

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648****[Docket No. 210907–0178]****RIN 0648–BK64****Fisheries of the Northeastern United States; Amendment 7 to the Atlantic Bluefish Fishery Management Plan**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to approve and implement measures included in Amendment 7 to the Atlantic Bluefish Fishery Management Plan, as submitted by the Mid-Atlantic Fishery Management Council. This amendment would revise the goals and objectives of the fishery management plan, reallocate quota between the commercial and recreational fisheries, reallocate commercial quota among the states, implement a rebuilding plan using a constant fishing mortality strategy, revise the sector quota transfer, and revise how management uncertainty is applied during the specifications process. Amendment 7 is intended to use the best information available to update the Bluefish Fishery Management Plan, by responding to changes in stock health and distribution, while recognizing economic need and reliance throughout the management area.

**DATES:** Comments must be received by October 13, 2021.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2021–0071, by the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to <https://www.regulations.gov>, and enter “NOAA–NMFS–2021–0071” in the Search box;

2. Click the “Comment” icon, complete the required fields; and

3. Enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying

information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for this action that describes the proposed measures and other considered alternatives. The EA also provides a thorough analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives. Copies of Amendment 7, including the EA, the Regulatory Impact Review, and the Regulatory Flexibility Act analysis prepared in support of this action, are available upon request from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at <https://www.mafmc.org/supporting-documents>.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

**SUPPLEMENTARY INFORMATION:****Background**

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage bluefish from Maine to Florida under the Atlantic Bluefish Fishery Management Plan (FMP). This joint Bluefish FMP was adopted over 30 years ago in 1990. Since that time, the only substantial changes to management measures were made through Amendment 1 to the FMP in 2000, which established most measures and regulations still managing the fishery today, based on fishery data from 1981–1989. The Council and Commission initiated Amendment 7 to the FMP as a joint action in December 2017 to respond to changes in the bluefish fishery that have occurred over the past 30–40 years, while the FMP has remained largely unaltered. When first initiated, Amendment 7 was intended to address a comprehensive range of management issues, from the goals and objectives of the FMP to the allocation and transfer of quota between the commercial and recreational sectors.

In August 2019, an operational stock assessment determined that bluefish is overfished but not subject to overfishing. Following this

determination, the Council and Commission’s Bluefish Management Board added development of a rebuilding plan to Amendment 7. The Council was notified of the overfished stock status determination in November 2019; therefore, this amendment must be implemented by the end of November 2021 to ensure that the rebuilding plan is compliant with the timing requirements of section 304(e)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This timing will also allow the other changes proposed in Amendment 7 to be effective for the 2022 fishing year, beginning on January 1, 2022. Final alternatives for Amendment 7 set forth in a Public Hearing Document were approved at the joint meeting of the Council and Commission’s Bluefish Management Board in February 2021, and public hearings on those alternatives were held throughout the spring. On June 8, 2021, the Council and Board took final action to approve Amendment 7, with the intent that the measures would be effective for the 2022 fishing year in January.

A Notification of Availability (NOA) for Amendment 7 was published in the **Federal Register** on September 1, 2021 (86 FR 48968). The Magnuson-Stevens Act allows NMFS as the implementing agency to approve, partially approve, or disapprove measures recommended by the Council in a regulatory amendment based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. As such, NMFS is soliciting public comments in response to the NOA, and the proposed measures described below, on whether they are consistent with the Bluefish FMP, the Magnuson-Stevens Act, and other applicable law. The comment period on the NOA ends on November 1, 2021. All public comments submitted by this date, whether specifically directed to the NOA or this proposed rule, will be considered in our decision to approve, partially approve, or disapprove Amendment 7. Comments on this proposed rule that are received before the end of this rule’s comment period (see **DATES**) will be considered in the decision to implement measures proposed by the Council. Comments received after the end of the NOA comment period will not be considered for this action.

**Proposed Measures**

This action proposes to implement Amendment 7 to the Bluefish FMP, as approved by the Council and Commission. The purpose of this action

is to implement a rebuilding plan for bluefish, as required by the Magnuson-Stevens Act, and to update the FMP using the best scientific information available; responding to changes in the overall fishery over time.

#### *FMP Goals and Objectives*

The FMP's existing goals and objectives were adopted in 1991 with the original FMP, and have remained unchanged since that time. Amendment 7 would revise these goals and objectives to better reflect the current fishery. While the FMP currently only has one overarching goal and a few general objectives, the proposed revisions contain multiple goals linked to more specific objectives to better guide management. The following proposed revisions were developed with extensive input from the public.

- *Goal 1:* Conserve the bluefish resource through stakeholder engagement to maintain sustainable recreational fishing and commercial harvest.
  - *Objective 1.1:* Achieve and maintain a sustainable spawning stock biomass and rate of fishing mortality.
  - *Objective 1.2:* Promote practices that reduce release mortality within the recreational and commercial fishery.
  - *Objective 1.3:* Maintain effective coordination between the National Marine Fisheries Service, Council, Commission, and member states by promoting compliance and to support the development and implementation of management measures.
  - *Objective 1.4:* Promote compliance and effective enforcement of regulations.
  - *Objective 1.5:* Promote science, monitoring, and data collection that support and enhance effective ecosystem-based management of the bluefish resource.
- *Goal 2:* Provide fair and equitable access to the fishery across all user groups throughout the management unit.
  - *Objective 2.1:* Ensure the implementation of management measures provides fair and equitable access to the resource across all user groups within the management unit.
  - *Objective 2.2:* Consider the economic and social needs and priorities of all groups that access the bluefish resource in the development of new management measures.
  - *Objective 2.3:* Maintain effective coordination with stakeholder groups to ensure optimization of economic and social benefits.

#### *Quota Reallocation Between the Commercial and Recreational Fishery Sectors*

The existing FMP allocated quota between the commercial and recreational fishery sectors based on landings data from 1981–1989. This action proposes to re-allocate quota between the sectors to better represent recent trends in the fishery. Amendment 7 would allocate 14 percent of the annual catch limit (ACL) to the commercial fishery, and 86 percent to the recreational fishery, representing a 3-percentage point shift from the existing 17/83 split. These revised sector allocations are based on updated catch data from 1981–2018, and landings data from 2014–2018 and 2009–2018, as all three time series resulted in the same allocation.

#### *Commercial Quota Reallocation Among the States*

The coastwide commercial quota for bluefish is allocated annually to each state within the management unit from Maine to Florida based on a percentage determined in the FMP. As with the sector allocation percentages, the existing state-by-state commercial quota allocations have not been updated since their implementation as a part of Amendment 1 (65 FR 45844; July 26, 2000), and are based on landings data from 1981–1989. Amendment 7 would revise the state-by-state quota allocations based on a recent, representative 10 years of landings data (2009–2018) for the commercial fishery to better capture how the stock and fishing activity have shifted over the years. The proposed allocations also include a 0.1-percent minimum default allocation to ensure that no state in the management unit is excluded from the commercial fishery entirely. To allow industry and state managers to adjust more easily to these changes in commercial quota allocation, this action proposes to phase in the changes over a period of seven years. The percent shift in allocation for each state would be divided evenly over the phase-in period, so each state would only experience 1/7th of the change in allocation each year through 2028.

#### *Rebuilding Plan*

The 2019 operational stock assessment determined that bluefish is overfished but not subject to overfishing. Amendment 7 would implement a rebuilding plan that uses a constant fishing mortality model ( $F = 0.154$ ) to rebuild the stock in seven years. This rebuilding plan was selected because it allows for least disruption to

industry and minimizes negative socio-economic impacts while still rebuilding within the 10-year period required by the Magnuson-Stevens Act. However, because this model projects acceptable biological catch (ABC) values during rebuilding that are higher than those generated by the Council's risk policy (5-year rebuilding alternative), an exemption to the FMP's "most restrictive ABC" requirement needs to be included with this amendment. This would allow the Council's Scientific and Statistical Committee to recommend higher ABCs than the risk policy would typically generate during a rebuilding plan as long as they are consistent with the rebuilding plan, and the plan is projected to rebuild within the necessary time period. This proposed rebuilding plan has been developed to begin in 2022, and would be reviewed and revised as necessary every two years, as required by section 304(e)(7) of the Magnuson-Stevens Act.

#### *Sector Quota Transfer*

Currently, the FMP allows a quota transfer from the recreational sector to the commercial sector up to a maximum final commercial quota of 10.5 million lb (4,763 mt) per year if the recreational fishery is not expected to attain the full recreational harvest limit in that given year. This action proposes to revise the measures regarding this sector transfer to allow quota to be transferred in either direction (from commercial to recreational or vice versa). This amendment would also revise the maximum transfer to be up to 10 percent of the acceptable biological catch, allowing the size of the transfer to scale with the current biomass of the stock. A restriction would also be added to disallow sector transfers when the bluefish stock is overfished or subject to overfishing.

#### *Management Uncertainty in the Specifications Process*

This amendment would revise how management uncertainty can be accounted for during the specifications process. In the current FMP, the fishery-level ACL may be reduced by a buffer to account for sources of management uncertainty before quota is allocated to the commercial and recreational fishery sectors. This action proposes to revise the specifications process so that the management uncertainty buffer is applied separately within each sector. This targeted approach would provide more management flexibility, and allow for the identification of sources of management uncertainty that are specific to one sector and are not present in the other.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Council reviewed the proposed regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Mid-Atlantic Council prepared an EA for this action that analyzes the impacts of the measures contained in this proposed rule. This EA includes an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA), which is supplemented by information contained in the preamble of this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small business entities, as well as the comparative possible impacts of the other alternatives considered. A copy of the detailed RFA analysis is available from the Council (see **ADDRESSES**). A summary of the Amendment 7 IRFA analysis follows.

### *Description of the Reasons Why Action by the Agency Is Being Considered, and the Statement of the Objectives of, and Legal Basis for, This Proposed Rule*

This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648. This action proposes a range of management measures for the Atlantic bluefish fishery. A complete description of the action, why it is being considered, and its legal basis, are contained in the EA (see **ADDRESSES**) and in this rule's preamble, and are not repeated here.

### *Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply*

This proposed rule affects those small entities engaged in commercial fishing operations in the Atlantic bluefish fishery (those with commercial bluefish permits), and those with Federal party/charter recreational permits for bluefish. Private recreational anglers are not considered "entities" under the RFA,

thus economic impacts on private anglers are not considered here. For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with bluefish permits may be considered to be part of the same firm because they may have the same owners. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. In terms of RFA, a business primarily engaged in commercial fishing is classified as a small business if it has combined annual receipts not in excess of \$11 million, for all its affiliated operations worldwide. A business primarily engaged in for-hire (party/charter) fishing is classified as small business if it has combined annual receipts not in excess of \$8 million.

The current ownership data set used in this analysis is based on calendar years 2018–2020 (the most recent and complete data available). According to the vessel ownership database, 526 commercial fishing affiliate firms landed bluefish during the 2018–2020 period, with 521 of those entities categorized as small businesses, and 5 categorized as large businesses. The three-year average (2018–2020) combined gross receipts (all species combined) for all small entities only was \$197,251,017 and the average bluefish receipts was \$899,490; this indicates that bluefish revenues contributed approximately 0.46 percent of the total gross receipts for these small entities.

For the recreational for-hire (party/charter) fishery, 361 for-hire affiliate firms reported revenue from recreational fishing for various species from 2018–2020. All 361 of those firms are categorized as small businesses. It is not possible to derive what proportion of the overall revenues for these for-hire firms came from fishing activities for an individual species. Nevertheless, given the popularity of bluefish as a recreational species in the Mid-Atlantic and New England, it is likely that revenues generated from bluefish may be somewhat important for many of these firms at certain times of the year. The 3-year average (2018–2020) combined gross receipts (all for-hire fishing activity combined) for these small entities was \$49,916,903, ranging from less than \$10,000 for 105 entities (lowest value \$46) to over \$1,000,000 for 8 entities (highest value \$3.6 million).

### *Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule*

There are no new reporting, recordkeeping, or other compliance requirements contained in this proposed rule, or any of the alternatives considered for this action.

### *Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule*

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

### *Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The proposed amendment would implement several measures that could potentially impact small businesses in both the commercial and recreational sectors of the bluefish fishery; most notably the reallocation of quota among the sectors and states, the rebuilding plan, and the revision of sector transfer of quota. While the revised FMP goals and objectives and the sector-specific accounting of management uncertainty during the specifications process could have an indirect economic impact on businesses, these alternatives are largely administrative and not discussed here. On average, bluefish revenues contributed approximately 0.46 percent to the total gross receipts for the small businesses and 0.02 percent for the large businesses. Due to the slightly higher dependence on bluefish for the small businesses compared to the large businesses, the small businesses may feel the effects of this action to a greater extent than the large businesses. Even so, the small businesses did not rely on bluefish for a substantial amount of their annual income either; although when considered individually, some businesses may be more dependent on this species than others.

Several alternatives were considered for the sector quota allocations based on different time series of catch and landings data; however, all of these alternatives resulted in quota shifting from the commercial sector to the recreational sector by varying degrees. The No Action alternative would continue to allocate 83-percent of the fishery-level ACL to the recreational fishery, and 17 percent to the commercial fishery, while the alternatives considered shift this distribution by 1, 3, 4, and 6 percentage

points to the recreational sector, with the preferred alternative being the 3-point shift. None of these alternatives affect the total ABC or ACL available to harvest each year, rather how opportunity to do so is distributed between commercial and recreational entities. The 3-point shift to the recreational sector is better representative of how the overall fishery operates, and while it may have a slight negative impact on commercial businesses, it would comparably benefit recreational businesses.

Some potential negative impact sector allocation from the prior proposed measure may be mitigated further by the proposed alternative to revise the sector transfer. The proposed sector transfer provisions would allow quota (in an amount up to 10-percent of the ABC) to be transferred from either sector to the other (from commercial to recreational or vice versa). This management tool would allow for supplementation of quota to either sector in a year when the assigned allocations may not support the business needs of the sector.

Similar to the sector reallocations, several alternatives were considered for the reallocation of commercial quota to the states, based on different time series of landings data. Because these alternatives do not affect the total amount of quota available in the fishery, but rather how it is distributed geographically, it is unlikely that they would have a direct economic impact on commercial businesses as a whole; however, they may have a disproportionate, indirect impact on some businesses more than others. To mitigate potential negative effects on entities in states that would experience the largest degree of change in commercial allocation, the Council and Board proposed to phase in the allocation changes equally over seven years. This would make the difference in quota allocation that each state would experience each year much smaller, and thus minimize the magnitude of any potential negative effects as a result.

There were three main rebuilding plan strategies considered in this amendment: (1) A plan using constant harvest model to rebuild the stock in four years; (2) a plan based on the Council's risk policy to rebuild the stock in five years; and (3) a plan using a constant fishing mortality model to rebuild the stock in seven years. A "No Action" alternative was not possible because of the Magnuson-Stevens Act requirement to rebuild an overfished stock. Even though the constant harvest and risk policy plans would rebuild the stock more quickly, the constant fishing mortality rebuilding plan was preferred

because the more gradual changes it proposes provides the most economic stability and least disruption of business operations while still rebuilding the stock within 10 years.

All alternatives have the potential to impact businesses in the commercial sector; whereas all alternatives except the commercial quota allocation to the states may affect recreational businesses, which comprise the majority of the fishery overall. However, most of the alternatives in this action affect small businesses indirectly and have minimal direct economic impacts. For example, they dictate the process for developing future landings limits, or shift the distribution of quota/effort, but do not change the overall annual amount. That being said, public input was solicited and considered throughout the development of this amendment, and the economic impact on small businesses was minimized wherever possible. Section 7.4 of the EA contains a more detailed discussion on the economic impacts of each of the alternatives considered in this amendment, and the full RFA analysis can be found in section 8.10.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 7, 2021.

#### Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.21, revise paragraph (c)(1) and add paragraph (c)(3) to read as follows:

#### § 648.21 Mid-Atlantic Fishery Management Council risk policy.

\* \* \* \* \*

(c) \* \* \*

(1) Unless otherwise allowed in paragraph (c)(2) or (3) of this section, for instances in which the application of the risk policy approaches in paragraph (b) of this section using OFL distribution results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of  $F_{REBUILD}$  at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the

Scientific and Statistical Committee (SSC) shall recommend to the MAFMC the lower of the ABC values.

\* \* \* \* \*

(3) The SSC may specify higher ABCs for bluefish based on  $F_{REBUILD}$ , as outlined in paragraph (a) of this section, instead of the risk policy approaches in paragraph (b) of this section in order to implement a rebuilding program that would rebuild this stock by 2028.

\* \* \* \* \*

■ 3. In § 648.161, revise the section heading and paragraph (a) to read as follows:

#### § 648.161 Bluefish Sector ACLs and Annual Catch Targets (ACTs).

(a) *Sector ACLs and ACTs.* As a part of the bluefish specifications process, the Bluefish Monitoring Committee shall allocate a specified percentage of the fishery-level ACL to the commercial and recreational fishery sectors, and identify and review the relevant sources of sector-specific management uncertainty to recommend ACTs for each sector.

(1) *Sectors.* The sum of the commercial and recreational sector-specific ACLs shall be less than or equal to the fishery level ACL. A total of 86 percent of the fishery-level ACL will be allocated to the recreational fishery. A total of 14 percent of the fishery-level ACL will be allocated to the commercial fishery.

(2) *Management uncertainty.* The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address management uncertainty and recommend ACTs for each sector, consistent with paragraph (a) of this section, after the sector allocation described in paragraph (a)(1) of this section. The Bluefish Monitoring Committee recommendations shall identify any sector-specific sources of management uncertainty affecting the fishery, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation and adjustment process.

(3) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

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■ 4. In § 648.162, revise paragraphs (b), (d), (f), and (g) to read as follows:

#### § 648.162 Bluefish specifications.

\* \* \* \* \*

(b) *TAL.* The Bluefish Monitoring Committee shall recommend sector-specific TALs less than or equal to the

ACTs through the specifications process.

(1) *Recreational harvest limit and commercial quota.* If research quota is specified as described in paragraph (g) of this section, the recreational harvest limit and commercial quota will be based on the respective sector TALs remaining after the deduction of the applicable research quota.

(2) *Sector quota transfer.* During the specifications process, the Bluefish Monitoring Committee may recommend a transfer of quota from the commercial fishery to the recreational fishery or from the recreational fishery to the commercial fishery; based on a review and comparison of expected landings for each sector and the recreational harvest limit and commercial quota. The amount of quota transferred between sectors may not exceed 10-percent of the ABC for that fishing year. No transfer may occur when the bluefish stock is overfished or subject to overfishing.

\* \* \* \* \*

(d) *Distribution of annual commercial quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages; state each followed by its allocation in parentheses: ME (0.1091); NH (0.2154); MA (10.1150); RI (9.6079); CT (1.0872); NY (19.7582); NJ (13.8454); DE (0.4945); MD (1.9175); VA (5.8657); NC (32.0278); SC (0.1034); GA (0.1023); and FL (4.7788). Note: The sum of all state allocations does not add to 100 because of rounding. This distribution includes a minimum allocation of 0.1 to every state in the management unit.

(2) The allocation percentages in paragraph (d)(1) of this section will be phased in over a 7-year period beginning in 2022. The percent change in allocation from those prior to 2022 for each state is divided equally by seven, and will be applied incrementally each year until the final allocations listed in paragraph (d)(1) are in full effect for fishing year 2028.

\* \* \* \* \*

(f) *Revision of state allocation.* Based upon any changes in the landings data available from the states for the base years 2009–2018, the Atlantic States Marine Fisheries Commission (ASMFC) and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement any warranted changes in allocation.

(g) *Research quota.* See § 648.22(g).

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