

interpretation prospectively only. However, we do not want to create incentives for a carrier to rush to put into place as many rates as possible in hybrid "common carrier" agreements during the period of unavoidable delay associated with seeking public comments. Therefore, should we adopt this interpretative rule, we intend to apply the rule to all agreements entered into after the date of publication of this decision in the **Federal Register**. Parties are hereby placed on notice that if this proposal is adopted, the reasonableness of a rate reflected in a bilateral agreement entered into after this date will be treated as a confidential contract governed by section 10709 and outside the Board's jurisdiction.

Our proposed changes to the Code of Federal Regulations are set forth in the appendix. Parties are specifically invited to comment on the proposed rules, particularly concerning 49 CFR 1313.1(c). Parties are asked to consider whether the proposed changes would have unforeseen consequences for agricultural contracts and whether there are differences between agricultural and other types of rail transportation contracts.

Pursuant to 5 U.S.C. 605(b), the Board certifies that this action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 10709.

Decided: March 28, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1300 and 1313 of title 49, chapter x, of the Code of Federal Regulations as follows:

PART 1300—DISCLOSURE, PUBLICATION, AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR RAIL COMMON CARRIAGE

1. The authority citation for Part 1300 continues to read as follows:

Authority: 49 U.S.C. 721(a) and 11101(f).

2. Amend § 1300.1 by adding paragraphs (c)(1) and (c)(2) to read as follows:

§ 1300.1 Scope; definitions.

* * * * *

(c) * * *

(1) The term *contract* in 49 U.S.C. 10709 is defined as any bilateral agreement between a carrier and a shipper for rail transportation in which the carrier agrees to a specific rate for a specific period of time in exchange for consideration from the shipper, such as a commitment to tender a specific amount of freight during a specific period or to make specific investments in rail facilities.

(2) Notwithstanding any representation that a rate specified in an agreement is a common carrier rate, a bilateral agreement as described in paragraph (c)(1) of this section will be treated by the Board as a rail transportation contract authorized under 49 U.S.C. 10709 and therefore outside the Board's jurisdiction.

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PART 1313—RAILROAD CONTRACTS FOR THE TRANSPORTATION OF AGRICULTURAL PRODUCTS

3. The authority citation for Part 1313 continues to read as follows:

Authority: 49 U.S.C. 721(a) and 10709.

4. Amend § 1313.1 by revising the first sentence of paragraph (c) to read as follows:

§ 1313.1 Scope; definitions of terms.

* * * * *

(c) For purposes of this part, the term *contract* means a contract as defined in 49 CFR 1300.1(c), including any amendment thereto, to provide specified transportation of agricultural products (including grain, as defined in 7 U.S.C. 75 and products thereof). * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 070330073-7073-01; I.D. 030507A]

RIN 0648-AU87

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications and Effort Controls

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes initial 2007 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories and to set effort controls for the General category and Angling category. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). A minor administrative change to the permit regulations is also proposed. NMFS solicits written comments and will hold public hearings in April 2007 to receive oral comments on these proposed actions.

DATES: Written comments must be received on or before May 4, 2007.

The public hearings dates are:

1. April 24, 2007, 7 p.m. to 9 p.m., Morehead City, NC.
2. April 26, 2007, 6:30 p.m. to 8:30 p.m., West Islip, NY.
3. April 27, 2007, 3:30 p.m. to 5:30 p.m., Gloucester, MA.

ADDRESSES: Comments may be submitted through any of the following methods:

- E-mail: 07BFTSPECS@noaa.gov. Include in the subject line the following identifier: "Comments on 2007 Atlantic bluefin tuna specifications."
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930.

• Fax: (978) 281-9340.

The hearing locations are:

1. Morehead City — Carteret Community College (Joselyn Hall, H.J. McGee, Jr. Building), 3505 Arendell Street, Morehead City, NC 28557.
2. West Islip — West Islip Public Library, 3 Higbie Lane, West Islip, NY 11795.
3. Gloucester — NMFS, One Blackburn Drive, Gloucester, MA 01930.

Supporting documents including the Environmental Assessment, Initial Regulatory Flexibility Analysis, and Regulatory Impact Review are available by sending your request to Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and the ATCA. The ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and the ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1998, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidates the management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP.

The initial specifications within this proposed rule are published in accordance with the Consolidated HMS FMP and are necessary to implement the 2006 ICCAT quota recommendation, as required by the ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. This proposed rule would: (1) Establish initial quota specifications consistent with the BFT rebuilding program by allocating the 2006 ICCAT-recommended quota for the 2007 fishing year (June 1, 2007 - December 31, 2007, pursuant to the change in fishing year to a calendar year as of January 2008 per the Consolidated HMS FMP); (2) establish General category effort controls, including time-period subquotas, restricted fishing days (RFDs), and the initial retention limit; and (3) establish Angling category retention limits for the 2007 fishing season. A minor administrative change to the permit regulations is also proposed to allow additional flexibility during conversion back from a fishing year to a calendar year.

Overall U.S. landings figures for the 2006 fishing year are still preliminary and may be updated before these 2007 fishing year specifications are finalized. The specifications and effort controls may subsequently be adjusted during the course of the fishing year, consistent with the provisions of the Consolidated HMS FMP, and, as appropriate, would be published in the **Federal Register**.

NMFS has prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) which present and analyze anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this proposed rule. The complete list of alternatives and their analysis is provided in the draft EA/RIR/IRFA, and is not repeated here in its entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

2006 ICCAT Recommendation, BFT Underharvests, and Transfers to Other ICCAT Contracting Parties

At its 2006 meeting, ICCAT recommended a western Atlantic BFT Total Allowable Catch (TAC) of 2,100 mt, to allow for continued rebuilding of BFT through 2018. The TAC is inclusive of dead discards and will be effective annually for 2007 through 2008, and thereafter until changed. The following deductions are made from the TAC prior to applying the U.S. share percentage: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 25 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and 15 mt for Canada and 25 mt for the United States (for bycatch related to directed longline fisheries in the "in the vicinity of the management boundary area," i.e., the Northeast Distant gear restricted area (NED), which was defined in the 2003 BFT annual specification rulemaking process as the Northeast Distant statistical area (68 FR 56783, October 2, 2003). The U.S. share of the adjusted TAC is 57.48 percent, or 1,165.12 mt. Accounting for the 25 mt NED set-aside, the total U.S. allocation is 1,190.12 mt. The previous (2002) ICCAT recommendation for a western Atlantic BFT TAC of 2,700 mt included a U.S. quota of 1,464.6 mt, which was effective from 2003 through the end of the 2006 fishing year, i.e., May 31, 2007, and also included a 25-mt NED set-aside, for a total of 1,489.6 mt.

The 2006 ICCAT recommendation also includes provisions to: (1) limit carryover of underharvest to no more than 50 percent of a contracting party's initial TAC; (2) limit mortality of school BFT to an average of 10 percent of the initial TAC, calculated on a four-year basis; and (3) allow a contracting party with a TAC allocation to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation

considerations. Regarding the third provision, the ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a contracting party that receives a one-time quota transfer may not retransfer that quota. For the United States, the 15-percent limit on quota transfer equates to 178.5 mt. In considering whether the United States could enter into an arrangement with another ICCAT contracting party, several factors would need to be taken into account, including, but not limited to, the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the U.S. TAC before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants (such as access to the EEZ of the receiving contracting party for the harvest of a designated amount of BFT), potential ecological impacts, and the contracting party's ICCAT compliance status. NMFS intends to undertake any transfer of U.S. quota to another ICCAT contracting party via a separate action proposed in the **Federal Register**, if the situation arises.

Initial landings estimates (as of January 15, 2007) per category are as follows: General category — 159.8 mt; Harpoon category — 22.2 mt; Longline category — 31.4 mt; Angling category — 186.8 mt; Trap category — 0 mt; and Purse Seine category — 3.6 mt. These preliminary landings estimates, totaling 403.8 mt, indicate that the total 2006 underharvest is 2,435.4 mt. Underharvests per category are preliminarily determined to be as follows: General category — 1,003.5 mt; Harpoon category — 101.8 mt; Longline category — 236.6 mt; Angling category — 195.2 mt; Trap category — 5.3 mt; and Purse Seine category — 620.5 mt. Based on the estimated amount of Reserve that NMFS maintains for the landing of BFT taken during ongoing scientific research projects and/or potential overharvests in certain categories, NMFS estimates that 282.3 mt of Reserve remains from the 2006 fishing year.

In anticipation of a cap on carryover for the 2007 fishing year, i.e., 595.1 mt, or one half of the initial U.S. TAC of 1,190.12 mt, and in anticipation of a substantial underharvest of the 2006 fishing year domestic quota, the United States agreed at the 2006 ICCAT meeting to transfer a total of 275 mt of current U.S. underharvest (i.e., underharvest of the 2006 fishing year quota) as follows: 75 mt and 100 mt for 2007 and 2008, respectively, to Mexico, and 50 mt for each of the years 2007 and 2008 to Canada. Based on these transfers, the remaining amount of underharvest (as of

January 15, 2007) is 2,160.4 mt. However, the ICCAT-recommended cap limits the amount the United States may carry over for 2007 to 595.1 mt.

Domestic Quota Allocation

The 1999 FMP and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years. The baseline percentage quota shares established in the 1999 FMP and contained in the Consolidated HMS FMP for fishing years beginning June 1, 1999, and continuing to the present are as follows: General category — 47.1 percent; Harpoon category — 3.9 percent; Purse Seine category — 18.6 percent; Angling category — 19.7 percent; Longline category — 8.1 percent; Trap category — 0.1 percent; and Reserve category — 2.5 percent.

These proposed initial 2007 fishing year specifications, consistent with the BFT rebuilding program, would allocate the 2006 ICCAT-recommended quota for the 2007 fishing year among the several established domestic fishing categories based on the current BFT quota allocation percentages per the Consolidated HMS FMP, and would allocate 25 mt to the longline north NED subquota.

As described further below, these specifications also would apply 595.1 mt of the underharvest of BFT quota from the 2006 fishing year, consistent with the ICCAT-recommended 50-percent cap on quota carryover to the 2007 fishing year quota, and distribute that underharvest in such a manner to: (1) Allow for potential transfer of a portion (up to 15 percent) of the 2007 U.S. quota to other ICCAT Contracting Parties, if warranted; (2) ensure that the Longline category has sufficient quota to operate during the 2007 fishing year while also considering accounting for BFT discards; and (3) provide the non-Longline quota categories a share of the remainder of the underharvest consistent with the allocation scheme established in the Consolidated HMS FMP.

Beginning with its 1998 recommendation, ICCAT has historically recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance has been 68 mt. The 2006 ICCAT recommendation included neither a recommended dead discard allowance, nor specified dead discard reporting methodology for compliance purposes. Nevertheless, the United States must report dead discard estimates annually. Accordingly, NMFS

must account for BFT dead discards in setting the 2007 fishing year quota.

In the past, for compliance purposes, the United States has reported dead discards to ICCAT as an estimate based on pelagic longline vessel logbook tallies, adjusted as warranted by observer data. For 2005, the most recent year for which complete information is available, the estimate is approximately 46 mt. However, based on revised methodology, the SCRS now reports dead discard estimates generated via extrapolation of logbook tallies by pooled observer data; for 2005, the estimate is approximately 131 mt. These specifications also use this revised estimate. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and consistent with how NMFS has handled past incidents of dead discards exceeding the allowance, NMFS would deduct the 131 mt of estimated dead discards from the amount of quota available for the Longline category for the 2007 fishing year. In addition, NMFS proposes to modify the BFT quota and annual adjustment regulations at § 635.27(a) to indicate that NMFS will account for dead discards annually as part of the specifications process, and to indicate its intent to subtract that amount from the quota of the category accounting for the dead discards.

As described above, the United States may choose, pursuant to the 2006 ICCAT recommendation, to transfer up to 15 percent of the U.S. TAC to another ICCAT Contracting Party with a TAC allocation, consistent with U.S. obligations and conservation considerations. NMFS proposes to divide the 595.1 mt of quota carryover such that 178.5 mt (i.e., 15 percent of 1,190.12 mt) is placed in the Reserve for potential ICCAT transfer purposes.

NMFS also proposes to assign a sufficient amount of the quota carryover (236.6 mt) to the Longline category, due to the revised dead discard accounting methodology, so that after accounting for the 131 mt of dead discards, sufficient quota is available to cover the anticipated landings and dead discards of the pelagic longline fishery during the 2007 fishing year, i.e., potentially 200 mt. NMFS seeks to avoid a zero or negative quota for the Longline category, which could result in increased BFT discards, given that NMFS must subtract the best available dead discard estimate from the TAC on an annual basis. The

Longline category baseline quota allocation (currently 8.1 percent of the TAC) may need to be revisited in the near future. Any change to the baseline allocation would require an amendment to the Consolidated HMS FMP. NMFS proposes to distribute the remainder of the quota carryover (180 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with their FMP allocations.

Consistent with the 2006 ICCAT recommendation, the proposed rule also would increase the limit on the take of school BFT (measuring 27 inches (68.6 cm) to less than 47 inches (119.4 cm)) over each 4-consecutive-year period from 8 percent of the total U.S. TAC (per the 2002 ICCAT recommendation) to 10 percent. Because the total U.S. quota is reduced by 22 percent, there will be only a minor effective increase in the base school BFT quota, in weight.

2007 Proposed Initial Quota Specifications

In accordance with the 2006 ICCAT quota recommendation, the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10)(ii), NMFS proposes initial quota specifications for the 2007 fishing year as follows: General category — 643.6 mt; Harpoon category — 53.3 mt; Purse Seine category — 254.1 mt; Angling category — 269.2 mt; Longline category — 200 mt; and Trap category — 1.4 mt. Additionally, 207.6 mt would be allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers.

Based on the above proposed initial specifications and considerations regarding the school BFT fishery, the Angling category quota of 269.2 mt would be further subdivided as follows: School BFT — 119 mt, with 45.8 mt to the northern area (north of 39°18' N. latitude), 51.2 mt to the southern area (south of 39°18' N. latitude), plus 22 mt held in reserve; large school/small medium BFT — 144 mt, with 68 mt to the northern area and 76 mt to the southern area; and large medium/giant BFT — 6.2 mt, with 2.1 mt to the northern area and 4.2 mt to the southern area.

The 25-mt NED set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude). Thus, the proposed Longline

category quota of 200 mt would be subdivided as follows: 80 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 120 mt to pelagic longline vessels landing BFT south of 31° N. latitude, with 25 mt set-aside for bycatch of BFT related to directed pelagic longline fisheries in the NED. NMFS would account for landings under this additional quota separately from other landings under the Longline north subcategory.

General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the Consolidated HMS FMP and are designed to address concerns regarding the allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The regulations implementing the Consolidated HMS FMP divide the annual General category quota into five time-period subquotas as follows: 50 percent for June-August, 26.5 percent for September, 13 percent for October-November, 5.2 percent for December, and 5.3 percent for January. Because the fishing year is changing back to a calendar year effective January 1, 2008, NMFS proposes, for the 2007 fishing year only, to distribute the 5.3 percent of the General category quota that would be assigned to the January time period to the four time periods that will occur during the 2007 fishing year. Therefore, of the available 643.6-mt coastwide quota, 339.8 mt would be available in the period beginning June 1 and ending August 31, 2007; 180.1 mt would be available in the period beginning September 1 and ending September 30, 2007; 88.4 mt would be available in the period beginning October 1 and ending November 30, 2007; and 35.3 mt would be available in the period beginning December 1 and ending December 31, 2007. The January 2007 BFT fishery was prosecuted using 2006 fishing year quota. The January 2008 subquota will be included in the 2008 specifications, which NMFS plans to publish prior to the start of the fishery on January 1, 2008. As discussed in the Consolidated HMS FMP, NMFS plans to work with the affected constituents through the 2008 specifications process to determine the most appropriate disposition of any under- or overharvest that has accrued in the General category by the end of December 2007.

In addition to time-period subquotas, NMFS also implements General category RFDs to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional fine scale inseason flexibility. For the 2007 fishing year, NMFS proposes a series of solid blocks of RFDs to extend the General category for as long as possible through the end of the 2007 fishing year.

Therefore, NMFS proposes that persons aboard vessels permitted in the General category would be prohibited from fishing, including catch-and-release and tag-and-release, for BFT of all sizes on the following days: all Saturdays and Sundays from November 17, 2007, through December 31, 2007, plus November 22 and December 25, 2007, while the fishery is open. These proposed RFDs would distribute fishing opportunities during the late season without increasing BFT mortality. NMFS' intention is to propose RFDs for January 2008 as part of the 2008 quota specifications and effort controls, scheduled to be published before January 1, 2008.

Finally, NMFS proposes to adjust the General category retention limit to three BFT (73 inches (185.4 cm) or greater per vessel per day/trip). This action is intended to allow increased opportunities to harvest the General category quota during the period when catch rates have historically been slow, and to avoid accumulation of unused quota. This retention limit would be effective from June 1, 2007, until August 31, 2007, unless adjusted with an inseason action, if necessary. NMFS may consider further retention limit adjustments after August 31, 2007, depending on several factors, including but not limited to catch rates and availability of quota.

Angling Category Effort Controls

NMFS proposes to adjust the Angling category retention limit to one school BFT (27 inches (68.6 cm) to less than 47 inches (119.4 cm)), and two large school/small medium BFT (i.e., two BFT measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per vessel per day/trip. This limit is expected to maximize use of the Angling category quota while avoiding overharvest of each of the Angling category subquotas. The alternative also would provide the same retention limit for both private and charter/headboat vessels.

Permit Category Changes

Because of the scheduled change to a calendar year fishery beginning January

1, 2008, and because NMFS plans to administer the permit program such that Atlantic Tunas, HMS Charter/Headboat, and HMS Angling category permits issued for the 2007 fishing year will be effective through December 31, 2008, NMFS also proposes to extend the window of opportunity to change permit categories for the 2008 fishing year, i.e., once during the period of January 1, 2008, through May 31, 2008.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and the ATCA. The AA has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic 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 this action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

NMFS has prepared this IRFA to analyze the impacts on small entities of the alternatives for establishing 2007 fishing year BFT quotas for all domestic fishing categories and General and Angling category effort controls. The analysis for the IRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. In order to do this, NMFS has estimated the average impact that the alternatives to establish the 2007 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2006 ICCAT recommendation reduced the U.S. BFT TAC to 1,190.12 mt. This quota allocation includes a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and non-BFT tuna fisheries in the NED. This action would distribute the adjusted (baseline) TAC of 1,165.1 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2006, the annual gross revenues from the commercial BFT fishery were approximately \$3.4 million.

Approximately 8,751 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2006 gross revenues are General (\$2.5 million), Harpoon (\$265,951), Purse Seine (\$33,819), and Longline (\$558,022). The IRFA assumes that vessels within a category will have similar catch and gross revenues in order to consider the relative impact of the various preferred alternatives on vessels. Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. NMFS considers this a reasonable approach for BFT fisheries. More specifically, available landings data (weight and ex-vessel value of the fish in price/pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. NMFS cannot determine whether net revenue varies among individual fishery participants within each category, and therefore whether the economic impact of a regulation would have a varying impact among individual participants. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

For the allocation of BFT quota among domestic fishing categories, NMFS considered three alternatives: A no action alternative (A1); Alternative A2 (the preferred alternative), which would implement the 2006 ICCAT recommendation; and Alternative A3, which would allocate the 2006 ICCAT recommendation in a manner other than that designated in the Consolidated HMS FMP and which could address issues regarding the changing nature of the BFT fisheries (e.g., allocate additional quota to certain categories and/or certain geographic regions). Alternative A3 would result in a de facto quota reallocation among categories, and an FMP amendment would be necessary for its implementation. Per the Consolidated HMS FMP, NMFS prepares quota specifications annually for the upcoming fishing year. Preparation of an FMP amendment would not be possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2006, and the start of the 2007 fishing year on June 1, 2007. Therefore, analysis of the impacts of

Alternative A3 is not available. But, if an FMP amendment was feasible, positive economic impacts would be expected to result on average for vessels in permit categories that would receive a greater share than established in the FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than established in the FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to participants.

As noted above, the preferred alternative (Alternative A2) would implement the 2006 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with the ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations. Alternative A2 would have slightly positive impacts for fishermen. The no action alternative would keep the quota at pre-2006 ICCAT recommendation levels (approximately 300 mt more) and would not be consistent with the purpose and need for this action and the Consolidated HMS FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2006 or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery, in the short term.

The preferred alternative also would implement the provision of the 2006 ICCAT recommendation that limits tolerance for school BFT landings to 10 percent of the U.S. TAC, calculated on a four-year average. This is expected to have neutral impacts on fishermen who fish for school BFT, particularly those who rely exclusively on the school size class for BFT harvest, since the available quota is the same as the level when the limit was 8-percent of the U.S. TAC under the 2002 ICCAT recommendation.

Two alternatives were considered for effort control using RFDs in the General category. The no action alternative would not implement any RFDs with publication of the initial specifications but rather would use inseason management authority established in the Consolidated HMS FMP to implement RFDs during the season, should catch rates warrant taking this approach. This alternative could be most beneficial during a season of low catch rates and could have positive economic consequences if slow catch rates were to persist during the late season fishery. During a slow season, the season could regulate itself and fishermen could choose when to fish or not based on their own preferences.

However, it is impossible to predict in advance whether the season will have low or high catch rates.

The preferred alternative would designate RFDs according to a schedule published in the initial BFT specifications. In the past, when catch rates have been high, the use of RFDs (preferred alternative) has had positive economic consequences by avoiding oversupplying the market and extending the season as late as possible. In addition, establishing RFDs at the season onset provides better planning opportunities than implementing RFDs during the season, since charter/headboat businesses could book trips and recreational and commercial fishermen could make plans ahead of time rather than waiting until the last minute to see if an RFD is going to be implemented. However, implementing RFDs to extend the late season may have some negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time as proposed under the preferred alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high, as is intended under this alternative. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Overall, extending the season as late as possible and establishing formalized RFDs at the season onset would enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of the fish migration, provide a reliable mechanism for slowing a fishery that has an ability to generate extremely high catch rates, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues.

A retention limit of three BFT (measuring 73 inches (185.4 cm) or greater per vessel per day/trip) is the preferred alternative for the opening retention limit for the General category, which would be in effect through August 31, 2007. This alternative is expected to result in the most positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market, thus maximizing gross revenues. Other considered alternatives were the no action alternative (one BFT measuring 73 inches or greater per vessel per day/trip) and a retention limit of two BFT (73 inches or greater per vessel per day/trip). Both of these alternatives are expected to be too

restrictive given the large amount of quota available for the General category during the 2007 fishing year and could result in the negative economic impact of lower gross revenues. Although early season landings seldom occur at a rate that could oversupply the market, NMFS will monitor landings closely to ensure that the increased retention limit does not contribute to an oversupply.

Six alternatives were considered for Angling category retention limits for the 2007 fishing year. The preferred alternative (D1b) is a three BFT retention limit (two fish measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm) and one fish measuring 27 inches (68.6 cm) to less than 73 inches) per vessel per day/trip for all sectors of the Angling category for the entire 2007 fishing year. The other two alternatives providing the same daily retention limits (per vessel) for both private recreational and charter/headboats were the no action alternative (D1a, i.e., one fish measuring 27 inches to less than 73 inches) and Alternative D1c (two fish measuring 47 inches to less than 73 inches and two fish measuring 27 inches to less than 73 inches). Alternative D1a was not preferred because it could unnecessarily restrict the amount of Angling category landings which could result in an underharvest of the quota and a negative economic impact. Alternative D1c was not preferred because it could result in an overharvest of the quota, with negative economic consequences.

Three other alternatives were considered that would provide different retention limits for the Angling category sectors. The first (D2a) would allow a private vessel daily retention limit of three fish (two measuring 47 inches to less than 73 inches and one measuring 27 inches to less than 47 inches) and a charter/headboat daily retention limit (per vessel) of five fish (three fish measuring 47 inches to less than 73 inches and two fish measuring 27 inches to less than 47 inches). The second alternative (D2b) would allow three fish (two measuring 47 inches to less than 73 inches and one measuring 27 inches to less than 47 inches) for each vessel per day/trip for the season, with an increase to five fish (three measuring 47 inches to less than 73 inches and two measuring 27 inches to less than 47 inches) per vessel for charter/headboats during June 15, 2007 through July 31, 2007, and the month of September 2007. The third alternative (D2c) would allow two fish (measuring 27 inches to less than 73 inches) less than 47 inches) for each vessel per day/trip for the season, with an increase to three fish (measuring 27 inches to less

than 73 inches) per vessel for charter/headboats during June 15, 2007 through July 31, 2007, and the month of September 2007. Alternatives D2a and D2b were considered to be potentially too liberal with a greater potential for exceeding the Angling category quota for 2007. Alternative D2c was considered to be unnecessarily restrictive with a greater potential for negative economic impacts associated with not harvesting the entire quota. In addition, the D2 subalternatives were not preferred since they could result in perceived inequities between the two sectors of the Angling category fishery.

The preferred alternative (D1b) was selected to balance the intent of landing the Angling category quota without overharvesting, providing sufficient retention limits to offset costs, reducing any perceived inequities between the charter/headboat and private recreational vessel sectors of the Angling category fishery, and providing economic benefits to all regional sectors of the fishery.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Management, Treaties.

Dated: March 30, 2007.

Samuel D. Rauch III

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.4, paragraph (j)(3) is revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(j) * * *

(3) A vessel owner issued an Atlantic tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 10 calendar days of the date of

issuance of the permit. After 10 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season, except during the period of January 1, 2008, through May 31, 2008, when one additional change is authorized.

* * * * *

3. In § 635.27, paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(6), (a)(7)(i), (a)(7)(ii), (a)(10)(iii), and (a)(10)(iv) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 1,165.1 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of the baseline annual U.S. BFT quota are: General - 47.1 percent (548.8 mt); Angling - 19.7 percent (229.5 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (45.4 mt); Purse Seine - 18.6 percent (216.7 mt); Longline - 8.1 percent (94.4 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.2 mt). The remaining 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) *General category quota.* * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3).

The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (548.8 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31 - 5.3 percent (29.1 mt);

(B) June 1 through August 31 - 50 percent (274.4 mt);

(C) September 1 through September 30 - 26.5 percent (145.4 mt);

(D) October 1 through November 30 - 13 percent (71.3 mt); and

(E) December 1 through December 31 - 5.2 percent (28.5 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (229.5 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (5.3 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 4 consecutive-year period (starting in 2007, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (51.2 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school BFT Angling category quota (45.8 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (55.6 mt) of the large school/small medium BFT Angling category quota

may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium BFT Angling category quota (49.6 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) An amount equal to 66.7 percent (3.5 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large medium and giant BFT Angling category quota (1.8 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (94.4 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00' N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23(f)(3).

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (216.7 mt) of the baseline annual U.S. BFT quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the Federal Register prior to July 1.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (45.4 mt) of the

baseline annual U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.2 mt) of the baseline annual U.S. BFT quota.

(7) * * *

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (22 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

(10) * * *

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4 consecutive-year period beginning in the 2007 fishing year does not exceed 10 percent by weight of the total annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, for that period.

(iv) NMFS may subtract the best available estimate of dead discards from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards.

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