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Issued on: February 7, 2008.

**Nicole R. Nason,**

*Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 071030625-8130-02]

RIN 0648-XC84

#### **Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2008 Scup Specifications; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** On December 31, 2007, NMFS published in the **Federal Register** a final rule containing final specifications for the 2008 scup fishery. Inadvertently, table 3 of the final rule contained incorrect values for the 2008 Adjusted Quota Less Overages and Research Set-Aside (RSA) for the scup quota periods. This document corrects those values.

**DATES:** Effective February 25, 2008, through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:** The final rule, including final quota specifications for the summer flounder, scup, and black sea bass fisheries, was published in the **Federal Register** on December 31, 2007 (72 FR 74197). Table 3 incorrectly lists the following Adjusted Quota Less Overages and RSA values for the scup quota periods: Winter I (2,367,373 lb, 1,074 mt), Summer (1,419,220 lb, 644 mt), Winter II (836,531 lb, 379 mt), and Total (4,623,124 lb, 2,097 mt). The correct amounts for the 2008 scup Adjusted Quota Less Overages and RSA are as follows: Winter I is 2,388,611 lb (1,083 mt); Summer is 1,437,558 lb (652 mt); Winter II is 844,036 lb (383 mt); and Total is 4,670,204 lb (2,118 mt).

## Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be contrary to the public interest. As explained above, this rule corrects values for the 2008 Adjusted Quota Less Overages and RSA that had already been published in the **Federal Register**. To delay this correction notice will cause confusion over the available 2008 scup quota. The correct values for the adjusted quotas are greater than the values currently published in the **Federal Register** and a delay may negatively impact fishermen during the current Winter I quota period (January - April), who may not be able to harvest the full amount of quota allocated to the fishery. Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date for the reasons given above. Delaying the rule for 30 days may negatively impact fishermen because the correct quota value for all quota periods, including the current Winter I period, are greater than the published values. This may lead to less quota being harvested for the Winter I period than is actually allocated to fishermen.

## Correction

Accordingly, the final rule FR Doc. 07-6252, published on December 31, 2007 (72 FR 74197), is corrected as follows:

1. On page 74199, in Table 3, the Adjusted quota less overages and RSA found in columns 11 and 12 for the Winter I Quota period in row 1 are corrected to read “2,388,611” lb and “1,083” mt, respectively.

2. On page 74199, in Table 3, the Adjusted quota less overages and RSA found in columns 11 and 12 for the Summer Quota period in row 2 are corrected to read “1,437,558” lb and “652” mt, respectively.

3. On page 74200, in Table 3, the Adjusted quota less overages and RSA found in columns 11 and 12 for the Winter II Quota period in row 3 are corrected to read “844,036” lb and “383” mt, respectively.

4. On page 74200, in Table 3, the Adjusted quota less overages and RSA found in columns 11 and 12 for the Total Quota in row 4 are corrected to read “4,670,204” lb and “2,118” mt, respectively.

Dated: February 19, 2008.

**Samuel D. Rauch III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 071212833-8179-02]

RIN 0648-XB94

#### **Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2008 Atlantic Bluefish Specifications**

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

**ACTION:** Final rule; final specifications for the 2008 Atlantic bluefish fishery.

**SUMMARY:** NMFS issues final specifications for the 2008 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 2008 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). The final specifications are modified from those contained in the proposed rule as a result of more recent information on recreational harvests.

**DATES:** This rule is effective March 26, 2008, through December 31, 2008.

**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>.

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

#### **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 regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for Atlantic 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 Commission, the Commission meets during the annual specification process to adopt complementary measures.

In July 2007, the Monitoring Committee met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2008. In

August 2007, 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 2008 specifications for this fishery was provided in the proposed specifications (72 FR 73304, December 27, 2007). That information is not repeated here.

##### **RSA Quota**

A request for proposals was published to solicit research proposals to utilize RSA in 2006 based on research priorities identified by the Council (December 27, 2006; 71 FR 77726). One research project that would utilize bluefish RSA has been preliminarily approved by the RA and forwarded to the NOAA Grants Office. Therefore, this final rule implements a 50,000-lb (22,680-kg) RSA quota for the 2008 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 (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 made 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 2008), or the  $F$  estimated in the most recent fishing year ( $F_{2006} = 0.15$ ), whichever is lower. Therefore, the 2008 recommendation is based on an estimated  $F$  of 0.15. An overall TAC of 31.887 million lb (14,464 mt) was recommended as the coast-wide TAC by the Council at its August 2007 meeting to achieve the target fishing mortality rate ( $F = 0.15$ ) in 2008, and to ensure that the bluefish stock continues toward the long-term biomass target,  $B_{MSY} = 324$  million lb (147,052 mt), consistent with the rebuilding schedule specified in Amendment 1. Based on the 2006 biomass estimate (307.5 million lb (139,496 mt)), the bluefish stock is well above the minimum biomass threshold

( $1/2 B_{MSY} = 162$  million lb (73,526 mt)), but is still slightly below the long-term biomass target ( $B_{MSY} = 324$  million lb (147,052 mt)).

The TAL for 2008 is derived by subtracting an estimate of discards of 3.734 million lb (1,694 mt), the average discard level from 2000–2006, from the TAC. After subtracting estimated discards, the 2008 TAL will be 28.156 million lb (12,771 mt), approximately 1.4 percent greater than the 2007 TAL. Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2008 would be 4.787 million lb (2,171 mt), and the RHL would be 23.370 million lb (10,600 mt) in 2008. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and its proportional adjustment downward to account for the recommended 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 4.088 million lb (1,854 mt) be transferred from the initial recreational allocation of 23.370 million lb (10,600 mt), resulting in a 2008 commercial quota of 8.875 million lb (4,026 mt) and a RHL of 19.281 million lb (8,746 mt). These allocations were also recommended by the Commission to be implemented by the states for fisheries within state waters.

##### **Final 2008 Commercial Quota and Recreational Harvest Limit**

Although the Council recommendation was based on the best information available at the time, more recent information, which was 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 recreational landings projection for the 2008 fishing year. This new recreational landings projection, when added to the commercial quota, as adjusted by the proposed transfer of bluefish from the allowable RHL, may cause the TAL to be exceeded. Such a result is inconsistent with § 648.160(c), which requires that the level of transfer be constrained to a level that does not cause the TAL to be exceeded. Based on data provided by the Marine Recreational Fisheries Statistic Survey (MRFSS) program, projected recreational landings in 2007 were approximately 20,414,621 lb (9,260 mt). Using this amount as the

most reasonable proxy for expected landings in 2008, this final rule reduces the amount of the transfer from the recreational to the commercial sector by 1,169,756 lb (531 mt), from 4,088,449 lb (1,854 mt) to 2,918,693 lb (1,324 mt), commensurate with the increase in projected recreational landings. This results in a post-transfer commercial quota of 7,705,244 lb (3,495 mt) and a recreational harvest limit of 20,450,938 lb (9,276 mt). After adjusting for the RSA quota, the resulting 2008

specifications include a commercial quota of 7,691,561 lb (3,489 mt) and a recreational harvest limit of 20,414,621 lb (9,260 mt). The RSA quota remains unchanged at 50,000 lb (22,680 kg).

#### Additional Adjustment for 2007 New York Overage

In accordance with the regulations at § 648.160(e)(2), NMFS may 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

2007 indicate a bluefish quota overage for New York in the amount of 51,719 lb (23,459 kg). This final rule adjusts New York's 2008 bluefish quota downward by this amount to 747,057 lb (338,859 kg), to account for this overage.

#### Final State Commercial Allocations

The 2008 commercial quota is allocated by state as shown in Table 1, according to the percentages specified in the FMP. The table accounts for New York's 2007 quota overage.

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2008<sup>1</sup>

State	Percent Share	2008 Commercial Quota (lb) RSA Deducted	2008 Commercial Quota (kg) RSA Deducted
ME	0.6685	51,418	23,323
NH	0.4145	31,882	14,461
MA	6.7167	516,619	234,338
RI	6.8081	523,649	237,527
CT	1.2663	97,398	44,180
NY	10.3851	747,057	338,865
NJ	14.8162	1,139,595	516,920
DE	1.8782	144,463	65,528
MD	3.0018	230,885	104,730
VA	11.8795	913,716	414,462
NC	32.0608	2,465,973	1,118,565
SC	0.0352	2,707	1,228
GA	0.0095	731	331
FL	10.0597	773,748	350,972
Total	100.0001	7,639,842	3,465,432

<sup>1</sup> The sum of the individual states does not add up to the final commercial quota of 7,639,841 lb due to rounding.

#### 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.

#### Comments and Responses

The public comment period on the proposed rule ended on January 28, 2008, with only one comment received.

*Comment 1:* The commenter suggested that the TAC be reduced by 50 percent initially, and by 10 percent in each subsequent year. The commenter also suggested that a December 2007, hypothermal fish kill in New Jersey had a detrimental impact on the overall bluefish population, and that the scientific methods used to estimate bluefish biomass were inaccurate.

*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 suggestions. According to the New Jersey Department of Environmental Protection, the December 2007 fish kill near the Oyster Creek Nuclear Power Generating Station in Ocean County, NJ, killed approximately 5,300 bluefish. Based upon estimates of total bluefish abundance in the June 2007 Bluefish

Assessment Summary prepared by the Commission's Bluefish Stock Assessment Sub-Committee, this kill represented less than 0.01 percent of the total bluefish population in 2007 (89.2 million fish). The impact of the fish kill is therefore negligible relative to the total bluefish stock. The reasons presented by the Council and NMFS for recommending the final 2008 bluefish specifications are based on the best available science, and are discussed in the preambles to both the proposed and final rules. 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 Act, the NMFS Assistant Administrator 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.

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

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. No large entities participate in this fishery, as defined in section 601 of the RFA. This rule could affect any vessels that fish for bluefish in Federal or state waters. The final measures regarding the 2008 quotas could affect any vessels holding an active Federal permit for bluefish, as well as vessels that fish for this species in state waters.

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 2006 (the last year for which there is complete data). These dealer reports identified 725 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 820 vessels<sup>1</sup> that landed bluefish in North Carolina and 567 vessels that landed bluefish on Florida's east coast. There were no reported landings of bluefish in South Carolina in 2006, and bluefish landings in Georgia were near zero, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2006.

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 and RHL contained in this final rule are 13.2 percent lower and 6.1 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, and lower than the FY 2007 commercial quota of 8,574,939 lb (3,890 mt), it remains approximately 24 percent greater than FY 2007 commercial landings (6,209,915 lb; 2,817 mt). All affected states will receive reductions in their individual commercial quota allocation in comparison to their respective 2007 individual state allocations. However, the magnitude of the reduction varies depending on the state's respective percent share in the total commercial quota, as specified in the FMP, and depending on whether the state had any overages from FY 2007 that needed to be accounted 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, is being implemented consistent with recent recreational landings trends and should ensure that the 2008 RHL is not exceeded. Furthermore, the RHL being implemented in this final rule is 8.5 percent higher than the RHL specified in FY 2007. In conclusion, because the 2008 commercial quota being implemented in this final rule is significantly greater than FY 2007 commercial landings, and the 2008 RHL represents an increase over the 2007 RHL, and because the revised 2008 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 are minimal. Assuming that the full RSA of 50,000 lb (22,680 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.

### *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>.

Dated: February 19, 2008.

**Samuel D. Rauch III**,  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

[Docket No. 061219338-7494-03]

**RIN 0648-AU69**

### **Fisheries off West Coast States and in the Western Pacific; Amendment 15 to the Pacific Coast Salmon Fishery Management Plan**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Amendment 15 to the Pacific Coast Salmon Fisheries Management Plan (Plan) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is intended to provide management flexibility in times of low Klamath River