

activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

\* \* \* \* \*

■ 3. Revise § 402.03 to read as follows:

**§ 402.03 Applicability.**

Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.

■ 4. Revise § 402.13 to read as follows:

**§ 402.13 Informal consultation.**

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

■ 5. In § 402.14, revise paragraphs (a) and (b)(1) to read as follows:

**§ 402.14 Formal consultation.**

(a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except

as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under § 402.12 or as a result of informal consultation with the Service under § 402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

\* \* \* \* \*

[FR Doc. E9-10203 Filed 5-1-09; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 090206144-9697-02]

RIN 0648-AX49

**Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2009 Atlantic Bluefish Specifications**

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

**ACTION:** Final rule; final specifications for the 2009 Atlantic bluefish fishery.

**SUMMARY:** NMFS issues final specifications for the 2009 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 2009 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

**DATES:** Effective June 3, 2009, through December 31, 2009.

**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, 55 Great Republic Drive, Gloucester, MA 01930 2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations implementing the FMP are prepared by the Mid-Atlantic Fishery Management Council (Council) and appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for bluefish (*Pomatomus saltatrix*) is 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) and Scientific and Statistical Committee (SSC) 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 and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator (RA). This FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission); therefore, the Commission meets during

the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation 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 publishes final specifications in the **Federal Register**.

In July 2008, the Monitoring Committee and SSC met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2009. Based on the updated 2007 estimate of bluefish stock biomass, the bluefish stock is not considered overfished:  $B_{2007} = 339.2$  million lb (153,843 mt) is greater than the minimum biomass threshold,  $\frac{1}{2} B_{MSY} = 162$  million lb (73,526 mt), and is actually above  $B_{MSY}$ . The bluefish stock, therefore, appears to be fully rebuilt. Estimates of fishing mortality have declined from 0.41 in 1991 to 0.15 in 2007. The new model results also conclude that the Atlantic stock of bluefish is not experiencing overfishing; i.e., the most recent  $F$  ( $F_{2007} = 0.15$ ) is less than the maximum  $F$  overfishing threshold specified by SARC-41 ( $F_{MSY} = 0.19$ ). Detailed background information regarding the stock assessment process for bluefish and the development of the 2009 specifications for this fishery was provided in the proposed specifications (74 FR 9072, March 2, 2009), and is not repeated here. In August 2008, the Council approved the SSC and Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures.

### Final Specifications

#### 2009 TAL

The FMP specifies that the bluefish stock is to be rebuilt to  $B_{MSY}$  over a 9-year period (i.e., by the year 2010). The FMP 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 harvested during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota and a RHL. 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 2009), or the  $F$  estimated in the most recent fishing year ( $F_{2007} = 0.15$ ), whichever is lower. Therefore, the 2009 recommendation is based on an estimated  $F$  of 0.15. An overall TAC of 34.081 million lb (15,459 mt) was recommended as the coast-wide TAC by the Council at its August 2008 meeting to achieve the target  $F$ , ( $F = 0.15$ ) in 2009, and to ensure that the bluefish stock continues to remain above the long-term biomass target,  $B_{MSY}$ .

The TAL for 2009 is derived by subtracting an estimate of discards of 4.725 million lb (2,143 mt), the average discard level from 2005–2007, from the TAC. After subtracting estimated discards, the 2009 TAL would be approximately 4 percent greater than the 2008 TAL, or 29.356 million lb (13,316 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2009 would be 4.991 million lb (2,227 mt), and the RHL would be 24.366 million lb (11,052 mt) in 2009. 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, and the proportional adjustments to account for the recommended bluefish RSA Quota.

### Final Commercial Quota, RHL, and RSA quota

The FMP stipulates that, in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), the commercial quota may be increased up to 10.500 million lb (4,763 mt) as long as the recreational fishery is not projected to land more than 83 percent of the TAL in the upcoming fishing year, and the combined projected recreational landings and commercial quota would not exceed the TAL. At the Monitoring Committee meeting in July 2008, Council staff estimated projected recreational landings for the 2009 fishing year by using simple linear regression of the recent (2001–2007) temporal trends in recreational landings. At that time, recreational landings were projected to reach 24.719 million lb (11,212 mt) in 2009. Therefore, projected 2009 recreational landings were slightly greater than the initial 2009 RHL. As such, a transfer of quota to the commercial sector could not occur based on those data. Any amount of transfer would likely have caused the TAL to be exceeded. This option, therefore, represented the preferred alternative recommended by the Council in its draft specifications document.

However, the Council also recommended that, if later projections based on more complete data indicated that recreational harvest would be below 83 percent of the TAL, the difference be transferred to the commercial sector in the final specifications. NMFS Northeast Regional Office staff recently updated the recreational harvest projection using Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 5 of 2008, and estimated the recreational harvest to be approximately 19.528 million lb (8,858 mt), or 67 percent of the TAL. Following the Council's recommendation, this would allow for a transfer to the commercial fishery of 4.838 million lb (2,194 mt), increasing the commercial quota from 4.991 million lb (2,227 mt) to 9.828 million lb (4,458 mt). This commercial quota is 27 percent greater than the 2008 quota, and 86 percent greater than actual 2008 commercial landings.

A request for proposals was published to solicit research proposals to utilize RSA in 2008 based on research priorities identified by the Council (February 8, 2008; 73 FR 7528). One research project that would utilize bluefish RSA has been preliminarily approved by the RA and forwarded to the NOAA Grants Office. Therefore, a 97,750-lb (44,339-kg) RSA quota is approved for use by this project, or other potential research projects, during 2009. This final rule does not represent NOAA's approval of any RSA-related grant award, which will be included in a separate action. Consistent with the allocation of the bluefish RSA, the final commercial quota for 2009 is 9,730,601 lb (4,414 mt), the final RHL is 19,528,060 lb (8,858 mt), and the RSA quota is 97,750 lb (44,339 kg).

### Recreational Possession Limit

NMFS has approved the Council's recommendation to maintain the current recreational possession limit of 15 fish per person to achieve the RHL.

### Final State Commercial Allocations

The final state commercial allocations for the 2009 commercial quota are shown in Table 1, based on the percentages specified in the FMP. In accordance with the regulations at § 648.160(e)(2), NMFS shall deduct any overages of the commercial quota landed in any state from that state's annual quota for the following year. Updated landings information for FY 2008 indicate a bluefish quota overage for New York in the amount of 34,149 lb (15,490 kg). This final rule adjusts New York's 2009 bluefish quota downward by this amount, to 976,384 lb

(442,880 kg), to account for this overage. The table below includes the adjustment for New York's 2008 quota overage.

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2009 (INCLUDING RSA DEDUCTIONS).

State	Percent Share	2009 Commercial Quota (lb)	2009 Commercial Quota (kg)
ME	0.6685	65,049	29,506
NH	0.4145	40,333	18,295
MA	6.7167	653,575	296,462
RI	6.8081	662,469	300,496
CT	1.2663	123,219	55,892
NY	10.3851	976,384	442,888
NJ	14.8162	1,441,702	653,956
DE	1.8782	182,760	82,900
MD	3.0018	292,093	132,493
VA	11.8795	1,155,945	524,337
NC	32.0608	3,119,709	1,415,100
SC	0.0352	3,425	1,554
GA	0.0095	924	419
FL	10.0597	978,869	444,015
Total	100.0001	9,696,457	4,398,313

### Comments and Responses

The public comment period on the proposed rule ended on March 17, 2009, with three comments received.

*Comment 1:* One commenter suggested that the bluefish quotas should be reduced by 50 percent, based on the notion that commercial fisheries are causing bluefish, and other species, to become extinct.

*Response:* 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 suggestion that bluefish are at risk of extinction. The reasons presented by the Council and NMFS for recommending the final 2009 bluefish specifications are based on the best scientific information available, and are discussed in the preambles to both the proposed and final rules. Bluefish are not considered overfished or subject to overfishing, and biomass appears to be at its highest level in 20 years. Sufficient analysis and scientific justification for NMFS's action in this final rule are contained within the supporting documents.

*Comment 2:* Two commenters were supportive of the proposed specifications and increased commercial quotas. They further agreed, based on personal observations, that the bluefish resource appears to be healthy.

*Response:* As stated above, NMFS used the best scientific information available, and selected specifications for the bluefish fishery that are consistent with the FMP and the recommendations of the Council. The 2009 commercial bluefish quotas implemented through this final rule will allow for increased fishing opportunities compared to 2008, while maintaining the conservation objectives of the FMP.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under E.O. 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's 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

Three comments were submitted on the proposed rule, but none were specific to the IRFA or the economic effects of the rule. NMFS has responded to the comments 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 comments received.

### Description and Estimated 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. No large entities participate in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available and individual vessel profitability cannot be determined directly. Therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector were defined using two sets of data. First, the Northeast dealer reports were used to identify any vessel that reported having landed 1 lb (0.45 kg) or more of bluefish during calendar year 2007 (the last year for which there are complete data). These dealer reports identified 709 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 856 vessels<sup>1</sup> that landed bluefish in North Carolina, and 586 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2007.

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 limit 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.

<sup>1</sup> Some of these vessels were identified in the Northeast dealer data; therefore, double counting is possible.

### 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 contained in this final rule is 27 percent higher than the 2008 commercial quota, and 86 percent higher than actual 2008 commercial bluefish landings. All affected states will receive increases in their individual commercial quota allocations in comparison to their respective 2008 individual state allocations, which may result in positive economic impacts for commercial bluefish fishery participants.

The RHL contained in this final rule is approximately 4 percent lower than the RHL in 2008. The small reduction in RHL is a reflection of a declining trend in recreational bluefish harvest in recent years. Since the 2009 RHL is set equal to the total projected recreational bluefish harvest for 2009, it does not constrain recreational bluefish harvest

below a level that the fishery is anticipated to achieve. Furthermore, the possession limit for bluefish remains at 15 fish per person. Therefore, no negative economic impacts on the recreational fishery are anticipated.

The impacts on revenues of the proposed RSA were analyzed; the social and economic impacts are minimal. Assuming that the full RSA of 97,750 lb (44,339 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. In conclusion, because the 2009 commercial quota being implemented in this final rule is greater than the 2008 commercial quota, the 2009 RHL is consistent with recent trends in recreational landings, and the impacts of the RSA quota will be minimal, no negative economic impacts are expected relative to the status quo.

#### *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 Atlantic 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>.

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

Dated: April 27, 2009.

**John Oliver,**

*Deputy Assistant Administrator For Operations, National Marine Fisheries Service.*

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