

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 4, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 031028268-3268-01; I.D. 091603F]

RIN 0648-AR12

Atlantic Highly Migratory Species; Bluefin Tuna Season and Size Limit Adjustments

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) governing the Atlantic bluefin tuna (BFT) fishery regarding the opening date of the Purse seine category, closure dates of the Harpoon and General categories, and size tolerances of large medium BFT for the Purse seine and Harpoon categories. The intent of this proposed rule is to further achieve domestic management objectives under the HMS FMP and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before November 28, 2003. The public hearing dates are:

1. November 24, 2003, 7 p.m.-9 p.m., Atlantic Beach, NC.
2. November 25, 2003, 7 p.m.-9 p.m., Gloucester, MA.

ADDRESSES: Written comments on the proposed rule should be sent to Dianne Stephan, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr. Gloucester, MA 01930. Comments also may be sent via facsimile (fax) to (978) 281-9340. Comments will not be accepted if submitted via e-mail or the Internet.

The public hearing locations are:

1. Sheraton Atlantic Beach Oceanfront Hotel, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512.

2. Sawyer Free Library, 2 Dale Avenue, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT:

Dianne Stephan at (978) 281-9397.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the FEDERAL REGISTER (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. This action proposes to amend the current HMS regulations regarding quota category opening and closure dates for the Purse seine, Harpoon and General categories and size tolerances for large medium BFT, measuring 73 to less than 81 inches (185 to less than 206 cm), in the Harpoon and Purse seine categories. NMFS issues this proposed rule to solicit public comment on the merits and potential impacts of these changes to the HMS regulations, which are intended to further the objectives of the HMS FMP. After consideration of public comment, NMFS will publish a final rule in the **Federal Register**.

Several additional issues regarding the domestic management of BFT were discussed at length during the most recent HMS Advisory Panel (AP) meeting held in Silver Spring, MD, many of which are beyond the scope of this action and will be addressed through a future HMS FMP amendment. These issues may include, but are not limited to, adjustment of domestic BFT quota allocation percentages, adjustment of General category time-period subquotas, and addressing the BFT quota allocation aspects of the Petition for Rulemaking (Petition) submitted by the North Carolina Department of Marine Fisheries (see Notice of Receipt of Petition, 67 FR 69502, November 18, 2002). Because these issues require further analysis and public input, NMFS has announced its intent to address these additional issues

through an HMS FMP amendment (68 FR 40907, July 9, 2003).

Adjustment of the Purse Seine Category Start Date

The Purse seine category start date was originally designed to minimize potential gear conflicts between the purse seine fishery and the handgear fishery for BFT. During the early 1970's, the opening of the purse seine BFT season was determined by the Regional Director and fluctuated between September 1 and the day after Labor Day. Since the late 1970's, August 15 has been the official start date for the Purse seine category BFT fishery (44 FR 36049, June 20, 1979), while June 1 has been the start date of the handgear fisheries (i.e., General and Harpoon categories). August 15 was determined as an appropriate start date for the Purse seine category as the majority of BFT handgear landings took place early in the season (i.e., July through early August). However, over the past several years there has been a shift in the commercial handgear landings to the fall months, which results in a large portion of General category BFT being landed simultaneously with Purse seine category landings. This can potentially re-create the gear conflicts originally intended to be avoided by the August 15 Purse seine start date as well as cause market gluts of BFT being exported from the United States, thus depressing ex-vessel prices and revenues (\$13,948,190 and \$3,066,034, respectively for 2002) in these two categories.

Thus, NMFS proposes to adjust the start date of the Purse seine category BFT fishery to commence on July 15 of each fishing year. This proposed action would be consistent with the original intent behind the creation of the Purse seine category start date to minimize conflicts with other gear types and permit categories, as well as maximize economic yields from General and Purse seine category landings (i.e., avoid market gluts). This proposed action should have a positive economic impact to the BFT fishery as a whole, although the Harpoon category may experience a minor negative economic impact. This proposed action is not expected to have substantial ecological impacts because there would be no changes to the current mortality level of BFT or of any non-target species.

Establishment of a Harpoon Category End Date

On June 13, 1980, NMFS established the Harpoon category (45 FR 40118) with the intent to create a quota category in which harpoons were the only permissible gear type in order to

preserve a historical fishery that takes place in northern New England (i.e., Gulf of Maine). Until recently, all Harpoon category landings have occurred in traditional locations in New England prior to BFT migrating out of the Gulf of Maine. However, in recent years, the Harpoon category quota has not been fully harvested in New England, which has led to vessels in other geographic regions landing 1,043 pounds of BFT against the Harpoon category quota in 2002. This has raised several concerns including conflict with the original intent of the regulations for this fishery to be in the New England area, as well as administrative issues regarding potential mis-reporting and enforcement concerns regarding illegal activities. Over the last couple of years, the Harpoon category has remained open with quota available after the General category quota has been met. This has led some vessels that use rod and reel gear to obtain a Harpoon category permit and land BFT caught with rod and reel against the Harpoon category quota. Typically, these concerns have not been raised as the Harpoon category quota is harvested prior to BFT moving out of the New England area, thus there has been no reason to implement a Harpoon category season end date.

NMFS proposes to establish a Harpoon category season end date of November 15, which is near the time period when BFT migrate out of the New England area, for each fishing year regardless of whether the quota is harvested. The intent of this proposed action is to preserve the traditional Harpoon category fishery by restricting its geographic activity to the New England area and minimize any negative impacts by proposing action before an investment in a southern area Harpoon category fishery takes place. Any potential negative impacts to the northern area fishermen from a closure date and prior to attaining the entire quota maybe somewhat mitigated by an adjustment to the tolerance limit for large medium BFT, as discussed below.

The impacts associated with this proposed action should be negligible due to the lack of investment in outfitting vessels to participate in the Harpoon category and the limited number of BFT Harpoon landings that have occurred outside the traditional New England area in recent history. Since there had been no Harpoon category participation outside the New England area prior to 2002, there has been minimal investment in a true Harpoon category fishery. Finally, any minor potential negative impacts to vessel owners/operators that wish to

fish outside the traditional New England area and use a harpoon as a primary gear type may be mitigated because they would still be able to do so with a General category permit under General category retention limits and regulations.

Adjustment of General Category Closure Date

During the development of the HMS FMP, the emergence of a General category BFT fishery in the southern Atlantic region was extensively discussed by the HMS AP and the public. However, the HMS AP did not reach consensus on how the HMS FMP should address the scope of a southern area General category BFT fishery. Over the last couple of years, NMFS has performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the HMS FMP, which have allowed the General category BFT fishery to extend into the winter months (i.e., late November - December). In 2002, NMFS received the Petition to formalize this winter fishery and extend fishing opportunities for the General category into January. NMFS published a Notice of Receipt of Petition on November 18, 2002 (67 FR 69502).

In part, to address some of the concerns raised in the Petition, as well as to increase fishing opportunities and optimum yield for the fishery overall, NMFS proposes to extend the General category end date from December 31 to January 31. This would effectively alter the third time-period from October through December to October through January. The quota allocated to this time-period would remain 10 percent of the overall General category quota (minus the 10 mt New York Bight Set-aside).

This action could have negative economic impacts on those northern area fishermen who would have otherwise caught and sold fish earlier in the season, but would have positive economic impacts to southern area fishermen who would be able to fish later in the season. Negative impacts could be slightly mitigated if northern area fishermen are willing to travel south late in the season, provided there is reciprocity among the different state permitting regulations.

Adjustment of the BFT Size Tolerance Limits for the Purse Seine Category

Currently, vessels permitted in the Purse seine category may retain, possess, land, and sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on a particular trip, provided that the total amount of large medium

BFT landed does not exceed 10 percent, by weight, of the total BFT quota allocated to that vessel for that fishing year. This restriction is intended to focus the fishery on BFT that have likely spawned at least once, and provide some protection to the large medium BFT size class, which is generally considered to represent pre-spawning fish imminently available to contribute to recruitment in the western Atlantic BFT stock.

Over the last few years, the Purse seine category has not fully harvested its allocated quota. This can be attributed to a number of different reasons outside of the industry's or NMFS' control. In 2001, Purse seine category landings were steady until the September 11 terrorist attack. After September 11, spotter planes were unable to assist in locating schools of BFT for Purse seine category vessels due to a requirement by the Federal Aviation Administration to have all flights schedule a predetermined flight pattern prior to take-off. In 2002, Purse seine category vessels claimed there were large numbers of mixed schools of BFT, comprised of different size classes, and that it was difficult to locate schools consisting solely of giant BFT. Purse seine category vessels claimed they therefore did not set on these mixed schools to ensure they stayed within the regulations tolerance limits and to avoid the potential of increasing BFT dead discards. However as a result, they were not able to land the allocated quota. In 2003, a similar scenario to 2002 is occurring, although this year there also appears to be fewer giant BFT available in any school.

To address some of the concerns raised by the Purse seine category participants and to provide a balance between dead discard reduction and increased numbers of pre-spawning BFT landed, NMFS proposes to remove the large medium tolerance limit on a trip basis and increase the seasonal large medium BFT tolerance to 15 percent by weight of the total BFT quota allocated to that vessel. This proposed action is designed to maintain the focus of the fishery on BFT that have likely spawned at least once while still providing Purse seine category vessels opportunities to harvest their allocated BFT quota in its designated time frame, thus increasing optimum yield. NMFS currently has very little data on BFT discards associated with this segment of the BFT fishery and therefore proposes to implement a previously approved vessel logbook program to gather more data on this issue, particularly regarding impacts of Purse seine category activities on discards of undersized

BFT. In the future, if circumstances and/or the data warrant, observers may also be deployed as well.

Adjustment of the BFT Size Tolerance Limits for the Harpoon Category

In 1992, NMFS implemented a tolerance limit on the large medium BFT size class for the Harpoon category (57 FR 32905, July 24, 1992) and restricted vessels permitted in the Harpoon category to one large medium BFT per vessel per day. These vessels may land an unlimited number of giant BFT, so long as the Harpoon category quota is not exceeded. This action was taken to reduce the fishing mortality on large medium BFT, thus allowing for an increase in the spawning potential of the western Atlantic BFT stock, while allowing for the incidental take of large medium BFT to minimize regulatory discards and negative economic impacts. Over the last couple of years, however, the Harpoon category has not been fully harvested, which can be attributed to a number of reasons such as oceanographic conditions, weather patterns, and migratory patterns, all of which appear to have reduced the availability of giant BFT. Also, similar to members of the Purse seine category, operators of Harpoon category vessels claim large numbers of mixed schools of BFT are comprised of different size classes, and that it has been difficult to locate schools of giant BFT on the fishing grounds. Having the ability to visually determine the size class of BFT prior to throwing a harpoon is a vital characteristic of this fishing method which will to minimize mortality on undersized BFT and reduce dead discards.

This proposed action is intended to provide Harpoon category vessels a reasonable opportunity to harvest the allocated Harpoon category quota in its designated time frame by allowing vessels permitted in the Harpoon category to retain two large medium BFT per vessel per day. Again, NMFS currently has very little data on BFT discards associated with this segment of the BFT fishery and may implement a previously approved vessel logbook program in the future to assist in determining the impact of the regulations and tolerance limits on discards in this fishery.

The potential impacts associated with this proposed action could consist of positive economic impacts by providing Harpoon category vessels more opportunities to harvest their allocated BFT quota in its designated time frame, thus increasing optimum yield. In addition, the proposed action is expected to have positive economic and

biological impacts by facilitating Harpoon category vessels to retain, land, and sell more large medium BFT that would otherwise be discarded while maintaining the focus of the fishery on BFT that have likely spawned at least once.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and 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.

NMFS has prepared a regulatory impact review and an Initial Regulatory Flexibility Analysis (IRFA) that examine the impacts of the alternatives for adjusting the Purse seine category start date, establishing a Harpoon category end date, adjusting the General category end date, and adjusting the retention limit for large medium BFT in the Harpoon and Purse seine category fisheries on small entities. The purpose of this proposed action is to ensure the BFT fishery is managed consistently with the objectives of the HMS FMP and its implementing regulations, applicable statutes including the Magnuson-Stevens Act and ATCA, and the 1998 ICCAT Rebuilding Plan for western Atlantic BFT.

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. Specifically, these issues affect vessels in three permit categories, namely the Purse seine, Harpoon, and General categories. The gross revenues for 2002, and number of vessels to date for 2003 for each category are as follows: General category, \$13.9 million, 6,797 vessels; Purse Seine category, \$3.0 million, 5 vessels; and the Harpoon category, \$0.5 million, 59 vessels.

Three alternatives were analyzed for the adjustment of the Purse seine category start date, including the status quo/no action alternative of an August 15 start date, the preferred alternative of a July 15 start date, and the same start date as all other categories - June 1. These alternatives were evaluated to improve optimum yield and ex-vessel prices for the Purse seine and General categories while minimizing negative impacts to other commercial categories, specifically the Harpoon category. Because of the various factors that affect ex-vessel prices for BFT (i.e., supply, quality, etc.), the exact effect of different Purse seine category season start dates on ex-vessel prices is uncertain. NMFS

estimated these impacts by assuming that the amount of product on the market was the primary factor affecting ex-vessel prices. Under the no action alternative, both the General and Purse seine categories appear to be negatively affected by depressed ex-vessel prices which may result from a mid-season glut of BFT on the market. However, under this alternative the Harpoon category benefits with higher ex-vessel prices early in the season before the Purse seine category commences. Opening the Purse seine category on June 1 could shift Purse seine category landings to earlier in the year and result in positive impacts for the Purse seine and General categories by relieving the mid-season market glut and distributing landings more uniformly over the fishing year. However, the Harpoon category could suffer the most negative impacts under this alternative because of the overall net increase in early season landings resulting from the overlap with the Purse seine category fishery season. This overlap would occur during the time period when the Harpoon category traditionally experiences the best ex-vessel prices and on average annually lands the bulk (87%) of its product. The preferred alternative of a July 15 start date appears to minimize the negative impacts on the Harpoon category by reducing the amount of overlap with the Purse seine category season relative to Alternative three, while still reducing the mid-season market glut, which should positively impact Purse Seine and General category ex-vessel prices. Increase in overlap with the Harpoon category during the time period when the Harpoon category averages approximately 26 percent of its gross revenues annually would be reduced to 30 days. Due to the large amount of landings, gross revenues and numbers of participants attributed to the Purse seine and General category commercial BFT sectors, this alternative is expected to provide the greatest positive impacts to the BFT fishery as a whole, even though the smaller Harpoon category may experience slightly negative economic impacts. In addition, it should be noted that any negative impact to the Harpoon category from the preferred alternative could be partially mitigated by the preferred alternative for Issue 2, which would increase the tolerance limit for large medium BFT to two fish per day, in an effort to improve the ability of the Harpoon category to catch its annual quota.

Three alternatives were also considered for the Harpoon category end date. The status quo alternative

would maintain an open Harpoon category season year round, provided there is Harpoon category quota available. Alternative two would close the Harpoon category season on November 15, and alternative three would establish a flexible season end date based on the actual dates of the BFT Fall migration. Alternatives two and three were designed to maintain the Harpoon category quota for the traditional New England fishery and impact only the Harpoon category vessels. The status quo alternative is expected to result in negative impacts for the traditional northern Harpoon category fishery since BFT could be harvested under the Harpoon category quota in areas outside the New England area. In addition, the status quo may encourage the development of, and investment in, a southern area Harpoon category fishery, which has not yet occurred. The second, and preferred alternative, is expected to provide positive impacts for the traditional New England Harpoon category fishery since it would close the fishery near the time period when BFT would migrate out of the New England area. Negative impacts to southern area fishermen interested in participating in the Harpoon category fishery under alternatives two and three are expected to be negligible since there had been no BFT landings against the Harpoon category quota prior to 2002, few vessels have participated in the Harpoon category fishery in the south Atlantic since that time, and there has been little investment in gear and equipment in a Harpoon category fishery outside of the New England area. Finally, vessel owners/operators that fish outside the traditional New England area that wish to use a harpoon as a primary gear type would still be allowed to do so under the General category permit, albeit under General category retention limits and restrictions. The third alternative could also provide positive impacts to the traditional New England Harpoon category fishery since it would more closely track the BFT fall migration, and could eliminate the landing of any BFT under the Harpoon category quota outside of the area of the traditional fishery, but could be difficult to administer due to the difficulty in tracking the BFT migration.

The General category season is scheduled to end on December 31 of each fishing year or when the General category quota is harvested, whichever comes first. A winter fishery for large medium and giant BFT has existed in the south Atlantic since the early 1990s, and when quota is available, fish have been harvested under the General

category. Two alternatives were considered that both extended the General category season to provide southern Atlantic fishermen with more access to the General category BFT quota in the late fall and winter. Alternative two would move the General category end date to January 31 of each fishing year. Overall economic impacts of this alternative to the General category BFT fishery as a whole would be neutral since the same overall amount of the General category quota would be landed and the value of the General category quota would not be changed. However, General category fishermen in the northern region may experience negative economic and social impacts since any unharvested quota as of December 31 would have been rolled over to the following year under the status quo alternative. General category fishermen in the southern region would be positively affected by this alternative as it would allow utilization of existing investment in gear and equipment especially if quota was still available for harvest after December 31. Under Alternative three, extending the General category end date to May 31, overall impacts would again be neutral, but northern General category fishermen could be more negatively affected and southern region fishermen could be more positively affected, depending on the amount of quota that remains after the season would have usually been closed. Alternative two was chosen as the preferred alternative since it minimizes negative impacts to northern area fishermen by providing a more limited southern fishery extension and provides positive impacts for southern area fishermen by allowing further utilization of gear and equipment previously invested in a southern area large medium and giant BFT fishery. Negative impacts on northern area fishermen could be slightly mitigated if they are willing to travel south late in the season, provided there is reciprocity among different states' permitting costs, and out-of-state fishermen are allowed under a coastal state's regulations to participate in a BFT commercial fishery, regardless of whether it occurs in federal or state waters.

As discussed above, the Purse seine and Harpoon categories have recently experienced difficulties in landing the full annual quota provided for each of these categories with the result of decreased annual gross revenues. Each of the alternatives associated with this issue modify the tolerance limits for large medium BFT and are analyzed to determine the change in opportunities

to harvest the respective quotas in the designated time frames while balancing any ecological impacts of changed fishing mortality and potential dead discards. As NMFS currently has little information on discards for these categories, each preferred alternative for the Harpoon and Purse seine categories respectively includes implementation of a previously approved logbook program and the potential for an observer program.

The status quo alternative has had negative economic impacts with a resulting decrease in optimum yield on both the Purse seine and Harpoon categories since they have not been able to land and sell the full allotted quota. Alternatives two, three, and four, all related solely to the Purse seine category, were all designed to increase access to large medium BFT for the Purse Seine category and to increase the possibility of full quota attainment while balancing the need to control overall mortality and increased pressure on the large medium size class of BFT. Alternative two removes the 10% annual tolerance limit and maintains the 15 percent trip limit which could increase landings and gross revenue for the Purse seine category. Alternative three (preferred), which eliminates the trip limit and establishes the annual limit at 15 percent, would provide access to the same total amount of landings as Alternative two, but may also increase net revenues by increasing flexibility in meeting the annual tolerance limit. Alternative four could provide the greatest increase in access by decreasing the minimum size to 73 inches (185 cm) for the Purse Seine category; however, it was not chosen as the preferred alternative because of the associated potential negative ecological impact of a relatively large increase in overall BFT mortality with the large medium size class of BFT.

Alternatives five and six, related solely to the Harpoon category, were designed to increase access to large medium BFT for the Harpoon category and, similar to considerations with the Purse seine category, balance concerns regarding attainment of the quota allocation with an increase in mortality and negative ecological impacts. Alternative five would allow an increase in the daily retention limit for the Harpoon category from the status quo of one large medium BFT per day to two large medium BFT per day, and is preferred as it is expected to provide an acceptable balance between positive economic effects and a modest increase in mortality of large medium BFT due to a harpooner's ability to determine visually the size class of BFT prior to

throwing a harpoon. Alternative six would allow full access to the large medium size class by reducing the minimum size limit for the Harpoon category to 73 inches (185 cm), and would provide the most positive economic impacts. However, it was not chosen because of the potential negative ecological impact of a relatively large increase in mortality on large medium fish. Finally, alternative seven, unlike all other alternatives, would eliminate the tolerance for large medium size class and raise the minimum size of BFT to 81 inches (206 cm) in both the Purse seine and Harpoon categories. This alternative was considered due to the potential positive ecological impacts that would increase support of western Atlantic BFT stock rebuilding, but would likely have negative economic and social impacts and further impede full attainment of quota and optimum yield.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

This proposed rule does not contain any new collection of information, reporting, record keeping, or other compliance requirements. NMFS intends, under existing regulations, to implement a vessel logbook program for five Purse seine category vessels that has previously been approved under OMB collection 0648-0371. As stated earlier, NMFS is considering a vessel logbook program for the Harpoon category in the future but is not proposing to implement a Harpoon vessel logbook program at this time.

NMFS prepared a draft Environmental Assessment (EA) for this proposed rule, and the AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule were implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule, are available from NMFS (see ADDRESSES).

NMFS has also preliminarily determined that these proposed regulations are consistent with the Atlantic Tunas Convention Act as well as with any International Commission for the Conservation of Atlantic Tunas Recommendations.

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

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act (ESA). A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS is currently implementing the reasonable and prudent alternative required by the BiOp. This proposed rule would not have any additional impact on sea turtles as these actions do not affect the use of pelagic longline gear, would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this proposed action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

The area in which this proposed action is planned has been identified as an Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. Based on the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, which analyzed the impacts of purse seine, harpoon, and rod and reel gear on EFH, this action is not anticipated to have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: November 3, 2003.

William T. Hogarth,

*Assistant Administrator for Fisheries,
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 § 635.23, paragraphs (d) and (e)(1) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant BFT per day. An incidental catch of only two large medium BFT per vessel per day may be retained, possessed, or landed.

(e) * * *

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the total amount of giant BFT landed during that fishing year.

* * * * *

3. In § 635.27, paragraphs (a)(1)(i)(C), (a)(4)(i), and (a)(5) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through January 31—10 percent.

* * * * *

(a) * * *

(4) * * *

(i) *Purse Seine category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The directed purse seine fishery for BFT commences on July 15 of each year.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

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