

### Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

### Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

### List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 14, 2005.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 050125017-5017-01; I.D. 011905E]

**RIN 0648-AR57**

### Fisheries of the Northeastern United States; Atlantic Bluefish Fishery

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

**ACTION:** Proposed 2005 specifications for the Atlantic bluefish fishery; request for comments.

**SUMMARY:** NMFS proposes 2005 specifications for the Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the East Coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

**DATES:** Public comments must be received no later than 5 p.m., Eastern Standard Time, on February 23, 2005.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and the Essential Fish Habitat Assessment (EFHA) are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA, IRFA, and EFHA are accessible via the Internet at <http://www.nero.noaa.gov>.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope, "Comments 2005 Bluefish Specifications." Comments also may be sent via facsimile (fax) to 978-281-9135. Comments on the specifications may be submitted by e-mail. The

mailbox address for providing e-mail comments is [2005\\_Bluefish\\_Specs@noaa.gov](mailto:2005_Bluefish_Specs@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments-2005 Bluefish Specifications." Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, (978) 281-9221, e-mail at [Don.Frei@noaa.gov](mailto:Don.Frei@noaa.gov), fax at (978) 281-9135.

### SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at 648.160. The FMP requires that the Council recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the total allowable landings (TAL) that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is comprised of a commercial quota and a recreational harvest limit. The FMP rebuilding program requires the TAC for any given year to be set based either on the fishing mortality rate (F) resulting from the stock rebuilding schedule specified in the FMP, or the estimated F in the most recent fishing year, whichever is lower.

The FMP further requires 17 percent of the TAL to be allocated to the commercial fishery as a quota, with the remaining 83 percent allocated as a recreational harvest limit, with the stipulation that, if 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota. The combination of the projected recreational landings and the commercial quota may not exceed the TAL.

In addition, the FMP allows the Council and NMFS to allocate up to 3 percent of the TAL as a Research Set-Aside (RSA), to support fishery research. This RSA is deducted proportionally from the amounts allocated to the commercial quota and recreational harvest limit.

The Council's recommendations must include supporting documentation, as

appropriate, concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

#### Proposed 2005 TAL

On August 17, 2004, the Council recommended specifications for the 2005 Atlantic bluefish fishery. The Council submitted the documents supporting its recommendations on August 20, 2004, with a final revision to those documents submitted on November 12, 2004. NMFS has reviewed the Council's recommendations and has found they comply with the FMP objectives. NMFS is proposing to implement the Council's recommended specifications.

For the 2005 fishing year, the stock rebuilding program in the FMP restricts F to 0.31, or the most recent estimate of F, whichever is lower. However, in June 2004, the Northeast Fisheries Science Center Stock Assessment Workshop (SAW-39) reviewed an updated stock assessment for bluefish and rejected it because it found that it was inappropriate for use as the basis of the management measures. SAW-39 concluded that input data negatively influenced the model used, and there was no concrete evidence that the stock was recovering. The technical review noted the need for a recreational catch rate abundance index, and better information about discard rates and mortality. SAW-39 advised that, because the assessment was rejected and

the status of the stock unknown, the total allowable landings specifications should be maintained at current levels. The Council's Monitoring Committee and the Council concurred with this advice, and recommended that the 2005 TAC should be the same as that in 2004, 34,215 million lb (15,519 million kg). The TAL is calculated by deducting an estimate of 2005 discards, estimated at 3,362 million lb (1,542 million kg), from the TAC; therefore, the TAL for 2005 would be 30,853 million lb (13,994 million kg). Due to the updated discard estimate, the TAL proposed for 2005 would be slightly lower than that established in 2004. As discussed below, the TAL is further allocated to a commercial quota, recreational harvest limit, and RSA.

#### Proposed Commercial Quota and Recreational Harvest Limit

If the TAL for the 2005 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 5,245 million lb (2,379 million kg), and the recreational harvest limit would be 25,608 million lb (11,615 million kg). However, recreational landings for the last several years have been much lower than the recreational allocation for 2005, ranging between 8.3 and 15.5 million lb (3.74 and 7.05 million kg). Because there is no indication that the recreational fishery will increase landings to 25,608 million lb (11,615 million kg) in 2005, the FMP allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). Therefore, consistent with the FMP and regulations governing the bluefish fishery, the Council recommended, and NMFS proposes, to transfer 5,254 million lb (2,383 million kg) from the initial recreational allocation of 25,608 million lb (11,615

million kg), resulting in 20,353 million lb (9,232 million kg) for a 2005 proposed recreational harvest limit and 10.5 million lb (4.76 million kg) for a proposed commercial quota. These allocations were also recommended by the Atlantic States Marine Fisheries Commission for implementation by the states for the fisheries within state waters.

#### RSA

A Request for proposals was published to solicit research proposals to utilize RSA in 2005 based on research priorities identified by the Council (March 9, 2004; 69 FR 10990). One research project that would utilize bluefish RSA has been approved by the Northeast Regional Administrator and forwarded to the NOAA Grants Office; therefore, a 297,750 lb (135,057 kg) RSA is also proposed. Consistent with the allocation of the bluefish RSA, the proposed commercial quota for 2005 would be reduced to 10,398 million lb (4,716 million kg) and the proposed recreational harvest limit is reduced to 20,157 million lb (9,143 million kg).

#### Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of 15 fish per person to achieve the recreational harvest limit.

#### Proposed State Commercial Allocations

Proposed state commercial allocations for the recommended 2005 commercial quota are shown in the table below, based on the percentages specified in the FMP. The table shows the allocations both before and after the deduction made to reflect the proposed RSA allocation.

State	% of Quota	2005 Commercial Quota (lb)	2005 Commercial Quota (kg)	2005 Commercial Quota (lb)	2005 Commercial Quota (kg)
				With Research Set-Aside	With Research Set-Aside
ME .....	0.6685	70,193	31,839	69,515	31,531
NH .....	0.4145	43,523	19,742	43,102	19,551
MA .....	6.7167	705,254	319,898	698,448	328,358
RI .....	6.8081	714,851	324,251	707,952	321,122
CT .....	1.2663	132,962	60,311	131,678	59,728
NY .....	10.3851	1,090,436	494,613	1,079,912	489,840
NJ .....	14.8162	1,555,701	705,654	1,540,688	698,844
DE .....	1.8782	197,211	89,453	195,308	88,590
MD .....	3.0018	315,189	142,967	312,147	141,588
VA .....	11.8795	1,247,348	565,788	1,235,310	560,327
NC .....	32.0608	3,366,384	1,526,966	3,333,897	1,512,230
SC .....	0.0352	3,696	1,676	3,660	1,650
GA .....	0.0095	998	453	988	448
FL .....	10.0597	1,056,269	479,116	1,046,075	474,492
Total .....	100.0000	10,500,000	4,762,720	10,398,671	4,731,822

## Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action are provided in the preamble of this proposed rule, and in the IRFA. A summary of the IRFA follows.

All vessels affected by this rulemaking have gross receipts less than \$3.5 million and are considered small entities under the Regulatory Flexibility Act. Since there are no large entities participating in this fishery, there are no disproportionate effects on small versus large entities. Since costs are not readily available, vessel profitability cannot be determined directly; therefore, changes in gross revenues were used as a proxy for profitability.

The participants in the commercial sector were defined using two sets of data. First, the reports of NMFS-permitted bluefish dealers were used to identify any vessel that reported having landed one or more pounds of bluefish during calendar year 2003 (the last year for which there is complete data). These dealer reports identify 853 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in the South Atlantic. To identify those commercial bluefish vessels, South Atlantic Trip Ticket reports were used to identify 871 vessels landed bluefish in North Carolina and 413 vessels that landed bluefish on Florida's east coast. Because bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings, it was assumed that there are no commercial vessels from those states active in this fishery. In recent years, approximately 2,063 party/charter vessels caught bluefish.

The Council analyzed three alternatives for allocating the TAL between the commercial and recreational sectors of the fishery. Consistent with SAW-39 advice to maintain harvest rates of the level of the 2004 fishing year, all of the alternatives were based on an overall TAL of 30.853 million lb (13.994 million kg) and included an allocation for RSA of 297,750 lb (135,057 kg). The alternatives differed only in the manner in which the TAL was allocated between the commercial and recreational sectors.

The recommended alternative would allocate 10.398 million lb (4.716 million kg) to the commercial sector and 20.157 million lb (9.14 million kg) to the recreational sector. Alternative 2 would have allocated 5.245 million lb (2.379 million kg) to the commercial sector and 25.608 million lb (11.615 million kg) to the recreational sector, reflecting the allocations derived from the 17-percent and 83-percent initial FMP allocation to the commercial and recreational sectors respectively. Alternative 3 would have allocated 9.583 million lb (4.346 million kg) to the commercial sector and 21.270 million lb (9.554 million kg) to the recreational sector, reflecting the commercial allocation made for 1995-2001.

For the recreational sector of the fishery, there were no negative revenue impacts projected to occur with any of the alternatives because the recreational harvest limits would be well above the level of recreational landings in recent years. The lowest recreational harvest limit considered is the recommended level of 20.157 million lb (9.14 kg), and it exceeds the recreational landings in 2003 by 44 percent. Given recent trends in bluefish recreational landings, the analysis concludes that the landings in 2005 are expected to be substantially lower than the proposed recreational harvest limit.

For the commercial sector, the recommended coastwide quota is approximately 44 percent higher than 2003 commercial landings. Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 853 vessels that landed bluefish from Maine through North Carolina. The analysis projected that there would be no revenue change for 548 of the 853 vessels, while 255 vessels could incur slight revenue losses of less than 5 percent. Another 50 vessels could incur revenue losses of between 5 percent and 39 percent, with the majority of these vessels identifying home ports in New York. Decreases in New York revenue are associated with the 2005 commercial quota allocated to New York being lower than 2003 landings from that state. The analysis also noted that the provision that allows commercial quota to be transferred from one state to another is likely to result in transfers of quota to New York from other states, thus eliminating the negative revenue impacts. While not assured, such transfers have been made annually in recent years, including 2003 and 2004.

The impacts of the recommended alternative on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concludes that

these impacts would be minimal, with an average revenue loss for vessels that landed in North Carolina of less than 1 percent, and no projected revenue losses for vessels that landed in Florida.

The analysis of Alternative 2 concluded that, for the commercial sector, there would be a 28-percent decrease in total potential commercial landings in 2005 compared to 2003 landings. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 300 of the 853 vessels that landed bluefish in 2003, while 460 could incur slight revenue losses (less than 5 percent). Another 67 could incur revenue losses between 5 percent and 39 percent, while 26 could incur revenue losses of greater than 39 percent. Nearly all of the vessels projected to incur revenue losses of greater than 5 percent had home ports in New York, New Jersey, or North Carolina. Again, the commercial quota transfer provision could be expected to moderate some or all of these impacts.

The impacts on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concludes that these impacts would result in revenue reductions of approximately 6.5 percent for vessels that landed in North Carolina, and no projected revenue losses for vessels that landed in Florida.

The analysis of Alternative 3 concluded that, for the commercial sector, there would be a 31-percent decrease in total potential commercial landings in 2005 compared to 2003. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 548 of the 853 vessels that landed bluefish in 2003, while 244 could incur slight revenue losses (less than 5 percent). Another 61 could incur revenue losses between 5 percent and 39 percent. The vessels projected to incur revenue losses greater than 5 percent had home ports in New York and North Carolina. Again, the commercial quota transfer provision could be expected to moderate some or all of these impacts.

The impacts on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concludes that these impacts would result in revenue reductions of approximately 1.5 percent for vessels landing in North Carolina and that there would be no revenue reductions for vessels landing in Florida.

The Council also analyzed the impacts on revenues of the proposed RSA amount and found that the social and economic impacts are minimal. Assuming that the full RSA of 297,750 lb (135,057 kg) is landed and sold to

support the proposed research project (a supplemental finfish survey in the Mid-Atlantic) then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments.

Because the recommended overall commercial quota and recreational harvest limit are both higher than 2003 landings, no overall negative impacts are expected.

Dated: February 2, 2005.

**Rebecca Lent,**

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

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