

*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 the target TAC and corresponding fleet DAS allocation is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The target TAC contained in this final rule is equal to the FY 2009 target TAC, and roughly 20 percent higher than actual FY 2009 commercial red crab landings. Whereas a limited market has been responsible for the shortfall in landings compared to the target TAC, red crab vessel owners have invested heavily in a new processing plant in New Bedford, MA, and have developed new marketing outlets with hopes to increase demand for their product. Further, the Council considered three alternatives, and this rule implements the alternative that has the highest target TAC and DAS allocation that is consistent with both the FMP and the best available science.

*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 red crab 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>.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: May 10, 2010.

**Eric C. Schwaab,**

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

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.4, paragraph (a)(13)(i)(B)(2)(ii) is revised to read as follows:

**§ 648.4 Vessel permits.**

- (a) \* \* \*  
(13) \* \* \*  
(i) \* \* \*  
(B) \* \* \*  
(2) \* \* \*

(ii) A limited-access permit holder may choose to declare out of the red crab fishery for the next fishing year by submitting a binding declaration on a form supplied by the Regional Administrator, which must be received by NMFS at least 180 days before the last day of the current fishing year. NMFS will presume that a vessel intends to fish during the next fishing year unless such binding declaration is received at least 180 days before the last day of the current fishing year. Any limited-access permit holder who has submitted a binding declaration must submit either a new binding declaration or a renewal application for the year after which they were declared out of the fishery. For the 2010 fishing year only, the 6-month notification requirement is waived, and a vessel may be declared out of the fishery at any time prior to fishing under a limited access red crab DAS during the 2010 fishing year.

\* \* \* \* \*

■ 3. In § 648.260, paragraph (a)(1) is revised to read as follows:

**§ 648.260 Specifications.**

- (a) \* \* \*

(1) Target total allowable catch. The target TAC for each fishing year will be 3.56 million lb (1,615 mt), unless modified pursuant to this paragraph.

\* \* \* \* \*

■ 4. In § 648.262, paragraph (b)(2) is revised to read as follows:

**§ 648.262 Effort-control program for red crab limited access vessels.**

\* \* \* \* \*

- (b) \* \* \*

(2) For fishing years 2010 and thereafter. Each limited access permit holder shall be allocated 116 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(i)(B)(2)(ii) or the TAC is adjusted consistent with § 648.260.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 100204079-0199-02]

**RIN 0648-XQ49**

**Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2010 Atlantic Bluefish Specifications**

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

**ACTION:** Final rule; final specifications for the 2010 Atlantic bluefish fishery.

**SUMMARY:** NMFS issues final specifications for the 2010 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 U.S. The intent of these specifications is to establish the allowable 2010 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 14, 2010, through December 31, 2010.

**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:** Sarah Heil, Fishery Management Specialist, (978) 281-9257.

**SUPPLEMENTARY INFORMATION:**

## Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the FMP is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160.

The FMP requires the Council to recommend, on an annual basis, a total allowable catch (TAC) and total allowable landings (TAL) that will control fishing mortality. Estimates of stock size, coupled with the target  $F$ , allow for a calculation of the TAC. Projected bluefish discards are subtracted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota (allocated to the states from Maine to Florida in specified shares) and a coastwide recreational harvest limit (RHL). The Council may also specify a research set-aside (RSA) quota, which 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 Northeast Regional Administrator (RA). Because this FMP is a joint plan, the Commission also 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 will publish final specifications in the **Federal Register**.

In July 2009, the Monitoring Committee and the SSC met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2010. Based on the updated 2008 estimate of bluefish stock biomass, the bluefish stock is not considered overfished:  $B_{2008} = 360.957$  million lb (163,727 mt) is greater than the minimum biomass threshold,  $\frac{1}{2} B_{MSY} = 162$  million lb (73,526 mt), and is actually above the long-term biomass target ( $B_{MSY}$ ). Biomass has been above the target since 2007, and the stock was declared rebuilt in 2009, satisfying the rebuilding program requirement to achieve rebuilding by 2010 that was established in Amendment 1 to the FMP. Estimates of  $F$  have declined from 0.41 in 1991 to 0.12 in 2008. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent  $F$  ( $F_{2008} = 0.12$ ) is less than the maximum  $F$  overfishing threshold specified by the 41st Stock Assessment Review Committee ( $F_{MSY} = 0.19$ ). Detailed background information regarding the stock assessment process for bluefish and the development of the 2010 specifications for this fishery was provided in the proposed specifications (75 FR 10450, March 8, 2010), and will not be repeated here.

## Final Specifications

### 2010 TAL

During the rebuilding period, the Council was required to set a TAC consistent with the prescribed  $F$  for a given phase in the rebuilding period, or the status quo  $F$ , whichever was less. According to Amendment 1, once the stock is recovered, the TAC could be set to achieve an  $F_{target}$  defined as 90 percent of  $F_{MSY}$  (0.19). At its July 2009 meeting, the SSC noted that sparse age composition data, the lack of sampling by fishery independent trawl and seine surveys, and the uncertainty behind recreational catch estimates were sources of scientific uncertainty associated with the bluefish stock assessment. Therefore, the Monitoring Committee and the SSC recommended a TAC for 2010 at a level consistent with the maximum allowable rebuilding  $F$  (0.15), rather than increasing  $F_{target}$  to the FMP-prescribed level for a recovered stock ( $F = 0.17$ ). The Council subsequently approved the Monitoring Committee and SSC's recommendations at its August 2009 meeting. Therefore, the Council recommended a coastwide TAC of 34.376 million lb (15,593 mt) to achieve the target  $F$  (0.15) in 2010 and

to ensure that the bluefish stock continues to remain above  $B_{MSY}$ .

The TAL for 2010 is derived by subtracting an estimate of discards of 5.112 million lb (2,319 mt), the average discard level from 2006–2008, from the TAC. After subtracting estimated discards, the 2010 TAL would be 29.264 million lb (13,274 mt), which is slightly less than the 2009 TAL of 29.356 million lb (13,316 mt) due to an increase in discard estimates in recent years. Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2010 would be 4.975 million lb (2,257 mt), and the RHL would be 24.289 million lb (11,017 mt) in 2010. In addition, up to 3 percent of the TAL may be allocated as an RSA quota. The discussion below describes the recommended 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 2009, Council staff attempted to estimate projected recreational landings for the 2010 fishing year by using a simple linear regression of the recent (2002–2008) temporal trends in recreational landings. However, at that time, only 2009 Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 2 were available for 2009, and a reliable estimate of 2009 recreational catch could not be generated. Therefore, the Council postponed this type of projection until more landings data for the 2009 fishing year became available. Recreational landings for 2008 (18.9 million lb, 8,573 mt) were applied to 2010 for an initial calculation of the RHL. As such, it was expected that a transfer of up to 5.387 million lb (2,444 mt) to the commercial sector could be approved. This represents the preferred alternative recommended by the Council in its specifications document.

Northeast Regional Office (NERO) staff recently updated the recreational harvest projection using 2009 MRFSS data from Waves 1 through 4 and 6.

Wave 5 estimates for 2009 are not available at this time. Using the best available data, the 2009 recreational harvest was estimated to be 15.391 million lb (6,981 mt), or 53 percent of the TAL. Consistent with the Council's recommendation, this would allow for a transfer of 5.387 million lb (2,444 mt) from the recreational sector to the commercial fishery, increasing the commercial quota from 4.975 million lb (2,257 mt) to 10.362 million lb (4,700 mt). This commercial quota is 5 percent greater than the 2009 commercial quota and 71 percent greater than actual 2009 commercial landings.

A request for research proposals for the 2010 Mid-Atlantic RSA Program was published on January 2, 2009 (74 FR

72). Two research projects that would utilize bluefish RSA quota have been approved and forwarded to NOAA's Grants Management Division. A 419,750-lb (190,395-kg) RSA quota is approved for use by these projects during 2010. This final rule does not represent NOAA's approval of any RSA quota-related grant award, which will be included in a separate action. Consistent with the allocation of the bluefish RSA quota, the final commercial quota for 2010 is 10,213,222 lb (4,633 mt), the final RHL is 18,630,842 lb (8,451 mt), and the RSA quota is 419,750 lb (190,395 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 2010 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 fishing year 2009, through December 31, 2009, indicate no commercial bluefish quota overages.

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2010 (INCLUDING RSA DEDUCTIONS).

State	Percent Share	Final State Quotas (lb)(including RSA deductions)	Final State Quotas (kg)(including RSA deductions)
ME	0.6685	68,275	30,969
NH	0.4145	42,334	19,202
MA	6.7167	685,991	311,161
RI	6.8081	695,326	315,395
CT	1.2663	129,330	58,663
NY	10.3851	1,060,653	481,104
NJ	14.8162	1,513,211	686,381
DE	1.8782	191,825	87,010
MD	3.0018	306,580	139,063
VA	11.8795	1,213,280	550,334
NC	32.0608	3,274,441	1,485,261
SC	0.0352	3,595	1,631
GA	0.0095	970	440
FL	10.0597	1,027,419	466,030
Total	100.0001	10,213,222	4,632,644

#### Comments and Responses

The public comment period for the proposed rule ended on March 23, 2010. One comment was received from a private citizen. A summary and response to the concerns raised by the commenter are included below.

*Comment 1:* The commenter suggested that quotas should be cut, based on the notion that commercial fisheries are causing bluefish, and other species, to become extinct.

*Response:* The commenter provided no scientific basis for the suggestion that bluefish are at risk of extinction. The

reasons presented by the Council and NMFS for recommending the final 2010 bluefish specifications are based on the best scientific information available, and are discussed in the preambles to both the proposed and final rule. 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.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (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 Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

The FRFA included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA and a summary of the analyses completed to support the action. No significant issues were raised by the public comment in response to the IRFA. 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 this final rule are contained 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 did not raise specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. No changes were made to the final rule as a result of the comment received. For a summary of the comment received, and the response to that comment, refer to the "Comments and Responses" section of this preamble.

#### *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. 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. The categories of small entities likely to be affected by this action include commercial and party/charter vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters.

The Council estimates that the proposed 2010 specifications could affect those vessels that were actively involved (landed more than 1 lb (0.45

kg) of bluefish) in the bluefish fishery in 2008. Northeast dealer reports identified 624 vessels that landed bluefish in states from Maine to North Carolina. South Atlantic Trip Ticket reports identified 908 vessels that landed bluefish in North Carolina and 685 vessels that landed bluefish on Florida's east coast (double counting is possible because some of these vessels were also identified in the Northeast dealer data). Bluefish landings in South Carolina and Georgia were near zero in 2008, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2008. The Council also estimates that approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish in recent years.

#### *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 contained in this final rule is 5 percent higher than the 2009 commercial quota, and 71 percent higher than actual 2009 commercial bluefish landings. All affected states will receive increases in their individual commercial quota allocations in comparison to their respective 2009 individual state allocations, which is expected to result in positive economic impacts for commercial bluefish fishery participants.

The RHL contained in this final rule is approximately 5 percent lower than the RHL in 2009. The small reduction in RHL is a reflection of a declining trend in recreational bluefish harvest in recent years. Since the 2010 RHL is greater than 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. The possession limit for bluefish will remain at 15 fish

per person, so there should be no impact on demand for party/charter vessel fishing and, therefore, no impact on revenues earned by party/charter vessels. No negative economic impacts on the recreational fishery are anticipated.

The impacts on revenues associated with the proposed RSA quota were analyzed and are expected to be minimal. Assuming that the full RSA quota of 419,750 lb (190,395 kg) is landed and sold to support the proposed research projects (a supplemental finfish survey in the Mid-Atlantic region and a study to reduce butterflyfish bycatch in the offshore Loligo squid fishery), then all of the participants in the fishery would benefit from the improved fisheries data yielded from each project.

Because the 2010 commercial quota being implemented in this final rule is greater than the 2009 commercial quota, the 2010 RHL is greater than the projected 2009 recreational bluefish harvest and consistent with recent trends in recreational landings, and the impacts of the RSA quota will be minimal, no negative economic impacts are expected as a result of this final rule.

#### *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: May 10, 2010.

**Eric C. Schwaab,**

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

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