

Dated: February 24, 2010.

Al Armendariz,

Regional Administrator, Region 6.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100204079-0084-01]

RIN 0648-XQ49

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2010 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 specifications for the 2010 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 2010 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Comments must be received on or before March 23, 2010.

ADDRESSES: You may submit comments, identified by 0648-XQ49, 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 and Hand Delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Bluefish Specifications."

• *Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a 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 (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments 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:

Sarah Heil, Fishery Management Specialist, (978) 281-99257.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the FMP is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160.

The FMP requires the Council to recommend, on an annual basis, a total allowable catch (TAC) and total allowable landings (TAL) that will control fishing mortality. 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 (allocated to the States from Maine to Florida in specified shares) and a coastwide 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). Because this FMP is a joint plan, the Commission also 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 2009, the Monitoring Committee and SSC met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2010. In August 2009, the Council approved the Monitoring Committee and SSC'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 $\frac{1}{2} B_{MSY}$. 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).

An age-structured assessment program (ASAP) model for bluefish was approved by the 41st Stock Assessment Review Committee (SARC 41) in 2005 to estimate F and annual biomass. In June 2009, the ASAP model was updated in order to estimate the current status of the bluefish stock (*i.e.*, 2008 biomass and F estimates) and enable the Monitoring Committee and SSC to recommend 2010 specifications using landings information and survey indices

through the 2008 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2008, $B_{2008} = 360.957$ million lb (163,727 mt); and (2) projected yields for 2010 using $F_{\text{target}} = F_{2008} = 0.12$. Based on the updated 2008 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: $B_{2008} = 360.957$ million lb (163,727 mt) is greater than the minimum biomass threshold, $2 B_{\text{MSY}} = 162$ million lb (73,526 mt), and is actually above B_{MSY} . Biomass has been above the target since 2007, and the stock was declared rebuilt in 2009, satisfying the rebuilding program requirement to achieve rebuilding by 2010 that was established in Amendment 1. Estimates of F have declined from 0.41 in 1991 to 0.12 in 2008. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent F ($F_{2008} = 0.12$) is less than the maximum F overfishing threshold specified by SARC 41 ($F_{\text{MSY}} = 0.19$).

2010 TAL

During the rebuilding period, the Council was required to set a TAC consistent with the prescribed F for a given phase in the rebuilding period, or the status quo F , whichever is less. According to Amendment 1, once the stock is recovered, the TAC could be set to achieve an F_{target} defined as 90 percent of F_{MSY} (0.19). An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the fishing year by the commercial and recreational fishing sector combined. The TAL is composed of a commercial quota and a RHL.

At its July 2009 meeting, the SSC noted that sparse age composition data, the lack of sampling by fishery independent trawl and seine surveys, and the uncertainty behind recreational catch estimates were sources of scientific uncertainty associated with the bluefish stock assessment. The Monitoring Committee and SSC recommended a TAC for 2010 at a level consistent with the maximum allowable rebuilding fishing mortality rate ($F = 0.15$), rather than increasing F_{target} to the FMP-prescribed level for a recovered stock ($F = 0.17$). The Council subsequently approved the Monitoring Committee and SSC's recommendations at its August 2009 meeting. Therefore, the Council recommended a coastwide

TAC of 34.376 million lb (15,593 mt) to achieve the target F (0.15) in 2010 and to ensure that the bluefish stock continues to remain above the long-term biomass target, B_{MSY} .

The proposed TAL for 2010 is derived by subtracting an estimate of discards of 5.112 million lb (2,319 mt), the average discard level from 2006–2008, from the TAC. After subtracting estimated discards, the 2010 TAL would be 29.264 million lb (13,274 mt), which is slightly less than the 2009 TAL of 29.356 million lb (13,316 mt) due to an increase in discard estimates in recent years. Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2010 would be 4.975 million lb (2,257 mt) and the RHL would be 24.289 million lb (11,017 mt) in 2010. 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 2009, Council staff attempted to estimate projected recreational landings for the 2010 fishing year by using simple linear regression of the recent (2001–2008) temporal trends in recreational landings. However, at that time, only data through Wave 2 were available, and a reliable estimate of 2009 catch could not be generated. Therefore, the Council postponed this type of projection until more landings data for the 2009 fishing year become available. Recreational landings for 2008 (18.9 million lb, 8,573 mt) were applied to 2010 for calculation of the RHL. As such, it is likely that a transfer of 5.387 million lb to the commercial sector could be approved. This option

represents the preferred alternative recommended by the Council in its specifications document.

However, the Council also recognized that future updates of the recreational harvest projections could result in a different transfer amount to the commercial sector in the final specifications. NMFS's Northeast Regional Office (NERO) staff is unable to update the recreational harvest projection at this time because although Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 4 of 2009 are available, Wave 5 estimates are delayed. When Wave 5 data become available, NERO staff will update the recreational harvest projection in the final rule for the 2010 bluefish specifications. Depending on the results of the Wave 5 estimates, the actual amount that could be transferred to the commercial sector could be higher or lower than the preferred option of 5.387 million lb.

RSA

A request for research proposals for the 2010 Mid-Atlantic RSA Program was published on January 2, 2009 (74 FR 72). For analysis of impacts for each TAL alternative, the maximum potential RSA amount of 3 percent of the TAL was used. Consistent with the allocation of the maximum bluefish RSA amount, the proposed commercial quota for 2010 would be adjusted to 10.051 million lb (4,559 mt), and the proposed 2010 RHL would be adjusted to 18.355 million lb (8,326 mt). This proposed rule does not represent NOAA's approval of any RSA-related grant award, which will be included in a subsequent action.

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 2010 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 2009. Any potential deductions for States that exceeded their quota in 2009 will be accounted for in the final rule.

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2010
[Including RSA deductions]

State	Percent share	2010 Council-proposed commercial quota (lb)	2010 Council-proposed commercial quota (kg)
ME	0.6685	67,192	30,478
NH	0.4145	41,662	18,898
MA	6.7167	675,105	306,222
RI	6.8081	684,292	310,390
CT	1.2663	127,278	57,732
NY	10.3851	1,043,821	473,469
NJ	14.8162	1,489,197	675,488
DE	1.8782	188,781	85,629
MD	3.0018	301,715	136,856
VA	11.8795	1,194,025	541,601
NC	32.0608	3,222,476	1,461,691
SC	0.0352	3,538	1,605
GA	0.0095	955	433
FL	10.0597	1,011,115	458,634
Total	100.0001	10,051,150	4,559,125

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.

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**).

The total gross revenue for the individual vessels that would be directly regulated by this action is less than \$4.0 million for commercial fishing and \$6.5 million for recreational fishing activities. All vessels that would be impacted by this proposed rulemaking are therefore considered to be small entities and, thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as

well as owners of vessels that fish for Atlantic bluefish in State waters.

The Council estimates that the proposed 2010 specifications could affect approximately 2,217 commercial vessels that actively participated (landed 1 lb (0.45 kg) or more) in the Atlantic bluefish fishery in 2008 (the last year for which there is complete data). 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 bluefish landings during calendar year 2008. These dealer reports identified 624 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 908 vessels¹ that landed bluefish in North Carolina and 685 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero in 2008, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

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

The IRFA in the Draft EA analyzed three TAL alternatives (including a no action/status quo alternative) for 2010 Atlantic bluefish fishery. All quota alternatives considered are based on various commercial harvest levels for bluefish (a low, medium, and high level of harvest). The Council approved a transfer of 5.387 million lb (2,444 mt) from the recreational sector to the commercial sector. For analysis of impacts of each TAL alternative, the maximum potential RSA quota of 3 percent of the TAL was used. Alternative 1 (Council's preferred) would implement a TAL of 29.264 million lb (13,274 mt). Alternative 2 would implement a TAL of 33.563 million lb (15,224 mt). Alternative 3, the no action alternative, is considered to be synonymous with status quo management measures for 2010 since failure to specify any management measures (no action) would be in gross violation of the Magnuson-Stevens Act. Under Alternative 3, the TAL would be the same as the 2009 TAL, or 29.356 million lb (13,316 mt).

The proposed 2010 Atlantic bluefish specification alternatives for TAL are shown in Table 2, along with the resulting commercial quota and RHL after the applicable transfer described earlier in the preamble and after deduction of the RSA quota. Alternative 1 (Council's preferred) would allocate 10.051 million lb (4,559 mt) to the commercial sector and 18.335 million lb (8,317 mt) to the recreational sector. Alternative 2 would result in the least restrictive commercial quota and would allocate 10.185 million lb (4,620 mt) to the commercial sector and 22.371 million lb (10,147 mt) to the recreational

sector. Alternative 3 (status quo) would allocate 9.533 million lb (4,324 mt) to the commercial sector and 18.942

million lb (8,592 mt) to the recreational sector. The commercial quota and RHL under Alternative 3 would be slightly

different than those in 2009 due to differences in the RSA.

TABLE 2—PROPOSED 2010 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL
[Million lb].

	TAL	Commercial quota	RHL
Alternative 1	29.264 (13,274 mt)	10.051 (4,559 mt)	18.335 (8,317 mt).
Alternative 2	33.563 (15,224 mt)	10.185 (4,620 mt)	22.371 (10,147 mt).
Alternative 3	29.356 (13,316 mt)	9.533 (4,324 mt)	18.942 (8,592 mt).

Under Alternatives 1, 2, and 3, the 2010 allowable commercial landings are 68, 70, and 60 percent higher than the 2008 commercial landings, respectively. While most States show similar directional changes in fishing opportunities as the overall change in fishing opportunity in 2010 compared to 2008 landings, New York shows a reduction in fishing opportunity under all three alternatives compared to 2008 commercial landings. New York had a bluefish quota overage for fishing year 2008 in the amount of 34,149 lb (15,490 kg). Because of this overage in 2008, New York shows a reduction in bluefish landings in 2010 for each alternative.

Under Alternative 1, the recommended commercial quota is approximately 4 percent higher than the 2009 commercial quota. Based on available data, approximately 32 percent of the TAL was not harvested during the 2009 fishing year. Only one State, New York, fully harvested its initial bluefish quota and received allocation transfers from other States in 2009. Five additional States—Massachusetts, Rhode Island, Connecticut, 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 2010, resulting in no overall coastwide economic impacts on the bluefish fishery. The economic impacts of the preferred 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 2009, the proposed 2010 quotas are also not expected to result in any detrimental impacts. For States that exceeded their initial quota allocations in 2009, but received quota transfers from other States, the apparent economic losses would likely be mitigated by quota transfers during 2010, therefore resulting in no overall impacts.

To assess the impact of the alternatives on commercial fisheries, the

Council conducted a threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result from each alternative using Northeast dealer reports and South Atlantic Trip Ticket reports. The analysis projected that there would be no revenue change for 493 vessels, while 124 vessels could incur slight revenue losses of less than 5 percent. Approximately 9 vessels could incur revenue losses of more than 5 percent. The majority of these vessels have home ports in New York. Of the 9 vessels that may experience revenue losses of more than 5 percent, 56 percent had gross sales of \$1,000 or less, and 89 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 analysis of Alternative 1 on commercial vessels in the South Atlantic concluded that there would be no loss of revenue for vessels that land bluefish in North Carolina or Florida.

The analysis of Alternative 2, which includes a 5-percent increase in the commercial quota from 2009, concluded that there would be no revenue change for 493 vessels, while 126 vessels could incur slight revenue losses of less than 5 percent. Approximately 7 vessels could incur revenue losses of between 5 percent and 19 percent. Most of the vessels projected to incur revenue losses of greater than 5 percent had home ports in New York. 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 concluded that there would be no change in revenue for 493 vessels, while 121 vessels could incur slight revenue losses of less than 5 percent. Approximately 12 vessels could incur revenue losses of between 5 percent and 29 percent. The analysis of impacts of Alternative 3 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.

For Alternative 1, the recommended RHL for the recreational sector (18.335 million lb, 8,317 mt) is approximately 3 percent below the recreational landings for 2008 and projected 2010 landings (18.9 million lb, 8,573 mt) and 6 percent below the RHL implemented for 2009 (19.528 million lb, 8,858 mt). There is very little empirical evidence regarding the sensitivity of charter/party anglers to regulation. If the proposed measures discourages trip-taking behavior among some of the affected anglers, the demand for party/charter boat trips may be slightly negatively impacted. If the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected. The IRFA analyzed the maximum transfer amount from the recreational sector to the commercial sector, but future updates of recreational harvest projections could result in a different transfer amount.

Analysis of Alternative 2 on the recreational sector concluded that the RHL for 2010 would be 18 percent above recreational landings in 2008 and projected 2010 landings. Because the RHL would be above the projected recreational landings for 2010, Alternative 2 would not be expected to have negative effects on recreational fishermen or affect demand for party/charter boat trips.

Analysis of the impacts of Alternative 3, which includes a RHL less than 1 percent above recreational landings in 2008 and projected 2010 landings, would not be expected to have any negative effects on recreational fishermen or affect the demand for party/charter boat trips. Analysis of Alternative 3 concluded that this alternative would not be expected to affect angler satisfaction and would be expected to result in recreational landings close to the RHL.

The IRFA also analyzed the impacts on revenues of the maximum RSA amount (3 percent of the TAL) and found that the social and economic impacts are minimal. Assuming that the

full RSA quota of 878,000 lb (398 mt) 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: March 1, 2010.

Eric C. Schwaab,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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