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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200214-0057]

RIN 0648-BJ57

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Interim 2020

Recreational Measures

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

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements interim recreational management measures for the 2020 Atlantic Bluefish Fishery to prevent overfishing. This action is necessary to constrain recreational harvest at the start of the fishing year while final 2020 measures are developed and implemented. These measures are expected to help ensure the long-term recovery and sustainability of the bluefish stock.

DATES: Effective February 28, 2020, through August 26, 2020. Comments must be received on or before March 30, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0011, by either of the following methods:

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

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0011*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: “Comments on the Bluefish Interim Action.”

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 a part of the public record and will generally be posted for public viewing on *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).

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the bluefish fishery under the Atlantic Bluefish Fishery Management Plan (FMP). The August 2019 bluefish operational assessment incorporated revised Marine Recreational Information

Program (MRIP) estimates and determined that the bluefish stock is overfished with overfishing not occurring. NMFS notified the Council of the stock status change on November 12, 2019, and the Council is developing a rebuilding plan. The final assessment results were not available until fall 2019 and additional analysis was required to respond to the new MRIP data and develop revised catch limits. As a result, it was not possible to implement new specifications and recreational management measures for the January 1, 2020, start of the fishing year. To ensure some measures were in place for the 2020 fishery, NMFS published status quo interim specifications for 2020 (84 FR 54041, October 9, 2019) with the expectation that they would be replaced once final measures informed by the assessment could be developed. However, in light of the assessment results and stock status change, the interim measures for 2020 are no longer appropriate and are substantially more liberal than what is necessary to sustainably manage the bluefish fishery and prevent overfishing for this overfished stock.

In September 2019, the Council's Scientific and Statistical Committee (SSC) recommended a substantially reduced 2020 and 2021 acceptable biological catch for bluefish. The Council and the Commission's Bluefish Board jointly approved catch specifications for fishing years 2020 and 2021 at a joint meeting in October 2019. The Council and Board delayed decision-making on the 2020 recreational management measures until the joint December 2019 meeting. This delay was necessary to address the later than normal specifications development timing, and to analyze options designed to reduce recreational catch. Recreational measures have not been adjusted in nearly a

decade, so appropriate time was given to exploring alternatives, particularly in light of the magnitude of change necessary for 2020.

Based on projected recreational landings for the 2020 bluefish fishery (13.27 million lb; 6,020 mt), the Council's Monitoring Committee determined that a 28.65-percent reduction in recreational harvest is necessary to constrain catch to the Council-recommended revised 2020 recreational harvest limit (RHL) of 9.48 million lb (4,301 mt). The Council and Board took final action in December 2019, and recommended a mode-specific reduction in bag limit from 15 to 3 fish for private anglers and to 5 fish for for-hire vessels, with no changes to recreational seasons or size limits.

The 2020 bluefish fishing year began on January 1. Because of the previously mentioned timing issues associated with developing the revised 2020 bluefish specifications and recreational management measures, it was not possible for the Council to provide analysis supporting its recommendation for recreational measures in time for the start of the fishing year. The Council is finalizing this document, which it will submit to NMFS to complete formal notice-and-comment rulemaking to finalize 2020 specifications and recreational measures by late spring.

The action taken by the Board in December 2019 was final, and states are expected to put in place recreational management measures as expeditiously as possible. However, many states require a public hearing and/or legislative process to finalize measures. As a result, many states have indicated that they will not be able to implement their own measures quickly. Some have stated that their process will be accelerated if Federal measures are in place first. The recreational bluefish fishery is very active in a

few southern states early in the year. Recent data shows that these states harvest a substantial portion of their annual bluefish catch between January and April, comprising up to 29 percent of the coast-wide recreational bluefish catch for the year. If immediate action is not taken with interim measures, the status quo Federal measures of a 15-fish bag limit will remain in place until final 2020 measures can be implemented. Harvest will be relatively unconstrained, which will greatly increase the risk of overfishing on the already overfished stock, potentially harming its long-term health and recovery.

Interim Management Measures

This action implements a reduction in the Federal bluefish recreational bag limit from 15 to 3 fish for private anglers and to 5 fish for for-hire vessels. All other management measures, including recreational season and minimum fish size, remain unchanged. This action is consistent with what the Council and Board approved at the joint meeting in December 2019 to constrain harvest to the reduced 2020 RHL and prevent overfishing. This bag limit reduction is expected to effectively constrain bluefish catch to prevent overfishing of the stock. Interim action is necessary to ensure these measures are in place as soon as possible in the fishing year while the proposed and final rulemaking of the Council-recommended measures is completed. This temporary rule has an effective period limited by the Magnuson-Stevens Act to 180 days, with a potential extension of an additional 186 days. The Council-recommended action containing revised 2020 specifications, and the same recreational measures implemented by this rule, is already in development and expected to be implemented in late spring. However, if the expected permanent rulemaking is not in place before the expiration of this rule (180 days

following publication), an extension of the interim measures for 186 days will be considered.

Justification for Interim Measures

Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) authorizes the Secretary of Commerce to implement interim measures to address overfishing. This action meets the 305(c) requirements for interim measures because it is necessary to prevent overfishing on the bluefish stock which was recently declared overfished. As a fishery with a significant recreational component, the bluefish fishery was substantially affected by the revised MRIP data and the 2019 operational assessment results. This assessment found the stock to be overfished, and while it was not subject to overfishing in 2018 (the terminal year of the assessment), the new data suggests that this was the first year overfishing had not been occurring in several years. Without changes to the current management measures, expected recreational catch (17.3 million pounds; 7,849 metric tons) would exceed the Council-recommended acceptable biological catch recommendation for the entire fishery (16.28 million pounds; 7,385 metric tons), with no allowance for catch from the commercial sector.

While some changes resulting from the revised MRIP data were expected, the magnitude of the shift in stock status necessitating changes to the catch limits and recreational management measures was not. Because of unforeseen large management adjustments necessary to address this change, the Council and Board chose to separate development of catch specifications and recreational management measures. This delayed Council decision on recreational management measures until December 2019. Due to

necessary analyses and process requirements for the Council to formally submit its recommendation to NMFS, the Council action will not be implemented until at least April 2020, while the fishing year began on January 1. Delayed implementation of these measures increases the risk of overfishing for the year. Higher harvest will occur under the substantially less restrictive status quo measures (*i.e.*, higher quotas, more liberal recreational management measures) that are in place now, which will also reduce the effectiveness of the Council-recommended measures, as they were calculated to apply to the entire fishing year.

These interim measures are intended to prevent overfishing in the Atlantic bluefish fishery and avoid serious damage to the already overfished fishery resource. Accelerating the implementation of the Council and Board-recommended measures through this expedited rulemaking is also expected to allow several states to rely on Federal measures, and accelerate the implementation of state management measures. Some states will be able to forego public meetings or the legislative process as their state provisions for bluefish management allow for instantaneous adoption of Federal management measures as soon as they become available. Therefore, avoiding the serious conservation and management problem of subjecting the overfished bluefish stock to potential overfishing conditions due to reasonably unforeseen circumstances justifies these interim measures, and outweighs the benefit of advance notice and comment.

Renewal of Interim Regulations

The Magnuson-Stevens Act limits NMFS' authority to implement interim measures for an initial period of 180 days, with a potential extension up to an additional

186 days, if warranted. The public has an opportunity to comment on the initial recreational management measures in this temporary rule (see **ADDRESSES**). After considering public comments on this rule, NMFS may extend the interim measures for one additional period of not more than 186 days to maintain Federal recreational measures until permanent rulemaking can be implemented. However, the 180-day period provided by this temporary rule should be sufficient as a stop gap until permanent 2020 recreational management measures are finalized and an extension is not anticipated.

Classification

The NMFS Assistant Administrator has determined that this temporary rule is consistent with the criteria and justifications for use of interim measures in section 305(c) of the Magnuson-Stevens Act. NMFS has also determined that this rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. Additionally, the need to implement these measures in a timely manner to reduce the risk of overfishing the depleted bluefish resource constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule.

The bluefish fishing year began on January 1, 2020, and is operating under an unrestrictive recreational bag limit of 15 fish. Although the Council already took final action to implement measures intended to constrain recreational catch to a reduced RHL,

it was not able to do so until December 2019 given delayed data available and time necessary to develop and analyze potential measures. These interim measures are necessary to implement a restrictive recreational bag limit as quickly as possible to prevent overfishing on the overfished bluefish stock. Recent data shows that the recreational bluefish fishery harvests up to 29 percent of the coast-wide recreational bluefish catch for the year between January and April. If immediate action is not taken with interim measures, the status quo Federal measures of a 15-fish bag limit will remain in place until final 2020 measures can be implemented. Further delaying implementation of these measures would increase the risk of overfishing and be potentially harmful to the long-term sustainability of the resource. Public comments will be accepted on this temporary rule (see **DATES** and **ADDRESSES**), and there will be opportunities for further comment and public participation through the notice-and-comment rulemaking process as we work to implement the permanent management measures for 2020, already in development by the Council.

These interim measures are being issued at the earliest possible date to minimize the amount of time the 2020 recreational bluefish fishery is at risk of overfishing, and will only be effective until permanent measures can be implemented. Unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this rule simply means adhering to a reduced bag limit. These measures were discussed at multiple public Council and

Commission meetings throughout 2019 and are generally expected by the recreational fishing sector.

For all of the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on these interim measures. Prior notice and opportunity for public comment, as well as a 30-day delayed effectiveness would prevent the positive benefit to the resource that this rule is intended to provide, and undermines the purpose of this interim action.

This action is being taken pursuant to the 305(c) emergency action and interim measures provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior notice and opportunity for public comment.

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

This action would not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 18, 2020.

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 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 § 648.164, suspend paragraphs (a) and (b), and add paragraphs (c) and (d).

The additions read as follows:

§ 648.164 Bluefish possession restrictions.

* * * * *

(c) *Recreational possession limits.* Any person fishing from a vessel in the EEZ that is not fishing under a bluefish commercial permit shall observe the applicable recreational possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the recreational possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(1) *Private recreational vessels.* Any person fishing from a vessel that is not fishing under a bluefish commercial or charter/party vessel permit issued pursuant to § 648.4(a)(8), may land up to three bluefish per trip.

(2) *For-hire vessels.* Anglers fishing onboard a for-hire vessel under a bluefish charter/party vessel permit issued pursuant to § 648.4(a)(8), may land up to five bluefish per person per trip.

(d) *Pooling Catch.* Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

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