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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200428-0123]

RIN 0648-BJ61

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Revised 2020 and Projected 2021 Specifications and Recreational Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revised specifications for the 2020 Atlantic bluefish fishery and projected specifications for fishing year 2021, as recommended by the Mid-Atlantic Fishery Management Council. This action is necessary to establish allowable harvest levels and other management measures to prevent overfishing, consistent with the most recent scientific information. This action also informs the public of the proposed fishery specifications and provides an opportunity for comment.

DATES: Comments must be received by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0020, by either of the following methods:

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

1. Go to <https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0020>,
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 Proposed Rule for Bluefish Specifications and Recreational Management Measures.”

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 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 a draft environmental assessment (EA) for this action that describes the proposed measures and other considered alternatives. The EA also provides an economic analysis, as well as an analysis of the biological, economic, and social impacts of the proposed measures and

other considered alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on 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 <http://www.mafmc.org>.

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

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the Atlantic Bluefish Fishery Management Plan (FMP). The FMP requires the specification of the acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quota, recreational harvest limit, and other management measures for up to 3 years at a time. This action proposes specifications and recreational management measures for the 2020 and 2021 bluefish fishery.

The August 2019 bluefish operational stock assessment incorporated revised Marine Recreational Information Program (MRIP) estimates into its analyses and reference points. This assessment determined that the bluefish stock is overfished but not subject to overfishing. Although the overall biomass of the stock increased after incorporating revised MRIP data, the biomass threshold also nearly doubled, resulting in the overfished determination. The Council received formal notification of the stock status

change on November 12, 2019, and is developing a rebuilding plan to be implemented by 2022. The final assessment results became available in late 2019, and additional analysis was required to incorporate the new MRIP data into development of revised catch limits. To ensure catch limits would be in place for the start of the fishing year on January 1, 2020, NMFS published interim 2020 specifications (84 FR 54041; October 9, 2019) until new measures could be developed. However, these interim catch limits and measures were developed before the revised MRIP data, assessment information, and new stock status were available. The interim specifications are substantially more liberal than what the best available science indicates is necessary to constrain catch in 2020 and prevent overfishing. This action would revise the 2020 specifications to reflect the assessment results, and project similar specifications for 2021.

On September 9, 2019, the Council's Scientific and Statistical Committee (SSC) reviewed the operational assessment, and recommended a reduced ABC for bluefish using the Council's risk policy with an overfishing limit coefficient of variation (CV) equal to 100 percent due to some increased uncertainty with the new MRIP data. In previous years, the SSC used a less conservative 60-percent CV because there was more confidence in the data. The Bluefish Monitoring Committee met on September 18, 2019, to develop and recommend full specifications based on the SSC's ABC recommendation. The Bluefish FMP has a prescriptive process for deriving specifications from the ABC. The FMP sets the ACL equal to the ABC, and the ACL is allocated 17 percent to the commercial ACT and 83 percent to the recreational ACT. The most recent fishing year discards from each sector are subtracted from each applicable ACT to calculate the

sector's total allowable landings (TAL). Commercial discards are assumed to be negligible, and recreational discards are estimated from MRIP data. If the recreational fishery is not projected to land its harvest limit, then quota may be transferred from the recreational to the commercial sector. The maximum amount that may be transferred can result in a commercial quota of up to 10.5 million lb (4,763 mt). The final commercial quota is then allocated to the coastal states from Maine to Florida based on percent shares specified in the FMP.

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, based on the assessment and recommendations from the SSC and Monitoring Committee. In these revised specifications, the Council recommended a 25-percent reduction in the overall ABC and ACL in comparison to the current interim 2020 values, a 25-percent reduction in initial commercial quota, and an 18-percent reduction in the recreational harvest limit (RHL). Because recreational landings are expected to fully achieve the RHL, no sector transfer to the commercial fishery is permitted. Thus, these recommended specifications would reduce the final commercial quota a total of a 64-percent from the reduced commercial quota and the lack of a quota transfer from the recreational sector. Given the substantial difference in expected 2020 recreational harvest compared to the reduced 2020 RHL, the Council and Board chose to delay development of recreational management measures until December 2019. This delay was intended to provide additional time to develop and analyze measures necessary to constrain recreational catch to the recommended 2020 RHL.

Based on projected recreational landings for the 2020 bluefish fishery (13.27 million lb; 6,020 mt), the Monitoring Committee determined that a 28.65-percent reduction in recreational harvest is necessary to constrain catch to the new RHL of 9.48 million lb (4,301 mt). The Council and Board took final action in December 2019 to recommend a mode-specific reduction in the daily recreational bag limit from 15 to 3 fish per person for private anglers and to 5 fish per person for for-hire (party/charter) vessels. No changes were recommended to recreational seasons or size limits because there is substantial variability in seasonal availability and recreational fish sizes taken from Florida to Maine. The change in bag limit is expected to sufficiently constrain recreational catch to the 9.48 million-lb (6,020-mt) RHL when applied to the entire fishing year. In an effort to prevent overfishing in the early months of the fishing year (which began on January 1, 2020), NMFS implemented interim measures to temporarily establish this reduced bag limit (85 FR 11863; February 28, 2020). However, this proposed action is necessary to permanently implement these recreational measures.

Proposed Specifications

This action proposes the Council's recommendations for revised 2020 and projected 2021 bluefish catch specifications, as well as the recreational management measures to constrain harvest the new limits. A comparison of the interim 2020 and the proposed revised 2020-21 specifications is summarized below in Table 1.

Table 1 -- Comparison of Current 2020 and Proposed 2020-21 Bluefish

Specifications

	Interim 2020 (Current)		Revised 2020-2021 (Proposed)		Percent Change
	Million lb	Metric tons	Million lb	Metric tons	
Overfishing Limit	27.97*	12,688	2020: 32.97 2021: 37.98	2020: 14,955 2021: 17,227	2020: 18 2021: 36
ABC = ACL	21.81	9,895	16.28	7,385	-25
Commercial ACT	3.71	1,682	2.77	1,255	-25
Recreational ACT	18.11	8,213	13.51	6,130	-25
Recreational Discards[†]	2.49	1,129	4.03	1,829	+162
Commercial TAL	3.71	1,682	2.77	1,255	-25
Recreational TAL	15.62	7,085	9.48	4,301	-39
Sector Transfer	4.00	1,814	0.00	0	-100
Commercial Quota	7.71	3,497	2.77	1,255	-64
RHL	11.62	5,271	9.48	4,301	-18

*This value was incorrectly published as 29.97 million pounds in the interim final specifications (84 FR 54041; October 9, 2019). This was the result of an inadvertent conversion error, and the value in metric tons was correct. This pound value was published correctly in the prior 2019 specifications rule (84 FR 8826; March 12, 2019), and this error has not directly affected bluefish fishery operations or stock status in any way.

[†]The terminal year of MRIP data used to project discard estimates for the interim (current) specifications was 2017, and the terminal year used to project the discards for the revised (proposed) specifications was 2018.

Table 2 provides the proposed commercial state allocations based on the Council-recommended coastwide commercial quota for 2020 and 2021. No states exceeded their state allocated quota in 2019; therefore, no accountability measures are necessary for the 2020 commercial fishery.

Table 2 -- Proposed 2020-21 Bluefish State Commercial Quota Allocations

State	Percent Share	Proposed Quota (lb)	Proposed Quota (kg)
Maine	0.67	18,496	8,388
New Hampshire	0.41	11,468	5,201
Massachusetts	6.72	185,838	84,280
Rhode Island	6.81	188,366	85,427
Connecticut	1.27	35,036	15,889

New York	10.39	287,335	130,311
New Jersey	14.82	409,934	185,911
Delaware	1.88	51,966	23,567
Maryland	3.00	83,054	37,666
Virginia	11.88	328,682	149,062
North Carolina	32.06	887,058	402,294
South Carolina	0.04	974	442
Georgia	0.01	263	119
Florida	10.06	278,332	126,228
Total	100.00	2,766,801	1,254,785

As previously mentioned, this action would also change the recreational management measures by reducing the Federal bluefish recreational daily bag limit from 15 to 3 fish per person for private anglers and to 5 fish per person for for-hire (charter/party) vessels. All other Federal management measures, including commercial management measures, and recreational season (open all year) and minimum fish size (none), would remain unchanged.

The Council will review the specifications for fishing year 2021 to determine if any changes need to be made prior to their implementation. Changes may occur if 2020 quota overages trigger accountability measures, or if new stock information results in changes to the ABC recommendations. NMFS will publish a notice prior to or early in 2021 to confirm or announce any necessary changes. The Council is developing a rebuilding plan for the bluefish stock that will be implemented by 2022. NMFS expects the rebuilding plan to inform development of the next set of specifications beginning in 2022.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (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 is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866

The Mid-Atlantic Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. The EA includes an 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 was prepared to examine the economic impact of this proposed rule, if adopted, on small business entities, as well as the possible economic impact of the other alternatives presented in the EA/specifications document. A copy of the detailed RFA analysis is available from the Council (see **ADDRESSES**). A summary of the 2020-2021 bluefish specifications 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 proposed rule revises 2020 catch limits and recreational management measures, and projects 2021 specifications for the Atlantic bluefish fishery. A complete description of the action, why it is being considered, and its legal basis are contained in the draft EA 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.

In the commercial fishery, 735 firms reported commercial bluefish revenue from 2016-2018. According to the vessel ownership database, based on 2018 revenues, 728 of those 735 total firms are categorized as small businesses, and 7 are categorized as large businesses. For the recreational for-hire (party/charter) fishery, 389 affiliate firms reported revenue from recreational fishing from 2016-2018. All 389 of those firms are categorized as small businesses based on their 2018 revenues. 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, revenues generated from this species are likely somewhat important for many of these firms at certain times of the year. The 3-year average (2016-2018) combined gross receipts (all for-hire fishing activity combined) for these small entities was \$52,156,152, ranging from less than \$10,000 for 119 entities (lowest value \$124) to over \$1,000,000 for 8 entities (highest value \$2.9 million).

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

There are no new reporting, record-keeping, 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 measures proposed revise 2020 and outline projected 2021 catch specifications and recreational management measures for the bluefish fishery based on the most recent stock assessment and the application of the Council's Risk Policy to prevent overfishing. Revenues in 2020 and 2021 are uncertain and will depend not only on the quota, but also on availability of bluefish, market factors (*e.g.*, price of bluefish compared to alternative species), weather, and other factors. These proposed specifications would decrease the coastwide commercial quota by 64 percent, and the recreational harvest limit by 18 percent. Although these are substantial reductions, especially for the commercial fishery due to the lack of quota transfer from the recreational sector, commercial bluefish entities may not be substantially negatively impacted. Preliminary reports indicate that the commercial bluefish fishery only landed 2.61 million lb (1,185 mt) in 2019, which is below the proposed commercial quota of 2.77 million lb (1,255 mt). Therefore, the commercial fishery overall is not expected to experience substantial negative impacts from the quota reduction. However, commercial entities in certain states that more actively target bluefish may still be affected as the allocated state quotas proportionately decrease. Compared to the average receipts for

2016-2018, the proposed 2020-2021 commercial quotas are expected to result in an overall revenue reduction of 0.38 percent and 0.01 percent for small and large entities.

In the recreational fishery (for-hire or party/charter entities), impacts to entities are more likely to be driven by the change in recreational management measures than the reduction in RHL. In the development of the proposed measures, a mode-specific bag limit was chosen specifically to mitigate the negative impacts on for-hire entities fishing for bluefish. To achieve the required reduction in the RHL, these measures propose a reduction in the daily recreational bag limit from 15 to 3 fish per person for private anglers and to 5 fish per person for for-hire (charter/party) vessels. Because for-hire vessels are responsible for less than 5 percent of overall bluefish recreational catch, but the bag limit can affect demand for mixed-catch trips and general business revenues, the proposed action allowed the for-hire mode two additional fish per-person than the initially determined 3-fish bag limit for the entire recreational fishery. Even with this extra allowance, it can be difficult to predict with certainty how the preferred alternative will affect demand for party/charter boat trips. Anglers may shift effort away from species with more restrictive measures towards those with more liberal measures, resulting in little change in overall fishing effort or demand for party/charter trips where multiple species can be caught together.

The Council also considered maintaining status quo specifications, where the same catch limits and management measures from 2019 would continue through 2020 and beyond; and a most-restrictive alternative, which would further reduce catch limits for a 64-percent reduction in commercial quota and a 69-percent reduction in the RHL.

Maintaining status quo would be expected to maintain revenues in the short term, but would likely have negative long term impacts due to the increased risk of overfishing and low contribution to stock health and recovery. The most-restrictive alternative is expected to have similar impacts as the preferred alternative, but is more drastic in the short term and may have a more substantial negative short term impact on affected entities.

The Council recommended the specifications in this proposed rule over the other two alternatives to satisfy the Magnuson-Stevens Act requirements to ensure fish stocks are not subject to overfishing, while minimizing the impact on the industry (including small entities) and private anglers. This also increases the likelihood that the fishery will remain a viable source of fishing revenues for bluefish fishing entities in the long term, and makes it the better sustainable economic choice. The status quo alternative was not recommended by the Council because it would exceed the catch level recommendations of the Council's SSC, put the bluefish stock at risk of overfishing, and would be inconsistent with the requirements of the Magnuson-Stevens Act. The most restrictive alternative was not recommended because it would impose substantial restrictions on the fishery too quickly without time to adjust, creating a more negative impact than the preferred alternative. Overall, the proposed specifications are expected to have slightly negative (short-term) to slightly positive (long-term) impacts on the affected entities; which could vary depending on the firm's reliance on bluefish as a target species. NMFS agrees with the Council's IRFA analysis and rationale for recommending these catch limits. As such, NMFS is proposing to implement the Council's preferred specifications and management measures, as presented in this proposed rule's preamble.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 29, 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 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 § 648.164,

- a. Remove paragraphs (c) and (d),
- b. Lift the suspension on paragraphs (a) and (b), and
- c. Revise paragraphs (a) and (b).

The revisions read as follows:

§ 648.164 Bluefish possession restrictions.

(a) *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 day.

(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 day.

(b) *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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