

Square Building, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 200 A/B, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 27, 2005, at 8:30 a.m. to identify preliminary issues concerning the 2005-06 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: November 27, 2004.

Paul R. Schmidt,

Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 041203341-4341-01; I.D. 072304B]

RIN 0648-AR86

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications, General Category Effort Controls, and Catch-and-Release Provision

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes initial 2004 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 General category effort controls. NMFS also proposes to establish a catch-and-release provision for recreational and

commercial BFT handgear vessels during a respective quota category closure. 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 January 6, 2005.

The public hearings dates are:

1. December 27, 2004, from 2 p.m. to 4 p.m. in Silver Spring, MD.
2. December 28, 2004, from 3 p.m. to 4:30 p.m. in Gloucester, MA.

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

- Email: 04BFTSPECS@noaa.gov.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

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

- Fax: 978-281-9340.

The public hearing locations are:

1. NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.
2. NOAA/NMFS Northeast Region Downstairs Conference Room, 1 Blackburn Drive Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brad McHale at (978) 281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. 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 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 (HMS FMP) that were adopted and made available to the public in April 1999.

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. 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 initial specifications within this proposed rule are published in accordance with the HMS FMP and are necessary to implement the 2002 ICCAT quota recommendation, as required by 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 HMS FMP by allocating the 2002 ICCAT-recommended quota for the 2004 fishing year (June 1, 2004 - May 31, 2005); (2) establish the General category effort controls, including time-period subquotas and restricted fishing days (RFDs), for the 2004 fishing season; and (3) establish a catch-and-release provision for recreational and commercial handgear vessels once their respective quota categories have been closed.

After consideration of public comment, NMFS will issue final initial quota specifications and effort controls and publish them in the **Federal Register**, along with NMFS' 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 HMS FMP, and will be published in the **Federal Register**.

NMFS acknowledges that a number of other issues regarding the domestic management of BFT have been discussed over the prior year, including a Petition for Rulemaking, at the 2003 HMS Advisory Panel (AP) meeting held in Silver Spring, MD and at public scoping hearings relating to Amendment 2 of the HMS FMP. Some of these issues have been addressed in separate rulemakings. For instance, at the end of 2003, a final rule was published (68 FR 74504, December 24, 2003) that (1) extended the General category season from December 31 to January 31, (2) established a Harpoon category end date of November 15 (or when the quota is

reached, whichever comes first), (3) adjusted the Harpoon category tolerance limits for large medium BFT, and (4) adjusted the Purse seine category opening date and large medium BFT tolerance limits. Some additional issues may be addressed in Amendment 2 to the HMS FMP or in other future rulemaking. These issues may include, but are not limited to, adjustment of domestic quota allocation percentages and General category time-period subquotas and addressing concerns raised in the Petition for Rulemaking submitted by the North Carolina Department of Marine Fisheries (see Notice of Receipt of Petition, 67 FR 69502, November 18, 2002).

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 three 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 HMS 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 HMS 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. Each of these adjustments is discussed below and then applied to the results of the above percentage shares to determine the 2004 fishing year proposed initial quota specifications.

The 2003 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 2004 fishing year quota specifications for the BFT fishery to account for underharvest or overharvest in the 2003 fishing year, which in turn were adjusted due to revised information on 2002 fishing year underharvests and overharvests.

Overall U.S. landings figures for the 2002 and 2003 fishing years are still preliminary and may be updated before the 2004 fishing year specifications are finalized. Should adjustments to the final initial 2004 BFT quota specifications be required based on final 2002 and/or 2003 BFT landing figures, NMFS will publish the adjustments in the **Federal Register**. For the 2003 fishing year, NMFS has preliminarily determined that General category landings were higher than the adjusted General category quota by approximately 30.8 mt; that Harpoon category landings were less than the adjusted Harpoon category quota by approximately 24.3 mt; that Longline category landings were less than the adjusted Longline category quota by approximately 27.6 mt; that 2003 Angling category landing estimates, inclusive of revised 2002 fishing year Angling category landing estimates, were in excess of the adjusted Angling category quota by approximately 440.7 mt; and that Purse seine category landings were less than the adjusted Purse seine category quota by approximately 117.0 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 209.8 mt of Reserve remains from the 2003 fishing year. This remaining Reserve quota will be used to partially address the Angling category overharvest. For categories with under or overharvests from the 2003 fishing year, these initial specifications will

subtract the overharvest from, or add the underharvest to, that quota category for the 2004 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. The estimate for the 2003 calendar year was used as a proxy to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2004. The 2003 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 52.4 mt. 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. As U.S. fishing activity is estimated to have resulted in fewer dead discards than its allowance, the ICCAT recommendation and U.S. regulations state that the United States may add one half of the difference between the amount of dead discards and the allowance (i.e., $68.0 \text{ mt} - 52.4 \text{ mt} = 15.6 \text{ mt}$, $15.6 \text{ mt} / 2 = 7.8 \text{ mt}$) to its total allowed landings for the following fishing year, to individual fishing categories, or to the Reserve category. NMFS proposes to allocate the 7.8 mt to the Reserve category quota to assist in covering potential overharvests from the previous fishing years.

The 2002 calendar year preliminary dead discard estimate, as reported in pelagic longline vessel logbooks and published in 2003 Final Initial Quota Specifications (68 FR 56783, October 2, 2003), totaled 38.0 mt. This preliminary estimate has been revised using the longline discards calculated from logbook tallies, adjusted as warranted when observer counts in stratum exceeded logbook reports. The revised 2002 calendar year dead discard estimate is 41.6 mt.

2004 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 2004 fishing year as follows: General category – 659.0 mt; Harpoon category – 81.4 mt; Purse Seine category – 389.4 mt; Angling category – 65.5 mt; Longline category –

171.2 mt; and Trap category – 2.3 mt. Additionally, 36.6 mt would be allocated to the Reserve category for inseason adjustments, including 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.

Based on the above proposed initial specifications, the Angling category quota of 65.5 mt would be further subdivided as follows: School BFT 21.0 mt, with 8.1 mt to the northern area (north of 39°18' N. latitude), 9.1 mt to the southern area (south of 39°18' N. latitude), plus 3.8 mt held in reserve; large school/small medium BFT – 42.7 mt, with 20.2 mt to the northern area and 22.5 mt to the southern area; and large medium/giant BFT – 1.8 mt, with 0.6 mt to the northern area and 1.2 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 to the North/South allocation percentages mentioned below. Thus, the proposed Longline category quota of 171.2 mt would be subdivided as follows: 58.2 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 63.8 mt to pelagic longline vessels landing BFT south of 31° N. latitude, and 49.2 mt (24.2 mt from 2003 + 25.0 mt for 2004) 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 the Longline north subcategory. 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 quota (§ 635.23(f)(3)). After the available quota has been landed target catch requirements at § 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 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 HMS 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 2004 coastwide quota for the General category of 659.0 mt, minus 10.0 mt reserved for the New York Bight set aside fishery. Therefore, of the available 649.0 mt coastwide quota, 389.4 mt would be available in the period beginning June 1 and ending August 31, 2004; 194.7 mt would be available in the period beginning September 1 and ending September 30, 2004; and 64.9 mt would be available in the period beginning October 1, 2004 and ending January 31, 2005.

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 2004 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 Fridays, Saturdays, and Sundays through January 31, 2005, inclusive, while the fishery is open. These proposed RFDs would improve distribution of fishing opportunities without increasing BFT mortality.

Catch-and-Release Provision

Prior to 1998, ICCAT designated quotas for BFT harvested in the western Atlantic management area as “scientific monitoring quotas.” Under this designation, after a quota category had closed, NMFS required vessels fishing for BFT to tag-and-release all BFT as a means to collect further scientific monitoring data. In 1998, ICCAT established a rebuilding plan for western Atlantic BFT and no longer referred to BFT quotas as “scientific monitoring quotas.”

Currently, permitted recreational and commercial BFT handgear vessel owner/operators are required to tag-and-release all BFT that are caught after their

respective quota categories have been closed. Therefore, vessel owner/operators are also required to obtain, possess and utilize an approved tagging kit onboard their vessel while engaged in directed BFT fishing after a closure has taken place.

Over the last few years, NMFS has received comments from the public that vessel owner/operators are not comfortable in tagging-and-releasing BFT due to a combination of their inexperience, and concerns regarding unintentional injury and mortality of a BFT. NMFS also has concerns that the current regulations may lead to unnecessary post-release mortality associated with anglers, who are inexperienced with proper tagging techniques and may improperly place the tag on the BFT, unintentionally killing or injuring the fish. Other commenters have stated that, on occasion, substantial time delays can be experienced in obtaining an approved tagging kit, thus limiting their ability to go fishing for BFT.

Therefore, NMFS proposes to allow vessels participating in the BFT recreational and commercial handgear fisheries to practice catch-and-release after a quota category has been closed. This proposal would also allow vessel owner/operators to tag-and-release BFT, but would not require them to do so.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (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 2004 specifications for the BFT fishery that allocates the quota among domestic fishing categories, including 25 mt of BFT quota to the Longline category, (2) implement General category effort controls, and (3) implement a catch-and-release provision for recreational and commercial BFT handgear vessels.

NMFS has prepared a RIR and an IRFA that examine the impacts of the selected alternatives discussed previously in this rulemaking. 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. For the quota allocation alternatives, NMFS has estimated the

average impact of the alternatives 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. This increase, in comparison to pre-2002 levels, includes 77.6 mt to be redistributed to the domestic fishing categories based on the allocation percentages established in the HMS FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed pelagic longline fisheries in the NED. In 2003, preliminary annual gross revenues from the commercial BFT fishery were approximately \$11.5 million. There are approximately 10,914 vessels that are permitted to land and sell BFT under four BFT quota categories. The four quota categories and their preliminary 2003 gross revenues are General (\$7,476,461), Harpoon (\$772,810), Purse Seine (\$2,546,236), and Incidental Longline (\$635,498). Note that all dollars have been converted to 1996 dollars using the Consumer Price Index Conversion Factors for comparison purposes. The analysis for the IRFA assumes that all category vessels have similar catch and gross revenues. While this assumption may not be entirely valid, the analyses are sufficient to show the relative impact of the various preferred alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, three alternatives were considered: no action, a preferred alternative that would allocate the ICCAT-recommended quota to domestic categories in accordance with the 2002 ICCAT recommendation and the HMS FMP, and a slight variation of the preferred alternative, that includes a 25-mt limit on the amount of quota that can accumulate from year-to-year within the pelagic longline quota set-aside in the NED.

The no action alternative would not be consistent with the purpose and need for this action, ATCA, and the HMS FMP. It would maintain U.S. BFT quota levels at a scale and distribution similar to the 2002 fishing year and would deny fishermen additional fishing opportunities as recommended by the ICCAT, an estimated \$1,000,000 in potential, additional gross revenues. The 2002 ICCAT quota recommendation specified a 1,489.6 mt total quota for the United States, a 102.6 mt increase from pre-2002 quota levels. Under ATCA, the United States is obligated to implement ICCAT-approved recommendations. The preferred alternative would increase the overall quota by 77.6 mt resulting in an approximate increase in gross revenues of \$750,000, and would also create a set-aside quota of 25 mt to account for

incidental harvest of BFT in the NED by pelagic longline vessels, resulting in a potential increase in gross revenues of \$250,000. Unharvested quota from this set aside would be allowed to roll from one fishing year to the next. The preferred alternative is expected to have positive economic impacts for fishermen, because of the modest increase in quota. Under the slight variation of the preferred alternative, the annual specification process would limit the NED set-aside to 25 mt and would not take into account any unharvested set-aside quota from the prior fishing year. Unharvested quota would not be rolled over from the previous fishing year, nor would it be transferred or allocated to other domestic fishing categories. This alternative is also expected to have overall positive economic impacts for fishermen due to the increase in gross revenues associated with the 77.6 mt quota increase.

For the General category effort controls, two alternatives were considered: The preferred alternative to designate RFDs according to a schedule published in the initial BFT specifications and the no action alternative (no RFDs published with the initial specifications, but implemented during the season as needed). In the past, when catch rates have been high, series of solid blocks of RFDs, the preferred alternative, has had positive economic consequences by avoiding market gluts and extending the season as late as possible. Implementing RFDs to assist a late season fishery would have positive economic impacts to those south Atlantic fishermen, but could have potentially negative economic impacts to those northern area fishermen who would have otherwise caught and sold fish earlier in the season. However, these adverse impacts would be slightly mitigated if northern area fishermen are willing to travel south late in the season. Overall, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen and access to the fishery over a greater range of the fish migration.

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 HMS FMP to implement RFDs during the season should catch rates increase. This alternative is based on a season of low catch rates and would have positive economic consequences if slow catch rates were to persist. Overall, the season would regulate itself and fishermen

could choose when to fish or not based on their own preferences. However, even with low catch rates and no RFDs, it is unlikely that there will be enough quota in the General category to sustain a late season commercial handgear fishery off south Atlantic states especially now that the General category is extended through January. Thus, if the 2004 season should be similar to the 2003 fishery, there may be negative economic impacts to fishermen in southern states unless inseason management actions (similar to those in 2003, i.e., inseason transfers) are taken to directly address these concerns and potential impacts.

For the catch-and-release provision, NMFS considered three alternatives: No action (maintain the tag-and-release requirement once a handgear quota category has been closed), disallow all fishing for BFT once a handgear quota category has been closed, and the preferred alternative to allow vessels to catch-and-release BFT once a handgear quota category has been closed.

Although NMFS believes that recreational HMS fisheries have a large influence on the economies of coastal communities, even when vessels are engaged in tag-and-release or catch-and-release fishing, NMFS has little current information on the costs and expenditures of anglers or the businesses that rely on them. Based on conversations with representatives of the handgear sectors of the BFT fishery, NMFS has assessed that the no action alternative would have slightly negative economic impacts. This assessment is attributed to vessel owner/operators, who are not comfortable tagging BFT, or those owner/operators who are unable to obtain a tagging kit in a timely fashion, not taking trips to pursue BFT. The second alternative would have even greater negative economic impacts by prohibiting vessels from taking trips targeting BFT after a quota is attained. The preferred alternative would have positive economic impacts on those associated with the BFT handgear fishery. This alternative, would positively impact numerous economic aspects of the BFT handgear fishery due to the willingness of more vessel owner/operators to actively take trips targeting BFT after a closure has taken place. This alternative would also allow for the tagging of BFT, but would not require owner/operators to do so.

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.

NMFS prepared a draft 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 via the Federal e-Rulemaking Portal (see ADDRESSES).

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

This proposed rule contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

On September 7, 2000, NOAA Fisheries 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 NOAA Fisheries jurisdiction. NOAA Fisheries has implemented the reasonable and prudent alternatives required by this BiOp. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NOAA Fisheries jurisdiction. NOAA Fisheries has implemented the reasonable and prudent alternative (RPA) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, 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, NOAA Fisheries 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. NOAA Fisheries is implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NOAA Fisheries 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. NOAA Fisheries will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The majority of the measures that will be implemented by this current rule are not expected to have adverse impacts. However, the 2002 ICCAT recommendation increased the BFT quota which may result in a slight increase in effort which could potentially increase the number of protected species interactions. Due to current restrictions on the BFT fishery and more specifically the pelagic longline fishery, NOAA Fisheries does not expect this slight increase in effort to alter current fishing patterns.

The area in which this proposed action is planned has been identified as 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. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

NMFS has determined that the list of actions in this proposed rule are consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). The proposed rule establishing quota

specifications and effort controls will be submitted to the responsible state agencies for their review under section 307 of the CZMA.

List of Subjects in 50 CFR Part 635

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

Dated: December 6, 2004.

Rebecca J. Lent,

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 § 635.23, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the **Federal Register** for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the **Federal Register** for publication, except that previously designated RFDs may be waived effective upon closure of

the General category fishery so that persons aboard vessels permitted in the General category may conduct catch-and-release or tag-and-release fishing for BFT under § 635.26.

* * * * *

3. In § 635.26, paragraph (a)(1) is revised to read as follows:

§ 635.26 Catch and release.

(a) * * *

(1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a catch-and-release or tag-and-release program. When fishing under a tag-and-release program, vessel owner/operators should use tags issued or approved by

NMFS. If a BFT is tagged, the tag information, including information on any previously applied tag remaining on the fish, must be reported to NMFS. All BFT caught under the catch-and-release or tag-and-release programs must be returned to the sea immediately with a minimum of injury.

* * * * *

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BILLING CODE 3510-22-S