

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

Dated: December 14, 2020.

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Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2020-27852 Filed 12-18-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 201214-0338; RTID 0648-XX006]

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

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

ACTION: Final rule.

SUMMARY: NMFS announces 2021 specifications for the summer flounder, scup, and black sea fisheries. 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. This action is intended to inform the public of the specifications for the start of the 2021 fishing year for summer flounder, scup, and black sea bass.

DATES: This rule is effective January 1, 2021.

ADDRESSES: A Supplemental Information Report (SIR) was prepared for the 2021 summer flounder, scup, and black sea bass specifications. Copies of the SIR 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 is also accessible via the internet at http://www.mafmc.org/s/SF_2020-2021_specs_EA.pdf.

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

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. Projected 2021 specifications for summer flounder (84 FR 54041; October 9, 2019) and scup and black sea bass (85 FR 29345; May 15, 2020) were previously announced. This action revises the 2021 ABC limits, 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 the Council at their joint August 2020 meeting. These revisions are primarily based on recent changes to the Council’s risk policy that we approved on December 15, 2020. The risk policy defines the acceptable risk of overfishing associated with an ABC. The revised risk policy allows for increased risk of overfishing under high stock biomass conditions compared to the previous risk policy. The change is greatest for stocks with biomass above the target level (B_{MSY}).

Final 2021 Specifications

Summer Flounder Specifications

For summer flounder, applying the revised risk policy, keeping all other relevant factors the same as previously adopted, results in an increase in the 2021 ABC from 25.03 million lb (11,354 mt) to 27.11 million lb (12,297 mt). This represents an 8-percent increase in the ABC and an increase in the probability of overfishing from 34 to 39 percent. Given the high biomass (healthy stock status) of summer flounder, the revised risk policy allows for a slightly increased risk of overfishing, which balances fishery access with the prevention of overfishing. Section 5.1 of the Council’s SIR provides information on how the revised ABC was calculated using the new risk policy. The resulting catch and landings limits are shown in Table 1.

TABLE 1—SUMMARY OF THE FINAL 2021 SUMMER FLOUNDER FISHERY SPECIFICATIONS

2021 Specifications	million lb	mt
OFL	31.67	14,367
ABC	27.11	12,297
Commercial ACL	14.63	6,635
Commercial ACT	14.63	6,635
Commercial Quota	12.49	5,663
Recreational ACL	12.48	5,662
Recreational ACT	12.48	5,662
Recreational Harvest Limit	8.32	3,776

We also recently approved (October 19, 2020) and implemented (December 14 2020, 85 FR 80661) Amendment 21 to the FMP. Amendment 21 implements a new state-by-state allocation formula for the commercial summer flounder

fishery. The revised allocation formula was used to set the final 2021 summer flounder commercial state quotas. In addition to the revised allocation formula, the final state summer flounder quotas take into account any overages

that occurred during the 2019 or current fishing year, through October 31, as described at 50 CFR 648.103(b)(2). The final 2021 state-by-state summer flounder quotas are provided in Table 2.

TABLE 2—FINAL 2021 SUMMER FLOUNDER STATE-BY-STATE QUOTAS

State	Percent share	Additional percent share of quota above 9.55 m lb (4,332 mt)	Initial allocation lb	Initial allocation kg	Preliminary 2020 overage	Final allocation lb	Final allocation kg
Maine	0.04756	0.333	14,342	6,501		14,332	6,501
New Hampshire	0.00046	0.333	9,844	4,461		9,834	4,461
Massachusetts	6.82046	12.375	1,015,179	460,477		1,015,179	460,477
Rhode Island	15.68298	12.375	1,861,550	844,385		1,861,550	844,385
Connecticut	2.25708	12.375	579,376	262,801		579,376	262,801
New York	7.64699	12.375	1,094,113	496,281		1,094,113	496,281
New Jersey	16.72499	12.375	1,961,062	889,523		1,961,062	889,523
Delaware	0.01779	0.333	11,499	5,211	-52,307	-40,818	-18,515
Maryland	2.0391	12.375	558,559	253,358		558,559	253,358
Virginia	21.31676	12.375	2,399,576	1,088,429		2,399,576	1,088,429
North Carolina	27.44584	12.375	2,984,903	1,353,929		2,984,903	1,353,929

This action makes no changes to the current commercial management measures, including the minimum fish size (14 inches (36 cm), total length), gear requirements, and possession limits. No changes to 2021 recreational management measures (bag limits, size

limits, and seasons) were considered as part of this action.

Scup Specifications

Application of the revised risk policy to the 2021 scup OFL, keeping all other relevant factors the same, results in the 2021 ABC increasing from 30.67 million

lb (13,912 mt) to 34.81 million lb (15,790 mt). This represents a 13-percent increase in the ABC. Section 5.2 of the Council’s SIR provides information on how the revised ABC was calculated using the new risk policy. The resulting catch and landings limits are shown in Table 3.

TABLE 3—SUMMARY OF THE FINAL 2021 SCUP FISHERY SPECIFICATIONS

2021 Specifications	million lb	mt
OFL	35.30	16,012
ABC	34.81	15,791
Commercial ACL	27.15	12,317
Commercial ACT	27.15	12,317
Commercial Quota	20.50	9,299
Recreational ACL	7.66	3,474
Recreational ACT	7.66	3,474
Recreational Harvest Limit	6.07	2,752

TABLE 4—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2021 BY QUOTA PERIOD

Quota period	Percent share	lb	mt
Winter I	45.11	9,247,904	4,194.77
Summer	38.95	7,985,056	3,621.96
Winter II	15.94	3,267,825	1,482.26
Total	100.0	20,500,000	9,299.00

Note: Pounds are converted from metric tons and may not necessarily total due to rounding.

This action does not change the 2021 commercial management measures for scup, including the minimum fish size (9 inches (22.9 cm), total length), gear requirements, and quota period possession limits. Like summer flounder, changes to the recreational measures for 2021 were not considered in this action.

Black Sea Bass Specifications

Application of the revised risk policy to the 2021 black sea bass OFL, keeping all other relevant factors the same,

results in the 2021 ABC increasing from 15.07 million lb (6,836 mt) to 17.45 million lb (7,915 mt), representing a 16-percent increase. As specified in the FMP, 49 percent of the ABC that is expected to be landed is allocated to the commercial fishery and 51 percent is allocated to the recreational fishery. Expected discards in each sector are added to these amounts to derive commercial and recreational ACLs. The Council and Board recommended revisions to the method for calculating expected discards for black sea bass.

The revised method is based on the assumption that sector-specific discards, as a percentage of sector-specific catch, will be the same as the 2016–2018 average (i.e., commercial dead discards would account for 36 percent of commercial catch and recreational dead discards would account for 20 percent of recreational catch). This allows commercial discards to scale up with the increase in the quota, consistent with past trends in the fishery. The previously used method for calculating expected discards under-predicted

actual discards in both sectors, contributing to commercial and recreational ACL overages in every year since 2015. The revised methodology reduces the likelihood of ACL overages. The resulting catch and landings limits are shown in Table 5. This action does not change the 2021 commercial management measures for black sea bass, including the commercial minimum fish size (11 inches (27.94 cm), total length) and gear requirements.

TABLE 5—SUMMARY OF THE FINAL 2021 BLACK SEA BASS SPECIFICATIONS

2021 Specifications	million lb	mt
OFL	17.68	8,021
ABC	17.45	7,916
Commercial ACL	9.52	4,320
Commercial ACT	9.52	4,320
Commercial Quota	6.09	2,764
Recreational ACL	7.93	3,596
Recreational ACT	7.93	3,596
Recreational Harvest Limit	6.34	2,877

This action revises the projected state-by-state February black sea bass recreational fishery harvest. No changes to the management measures for the February fishery are being proposed. The harvest projections are being updated to incorporate the revised Marine Recreational Information Program data, but the overall estimation method would remain unchanged (Table 6). States that choose to participate in this optional opening must use these revised values when developing state waters management measures for the rest of the year. The purpose is to ensure their participation in this optional opening does not increase their annual recreational black sea bass harvest in such a way as to result in an average of the coastwide RHL. Changes to management measures for the overall recreational black sea bass fishery were not considered in this action.

TABLE 6—RECREATIONAL BLACK SEA BASS FEBRUARY 2021 HARVEST ESTIMATES

State	Harvest estimates (lb)	Harvest estimates (mt)
Rhode Island	1,146	0.52
Connecticut	158	0.07
New York	41,871	18.99
New Jersey	405,913	184.12
Delaware	6,418	2.91
Maryland	2,227	1.01
Virginia	24,891	11.29
North Carolina	1,369	0.62
Total	483,993	219.54

Comments and Responses

We received two comments on the proposed rule. One comment was not relevant to the proposed specifications and is not discussed further. The second comment was from the State of New York and the New York State Department of Environmental Conservation (hereinafter referenced as “New York”). New York’s comment comprises a cover letter and ten attachments. The attachments were the comment letters and supporting documents that New York previously submitted in response to the proposed rule for the 2020–2021 Summer Flounder, Scup, Black Sea Bass, and Bluefish Specifications (84 FR 36046; July 26, 2019) and the proposed rule for Amendment 21 to the FMP (85 FR 48660; August 12, 2020). Similar to arguments made in ongoing and past litigation, 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. NMFS’s responses to New York’s previously submitted comments can be found in the final rules for those two actions (84 FR 54041; October 8, 2019, and 85 FR 80661; December 14, 2020) and are not repeated here. In the proposed rule, we published initial 2021 summer flounder state quotas based on two scenarios. In the first scenario the distribution of state quota was based on the new allocation method we approved through Amendment 21 to the FMP. Although we approved Amendment 21 on October 19, 2020, when the specifications proposed rule was published, we did not know whether the final rule for Amendment 21, implementing the new allocation method, would be published and effective prior to the start of the 2021 fishing year. Due to the timing uncertainty, the proposed rule included a second scenario under which the

commercial state summer flounder quota distribution would be based on the old allocation formula. In its comment letter, New York opposed “the state-by-state allocations proposed under either scenario.” The final rule for Amendment 21 published on December 14, 2020. Therefore the current regulations governing the FMP require that quota allocations be distributed based on the percentages outlined in Table 2. Any adjustments to these quota allocations that are currently part of the FMP must be developed and considered through an amendment to the FMP and are outside the scope of this specifications action.

Changes From the Proposed Rule

As described in the proposed rule, the summer flounder specifications in this final rule incorporate overage information to calculate the final state quotas.

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.

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 2021 specifications for the summer flounder, scup, and black sea bass fisheries. These specifications should be effective by the start of the fishing year on January 1, 2021, and must be published on or before December 31, 2020.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the Council's submission of the SIR. NMFS

received the final version of the SIR on November 2, 2020. Preparation of the final rule is also dependent on the analysis of commercial summer flounder landings for the prior fishing year (2019) and the current fishing year through October 31, to determine whether any overages have occurred and adjustments are needed to the final state quotas. This process is codified in the summer flounder regulations, and, therefore, cannot be performed earlier. Annual publication of the summer flounder quotas prior to the start of the fishing year, by December 31, is required by Court Order in *North Carolina Fisheries Association v. Daley*.

The 30-day delay in implementation for 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.

This final rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the

Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

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Dated: December 14, 2020.

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[FR Doc. 2020-27851 Filed 12-18-20; 8:45 am]

BILLING CODE 3510-22-P