

7.2 For an oxygen generator, the generator must not actuate.

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Thomas J. Barrett,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-AT67

[Docket No. 061109296-7009-02; I.D. 110606A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2007 Atlantic Bluefish Specifications; Quota Adjustment; 2007 Research Set-Aside Project

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

ACTION: Final rule; final specifications for the 2007 Atlantic bluefish fishery.

SUMMARY: NMFS issues final specifications for the 2007 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 these specifications is to establish the allowable 2007 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the stock rebuilding program contained in Amendment 1 to the Atlantic Bluefish Fishery Management Plan (FMP), as well as ensuring compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action will publish final specifications that are modified from those contained in the proposed rule.

DATES: This rule is effective March 2, 2007, through December 31, 2007.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also

accessible via the Internet at <http://www.nero.noaa.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov/nero/nr/>.

The Northeast Fisheries Science Center (Center) 41st Stock Assessment Review Committee (SARC) Bluefish Assessment Report (updated for 2006) is available at: <http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0514>.

FOR FURTHER INFORMATION CONTACT:

Allison McHale, Fishery Policy Analyst, (978) 281-9103, or Michael Pentony, Supervisory Policy Analyst, (978) 281-9283.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is cooperatively managed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish (*Pomatomus saltatrix*) is the U.S. waters of the western Atlantic Ocean.

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and recreational harvest limit (RHL). A research set aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors. The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) review and make recommendations based on the best available data including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee, the Council makes a recommendation to the Northeast Regional Administrator (RA). Because the Bluefish FMP is a joint plan with the Atlantic States Marine Fisheries

Commission (Commission), the Commission meets during the annual specification process to adopt complementary measures.

In July 2006, the Monitoring Committee met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2007. In August 2006, the Council approved the Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures. Detailed background information regarding the status of the bluefish stock and the development of the 2007 specifications for this fishery was provided in the proposed specifications (71 FR 68524, November 27, 2006). That information is not repeated here.

RSA Quota

A request for proposals was published on December 23, 2005, to solicit research proposals to utilize RSA in 2007 based on research priorities identified by the Council (70 FR 76253). One research project that would utilize 363,677 lb (164,961 kg) of bluefish RSA has been conditionally approved by NMFS and is currently awaiting notice of award. Therefore, this final rule implements a 363,677-lb (164,961-kg) RSA quota for the 2007 bluefish fishery. If this project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the bluefish TAL through publication in the **Federal Register**.

Final Specifications

The FMP specifies that the bluefish stock is to be rebuilt to B_{MSY} over a 9-year period and requires the Council to 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 TAL that can be made during the year by the commercial and recreational fishing sectors combined. The FMP rebuilding program requires the TAC for any given year to be set based either on the target F resulting from the stock rebuilding schedule specified in the FMP (0.31 for 2007), or the F estimated in the most recent fishing year ($F_{2005} = 0.15$), whichever is lower. An overall TAC of 32.033 million lb (14,530 mt) is recommended as the coastwide TAC by the Council at its August 2006 meeting to achieve the target fishing mortality rate ($F = 0.15$) in 2007, consistent with the rebuilding schedule specified in Amendment 1.

The TAL for 2007 is derived by subtracting an estimate of discards of

4.271 million lb (1,937 mt), the average discard level from 2001–2005, from the TAC. After subtracting estimated discards, the 2007 TAL is approximately 12 percent greater than the 2006 TAL, or 27.762 million lb (12,593 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2007 would be 4.720 million lb (2,141 mt), and the RHL would be 23.043 million lb (10,452 mt) in 2007. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the allocation of TAL between the commercial and recreational sectors that is being implemented in this final rule, and its proportional adjustment downward to account for the bluefish RSA quota.

Council Recommendation: Commercial Quota and Recreational Harvest Limit

As described in the proposed rule, based on the best information available at the time, the Council recommended that 4.780 million lb (2,168 mt) be transferred from the initial recreational allocation of 23.043 million lb (10,452 mt) resulting in a 2007 commercial quota of 9.500 million lb (4,309 mt) and a RHL of 18.262 million lb (8,284 mt). These allocations were also recommended by the Commission to be implemented by the states for fisheries within state waters.

Final 2007 Commercial Quota and Recreational Harvest Limit

Although the Council recommendation was based on the best information available at the time, more recent information not available at the time of the Council's recommendation or at the time of publication of the proposed rule was used to develop a new landings projection for the 2007 fishing year. This new projection indicates that the initial transfer amount would exceed the amount allowable under the regulations. Based on data provided by the Marine Recreational Fisheries Statistic Survey (MRFSS) program, projected recreational landings in 2006 equal 18,823,384 lb (8,538 mt). Using this amount as the most reasonable proxy for expected landings in 2007, this final rule will reduce the amount of the transfer from the recreational to the commercial sector by 810,780 lb (367,764 kg) from 4,780,000 lb (2,168 mt) to 3,969,220 lb (1,800 mt), commensurate with the increase in projected recreational landings. Therefore, the initial recreational allocation of 18,262,270 lb (8,284 mt) will be reduced by 3,969,220 lb (1,800 mt) resulting in a post-transfer commercial quota of 8,688,760 lb (3,941 mt) and a recreational harvest limit of 19,073,240 lb (8,651 mt). After adjusting for the RSA quota, the resulting 2007 specifications will include a commercial quota of 8,574,939 lb (3,890 mt) and a

recreational harvest limit of 18,823,384 lb (8,538 mt). The RSA quota will remain unchanged at 363,677 lb (164,961 kg).

Adjustment Additional 2005 New York Overage

In accordance with the regulations found at 50 CFR 648.160(f)(4), NMFS published an in-season adjustment to New York's commercial bluefish quota on May 15, 2006 (71 FR 27977), as the result of an overage of 51,397 lb (23,313 kg) that occurred during FY 2005. Since the publication of that in-season adjustment, updated landings information for FY 2005 indicates an additional bluefish quota overage for New York in the amount of 6,238 lb (2,829 kg), resulting in a total 2005 bluefish quota overage of 57,635 lb (26,143 kg) for the state. This final rule adjusts the 2007 bluefish quota for New York downward by 6,238 lb (2,829 kg) to account for this additional 2005 overage, from 890,516 lb (403,931 kg) to 884,278 lb (401,106 kg).

Final State Commercial Allocations

The 2007 commercial quota is allocated by state as shown in Table 1 below, according to the percentages specified in the FMP. Table 1 shows the allocations both before and after the deductions made to reflect the RSA quota allocation, and also accounts for the carryover quota overage for New York from FY 2005.

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2007

States	Quota Percent Share	2007 Commercial Quota		Carryover 2005 Overages		2007 Commercial Quota	
		(lb)	(kg)	(lb)	(kg)	(lb)	(kg)
ME	0.6685	58,084	26,347			57,323	26,002
NH	0.4145	36,015	16,336			35,543	16,122
MA	6.7167	583,598	264,718			575,953	261,251
RI	6.8081	591,539	268,321			583,790	264,806
CT	1.2663	110,026	49,907			108,584	49,254
NY	10.3851	902,336	409,297	6,238	2,830	884,278	401,106
NJ	14.8162	1,287,344	583,935			1,270,480	576,286
DE	1.8782	163,192	74,024			161,055	73,054
MD	3.0018	260,819	118,307			257,403	116,757
VA	11.8795	1,032,181	468,194			1,018,660	462,061
NC	32.0608	2,785,686	1,263,579			2,749,194	1,247,026
SC	0.0352	3,058	1,387			3,018	1,369
GA	0.0095	825	374			815	370
FL	10.0597	874,063	396,472			862,613	391,279

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2007—Continued

States	Quota Percent Share	2007 Commercial Quota		Carryover 2005 Overages		2007 Commercial Quota	
		(lb)	(kg)	(lb)	(kg)	(lb)	(kg)
Total	100.0001	8,688,769⁽¹⁾	3,941,200	6,238	2,830	8,568,710⁽²⁾	3,886,741

⁽¹⁾ The sum of the individual states does not add up to the final commercial quota of 8,688,760 lb due to rounding.

⁽²⁾ The sum of the individual states does not add up to the final RSA adjusted commercial quota of 8,574,939 lb, less the New York overage of 6,238 lb (i.e., 8,568,701 lb), due to rounding.

Recreational Possession Limit

In this final rule, NMFS approves the Council's recommendation to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Comments and Responses

The public comment period on the proposed rule ended on December 27, 2006, with only one comment received.

Comment 1: The commenter expressed general support for environmental reforms and conservation of bluefish for future generations. The commenter suggested that the TAC be reduced by 50 percent initially, and by 10 percent in each subsequent year.

Response: NMFS acknowledges the importance of the issues raised by the commenter, but those of a general nature are outside the scope of this rulemaking. The commenter gave no specific rationale for why the quotas should be reduced in the manner suggested, and there is no known scientific basis for the commenter's suggestions. The reasons presented by the Council and NMFS for recommending the final 2007 bluefish specifications are discussed in the preambles to both the proposed and final rules, and sufficient analysis is contained within the supporting documents.

Classification

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for these specifications are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

One comment was submitted on the proposed rule, but it was not specific to the IRFA or the economic effects of the rule. NMFS has responded to the comment in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comment received.

Description and Estimate of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines small businesses in the commercial fishing and recreational fishing sectors as firms with receipts (gross revenues) of up to \$4.0 million and \$6.5 million, respectively. This rule could affect any vessels that fish for bluefish in Federal or state waters. The final measures regarding the 2007 quotas could affect any vessels holding an active Federal permit for bluefish as well as vessels that fish for this species in state waters.

An active participant in the commercial sector was defined as being any vessel that reported having landed one or more pounds of bluefish the dealer data during calendar year 2005. Of the active vessels reported in 2005, 745 known vessels landed bluefish from Maine through North Carolina. The Northeast Region dealer data do not cover vessel activity in the South Atlantic. The Northeast Region dealer data indicate that 148 federally permitted vessels landed bluefish in North Carolina in 2005. However, the North Carolina landings data for bluefish may be incomplete in this data system. South Atlantic Trip Ticket Report data indicate that 882 vessels landed bluefish in North Carolina in 2005. Some of these vessels may be

included among the 148 vessels identified as landing bluefish in the Northeast Region dealer data. As such, double counting is possible. In addition, up to 620 vessels may have landed bluefish in Florida's east coast in 2005. Bluefish landings in South Carolina and Georgia were less than a thousand pounds combined in FY 2005, representing a negligible proportion of the total bluefish landings along the Atlantic coast in 2005. Therefore, for the purpose of this analysis, it is assumed that no vessels landed bluefish from South Carolina and Georgia.

In addition, it was estimated that in recent years approximately 2,063 party/charter vessels may have been active and/or caught bluefish. All of these vessels are considered small entities under the RFA, having gross receipts of less than \$5 million annually. Since the recreational possession limits will remain at 15 fish per person, there should be no impact on demand for party/charter vessel fishing, and, therefore, no impact on revenues earned by party/charter vessels.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The commercial quota and RHL contained in this final rule are 8.5 percent lower and 4.4 percent higher, respectively, than the Council's preferred alternative contained in the proposed rule. Although the commercial quota under this new alternative is lower than the commercial quota recommended by the Council, it is 7.7 percent higher than the final 2006 commercial quota (71 FR 9471; February 24, 2006). As a result, all affected states will receive an increase in their

individual commercial quota allocation in comparison to their respective 2006 individual state allocations. However, the magnitude of that increase varies depending on the state's respective percent share in the total commercial quota, as specified in the FMP, and depending on if the state had any additional overages from FY 2005 that needed to be adjusted for in this final rule (e.g., New York). NMFS considered a TAL that would have allowed a higher allocation of quota to the commercial sector, but this alternative, proposed by the Council, would have been inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. The new alternative, which will transfer less quota from the recreational sector to the commercial sector than the alternative contained in the proposed rule (see

Table 2), is being implemented consistent with recent recreational landings trends and should ensure that the 2007 RHL is not exceeded. Furthermore, the RHL being implemented in this final rule is 14.3 percent higher than the RHL specified in FY 2006. In conclusion, because both the 2007 commercial quota and RHL being implemented in this final rule represent increases over the 2006 specifications, and because the revised 2007 RHL is consistent with recent trends in recreational landings, no negative economic impacts are expected relative to the status quo and the Council's preferred alternative.

The impacts on revenues of the proposed RSA were analyzed. The social and economic impacts of this proposed RSA are expected to be minimal. Assuming the full RSA is

allocated for bluefish, the set-aside amount could be worth as much as \$120,013 dockside, based on an average 2005 ex-vessel price of \$0.33 per pound for bluefish. Assuming an equal reduction among all 745 active dealer reported vessels, this could mean a reduction of about \$161 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than a 2- percent decrease), if 1.3 percent of the TAL is used for research. There are no anticipated adverse impacts associated with the RSA. In general, RSAs are expected to yield important long-term benefits associated with improved data upon which to base management decisions.

Table 2. Comparison of New Alternative to Council Preferred and 2006 Specifications

TABLE 2. COMPARISON OF NEW ALTERNATIVE TO COUNCIL PREFERRED AND 2006 SPECIFICATIONS

	Initial TAL	Post-Transfer Commercial Quota	Post-Transfer Recreational Quota	Research Set-Aside	Adjusted Commercial Quota	Adjusted Recreational Harvest Limit
2007 Final Bluefish Specifications						
Final Rule Preferred Alternative	27,762,000 lb (12,593 mt)	8,688,760 lb (3,941 mt)	19,073,240 lb (8,651 mt)	363,677 lb (165 mt)	8,574,939 lb (3,890 mt)	18,823,384 lb (8,538 mt)
Council's Preferred Alternative for 2007 Bluefish Specifications						
Proposed Rule Preferred Alternative	27,762,000 lb (12,593 mt)	9,499,540 lb (4,309 mt)	18,262,460 lb (8,284 mt)	363,677 lb (165 mt)	9,375,098 lb (4,252 mt)	18,023,225 lb (8,175 mt)
2006 Final Bluefish Specifications						
Preferred Alternative	24,798,836 lb (11,249 mt)	8,081,096 lb (3,666 mt)	16,717,740 lb (7,583 mt)	363,677 lb (165 mt)	7,962,586 lb (3,612 mt)	16,472,573 lb (7,472 mt)

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the bluefish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following website: <http://www.nero.noaa.gov/nero/nr/index.html>.

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

Dated: January 24, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061003253-7008-02; I.D. 092606A]

RIN 0648-AU27

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline for Pacific mackerel in the U.S. exclusive economic zone off the Pacific