Authority: 42 U.S.C. 7401–7642.

Dated: August 4, 1999.

W. Michael McCabe,

Regional Administrator, EPA.

[FR Doc. 99–21659 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990713190–9190–01; I.D. 041599B]

RIN 0648–AH63

Fisheries of the Northeastern United States; Amendment 1 to the Fishery Management Plan for the Atlantic Bluefish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 1 (Amendment 1) to the Fishery Management Plan for the Atlantic Bluefish Fishery (FMP). This proposed rule would: Implement permit and reporting requirements for commercial bluefish vessels, dealers, and party/charter boats; implement permit requirements for bluefish vessel operators; define a Bluefish Monitoring Committee (Committee) that would annually recommend the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rates (F) specified in the FMP; establish a framework adjustment process; establish a 9-year stock rebuilding schedule; establish a commercial quota with allocations to states; and establish a recreational harvest limit. Amendment 1 also addresses the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). Two primary examples of these requirements are establishing a rebuilding plan to rebuild the bluefish stock from an overfished condition and describing and identifying essential fish habitat (EFH) for bluefish. The purpose of this rule is to control fishing mortality of bluefish and rebuild the stock.

DATES: Comments must be received on or before October 7, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Bluefish Plan Proposed Regulations.''

Comments on the collection-of-information requirements that would be established by this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer) and to NMFS (See **ADDRESSES**).

Copies of Amendment 1, its Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) and the Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION:

Background

The FMP was adopted by the Council and the Commission in October 1989 and approved by NMFS in March 1990. In 1996, the Council and the Commission began development of Amendment 1 to address the need to broaden the suite of management measures that could be used to reduce bluefish fishing mortality.

The enactment of the SFA in October 1996 further prompted the Council to take action to end overfishing on the bluefish stocks. The 23rd Northeast Stock Assessment Workshop, held in 1997, concluded that the Atlantic bluefish stock was at a low level of abundance and was overexploited. NMFS declared the bluefish stock to be overfished in its 1997 and 1998 Reports to Congress on the Status of Fisheries in the United States.

NMFS published a notice of availability for Amendment 1 in the **Federal Register** on April 30, 1999. The public comment period ended June 29, 1999. All comments received through June 29, 1999, were considered in the approval/disapproval decision on Amendment 1. Amendment 1 was partially approved by NMFS on behalf of the Secretary of Commerce on July 29, 1999. NMFS disapproved the *de minimis* provision related to state allocations of the commercial quota, the description and analysis of fishing communities, and the portion of the EFH section assessing the effects of fishing gear on bluefish EFH. Copies of Amendment 1 are available from the Council upon request (see **ADDRESSES**).

Overfishing Definition and Rebuilding Schedule

Amendment 1 revises the definitions of overfishing and overfished in the FMP to include an F and biomass (B) component, respectively. Overfishing is defined as occurring when F is greater than the maximum F threshold, specified as F_{msy} = 0.4; and the bluefish stock will be considered overfished when biomass is less than the minimum biomass threshold, specified as $1/2B_{msy}$ = 118.5 million (mil) lb (53,750 mt). The long-term F target would be 90 percent of F_{msy} and the long-term B target would be B_{msy}. The Council plans in Amendment 1 to rebuild the bluefish stock to B_{msy} over a 9-year period. In the first 2 years of rebuilding, F would remain at the current level, F=0.51, in years 3 through 5 it would be reduced to F=0.41, and in years 6 through 9 it would be reduced to F=0.31. Once rebuilding is achieved, F will be set at F=0.36, and continue to be that value as long as the stock is not overfished.

Annual Adjustment Process and Committee

This rule would define the composition of a Bluefish Monitoring Committee as staff representatives from the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Committee would review annually the best available data and recommend to the Council and the Commission commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits, and seasonal closures) measures designed to assure that the target F for bluefish for that given year is not exceeded.

EFH for Bluefish

Section 2.2.2.2 of Amendment 1 describes and identifies EFH for bluefish with large areas of oceanic waters identified as EFH for eggs and larvae, and major estuaries from Maine through Florida identified as EFH for juveniles (generally North Atlantic estuaries from June through October, Mid-Atlantic estuaries from May through October, and South Atlantic estuaries from March through December). For adults, EFH in estuaries is similar to that of juveniles on a seasonal basis, and over a wide area of the continental shelf throughout the

year. The amendment does not identify any habitat areas of particular concern for bluefish. While bluefish are pelagic and wide ranging, there is some linkage between juvenile bluefish and submerged aquatic vegetation (SAV). Certain estuarine fishing gear effects SAV and bluefish EFH. The effects of this gear are not analyzed by Amendment 1; therefore, NMFS has disapproved this portion of the amendment.

Recreational Harvest Limit and Commercial Quotas

This proposed rule would establish a procedure to specify a TAL divided between the recreational and commercial fisheries. The TAL would be set annually, based on the F values specified in the rebuilding schedule, and a target F=0.36, once rebuilding is achieved. The recreational fishery would have a harvest limit of 83 percent of the TAL, and the commercial fishery would have a quota of 17 percent of the TAL. These percentages of the TAL are based on the average catch composition of the two fisheries from 1981 through 1989. The commercial quota would be distributed to the states based on their percentage share of commercial landings during this time period as designated in Table 48 of Amendment 1 (See also § 648.160(e)(1) of this rule). Amendment 1 provides a procedure where the commercial TAL could be set higher than 17 percent, up to 10.5 mil lb (4.8 mil kg) (the average commercial landings for the period 1991–1996), if the recreational fishery is not likely to land its annual allocation, based on a projection of the most recently available recreational landings data, and provided that the combination of the projected recreational landings and commercial quota does not exceed the TAL. The Council provided this procedure to ensure that commercial landings would not be unduly constrained under low allowable harvest levels and proportionally low recreational landings.

1999 Allocations for the Commercial Fishery

States participating in the bluefish fishery have already taken action for 1999 in accordance with the rebuilding schedule of Amendment 1 through the Commission and their own existing administrative programs for managing quotas in the commercial fishery for bluefish. The TAL for the bluefish fishery for 1999 is 36.84 mil lb (16.71 mil kg), with 5.93 mil lb (2.69 mil kg) (17 percent) going to the commercial fishery, and 30.91 mil lb (14.02 mil kg) (83 percent) going to the recreational fishery. There are not enough data for the 1999 recreational fishery at this time to warrant increasing the allocation to the commercial fishery above 17 percent (as discussed in the aforementioned procedure for increasing an annual commercial TAL above 17 percent up to 10.5 mil lb (4.8 mil kg)). The proposed state-by-state allocation of the commercial quota for 1999, based on the percentage share, is as follows:

State	Pounds	Kilograms
Maine	39,802	18,054
New Hampshire	24,675	11,193
Massachusetts	399,876	181,384
Rhode Island	405,316	183,851
Connecticut	75,390	34,197
New York	618,275	280,450
New Jersey	882,078	400,110
Delaware	111,817	50,720
Maryland	178,712	81,064
Virginia	707,240	320,804
North Carolina	1,908,731	865,800
South Carolina	2,095	950
Georgia	566	257
Florida	598,900	271,661
Totals	5,953,473	2,700,495

Framework Adjustment Process

In addition to the annual review and modifications to management measures associated with the Committee process, under Amendment 1 and the proposed rule, the Council could add or modify management measures through a streamlined public review process called a framework adjustment. As such, management measures that have been identified in the plan could be implemented or adjusted at any time during the year following consideration of the measures and associated analyses during at least two Council meetings. The recommended management measures then could be implemented through a final rule without first publishing a proposed rule. The framework process would allow the Council to consider gear restrictions, minimum and maximum fish size, permitting restrictions, changes in the recreational possession limit, recreational and commercial seasons, closed areas to address overfishing if it is deemed necessary in the future, description and identification of essential fish habitat (EFH) and fishing gear management measures that impact EFH, and description and identification of habitat areas of particular concern.

Permit and Reporting Requirements

This rule proposes to add bluefish permit and reporting requirements that mirror similar requirements for other Northeast fisheries. These measures include new permitting requirements for Federal commercial bluefish vessels, bluefish charter and party boats, bluefish dealers, and bluefish vessel operators, and new reporting requirements for bluefish dealers and owners or operators of commercial bluefish vessels and bluefish charter and party boats. In addition to logbook reporting, dealers would be required to participate in the Northeast Interactive Voice Reporting (IVR) system to assure timely reports for purposes of quota monitoring.

Implementation of a commercial bluefish vessel permitting system represents a modification of the present system where individuals, and not vessels, are issued a permit to sell bluefish. Under the current bluefish regulations, any person selling a bluefish harvested from the exclusive economic zone is identified as a commercial fisherman and must have a commercial fishing permit issued by a state or by NMFS that allows the sale of bluefish (i.e., the individual is licensed). The new management measure would allow the sale of bluefish harvested in Federal waters only from vessels issued a Federal permit. The Council believes that the bulk of the bluefish that enters the market is harvested by commercial vessels. However, at Council and committee meetings, it has been noted that certain individuals, such as those who fished from a vessel they did not own or operate and then sold their catch, would be affected by the changeover to a vessel permit. The individuals would be subject to the recreational possession limit and would no longer be able to sell bluefish.

Management Measure Returned to the Council

Pursuant to section 304(b)(1)(B) of the Magnuson-Stevens Act, NMFS returned to the Council the *de minimus* provision contained in Amendment 1 and disapproved the provision on July 29, 1999. NMFS determined that this measure is inconsistent with national standard 1 of the Magnuson-Stevens Act, which requires that management measures prevent overfishing. This provision lacks any clear obligation on the part of the *de minimus* state to close its commercial bluefish fishery once its quota is harvested and could result in overfishing of the bluefish stock. If *de minimus* status does not, at the very least, require a state to impose landing constraints, the provision may encourage owners of vessels that have not traditionally landed in that state to land amounts of bluefish much greater than they could land in their home port states. This could result in the state's *de minimus* quota being rapidly exceeded

and compound the overfishing situation if a *de minimus* state is not required to close its fishery when its *de minimus* quota is harvested. NMFS described its determination on this measure in a letter that it sent to the Council. As indicated in section 304(b)(2) of the Magnuson-Stevens Act, the Council may revise this measure and submit it to the Secretary of Commerce for reevaluation under section 304(b)(1) of the Magnuson-Stevens Act.

Classification

NMFS determined on July 29, 1999, that the amendment that this rule would implement is consistent with the Magnuson-Stevens Act and other applicable laws, with the exception of the *de minimus* provision, the fishing communities section, and the portion of the EFH section dealing with the effect of fishing gear on bluefish EFH. NMFS, in making that determination, took into account the data, views, and comments received on Amendment 1 through June 29, 1999.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. Reasons why the action is considered, as well as the objectives and legal basis of the rule are described in the preamble to this rule and are not repeated here. The analyses of the impacts on small entities attributable to the preferred and other alternative management measures found in Amendment 1 are discussed below. Since the final rule implementing Amendment 1 would not become effective until the fall of 1999, this summary discusses impacts to small entities in the year 2000, the projected first full year under the amendment. An assumption of constant prices is applied throughout the summary. It is also assumed that the 2000 fishery will be similar to 1997 in terms of commercial and recreational landings.

Impact of the Commercial Vessel Permit

NMFS recently completed an analysis of NMFS bluefish operator permit holder files. In the full permit year of 1998, there were 1,126 Federal bluefish permits issued to individuals. The Federal individual bluefish permit file was merged with the vessel owner database for Federal permits by permit holder name to identify the number of Federal bluefish individual permits associated with vessel ownership. It is estimated that 190 permits held by individuals are associated with vessel ownership. As such, these individuals would be allowed to continue to sell bluefish caught from their vessels, as long as they obtain a bluefish vessel permit. Over 32 percent (305) of the individuals with no vessel status (936) claimed that 5-percent or more of their annual income is derived from the sale of bluefish. Therefore, the Council concluded that the proposed action could result in a significant economic impact (result in a 5 percent or more revenue loss) for a substantial (20 percent or more) number of small entities (participants). It is unclear how many of these individuals would make the required capital investment necessary to purchase a vessel, which would allow them to apply for a bluefish vessel permit. NMFS seeks public comment on this issue.

Also, it is possible that some of these individuals took party and charter recreational trips with the sole purpose of landing bluefish to be sold commercially. There is no indication that the implementation of this measure would lead to any substantive decline in the demand for party and charter boat trips. Anglers that fish from party and charter boats fish for multiple species, and only a few anglers would take recreational trips to target solely bluefish to be sold commercially.

The Council, in Amendment 1, acknowledges that since there have been no mandatory reporting requirements in the past for this fishery, it is not possible to determine the number of individuals holding bluefish permits who actually land and sell bluefish. The individual permit holders affected by this rule may include individuals who exceeded the bag limit to stock their freezers or feed the poor in their communities, for example. In addition, crew members of party boats have supplemented their wages by selling bluefish under the individual permit. Since arrangements between owner/operators and their crew differ individually and by region, it is difficult to ascertain the number of crew likely to be affected.

The Council assumed that individuals who were not registered as owners of federally permitted vessels did not own a vessel and would not qualify for a vessel permit under Amendment 1. However, many of these individuals probably own vessels that are used for recreational fishing only. This is especially significant, given that the majority of the individuals who currently hold individual commercial permits reside in New Jersey, a state that does not issue its own commercial permit, but relies on the Federal individual commercial permit. Since New Jersey does not regulate commercial vessels harvesting bluefish through permits, owners of recreational boats would need only to obtain a Federal individual commercial permit to land and retain more than the bag limit. Therefore, the Council's assumption regarding the percentage of income claimed and the assumption that those who do not own a federally permitted vessel do not, indeed, own a vessel, likely underestimates the number of individuals who would qualify for Federal commercial vessel permits if this proposed rule is implemented. Notwithstanding the above discussion, it is likely that some portion of the number of individual permit holders, although immeasurable, may be vulnerable to economic impacts as a result of this action. The Council notes that negative economic impacts on small entities would be mitigated by potential increases in harvest associated with a rebuilt bluefish stock.

The Council also considered the status quo alternative of continuing the issuance of permits to individuals. Although this would mitigate the economic impacts of the proposed vessel permitting scheme, the Council notes that under individual permitting, the monitoring of the quota system could potentially be undermined, because it may be difficult to contact individuals with timely notifications or obtain information required for quota reports. Implementation and enforcement of commercial closures and commercial minimum fish sizes that are essential to managing the fishery would be compromised by the continued permitting of individuals. Furthermore, harvesting capacity or fishing power could not be evaluated under a regime of individual permits.

Impacts of Quota Allocation

The Council considered, but rejected, several time periods other than 1981–1989, upon which to base allocation of the total annual quota between the commercial and recreational sectors, and state-by-state allocations of the commercial quota. Other time periods considered were 1981–1993 and 1985–1989.

The Council chose the time period 1981–1989 for the preferred alternative because it reflects the composition of the overall fishery in a period of relatively high stock abundance and stability. Furthermore, the Council believed that basing the allocation on proportional catch after 1989 would be biased, since restrictions of 10 fish per individual angler were introduced by the FMP in 1990, while no restrictions were placed on the commercial fishery, e.g., there are no trip limits, minimum fish size, or minimum mesh size.

In 1997, commercial landings accounted for 39 percent of total landings. The commercial allocation (17 percent) under the preferred alternative would represent a substantial reduction relative to the 1997 landings. The Council, recognizing this disparity, decided to allow the commercial quota to be increased up to 10.5 mil lb (4.76 mil kg), the average commercial landings for the period 1990–1997, under the following condition—if 17 percent of the TAL (the commercial sector) for a given year is initially calculated to be less than 10.5 mil lb (4.76 mil kg), then the quota could be increased from the level associated with 17 percent of the TAL up to 10.5 mil lb (4.76 mil kg).

The overall quota for 2000, per the preferred rebuilding schedule, would be 43.08 mil lb (19.54 mil kg), resulting in allocations of 7.32 mil lb (3.32 mil kg) for the commercial fishery and 35.80 mil lb (16.23 mil kg) for the recreational fishery. Using 1997 data (9.305 mil lb (4.21 mil kg)) for comparison, commercial vessels in the 2000 fishery could expect to experience increased revenues, at least in the short term, since it is assumed that the commercial fishery would be able to harvest 10.5 mil lb (4.76 mil kg). This is based on the underlying assumption that the recreational fishery would not be projected to take more than 32.62 mil lb (14.80 mil kg), given that landings for the recreational fishery have been declining since 1991 and were only 14.9 mil lb (6.76 mil kg) in 1997.

In the absence of an unpredicted surge in recreational landings in 1999, 10.5 mil lb (4.76 mil kg) would be allocated to the commercial fishery (7.32 mil lb (3.32 mil kg) specified, plus 3.18 mil lb (1.44 mil kg) from the projected surplus recreational allocation). It should be noted that in the event recreational landings are projected to be more than 35.80 mil lb (16.23 mil kg), the 2000 commercial quota would be 7.32 mil lb (3.32 mil kg), and commercial bluefish fishermen would face economic impacts associated with a 21-percent reduction of commercial landings from 9.3 mil lb. (4.21 mil kg) in 1997.

Using the 1981–93 and 1985–89 periods for analyses would yield the same result as above, if the assumption that the commercial sector would be able to harvest 10.5 mil lb (4.76 mil kg) remains valid. The 1981–93 period would result in a 19/81 percent commercial/recreational split, while the 1985–89 period would result in an 18/82 percent split.

Impacts to individual state quotas from any of the three alternative quota allocations would also be positive, assuming that the commercial allocation for the 2000 fishery is specified at 10.5 mil lb (4.76 mil kg). The difference in revenues going to the various states from the distribution of quota is negligible when the preferred period is compared to the two alternative periods. This falls within a range of 0.003 to 2.300 percent.

There would be no substantial short-term economic impact on businesses that service the recreational fishery (e.g., marina, bait shops) from the recreational quota. The recreational fishery could take up to 35.80 mil lb (16.23 mil kg) in 2000, while estimated harvest in 1997 was only 14.9 mil lb (6.76 mil kg) in 1997, leaving a projected surplus of 20.9 mil lb (9.48 mil kg).

Impact of Permitting and Reporting Requirements

The alternatives concerning vessel and dealer permitting and reporting would have no effect on revenues and would represent a minute portion of the cost of doing business. The Council estimated that 249 new vessel applicants would each spend $7.50 to apply for a permit and $20.00 per year for reporting requirements. No special knowledge is required to fill out the permit application.

Impact of a Commercial Minimum Fish Size

With the exception of the pound net fishery and long haul seine fishery in North Carolina, the preferred alternative of a 12-inch (30.48 cm) minimum fish size would not have a significant impact on revenues. Data suggest that from 1987–1996 only 1 percent of all fish taken by all gear types in the commercial fishery were less than 12 inches (30.48 cm). There could be significant losses in revenue to the pound net fishery and the long haul seine fishery in North Carolina where 64.2 and 53.7 percent of the total bluefish catch, respectively, may be lost due to this minimum fish size restriction. However, the reduction in gross revenue is not expected to be significant for these gear types in terms of their gross revenue from all fishing activities. Although the effect of other minimum fish sizes is not known, it can be construed that the greater the minimum fish size, the larger the impact.

Impact of the Recreational Minimum Size Limit

The recreational minimum size limit of 12 inches may effect revenues earned by party/charter boats. The decrease in revenues would be attributable to anglers' perception of the fishing experience in regard to keeping or releasing small fish and how this relates to demand for party/charter boat trips. The greatest impact would be in Rhode Island, Connecticut, and New York, where the minimum size limit would impact established ''snapper'' fisheries. As alternative sizes increase, the economic effect would be diminished. However, with limited data, it is not possible to project at what size the negative impact would dissipate.

Impacts of Rebuilding Strategies

The Council predicts that the preferred and other alternative rebuilding strategies will have positive long-run economic impacts. In the short term, the impact on revenues for the 2000 fishery for all alternative rebuilding strategies depends on the ability to transfer quota from the recreational to the commercial fishery. Since the Council has decided to retain a quota of 5.95 mil lb for the commercial fishery in 1999, any transfers above the levels discussed in the previous section on quota allocation would have a positive economic impact on the commercial fishery in the year 2000.

The Council prepared a FEIS for Amendment 1. A notice of availability for the FEIS was published in the **Federal Register** on June 25, 1999 (64 FR 34235). A copy of the FEIS may be obtained from the Council (see ADDRESSES).

This rule has been determined to be significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been submitted to the Office of Management and Budget for approval. The public reporting burden for vessel logbooks is estimated to average 12 minutes per response. The reporting burden for dealer reports is estimated to average 4 minutes for the IVR system and estimated to average 2 minutes for completing NOAA Form 30–80. The reporting burden for new requirements is estimated to be 30 minutes for vessel and charter/party vessel permit applications, 12 minutes for dealer permit applications, 45 minutes for vessel identification, 2 minutes for completing the employment

section of the Processed Products Report, and 60 minutes for states to apply for a transfer of commercial bluefish quota. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Please send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 16, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for ''Bluefish Committee'' is removed and a new definition for ''Bluefish Monitoring Committee'' is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Bluefish Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Mid-Atlantic Fishery Management Council's Executive Director or a designee chairs the committee.

* * * * *

3. In § 648.4, the section heading and paragraphs (a)(8), (b) and (c)(2)(i) are revised, and paragraph (c)(3) is removed, to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(8) *Atlantic bluefish vessels*—(i) *Commercial.* Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels.* Any party or charter boat must have been issued and carry on board a valid party or charter boat a permit to fish for bluefish if it is carrying passengers for hire. Such vessel must observe the possession limits established pursuant to § 648.164, and the prohibitions on sale specified in § 648.14(w).

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, black sea bass moratorium or bluefish commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

(c) * * *

(2) * * * (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following and any thing else required by the Regional Administrator: Vessel name; owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing; length overall; GRT; NT; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold

capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to be carried (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

* * * * *

4. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit. * * *

* * * * *

5. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, or bluefish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession a valid permit for these species.

* * * * *

6. In § 648.7, the first sentence of paragraphs (a)(1)(i) and (a)(3)(i) and the heading and first sentence of paragraph (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, or bluefish dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, which ever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(3) * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, butterfish, and bluefish dealers must complete the ''Employment Data'' section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(b) * * *

(1) * * *

(i) *Owners or operators of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, butterfish, or bluefish permit.* The owner or operator of any vessel issued a permit for summer flounder, scup, black sea bass, Atlantic sea scallops, NE multispecies, Atlantic mackerel, squid, butterfish, or bluefish must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. * * *

* * * * *

7. In § 648.11, the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterfish, or scup, or black sea bass, or bluefish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, or a bluefish permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or other specimens taken by vessel.

* * * * *

8. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), H (scup), I (black sea bass), or J (bluefish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfish, the summer flounder, the scup, the black sea bass, and the bluefish fisheries.

* * * * *

9. In § 648.14, paragraphs (w)(1) through (w)(5) are revised and paragraphs (w)(6), (w)(7), and (x)(8) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(w) * * *

(1) Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, Atlantic bluefish taken from a fishing vessel unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under § 648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the **Federal Register**, pursuant to § 648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to an Atlantic bluefish permit issued under § 648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the **Federal Register** pursuant to § 648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) Sell or transfer bluefish harvested in or from the EEZ unless the vessel has been issued a valid commercial permit pursuant to § 648.4(a)(8)(i).

(x) * * *

(8) All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8) are deemed to have been harvested from the EEZ.

10. Subpart J is revised to read as follows:

Subpart J—Management Measures for the Atlantic Bluefish Fishery

Sec.
648.160 Catch quotas and other restrictions.
648.161 Closures.
648.162 Minimum fish sizes.
648.163 Gear restrictions.
648.164 Possession restrictions.
648.165 Framework specifications.

Subpart J—Management Measures for the Atlantic Bluefish Fishery

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) *Annual review*. The Bluefish Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to recommend the total allowable level of landings (TAL) and other restrictions necessary to achieve a target fishing mortality rate (F) of 0.51 in 1999 and 2000; a target F of 0.41 in 2001, 2002, and 2003; a target F of 0.31 in 2004, 2005, 2006, and 2007; and a target F of 0.36 thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) *Recommended measures*. Based on the annual review, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) A TAL set from a range of zero to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of zero to 20 bluefish to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls and gill nets.

(c) *Allocation of the TAL*—(1) *Recreational harvest limit*. The recreational fishery shall be allocated 83 percent of the TAL as a harvest limit.

(2) *Commercial quota*. The commercial fishery shall be allocated 17 percent of the TAL as a quota. If 17 percent of the TAL is less than 10.5 mil lb (4.8 mil kg), and the recreational fishery is not projected to land 83 percent of the TAL for the upcoming year, the commercial fishery may be allocated up to 10.5 mil lb (4.8 mil kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL.

(d) *Annual fishing measures*. The Council'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 Council measures necessary to assure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to assure that the applicable specified F will not be exceeded. The Council'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 Commission. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about October 15 to implement a coastwise commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the **Federal Register** on or about February 15 to implement additional management measures for the recreational fishery, if received from the Council by January 1, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register**.

(e) *Distribution of annual quota*. (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Percentage
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
FL	10.0597
Total	100.0000

Note: The ''Total'' does not actually add up to 100.0000 because of rounding error.

(2) 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.

(f) *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 other 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:

(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.

(iii) The transfer is consistent with the objectives of the 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 and will be effective when the notice of approval of the transfer or combination has been published in the **Federal Register**.

(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 notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been published in the **Federal Register**.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. 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 paragraph (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981–89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(1) of this section be revised. The Council's and the Commission'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 Commission and the Council. 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.

§ 648.161 Closures.

(a) *EEZ closure.* The Regional Administrator 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 he/she 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. The Regional Administrator 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 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. The Regional Administrator 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.

§ 648.162 Minimum fish sizes.

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

§ 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.

§ 648.164 Possession restrictions.

(a) No person shall possess more than 10 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. 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 operator.

§ 648.165 Framework specifications.

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends

that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the Council's recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, then the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 99–21591 Filed 8–20–99; 8:45 am]

BILLING CODE 3310–22–P