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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170919912-8142-01]

RIN 0648-BH26

Fisheries of the Northeastern United States; Scup Fishery; Framework Adjustment 10

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes modifications to the commercial scup quota periods, as recommended by the Mid-Atlantic Fishery Management Council. The proposed change would move the month of October from the Summer Period to the Winter II Period. This rule is intended to increase fishing opportunities by allowing for more scup to be landed by extending the Winter II Period when possession limits are higher.

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 Scup Commercial Quota Period Modification Framework, 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/s/Scup_quota_period_framework_draftEA_Nov2017.pdf.

You may submit comments on this document, identified by NOAA-NMFS-2018-0001, 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-2018-0001,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope, “Comments on the Proposed Rule to Modify the Scup Commercial Quota Periods.”

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

Scup (*Stenotomus chrysops*) is managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission through the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan (FMP). The management unit specified in the FMP for scup is U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The scup stock is not overfished and it is not experiencing overfishing.

Currently, the scup commercial quota is broken into three periods: Winter I (January 1 through April 30) receives 45.11 percent of the annual quota; Summer (May 1 through October 31) receives 38.95 percent; and Winter II (November 1 through December 31) receives an initial 15.94 percent with any unused Winter I quota rolled over into Winter II. Federal trip limits are imposed during the two Winter Periods; states impose landing restrictions during the Summer Period. The Council established these quota periods in 1997 to recognize that there are two commercial fishing fleets (62 FR 27978; May 22, 1997). Larger vessels harvest scup offshore during the winter months and smaller vessels harvest scup inshore during the summer. Without the quota periods and Federal trip limits, the larger vessels would be able to fish the full annual quota early in the year, leaving no quota for the smaller inshore fleet.

The scup stock was declared rebuilt in 2009 based on the findings of a stock assessment. The commercial scup quota nearly doubled between 2010 and 2011. From 2011 to 2016, commercial scup landings have been 20 to 47 percent below the annual commercial quota. Stakeholders have stated that the more restrictive possession limits during the Summer Period, compared to the Winter I and II Periods, have prevented fishermen from landing high volumes of scup when they are available. This limits the ability of the fishery to achieve the annual

commercial quota and results in forgone yield.

Proposed Action

In order to address these limits on the ability of the fishery to achieve the annual commercial quota, this action would move the month of October from the Summer Period to the Winter II Period (Table 1). This action would facilitate more landings at higher possession limits during longer periods of time. This change would be effective for October 2018 and is expected to have positive socioeconomic impacts compared to maintaining the status quo quota periods.

This action only considers a change to the seasons of the three quota periods. It is not changing the possession limits or the amount of quota allocated annually to each period.

Table 1. Proposed Commercial Quota Period Dates. Percent Shares and Possession Limits Remain Unchanged.

Quota Period	Percent Share	Dates	Federal Possession Limits (Per Trip)	
			lb	kg
Winter I	45.11	January 1 – April 30	50,000	22,680
Summer	38.95	May 1 – September 30	N/A	N/A
Winter II	15.94	October 1 – December 31	12,000 (initial)	5,443
Total	100.0	N/A	N/A	N/A

The Council has reviewed the proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA.

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 has been determined to be not significant for purposes of Executive Order 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 environmental assessment. According to the commercial ownership database, 526 affiliate firms were issued scup permits during the 2014-2016 period, with 517 of those business affiliates categorized as small businesses and nine categorized as large businesses. Scup represented approximately 1.2 percent of the average receipts of the small entities considered and less than 1 percent of the average receipts of the large entities considered over this time period. This action does not affect the for-hire recreational fishery.

Analyses conducted in support of this action indicate that modifications to the commercial quota periods will result in higher scup landings and increased revenues when compared to current conditions by increasing the scup possession limit during the month of October. As such, this action is expected to increase potential fishing opportunities available to small commercial fishing 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.

Dated: February 21, 2018.

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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.*

2. In § 648.122, paragraph (c)(1) is revised to read as follows:

§ 648.122 Scup specifications.

* * * * *

(c) * * *

(1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January-April	45.11
Summer—May-September	38.95
Winter II—October-December	15.94

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3. In § 648.123, paragraph (a)(2)(ii) is revised to read as follows:

§ 648.123 Scup accountability measures.

(a) * * *

(2) * * *

(ii) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the *Federal Register* announcing the restoration.

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4. In § 648.125, paragraphs (a)(1) and (a)(5) are revised to read as follows:

§ 648.125 Scup gear restrictions.

(a) * * *

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess more than 1,000 lb (454 kg) of scup from October 1 through April 30, or more than 200 lb (91 kg) of scup from May 1 through September 30, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and

all other nets are stowed and not available for immediate use as defined in § 648.2.

* * * * *

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 1,000 lb (454 kg) or more of scup from October 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through September 30, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed and not available for immediate use as defined in § 648.2, and that can be shown not to have been in recent use, is considered to be not available for immediate use.

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[FR Doc. 2018-03828 Filed: 2/23/2018 8:45 am; Publication Date: 2/26/2018]