

“Musculoskeletal & Connective Tissue Diseases” is corrected to read “Severe Musculoskeletal and Connective Tissue Diseases.”

#### Addendum B

1. On pages 3663 and 3664, in the fifth column, for the SSA State County Codes 11760 through 11980, correct the wage index values to follow the format of the table.

The 2006 MSA-Based WI should read as follows:

SSA State/county code	2006 MSA-based WI
11760	0.8166
11770	0.8166
11771	0.8166
11772	0.8166
11780	0.8560
11790	0.9793
11800	0.9855
11801	0.8166
11810	0.9793
11811	0.9277
11812	0.9793
11820	0.8166
11821	0.8166
11830	0.8166
11831	0.8166
11832	0.8166
11833	0.8166
11834	0.8166
11835	0.8166
11840	0.9808
11841	0.9793
11842	0.8166
11850	0.8166
11851	0.8166
11860	0.9793
11861	0.8166
11862	0.8166
11870	0.8166
11880	0.8166
11881	0.8166
11882	0.8166
11883	0.8166
11884	0.8166
11885	0.8166
11890	0.8166
11900	0.8166
11901	0.8166
11902	0.8166
11903	0.8166
11910	0.8166
11911	0.8166
11912	0.9277
11913	0.8166
11920	0.8166
11921	0.9088
11930	0.9793
11940	0.8166
11941	0.8166
11950	0.8166
11960	0.8166
11961	0.8166
11962	0.8166
11963	0.8166
11970	0.8166
11971	0.8166
11972	0.8166
11973	0.8166
11980	0.8166

2. On page 3702 in the footnote, remove the sentence “\*Transition wage index value should be used with the CBSA urban/rural designation for rate calculation purposes.”

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: February 17, 2006.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 060216041-6041-01; I.D. 020206C]

**RIN 0648-AT72**

#### 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 2006 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). NMFS will hold public hearings to receive comments on these proposed actions.

**DATES:** Written comments must be received on or before Tuesday, April 11, 2006.

The public hearings dates and locations are:

1. March 17, 2006, 3 p.m. to 5:30 p.m. in Gloucester, MA.
2. March 22, 2006, 6 p.m. to 8:30 p.m. in West Islip, NY.
3. March 24, 2006, 6:30 p.m. to 9 p.m., in Berlin MD.

4. March 27, 2006, 6 p.m. to 8:30 p.m., in Morehead City, NC.

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

- Email: [06BFTSPECS@noaa.gov](mailto:06BFTSPECS@noaa.gov).
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Dianne Stephan, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930.

- Fax: 978-281-9340.

Public hearing locations include:

1. March 17, 2006 - NMFS, One Blackburn Drive, Gloucester, MA 01930.

2. March 22, 2006 - West Islip Public Library, 3 Higbie Lane, West Islip, NY 11795.

3. March 24, 2006 - Worcester County Public Library, Ocean Pines Branch, 11107 Cathell Road, Berlin MD 21811.

4. March 27, 2006 - Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557.

Supporting documents including the environmental assessment, initial Regulatory Flexibility Act analysis, and regulatory impact review are available by sending your request to Dianne Stephan, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930; Fax: 978-281-9340.

**FOR FURTHER INFORMATION CONTACT:** Dianne Stephan at (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).

In November 2002, ICCAT recommended a Total Allowable Catch (TAC) of BFT for the United States in the western Atlantic management area of 1,489.6 metric tons (mt), effective beginning in 2003 and continuing in subsequent fishing years until revised by ICCAT. (ICCAT is scheduled to assess BFT stocks during 2006 which

could result in a subsequent re-evaluation of the quota). Also in the 2002 recommendation, ICCAT allocated 25 mt annually to account for incidental catch of BFT by pelagic longline fisheries directed on other species “in the vicinity of the management boundary area.” This area was defined in the 2003 BFT annual specification rulemaking process as the Northeast Distant statistical area (NED) (68 FR 56783, October 2, 2003). The TAC of 1,489.6 mt is inclusive of the annual 25 mt pelagic longline set-aside in the NED. The 2002 ICCAT recommendation also includes an annual eight percent tolerance limit calculated as a four-year average. The initial specifications within this proposed rule are published in accordance with the 1999 FMP and are necessary to implement the 2002 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 as set forth in the 1999 FMP by allocating the 2002 ICCAT-recommended quota for the 2006 fishing year (June 1, 2006 - May 31, 2007); (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 2006 fishing season.

After consideration of public comment, NMFS will issue a final rule setting the initial quota specifications and effort controls and publish them in the **Federal Register**, along with NMFS’s response to those comments. The specifications and effort controls may subsequently be adjusted during the course of the fishing year, consistent with the provisions of the 1999 FMP, and, as appropriate, would be published in the **Federal Register**.

A number of other issues regarding the domestic management of BFT have been discussed during recent years. For instance, adjustment of domestic quota allocation percentages and General category time-period subquotas were raised as issues in a Petition for Rulemaking submitted by the North Carolina Division of Marine Fisheries (see Notice of Receipt of Petition, 67 FR 69502, November 18, 2002). This issue was addressed in part in the final rule which extended the General category season from December 31 to January 31 (68 FR 74504, December 24, 2003). The issue is further addressed in the draft consolidated HMS FMP (70 FR 48804, August 19, 2005), which considers

several aspects of the changing BFT fishery and has proposed modifications to time period subquotas and authorized gear for use in BFT fisheries, among other things.

Other issues include the changing nature of BFT fisheries and BFT distribution. These issues are in part characterized by the growth of a late season General category fishery, increased numbers of recreational participants and fishing effort for smaller size BFT, and ongoing under-harvested quota for several commercial categories. ICCAT will be undertaking a stock assessment for BFT during the first half of 2006. The information provided by this stock assessment and international deliberations in fall 2006 will provide insight into management options to address the above issues which could result in future regulatory or FMP amendments.

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**).

#### **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 for fishing years beginning June 1, 1999, 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. The 2002 ICCAT-recommended U.S. BFT quota of 1,464.6 mt, not including the annual 25 mt set-aside for pelagic longline vessels, would be allocated in accordance with these percentages. However, in addition to the 2002 ICCAT quota recommendation, quota allocations are adjusted based on overharvest or underharvest from prior fishing year’s activity and on U.S. data on dead discards as they relate to the ICCAT dead discard allowance.

In addition, the 2002 ICCAT recommendation includes a provision designed to limit mortality of school BFT to an average of eight percent of overall quota allocation, calculated on a four-year basis. Estimates of recreational harvest showed that the eight percent tolerance limit had been exceeded in years one and two (2003 and 2004) of the 4-year balance period. In March 2005, NMFS consulted with the HMS Advisory Panel (AP) to identify alternatives for the 2005 school BFT fishery. Since NMFS was reviewing methodology for measuring BFT in the Large Pelagics Survey (LPS), which could result in a re-estimation and was expected to result in a decrease in previous school BFT harvest estimates, some members of the AP recommended that all of the available school quota be provided for the 2005 fishing year, even though such an approach could severely reduce the amount of quota available for the 2006 fishing year. Estimates of the 2005 school harvest show that landings are at, or near, the 4-year eight percent tolerance limit after only 3 years. The reviews of LPS methodologies have not yet been completed, thus no school subquota can be provided for the 2006 fishing year.

Each of these adjustments is discussed below and then applied to the results of the above percentage shares to determine the 2006 fishing year proposed initial quota specifications.

#### **The 2005 Underharvest/Overharvest**

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the following fishing year, provided that the total of the adjusted category quotas does not result in overharvest of the total annual BFT quota and remains consistent with all applicable ICCAT recommendations, including restrictions on landings of school BFT. Therefore, NMFS proposes to adjust the 2006 fishing year quota specifications for the BFT fishery to account for underharvest or overharvest in the 2005 fishing year.

Overall U.S. landings figures for the 2005 fishing year are still preliminary and may be updated before these 2006 fishing year specifications are finalized. Should adjustments to the final initial 2006 BFT quota specifications be required based on final 2005 BFT landing figures, NMFS will publish the adjustments in the **Federal Register**. For the 2005 fishing year, NMFS has preliminarily determined that General category landings were lower than the adjusted General category quota by

approximately 493.0 mt; that Harpoon category landings were less than the adjusted Harpoon category quota by approximately 66.9 mt; that Longline category landings were less than the adjusted Longline category quota by approximately 145.3 mt; that Angling category landing estimates were less than the adjusted Angling category quota by approximately 50.6 mt; that Trap category landings were less than the adjusted Trap category quota by 3.8 mt; and that Purse Seine category landings were less than the adjusted Purse Seine category quota by approximately 351.7 mt. Regulations at 50 CFR 635.27(a)(9)(i) require that Purse Seine category underharvests or overharvests be subtracted from or added to each individual vessel's quota allocation, as appropriate. 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 245.7 mt of Reserve remains from the 2005 fishing year. Since all categories experienced underharvests from the 2005 fishing year, these initial specifications will add the underharvest to the same quota category for the 2006 fishing year.

#### Dead Discards

As part of the BFT rebuilding program, ICCAT recommends an allowance for dead discards. The U.S. dead discard allowance is 68 mt. Dead discard estimates for 2005 are not yet available, so the estimate for the 2004 calendar year is used as a proxy to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2006. The 2004 calendar year preliminary estimate of U.S. dead discards, as reported per the longline discards calculated from logbook tallies, adjusted as warranted when observer counts in quarterly/geographic stratum exceeded logbook reports, totaled 71.8 mt. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are not collected, and thus, are not included in this calculation. As U.S. fishing activity is estimated to have resulted in more dead discards than its allowance, the ICCAT recommendation and U.S. regulations state that the United States must subtract the difference between the amount of dead discards and the allowance (i.e., 71.8 - 68.0 mt = 3.8 mt) from its total allowed landings for the following fishing year, from individual fishing categories, or from the Reserve category. NMFS proposes to subtract the 3.8 mt from each Longline category regional

subquota based on the percentage of total longline landings that occurred in each geographic region.

#### 2006 Proposed Initial Quota Specifications

In accordance with the 2002 ICCAT quota recommendation, the ICCAT recommendation regarding the dead discard allowance, the HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS proposes initial quota specifications for the 2006 fishing year as follows: General category – 1,182.8 mt; Harpoon category – 124.0 mt; Purse Seine category – 624.1 mt; Angling category – 339.2 mt; Longline category – 285.1 mt; and Trap category – 5.3 mt. Additionally, 282.3 mt would be allocated to the Reserve category for inseason adjustments, including potentially providing for a late season General category fishery, or allocated to cover scientific research collection and potential overharvest in any category except the Purse Seine category.

As discussed above, under the ICCAT 2002 recommendation regarding school landings, these specifications do not provide for a school fishery during the 2006 fishing year to be consistent with the ICCAT recommendation and FMP. Based on the above proposed initial specifications and considerations regarding the school fishery, the Angling category quota of 339.2 mt would be further subdivided as follows: School BFT – 5.7 mt, with 0.0 mt to the northern area (north of 39E18' N. latitude), 0.0 mt to the southern area (south of 39E18' N. latitude), plus 5.7 mt held in reserve; large school/small medium BFT – 325.8 mt, with 153.8 mt to the northern area and 172.0 mt to the southern area; and large medium/giant BFT – 7.7 mt, with 2.5 mt to the northern area and 5.2 mt to the southern area.

The 2002 ICCAT recommendation includes an annual 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the vicinity of the management area boundary and referred to as the NED hereafter. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance with the North/South allocation percentages mentioned below. Thus, the proposed Longline category quota of 285.1 mt would be subdivided as follows: 82.3 mt to pelagic longline vessels landing BFT north of 31E N. latitude and 123.2 mt to pelagic longline vessels landing BFT south of 31E N. latitude, and 79.6 mt (54.6 mt from 2005 + 25.0 mt for 2006)

to account for bycatch of BFT related to directed pelagic longline fisheries in the NED. The bycatch allocation by ICCAT for pelagic longline vessels in the NED would be allocated to a special subcategory of the Longline north category. Accounting for landings under this additional quota would be maintained separately from other landings under the Longline north subcategory. Finally, regulations regarding BFT target catch requirements for pelagic longline vessels within the NED do not apply until the landings equal the available set-aside quota (50 C.F.R. 635.23(f)(3)) of 25 mt. After the available quota has been landed, target catch requirements at 50 C.F.R. 635.23(f)(1) will then apply.

#### 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 1999 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 1999 FMP divide the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-January. These percentages would be applied to the adjusted 2006 coastwide quota for the General category of 1,182.8 mt, minus 10.0 mt reserved for the New York Bight set-aside fishery. Therefore, of the available 1172.8 mt coastwide quota, 709.7 mt would be available in the period beginning June 1 and ending August 31, 2006; 344.8 mt would be available in the period beginning September 1 and ending September 30, 2006; and 118.3 mt would be available in the period beginning October 1, 2006, and ending January 31, 2007.

In addition to time-period subquotas, NMFS also has implemented 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 2006 fishing year, NMFS proposes a series of solid blocks of RFDs to extend the General category for as long as possible through the October through January time-period.

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 18, 2006, through January 31, 2007, and November 23, 2006, and December 25, 2006, inclusive, while the fishery is open. These proposed RFDs would improve distribution of fishing opportunities during the late season without increasing BFT mortality.

Finally, NMFS proposes to adjust the General category retention limit to three BFT (73 inches (185.4 centimeters (cm)) or greater per vessel per day/trip). This retention limit would go into effect on the effective date of the final rule and would remain in place until the end of the first General category subperiod on August 31, 2006, or until adjusted before that with an inseason action, if necessary. Although NMFS usually adjusts retention limits with an inseason action, the adjustment is included in this proposed rule to provide an opportunity for public comment. NMFS may consider further retention limit adjustments after August 31, 2006.

#### Angling Category Effort Controls

NMFS proposes to adjust Angling category retention limits to three BFT (47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per vessel per day/trip. Although NMFS usually adjusts Angling category retention limits with an inseason action, the adjustment is included in this proposed rule to provide an opportunity for public comment. NMFS is especially interested in comments on how to minimize the impacts of the retention prohibition of school size class BFT (27 inches (68.6 cm) to less than 47 inches (119.4 cm)), particularly in those regions which extensively fish for school size BFT.

#### 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.

The purpose of this proposed action is to: (1) implement the 2002 ICCAT recommendation regarding the BFT quota, by proposing 2006 specifications for the BFT fishery that allocates the quota among domestic fishing categories, including 25 mt of BFT quota to the Longline category and the four-year eight percent tolerance limit on landings of school BFT, (2) implement General category effort controls, and (3)

implement Angling category effort controls.

NMFS has prepared this IRFA to analyze the impacts on small entities of the alternatives for establishing 2006 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 2006 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2002 ICCAT recommendation increased the BFT quota allocation to 1,489.6 mt, to be distributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP. 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. Both these quota modifications were established in the 2003, 2004 and 2005 specifications.

In 2005, the annual gross revenues from the commercial BFT fishery were approximately \$3.4 million. There are approximately 8,511 vessels that are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2005 gross revenues are General (\$2.2 million), Harpoon (\$218,017), Purse seine (\$906,946), and Longline (\$163,665). The analysis for the IRFA approximates that each vessel within a category will have similar catch and gross revenues to show 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. This is considered 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 (i.e., number of trips expended that led to the successful trip and the associated cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. So 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 analyzed a no action alternative and alternative two (preferred alternative) which would implement the 2002 ICCAT recommendation. NMFS considered a third alternative that would have allocated the 2002 ICCAT recommendation in a manner other than that designated in the 1999 FMP that was meant to address issues regarding the changing nature of the BFT fisheries, including providing specific set-asides and allocations for fishing groups which are not currently considered in the 1999 FMP. However, since the third alternative could have resulted in a defacto sub-period quota reallocation, an FMP amendment would be necessary for its implementation, and it was not further analyzed. In a concurrent rulemaking, changes to BFT subquota allocations, among other things, have been proposed in the consolidated HMS FMP (70 FR 48804, August 19, 2005).

As noted above, alternative two would implement the 2002 ICCAT recommendation in accordance with the 1999 FMP and consistent with the ATCA in the same way it was implemented in 2003–2005. Under the ATCA, the United States is obligated to implement ICCAT-approved quota recommendations. The preferred alternative would apply this quota and have positive impacts for fishermen. The no action alternative would keep the quota at pre–2002 ICCAT recommendation levels (i.e. 77.6 mt less) and would not be consistent with the purpose and need for this action and the 1999 FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002 or recent prior years, but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT recommendation and as mandated by the ATCA.

The preferred alternative would also implement the provision of the 2002 ICCAT recommendation that limits tolerance for school BFT landings to eight percent of the domestic quota, calculated on a four-year average. Because of high landings in the previous 3 years, resulting in near full utilization of the 4-year tolerance limit, a prohibition on school landings is proposed. The prohibition could have negative economic impacts to fishermen

who fish for school BFT, particularly those who rely exclusively on the school size class for BFT harvest. In some regions, access to large school and small medium BFT will mitigate these impacts. In areas where school size BFT are primarily available, fishermen may be able to shift their efforts to other pelagic species (e.g. striped bass or bluefish) to mitigate impacts. The degree to which shifting effort for either of these user groups would mitigate negative economic impacts is unknown.

Two alternatives were considered for effort control using restricted fishing days 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 1999 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 three fish retention limit (73 inches (185.4 cm) or above) is the preferred alternative for the opening retention limit for the General category, which would be in effect through August 31, 2006. 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 73 inches (185.4 cm) or above per vessel per day/trip) and a retention limit of two BFT (73 inches (185.4 cm) or above per vessel per day/trip). Both these alternatives are expected to be too restrictive given the large amount of quota available for the General category during the 2006 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 assure that the increased retention limit does not contribute to an oversupply.

Six alternatives were considered for Angling category retention limits for the 2006 fishing year. The no action alternative was rejected since it would allow landing of school size class BFT, which is contrary to the 1999 FMP, 2002 ICCAT recommendation and the ATCA, given the status of school landings over the first 3 years of the 4-year balance period. The preferred alternative is a three BFT (from 47 inches (119.4 cm) to less than 73 inches (185.4 cm) per vessel per day/trip) retention limit for all sectors of the Angling category for the entire 2006 fishing year.

In addition to the preferred alternative, two other alternatives were considered that would provide the same retention limits for both private recreational and charter/headboats. One alternative (one BFT from 47 inches (119.4 cm) to less than 73 inches (185.4 cm) per vessel per day/trip) 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. The other alternative

would allow one BFT per person up to a maximum of six per vessel (from 47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per day/trip and is the alternative most likely to result in an overharvest of the quota with negative economic consequences.

Two other alternatives were considered which provided differential retention limits between the Angling category sectors, all for BFT from 47 inches (119.4 cm) to less than 73 inches (185.4 cm). The first would provide a private vessel retention limit of two fish per vessel per day/trip and a charter/headboat limit of one fish per person with a maximum of six per vessel per day/trip. The second alternative would provide one fish for each vessel per day/trip for the season, with an increase to three fish per vessel for charter/headboats during June 15, 2006 through July 31, 2006 and the month of September 2006. The second alternative was considered to be unnecessarily restrictive with a greater potential for negative economic impacts associated with not harvesting the entire quota. The first alternative was not preferred since it could result in perceived inequities between the two sectors of the Angling category fishery.

The preferred alternative would provide a three-fish (47 inches to less than 73 inches) retention limit for both charter/headboats and private recreational vessels for the entire season. The preferred alternative 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.

None of the proposed alternatives in this document would result in additional reporting, recordkeeping, compliance, or monitoring requirements for the public. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

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 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. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries, which are the primary gears for directed BFT harvest, may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative (RPA) required by this BiOp.

Subsequently, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NMFS

published an advance notice of proposed rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp.

The measures proposed in this action are not expected to have adverse impacts on protected species, or have any further impacts on protected species than those considered in the 2001 and 2004 BiOps. The 2002 ICCAT recommendation increased the BFT quota slightly (77.6 mt), which may have resulted in a slight increase in effort in BFT fisheries after its initial implementation in 2003. NMFS does not expect that this slight increase has altered fishing patterns or effort compared to pre-2003 levels because the amount of additional quota is so small that it would likely not have been an incentive for other fishermen to join the open access BFT fisheries, or for either open or limited access BFT fishermen to substantially increase fishing effort. The options to control effort in the General and Angling categories are not expected to adversely

impact protected species or have any further impacts on protected species than those previously analyzed, since they would not result in a change in fishing patterns or an increase in effort, in part because they are designed to moderate fishing effort without such changes. In addition, these measures are within the limits of effort controls allowed under the HMS regulations at 50 CFR 635.23 which were covered by the previous BiOps. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. Since BFT are only allowed to be retained incidentally in this fishery, the additional quota would not provide an incentive to target BFT, or modify fishing behavior or expand fishing effort. Thus, overall, the proposed action would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

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

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