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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150126074-5655-02]

RIN 0648-XD742

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2015 Atlantic Bluefish Specifications

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

ACTION: Final rule.

SUMMARY: NMFS is implementing final specifications for the 2015 Atlantic bluefish fishery, including catch restrictions for commercial and recreational fisheries. This action is necessary to establish the 2015 harvest limits and management measures to prevent overfishing. The intent of the action is to inform the public of the 2015 catch limits and state-to-state commercial quota transfers consistent with the Atlantic Bluefish Fishery Management Plan and the recommendations of the Mid-Atlantic Fishery Management Council. NMFS is also approving transfers of commercial bluefish quota from the Commonwealth of Virginia and the State of Florida to the State of New York to ensure New York quota would not be exceeded.

DATES: The final specifications and state-to-state commercial quota transfers for the 2015

bluefish fishery are effective *[insert date of filing for public inspection with the OFFICE OF THE FEDERAL REGISTER]*, through December 31, 2015.

ADDRESSES: 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 Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at:

<http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 281-9112.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is jointly managed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.162, and are described in the proposed rule. The proposed rule for this action published in the **Federal Register** on April 27, 2015 (80 FR 23249), and comments were accepted through May 12, 2015.

Final Specifications

A description of the process used to estimate bluefish stock status and fishing mortality, as well as the process for deriving the annual catch limit (ACL) and associated quotas and harvest limits, is provided in the proposed rule and in the bluefish regulations at §§ 648.160 through

648.162. The stock is not overfished or experiencing overfishing, and the catch limits described below reflect the best available scientific information for bluefish. The final 2015 bluefish acceptable biological catch (ABC), ACL, and Annual Catch Target (ACT) are specified at 21.544 million lb (9,772 mt).

The ACT is initially allocated between the recreational fishery (83 percent) and the commercial fishery (17 percent). After deducting 3.351 million lb (1,520 mt) to adjust for recreational discards (commercial discards are considered negligible), the recreational Total Allowable Landings (TAL) is 14.530 million lb (6,591 mt) and the commercial TAL is 3.662 million lb (1,661 mt).

A transfer of quota from the recreational to the commercial sector is permitted under the FMP because the initial commercial fishery ACT is less than 10.50 million lb (4,763 mt) and the recreational fishery is not projected to land its harvest limit in 2015.

The recreational landings for 2015 are projected to be 12.951 million lb (5,875 mt). This projection was based on the average recreational landings from 2012 through 2014, including final 2014 Marine Recreational Information Program data that became available after the publication of the proposed rule. With the addition of updated and final recreational landings data, the projected 2015 recreational landings (12.951 million lb; 5,875 mt) are lower than what was published in the proposed rule (13.073 million lb; 5,930 mt). We are implementing a revised transfer of 1.579 million lb (716 mt) from the recreational to the commercial sector in the final rule. This updated final transfer results in an adjusted 2015 commercial quota of 5.241 million lb (2,377 mt), a 35-percent decrease from 2014 (7.458 million lb; 3,383 mt), and an adjusted 2015 RHL of 12.951 million lb (5,875 mt), a 4.3-percent decrease from the 2014 RHL (13.523 million lb; 6,133 mt). Consistent with Council recommendations, these final specifications do not allocate research

set-aside quota for 2015; therefore, no additional adjustments to commercial or recreational allocations are needed.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.162(e). The Regional Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

During the processing of this final rule, the Commonwealth of Virginia and the State of Florida each requested we transfer 150,000 lb (68,039 kg) to the State of New York to help ensure the NY state quota would not be exceeded. The state commercial transfers will not preclude the overall annual quota from being fully harvested, and will also address contingencies in the fishery. In addition, the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. These transfers have been approved and are incorporated within this final rule and the individual state quota allocations have been adjusted to reflect the transfers. The final bluefish quotas are shown in Table 1.

Final Recreational Possession Limit

Consistent with the recommendation by the Council, this final rule maintains the status quo daily recreational possession limit of up to 15 fish per person for 2015.

Final State Commercial Allocations

The final state commercial allocations, including the previously outlined transfers, for the recommended 2015 commercial quota are shown in Table 1. The initial quotas are based on the

percentages specified in the FMP. There were no states that exceeded their quota in 2014; therefore, no accountability measures are being implemented for the 2015 fishing year.

Table 1. Final Bluefish Commercial State-by-State Allocations for 2015

State	Percent Share	2015 Commercial Quota (lb) Before Transfer	2015 Transfer of Commercial Quota (lb) as of 7/10/2015	Final 2015 Commercial Quota (lb)	Final 2015 Commercial Quota (kg)
ME	0.6685	35,037		35,037	15,893
NH	0.4145	21,725		21,725	9,854
MA	6.7167	352,036		352,036	159,682
RI	6.8081	356,826		356,826	161,855
CT	1.2663	66,369		66,369	30,105
NY	10.3851	544,304	+300,000	844,304	382,970
NJ	14.8162	776,547		776,547	352,239
DE	1.8782	98,440		98,440	44,652
MD	3.0018	157,330		157,330	71,365
VA	11.8795	622,629	-150,000	472,629	214,380
NC	32.0608	1,680,371		1,680,371	762,211
SC	0.0352	1845		1,845	837
GA	0.0095	498		498	226
FL	10.0597	527,249	-150,000	377,249	171,117
Total	100.0001	5,241,202		5,241,202	2,377,394

Comments and Responses

The public comment period for the proposed rule ended on May 12, 2015. There were 19 comments that resulted in 9 groups of substantive comments received from the public, including recreational and commercial fishermen, in regards to the proposed rule. Three comments were non-substantive and did not address this rule or the subject matter related to the rule.

Comment 1: One commenter generally criticized NMFS and the data used to set catch

limits. The commenter did not suggest other data or approaches that might be better suited for establishing specifications.

Response: Consistent with National Standard 2 of the MSA, NMFS used the best scientific information available and is approving specifications for the bluefish fishery. The most up-to-date stock assessment and recreational and commercial catch data were used. The final specifications in this rule are consistent with the FMP and recommendations of the Council.

Comment 2: One commenter expressed concern regarding the economic effects that this rule would have on the recreational sector, specifically party and charter/head boat businesses. The commenter suggested there should be an increase in quota specifically for charter/head boats.

Response: NMFS disagrees that a quota increase for charter and party vessels is needed. The 2015 specifications have been established following the procedures set forth in the FMP, which does not allocate bluefish harvest between sectors of the recreational fishery. Marine Recreational Information Program (MRIP) catch data by mode for 2013 indicate that approximately 59 percent of bluefish were caught from shore, 34 percent of bluefish were caught from private and rental boats, and 7 percent from party and charter boats. The 2015 RHL represents approximately 71 percent of the coastwide total allowable landings for bluefish when accounting for transfers, which are expected to be equivalent to recent observed recreational harvest across all sectors (shore, private, charter, etc.). As such, the 2015 RHL is not likely to constrain party or charter fishing opportunity or catch. According to the analyses in the EA supporting this action (see **ADDRESSES**), the economic impacts of these specifications have neutral to slightly negative impacts that are not expected to be significant to any component of the recreational fishery.

Comment 3: One commenter suggested that with the decrease in private angler and

for-hire effort, there should be no reduction in the bluefish recreational quota.

Response: NMFS disagrees. The RHL is set to equal the expected recreational catch for 2015. NMFS calculates the expected catch by averaging the yearly recreational landing over a three-year period (2012-2014) using MRIP data. Although the 2014 RHL is less than the 2015 RHL, the fishery is projected to catch less bluefish recreationally during 2015. Therefore, the RHL is not likely to constrain or limit recreational fishing opportunity in 2015.

Comment 4: Three commenters requested clarification for the decision to reduce the ACL, given that the bluefish stock is not currently being overfished.

Response: Although the bluefish stock is not currently overfished or experiencing overfishing, estimated biomass has declined slightly in recent years. Based upon the results of the 2014 assessment update for bluefish, the Council's Scientific and Statistical Committee (SSC) recommended a reduction in the ABC for 2015. This reduction is necessary to reduce the risk of overfishing the stock.

Comment 5: Three commenters, including an operator of a party boat that targets bluefish, agreed with NMFS that the current recreational bag limit of 15 bluefish per person per day should remain unchanged for the 2015 fishing year.

Response: NMFS agrees and has retained the Council's recommendation that the status quo recreational bag limit of 15 bluefish per person, per day remain in place for the 2015 fishing year.

Comment 6: Five commenters stated that the bluefish specifications should remain unchanged from the 2014 fishing year. The comments offered no suggestions on why specifications should remain unchanged.

Response: NMFS disagrees that the status quo bluefish specifications would be

appropriate for 2015. As outlined in the response to comment number 3, the bluefish biomass has declined. The specifications in place for 2014 would be expected to result in negative biological impacts to the bluefish stock. If the 2014 catch limits remain in place for 2015 and were fully achieved, it would result in catches above the ABC recommended by the SSC, and could result in overfishing. Under National Standard 1 guidelines, the Council cannot recommend catch limits higher than the ABC recommended by its SSC.

Comment 7: Two commenters expressed concern that the 2015 specifications imposed regulations that were too severe and would have an adverse effect on small businesses in the commercial sector.

Response: According to the economic analyses in the EA (see **ADDRESSES**), the impacts of the 2015 specifications are not expected to be significant. Although there are 1,009 affiliate firms that caught bluefish from 2011 to 2013, of those, 1,001 were considered small business entities and bluefish comprised a very small amount of their annual gross revenues, averaging 0.63 percent.

The 2015 commercial bluefish quota is lower than the commercial quota implemented in 2014. However, the 2015 quota is higher than the realized commercial landings for 2014. Under the 2015 commercial quota, it is expected that commercial bluefish fishermen would likely land bluefish similarly to 2014 landings. Furthermore, the Bluefish FMP permits states to transfer bluefish quota to each other as a tool to mitigate the potential adverse economic impacts of a fishery closure in a particular state.

Comment 8: One commenter expressed concern that offshore fleets outside of the Exclusive Economic Zone (EEZ) are having an adverse impact on bluefish abundance. The commenter suggested that the EEZ border be expanded to improve U.S. fish stocks.

Response: NMFS recognizes that a small amount of bluefish are caught outside the U.S. EEZ. Bluefish stock assessments are based on data collected from within EEZ and changes in stock biomass from a variety of sources, including international fishing pressures, are part of the assessment. Changes to the EEZ boundaries would be beyond the scope of this rule.

Comment 9: One commenter inquired about the reduction in the commercial quota compared to a smaller reduction in the recreational TAL. The commenter asked if there could be a more equitable split in quota reduction to accomplish the same conservation goals.

Response: Bluefish catch is allocated between the recreational and commercial fisheries according to specific requirements in the Bluefish FMP, as described in the EA (see **ADDRESSES**). Allocation changes can be addressed by the Council through an FMP amendment. Apart from the previously described transfer, NMFS has no authority to alter allocations between the commercial and recreational sector. How the 2015 specifications were derived is explained in detail in the preamble of this rule and the proposed rule (80 FR 23249).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final 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 Assistant Administrator for Fisheries finds there is a need to implement these measures in a timely manner in order to help achieve conservation objectives for the bluefish fishery which constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the 2015 Atlantic bluefish specifications effective

immediately upon filing with the Office of the Federal Register.

The bluefish fishing year began on January 1, 2015, and has been operating without an established bluefish quota. Until this final rule becomes effective, there will be no established bluefish quota for 2015 and therefore no authority to close a fishery approaching a quota limit. A 30-day delay in implementing this final rule would delay the setting of quota used to properly manage and monitor bluefish stocks at the state and federal level. Development of this final rule was undertaken as quickly as possible; however, incorporating the most up-to-date MRIP data necessarily created a delay while analysis occurred.

This final rule also implements two quota transfers of commercial bluefish quota from the Commonwealth of Virginia and the State of Florida to the State of New York to ensure New York does not exceed its 2015 commercial quota.

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 analyses completed to support the action. A public copy of the EA/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

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

The comments NMFS received did not raise specific issues, but commented generally on the economic analyses summarized in the IRFA. Refer to the "Comments and Responses" section of this preamble for more detail. No changes to the proposed rule were required to be

made as a result of public comment.

Description and Estimate of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to \$5.5 million for shellfish and \$20.5 million for finfish businesses. A small business in the recreational fishery is a firm with receipts of up to \$7.5 million.

According to the 2011- 2013 Northeast affiliate ownership database, 1,009 fishing businesses or affiliated firms (vessels grouped together by a common owner) landed bluefish during the 2011-2013 period, with 1,001 of those businesses categorized as small businesses and 8 categorized as large businesses. South Atlantic Trip Ticket reports identified 790 vessels that landed bluefish in North Carolina and 1,338 vessels that landed bluefish on Florida's east coast in 2013.¹ Bluefish landings in South Carolina and Georgia were near zero in 2013, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. In recent years, approximately 2,000 party/charter vessels have been active in the bluefish fishery and/or have caught bluefish.

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 the Agency Has Taken to Minimize the Significant Economic Impact on

Small Entities Consistent with the Stated Objectives of Applicable Statutes

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

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. With the specification options considered, the measures in this final rule are the only measures that both satisfy these overarching regulatory and statutory requirements while minimizing, to the extent possible, impacts on small entities. The 2015 commercial quota implemented by this final rule is 35 percent lower than the 2014 quota, but higher than actual 2014 bluefish landings. All affected states will receive decreases in their individual commercial quota allocations. The magnitude of the decrease varies depending on the state's relative percent share in the total commercial quota, as specified in the FMP. The states have the ability to transfer commercial quota from one state to another; although the use of this management measure cannot be predicted, it is often used to prevent quota overages in the commercial sector and can minimize the economic impacts associated with a quota allocation.

The 2015 RHL contained in this final rule is approximately 4.3 percent lower than the RHL in 2014. The 2015 RHL is greater than the total recreational bluefish harvested in 2014, and therefore 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.

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:

www.greateratlantic.fisheries.noaa.gov.

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

Dated: July 31, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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