



DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 648

[Docket No. 231113-0266]

RIN 0648-BM59

## Fisheries of the Northeastern United States; 2024 and Projected 2025 Specifications for the Summer Flounder and Scup Fisheries, and 2024 Specifications for the Black Sea Bass Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 2024 specifications for the summer flounder, scup, and black sea fisheries, and projected 2025 specifications for summer flounder and 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. The proposed specifications are intended to establish allowable harvest levels for these species that will prevent overfishing, consistent with the most recent scientific information.

**DATES:** Comments must be received on or before December 2, 2023.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0131, by the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0131 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*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 <https://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).

A Supplemental Information Report (SIR) was prepared for the 2024 black sea bass specifications. An Environmental Assessment (EA) was prepared for the 2024 and projected 2025 summer flounder and scup specifications. Copies of the SIR and 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. The SIR and EA are also accessible via the Internet at <https://www.mafmc.org/supporting-documents>.

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Policy Analyst, (978) 281-9116, or [emily.keiley@noaa.gov](mailto:emily.keiley@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**General Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council's process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limits (RHL), and other management measures, for 1 to 3 years at a time. This action proposes 2024 ABCs, as well as the recreational and commercial ACLs, ACTs, commercial quotas, and RHLs

for all three species, consistent with the recommendations made by the Commission’s Summer Flounder, Scup, and Black Sea Bass Board and Council at their joint August 2023 meeting. This action also proposes projected 2025 ABCs and corresponding specifications for summer flounder and scup.

**Proposed 2024 and Projected 2025 Specifications**

*Summer Flounder Specifications*

The Council and Board-recommended 2024 and projected 2025 summer flounder catch and landings limits are shown in table 1. The recommendations are based on the averaged 2024-2025 ABCs recommended by the Council’s Science and Statistical Committee (SSC). This approach allows for constant catch and landings limits across both years. The ABCs are based on the overfishing limit (OFL) and the Council’s risk policy, resulting in a 32- to 38-percent probability of overfishing. For summer flounder, this results in a 42-percent decrease in the recommended 2024 and 2025 ABC relative to the 2023 ABC. The proposed 2024-2025 commercial quota represents a 42-percent decrease compared to the 2023 quota, and an approximately 30-percent reduction compared to 2022 reported landings. The proposed 2024-2025 RHL is a 40-percent decrease compared to the 2023 RHL.

**Table 1 -- Summary of 2024 and Projected 2025 Summer Flounder Fishery Specifications**

Specifications	Million lb	Metric Ton
OFL	22.98 (2024) 24.97 (2025)	10,422 (2024) 11,325 (2025)
ABC	19.32	8,761
Commercial ACL = ACT	10.62	4,819
Commercial Quota	8.79	3,987
Recreational ACL = ACT	8.69	3,942
Recreational Harvest Limit	6.35	2,879

The initial 2024 state-by-state summer flounder quotas are provided in table 2.

As required in Amendment 21 (85 FR 80661), if the commercial quota in any year is

higher than 9.55 million lb (4,332 mt), the first 9.55 million lb (4,322 mt) is distributed according to the baseline formula, and 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. Because this year’s quota is below the threshold, the state-by-state allocations below are based on the baseline allocations (the baseline allocations were established through Amendment 2 and modified by Amendment 4). Through the final rule for this action, prior to the start of the fishing year, we will announce any adjustments necessary to address any long-standing overages or potential 2023 overages to provide the states with their final quotas.

**Table 2 -- Initial 2024 Summer Flounder State-by-State Quotas**

State	Percent Share	Initial 2024 Quotas* (lb)	Initial 2024 Quotas* (mt)
ME	0.04756	4,180	1.90
NH	0.00046	40	0.02
MA	6.82046	599,507	271.93
RI	15.68298	1,378,507	625.28
CT	2.25708	198,394	89.99
NY	7.64699	672,157	304.89
NJ	16.72499	1,470,098	666.83
DE	0.01779	1,564	0.71
MD	2.03910	179,233	81.30
VA	21.31676	1,873,707	849.90
NC	27.44584	2,412,443	1,094.27
Total	100	8,789,830	3,987.02

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

This action makes no changes to the current commercial management measures, including the minimum fish size (14-inch (36-centimeters (cm)) total length), gear requirements, and possession limits. Changes to 2024 recreational management measures (bag limits, size limits, and seasons) are not considered in this action, but will be considered by the Board and Council later this year.

*Black Sea Bass Specifications*

No updated stock assessment information is available for black sea bass this year; therefore, the SSC decided to set the 2024 ABC equal to the 2023 ABC. The Council and Board made no changes to the ACLs or ACTs compared to 2023. While the ACLs and ACTs are the same as 2023, updated dead-discard projections for each sector led to a change in the commercial quota and RHL. The Council and Board approved a 2024 commercial quota of 6 million pound (lb) (2,721 mt), which is a 25-percent increase from 2023, and a 2024 RHL of 6.27 million lb (2,845 mt), which is a 5-percent decrease from 2023. An updated management track stock assessment is anticipated to be available in 2024 for setting future specifications. The Council and Board-recommended 2024 black sea bass catch and landings limits are shown in table 3.

**Table 3 -- 2024 Black Sea Bass Catch and Landings Limits**

Specifications	2024	
	Million lb	Metric Ton
OFL	17.01	7,716
ABC	16.66	7,557
Expected Commercial Discards	1.50	680
Expected Recreational Discards	2.89	1,311
Commercial ACL = ACT	7.50	3,401
Commercial Quota	6.00	2,721
Recreational ACL = ACT	9.16	4,156
RHL	6.27	2,845

This action proposes no changes to the 2024 commercial management measures for black sea bass, including the commercial minimum fish size (11-inch (27.94-cm) total length) and gear requirements. Changes to 2024 recreational management measures (bag limits, size limits, and seasons) are not considered in this action, but will be considered by the Board and Council later this year.

On August 2, 2023, we partially approved Amendment 23 to the Summer Flounder, Scup, and Black Sea Bass FMP. The approved measures change the Federal coastwide commercial in-season accountability measure such that the commercial fishery

will now close when the quota plus an additional buffer of up to 5 percent is projected to be landed. The intent of this buffer is to minimize negative economic impacts when the coastwide quota is reached before all states have fully harvested their allocations due to overages in individual states.

Each year, through the specification process, the Council and Board will recommend a buffer from 0 to 5 percent. For 2024, the Council and Board have recommended a 5-percent commercial in-season closure buffer, and this action proposes this buffer. Given recent patterns in the fishery, an in-season closure is not expected for 2024; however, the Council and Board agreed that, in the unlikely event it is needed, a 5-percent buffer could have socioeconomic benefits with little risk to stock status.

We are in the process of publishing a final rule to implement the approved buffer provision. If the Amendment 23 final rule is published and effective prior to the final rule implementing these specifications, we intend to implement the Council and Board's proposed 5-percent commercial in-season closure buffer in the final rule for this specifications action. If the Amendment 23 final rule is not published prior to the finalization of these specifications, we will consider implementing the buffer for 2024 through that action.

#### *Scup Specifications*

The Council and Board-recommended 2024-2025 scup catch and landings limits are shown in table 4. The SSC recommended 2024-2025 ABCs are based on the OFL and the Council's risk policy, resulting in a 49-percent probability of overfishing. To ensure that the probability of overfishing remained below 50 percent in each year, the SSC recommended annually varying ABCs for 2024 and 2025. This results in a proposed 2024 ABC that is 49 percent higher than the 2023 ABC; and a proposed 2025 ABC that is 35 percent higher than the 2023 ABC. The proposed scup commercial quota for 2024 is 52

percent higher than the 2023 commercial quota. The proposed 2024 RHL is 43 percent higher than the 2023 RHL.

**Table 4 -- 2024 – 2025 Scup Catch and Landing Limits**

Specifications	2024		2025	
	Million lb	Metric Ton	Million lb	Metric Ton
OFL	44.74	20,295	40.55	18,393
ABC	44.13	20,015	39.99	18,139
Expected Commercial Discards	7.39	3,350	7.08	3,211
Expected Recreational Discards	2.17	984	2.08	943
Commercial ACL = ACT	28.68	13,010	25.99	11,790
Commercial Quota	21.30	9,660	18.91	8,579
Recreational ACL = ACT	15.44	7,005	14.00	6,349
RHL	13.27	6,021	11.92	5,406

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

**Table 5 -- Commercial Scup Quota Allocations for 2024 by Quota Period**

Quota Period	Percent Share	lb	mt
Winter I	45.11	9,608,430	4,358
Summer	38.95	8,296,350	3,763
Winter II	15.94	3,395,220	1,540
Total	100.0	21,300,000	9,661

The current quota period possession limits are not changed by this action and are outlined in table 6.

**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

The Winter I scup commercial 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 7.

**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.

This action proposes no changes to the 2024 commercial management measures for scup, including the minimum fish size (9-inch (22.9-cm) total length), gear requirements, and quota period possession limits.

This action proposes a potential change to the recreational scup management measures. Currently, there is a Federal recreational scup closure from January 1 – April 30. The Board and Council previously asked if we would reconsider this closure. Due to the timing of the closure and the recreational regulation-setting process, we are proposing the removal of the closure through this action. In the fall, additional recreational data and model results will be available, allowing us to determine if it is appropriate to remove the

closure. We will reconsider the Federal closure if the analyses available in December demonstrate that the closure is not needed to constrain scup catch to the target level, or if additional Federal or state measures are proposed that eliminate the need for the closure. If there are insufficient data, or, if we determine that the closure remains necessary to constrain scup harvest to the required levels, we will not remove the closure. We will announce our final decision on the closure in the final rule for this action. Additional recreational management measure changes (including additional adjustments to the open season, possession limits, and minimum fish size) will be considered at the joint Council and Commission meeting in December 2023.

### **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.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C 553(c)), while also ensuring that the final specifications are in place for the start of the fishing year on January 1, 2024 as required by court order (*North Carolina Fisheries Association v. Daley*). A longer comment period and subsequent potential delay in implementation past the start of the 2023 fishing year would be contrary to the public interest, as it could create confusion both in the industry around current quotas, and with state agencies as they prepare their annual management measures.

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 EA and a SIR. The proposed action would set the 2024 catch and landings limits for summer flounder, scup, and black sea bass based on the recommendations of the SSC, the Council, and Board. This action also proposes projected 2025 summer flounder and scup specifications; however, a future action would be needed to implement these specifications or alternative measures.

Vessel ownership data were used to identify all individuals who own 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 that may be affected by this action.

Affiliates were identified as primarily commercial fishing affiliates if the majority of their revenues in 2022 came from commercial fishing. Some of these affiliates may have also held party/charter permits. Affiliates were identified as primarily for-hire fishing affiliates if the majority of their revenues in 2022 came from for-hire fishing. Some of these affiliates may have also held commercial permits. Affiliates were identified as small or large businesses based on their average revenues during 2018-2022.

A total of 729 primarily commercial affiliates were identified as potentially impacted by this action based on the definitions above. A total of 723 (99 percent) of these commercial affiliates were classified as small businesses and 6 (1 percent) were classified as large businesses.

A total of 482 primarily for-hire affiliates were identified as potentially impacted

by this action based on the definitions above. All 482 of these for-hire affiliates were categorized as small businesses.

#### *Expected Impacts on Commercial Entities*

The six potentially impacted primarily commercial large business affiliates had average total annual revenues of \$20.6 million, and \$403,440 on average in annual revenues from summer flounder, scup, and/or black sea bass during 2020-2022. On average, summer flounder, scup, and/or black sea bass accounted for about 2 percent of total annual revenues for these six large businesses.

The 723 potentially impacted primarily commercial small business affiliates had average total annual revenues of \$457,771, and \$53,567 on average in annual revenues from commercial landings of summer flounder, scup, and/or black sea bass during 2020-2022. Summer flounder, scup, and/or black sea bass accounted for an average of 12 percent of the total revenues for these 723 small businesses.

The proposed 2024-2025 summer flounder commercial quotas are expected to result in moderate negative socioeconomic impacts for commercial fishery participants because they would require a decrease in commercial landings and therefore would be expected to result in a decrease in revenues. Some of these negative impacts are expected to be offset if a decrease in landings results in an increase in price. The analysis described in the EA [See **ADDRESSES**] predicted an expected price of \$3.40 per pound under the proposed 2024-2025 quota based on previous landings and price information, resulting in a total expected value of the harvest of \$29.87 million. Compared to the 2022 total value of \$30.41 million, the expected total reduction in revenue is 1.74 percent, spread among all vessels in the fleet. Impacts may vary by state and by fishery participant, particularly if potential price increases do not occur to the same degree in all areas.

The proposed 2024-2025 scup commercial quotas are expected to result in similar levels of commercial scup landings and revenues as the past several years. Commercial

scup landings appear to be influenced more by market facts than the annual commercial quota. The preferred 2024-2025 scup quotas represent an increase from 2022-2023; however, it is unlikely that commercial effort or landings would increase given recent trends. In general, the preferred 2024-2025 scup quotas are expected to have moderate positive impacts for both the small and large businesses identified above given they are expected to result in revenues similar to those over the past several years.

The proposed 2024 commercial quota is slightly higher than recent black sea bass landings. By allowing for slightly higher levels of landings, and therefore revenues, compared to recent years, the proposed 2024 quota is expected to have moderate positive impacts for small and large commercial fishing businesses. Given recent patterns in the black sea bass fishery, it is not expected that the proposed 5-percent in-season closure buffer will be needed for black sea bass in 2024. In the unlikely event that it is needed, it could allow landings to exceed the quota by up to 5 percent. This is not expected to result in notably different impacts than the impacts of the quota.

#### *Expected Impacts on Recreational Entities*

As previously stated, 482 for-hire fishing affiliates were identified as potentially impacted by this action based on the definition above. All these affiliates were categorized as small businesses based on their average 2018-2022 revenues. These 482 small businesses had average total annual revenues of \$130,921 during 2020-2022. Their average revenues from recreational for hire fishing (for a variety of species) was \$107,429. Average annual revenues from for-hire fishing ranged from less than \$10,000 for 195 affiliates to over \$1,000,000 for 8 affiliates. On average, recreational fishing accounted for 85 percent of the total revenues for these 482 small businesses.

It is not possible to derive what proportion of the for-hire revenues came from fishing activities for an individual species. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as recreational species, revenues generated from these

species are likely important to many of these businesses, at least at certain times of the year.

For-hire revenues are impacted by a variety of factors, including regulations and demand for for-hire trips for summer flounder, scup, black sea bass, and other potential target species, as well as weather, the economy, and other factors. Recreational measures for 2024-2025 are not yet known. However, this action does propose the potential removal of the Federal recreational scup closure that is currently effective from January 1 – April 30. Given the timing of the current closure and the limited proportion of recreational scup fishing that occurs in Federal water any benefit of the closure removal would be minimal. The approach for Federal waters recreational measures will be determined by the Council and Board in December 2023. States will work through the Commission process to determine the state waters measures in early 2024.

This action is not expected to adversely impact revenues for commercial and recreational vessels that fish for summer flounder, scup, and black sea bass. Because this rulemaking 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.

This proposed 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: November 13, 2023.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposed to amend 50 CFR part

648 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. Revise § 648.127 to read as follows:

**§ 648.127 Scup recreational fishing season.**

Fishermen and vessels that are not eligible for a scup moratorium permit under § 648.4(a)(6), may possess scup from January 1 through December 31, subject to the possession limit specified in § 648.128(a). The recreational fishing season may be adjusted pursuant to the procedures in § 648.122. Should the recreational fishing season be modified, non-federally permitted scup vessels abiding by state regulations may transit with scup harvested from state waters on board through the Block Island Sound Transit Area following the provisions outlined in § 648.131.

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