



DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 648

[Docket No.: 201207-0328]

RIN 0648-BJ18

### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan**

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

**ACTION:** Final rule.

**SUMMARY:** This action implements approved measures for the Mid-Atlantic Fishery Management Council's Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. This rule changes the summer flounder commercial state quota allocation system and fishery management plan goals and objectives. This action is intended to increase equity in state allocations when annual coastwide commercial quotas are at or above historical averages, while recognizing the economic reliance coastal communities have on the state allocation percentages currently in place.

**DATES:** Effective January 1, 2021.

**ADDRESSES:** Copies of Amendment 21, including the Environmental Impact Statement, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the Internet at: <http://www.mafmc.org>.

A copy of the Record of Decision (ROD) for the Final EIS (FEIS) can be obtained

from the NOAA Fisheries Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

**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 cooperatively manage summer flounder under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The joint FMP became effective in 1988, establishing measures to manage summer flounder fisheries. Summer flounder is an important commercial and recreational species. Currently, 60 percent of the total allowable landings limit (TAL) is allocated to the commercial fishery (coastwide annual commercial quota), with the remaining 40 percent allocated to the recreational fishery. Available quotas are fully utilized by both sectors in most fishing years. The coastwide annual commercial quota is allocated to each of the states in the management unit (Maine-North Carolina) on a percentage basis. The existing commercial state-by-state allocations were last modified in 1993.

Amendment 21 was approved by the Council and Commission in March 2019. A notice of availability (NOA) for the amendment published in the **Federal Register** on July 29, 2020 (85 FR 45571), with a comment period ending on September 28, 2020. We published a proposed rule in the **Federal Register** on August 12, 2020 (85 FR 48660), with a comment period ending on September 11, 2020.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens

Act and its National Standards, and other applicable law. After considering public comment on the NOA and proposed rule, we approved Amendment 21 on October 19, 2020. This rule implements the management measures in Amendment 21. The details of the development of the measures in Amendment 21 were described in the NOA and proposed rule, and are not repeated here.

## Approved Measures

### *State Commercial Allocations*

Amendment 21 changes the state-by-state commercial quota allocations for summer flounder when the coastwide quota exceeds 9.55 million lb (4,332 mt). When the coastwide quota is 9.55 million lb (4,332 mt) or less, the quota will be distributed according to the current allocation percentages. In years when the coastwide quota exceeds 9.55 million lb (4,332 mt), any additional quota, beyond this threshold, will be distributed in equal shares to all states except Maine, Delaware, and New Hampshire, which would split 1 percent of the additional quota. The Council and Board selected this allocation alternative to balance preservation of historical state access and infrastructure at recent quota levels, while providing equitability among states when the stock and quota are at high levels.

**Table 1 -- Approved State-by-State Summer Flounder Quota Allocations**

State	Allocation of baseline quota $\leq$ 9.55 mil lb (4,332 metric tons) (percent)	Allocation of additional quota beyond 9.55 mil lb (4,332 metric tons) (percent)
ME	0.04756	0.333
NH	0.00046	0.333
MA	6.82046	12.375
RI	15.68298	12.375
CT	2.25708	12.375
NY	7.64699	12.375
NJ	16.72499	12.375
DE	0.01779	0.333
MD	2.03910	12.375
VA	21.31676	12.375
NC	27.44584	12.375

Total	100	100
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Concurrent to this action we are considering changes to the 2021 specifications for summer flounder, scup, and black sea bass (85 FR 73253; November 17, 2020). If the revised 2021 summer flounder acceptable biological catch and corresponding specifications are approved, state allocations of summer flounder would be initially distributed as shown in Table 2. Final 2021 allocations, which will take into account any 2019 or 2020 overages through October 31, 2020, will be provided in the final rule establishing the 2021 specifications.

**Table 2 -- Initial 2021 Summer Flounder State-by-State Quotas**

State	Initial 2021 Quotas* Amendment 21 Allocations (lb)	Initial 2021 Quotas* Amendment 21 Allocations (mt)
ME	14,342	6.51
NH	9,844	4.47
MA	1,015,179	460.48
RI	1,861,550	844.38
CT	579,376	262.80
NY	1,094,113	496.28
NJ	1,961,062	889.52
DE	11,499	5.22
MD	558,559	253.36
VA	2,399,576	1,088.43
NC	2,984,903	1,353.93
Total	12,490,000	5,665.37

\*Initial quotas do not account for any previous overages.

*Revised Summer Flounder FMP Goals and Objectives*

The original FMP objectives were adopted via Amendment 2 to the Summer Flounder FMP in 1993 and have remained unchanged since that time. Amendment 21 revises the FMP goals and objectives. The FMP previously contained only management objectives, while the revision contains three overarching goals linked to more specific objectives. The goals are: (1) Ensuring sustainability of both the summer flounder stock and fishery; (2) increasing the effectiveness of management measures through partnerships, enforcement, and data collection; and, (3) optimization of the social and economic benefits from the summer flounder stock. Additional information on these

changes can be found in the Amendment 21 FEIS.

## **Comments and Responses**

We received seven comment letters on the NOA and the proposed rule. Four comments were received on the proposed rule and three comments were received on the NOA. The state of New York and the New York Department of Environmental Conservation jointly submitted the same comment in response to the proposed rule and NOA (hereinafter referenced as “New York”), resulting in six unique comments on the proposed rule and NOA. Three comments, one from an industry group in Rhode Island and two from members of the public, supported the revised allocation system. The only comment that did not support approval of the revised allocation system was from New York. The comment submitted by New York consisted of a letter and nine supporting attachments, which ultimately requested that we disapprove Amendment 21. Similar to arguments made in ongoing and past litigation and its comments on the Draft EIS, New York contends that the revised allocations and resulting quotas are not in accordance with Magnuson-Stevens Act’s National Standards 2, 4, 5, and 7. See comments 5-7, below, for more information.

Two comments on the proposed rule were not relevant to the proposed measures. One of these comments was related to the allocation split between the commercial and recreational sectors, and the perceived inequity of current recreational management. These issues are currently being considered by the Council and Commission in a separate joint action to address commercial/recreational sector allocations. The other comment, from a member of the public, stated that the total quota should be reduced below 9.5 million lb (4,332 mt), to 6.5 million lb (2,971 mt) because the current quota levels are unsustainable. Amendment 21, as an action, does not set summer flounder quotas. However, the process used to set quotas does so in a manner that ensures that catch levels are sustainable and overfishing is prevented. These comments were not related to the

proposed commercial state allocation changes or management objective revisions, and, therefore, are not discussed further.

*Comment 1:* An industry group in Rhode Island commented on the proposed rule in support of the proposed allocation changes because the revised allocations allow states to keep their existing shares of summer flounder, which they greatly depend on, but also provide those states allocated a lower quota with an increased share when the summer flounder quota reaches the threshold.

*Response 1:* We agree and have approved the Council's proposed allocation changes. The Council and Board selected the approved approach to balance the historical distribution of allocations with the need to equitably provide additional quota to states with lower quotas when summer flounder is abundant.

*Comment 2:* One comment on the NOA supported the approval of Amendment 21. This commenter also misunderstood the proposed measures, and stated support for 9.55 million lb (4,332 mt) cap on summer flounder catch.

*Response 2:* We agree with this commenter's support of Amendment 21 and have approved the amendment as recommended by the Council and Commission. However, we note that Amendment 21 does not constrain future commercial summer flounder catch limits to 9.55 million lb (4,332 mt). This is the threshold level for the change in the allocation formula.

*Comment 3:* One comment on the NOA supported the approval of Amendment 21. Specifically, this commenter supported the Council's updates to the management objectives. This commenter also supported the allocation change because it adapts to changing population levels.

*Response 3:* We agree and have approved Amendment 21.

*Comment 4:* One commenter asked why Maine, Delaware, and New Hampshire do not get distributed shares of the excess quota.

*Response 4:* Under this amendment, Maine, Delaware, and New Hampshire do get distributed additional shares of commercial summer flounder quota. The distribution of the baseline 9.55 million lb (4,332 mt) quota remains unchanged by this action. In years when the coastwide quota exceeds 9.55 million lb (4,332 mt), any additional quota beyond this threshold will be distributed in equal shares to all states except Maine, Delaware, and New Hampshire, which would split 1 percent of the additional quota. These states receive a smaller portion of the additional quota because they have a very limited fishery for summer flounder. To date, Maine and New Hampshire have no reported commercial summer flounder landings in 2020, and none for the 2019 fishing year. Delaware also has no reported 2020 landings, and 2019 landings were less than 1,300 lb (0.59 mt).

*Comment 5:* New York contends that the revised allocation system in the amendment is inconsistent with National Standard 2 because it is not based upon the best scientific information available. Specifically, New York states that it is not based on current, reliable information about the summer flounder fishery; the continuation of the 1993 formula is based upon flawed, outdated information from the 1980s; and the amendment's proposed method to evenly distribute excess landings appears to be based upon no scientific information whatsoever.

*Response 5:* We disagree with New York's position that the current and the revised allocation approaches are not based on relevant data sources or the best available scientific information. The 1980-1989 landings data used in the base allocation formula represent the best scientific information available for commercial landings, by state, from that time period, which was prior to imposing state-based allocations. Landings since 1993 have been constrained by the allocation formulas, so more recent data would simply reflect the same percentages as the 1980-1989 data or would be skewed toward states that exceeded their quota allocations. The 1980-1989 base years were originally selected

because they represented a period of relatively unrestricted fishing effort and, therefore, could serve as a proxy for state level effort and interest in the fishery absent management controls.

New York has long asserted that a different accounting method (*i.e.*, a "box method" rather than weigh-out data) was used for tracking New York's landings during the 1980s, and that this method would account for a higher level of landings than shown in current dealer data. However, despite numerous opportunities to provide this information, it appears that records of these alternative landings do not exist or are not readily available for review, and it is not clear that these data would be comparable to existing landings data if they were available.

More recently, New York has claimed that its summer flounder fishery during that period was infiltrated by organized crime, resulting in unreported landings and making it impossible to collect accurate landings information in New York for that timeframe.

After the initial state allocations were developed, Connecticut made similar arguments about inaccuracies in landings data and was able to document the higher levels of landings in that state. As a result, the Council revised Connecticut's allocation through Amendment 4 to the FMP. In contrast, New York has not presented any additional basis for similar adjustments to its historical landings data and, in fact, has suggested that there is not a way to gather more accurate data for New York landings during that timeframe.

*Comment 6:* New York contends that the revised allocation system should be based on recent trends in the distribution of summer flounder, and that because the revised allocation does not address the shift in stock distribution, the resulting allocation is not fair or efficient and results in excessive costs for New York fishermen, contrary to National Standard 5.

*Response 6:* The Council and Board did consider revising allocations based on



recent summer flounder stock distribution information (alternative 2B), but ultimately did not select that alternative. While a reallocation scheme based only on proximity to the center of summer flounder biomass might allow for more efficient access for states with fleets targeting summer flounder that are closer to the center of biomass, it would also disadvantage states with traditionally more long-distance fleets and fleets historically dependent on summer flounder by reducing their allocation. While National Standard 5 directs that management measures should consider efficiency in the utilization of fishery resources when practicable, the NMFS National Standard 5 Guidelines recognize that pure efficiency considerations should not prevent the attainment of other social or biological objectives. 50 CFR 600.330(b)(2)(ii). Of relevance here, National Standard 8 directs that management measures take into account the importance of fishery resources to fishing communities to allow for the sustained participation of such communities. 50 CFR 600.345. Substantial reductions in allocation, resulting in quotas below historical averages for states that have historically depended on the summer flounder fishery would increase their operation costs, and the cost of the infrastructure relative to the value of the fishery overall. Along the coast, there is substantial variability in the mobility of each state's fleet, the traditional areas of operation for each state's fleet, the targeted species of each state's fleet, and economic dependence on summer flounder within each state. The Council selected the proposed allocation formula to balance preservation of historical state access and infrastructure at recent quota levels, with the intent to provide equitability among states when the stock and quota are at higher levels.

We disagree that the revised allocation formula does not address the shift in stock distribution. While the formula is not based on the biomass distribution, it does generally reduce the proportion of quota for states at the southern end of summer flounder distribution (North Carolina, Virginia, and New Jersey) and increase allocation for many northern states, including New York, reflecting the shift of the center of summer flounder

biomass. Increased allocations during years with higher biomass levels, may allow these states to liberalize management measures, such as possession limits, increasing the efficiency of vessels landing in their ports. Had the revised allocation formula been used when setting 2020 state-by-state quotas, New York's quota would have been 10.61 percent higher than under status quo allocations. While there is no guarantee that summer flounder quotas will remain above 9.55 million lb (4,332 mt), the trigger was based on the average of quotas from 2014-2018 and 2009-2018. The proposed 2021 quota is higher than the 2020 quota, at 12.49 million lb (5,665 mt).

*Comment 7:* New York contends that the revised allocation is inconsistent with National Standard 4 because it would allocate fishing privileges in the commercial summer flounder fishery between the states in a manner that is neither fair and equitable, reasonably calculated to promote conservation, nor carried out in a manner to prevent any entity from acquiring an excessive share. Specifically, New York states that "...the outdated 1993 Allocation regime is unfair to fishermen and other market participants in New York, to the benefit of fishermen and other market participants in North Carolina and Virginia, without any rational conservation basis. The Proposed Amendment would substantially retain this model with only incremental relief for New York in abundant years, making it inconsistent with Magnuson Standard 4."

*Response 7:* The new allocation was specifically developed to balance historical allocations and access with equitability across states. When the quota is above the threshold the remaining quota is distributed equally to all states (with the exception of Maine, New Hampshire and Delaware). New York's comments suggest that a significant portion of the quota should have been reallocated to New York, due to the stock distribution and resulting fishery dynamics. While this type of reallocation scheme would have been favorable for New York fishermen, it would have disadvantaged other states that have a historical dependence on this fishery. The National Standard 4

Guidelines specifically state that the Council should consider other factors relevant to the FMP's objectives, including the dependence on the fishery by present participants and coastal communities when considering allocation changes.

Additionally, according to the Guidelines, an allocation of fishing privileges should be rationally connected to the achievement of optimal yield (OY) or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. Objective 3.1 of the FMP states that reasonable access to the fishery throughout the management unit should be provided and that fishery allocations and other management measures should balance responsiveness to changing social, economic, and ecological conditions with historic and current importance to various user groups and communities. By balancing between historic participants from southern states and New York's desire for increased quota based on shifts in summer flounder distribution Amendment 21 reflects this objective of the FMP.

New York also contends that the new allocation will not prevent excessive shares from being accumulated. Specifically New York states that "...the Proposed Amendment would provide the fishing industries in North Carolina and Virginia an excessive share of fishing privileges." The National Standard 4 Guidelines state that "an allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist." 50 CFR 600.235(c)(3)(iii) (emphasis added). The new allocation formula will, in years when the quota exceeds 9.55 million lb (4,332 mt), reduce the proportion of quota that both North Carolina and Virginia will receive, compared to the status quo. Approval of the new allocation formula does not, in fact,

increase these states' quota shares in a manner that would not otherwise exist. Moreover, state landings quotas do not result in excessive shares in the summer flounder fishery. The concept of excessive shares refers to individuals and/or corporations having market control. This Amendment revises the allocation of landings among the states. Within and among the states there are hundreds of Federal and state permitted vessels in the fishery, which prevents any individual from exercising market power in a manner that would be considered an excessive share.

National Standard 4 guidelines state that allocations should be reasonably calculated to promote conservation. Numerous methods of allocating fishing privileges can be considered "conservation and management" measures under section 303 of the Magnuson-Stevens Act. State allocations promote conservation by reducing the potential for a "race to fish" that can result from coastwide allocations, allowing for a more orderly prosecution of the fishery through management at the state landings level. Inherent in such a state allocation system is a division of the quota among the states. The new allocation formula is designed to provide equitable access to the resource compared to the status quo. When the stock biomass is high, as it is currently, quota above 9.55 million lb (4,332 mt) is distributed evenly to states with an active summer flounder fishery, including New York. This results in a shift of quota from states with historically higher quotas to northern states such as New York, Connecticut, and Massachusetts. These states receive additional access to the stock when it is healthy, which should increase the economic and social benefits to these communities without unfairly disadvantaging states and communities that have historically relied on the quota.

### **Changes from the Proposed Rule**

There are no changes to the measures from the proposed rule.

### **Classification**

Pursuant to section 304(b)(3) 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, other provisions of the Magnuson-Stevens Act, and other applicable law.

For the reasons discussed below, the Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner constitutes good cause, under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action. This action implements a new state-by-state allocation formula for the commercial summer flounder fishery, which should be effective by the start of the summer flounder fishing year on January 1, 2021.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the FEIS, in support of the Amendment, that is developed by the Council. An initial draft was received by NMFS in March 2020, and a final draft was submitted in May 2020. A NOA for the FEIS was prepared for Amendment 21, as required by the National Environmental Policy Act, and published on July 31, 2020 (85 FR 46094) with a comment period ending on August 31, 2020. In addition, as required by the Magnuson-Stevens Act, an NOA for Amendment 21 published on July 29, 2020 (85 FR 45571), with a comment period ending on September 28, 2020. A proposed rule was published on August 12, 2020 (85 FR 48660), with a comment period ending on September 11, 2020.

The summer flounder fishery operates on the calendar year. Annual publication of the summer flounder quotas is required prior to the start of the fishing year, by December 31. Amendment 21 has already been approved (October 19, 2020), and this final rule must be effective as soon as possible to enable the use of the new allocation formula in the 2021 summer flounder specifications. If this rule were not effective prior to the start of the fishing year, the resulting mid-year change to the allocations and state quotas would cause unnecessary harm to the fishery and would be contrary to the public

interest. Based on historic participation and harvest patterns, the summer flounder fishery is expected to be very active at the start of the fishing season in 2021. If this rule is not effective on January 1 and interim specifications go into effect, it would create unnecessary challenges for individual states when setting commercial possession and/or trip limits, which apportion the catch over the entire calendar year. Moreover, if the current formula were used to develop the state quotas at the beginning of the year, there is the potential for a “race to fish” for states whose quotas would be lower using the new formulas, which could ultimately result in landings overages.

Furthermore, the revised allocation formula is intended to create a more equitable distribution of quota and provide relief for states that have had lower quotas relative to their fleet’s reliance on the summer flounder fishery in recent years.

The 30-day delay in implementation of this rule is also unnecessary because this rule contains no new measures (*e.g.*, requiring new nets or equipment) for which regulated entities need time to prepare or revise their current practices.

The Council prepared a FEIS for this FMP amendment. The FEIS was filed with the Environmental Protection Agency on July 23, 2020. A notice of availability was published on July 31, 2020 (85 FR 46094). In approving the FMP amendment on October 19, 2020, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. NMFS did not receive any comments that were specifically in response to the

IRFA. The FRFA incorporates sections of the preamble (**SUPPLEMENTARY INFORMATION**) and analyses supporting this rulemaking, including the Amendment 21 EIS (see **ADDRESSES**). A description of the action, why it is being considered, and the objectives of and the legal basis for this rule are contained in the supplemental information report and preamble to the proposed rule, and are not repeated here.

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action can be found in the **Comments and Responses** section of this rule. In the proposed rule, we solicited comments on a revised allocation formula for distributing commercial summer flounder quota to states, and updated FMP goals and objectives. The majority of comments supported the proposed measures. There were no comments that specifically addressed the IRFA.

*Description and Estimate of the Number of Small Entities to Which this Rule Would Apply*

The entities (*i.e.*, the small and large businesses) that may be affected by this action include fishing operations with summer flounder moratorium (commercial) permits. The recreational fishery is not impacted by this action, and therefore entities with recreational party/charter permits are not considered here, nor are private recreational anglers which are not considered “entities” under the Regulatory Flexibility Act (RFA). For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of

operation (including its affiliates), and has combined annual receipts not in excess of \$11 million, for all its affiliated operations worldwide.

Vessel ownership data were used to identify all individuals who own commercial fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses, which may be affected by this action. Based on this grouping, a total of 607 affiliates reported revenues from commercial summer flounder landings during the 2016-2018 period, with 601 of those business affiliates categorized as small businesses and 6 categorized as large businesses.

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Rule*

There are no reporting, recordkeeping, or other compliance requirements.

*Federal Rules Which May Duplicate, Overlap, or Conflict with this Rule*

The action does not duplicate, overlap, or conflict with other Federal rules.

*Description of Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The approved measures (*i.e.*, the suite of preferred alternatives) includes implementation of revised commercial quota allocation system for the summer flounder fishery. Specifically, this action creates state allocations that vary with overall stock abundance. For all years when the annual commercial quota is at or below 9.55 million lb (4,332 mt), the state allocations will remain status quo. In years when the annual coastwide quota exceeds this trigger, the first 9.55 million lb (4,332 mt) will be distributed according to status quo allocations, and the additional quota, beyond 9.55 million lb (4,332 mt), will be distributed by equal shares (with the exception of Maine, New Hampshire, and Delaware, which would split 1 percent of the additional quota).



Additional non-preferred alternatives were also considered. For the purposes of the RFA, only the preferred alternatives and those non-preferred alternatives which would minimize negative impacts to small businesses are required to be considered. Economic impacts would vary by state and community under all alternatives, but alternatives 2A (status quo) and alternatives 2C (the preferred alternative) are likely to have fewer negative impacts overall compared to other alternatives. Therefore, the preferred alternative (2C) is compared to the status quo (alternative 2A) in the quantitative analysis. Although not required, we also provide a brief summary of the relative impacts of the two additional non-preferred options (2B and 2D).

The analysis was conducted assuming full utilization of the 2020 commercial quota of 11.53 million lb (5,230 mt). Results indicate that the proposed action of a quota reallocation threshold of 9.55 million lb (4,332 mt) increases fleetwide revenue by \$400,000 relative to No Action, and ex-vessel price by \$0.04 per pound relative to No Action. The proposed action is estimated to yield a decrease in fishery-wide revenue of \$150,000 as compared to the quota reallocation threshold of 8.4 million lb (3,810 mt) (Alternative 2C-1). This slight decrease in revenue under the proposed action, relative to the highest revenue-generating alternative, is not expected to disproportionately impact small entities.

Additional alternatives, 2B and 2D, were considered but not recommended by the Council. Alternatives 2B and 2D had more negative impacts on small businesses than the selected alternative. Alternative 2B considered revisions to the quota allocation based on recent summer flounder biomass distribution, while alternative 2D (the “scup model”), considered a significant change in summer flounder management by creating a winter season that was open to any vessel with a summer flounder permit.

Compared to the other allocation alternatives, the impacts of alternative 2D are the most difficult to determine, as this alternative is associated with the highest

uncertainty regarding impacts on vessel participation, fishing effort, landings patterns, and market responses. Relative to alternative 2A, alternative 2D is expected to have a higher magnitude of positive or negative impacts to states and businesses, due to the substantial change in the management system that will benefit some and negatively impact others. Shoreside communities would also be impacted by alternative 2D. Many states have invested heavily in shoreside infrastructure to support their fleets. Under alternative 2D, the distribution of landings in the winter would be driven more by vessel preference and market factors, which would positively impact some shoreside businesses and negatively impact others.

Alternative 2B would shift quota allocation from the Southern region of the management unit (North Carolina through New Jersey) to the Northern region (New York through Maine). Compared to alternative 2C, alternative 2B is more likely to have a higher magnitude of positive or negative impacts (depending on the state), as allocation changes would be permanently revised from status quo, while under 2C there is the potential for status quo allocation. Additionally, option 2C has a higher likelihood of costs and benefits being shared more equally over time as the quota fluctuates above and below the trigger point.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a fishery bulletin that serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO) (see **ADDRESSES**), and fishery bulletin (*i.e.*, compliance guide) will be sent to all holders of

commercial permits for the summer flounder fishery. The fishery bulletin and this final rule will be posted on the GARFO website.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 7, 2020.

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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 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 § 648.102, paragraph (c)(1) is revised to read as follows:

**§ 648.102 Summer flounder specifications.**

\* \* \* \* \*

(c) \* \* \*

(1) *Distribution of annual commercial quota.* (i) For years when the annual commercial quota is at or below 9,550,000 lb (4,332 mt), the quota will be distributed to the states, based upon the following percentages (state followed by percent share in

parenthesis): Maine (0.04756); New Hampshire (0.00046); Massachusetts (6.82046); Rhode Island (15.68298); Connecticut (2.25708); New York (7.64699); New Jersey (16.72499); Delaware (0.01779); Maryland (2.03910); Virginia (21.31676); and North Carolina (27.44584).

(ii) For years when the annual commercial quota is greater than 9,550,000 lb (4,332 mt), the quota up to this amount will be distributed as outlined in paragraph (c)(1)(i) of this section, and the additional quota above 9,550,000 lb (4,332 mt) will be distributed based upon the following percentages (state followed by percent share in parenthesis): Maine (0.333); New Hampshire (0.333); Massachusetts (12.375); Rhode Island (12.375); Connecticut (12.375); New York (12.375); New Jersey (12.375); Delaware (0.333); Maryland (12.375); Virginia (12.375); and North Carolina (12.375).

\* \* \* \* \*

[FR Doc. 2020-27193 Filed: 12/11/2020 8:45 am; Publication Date: 12/14/2020]