

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

RIN 0648-AT20

[Docket No. 051128313-5313-01; I.D. 111705C]

**Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2006 Atlantic Bluefish Specifications; 2006 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 2006 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 2006 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 January 3, 2006.

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

- E-mail: [BF2006SPECS@noaa.gov](mailto:BF2006SPECS@noaa.gov).

Include in the subject line the following identifier: "Comments on 2006 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 2006 Bluefish Specifications."

- Fax: (978) 281-9135.

Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/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's 41st Stock Assessment Review Committee (SARC) summary and panelist reports are available at <http://www.nefsc.noaa.gov/nefsc/saw/saw41/>.

**FOR FURTHER INFORMATION CONTACT:**

Bonnie Van Pelt, Fishery Policy Analyst, (978) 281-9244.

**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. 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 2005, the Monitoring Committee accepted the most recent bluefish stock assessment as the basis for its specification recommendations to the Council. In August 2005, the Council approved the Monitoring Committee's recommendations and the

Commission's Bluefish Board (Board) adopted complementary management measures.

**Proposed Specifications****Stock Assessment**

The SARC rejected the previous bluefish assessment in 2004, because of the instability of estimates derived from a catch/effort stock assessment model. A new model, called the age-structured assessment program (ASAP) model was used to assess the bluefish stock in 2005 and was reviewed by the SARC during the 41st Stock Assessment Workshop (SAW-41) in June 2005. The ASAP model is based on new methods for calculating biological reference points and biomass estimates (*i.e.*, thresholds and targets for defining whether bluefish is overfished or whether overfishing is occurring). Although there were opposing viewpoints regarding the use of the ASAP model among the participating SAW-41 panel members, two of the panelists felt that the assessment was adequate for management purposes. The panelists also recognized the need for a recreational catch rate abundance index, better information on discard rates and mortality, and an improved modeling approach (see **ADDRESSES** for link to panelist reports).

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. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as  $\frac{1}{2}B_{MSY}$ . 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 SAW-41 model results generated new biological reference points: (1) Maximum fishing mortality threshold or  $F_{MSY} = 0.19$ ; (2)  $F_{0.1} = 0.18$ , the long term fishing mortality target; (3) minimum biomass threshold, or  $\frac{1}{2}B_{MSY} = 73.5$  million lb (33,351 mt); and (4)  $B_{MSY} = 147$  million lb (66,678 mt), the long term biomass target. Based on the new biological reference points, and the 2004 estimate of bluefish stock biomass (104 million lb (47,235 mt)), the bluefish stock is not considered overfished. Estimates of fishing mortality have declined from 0.41 in 1991 to 0.15 in 2004. Therefore, the new model results also conclude that the Atlantic stock of bluefish is not experiencing overfishing, *i.e.*, the model estimated the maximum fishing mortality threshold,  $F_{MSY} = 0.19$ , and since  $F_{2004} = 0.15$ ,  $F_{2004} < F_{MSY}$ .

## 2006 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 recreational harvest limit. 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 2006), or the F estimated in the most recent fishing year ( $F_{2004} = 0.15$ ), whichever is lower. Therefore, the 2006 recommendation is based on an estimate F of 0.15. Furthermore, the best information available indicates that the TAC of 29.147 million lb (13,221 mt) could achieve the target F ( $F = 0.15$ ) in 2006, based on an estimated biomass of 104 million lb (47,235 mt) in 2004.

The TAL for 2006 is derived by subtracting an estimate of discards of 4.348 million lb (1,972 mt), the average discard level from 2000–2004, from the TAC. After subtracting estimated discards, the 2006 TAL would be approximately 24 percent less than the 2005 TAL, or 24.799 million lb (11,249 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational),

the commercial quota for 2006 would be 4.216 million lb (1,912 mt), and the recreational harvest limit would be 20.583 million lb (9,336 mt) in 2006. 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. Given recreational harvest trends in recent years—an average of 12.698 million lb (5,760 mt) over the last 5 years—the Council and the Board recommended that the recreational harvest limit for 2006 approximate 2004 recreational landings (15.146 million lb (6,870 mt)). Therefore, consistent with the FMP and regulations governing the bluefish fishery, the Council recommended, and NMFS proposes, to transfer 5.367 million lb (2,434 mt) from the initial recreational allocation of 20.583 million lb (9,336 mt) resulting in a proposed 2006 recreational harvest limit of 15.216

million lb (6,902 mt) and a proposed commercial quota of 9.583 million lb (4,347 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 (April 18, 2005; 70 FR 20104). 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 2006 would be reduced to 9.442 million lb (4,283 mt) and the proposed recreational harvest limit is reduced to 14.993 million lb (6,801 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 recreational harvest limit.

#### Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2006 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 2006

States	Quota	2006 Commercial quota		2006 Commercial quota	
	Percent share	(lb)	(kg)	(lb) With research set-aside	(kg) With research set-aside
ME .....	0.6685	64,062	29,058	63,123	28,632
NH .....	0.4145	39,722	18,018	39,139	17,753
MA .....	6.7167	643,661	291,963	634,222	287,678
RI .....	6.8081	652,420	295,936	642,852	291,593
CT .....	1.2663	121,350	55,044	119,570	54,236
NY .....	10.3851	995,204	451,422	980,609	444,797
NJ .....	14.8162	1,419,836	644,034	1,399,014	634,582
DE .....	1.8782	179,988	81,642	177,348	80,444
MD .....	3.0018	287,662	130,483	283,444	128,568
VA .....	11.8795	1,138,412	516,381	1,121,718	508,803
NC .....	32.0608	3,072,386	1,393,625	3,027,330	1,373,174
SC .....	0.0352	3,373	1,530	3,324	1,508
GA .....	0.0095	910	413	897	407
FL .....	10.0597	964,021	437,277	949,884	430,860
Total .....	100.0001	9,583,000	4,346,820	9,442,465	4,283,031

## Classification

This rule is exempt from review under Executive Order 12866. The Council prepared an IRFA that describes the 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 the action are provided in the preamble of this proposed rule, and in the IRFA. A copy of the complete IRFA can be obtained from the Council (see ADDRESSES). A summary of the economic analysis follows.

All vessels affected by this rulemaking have gross receipts less than \$3.5 million and are considered small entities under the Regulatory Flexibility Act. 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 2004 (the last year for which there is complete data). These dealer reports identify 748 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 819 vessels<sup>1</sup> that landed bluefish in North Carolina and 591 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 2004. In recent years, approximately 2,063 party/charter vessels may have been active and/or caught bluefish.

The Council 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 SARC-41, all of the alternatives were based on an overall

TAL of 24,799 million lb (11,249 mt) and included an RSA quota of 363,677 lb (164,961 kg). 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 9,583 million lb (4,347 mt) to the commercial sector and 15,216 million lb (6,902 mt) to the recreational sector. Alternative 2, the most restrictive alternative would have allocated 4.216 million lb (1,912 mt) to the commercial sector and 20,583 million lb (9,336 mt) to the recreational sector, reflecting the traditional allocations derived from the FMP (i.e., the 17-percent commercial/83-percent recreational sector split). Alternative 3 would have allocated 10,500 million lb (4,763 mt) to the commercial sector and 14,299 million lb (6,486 mt) to the recreational sector, reflecting the commercial level that was in place from 2002–2005 (i.e., status quo/no action alternative).

For the commercial sector, the recommended coast wide quota is approximately 23 percent higher than 2004 commercial landings. Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 748 vessels that landed bluefish from Maine through North Carolina. The analysis projected that there would be no revenue change for 535 out of 748 vessels, while 191 vessels could incur slight revenue losses of less than 5 percent. Another 22 vessels could incur revenue losses of between 5 percent and 39 percent, with the majority of these vessels identifying home ports in New York and North Carolina. According to a threshold impact analysis that compared 2004 landings from the Northeast dealer reports to the recommended 2006 commercial quota allocation, New York could experience decreases in landings up to 30 percent, while overall coast wide landings would increase by approximately 23 percent.

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 2006 recommended allocation compared to 2004 landings, there could be decreased landings in North Carolina and Georgia of up to 20 percent and 50 percent, respectively. On average, the potential decrease in landings in North Carolina is expected to be minimal (approximately 2 percent), with no projected revenue losses for vessels that landed in Florida. While the potential percentage decrease in bluefish landings from Georgia appears high, 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 decrease in absolute terms. The analysis also noted that the provision that allows commercial quota to be transferred from one state to another is likely to result in transfers of quota to New York and 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 2003 and 2004.

The analysis of Alternative 2 concluded that, for the commercial sector, there would be a 46-percent decrease in total potential commercial landings in 2006 compared to 2004 landings. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 62 of the 748 vessels that landed bluefish in 2004, while 606 vessels could incur slight revenue losses (less than 5 percent). Another 61 vessels could incur revenue losses between 5 percent and 39 percent, while 19 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 New York, New Jersey, 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 65 percent for vessels that landed in North Carolina. However, on average, reductions in landings would be expected to approximate 8 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 34-percent increase in total potential commercial landings in 2006 compared to actual landings in 2004. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 535 of the 748 vessels that landed bluefish in 2004, while 198 could incur slight revenue losses (less than 5 percent). Another 15 vessels could incur revenue losses between 5 percent and 39 percent. The vessels projected to incur revenue losses

<sup>1</sup> Some of these vessels were identified in the Northeast dealer data, therefore double counting is possible.

of greater than 5 percent had home ports in New York and North Carolina. These revenue losses result from the fact that these two states received quota transfers in 2004 which allowed them to land more than their initial coast wide quotas; however, in the absence of additional quota from transferring states in 2006 there is the potential for revenues to decrease compared to 2004. 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 1.5 percent for 819 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 to the recommended recreational harvest limits because this level would be close to the recreational landings in 2004 (15.146 million lb (6,870 mt)), and well above the 5-year average (2000–2004) of 12.698 million lb (5,760 mt). The recommended recreational harvest limit represents the second lowest harvest level when compared with the two other alternatives, exceeding the average recreational landings over the past 5 years by approximately 15 percent. Given recent trends in bluefish recreational landings, the analysis concludes that landings would remain lower than the proposed recreational harvest limit. The recreational fishery impacts are expected to be similar for Alternatives 2 and 3, compared to the recommended measures under Alternative 1. 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 Council 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 2004 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 2006. A full analysis is available from the Council (see **ADDRESSES**).

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

Dated: December 13, 2005.

**James W. Balsiger,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 022505B]

#### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11 Atlantic Mackerel Limited Access Program

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

**ACTION:** Supplemental notice of intent.

**SUMMARY:** On March 4, 2005, the Mid-Atlantic Fishery Management Council (Council), in cooperation with NMFS, announced its intent to prepare a programmatic supplemental environmental impact statement (SEIS) and Amendment 9 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). As a result of that notice, the Council received public comment on the issue of whether or not to consider measures to control or limit future access to the Atlantic mackerel fishery in Amendment 9. Based on public comment received during that scoping comment period, the Council notified the public in a subsequent notice on June 9, 2005, of its intention to move the consideration of the development of a limited access program for mackerel to Amendment 10 to the FMP. Since then, the Council has been notified that it must develop a stock rebuilding program for butterfish as a result of that stock being designated as overfished. Consequently, Amendment 10 will now include a plan to rebuild the overfished butterfish stock. As a result, the Council hereby

notifies the public that the mackerel limited access program will now be developed in Amendment 11 to the FMP. While the Council believes that this action will result in a slight delay in the development of a limited access program for Atlantic mackerel, no other changes are anticipated.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259; fax 978–281–9135. e-mail: [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Atlantic mackerel (*Scomber scombrus*) is a migratory species that supports important recreational and commercial fisheries along the Atlantic coast of the United States and Canada. The Council has considered the possibility of limiting entry to the Atlantic mackerel fishery for more than a decade. In April 2002, because the Council was concerned about rapid expansion of harvesting capacity in the fishery, possible overcapitalization, and the fact that nearly 5 years had passed since the most recent control date for the fishery was established, the Council requested that a new control date for the Atlantic mackerel fishery be established. As a result, NMFS published an advance notice of proposed rulemaking (ANPR) on July 5, 2002 (67 FR 44792), which established that date as the new control date for the Atlantic mackerel fishery. The ANPR was intended to discourage speculative entry into the fishery while potential management regimes to control access into the fishery were considered by the Council, and to help the Council distinguish established participants from speculative entrants to the fishery, should such a program be developed.

On March 4, 2005 (70 FR 10605), the Council published a notice of intent to prepare an SEIS to consider impacts of alternatives for limiting access to the Atlantic mackerel fishery. The Council subsequently conducted scoping meetings on the development of a limited access program for Atlantic mackerel, which the Council planned to include in Amendment 9 to the FMP. The first scoping meeting was held on March 17, 2005, in Kill Devil Hills, NC, and the second meeting was held on March 28, 2005, in Newport, RI. However, because the Council decided to complete and submit for review by the Secretary of Commerce several other measures in Amendment 9 that were further along in their development than the mackerel limited access program, the Council voted on May 4, 2005, to complete Amendment 9 without a limited access program for the Atlantic mackerel fishery, and to pursue the