



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 200420-0118]**

**RIN 0648-XH043**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Revised 2020 and Projected 2021 Black Sea Bass and Scup Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** This action approves revised 2020 and projected 2021 specifications for the scup and black sea bass fisheries. Changes to the specifications are necessary to better achieve optimum yield within the fishery while controlling overfishing, consistent with recent stock assessment updates and the Magnuson-Stevens Fishery Conservation and Management Act. This rule informs the public of the changes to the specifications for the remainder of the 2020 fishing year and announces projected 2021 specifications.

**DATES:** Effective [*insert date of publication in the FEDERAL REGISTER*], through December 31, 2020.

**ADDRESSES:** Copies of the revised specifications, including the Environment Assessment, and other supporting documents for the action, are available upon request

from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Policy Analyst, (978) 281-9116.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the scup and black sea bass fisheries as part of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Scup and black sea bass annual catch and landings limits do not roll over from one year to the next. To meet the FMP objectives and requirements of the Magnuson-Stevens Act, commercial quotas and recreational harvest limits (RHL) must be in place by January 1 of each year. At a joint meeting in October 2019, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Board adopted interim 2020 catch and landings limits for scup and black sea bass in late 2019 (84 FR 54041, October 9, 2019). The interim limits were identical to 2019 limits and intended to be replaced as soon as possible following operational stock assessments for both species conducted in the fall of 2019. Interim 2020 specifications were necessary because there was not sufficient time to complete the specification development and rulemaking between the stock assessment peer review and January 1, 2020. This action implements the updated 2020

specifications replacing the interim measures and announces projected 2021 specifications for scup and black sea bass.

The Council's Scientific and Statistical Committee (SSC) and the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) met in October 2019 to review the operational stock assessment results and make recommendations to the Council for revised catch and landings limits. The SSC applied the Council's risk policy and acceptable biological catch (ABC) control rule to derive recommended overfishing limits (OFL) and ABC values for fishing years 2020 and 2021.

The Council and Board reviewed the new operational stock assessment information and the SSC and MC-recommended specifications at their joint meeting in October 2019, and took final action on revised 2020 and projected 2021 specifications. This action implements the Council and Board's preferred alternatives.

This action is being published without prior notice and a formal public comment period. The revised 2020 scup and black sea bass specifications included in this action were anticipated during development of the interim specifications, which were the subject of a notice and comment rulemaking process. Prior to our rulemaking, the Council and Board discussed that the interim measures would be replaced as quickly as possible once the operational stock assessment process was complete. The public was also notified of our intent to publish revised specifications in the proposed and final rules of the interim scup and black sea bass specifications action (84 FR 54041, October 9, 2019).

## **Revised Specifications**

### *Black Sea Bass Specifications*

The Council and Board recommended 2020-2021 black sea bass catch and landings limits are shown in Table 1. The recommendations are based on the averaged 2020-2021 ABCs recommended by the SSC. This approach allows for constant catch and landings limits across both years. The ABCs are based on an SSC-modified OFL and the Council’s risk policy for a species with a typical life history and biomass level above  $B_{MSY}$ , resulting in a 40-percent probability of overfishing. The final 2020 commercial quota and RHL are 59 percent higher than the interim 2020 limits.

**Table 1 -- 2020-2021 Black Sea Bass Catch and Landings Limits\***

<b>Measure</b>	<b>Mil lb.</b>	<b>Metric Ton</b>
OFL	2020: 19.39	2020: 8,795
	2021: 17.68	2021: 8,021
ABC	15.07	6,835
ABC Landings Portion	11.39	5,164
ABC Discards Portion	3.68	1,671
Expected Commercial Discards	1.4	637
Expected Recreational Discards	2.28	1,034
Commercial ACL = ACT	6.98	3,167
Commercial Quota	5.58	2,530
Recreational ACL = ACT	8.09	3,668
RHL	5.81	2,634

\*All values except OFL are the same for both years.

*Scup Specifications*

The Council and Board recommended 2020-2021 scup catch and landings limits are shown in Table 2. The recommendations are based on the 2020-2021 ABCs recommended by the SSC. The ABCs are based on an SSC-modified OFL and the Council’s risk policy for a species with a typical life history and biomass level above

B<sub>MSY</sub>, resulting in a 40-percent probability of overfishing. The final 2020 commercial quota and RHL are 7 percent lower than the interim 2020 limits.

**Table 2 -- 2020-2021 Scup Catch and Landings Limits**

Measure	2020-2021 Varying ABC Approach			
	2020		2021	
	mil lb	mt	mil lb	mt
OFL	41.17	18,674	35.30	16,012
ABC	35.77	16,227	30.67	13,913
ABC Discards	7.03	3,190	7.26	3,295
Commercial ACL=ACT	27.90	12,657	23.92	10,852
Projected Commercial Discards	5.67	2,574	5.86	2,659
Commercial Quota	22.23	10,083	18.06	8,194
Recreational ACL=ACT	7.87	3,570	6.75	3,061
Projected Recreational Discards	1.36	616	1.40	636
RHL	6.51	2,954	5.34	2,424

The 2020 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 3.

**Table 3 -- Commercial Scup Quota Allocations for 2020 by Quota Period**

Quota Period	Percent Share	lb	mt
Winter I	45.11	10,027,597	4,548
Summer	38.95	8,658,277	3,927
Winter II	15.94	3,543,336	1,607
Total	100.0	22,229,210	10,083

The current quota period possession limits are not changed by this action, and are outlined in Table 4.

**Table 4 -- 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

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. 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 5.

**Table 5 -- 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.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the otherwise applicable requirement for notice and an opportunity and comment because it would be contrary to the public interest. Additionally, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule. This action revises the existing 2020 specifications (*i.e.*, annual catch limits) for the scup and black sea bass fisheries to account for new stock assessment results. The black sea bass commercial and recreational harvest limits increase by 59 percent based on the updated stock assessment. A delay in effectiveness would unnecessarily disadvantage fishermen who wish to take

advantage of the increased quotas. A delay would be contrary to the public interest for this loss of potential economic opportunity, and it could create confusion in the black sea bass fishery. This rule should be effective as soon as possible to fully realize the intended benefits to the fishery. This action is necessary to adjust the scup quotas based on the newest stock assessment. The commercial scup quota is decreasing by 19 percent, and the recreational quota is being reduced by 18 percent. A delay in its effectiveness would unnecessarily increase the probability of overfishing the stock. This rule should be effective as soon as possible to ensure that the catch limits are consistent with the most recent assessment of the stock.

This action, revising 2020 scup and black sea bass specifications to account for the stock assessment results, was anticipated during development and implementation of the interim specifications put in place to start the fishing year. Because of this, the public was notified of our intent to publish revised specifications in the proposed and final rules on that action (84 FR 54041, October 9, 2019). The information for and development of this action was discussed and subject to public comment following the assessment results at a public monitoring committee meeting in October 2019, and at the joint Mid-Atlantic Council and Board meeting in October 2019.

This rule is being issued at the earliest possible date. The results of the assessment became available in October 2019, and while the Council and Board also took final action on the revised specifications in October, we did not receive the Council's recommendations and supporting analysis until January 2020. A delay in implementing the new catch limits would be contrary to the public interest.

Furthermore, there exists good cause to waive the otherwise applicable requirement of a 30-day delay before this rule becomes effective. Unlike actions that require an adjustment period to comply with new rules, fishery participants will not be required to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this rule simply means adhering to the catch limits and management measures set for the remainder of the fishing year. Fishery stakeholders have been involved in the development of this action and are anticipating this rule. For the reasons explained above any further delay would be contrary to the public interest because it would undermine the intended effect of the rule.

For these reasons, there is good cause to waive the 30-day delay in effectiveness and these specifications shall be made effective on [*insert date of publication in the FEDERAL REGISTER*].

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

Dated: April 20, 2020.

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

[FR Doc. 2020-08829 Filed: 5/14/2020 8:45 am; Publication Date: 5/15/2020]