

Should the length of oral comments or the number of commenters warrant doing so, the meeting may be extended to as late as 5 p.m. A government-issued photo identification (for example, a driver's license) will be required for entrance to the building.

We plan to record this meeting using an audio-digital recorder and to make that audio recording available through a link in our online docket. We will also provide a written summary of the meeting and comments and will place that summary in the docket.

Dated: February 25, 2009.

Howard L. Hime,

Acting Director of Commercial Regulations and Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206144-9186-01]

RIN 0648-AX49

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2009 specifications for the 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: Written comments must be received no later than 5 p.m. eastern standard time, on March 17, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX49, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal: <http://www.regulations.gov>,
- Fax: (978) 281-9135, Attn: Regional Administrator.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2009 Bluefish Specifications."

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, 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>.

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 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 will publish 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. In August 2008, the Council approved the SSC and Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures.

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP (Amendment 1), overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as $1/2 B_{MSY}$. Amendment 1 also established that the long-term target F is 90 percent of F_{MSY} ($F_{MSY} = 0.19$, therefore $F_{target} = 90$ percent of $F_{MSY} = 0.17$), and the long-term target B is $B_{MSY} = 324$ million lb (146,964 mt). The rebuilding plan established through Amendment 1 stipulates that the target fishing mortality rate (F_{target}) in 2009 be set at $F = 0.31$ (based upon earlier estimates of F_{MSY} , which was updated by the 41st Stock Assessment Review Committee (SARC-41) in 2005), or the status quo fishing mortality rate (F_{2007}), whichever is less.

An age-structured assessment program (ASAP) model for bluefish was approved by SARC-41 in 2005 to

estimate F and annual biomass. The ASAP model was updated for the purpose of estimating the current status of the bluefish stock; i.e., 2007 biomass and F estimates, in order to enable the Monitoring Committee and SSC to recommend 2009 specifications using landings information and survey indices through the 2007 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2007, $B_{2007} = 339.2$ million lb (153,843 mt); and (2) projected yields for 2009 using $F_{\text{target}} = F_{2007} = 0.15$. 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, $1/2 B_{\text{MSY}} = 162$ 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 ($F_{\text{MSY}} = 0.19$).

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 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 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 fishing mortality rate, ($F = 0.15$) in 2009, and to ensure that the bluefish stock continues to remain above the long-term biomass target, B_{MSY} .

The proposed 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 recommended allocation of TAL between the commercial and recreational sectors, and the proportional adjustments to account for the recommended bluefish RSA quota.

Proposed Commercial Quota and Recreational Harvest Limit

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, resulting in a significantly reduced commercial quota for 2009. Any amount of transfer would likely have caused the TAL to be exceeded. This option, therefore, represents the preferred alternative recommended by the Council in its specifications document.

However, the Council also recommended that, if later projections based on more complete data indicate that recreational harvest is 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.

RSA

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). Onere search 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 proposed for use by this project, or other potential research projects, during 2009. This proposed rule does not represent NOAA's approval of any RSA-related grant award, which will be included in a subsequent action. Consistent with the allocation of the bluefish RSA, the proposed commercial quota for 2009 would be adjusted to 9.731 million lb (4,414 mt) and the proposed RHL to 19.528 million lb (8,858 mt). Therefore, NMFS proposes a commercial quota of 9.731 million lb (4,414 mt), an RHL of 19.528 million lb (8,858 mt), and an RSA quota of 97,750 lb (44,339 kg) for the 2009 bluefish fishery.

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2009 commercial quota are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some states in 2008. Any potential deductions for states that exceeded their quota in 2008 will be accounted for in the final rule.

TABLE 1. PROPOSED 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	1,010,533	458,378
NJ	14.8162	1,441,702	653,956

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

State	Percent Share	2009 Commercial Quota (lb)	2009 Commercial Quota (kg)
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	9,730,601	4,413,801

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.

This action is exempt from review under E.O. 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

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 is 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 vessels¹ 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 recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

The IRFA in the Draft EA analyzed three alternatives (including the no action/status quo alternative) for allocating the TAL between the commercial and recreational sectors of the fishery. Consistent with the FMP's rebuilding schedule and the status of the resource as assessed by the revised SARC-41 report and the updated model

projections, Alternative 1 was based on an overall TAL of 29.356 million lb (13,316 mt) and included an RSA quota of 97,750 lb (44,339 kg). Alternative 2 applies $F = 0.17$ based on a rebuilt bluefish stock, resulting in a TAL of 32.205 million lb (14,608 mt). Alternative 3, the no action/status quo alternative, includes an overall TAL of 28.156 million lb (12,771 mt). The preferred NMFS alternative, not analyzed in the Draft EA, also applies the TAL used in the Council's preferred alternative: 29.356 million lb (13,316 mt). Outside of the difference in the overall TAL specification, the alternatives differed only in the manner in which the TAL was allocated between the commercial and recreational sectors.

Alternative 1 would allocate 4.974 million lb (2,256 mt) to the commercial sector and 24.285 million lb (11,015 mt) to the recreational sector, reflecting the percentage allocations specified in the FMP (i.e., the 17-percent commercial/83-percent recreational sector split). Alternative 2 would allocate 7.486 million lb (3,396 mt) to the commercial sector and 24.719 million lb (11,212 mt) to the recreational sector. Alternative 3 would allocate 7.678 million lb (3,483 mt) to the commercial sector and 20.380 million lb (9,244 mt) to the recreational sector, reflecting the commercial harvest level that was in place in 2008 (i.e., status quo). The NMFS preferred alternative, not included in the Draft EA, would allocate 9.731 million lb (4,414 mt) to the commercial sector and 19.528 million lb (8,858 mt) to the recreational sector (Table 2), consistent with the Council's recommendation to utilize the recent updated projection for 2009 recreational harvest.

TABLE 2. PROPOSED 2009 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL (MILLION LB).

	TAL	Commercial Quota	RHL
Alternative 1	29.356 (13,316 mt)	4.974 (2,256 mt)	24.285 (11,015 mt)
Alternative 2	32.205 (14,608 mt)	7.486 (3,396 mt)	24.719 (11,212 mt)
Alternative 3	28.156 (12,771 mt)	7.678 (3,483 mt)	20.380 (9,244 mt)
NMFS Preferred	29.356 (13,316 mt)	9.731 (4,414 mt)	19.528 (8,858 mt)

For the commercial sector, the recommended coast-wide quota is approximately 26 percent higher than the 2008 commercial quota, and 86 percent higher than 2008 commercial landings. Based on available data, approximately 32 percent of the TAL was not harvested during the 2008

year. Only one state, New York, fully harvested its initial bluefish quota and received allocation transfers from other states in 2008. Four additional states, Massachusetts, Rhode Island, New Jersey, and North Carolina, harvested more than 50 percent of their bluefish quotas, while the remaining

states only harvested between 0 and 40 percent of their allocations. Given these recent trends in landings, it is unlikely that the proposed TAL will be fully harvested in 2009, resulting in no overall coastwide economic impacts on the bluefish fishery. The economic impacts of the NMFS preferred

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

alternative are therefore likely to be neutral or positive relative to the status quo and other alternatives. For states that did not harvest their quotas in 2008, the proposed 2009 quotas are also not expected to result in any detrimental impacts. For states that exceeded their initial quota allocations in 2008, but received quota transfers from other states, the apparent economic losses would likely be mitigated by quota transfers during 2009, therefore resulting in no overall impacts. For states that exceeded their post-transfer quota allocations in 2008, any economic impacts would be solely due to the overage in landings.

Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 709 vessels that landed bluefish from Maine through North Carolina in 2007. For Alternative 1, the 2009 commercial quota would be approximately 35 percent lower than in 2008. The analysis projected that there would be no revenue change for 36 vessels, while 602 vessels could incur slight revenue losses of less than 5 percent. Approximately 71 vessels would incur revenue losses of more than 5 percent, including 16 vessels that would incur revenue losses of at least 40 percent. The majority of these vessels have home ports in New York and New Jersey. Of the 71 vessels that may experience revenue losses of at least 5 percent, 30 percent had gross sales of \$1,000 or less, and 58 percent had gross sales of \$10,000 or less, indicating that dependence on income from fishing for some of these vessels is very small.

The impacts of Alternative 1 on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concluded that, as a

consequence of the 2009 allocation compared to 2007 landings, there would be revenue losses of 3.1 percent for vessels that land bluefish in North Carolina, but no loss of revenue for vessels that land in Florida.

The analysis of Alternative 2, which includes a 2.5-percent reduction in the commercial quota from 2008, concluded that there would be no revenue change for 147 vessels, while 513 vessels could incur slight revenue losses (less than 5 percent). Another 46 vessels could incur revenue losses of between 5 percent and 29 percent, while 3 vessels could incur revenue losses of greater than 29 percent. Most of the vessels projected to incur revenue losses of greater than 5 percent had home ports in New York and New Jersey. The analysis of impacts of Alternative 2 on commercial vessels in the South Atlantic concluded that no revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida.

The analysis of Alternative 3, which maintains the status quo for commercial quota, concluded that there would be no change in revenue for 147 vessels, while 517 vessels could incur slight revenue losses (less than 5 percent). Another 45 vessels could incur revenue losses of between 5 percent and 49 percent, and zero vessels would incur revenue losses of greater than 49 percent. The analysis of impacts of Alternative 3 on vessels in the South Atlantic concluded that no revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida.

For the recreational sector of the fishery, there were no negative revenue impacts projected to occur with regard to the RHL, because the level considered in each alternative is equal to or above the recreational landings projected for

2009 (19.528 million lb (8,858 mt)). The recommended RHL is lower than the other alternatives, and lower than the RHL implemented in 2007 (21.163 million lb (9,599 mt)) and 2008 (20.414 million lb (9,260 mt)). This reduction in RHL, however, is commensurate with an apparent decline in recreational bluefish harvest during 2008, and projected to continue in 2009. Although there is very little empirical evidence regarding the sensitivity of charter/party anglers to regulation, it is anticipated that the proposed harvest levels will not affect the demand for charter/party boat trips.

The IRFA also analyzed the impacts on revenues of the proposed RSA amount and found that 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. Because the recommended overall commercial quota is higher than 2008 landings, no overall negative impacts are expected in the commercial sector. Based on recent trends in the recreational fishery, recreational landings will more than likely remain below the recommended harvest level in 2009.

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

Dated: February 23, 2009.

Samuel D. Rauch III,

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

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