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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200623-0167]

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: Final rule.

SUMMARY: NMFS issues revised specifications and recreational management measures for the 2020 Atlantic bluefish fishery and projected specifications for fishing year 2021. This action is necessary to establish allowable harvest levels and other management measures to prevent overfishing, consistent with the most recent scientific information. This rule informs the public of these revised fishery specifications and management measures for the 2020 fishing year.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for these specifications that describes the action and other considered alternatives. The EA provides an analysis of the biological, economic, and social impacts of the preferred measures and other considered alternatives; a

Regulatory Impact Review; and economic analysis. Copies of these specifications, including the EA, Regulatory Flexibility Act Analyses, and other supporting documents for the action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at <https://www.mafmc.org/supporting-documents>.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (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 three years at a time. This action implements specifications and recreational management measures for the 2020 bluefish fishery, and announces projected specifications for 2021.

The most recent 2019 bluefish operational assessment incorporated revised Marine Recreational Information Program (MRIP) estimates into its analyses and reference points, and determined that the bluefish stock is now overfished but not subject to overfishing. The Council is developing a rebuilding plan to be implemented for the 2022 fishing year. Interim specifications status quo to 2019 were implemented on

October 9, 2019 (84 FR 54041) to be in place for the beginning of the 2020 fishing year until new measures could be developed incorporating the results of the operational assessment. However, those interim specifications are substantially more liberal than what the best available science indicates is necessary to constrain catch and prevent overfishing in 2020. Interim recreational management measures were implemented on February 28, 2020 (85 FR 11863), which reduced the recreational bag limit for the fishery in an effort to prevent overfishing in the early months of the fishing year. This final action is necessary to implement these recreational measures beyond the temporary period of the interim rule that expires in August 2020. This action revises the 2020 specifications to reflect the assessment results and project similar specifications for 2021, as well as implements recreational management measures to constrain catch to these new limits on a permanent basis.

The proposed rule for this action published in the **Federal Register** on May 11, 2020 (85 FR 27703), and comments were accepted through May 26, 2020. NMFS received nine comments from the public, and no changes were made to the final rule as a result of those comments (see **Comments and Responses** for additional detail).

Additional background information regarding the development of these specifications was provided in the proposed rule and is not repeated here.

Final Specifications

This action implements the final revised 2020 and projected 2021 bluefish catch specifications, as well as the revised recreational management measures to constrain harvest the new limits, as outlined in the proposed rule. These specifications substantially

reduce both the commercial quota and recreational harvest limit (RHL) in response to the results of the 2019 operational assessment and to prevent overfishing on the overfished bluefish stock. There is no transfer of quota from the recreational to commercial sector because the recreational fishery is expected to achieve the full harvest limit. A comparison of the interim 2020 and the revised 2020-21 specifications is shown below in Table 1.

Table 1 -- Comparison of Interim 2020 and Revised 2020-21 Bluefish Specifications*

	Interim 2020		Revised 2020-2021		Percent Change
	Million lb	Metric tons	Million lb	Metric tons	
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
Commercial Total Allowable Landings (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

*Specifications are derived in metric tons (mt). When values are converted to millions of pounds the numbers may slightly shift due to rounding. The conversion factor used is 1 mt = 2204.6226 pounds.

Table 2 provides the commercial state allocations based on the final coastwide commercial quota for 2020 and 2021, and the allocation percentages defined in the FMP. No states exceeded their allocated quota in 2019; therefore, no commercial fishery accountability measures are necessary for the 2020 fishing year.

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

State	Percent Share	Quota (lb)	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, changes to the recreational management measures were already made through a temporary interim action implemented by NMFS using Magnuson-Stevens Act authority to prevent overfishing (section 305(c)). This action permanently implements the change in the daily federal recreational bag limit. The 2020 measures reduce the limit from 15 fish for all anglers 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 measures, and recreational season (open all year) and minimum fish size (none), remain unchanged.

The Council will review the specifications for fishing year 2021 to determine if any changes need to be made prior to their final 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 finalize the projected measures or announce any necessary changes.

Comments and Responses

The public comment period for the proposed rule ended on May 26, 2020, and NMFS received nine comments from the public. Four commenters supported this action and encouraged restriction in the bluefish fishery, mentioning that they have noticed a decline in the available bluefish resource in recent years. However, one of these commenters did note concerns about the implications of implementing different recreational measures for private anglers and for-hire vessels, especially when the stock is overfished. NMFS understands these concerns, and these issues are being discussed as part of ongoing agency, Council, and Commission recreational reform initiative, as well as under Amendment 7 to the FMP and the rebuilding plan, currently in various stages of development.

Two commenters suggested that this action's catch reduction is too drastic and should be reconsidered, and another commenter suggested that a slot limit or size limits be used to restrict recreational catch instead of only a substantially reduced bag limit. The Council and Commission explored other methods to reduce catch, such as size limits or phased reductions, during development of these measures; however, these measures were not adopted. This action achieves the necessary reduction in catch while having the smallest negative impact on all stakeholders coastwide.

A comment from a fishing organization in Florida expressed concerns about the accuracy of the data used in the latest assessment, especially with regards to certain states. This commenter alleged that inaccuracies could be found in both the recreational and commercial fishery data, and such drastic reductions should not be made based on an assessment that includes flawed data. The revised MRIP and commercial data used in the

2019 operational assessment are the best scientific data available, and the appropriate model from which to base these management decisions. MRIP is the only program to provide consistent, comprehensive recreational catch and effort data for the entire Atlantic coast to cover the range of the bluefish fishery, and the recent revisions incorporating the Fishing Effort Survey improved the accuracy of the data; reducing bias and increasing efficiency. In terms of commercial fishery data and quota allocation, these specifications allocate commercial quota based on the percentage share determined by Amendment 1 to the FMP (65 FR 45844; August 25, 2000). Revision of these allocations is being discussed under Bluefish Amendment 7, but this is a separate action and does not need to be addressed with these specifications.

The final comment was not responsive to the action or bluefish fishery, and as such, it does not warrant a response. No changes were made to the proposed rule as a result of these comments.

Changes from the Proposed Rule

NMFS has not made any changes to the proposed regulatory text, and there are no substantive changes from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Administrator, Greater Atlantic Region, has determined that this final rule is necessary for the conservation and management of the Atlantic bluefish fishery, and that it is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule, to ensure that these final specifications are in place as soon as possible to prevent overfishing in the 2020 fishing year, which began on January 1, 2020. This action establishes final, revised specifications (i.e., annual catch limits) and recreational daily bag limits for the 2020 bluefish fishery that began on January 1. A delay in effectiveness well into the 2020 fishing year would be contrary to the public interest, as it could create confusion in both the commercial and recreational fishery sectors. Additionally, it could compromise the effectiveness of the new specifications to prevent overfishing.

This rule is being issued at the earliest possible date. The proposed rule and public comment period were delayed due to the timing of the operational stock assessment and the time necessary for the Council and Commission to develop new specifications based on this updated information. The proposed rule published on May 11, 2020, with a 15-day comment period ending May 26, 2020. A 30-day delay in effectiveness would postpone implementation of the revised specifications and recreational bag limit well into the 2020 fishing year and after the start of the recreational season for most of the coast, which is contrary to the public interest.

Furthermore, it is important to implement the lower catch limits as soon as possible to minimize the potential for overfishing. Although interim specifications are in place, the specifications in this rule provide a substantial reduction in catch limits based on the most recent stock assessment, which also determined the bluefish stock to be overfished. Further harvest under old catch limits could harm the resource and subject it

to a greater risk of overfishing. This could also have further negative impact on industry, as overharvest could result in even more restrictive catch limits in the near future.

Finally, regulated parties do not require any additional time to come into compliance with this rule, and thus, a 30-day delay does not provide any benefit. Unlike actions that require an adjustment period to comply with new rules, bluefish fishery participants will not have to purchase new equipment or otherwise expend time or money to comply with these status quo management measures. Rather, complying with this final rule simply means adhering to the catch limits and management measures set for the bluefish fishing year. Fishery stakeholders have also been involved in the development of this action and are anticipating this rule. Therefore, there would be no benefit to delaying the implementation of these specifications.

For these reasons, NMFS finds that a 30-day delay in effectiveness would be contrary to the public interest, and therefore waives the requirement consistent with 5 U.S.C. 553(d)(3). As a result, there is good cause to implement this action on *[insert date of publication in the FEDERAL REGISTER]*.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

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

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council reviewed the regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Act.

Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a), and is included in this final rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A public copy of the EA containing the IRFA is available from the Mid-Atlantic Fishery Management 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.

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

NMFS did not receive any comments in response to the IRFA or regulatory flexibility analysis (RFA) process. Refer to the "Comments and Responses" section of this rule's preamble for more detail on the public comments that were received. No changes to the proposed rule were made as a result of public comment.

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

This final rule affects 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 along the Atlantic seaboard, 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 Projected Reporting, Recordkeeping, and Other Compliance

Requirements

There are no new 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

Specification of catch limits and management measures is constrained by the conservation objectives of the FMP and the Magnuson-Stevens Act. This action revises 2020 catch limits and recreational management measures, and projects 2021 specifications for the Atlantic bluefish fishery based on the most recent operational stock assessment and the application of the Council's Risk Policy to prevent overfishing. Because the bluefish stock declared overfished by the most recent assessment conducted in 2019 and is at high risk for overfishing, the Council and the agency are required to take steps to protect the stock. NMFS is constrained in the specifications process in that the agency can approve, disapprove, partially approve, or in very limited circumstances substitute measures to end overfishing and rebuild stocks if Council-recommended

measures will not do so. Because of this, there are limited options to minimize potential impacts on small entities.

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. This rule decreases 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 are unlikely to 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 revised 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. Any quota losses should be able to be made up in state-to-state transfers. Compared to the average receipts for 2016-2018, the revised 2020-2021 commercial quotas are expected to result in an overall revenue reduction of 0.38 percent for small 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 implement 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, this action allows the for-hire mode two additional fish per-person than the initially determined 3-fish bag limit for the entire recreational fishery.

NMFS does not anticipate significant economic impacts on small entities as a result of implementing the reduced quotas in this action. While there is a substantial reduction in the commercial quota, analyses indicate that coastwide bluefish landings have been less than the approved limit in recent years. It is unlikely that potential revenue losses would be directly affected by these quota reductions. The recreational fishery has a relatively smaller reduction to the RHL and loses no quota through a sector transfer. Also, the choice to reduce harvest through only bag limit rather than adjusting other management measures such as size limit or season enables recreational trips to continue. The choice to allow a higher bag limit (5 fish) to the for-hire sector was also a step taken to lessen any negative impact on small entities.

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 letter to permit holders that also serves as small entity compliance guide was prepared and will be sent to all holders of Federal permits issued for the bluefish fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from NMFS at the following website: <https://www.fisheries.noaa.gov/species/bluefish#management>.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 23, 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,

a. Lift the suspension on paragraphs (a) and (b);

b. Revise paragraphs (a) and (b); and

c. Remove paragraphs (c) and (d).

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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