which information is available. The update estimated that the scup spawning stock biomass (SSB) is 2.1 times the proxy reference point for SSB at

maximum sustainable yield (MSY), and fishing mortality (F) in 2016 was about 63 percent of the F_{MSY} proxy reference point. In addition, the update estimated that the 2015 year class was about 2.1 times the average recruitment (*i.e.*, number of age 0 scup) from 1984-2016. The 2016 year class was 46 percent below the 1984-2016 recruitment average. Although the 2016 year class was estimated to be below average, the 2015 year class was so large that the assessment update provided higher revised overfishing limit (OFL) recommendations for 2018 and 2019. Compared to the previously implemented 2018 OFL (29.68 million lb, 13,462 mt), the 2018 recommendation is a 52-percent increase.

Proposed Specifications

The Council's Scientific and Statistical Committee (SSC) met on July 19-20, 2017, to discuss the assessment update results and resulting OFL estimates, to identify an updated acceptable biological catch (ABC) level for 2018, and to project an ABC for the 2019 fishing year. To derive the ABC recommendations, the SSC applied the Council's standard risk policy for a species with a typical life history, which produces ABCs estimated to result in a 60-percent probability of not overfishing the stock. The process resulted in ABCs of 39.14 million lb (17,755 metric tons (mt)) for 2018 and 36.43 million lb (16,525 mt) for 2019 (Table 1). The revised 2018 ABC is approximately 45 percent higher than the previously established 2018 ABC. Under the FMP, 22 percent of the ABC is allocated to the recreational fishery, while 78 percent is allocation to the commercial fishery.

Following the SSC meeting, the Monitoring Committee met on July 24, 2017, to discuss ACLs, ACTs, commercial quotas, and recreational harvest limits for the 2018 and 2019 fishing years. In light of the substantial increase in the ABC, the Monitoring Committee recommended a moderate increase for the fishery and suggested setting the 2018 commercial ACT at 25.85

million lb (11,725 mt) and the recreational ACT at 7.29 million lb (3,307 mt). These recommended ACTs were 15 percent lower than those formulaically resulting from the SSC's ABC recommendation, but 22.5 percent higher than what is currently in place for 2018. The Monitoring Committee also recommended setting the 2019 ACTs at the same level as the 2018 ACTs. The Monitoring Committee decided that there was enough management uncertainty around the upcoming adjustments to the commercial quota periods in 2018 and the outcome of the upcoming recreational harvest estimate revisions through the Marine Recreational Information Program to warrant the inclusion of a buffer between the ACLs and ACTs, which would provide for more stability in the fishery by using constant ACTs for both years.

The Council and Commission's Scup Management Board meet jointly on August 8, 2017, to review the SSC's and Monitoring Committee's recommendations. They found merit in the idea of offering stability in the fishery by allowing for a buffer between the ACLs and ACTs, but did not accept the Monitoring Committee's specific recommendations. Instead, the Council and Commission recommended constant sector-specific ACTs across 2018 and 2019, based on the 2019 ABC and setting the ACLs for 2019 equal to the ACTs (*i.e.*, 8.01 million lb (3,636 mt) for the recreational fishery and 23.98 million lb (10,879 mt) for the commercial fishery).

After removing the sector-specific estimated discards from the ACTs, the scup commercial quotas and recreational harvest limits would be those shown in Table 1. These values are approximately 40 percent higher than the current 2018 commercial quota and recreational harvest limit. The Monitoring Committee did not recommend any changes to the current commercial measures, including the 9-inch (22.9-cm) minimum fish size, the mesh size requirements and seasonal possession limit thresholds, and the pot/trap gear requirements.

The Council will revisit its decision on the projected 2019 specifications following the

SSC’s review next summer. By providing projected specifications for 2019, NMFS hopes to assist fishery participants in planning ahead. Final 2019 specifications will be published in the *Federal Register* before the start of the 2019 fishing year (January 1, 2019) based on the Council’s review.

Table 1. Council-recommended 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
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

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 action is exempt from review under E.O. 12866.

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, 517 affiliate firms landed scup during the 2014-2016 period, with 513 of those business affiliates categorized as small businesses and 4 categorized as large businesses. Scup represented approximately 3.94 percent of the average receipts of the small entities considered and 0.11 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 359 for-hire affiliate firms generating revenues from fishing recreationally for various species during the 2014-2016 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 scup as a recreational species it is likely that revenues generated from scup are important for some, if not all, of these firms.

The proposed measure would increase both the 2018 commercial quota and the 2018 recreational harvest limit by around 40 percent. However, the scup fishery is a market-limited fishery (i.e., market conditions are typically the limiting factor, not allowable landings) and it is expected that, unless market conditions change drastically, commercial and recreational landings will likely be similar to current landings. As a result, this action is not expected to adversely impact revenues for vessels that fish for scup commercially. The increase in the recreational harvest limit does not directly impact the party/charter fishery. Future regulatory action may be needed to adjust current scup recreational management measures (i.e., bag limits, seasons, and minimum sizes), and consideration of the impact of those potential future measures on small entities engaged in the for-hire fishery will be evaluated at that time, should such a regulatory

action become necessary. 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: November 2, 2017.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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