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### Background and Purpose

On August 20, 2008, The Coast Guard published an NPRM entitled "Passenger Weight and Inspected Vessel Stability Requirements" (73 FR 49244). During the NPRM's original comment period, which ended November 18, 2008, members of the public requested that the Coast Guard add to the docket a study cited in support of certain stability findings that resulted in proposed changes to 46 CFR 171 in the NPRM.

The 12-page study, entitled the "Pontoon Vessel Passenger Crowding Stability Criteria Study," was added to the docket on October 30, 2008 (document number USCG-2007-0030-0139.1). Following the addition of the study, members of the public stated that they did not have sufficient time to review and comment on this study before the close of the comment period. On December 8, 2008, the Coast Guard reopened the comment period for 60 days to afford the public additional time to comment (73 FR 74426).

During the reopened comment period the Coast Guard became aware that an appendix to the study, that had not been previously released, would assist the public in understanding the Pontoon Vessel Passenger Crowding Stability Criteria Study. We added this information, entitled "Pontoon Vessel Passenger Crowding Stability Criteria Study, Appendix 1" to the docket on February 09, 2009 (document number USCG-2007-0030-0204.1). In order to ensure the public has sufficient time to utilize the information in the appendix we will reopen the comment period, which closed February 6, 2009, for 30 additional days. The comment period

will close on March 20, 2009. Additionally, you are reminded that you may comment on any aspect of the rulemaking, including on any comments placed in the docket. We may change the proposed rules in response to the comments received.

Dated: February 10, 2009.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. E9-3155 Filed 2-17-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 080728943-9153-01]

RIN 0648-AX12

#### Atlantic Highly Migratory Species; 2009 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 2009 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 (daily retention limits) for the General and Angling categories. 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 solicits written comments and will hold public hearings to receive oral comments on these proposed actions.

**DATES:** Written comments must be received on or before March 20, 2009.

The public hearing dates are:

1. March 4, 2009, 3 p.m. to 5 p.m., Gloucester, MA.
2. March 17, 2009, 4 p.m. to 6 p.m., Silver Spring, MD.

**ADDRESSES:** You may submit comments, identified by "0648-AX12", by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal <http://www.regulations.gov>

• Fax: 978-281-9340, Attn: Sarah McLaughlin

• Mail: Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Dr., Gloucester, MA 01930

Instructions: All comments received are a part of the public record and will generally be posted to Portal <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "n/a" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The hearing locations are:

1. Gloucester -- NMFS, 55 Great Republic Drive, Gloucester, MA 01930.
2. Silver Spring -- NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

Supporting documents including the 2009 draft Environmental Assessment, Initial Regulatory Flexibility Analysis, and Regulatory Impact Review are available by sending your request to Sarah McLaughlin at the mailing address specified above.

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

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and 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 October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

The 2009 annual specifications are necessary to implement the 2008 ICCAT quota recommendation (ICCAT Recommendation 08–04), as required by ATCA, and to achieve domestic management objectives under the Magnuson–Stevens Act. The proposed rule would establish quota specifications consistent with the ICCAT Western Atlantic BFT rebuilding program by adjusting the 2008 ICCAT–recommended U.S. quota as necessary for the 2009 fishing year (January–December 2009), and establish General category and Angling category effort controls (daily retention limits) for the 2009 fishing season.

Overall U.S. landings figures for the 2008 fishing year are still preliminary and may be updated before these 2009 fishing year specifications are finalized. The specifications and effort controls may subsequently be adjusted during the course of the fishing year, consistent with the provisions of the Consolidated HMS FMP, and, as appropriate, would be published in the **Federal Register**.

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

#### *2008 ICCAT Recommendation, BFT Underharvests, and Transfers to Other ICCAT Contracting Parties*

At its 2008 meeting, ICCAT recommended a reduction in the western Atlantic BFT Total Allowable Catch (TAC), from 2,100 mt to 1,900 mt for 2009 and 1,800 mt for 2010 (including dead discards). These TACs are intended to allow for rebuilding of BFT in the western Atlantic through 2018, i.e., rebuild the stock by 2019, and to end overfishing by 2010. From these initial TACs, the following allocations are made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 95 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and, for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED), 15 mt for Canada and 25 mt for the United States. The U.S. share of the adjusted TAC following the adjustments described above is 57.48 percent, or

1,009.9 mt for 2009; this is the baseline annual U.S. BFT quota. Accounting for the 25–mt NED allocation, the total U.S. quota is 1,034.9 mt for 2009. The previous (2006) ICCAT recommendation for a western Atlantic BFT TAC of 2,100 mt (ICCAT Recommendation 06–06) included a total U.S. quota of 1,190.12 mt (1,165.12 mt and 25 mt for the NED), which was effective from 2007 through the end of the 2008 fishing year, i.e., December 31, 2008.

The 2008 ICCAT recommendation also includes provisions to: (1) limit carryover of underharvest to no more than 50 percent of a contracting party's initial quota; (2) limit mortality of BFT measuring less than 115 cm (45 inches) to an average of 10 percent of the initial quota over the 2009–2010 fishing periods (a change from previous recommendations that provided a 4-year period to balance the 10–percent tolerance); and (3) allow a contracting party with a TAC allocation (i.e., an ICCAT BFT quota) to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations. NMFS manages the second provision by limiting quota available for the retention of school BFT (measuring 27 inches (68.6 cm) to less than 47 inches (119.4 cm)) to no more than 10 percent of the total U.S. quota and may adjust a subsequent year's school BFT subquota as needed to be consistent with the ICCAT recommendation. Regarding the third provision, the ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a contracting party that receives a one-time quota transfer may not retransfer that quota. For the United States, the 15–percent limit on quota transfer equals 155.2 mt. Consistent with 50 CFR 635.27(a)(8), NMFS would consider several factors in deciding whether or not the United States would enter into an arrangement with another ICCAT contracting party, including, but not limited to, the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants, potential ecological impacts, and the contracting party's ICCAT compliance status. Should NMFS consider a transfer of U.S. quota to another ICCAT contracting party, NMFS would publish a separate action in the **Federal Register**, which would provide detail of

the transaction considered, including information regarding the factors above.

Initial landings estimates for the 2008 fishing year (as of January 13, 2009) per category are as follows: General category — 230 mt; Harpoon category — 22 mt; Longline category — 82 mt; Angling category — 436 mt; Trap category — 2 mt; and Purse Seine category — 0 mt. These preliminary landings estimates, totaling 772 mt, indicate that the total 2008 underharvest is 705. However, the ICCAT recommendation limits the amount the United States may carry over for 2009 to 50 percent of the 2009 Total U.S. BFT quota, which equals 517.5 mt.

#### *Domestic Allocations and Quotas*

The 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years. The baseline percentage quota shares established in the 1999 FMP and continued in the Consolidated HMS FMP, i.e., effective since June 1, 1999, 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 proposed 2009 fishing year specifications would allocate the 2008 ICCAT–recommended quota for the 2009 fishing year among these established domestic fishing categories and would allocate 25 mt for bycatch related to directed longline fisheries in the NED.

As described further below, these specifications also would apply 517.5 mt of the underharvest of BFT quota from the 2008 fishing year to the 2009 fishing year, consistent with the ICCAT–recommended 50–percent cap on quota carryover, and distribute that underharvest to: (1) Ensure that the Longline category has sufficient quota to operate during the 2009 fishing year while also accounting for BFT discards; (2) set 15 percent of the 2009 U.S. quota in reserve for potential transfer to other ICCAT Contracting Parties, if warranted; and (3) provide the non–Longline quota categories a share of the remainder of the underharvest consistent with the Consolidated HMS FMP BFT quota allocation scheme.

The United States must report BFT dead discard estimates to ICCAT annually and accounts for this mortality

as part of the specification calculation process. To be consistent with U.S. reports to the ICCAT Standing Committee on Research and Statistics for stock assessment purposes, NMFS reports dead discards as the estimate generated via extrapolation of pelagic longline vessel logbook tallies by pooled observer data, as warranted. Since dead discard estimates for 2008 are not yet available, the NMFS estimate of 90 mt for 2007 is used as a proxy. Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and consistent with the BFT quota regulations at § 635.27(a), NMFS would subtract the 90 mt of estimated dead discards from the amount of quota available for the Longline category for the 2009 fishing year. The best available information indicates that pelagic longline landings and dead discards for 2007 totaled 164.3 mt. The baseline longline category quota is 81.8 mt. Therefore, NMFS proposes to use 82.5 mt of BFT underharvest to cover the anticipated pelagic longline fishery landings during the 2009 fishing year. Making available additional landings quota in this manner likely will allow the fishery to operate for the entire fishing year and avoid discards that could result if the BFT Longline category fishery were closed due to the quota being filled while longline vessels are still fishing for other species.

Additionally, NMFS proposes to place 155.2 mt (i.e., 15 percent of 1,034.9 mt) of 2008 underharvest in the Reserve category for transfer to other ICCAT contracting parties, if warranted, and for other domestic management objectives. NMFS proposes to distribute the remainder of the quota carryover (363 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with the FMP allocations.

### 2009 Quota Specifications

In accordance with the 2008 ICCAT recommendation (Recommendation 08–04), the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS proposes quotas for the 2009 fishing year as follows: General category — 623.1 mt; Harpoon category — 51.6 mt; Purse Seine category — 246.0 mt; Angling category — 260.6 mt; Longline category — 74.3 mt; and Trap category — 1.3 mt. A total of 180.4 mt (155.2 plus the baseline quota of 25.2 mt) would be allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers.

Adjustments to these 2009 quotas and subquotas will be made, if necessary based on revised 2008 landings information, in the final rule.

The proposed General category quota of 623.1 mt would be divided per the time period allocations established in the Consolidated FMP, i.e., 33.0 mt (5.3 percent) for the period beginning January 1, 2009, and ending January 31, 2009; 311.5 mt (50 percent) would be available in the period beginning June 1, 2009, and ending August 31, 2009; 165.1 mt (26.5 percent) would be available in the period beginning September 1, 2009, and ending September 30, 2009; 81.0 mt (13 percent) would be available in the period beginning October 1, 2009, and ending November 30, 2009; and 32.4 mt (5.2 percent) would be available in the period beginning December 1, 2009, and ending December 31, 2009.

The Angling category quota of 260.6 mt would be further subdivided as follows: School BFT — 103.5 mt, with 39.8 mt to the northern area (north of 39°18' N. latitude), 44.5 mt to the southern area (south of 39°18' N. latitude), plus 19.1 mt held in reserve; large school/small medium BFT — 151.1 mt, with 71.3 mt to the northern area and 79.8 mt to the southern area; and large medium/giant BFT — 6.0 mt, with 2 mt to the northern area and 4 mt to the southern area.

The Longline category would be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude). Thus, the proposed Longline category quota of 74.3 mt would be subdivided as follows: 29.7 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 44.6 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS would account for landings under the 25–mt NED allocation separately from other Longline category landings.

### General Category Effort Controls

On December 18, 2008, NMFS set the January 2009 General category BFT daily retention limit at two BFT per vessel, via an inseason action (73 FR 76972). This retention limit was selected following review of dealer reports, daily landing trends, the winter fishery performance over the last several years, the availability of BFT on the fishing grounds, and the relatively small January General category baseline subquota. The General category fishery closed on January 31, 2009, and will reopen June 1, 2009.

NMFS proposes to increase the General category daily retention limit to three BFT (73 inches (185.4 cm) or

greater per vessel) for the June–August subperiod. This action is intended to allow increased opportunities to harvest the General category quota during the period when catch rates have been slow and to avoid accumulation of unused quota. This retention limit would be effective from June 1, 2009, through August 31, 2009, unless later adjusted with an inseason action, if necessary. NMFS may consider further daily retention limit adjustments after August 31, 2009, depending on several factors, including but not limited to catch rates and availability of quota.

Regardless of the duration of a fishing trip, the daily retention limit applies. For example, whether a vessel that is fishing under the General category limit takes a two-day trip or makes two trips in one day, the limit of three fish overall applies and may not be exceeded.

### Angling Category Effort Controls

NMFS proposes to maintain the default Angling category daily retention limit of one school, large school, or small medium BFT (i.e., one fish measuring 27 inches to less than 73 inches (185.4 cm)) per vessel.

Prior to 2007, recreational BFT fishing activity was largely focused on fishing opportunities for school BFT (27 to less than 47 inches). However, recreational BFT fishing data and dockside observations from 2007 forward indicate a recent shift in catch to the large school/small medium size class (47 to less than 73 inches), particularly to large school BFT [(47 to less than 59 inches (149.9 cm)]. In the last two fishing years, availability and landings of the recreational size classes (27 to less than 73 inches) has been high, and the 2007 and 2008 Angling category quotas are estimated to have been exceeded. It has become apparent to NMFS that the availability of recreational size fish is limited to a narrow size range or cohort that NMFS estimates to have been approximately age 4 in 2007 and age 5 in 2008. The majority of these fish in 2008 were in the large school size range. However, in 2009, NMFS anticipates these BFT will be approximately age 6 and will enter the small medium size class (59 to less than 73 inches). NMFS manages the recreational BFT quota by size class, so as this cohort of fish ages and grows in weight but remains under 73 inches, NMFS expects the large school/small medium subquota to be attained with fewer fish landed.

NMFS considered the results of the 2007 and 2008 fishing seasons under the various limits when selecting the proposed 2009 Angling category daily retention limit. In addition, NMFS considered the observed trend in the

recreational fishery toward heavier fish, particularly in the large school and small medium size classes. Under a daily retention limit of one school BFT and two large school/small medium BFT in 2007, total Angling category landings were nearly double the adjusted Angling category quota, largely due to the landings of large school/small medium BFT. For the 2008 fishing year, NMFS lowered the daily retention limit to one school BFT and one large school/small medium BFT. Despite these lower retention limits, preliminary 2008 estimates indicate that the total Angling category quota was again exceeded (by approximately 30 percent), and although the school BFT landings fell well below the subquota in 2008, the landings of large school/small medium BFT were approximately two times the associated quota.

NMFS considered three daily retention limit alternatives that would be as restrictive, or more restrictive, than the 2008 daily retention limits in order to ensure that the Angling category quota is not again exceeded. Because of the reduced ICCAT-recommended BFT TAC and the resulting reduced U.S. quota, all domestic quotas are decreased from the 2008 level. In order to constrain landings to the proposed adjusted Angling category quota (260.6 mt), NMFS must implement conservative daily retention limits in 2009. This is particularly important given the new ICCAT-recommended 2-year balancing period for limiting the harvest of school BFT and given that complete information regarding coastwide recreational BFT landings is not available until the end of the calendar year. NMFS manages BFT subquotas so that they are not exceeded both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding. Given that the proposed Angling category daily retention limit will expire on December 31, 2009, NMFS will consider the results of the 2009 fishing year, i.e., available landings information and the daily retention limits implemented for the 2009 recreational fishery, when selecting the proposed 2010 Angling category daily retention limits or preparing future recreational inseason actions.

The proposed rule would provide the same daily retention limit for both private and charter/headboat vessels. Given the limited amount of Angling category quota available and the likely availability of larger fish to recreational

anglers, assigning higher daily retention limits to charter/headboats would risk overharvest of the Angling category quota and subquotas.

Regardless of the duration of a fishing trip, the daily retention limit applies. For example, whether a vessel that is fishing under the Angling category limit takes a two-day trip or makes two trips in one day, the limit of one fish overall applies and may not be exceeded.

NMFS specifically requests public comment on one of the alternatives to the proposed action, which would establish a daily retention limit, for both the charter/headboat and the private sectors of the fishery, of one school BFT (27 to less than 47 inches) per vessel for the entire 2009 fishing year and, additionally, one large school/small medium BFT (47 to less than 73 inches) per vessel for specific date ranges. For example, NMFS could manage the Angling category using the North/South line (39°18' N. latitude, currently used in dividing the Angling category quota) so that the fishery is open in the southern area for the early summer and for the northern area in the late summer/fall. This approach was used in managing the school BFT fisheries in 2006. This alternative is intended to allow anglers the opportunity to retain a large school/small medium BFT during part or parts of the 2009 fishing season while reducing the risk of overharvest of the large school/small medium BFT adjusted subquota. NMFS seeks specific suggestions regarding appropriate periods during the 2009 fishing season for retention of the additional one large school/small medium BFT.

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS has prepared an IRFA to analyze the impacts on small entities of the alternatives for establishing 2009 fishing year BFT quotas for all domestic fishing categories and General and Angling category effort controls. 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 2009 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2008 ICCAT recommendation reduced the U.S. BFT quota to 1,034.9 mt. This quota allocation includes 25 mt to account for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the adjusted (baseline) quota of 1,009.9 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2008, the annual gross revenues from the commercial BFT fishery were approximately \$5.0 million. Approximately 9,871 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2008 gross revenues are General (\$4.0 million), Harpoon (\$313,781), Purse Seine (\$0), and Longline (\$722,016). The IRFA assumes that each vessel within a category will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. NMFS considers this a reasonable approach for BFT fisheries. More specifically, available landings data (weight and ex-vessel value of the fish in price/pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. NMFS cannot determine whether net revenue varies among individual fishery participants within each category, and therefore whether the economic impact of a regulation would have a varying impact among individual participants. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

For the allocation of BFT quota among domestic fishing categories, NMFS considered three alternatives: A no action alternative (Alternative 1); Alternative A2 (the preferred alternative), which would implement the U.S. quota under the 2008 ICCAT recommendation and consistent with the Consolidated HMS FMP; and Alternative A3, which would implement the U.S. quota under the 2008 ICCAT recommendation in a manner other than that designated in the Consolidated HMS FMP and which would address issues regarding the changing nature of the BFT fisheries since the Consolidated HMS FMP was written (e.g., allocate additional quota to certain categories and/or certain geographic regions). Alternative A3 would result in a reallocation of quota among categories, and an FMP amendment would be necessary for its implementation. Per the Consolidated HMS FMP, NMFS prepares quota specifications annually for the upcoming fishing year. Preparation of an FMP amendment would not be possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2008, and the start of the 2009 fishing year on January 1, 2009. Therefore, analysis of the impacts of Alternative A3 is not practicable. If an FMP amendment were feasible prior to the 2009 fishing year, positive economic impacts would be expected to result on average for vessels in permit categories that would receive a greater share than currently established in the Consolidated HMS FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than currently established in the Consolidated HMS FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to fishery participants.

The no action alternative (A1) would keep the quota at pre-2008 ICCAT recommendation levels (approximately 155 mt more) and would not be consistent with the purpose and need for this action and the Consolidated HMS FMP because it would ignore the recommendation of ICCAT, which NMFS must implement pursuant to ATCA. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2008 or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery, in the short term.

As noted above, the preferred alternative (Alternative A2) would

implement the 2008 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations. Alternative A2 would have slightly positive socio-economic impacts for fishermen. The preferred alternative also would implement the provision of the 2008 ICCAT recommendation that limits tolerance for school BFT landings to 10 percent of the total U.S. BFT quota, calculated on a two-year average, over 2009 and 2010. This is expected to have neutral impacts on fishermen who fish for school BFT, particularly those who rely exclusively on the school size class for BFT harvest, as NMFS has successfully managed the school BFT fishery since the 2006 recommendation so as to not exceed the school BFT tolerance on an annual basis.

A daily retention limit of three BFT (measuring 73 inches or greater per vessel) is the preferred alternative (Alternative B3) for the opening retention limit for the General category, which would be in effect from June 1 through August 31, 2009. 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 (Alternative B1, the current default daily retention limit of one BFT measuring 73 inches or greater per vessel) and Alternative B2, a daily retention limit of two BFT (73 inches or greater per vessel). Both of these alternatives would not provide adequate fishing opportunities given the large amount of adjusted quota available for the General category during the 2009 fishing year and could result in the negative economic impact of lower gross revenues. Although early season landings seldom occur at a rate that could oversupply the market, NMFS will monitor landings closely to ensure that the increased daily retention limit does not contribute to an oversupply.

Three alternatives were considered for Angling category daily retention limits for the 2009 fishing year. The preferred/no action alternative (Alternative C1) is a daily retention limit of one fish measuring 27 inches to less than 73 inches) per vessel for all sectors of the Angling category for the entire 2009 fishing year. The other alternative that would provide a constant daily retention limit is Alternative C2 (one fish measuring 27 inches to less than 47 inches and one fish measuring 47 inches to less than 73 inches per vessel). This

is not the preferred alternative as it could result in overharvest of the quota, based on the results of the 2008 season and the apparent trend in increasing fish weight in the large school/small medium BFT size range. Alternative C3 (one fish measuring 27 inches to less than 47 inches and, for certain periods, one fish measuring 47 inches to less than 73 inches per vessel) would be designed to constrain large school/small medium BFT landings to the available subquota and would be more restrictive with regard to retention of this size class than Alternative C2. However, this is not the preferred alternative as it may not be effective in constraining the recreational landings to the adjusted large school/small medium BFT subquota and may not provide consistent and equitable fishing opportunities to all users. The proposed action (Alternative C1) was selected to balance the intent of filling the Angling category quota without overharvesting and providing economic benefits to all regional sectors of the fishery. NMFS seeks specific suggestions regarding Alternative C3, i.e., the appropriate periods during the 2009 fishing season for retention of the additional one large school/small medium BFT.

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

### Public Hearings

The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281-9279, at least 7 days prior to the meeting.

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

### List of Subjects in 50 CFR Part 635

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

Dated: February 12, 2009.

**James W. Balsiger**

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

**§ 635.27 Quotas.**

(a) *BFT*. Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 1,009.9 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of the baseline annual U.S. BFT quota are: General – 47.1 percent (475.7 mt); Angling – 19.7 percent (199.0 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon – 3.9 percent (39.4 mt); Purse Seine – 18.6 percent (187.8 mt); Longline – 8.1 percent (81.8 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap – 0.1 percent (1.0 mt). The remaining 2.5 percent (25.2 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) \* \* \*

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (475.7 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31 – 5.3 percent (25.2 mt);

(B) June 1 through August 31 – 50 percent (237.8 mt);

(C) September 1 through September 30 – 26.5 percent (126.1 mt);

(D) October 1 through November 30 – 13 percent (61.8 mt); and

(E) December 1 through December 31 – 5.2 percent (24.7 mt).

\* \* \* \* \*

(2) *Angling category quota*. In accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (199.0 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (4.6 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 2-consecutive-year period (starting in 2009, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (44.5 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school BFT Angling category quota (39.8 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (48 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium BFT Angling category quota (42.9 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) An amount equal to 66.7 percent (3.1 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large medium and giant BFT Angling category quota (1.5 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(3) *Longline category quota*. The total amount of large medium and giant BFT

that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (81.8 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent (49.1 mt) of the Longline category quota may be allocated for landing in the area south of 31°00' N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23(f)(3).

(4) \* \* \*

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (187.8 mt) of the baseline annual U.S. BFT quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the Federal Register prior to July 1.

\* \* \* \* \*

(5) *Harpoon category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (39.4 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

(6) *Trap category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.0 mt) of the baseline annual U.S. BFT quota.

(7) \* \* \*

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (25.2 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (19.1 mt) of the total school BFT Angling category quota as described

under paragraph (a)(2) of this section. This is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for

inseason or annual adjustments to the Angling category.

\* \* \* \* \*

(10) \* \* \*  
(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 2-consecutive-year period

beginning in the 2009 fishing year does not exceed 10 percent by weight of the total annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, for that period.

\* \* \* \* \*

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