



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180906820-8820-01]

RIN 0648-BI48

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2019 specifications for the summer flounder and black sea bass fisheries and maintains previously established 2019 specifications for the scup fishery.

Additionally, this action proposes to reopen the February 2018 black sea bass recreational fishery and to adjust to the current commercial incidental possession limit for scup. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. This action is intended to inform the public of the proposed specifications and management measures for the start of the 2019 fishing year for these three species.

DATES: Comments must be received on or before *[insert date 15 days after the date of publication in the FEDERAL REGISTER]*.

ADDRESSES: An environmental assessment (EA) was prepared for this action that describes the proposed measures and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Summer Flounder, Scup, and Black Sea Bass 2019 Specifications, 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/SFSBSB_2019_specs_EA.pdf.

You may submit comments on this document, identified by NOAA-NMFS-2018-0110, 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-2018-0110,
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 for the Summer Flounder, Scup, and Black Sea Bass 2019 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 (Council) and the Atlantic States Marine Fisheries Commission (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 (ACL), annual catch targets (ACT), and sector-specific landing limits (*i.e.*, the commercial fishery quota and recreational harvest limit), as well as management measures, as needed, that are designed to ensure these catch limits will not be exceeded. Annual specifications may be established for three year periods, and, in interim years, specifications are reviewed by the Council to ensure previously established multi-year specifications remain appropriate. 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.

This action proposes 2019 specifications for summer flounder and black sea bass. The previously approved 2019 scup specifications (82 FR 60682; December 22, 2017) remain unchanged from the current two year specifications and are maintained through this action.

The Council's Science and Statistical Committee (SSC) and Summer Flounder, Scup, and Black Sea Bass Monitoring Committee met in July 2018 to develop specification recommendations, including new acceptable biological catch limits (ABC) for summer flounder and black sea bass. The Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) met jointly August 14-15, 2018, to consider the SSC and Monitoring Committee's recommendations, receive public comments on those recommendations, and to formalize recommendations to the NMFS for catch limit specifications and commercial management measures. Recreational fishery management measures will be developed in early 2019.

A summer flounder benchmark assessment, which will incorporate updated Marine Recreational Information Program (MRIP) data, is expected to be completed by early 2019. Operational assessments for black sea bass and scup that will also incorporate updated MRIP information will be completed in spring 2019. Because of this, the Council and Board have only recommended specifications for 2019. As explained below, the Council and Board are considering the specifications here as interim measures and will likely develop mid-year changes to the summer flounder specifications, if not also black sea bass, to address the updated assessment information, if necessary.

Proposed 2019 Summer Flounder Specifications

In June, the Northeast Fisheries Science Center (Center) provided the Council with a summer flounder data update. The data update provided a projection for stock biomass for 2019. Most state and Federal survey indices of abundance, with the exception of Massachusetts and Delaware, remain below their most recent peaks (generally 2009-2012) in the update. Recruitment indices in 2017 were highly variable. Based on the best available scientific information, the summer flounder stock is subject to overfishing but is not overfished.

After reviewing the update, the SSC and Monitoring Committee recommended an interim ABC of 15.41 million lb (6,990 mt).

At the joint August meeting, the Council and Board made recommendations for interim summer flounder specifications for the start of the 2019 fishing year (Table 1). Compared to 2018, the proposed interim 2019 ABC is a 16-percent increase. The results from the benchmark stock assessment are expected to be available in early 2019 following peer review in November 2018. The Council and Board intend to consider revising the 2019 summer flounder specifications at a joint meeting in February 2019 taking into account the benchmark stock assessment. If revisions are recommended at this meeting, we anticipate updated catch limits could be in place by early May 2019.

Table 1. Current 2018 and Proposed 2019 Summer Flounder Specifications.

	2018 (current)		2019		Difference (%)
	million lb	mt	million lb	mt	
Overfishing Limits (OFL)	18.69	8,476	20.60	9,344	10
ABC	13.23	5,999	15.41	6,990	16
Commercial ACL	7.70	3,491	9.18	4,164	19
Commercial ACT	7.70	3,491	9.18	4,164	19

Projected Commercial Discards	1.07	485	1.47	667	2
Commercial Quota	6.63	3,006	7.72	3,502	16
Recreational ACL	5.53	2,508	6.22	2,821	12
Recreational ACT	5.53	2,508	6.22	2,821	12
Projected Recreational Discards	1.11	504	1.08	490	-3
Recreational Harvest Limit	4.42	2,004	5.15	2,336	16

2019 Summer Flounder Commercial Non-Landing Accountability Measure

Our final 2017 catch accounting shows that the 2017 commercial fishery exceeded its ACL by 21 percent and the 2017 ABC was exceeded by 7 percent, due to higher than expected discards in the commercial fishery. Currently, the regulations require a pound-for-pound accountability measure (AM) that is applied to the commercial ACT when the ACL has been exceeded and the overage is caused by higher discards than those estimated prior to the fishing year. A final rule for a framework adjustment (Framework 13) that would modify this AM published on October 25, 2018 (83 FR 53825), and will be effective on November 26, 2018. That action adjusts this non-landings based AM to help account for the variability in commercial discard estimates and provide additional flexibility based on stock status and the biological consequences, if any, of estimated discard overages. In terms of impacts of the 2017 discard overage for 2019, the AM as modified by the pending framework would result in a scaled payback against the commercial fishery's ACT, based on the amount of the overage and the status of the summer flounder stock, using the most recent biological reference points.

Based on the 2016 assessment update, this scaled payback would be 1.04 million lb (472 mt). This overage, when applied to the proposed 2019 commercial ACT of 9.18 million lb (3,502 mt), would result in a commercial quota of 6.67 million lb (3,030 mt), after subtracting the 2019 projected estimated discards. The resulting quota is less than one percent higher than

the 2018 quota.

Proposed 2019 Commercial State Quota Shares

Table 2 presents the proposed state summer flounder allocations for 2019 using the commercial state quota allocations described in the FMP. Any commercial quota adjustments to account for commercial landings overages will be published in the final specification rule prior to the start of the respective fishing year.

Table 2. 2019 Proposed Initial Summer Flounder State Commercial Quotas.

State	FMP Percent Share	2019 Initial Quota		2019 Initial Quota, including AM accounting for 2017 non-landings overages (using AM as modified by Framework 13)	
		lb	kg	lb	kg
ME	0.04756	3,672	1,665	3,172	1,439
NH	0.00046	36	16	31	14
MA	6.82046	526,540	238,834	454,925	206,350
RI	15.68298	1,210,726	549,176	1,046,055	474,482
CT	2.25708	174,247	79,037	150,547	68,287
NY	7.64699	590,348	267,777	510,054	231,357
NJ	16.72499	1,291,169	585,665	1,115,557	506,008
DE	0.01779	1,373	623	1,187	538
MD	2.0391	157,419	71,404	136,008	61,692
VA	21.31676	1,645,654	746,456	1,421,828	644,930
NC	27.44584	2,118,819	961,080	1,830,638	830,363
Total	100	7,720,000	3,501,733	6,670,000	3,025,461
Note: Kilograms are as converted from lb and do not sum to the converted total due to rounding. Rounding of quotas results in totals slightly exceeding 100 percent.					

The Council and Board recommended no adjustment to the commercial minimum fish size (14-inch (35.6 cm) total length), gear requirements, and possession limits. The Council and Board will develop recreational management measures (i.e., minimum fish sizes, open seasons, and bag limits) for summer flounder this fall and NMFS rulemaking will occur in early spring of

2019.

Proposed 2019 Black Sea Bass Specifications

At the August meeting, the Council and Board made recommendations for the 2019 black sea bass specifications, but for reasons outlined below, we propose maintaining status quo measures currently in place for 2018.

In June 2018, the Center provided the Council with a black sea bass data update, including updated catch, landings, and survey indices through 2017. Black sea bass biomass continues to be high and the 2015 year class appears to be above average in both the northern and southern surveys. Updated stock status information and biomass projections incorporating data on the 2015 year class are not available, but will be once the operational assessment is completed in April 2019.

The SSC recommended a 2019 ABC of 7.97 million lb (3,615 mt), which was based on biomass projections from the 2016 benchmark stock assessment. This ABC would be an 11-percent reduction compared to the 2018 ABC. This declining pattern of ABCs reflects the population responding to fishing at maximum sustainable yield and the decrease of the large 2011 year class, but does not incorporate the information on the 2015 year class. Based on this ABC recommendation, the Council and Board recommended the 2019 specifications outlined in Table 3.

Following the Council and Board meeting, the Center performed a sensitivity analysis of the 2019 projection derived from the 2016 benchmark stock assessment. As previously described, that projection did not include the 2015 year class because those fish were too small to be widely captured in the surveys at the time of the 2016 assessment. This sensitivity analysis

used various recruitment scenarios applied to the original projection and compared them to the most recent survey indices. The objective of this analysis was to see if that projection would have supported different specifications for 2019 had we been able to incorporate what we know now about the strength of the 2015 year class. The results suggest that the 2015 year class would only have to be about 50 percent above average to allow for 2019 catch limits to be the same as what they were in 2018. Based on a comparison between the Center’s 2018 spring survey results and average recruitment from 2003-2018, the 2015 year class appears to be well more than 50 percent above average. Based on this information, we propose maintaining status quo black sea bass specifications for 2019 (Table 3).

Table 3. Proposed 2019 black sea bass specifications (in millions of lb).

	Proposed NMFS Recommendation (Status Quo 2018)		Council and Board Recommendation	
	million lb	mt	million lb	mt
OFL	10.29	4,667	9.18	4,164
ABC	8.94	4,055	7.97	3,615
Commercial ACL	4.35	1,974	3.88	1,760
Commercial ACT	4.35	1,974	3.88	1,760
Projected Commercial Discards	0.83	377	0.74	336
Commercial Quota	3.52	1,596	3.14	1,424
Recreational ACL	4.59	2,083	4.10	1,860
Recreational ACT	4.59	2,083	4.10	1,860
Projected Recreational Discards	0.93	422	0.83	376
Recreational Harvest Limit	3.66	1,661	3.27	1,483

Maintaining status quo would allow for stability in the black sea bass commercial and recreational fisheries while we wait for the results of the MRIP operational assessment to be

completed in April 2019. Once that information is available, the Council and Board may recommend adjusting black sea bass measures mid-year.

The Council and Board recommended no adjustment to the commercial minimum fish size (11-inch (27.9 cm) total length), gear requirements, and possession limits.

Recreational Black Sea Bass Wave 1 Fishery

This action also proposes reopening the black sea bass recreational fishery for the month of February (during MRIP Wave 1). The current Federal black sea bass recreational management measures (i.e., a 12.5-inch (31.8-cm) minimum size and a possession limit of 15 fish) would apply to the fishery for this limited winter season. The intent of this action is to allow for some recreational fishing access during a portion of Wave 1 in 2019.

There are currently no MRIP survey estimates collected for Wave 1, but catch from this time period must be accounted for, and count against the recreational harvest limit. Similar to last year, to account for the harvest during this 28-day season, the Council and Board recommended a catch estimate of 100,000 lb (45.3 mt). States that decide to participate in the Wave 1 fishery must account for this catch when developing their management measures for the remainder of the fishing year. Only two states participated in the 2018 February recreational fishery. The estimated catch was nominal. Measures for the rest of the 2019 recreational fishery will be developed through the winter for implementation in spring 2019.

2019 Scup Specifications

The scup fishery is currently operating under multi-year specifications projected through 2019. The Council received a data update indicating that biomass continues to be high, and the 2015 year class appears to be above average. In response, the Council and Board made no

adjustments to the previously implemented multi-year specifications set in August 2017. This action reaffirms the Council's and Board's previous recommendation for scup 2019 specifications. Those specifications result in the same commercial quota and recreational harvest limit as implemented in 2018 (Table 4).

Table 4. Scup Specifications for 2019.

	million lb	mt
OFL	41.03	18,612
ABC	36.43	16,525
Commercial ACL	28.42	12,890
Commercial ACT	28.42	12,890
Commercial Discards	4.43	2,011
Commercial Quota	23.98	10,879
Recreational ACL	8.01	3,636
Recreational ACT	8.01	3,636
Recreational Discards	0.65	293
Recreational Harvest Limit	7.37	3,342

The 2019 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 5.

Table 5. Commercial Scup Quota Allocations for 2019 by Quota Period.

		2019 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 lb 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 6. 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 7.

Table 6. 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 7. 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.

Adjustment to the Commercial Scup Gear-Based Possession Limit Thresholds

This action proposes adjustments to the gear-based incidental possession limit for the commercial fishery. The incidental possession limit applies to vessels with commercial moratorium scup permits fishing with nets with diamond mesh smaller than 5 inches (12.7 cm) in diameter. The incidental possession limit is currently 1,000 lb (454 kg) during October 1-April 30 and 200 lb (91 kg) during May 1-September 30. The action would add another threshold period from April 15-June 15 to allow for higher retention in the small-mesh squid fishery that operates during that time and occasionally catches larger amounts of scup than the current limits allow to be landed (Table 8). During that time, vessels with scup moratorium permits using small mesh could land up to 2,000 lb (907 kg) of scup.

Table 8. Proposed adjustment to the scup incidental possession limit.

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
Current	1,000 lb (454 kg)				200 lb (91 kg)				1,000 lb (454 kg)			
Proposed	1,000 lb (454 kg)			2,000 lb (907kg)		200 lb (91 kg)			1,000 lb (454 kg)			

The Council and Board made no adjustments to the current commercial minimum fish size (9-inch (22.9-cm) total length) and winter quota period directed-fishery possession limits.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS 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, 771 affiliate firms landed summer flounder and/or black sea bass during the 2015-2017 period, with 762 of those business affiliates categorized as small businesses and nine categorized as large businesses. Summer flounder and black sea bass represented approximately 4 percent of the average receipts of the small entities and 1 percent for large entities considered over this time period.

The ownership data for the for-hire fleet indicate that there were 869 for-hire affiliate firms with summer flounder and/or black sea bass permits generating revenues from recreationally fishing, 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 these three species as recreational targets it is likely that revenues generated from these species are important for some, if not all, of these firms.

For the summer flounder fishery, the proposed measures would increase both the 2019 commercial quota and the 2019 recreational harvest limit. Even though there will be an AM applied to the commercial summer flounder fishery, the resulting commercial quota will still be a slight increase from 2018. For the black sea bass fishery, the proposed measures would result in a 2019 commercial quota and a 2019 recreational harvest limit that are identical to what was in place for 2018. As a result, this action is not expected to adversely impact revenues for vessels that fish for summer flounder and black sea bass commercially. The increase in the summer flounder recreational harvest limit does not directly impact the party/charter fishery. Future regulatory action may be needed to adjust current summer flounder, black sea bass, and 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 9, 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 § 648.125, 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 14, more than 2,000 lb (907 kg) from April 15 through June 15, or more than 200 lb (91 kg) of scup from June 16 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 14, 2,000 lb (907 kg) or more of scup from April 15 through June 15, or 200 lb (90.7 kg) or more of scup from June 16 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.

* * * * *

3. Section 648.146 is revised to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from

February 1 through February 28, May 15 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2018-24946 Filed: 11/14/2018 8:45 am; Publication Date: 11/15/2018]