

## PART 628—ATLANTIC BLUEFISH FISHERY

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

SOURCE: 55 FR 18733, May 4, 1990, unless otherwise noted.

### Subpart A—General Provisions

#### § 628.1 Purpose and scope.

The regulations in this part implement the Fishery Management Plan for the Bluefish Fishery, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission in cooperation with the New England and South Atlantic Fishery Management Councils. These regulations govern the conservation and management of Atlantic bluefish in the EEZ.

#### § 628.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Bluefish* means *Pomatomus saltatrix*. Bluefish, for the purposes of this part, refers to bluefish in the Atlantic EEZ from the eastern coast of Florida to Maine.

*Charter or party boat* means any vessel that carries passengers for hire to engage in fishing.

*Commission* means the Atlantic States Marine Fisheries Commission.

*Committee* means the Bluefish FMP Review and Monitoring Committee of the Council.

*Council* means the Mid-Atlantic Fishery Management Council.

*Fishery Management Plan (FMP)* means the Fishery Management Plan for the Bluefish Fishery and any amendments thereto.

*Fishing trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

*NEFC* means the Northeast Fisheries Center, NMFS, Water Street, Woods Hole, MA 02543.

*Pair trawl* means a net attached to and towed by two vessels.

*Person who receives bluefish for commercial purposes* means any person (excluding representatives of governmental agencies) engaged in the sale, barter, or trade of bluefish received from a fisherman, or one who transports bluefish from a fisherman.

*Purse seine* means a floated and weighted net that is closed by means of a draw string threaded through rings attached to the bottom of the net.

*Regional Director* means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, telephone 508-281-9243, or a designee.

*Regulated fishery* means any fishery of the United States which is regulated under the Magnuson Act.

*Runaround gillnet or encircling gillnet* means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than  $\frac{1}{4}$  the length of the net or with an opening greater than  $\frac{1}{4}$  the length of the net if the opening is obstructed in any fashion.

*Vessel length* means that length specified on State registration or U.S. Coast Guard documentation.

#### § 628.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Additional regulations governing fishing for bluefish by foreign vessels in the EEZ are set forth in 50 CFR part 611, subparts A and C.

#### § 628.4 Permits and fees.

(a) *General.* (1) Any person selling bluefish harvested in the EEZ must have either a valid permit issued under this part or a valid State of landing permit to sell bluefish.

(2) Any person who applies for a permit under this section, or who uses a valid state permit to sell fish harvested from the EEZ, must agree as a condition of using either permit that his/her bluefish catch and gear (without regard to whether fishing occurs in the EEZ or landward of the EEZ, and without regard to where such bluefish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such catch and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by a state or local law differ, any person issued a permit under this section or using a valid State permit to sell bluefish harvested from the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a permit under this part must be signed by the applicant on an appropriate form obtained from the Regional Director and submitted at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide all the following information:

(i) The name, mailing address, including zip code, and telephone number of the applicant;

(ii) The height, weight, hair color, and eye color of an individual applicant;

(iii) If the applicant represents a corporation, the certificate of incorporation;

(iv) Percentage of annual income derived from the sale of bluefish; and

(v) Any other information required by the Regional Director.

(3) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(4) Any change in the information specified in paragraph (b)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(c) *Fees.* The Regional Director may charge a fee consistent with the Mag-

nuson Act for the issuance of the federal permit.

(d) *Issuance.* The Regional Director will issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(e) *Duration.* A permit will continue in effect until December 31 of each year unless it is revoked, suspended, or modified under 15 CFR part 904.

(f) *Alteration.* No person may alter, erase, or mutilate any permit. Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. The Regional Director may charge a fee consistent with the Magnuson Act for the issuance of the replacement permit.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the person for which it is issued.

(i) *Display.* A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer.

(j) *Suspension and revocation.* Subpart D of 15 CFR part 904 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part.

#### § 628.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Possess in or harvest from the EEZ Atlantic bluefish in excess of the daily possession limit specified in § 628.21, unless that person has a permit meeting the requirements of § 628.4(a);

(b) Possess, have custody or control of, ship, receive, barter, trade, transport, offer for sale, sell, purchase, import, or export any bluefish taken, retained, or landed in violation of the Magnuson Act, or any regulation or permit issued under the Magnuson Act;

(c) Fish under a permit meeting the requirements of § 628.4(a) in violation of a notice of restriction published under § 628.22;

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(d) Fish in the EEZ under a permit meeting the requirements of § 628.4(a) during a closure under § 628.23;

(e) Fail to report to the Regional Director within 15 days, any change in the information in the application for a permit under § 628.4;

(f) Fail to present any permit meeting the requirements of § 628.4(a) upon request of an authorized officer;

(g) Sell any Atlantic bluefish harvested from the EEZ unless that person has a permit that meets the requirements of § 628.4(a);

(h) Make any false statement, written or oral, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of any Atlantic bluefish; or

(i) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

**§ 628.6 Facilitation of enforcement.**

See § 620.8 of this chapter.

**§ 628.7 Penalties.**

See § 620.9 of this chapter.

**Subpart B—Management Measures**

**§ 628.20 Fishing year.**

The fishing year is from January 1 through December 31.

**§ 628.21 Possession limit.**

(a) *Possession limit.* (1) No person shall possess more than ten bluefish unless he/she has a permit meeting the requirements of § 628.4(a).

(2) Bluefish caught while in possession of a permit meeting the requirements of § 628.4(a) must be kept separate from the pooled catch and in the possession of the permit holder at all times.

(3) If Atlantic bluefish are filleted into two or more sections, such fillets shall be deemed to be whole Atlantic bluefish using a ratio of 1:2 (two fillets to one whole fish). If Atlantic bluefish are filleted into a single (butterfly) fillet, such fillets shall be deemed to be whole Atlantic bluefish.

(4) Atlantic bluefish harvested from party and charter boats or other ves-

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sels carrying more than one person may be commingled. Compliance with the daily possession limit will be determined by dividing the number of Atlantic bluefish on board by the number of persons on board, provided, however, that if a person or persons on board are fishing under a permit meeting the requirements of § 628.4(a), his/her catch shall not be counted for determining compliance with the possession limit if it is maintained in the possession of such person(s). If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and/or operator.

(b) *Adjustment of the possession limit.* The Secretary may adjust the possession limit within a range of 0 to 15 Atlantic bluefish based on a recommendation of the Council and Commission. The Secretary will publish a notice of any proposed adjustment, together with the basis for such adjustment in the FEDERAL REGISTER. The public may comment on the adjustment for 15 days after the date of the publication. After consideration of public comments, the Secretary may publish a notice of any adjustment in the possession limit in the FEDERAL REGISTER.

**§ 628.22 Catch monitoring, commercial controls, and gear restrictions.**

(a) The Committee will review bluefish catch statistics, a projection of the commercial share for the next fishing year, and the most recent stock assessment prior to August 15th of each year. The Committee will report to the Council and the Commission.

(b) The Council and the Commission will review the report of the Committee. If the report indicates that the commercial catch for the next fishing year will equal or exceed 20 percent of the total catch (recreational catch plus commercial landings) of Atlantic bluefish, the Council and Commission will propose the commercial controls to be implemented at the start of the upcoming year. If the report indicates that the commercial catch will be greater than 17 percent but less than 20 percent of the total catch of Atlantic bluefish, or that the commercial share for the last full year is 50 percent greater than

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the previous year's commercial share, the Council and Commission will determine whether commercial controls are necessary. In making such a determination the Council and Commission will consider:

- (1) The most recent catch data;
- (2) Trends in the fishery; and
- (3) Any other relevant factors.

(c) If the catch in the commercial fishery is projected to equal or exceed the 20 percent limit during the upcoming year, then a State allocation system will be implemented. This will entail the use of landings data from the most recent 10-year period for each State, to determine the average percentage of each State's coastwide commercial landings. These percentages will be used to determine the amount of the coastwide quota allocated to each State. Quotas will apply to landings in each State, regardless of where the bluefish were caught.

(d) If whole Atlantic bluefish are processed into fillets at sea, then fillet weight will be converted to whole weight at the State of landing by multiplying fillet weight by 2.5. If whole Atlantic bluefish are headed and gutted at sea, then the conversion is accomplished by multiplying headed/gutted weight by 1.5.

(e) If the Council concludes that the increase in the commercial catch is attributable to the use of purse seines, pair trawls, or encircling (runaround) gillnets, then it will propose restrictions applicable to that gear type. In determining what restrictions are necessary to control the catch of Atlantic bluefish by commercial fishermen using these gear, the Council may consider:

- (1) Trip limits;
- (2) Area closures;
- (3) Banning the use of these gear types; or
- (4) Any other measures it deems appropriate.

(f) The Regional Director will review any gear restriction(s) proposed by the Council. If the Regional Director concurs that the proposed gear restrictions are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish a notice of

the proposed restriction in the FEDERAL REGISTER with a 30-day public comment period. After consideration of public comments, the Secretary may publish a notice in the FEDERAL REGISTER specifying the final restriction(s).

(g) The Secretary may rescind a notice of restriction in the FEDERAL REGISTER if he finds, based on the advice of the Council through the process set forth in paragraphs (a) and (b) of this section, that the restriction is no longer necessary.

### § 628.23 Closure of fishery.

The Regional Director shall close the commercial fishery for Atlantic bluefish in the EEZ if the commercial fisheries for Atlantic bluefish have been closed in all Atlantic coastal States.

## PART 630—ATLANTIC SWORDFISH FISHERY

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### FIGURES—PART 630

FIGURE 1—CLEITHRUM TO KEEL (CK) MEASUREMENT OF SWORDFISH.