

previous calendar year for a supplier or non cost-report provider.

Extreme hardship exists when a provider or supplier qualifies as being in "hardship" as defined in this paragraph and the provider's or supplier's request for an extended repayment schedule (ERS) is approved under paragraph (c)(3) of this section.

(ii) CMS or its contractor reviews a provider's or supplier's request for an ERS. For a provider or a supplier not paid by Medicare during the previous year or paid only during a portion of that year, the contractor or CMS will use the last 12 months of Medicare payments. If less than a 12-month payment history exists, the number of months available is annualized to equal an approximate yearly Medicare payment level for the provider or supplier.

(iii) For a provider or supplier requesting an ERS, CMS or its contractor evaluates the request based on the definitions and information submitted under this paragraph (c)(2). For a provider or supplier whose situation does not meet the definitions in paragraph (c)(2)(i) of this section, CMS or its contractor evaluates the ERS request using the information in paragraph (c)(3) of this section in deciding to grant an ERS.

(iv) CMS or its contractor is not required to grant an ERS to a provider or supplier if there is reason to suspect the provider or supplier may file for bankruptcy, cease to do business, discontinue participation in the Medicare program, or there is an indication of fraud or abuse committed against the Medicare program.

(v) CMS or its contractor may grant a provider or a supplier an ERS of at least 6 months if repaying an overpayment within 30 days would constitute a "hardship" as defined in paragraph (c)(2)(i) of this section. If a provider or supplier is granted an ERS for 6 months under paragraph (c)(2)(i) of this section, missing one installment payment constitutes a default and the total balance of the overpayment will be recovered immediately.

(vi) CMS or its contractor may grant a provider or a supplier an ERS of 36 months and up to 60 months if repaying an overpayment would constitute an "extreme hardship" as defined in paragraph (c)(2)(i) of this section.

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: April 5, 2006.

Mark B. McClellan,
Administrator, Centers for Medicare & Medicaid Services.

Approved: May 17, 2006.

Michael O. Leavitt,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-AT67

[Docket No. 061109296-6296-01; I.D. 110606A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2007 Atlantic Bluefish Specifications; 2007 Research Set-Aside Project

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2007 specifications for the 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 2007 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the stock rebuilding program in Amendment 1 to the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on December 27, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: Bluespecs2007@noaa.gov.

Include in the subject line the following identifier: "Comments on 2007 Bluefish Specifications."

- Federal e-Rulemaking portal: <http://www.regulations.gov>.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2007 Bluefish Specifications."

- Fax: (978) 281-9135.

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>.

The Northeast Fisheries Science Center (Center) 41st Stock Assessment Review Committee (SARC) Bluefish Assessment Report (updated for 2006) is available at: <http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0514/>.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281-9103, or Michael Pentony, Senior Fishery Policy Analyst, (978) 281-9283.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP) are prepared by the Mid-Atlantic Fishery Management Council (Council) and appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for bluefish (*Pomatomus saltatrix*) is U.S. waters of the western Atlantic Ocean.

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and 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) 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, the Council makes a recommendation to the Northeast Regional Administrator (RA). This FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission); therefore, the

Commission meets during the annual specification process to adopt complimentary 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 2006, the Monitoring Committee met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2007. In August 2006, the Council approved the Monitoring Committee'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 $1/2B_{MSY}$. The Amendment also established that the long term target F ($F_{0.1}$) is 90 percent of F_{MSY} , and the long term target B is B_{MSY} . The rebuilding plan established through Amendment 1 stipulates that the target fishing mortality rate (F_{target}) in 2007 be set at $F = 0.31$, or the status quo fishing mortality rate (F_{year}), whichever is less.

An age-structured assessment program (ASAP) model presented by the bluefish SARC in 2005 estimated annual biomass and F through the 2004 fishing year, as well as associated biological reference points. The original ASAP model output was revised in 2006. The corrected values were made available by the Center in August of 2006 as follows: $B_{2004} = 230$ million lb (104,136 mt), which was greater than the minimum biomass threshold, $1/2B_{MSY} = 162$ million lb (73,526 mt), and $F_{2004} = 0.15$, which was less than the maximum F threshold, $F_{MSY} = 0.19$. These revisions indicated that the bluefish stock was not overfished and that overfishing was not occurring (see **ADDRESSES** for link to revised report).

The ASAP model was updated for the purpose of estimating the current status of the bluefish stock; i.e., 2005 biomass

and F estimates were compared to the corrected ASAP model output, in order to enable the Monitoring Committee to recommend 2007 specifications using landing information through the 2005 fishing year. Additionally, a projection of biomass through 2010 was done using $F_{target} = F_{2005} = 0.15$. This projection identified a target yield for 2007 and also indicated that biomass is likely to reach the target by the rebuilding deadline; i.e., the year 2010. The Monitoring Committee supported the model updates that derived the following new estimates of biomass and projected fishery yields based on the corrected biological reference points for 2004: (1) An estimated stock biomass for 2005, $B_{2005} = 310$ million lb (140,614 mt); and (2) projected yields for 2007 using $F_{target} = F_{2005} = 0.15$. Based on the updated biological reference points, and the 2005 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: $B_{2005} = 310$ million lb (140,614 mt) is greater than the minimum biomass threshold, $1/2B_{MSY} = 162$ million lb (73,526 mt). Estimates of fishing mortality have declined from 0.41 in 1991 to 0.15 in 2005. The new model results also conclude that the Atlantic stock of bluefish is not experiencing overfishing; i.e., the most recent F ($F_{2005} = 0.15$) is less than the maximum F overfishing threshold ($F_{MSY} = 0.19$).

2007 TAL

The FMP specifies that the bluefish stock is to be rebuilt to B_{MSY} over a 9-year period. The FMP requires the Council to recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the total allowable landings (TAL) that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota and a RHL. The FMP rebuilding program requires the TAC for any given year to be set based either on the target F resulting from the stock rebuilding schedule specified in the FMP (0.31 for 2007), or the F estimated in the most recent fishing year ($F_{2005} = 0.15$), whichever is lower. Therefore, the 2007 recommendation is based on an estimated F of 0.15. An overall TAC of 32.033 million lb (14,530 mt) was recommended as the coast-wide TAC by the Council at its August 2006 meeting to achieve the target fishing mortality rate, ($F = 0.15$) in 2007, and to ensure that the bluefish stock continues toward the long term biomass target, $B_{MSY} = 324$ million lb (147,052 mt), consistent with

the rebuilding schedule specified in Amendment 1. Based on the 2005 biomass estimate (310 million lb (140,614 mt)) the bluefish stock is well above the minimum biomass threshold ($1/2B_{MSY} = 162$ million lb (73,526 mt)), but is still slightly below the long-term biomass target ($B_{MSY} = 324$ million lb (147,052 mt)).

The TAL for 2007 is derived by subtracting an estimate of discards of 4.271 million lb (1,937 mt), the average discard level from 2001–2005, from the TAC. After subtracting estimated discards, the 2007 TAL would be approximately 12 percent greater than the 2006 TAL, or 27.762 million lb (12,593 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2007 would be 4.720 million lb (2,141 mt), and the RHL would be 23.043 million lb (10,452 mt) in 2007. 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 its proportional adjustment downward 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, Council staff presented a new mechanism for estimating projected recreational landings (simple linear regression of the recent (2000–2005) temporal trend in recreational landings) for the 2007 fishing year. The rationale provided for why this method was preferred was that the Marine Recreational Fisheries Statistics Survey (MRFSS) sampling coverage in wave 1 increased dramatically in 2005 compared to previous years, and to extrapolate this wave 1 landing level to the upcoming year would result in a higher estimate of projected landings than would likely be achieved. The Monitoring Committee, which met in July 2006, reviewed and recommended using the linear projection approach for projecting 2007 recreational landings. Recreational landings are projected to reach 17.813 million lb (8,080 mt) in 2007. If the

maximum commercial quota of 10.500 million lb (4,763 mt) is established within a TAL of 27.762 million lb (12,593 mt) this would leave 17.262 million lb (7,830 mt) for the recreational fishery. This amount is less than the projected 2007 recreational landings (17.813 million lb (7,830 mt)) which when added to the maximum allowable commercial quota of 10.500 million lb (4,763 mt) would exceed the overall TAL. Therefore, because the FMP and regulations governing the bluefish fishery do not allow for this maximum allowable commercial quota, the Monitoring Committee and the Council recommended, and NMFS proposes, to transfer 4.780 million lb (2,168 mt) from the initial recreational allocation of 23.043 million lb (10,452 mt) resulting

in a proposed 2007 commercial quota of 9.500 million lb (4,309 mt) and a RHL of 18.262 million lb (8,284 mt). These allocations were also recommended by the Commission to be implemented by the states for fisheries within state waters.

RSA

A request for proposals was published to solicit research proposals to utilize RSA in 2006 based on research priorities identified by the Council (December 23, 2005; 70 FR 76253). One research project that would utilize bluefish RSA has been approved by the RA and forwarded to the NOAA Grants Office. Therefore, a 363,677-lb (164,961-kg) RSA quota is proposed. Consistent with the allocation of the bluefish RSA, the proposed commercial

quota for 2007 would be reduced to 9.376 million lb (4,253 mt) and the proposed RHL is reduced to 18.023 million lb (8,175 mt).

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 2007 commercial quota are shown in Table 1 below, based on the percentages specified in the FMP. The table shows the allocations both before and after the deduction made to reflect the proposed RSA allocation.

TABLE 1. PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2007

States	Quota	2007 Commercial Quota		2007 Commercial Quota (lb)	2007 Commercial Quota (kg)
	Percent Share	(lb)	(kg)	With Research Set-Aside	With Research Set-Aside
ME	0.6685	63,508	28,807	62,676	28,429
NH	0.4145	39,378	17,862	38,862	17,628
MA	6.7167	638,087	289,434	629,728	285,643
RI	6.8081	646,770	293,373	638,297	289,530
CT	1.2663	120,299	54,567	118,723	53,852
NY	10.3851	986,585	447,512	973,661	441,650
NJ	14.8162	1,407,539	638,456	1,389,101	630,092
DE	1.8782	178,429	80,935	176,092	79,875
MD	3.0018	285,171	129,353	281,435	127,658
VA	11.8795	1,128,553	511,908	1,113,769	505,202
NC	32.0608	3,045,776	1,381,555	3,005,877	1,363,457
SC	0.0352	3,344	1,517	3,300	1,497
GA	0.0095	903	409	891	404
FL	10.0597	955,672	433,490	943,153	427,811
Total	100.0001	9,500,000	4,309,172	9,375,562	4,252,727

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 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 copy of the IRFA can be obtained from the Council or NMFS (see ADDRESSES) or via the Internet at <http://www.nero.noaa.gov>. A

summary of the economic analysis follows.

There were no large entities that participated in this fishery, as defined in section 601 of the RFA. Because there are no large entities participating in this fishery, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available and vessel profitability cannot be determined

directly. Therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

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 having landed 1 or more pounds of bluefish during calendar year 2005 (the last year for which there is complete data). These dealer reports identify 745 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. To identify those commercial bluefish vessels, South Atlantic Trip Ticket reports were used to identify 882 vessels that landed bluefish in North Carolina and 620 vessels that landed bluefish on Florida's east coast. The bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings, a negligible proportion of the total bluefish landings along the Atlantic coast in 2005. In recent years, approximately 2,063 party/charter vessels may have been active and/or caught bluefish.

The IRFA analyzed three alternatives (including the no action/status quo alternative) for allocating the TAL between the commercial and recreational sectors of the fishery. Consistent with FMP's rebuilding schedule and the status of the resource as assessed by the revised SARC-41 report and the updated model projections, alternatives one and two were based on an overall TAL of 27.762 million lb (12,593 mt) and included an RSA quota of 363,677 lb (164,961 kg). The no action alternative includes an overall TAL of 24.799 million lb (11,249 mt) and an RSA quota of 363,677 lb (164,961 kg). Outside of the difference in the overall TAL specification, the alternatives differed only in the manner in which the TAL was allocated between the commercial and recreational sectors.

The recommended alternative, before RSA deduction, would allocate 9.500 million lb (4,309 mt) to the commercial sector and 18.262 million lb (8,284 mt) to the recreational sector. Alternative 2, the most restrictive alternative, would have allocated 4.720 million lb (2,141 mt) to the commercial sector and 23.043 million lb (10,452 mt) to the recreational sector, reflecting the percentage allocations specified in the FMP (i.e., the 17-percent commercial/83-percent recreational sector split). Alternative 3 would have allocated 8.082 million lb (3,666 mt) to the commercial sector and

16.718 million lb (7,583 mt) to the recreational sector, reflecting the commercial level that was placed in 2006 (i.e., status quo/no action alternative).

For the commercial sector, the recommended coast-wide quota is approximately 35 percent higher than 2005 commercial landings. Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 745 vessels that landed bluefish from Maine through North Carolina. The analysis projected that there would be no revenue change for 638 out of 745 vessels, while 104 vessels could incur slight revenue losses of less than 5 percent. Another three vessels could incur revenue losses of between 5 percent and 39 percent; all these vessels identified home ports in New York. According to a threshold impact analysis that compared 2005 landings from the Northeast dealer reports to the recommended 2007 adjusted commercial quota allocation, New York could experience decreases in landings up to 14 percent, while overall coast wide landings would increase by approximately 33 percent. This is due to the fact that New York's proposed 2007 quota is smaller than actual 2005 landings.

The impacts of the proposed alternative on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concluded that as a consequence of the 2007 recommended allocation compared to 2005 landings, there would be no decreased landings in North Carolina, Florida, and Georgia. On average, the potential increase in landings in North Carolina is expected to be minimal (approximately 7 percent); whereby, no projected revenue losses are expected for vessels that landed in Florida. While the potential percentage increase in bluefish landings from Georgia appears high (136 percent), bluefish landed in Georgia represent a very small proportion of the overall coast wide landings (less than 1/10 of 1 percent), so this would represent a very small increase in absolute terms. The provision that allows commercial quota to be transferred from one state to another may result in transfers of quota to New York and possibly North Carolina, from other states, thus mitigating the potential negative revenue impacts. While not assured, such transfers have been made annually in recent years, including 2004 and 2006.

The analysis of Alternative 2 concluded that, for the commercial sector, there would be a 33-percent decrease in total potential commercial

landings in 2007 compared to 2005 landings. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 93 of the 745 vessels that landed bluefish in 2005, while 585 vessels could incur slight revenue losses (less than 5 percent). Another 52 vessels could incur revenue losses between 5 percent and 39 percent, while 15 vessels could incur revenue losses of greater than 39 percent. Nearly all of the vessels projected to incur revenue losses of greater than 5 percent had home ports in Massachusetts, New York, New Jersey, Pennsylvania, or North Carolina. Again, the commercial quota transfer provision could be expected to mitigate some or all of these impacts, although to a lesser extent than in the other alternatives, as all states would have less quota to transfer.

The impacts of Alternative 2 on commercial vessels in the south Atlantic area were assessed using trip ticket data. The analysis concluded that these impacts would result in revenue reductions associated with allowable landings of approximately 47 percent for vessels that landed in North Carolina. However, on average, reductions in landings would be expected to approximate 6 percent for vessels that land in North Carolina. No projected revenue losses are expected for vessels that land in Florida.

The analysis of Alternative 3 concluded that, for the commercial sector, there would be a 15-percent increase in total potential commercial landings in 2007 compared to actual landings in 2005. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 324 of the 745 vessels that landed bluefish in 2005, while 411 could incur slight revenue losses (less than 5 percent). Another 14 vessels could incur revenue losses between 5 percent and 39 percent. The vessels projected to incur revenue losses of greater than 5 percent had home ports in New York, New Jersey, and North Carolina. Similar to the other alternatives, the commercial quota transfer provision could be utilized to mitigate revenue losses, the extent to which would be dependent on a state's willingness and ability to partake in the transfer.

The impacts of Alternative 3 on commercial vessels in the south Atlantic area were assessed using trip ticket data. The analysis concludes that these impacts would result in revenue reductions associated with allowable landings of approximately 9 percent for 882 vessels identified as landing in North Carolina and no revenue

reductions for vessels landing in Florida.

For the recreational sector of the fishery, there were no negative revenue impacts projected to occur with regard the recommended RHLs because this level would be close to the recreational landings in 2005 (16.162 million lb (7,331 mt)), and above the recreational landings projected for 2007 through the linear projection approach (17.813 million lb (8,080 mt)). The recommended RHL is higher than the other two other alternatives, to account for this increase in expected landings. The recreational fishery impacts may be greater under Alternatives 3, compared to the recommended measures under Alternative 1, because the RHL under

this alternative is less than the projected landings for 2007. Although there is very little empirical evidence regarding the sensitivity of charter/party anglers to regulation, it is anticipated that the proposed harvest levels will not affect the demand for charter/party boat trips.

The IRFA also analyzed the impacts on revenues of the proposed RSA amount and found that the social and economic impacts are minimal.

Assuming that the full RSA of 363,677 lb (164,961 kg) 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 2005 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 2007. A full analysis is available from the Council (see **ADDRESSES**).

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

Dated: November 20, 2006.

Samuel D. Rauch III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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