



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: August 13, 2021

SUBJECT: Proposal Affecting Winter I and Winter II Scup Limits

#### Background

The annual commercial coastwide scup quota is divided into three seasonal quota management periods (Table 1). The Summer period is subject to the state-by-state quotas allocated under the interstate fishery management plan and subject to each state's quota management regulations. During the Winter I and Winter II periods—when harvest occurs predominantly in offshore waters—the fishery is managed at the federal level with a coastwide trip limit. Historically, DMF has sought to match the federal trip limit for Winter I and Winter II periods to allow vessels fishing offshore to possess and land lawfully harvested scup in our ports.

In recent years, this has been accomplished through a declaratory process, which requires—among other things—a two-week public comment period and approval of the MFAC. DMF begins this process when NOAA Fisheries announces the federal Winter I trip limit in November or December and the Winter II trip limit in August or September. At times, these announcements do not come with enough advance notice to set the state waters limit prior to the start of the period, given the MFAC's monthly meeting schedule.

**Table 1. Commercial Scup Seasonal Quota Management**

Period	% of Coastwide Quota	Trip Limits
Winter I (January 1–April 30)	45.11%	Coastwide: 50,000 lb
Summer (May 1–September 30)	38.95%	State-by-state quotas and trip limits
Winter II (October 1–December 31)	15.94% plus underage from Winter I	Coastwide: 12,000 lb plus 1,500 lb per 500,000 lb rolled over

#### Proposal

DMF's current process for mirroring the federal rules (as described above) is fairly intensive, often behind schedule, and of limited value given that most if not all expected harvest occurs by federal permit holders already beholden to the federally-established limits. Accordingly, it is my preference to streamline the administration of the federal Winter period trip limits through the

establishment of regulations that will not require use of the declaratory process. To do this, I am moving to go to public hearing this fall with the proposal enumerated below.

1. For state-only permit holders and dually (state and federal) federal permit holders fishing in state waters:
  - a. Establish a 1,500-pound harvest and retention limit for the period of October 1–April 14. This would effectively extend the state's summer period directed fishery limits throughout the winter period. Given the limited abundance of scup in our waters during the Winter periods, the low ex-vessel value for this species, and regulations that limit scup catch (e.g., night closure for mobile gear, minimum net mesh size), it is unlikely that harvesters will take advantage of this trip limit.
  - b. Establish a 2,000-pound harvest and retention limit for the period of April 15–April 30. This would allow harvesters to retain scup in state waters consistent with state and federal rules governing small mesh fisheries, effectively allowing these vessels to retain potential scup bycatch in the inshore squid trawl fishery, should there be an early run.
2. For Federal permit holders:
  - a. Adopt a regulation that would allow them to possess and land scup Massachusetts in excess of the state limit (described above) throughout October 1–April 30, provided the fish were caught in federal waters in accordance with federal regulations. This is a similar approach to how DMF addresses the possession and landing of non-conforming groundfish and sea scallop catch taken in federal waters by federal permit holders.

This approach would establish suitable limits for state waters while continuing to allow federal permit holders to possess and land scup in Massachusetts in accordance with the federal limits during the Winter I and Winter II fisheries without requiring DMF and the MFAC go through the process of setting these limits each season. This will effectively reduce administrative burden without altering how the fishery currently operates.

Given the timeline for rule making, it is doubtful that a final regulation—if approved by the MFAC—would be implemented prior to January 1, 2022. Therefore, I anticipate we will continue to use the existing declaratory process to set the 2021 Winter II limits and 2022 Winter I limits. Then we would transition to using this new approach for the 2022 Winter II limits.

#### Proposed Regulatory Language at 322 CMR 6.27

##### 6.27: Scup Fishery Management

###### (3) Commercial Fishery Management.

- (a) Permit Requirements. A regulated fishery permit endorsement, issued by the Director pursuant to 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, is required to sell scup, or to fish for, retain, possess or land scup in accordance with scup commercial fishery regulations at 322 CMR 6.27(2).
- (b) Minimum Size. It is unlawful for any commercial fisherman or dealer to possess scup less than nine inches in total length.

(c) Winter I and Winter II Fishery. ~~The Winter I fishery occurs during the period of January 1<sup>st</sup> through April 30<sup>th</sup>. This is a federal commercial scup management period. Federal limits are set pursuant to 50 CFR 648.122 and 648.123. The Director shall establish state possession and landing limits through Declaration, in accordance with the procedure set forth at 322 CMR 6.41(2)(d).~~

1. During the period of October 1 – April 14, it shall be unlawful for any commercial fisherman to retain, possess or land more than 1,500 pounds of scup within the waters under the jurisdiction of the Commonwealth during any calendar day or any trip, whichever period of time is longer.
2. During the period of April 15 – April 30, it shall be unlawful for any commercial fisherman to retain, possess or land more than 2,000 pounds of scup within the waters under the jurisdiction of the Commonwealth during any calendar day or any trip, whichever period of time is longer.
3. Exemption for Federal Permit Holders. Vessels with federal permits allowing the taking of scup from federal waters may possess and land more than the state regulated limits set forth at 322 CMR 6.27(3)(c)(1) and (2), provided said scup were lawfully taken from federal waters. It shall remain unlawful for any vessel with federal permits allowing the taking of scup to retain or possess scup in excess of the possession limits state regulated limits set forth at 322 CMR 6.27(3)(c)(1) and (2) while fishing in the waters under the jurisdiction of the Commonwealth. If a vessel with federal permits is possessing scup in accordance with this section, the vessel shall transit directly through state-waters and make no stops except to land fish in a Massachusetts port unless otherwise directed by the Massachusetts Environmental Police or the United States Coast Guard; all fishing gear shall be out of the water and properly stowed on the vessel; and the vessel, crew, gear, and catch shall be in compliance with all applicable federal regulations.

(d) Summertime Fishery. The summertime fishery occurs during the period of May 1<sup>st</sup> through September 30<sup>th</sup> and is subject to the commercial scup quota. The commercial scup quota is managed through gear type specific trip limits, seasons and fishing days.

1. Weirs. During this period, commercial fishermen, permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* to operate a fish weir, shall not be subject to daily possession limits or closed commercial fishing days for scup caught in fish weirs. The weir fishery shall close when the aggregate landings among all permitted weir fishermen reach 300,000 pounds of scup.
2. Trawlers. During this period, commercial fishermen, permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* to fish for scup with trawl gear may fish for, possess and land scup seven days per week. Trawlers shall not land more than 10,000 pounds of scup per calendar week or possess more than 10,000 pounds of scup at any one time. The calendar week shall begin on Sunday at 12:01 A.M. and end on the following Saturday at 11:59 P.M.
3. All Other Gear Types. Commercial fishermen, permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* to fish for scup with any other gear type including, but not limited to, hook and line and scup pots, are subject to the following seasonal limits:

a. May 1<sup>st</sup> through May 31<sup>st</sup>. During this period, these commercial fishermen may fish for, possess and land scup Sundays through Thursdays and shall not possess or land more than 800 pounds of scup per calendar day or per fishing trip, whichever period is longer. The possession and landing of scup is prohibited on Fridays and Saturdays.

b. June 1<sup>st</sup> through June 30<sup>th</sup>. During this period, these commercial fishermen may fish for, possess and land scup on Sundays, Tuesdays and Wednesdays and shall not possess or land more than 400 pounds of scup per calendar day or per fishing trip. The possession and landing of scup is prohibited on Mondays, Thursdays, Fridays and Saturdays.

c. July 1<sup>st</sup> through September 30<sup>th</sup>. During this period, these commercial fishermen may fish for, possess and land scup seven days per week and shall not possess or land more than 1,500 pounds of scup per calendar day or per fishing trip.

4. Quota Closure. It shall be unlawful for commercial fishermen to land or possess scup once the Director has determined that 100% of the annual commercial scup quota has been reached. The quota closure will be enacted and announced in accordance with the procedure set forth at 322 CMR 6.41(2)(c).

~~(e) Winter II Fishery. The Winter II fishery occurs during the period of October 1<sup>st</sup> through December 31<sup>st</sup>. This is a federal commercial scup management period. Federal limits are set pursuant to 50 CFR 648.122 and 648.123. The Director shall establish state possession and landing limits through Declaration, in accordance with the procedure set forth at 322 CMR 6.41(2)(d).~~

(f) Trip Limit Restrictions on Trawl Vessels. Notwithstanding the state waters trawl mesh minimum size restrictions at 322 CMR 4.06: *Use of Mobile Gear*, vessels using trawls shall not possess more than 1,000 pounds of scup from October 1<sup>st</sup> through April 14<sup>th</sup>, more than 2,000 pounds of scup from April 15<sup>th</sup> through June 15<sup>th</sup>, nor more than 200 pounds of scup from June 16<sup>th</sup> through September 30<sup>th</sup>, unless fishing with nets that have a minimum mesh size of five inches diamond applied throughout the cod end of the net for at least 75 continuous meshes forward of the terminus of the net and all other nets are stowed and not available for immediate use.