

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 200806–0207]

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:** Proposed rule; request for comments.

**SUMMARY:** The Mid-Atlantic Fishery Management Council has submitted to NMFS Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Amendment 21 proposes revisions to the summer flounder commercial state quota allocation percentages and the fishery management plan goals and objectives. Amendment 21 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:** Comments must be received by September 11, 2020.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2020–0107, by the following method:

*Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

- Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0107](http://www.regulations.gov/),

- Click the “Comment Now!” 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 a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://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).

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>.

**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 if not all 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. The original allocations, adopted in 1992 as part of Amendment 2 to the FMP (December 4, 1992; 57 FR 57358), were based on available landings data from 1980–1989. Shortly thereafter, in 1993, the State of Connecticut argued that during the early and mid-1980s, the state did not have the authority to collect landings data from offshore fishermen, nor did the NMFS provide a port agent to the state that would have collected or validated landings information. Connecticut contended that their commercial landings during the allocation base years were underreported and therefore its quota share was too small. Amendment 4 (September 24, 1993; 58 FR 49937) increased Connecticut’s quota share from 0.95 percent to 2.26 percent based on additional landings information provided by the state. The state-by-state allocations have not been modified since Amendment 4.

TABLE 1—CURRENT STATE-BY-STATE ALLOCATIONS

State	Current state allocation percentage
ME .....	0.04756
NH .....	0.00046
MA .....	6.82046
RI .....	15.68298
CT .....	2.25708
NY .....	7.64699
NJ .....	16.72499
DE .....	0.01779
MD .....	2.03910
VA .....	21.31676
NC .....	27.44584
<b>Total .....</b>	<b>100</b>

The current commercial allocation is perceived by many stakeholders as outdated, given that it was last modified in 1993 and is based on 1980–1989 landings data. Some other states and parties assert that the initial allocations were based on incomplete or otherwise flawed data.

Summer flounder distribution, center of biomass, and location of fishing effort has changed over time, likely due to a combination of stock rebuilding and difficult to quantify but widely accepted climate-related changes in the Mid-Atlantic Bight and southern New

England waters. As changing environmental conditions have resulted in an apparent shift in the average distribution of summer flounder, there have been requests to incorporate this information in setting state commercial quota allocations.

On September 16, 2014 (79 FR 55432), the Council published a notice of intent (NOI) to prepare an EIS for Amendment 21 to consider, in coordination with the Commission: (1) Performing a comprehensive review of all aspects of the FMP related to summer flounder; (2) updating the FMP goals and objectives for summer flounder management; and (3) modifying management strategies and measures as necessary to achieve those goals and objectives. The Council and Commission held scoping meetings during September and October of 2014 to solicit comments from the public regarding the range of commercial and recreational summer flounder management issues that should be considered in the amendment.

On March 29, 2018 (83 FR 13478), the Council published a supplemental NOI announcing that the scope of the amendment would be narrowed to include only commercial summer flounder management considerations. Due to ongoing revisions to the recreational data by the Marine Recreational Information Program, the Council and Commission chose to delay development of an amendment addressing recreational issues. This included quota allocation between the commercial and recreational sectors, as well as recreational management measures and strategies. The supplemental NOI identified that the commercial fishery-focused amendment would specifically consider revisions to the current qualification criteria for

Federal moratorium permit holders, the current allocation of commercial quota, and the current list of frameworkable items in the FMP, and would consider revising the FMP goals and objectives for summer flounder.

On August 17, 2018 (83 FR 41072), the Environmental Protection Agency announced the public comment period for the Amendment 21 draft environmental impact statement (DEIS). The public comment period extended until October 12, 2018. During that time, the Council and Commission held public hearings on the DEIS in Old Lyme, Connecticut; Washington, North Carolina; Dover, Delaware; Newport News, Virginia; Buzzards Bay, Massachusetts; Narragansett, Rhode Island; Toms River, New Jersey; Berlin, Maryland; Stony Brook, New York; and via webinar.

In March 2019, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Board approved Amendment 21 to the FMP to change the commercial quota allocation for summer flounder, as well as revise the FMP objectives for summer flounder. The Council and Commission also considered, but did not approve, changes to Federal permit qualifying criteria, and adding landings flexibility as a frameworkable subject in the FMP.

A Notice of Availability (NOA) for Amendment 21 was published in the **Federal Register** on July 29, 2020 (85 FR 16446). 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. As such, we are seeking comments in response to the NOA on whether measures in Amendment 21 are consistent with the Summer Flounder, Scup and Black Sea Bass FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. The comment period on the NOA ends on September 28, 2020. Comments submitted on the NOA and/or this proposed rule by that date, will be considered in our decision to approve, partially approve, or disapprove Amendment 21. We will consider comments received before the end of the comment period for this proposed rule (See **DATES**) in our decision to implement measures proposed by the Council.

**Proposed State-by-State Allocation Changes**

Amendment 21 would change the state-by-state commercial quota allocations 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 would be distributed according to the current allocations. In years when the coastwide quota exceeds 9.55 million lb (4,332 mt), any additional quota, beyond this threshold, would 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 stated that this allocation alternative was selected over other alternatives to balance preservation of historical state access and infrastructure at recent quota levels, with an intent of providing equitability among states when the stock and quota are at high levels.

TABLE 2—PROPOSED STATE-BY-STATE ALLOCATIONS

State	Allocation of baseline quota ≤9.55 mil lb (4,332 metric tons) (percent)	Allocation of <i>additional</i> 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

TABLE 3—STATUS QUO STATE-BY-STATE ALLOCATIONS (IN PERCENTAGES) AND RESULTING QUOTA (IN LB) COMPARED TO THE PROPOSED REVISED ALLOCATION (IN PERCENTAGES) AND RESULTING QUOTA (IN LB) AT THE CURRENT, 2020 QUOTA LEVEL (11.53 MILLION LB)

State	Status quo state allocation percentages	Status quo distribution of 11.53 million lb quota	Revised allocation percentages (11.53 million lb quota)	Revised allocation distribution of 11.53 million lb quota	Percent change
ME .....	0.04756	5,484	0.09663	11,142	103.17
NH .....	0.00046	53	0.05762	6,644	12435.85
MA .....	6.82046	786,399	7.77432	896,379	13.99
RI .....	15.68298	1,808,248	15.11491	1,742,750	-3.62
CT .....	2.25708	260,241	3.99459	460,576	76.98
NY .....	7.64699	881,698	8.45891	975,313	10.62
NJ .....	16.72499	1,928,391	15.97798	1,842,262	-4.47
DE .....	0.01779	2,051	0.07198	8,299	304.63
MD .....	2.03910	235,108	3.81404	439,759	87.05
VA .....	21.31676	2,457,822	19.78123	2,280,776	-7.20
NC .....	27.44584	3,164,505	24.85779	2,866,103	-9.43
Total .....	100	11,530,000	100	11,530,000	0.00

TABLE 4—STATUS QUO STATE-BY-STATE ALLOCATIONS (IN PERCENTAGES) AND RESULTING QUOTA (IN MT) COMPARED TO THE PROPOSED REVISED ALLOCATION (IN PERCENTAGES) AND RESULTING QUOTA (IN MT) AT THE CURRENT, 2020 QUOTA LEVEL (5,230 MT)

State	Status quo state allocation percentages	Status quo distribution of 5,230 mt quota	Revised allocation percentages (5,230 mt quota)	Revised allocation distribution of 5,230 mt quota	Percent change
ME .....	0.04756	2.49	0.09663	5.05	103.17
NH .....	0.00046	0.02	0.05762	3.01	12435.85
MA .....	6.82046	356.70	7.77432	406.59	13.99
RI .....	15.68298	820.21	15.11491	790.50	-3.62
CT .....	2.25708	118.04	3.99459	208.91	76.98
NY .....	7.64699	399.93	8.45891	442.39	10.62
NJ .....	16.72499	874.70	15.97798	835.64	-4.47
DE .....	0.01779	0.93	0.07198	3.76	304.63
MD .....	2.03910	106.64	3.81404	199.47	87.05
VA .....	21.31676	1,114.85	19.78123	1,034.54	-7.20
NC .....	27.44584	1,435.39	24.85779	1,300.04	-9.43
Total .....	100	5,229.92	100	5,229.92	0.00

**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. While the current FMP contains only management objectives, the proposed revisions contain three overarching goals linked to more specific objectives. The proposed goals include: (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 EIS.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the 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.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would

have on small entities, and also determines ways to minimize these impacts. The IRFA incorporates sections of the preamble to this rule and analyses contained in Amendment 21 and its accompanying EIS/RIR/IRFA. A copy of the complete analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

*Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule*

This action proposes management measures for the commercial summer flounder fishery. This action is taken under the authority of the MSA and regulations at 50 CFR part 648. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to

this proposed rule and are not repeated here.

*Description and Estimate of the Number of Small Entities to Which This Proposed 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 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 business and 6 categorized as large business.

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

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

*Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule*

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

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

The proposed action (*i.e.*, the suite of preferred alternatives) includes implementation of revised commercial

quota allocation system for the summer flounder fishery. Specifically, this action would create state allocations that vary with overall stock abundance and resulting commercial quotas. For all years when the annual commercial quota is at or below 9.55 million lb (4,332 mt), the state allocations would remain status quo. In years when the annual coastwide quota exceeded this trigger, the first 9.55 million lb (4,332 mt) would be distributed according to status quo allocations, and the additional quota beyond 9.55 million lb (4,332 mt) would 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 \$0.4 million 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 \$0.15 million 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, 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.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 6, 2020.

**Donna S. Wieting,**

*Acting 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 § 648.102, 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 9.55 million lb (4,332 mt) will be distributed as outlined in paragraph (c)(1)(i) of this section and the additional quota above 9.55 million lb 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. 2020-17609 Filed 8-11-20; 8:45 am]

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