

from the Tribes and conclude that the changes to these implementing regulations make general changes to the Act's implementing regulations and do not directly affect specific species or Tribal lands or interests. This regulation defines the term "habitat" as it is applied to designating critical habitat and directly affect only the Services. With or without these regulatory revisions, the Services would be obligated to continue to list species and to designate critical habitat based on the best available data. Therefore, we conclude that this regulation does not have "tribal implications" under section 1(a) of E.O. 13175, and formal government-to-government consultation is not required by the executive order and related policies of the Departments of Commerce and the Interior. We will continue to collaborate with Tribes on issues related to federally listed species and their habitats and work with them as we implement the provisions of the Act. See Joint Secretarial Order 3206 ("American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," June 5, 1997).

#### *Paperwork Reduction Act*

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act and does not alter the existing collection of information approved under OMB Control Number 1018-0165. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act*

We analyzed this final rule in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10-46.450), the Department of the Interior Manual (516 DM 8), the NOAA Administrative Order 216-6A, and the NOAA Companion Manual (CM), "Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities" (effective January 13, 2017). This rulemaking responds to recent Supreme Court case law.

As a result, we conclude that the categorical exclusion found at 43 CFR 46.210(i) applies to this regulation. At 43 CFR 46.210(i), the Department of the Interior has found that the following category of actions would not have a significant effect on the human

environment and, therefore, that these actions are categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature."

NOAA's NEPA procedures include a similar categorical exclusion for "preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature." (Categorical Exclusion G7, at CM Appendix E).

We have considered the extent to which this regulation has a significant impact on the human environment and determined that it falls within one of the categorical exclusions for actions that have no effect on the quality of the human environment.

#### *Energy Supply, Distribution or Use (E.O. 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This regulation is not expected to have a significant adverse effect on the supply, distribution, or use of energy, and it has not been otherwise designated by the Administrator of OIRA as a significant energy action. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### **Authority**

We issue this final rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

#### **List of Subjects in 50 CFR Part 424**

Administrative practice and procedure, Endangered and threatened species.

#### **George Wallace,**

*Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.*

#### **Christopher Wayne Oliver,**

*Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.*

#### **Regulation Promulgation**

For the reasons set out in the preamble, we hereby amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

## **PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT**

■ 1. The authority citation for part 424 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

■ 2. Amend § 424.02 by adding a definition for "Habitat" in alphabetical order to read as follows:

#### **§ 424.02 Definitions.**

\* \* \* \* \*

*Habitat.* For the purposes of designating critical habitat only, habitat is the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.

\* \* \* \* \*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 201209-0332; RTID 0648-XX064]

### **Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2021 Bluefish Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2021 Atlantic bluefish fishery. This action is necessary to establish allowable harvest levels to prevent overfishing, consistent with the most recent scientific information, as required by the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Bluefish Fishery Management Plan. This rule also informs the public of the final fishery specifications for the 2021 fishing year. **DATES:** Effective on January 1, 2021.

**ADDRESSES:** The Mid-Atlantic Fishery Management Council prepared a Supplemental Information Report (SIR) for these specifications that describes the action and any changes from the original environmental assessment (EA) and analyses for the revised 2020 and 2021 specifications action. Copies of the SIR, original EA, and other supporting documents for this 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 bluefish fishery under 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 implements bluefish specifications for the 2021 fishing year.

The August 2019 bluefish operational assessment concluded that the Atlantic bluefish stock is overfished but not subject to overfishing. The most recent data update (2020) showed increases in both commercial and recreational catch in 2019 from 2018, but no change in the stock status determination from the 2019 assessment. Based on this best available scientific information, 2021 specifications were proposed with no changes from those implemented for 2020, except for a reduction of 1.14 million lb (515,811 kg) in the recreational total allowable landings (TAL) and recreational harvest limit (RHL) to account for higher reported recreational discards in 2019 than initially projected.

The proposed rule for this action published in the **Federal Register** on November 5, 2020 (85 FR 70573), and comments were accepted through November 20, 2020. Additional background information regarding the development of these specifications was provided in the proposed rule and is not

repeated here. NMFS received five comments from the public, and no changes to the final rule are necessary as a result of those comments (see Comments and Responses for additional detail).

**Final Specifications**

This action implements the Council and Commission’s recommendations for 2021 bluefish catch specifications (Table 1), as outlined in the proposed rule. These specifications are status quo relative to 2020, except for a 12-percent reduction in the recreational TAL and RHL to account for the most recent catch data. The recreational fishery is expected to fully achieve the RHL. Therefore, this action does not include a quota transfer to the commercial fishery, which is authorized in the FMP up to a specified amount only if the recreational fishery is not projected to achieve the RHL. This action does not change any other 2021 fishery management measures, including the daily recreational bag limits.

TABLE 1—SUMMARY OF FINAL 2021 BLUEFISH SPECIFICATIONS \*

	Final 2021 specifications	
	million pounds	metric tons
Overfishing Limit .....	37.98	17,228
ABC = ACL .....	16.28	7,385
Commercial ACT .....	2.77	1,255
Recreational ACT .....	13.51	6,130
Commercial TAL .....	2.77	1,255
Recreational TAL .....	8.34	3,785
Sector Transfer .....	0.00	0
Commercial Quota .....	2.77	1,255
Recreational Harvest Limit .....	8.34	3,785

\* Specifications are derived from the ABC 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 = 2204.62262 lb.

The state commercial quota allocations for 2021 (Table 2) are based on the final coastwide commercial quota for 2021, and the allocation percentages defined in the FMP. No state exceeded its allocated quota in 2019, nor is projected to do so in 2020; therefore, no accountability measures are necessary for the 2021 commercial fishery.

TABLE 2—2021 BLUEFISH STATE COMMERCIAL QUOTA ALLOCATIONS

State	Percent share	Quota (lb)	Quota (kg)
Maine .....	0.67	18,503	8,391
New Hampshire .....	0.41	11,473	5,203
Massachusetts .....	6.72	185,904	84,310
Rhode Island .....	6.81	188,434	85,458
Connecticut .....	1.27	35,049	15,895
New York .....	10.39	287,438	130,357
New Jersey .....	14.82	410,082	185,978
Delaware .....	1.88	51,985	23,576
Maryland .....	3.00	83,084	37,680
Virginia .....	11.88	328,800	149,116
North Carolina .....	32.06	887,377	402,438
South Carolina .....	0.04	974	442
Georgia .....	0.01	263	119
Florida .....	10.06	278,432	126,273

TABLE 2—2021 BLUEFISH STATE COMMERCIAL QUOTA ALLOCATIONS—Continued

State	Percent share	Quota (lb)	Quota (kg)
Total .....	100.00	2,767,793	1,255,235

The Council is developing a rebuilding plan for the bluefish stock that will be implemented by the end of November 2021. This rebuilding plan will inform development of the next set of specifications for fishing year 2022.

**Comments and Responses**

The public comment period for the proposed rule ended on November 20, 2020, and NMFS received five comments from the public. No changes to the proposed specifications were made as a result of these comments.

*Comment 1:* One comment voiced support for the action.

*Response:* NMFS agrees and is implementing the proposed specifications for the reasons outlined in the preamble to this rule.

*Comment 2:* Two comments were submitted by the same individual, who expressed frustration with the slow government process and suggested that an immediate shutdown of the fishery would be the best way to end overfishing and protect the bluefish stock. These comments also questioned the science used to determine the proposed catch limits.

*Response:* NMFS emphasizes the importance of the regulatory public process and is proceeding as quickly as possible within the applicable law. All of the analyses for this action have been conducted with the best scientific data available, and indicate that it is not necessary to fully close the bluefish fishery to promote stock recovery. A stable and sustainable bluefish fishery can be maintained while the stock rebuilds with minimal risk to the resource.

*Comment 3:* Another commenter disagreed with the way bluefish population is monitored and data used to determine stock health. The comment went on to claim that all available data indicates that bluefish stock is healthy and not overfished. The commenter then recommended that the proposed specifications should remain consistent with earlier years' catch limits, not reduce the RHL, and enable a transfer of quota to the commercial sector because the healthy stock status does not justify the proposed restrictions.

*Response:* NMFS disagrees with the commenter's evaluation of the bluefish stock. The August 2019 operational stock assessment incorporated data from

several fishery dependent and independent surveys as well as the Marine Recreational Information Program. This assessment was peer reviewed before publication, and is the best scientific information available concerning bluefish stock health. The assessment determined the bluefish stock to be overfished, and a data update this year (2020) confirmed this status has not changed. Restrictions to management measures were implemented in February 2020 (85 FR 11863; February 28, 2020) to prevent overfishing on the overfished stock, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These specifications reduce the RHL to further reduce the risk of overfishing to an acceptable level, and there is no sector quota transfer to the commercial fishery because the recreational sector is expected to fully catch its entire allocated quota.

*Comment 4:* The final commenter asked about the differences between state commercial quotas in the proposed specifications compared to 2020, and how NMFS calculates the coastwide bluefish population.

*Response:* The proposed coastwide commercial quota is unchanged from 2020, and the percentage that each state is allocated has not changed since the allocations were established in Amendment 1 to the FMP (65 FR 45844; July 26, 2000). There may be a perceived proportional difference in final state quotas due to state-to-state transfers that have taken place throughout the 2020 fishing year. These transfers are authorized in the FMP, completed through mutual agreement between respective state agencies, and are not an accountability measure. Revision of state allocations is being reviewed in Bluefish Amendment 7, currently in development. The bluefish stock is evaluated through regular stock assessments, which incorporate data from a variety of fishery dependent and independent surveys.

**Changes From the Proposed Rule**

There are no substantive changes from the proposed rule.

**Classification**

Pursuant to section 304(b)(3) of the 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 law.

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 the final specifications are in place as close as practicable to the start of the bluefish fishing year on January 1, 2021. This action establishes the final specifications (*i.e.*, ACLs) for the 2021 bluefish fishery. A delay in effectiveness well beyond the start of the fishing year would be contrary to the public interest, as it could create confusion in the commercial bluefish industry.

Furthermore, this rule is being issued at the earliest possible date. The proposed rule was prepared in October and published by early November 2020, and the public comment period ended on November 20, 2020. Ideally, this final rule should publish in time to be effective for the January 1 start of the fishing year to allow state agencies to use the implemented commercial quota allocations to set annual state management measures. A 30-day delay in effectiveness would needlessly postpone implementation of final 2021 specifications well into the fishing year, which is contrary to the public interest. The longer these specifications are delayed, the longer it will take for some states to implement respective regulations.

The 30-day delay in implementation for this rule is also unnecessary because this rule contains no new measures (*e.g.*, requiring new nets or equipment) for which regulated entities need time to prepare or revise their current practices. 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. 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).

This final rule is exempt from review under Executive Order 12866 because the action contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic

impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This action contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: December 9, 2020.

**Samuel D. Rauch III,**

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

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