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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-XG295

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Notice of Receipt of a Petition for Rulemaking

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

ACTION: Notice of receipt; request for comments.

SUMMARY: On March 23, 2018, the State of New York submitted a petition to the Secretary of Commerce requesting rulemaking under the Administrative Procedure Act. The petition requests that NMFS revise the current state-by-state commercial quota allocations in the summer flounder fishery. This notice announces that NMFS, acting on the Secretary's behalf, has received this request, and provides the opportunity for public comment.

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: You may submit comments on this document, identified by NOAA-NMFS-2018-0074, 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-2018-0074*,

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 NY Fluke Petition for Rulemaking.”

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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

SUPPLEMENTARY INFORMATION: On March 23, 2018, the State of New York and the New York State Department of Environmental Conservation ("New York") submitted a petition to the Secretary of Commerce requesting rulemaking under the Administrative Procedure Act. The petition requests that NMFS amend the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) to revise the

summer flounder state-by-state commercial quota allocations. The existing allocations were implemented in 1993 through Amendment 2 to the FMP. These allocations were based on the best available historical landings information from 1980-1989. The existing state allocations provide New York with 7.65 percent of the total coastwide commercial quota. New York asserts that, since 1993, the summer flounder stock distribution and commercial fishing activity have shifted northeast towards New York. As a result, New York believes the summer flounder commercial quota should be re-allocated amongst the states to reflect this shift in stock distribution and fishing activity, and New York should receive a higher percentage of the coastwide quota. New York argues in its petition that the current quota allocations are outdated, discriminatory, inefficient, costly, and unsafe, and should be replaced as soon as possible.

New York proposed that NMFS revise the allocations in a two-phase process. First, state-by-state allocations would be removed and replaced with coastwide management of the commercial quota for an interim period while new information is collected to inform revisions to the state quota allocation system. Then, revised state-by-state quota allocations that are “far to New York” would be implemented in phase two, based on the coastwide harvest activity information collected during phase one.

The Mid-Atlantic Fishery Management Council, acting jointly with the Atlantic States Marine Fisheries Commission, is already developing an amendment to the FMP that considers reallocating the summer flounder commercial state quotas. Included in the alternatives under consideration are changes to the state-by-state quota allocations based on updated stock distribution, similar to New York’s request in this petition. The potential coastwide quota allocation percentage for New York under consideration in the

amendment ranges from 7.65 percent (status quo) to 10.71 percent. The Council intends to conduct public hearings on this amendment later this summer to solicit comments on the amendment's draft alternatives. The Council is scheduled to take final action at its December 2018 meeting. Once the Council submits the final amendment for review and approval, NMFS will review the Council's amendment to determine if it is consistent with the National Standards, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws. Under the current timeline, this would result in the implementation of this new allocation amendment in the fall of 2019. Any new state allocations are intended to be implemented for the 2020 fishing year, beginning on January 1, 2020, if adopted and approved.

NMFS is providing this notice to acknowledge the receipt of New York's petition. With this notice, NMFS also seeks to emphasize the importance of the Council process, and encourage interested parties, including the State of New York and New York fishermen, to engage in the Council and Commission's development of the Commercial Summer Flounder Amendment at upcoming public hearings and Council meetings. NMFS will share comments received on this petition with the Council and Commission as the comments will likely have direct applicability to the allocation alternatives under consideration in the amendment. The Council's final commercial amendment will be reviewed by NMFS for consistency with the National Standards and other provisions of the Magnuson-Stevens Act. If, after completion of the amendment process, the state of New York wishes to revisit this petition request, NMFS may publish a subsequent notice

to initiate rulemaking or formally deny the petition request. However, in the interim, NMFS defers to the ongoing Council amendment intended to address the current commercial quota allocation for summer flounder.

Dated: July 5, 2018.

Patricia A. Montanio,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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