

## § 648.161

NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(h) *Research quota*. See § 648.21(g).

[65 FR 45852, July 26, 2000, as amended at 66 FR 42162, Aug. 10, 2001; 70 FR 53970, Sept. 13, 2005; 73 FR 4756, Jan. 28, 2008; 76 FR 17793, Mar. 31, 2011]

EFFECTIVE DATE NOTE: At 76 FR 60639, Sept. 29, 2011, § 648.160 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

### § 648.160 Bluefish Annual Catch Limit (ACL).

(a) The Bluefish Monitoring Committee shall recommend to the MAFMC an ACL for the bluefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) *Periodicity*. The bluefish fishery ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review*. The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

### § 648.161 Closures.

(a) *EEZ closure*. NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states

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have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas*. The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

EFFECTIVE DATE NOTE: At 76 FR 60639, Sept. 29, 2011, § 648.161 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

### § 648.161 Bluefish Annual Catch Targets (ACTs).

(a) The Bluefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the bluefish specification process. The Bluefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. The sum of the commercial and recreational sector-specific ACTs shall be less than or equal to the fishery level ACL. The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section. A total of 83 percent of the fishery-level ACT will be allocated to the recreational fishery. A total of 17 percent of the fishery-level ACT will be allocated to the commercial fishery.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.160(b)(1) through (3).

### § 648.162 Minimum fish sizes.

If the Council determines through its annual review or framework adjustment process that minimum fish sizes

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are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objective, such measures will be enacted through the procedure specified in § 648.160(d) or 648.165.

EFFECTIVE DATE NOTE: At 76 FR 60639, Sept. 29, 2011, § 648.162 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

### § 648.162 Bluefish specifications.

(a) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

- (1) A fishery-level ACT;
- (2) Research quota set from a range of 0 to 3 percent of TALs;
- (3) Commercial minimum fish size;
- (4) Minimum mesh size;
- (5) Recreational possession limit set from a range of 0 to 20 bluefish;
- (6) Recreational minimum fish size;
- (7) Recreational season;
- (8) Restrictions on gear other than otter trawls and gill nets;
- (9) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports; and
- (10) Modification of existing AM measures and ACT control rules utilized by the Bluefish Monitoring Committee.

(b) *TAL*—(1) *Recreational harvest limit.* If research quota is specified as described in paragraph (g) of this section, the recreational harvest limit will be based on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota.* If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (g) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(c) *Annual fishing measures.* The MAFMC's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the MAFMC measures necessary to ensure that the ACL will not be exceeded.

The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER as soon as practicable, to implement an ACL, ACTs, research quota, a coastwide commercial quota, individual state commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the ACL will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(d) *Distribution of annual commercial quota.*—(1) The annual commercial quota will be distributed to the states, based upon the following percentages; state each followed by its allocation in parentheses: ME (0.6685); NH (0.4145); MA (6.7167); RI (6.8081); CT (1.2663); NY (10.3851); NJ (14.8162); DE (1.8782); MD (3.0018); VA (11.8795); NC (32.0608); SC (0.0352); GA (0.0095); and FL (10.0597). Note: The sum of all state allocations does not add to 100 because of rounding.

(2) [Reserved]

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

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(i) The transfer or combination would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the FEDERAL REGISTER.

(f) Based upon any changes in the landings data available from the states for the base years 1981–89, the ASMFC and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(g) *Research quota.* See § 648.21(g).

### § 648.163 Gear restrictions.

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in §§ 648.160(d) or 648.165.

EFFECTIVE DATE NOTE: At 76 FR 60640, Sept. 29, 2011, § 648.163 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

### § 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded.

(b) *Commercial sector EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the ACL specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the ACL to be exceeded.

(c) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

(1) *Commercial landings overage repayment.* All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year, irrespective of whether the fishery-level ACL is exceeded. If a state has increased or reduced quota through the transfer process described in § 648.162, then any overage will be measured against that state's final adjusted quota.

(2) If there is a quota overage at the end of the fishing year among states involved in the combination of quotas, the overage will be deducted from the following year's quota for each of the states involved in the combined quota, irrespective of whether the fishery-level ACL is exceeded. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in § 648.162(d)(1).

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year recreational ACT.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings*