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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 970401075-7075-01; I.D.
121296A]

RIN 0648-AJ69

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Quota Specifications

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

ACTION: Proposed quota specifications; public hearings; request for comments.

SUMMARY: NMFS issues proposed specifications to set Atlantic bluefin tuna (ABT) fishing category quotas for the 1997 fishing year. The proposed specifications are necessary to implement the 1996 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding fishing quotas for bluefin tuna, as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed specifications.

DATES: Comments are invited and must be received on or before May 16, 1997. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Comments on the proposed specifications should be sent to, and copies of supporting documents, including a Draft Environmental Assessment-Regulatory Impact Review (EA/RIR), are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347, or Mark Murray-Brown, 508-281-9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed

under the authority of ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the recommendations of ICCAT. The authority to carry out ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Based on a revised stock assessment, parties at the 1996 meeting of ICCAT adopted a recommendation to increase the annual scientific monitoring quota of ABT in the western Atlantic Ocean from 2,200 metric tons (mt) to 2,354 mt. The share allocated to the United States was increased from 1306 mt to 1,344 mt and applies each year for the 1997 and 1998 fishing years. These proposed specifications would implement that quota recommendation and allocate the total among the several established fishing categories. While the ICCAT recommendation refers to adjustments to the 1998 quotas based on underharvest or overharvest in 1997, there is no provision for such adjustments from the 1996 fishing year. Therefore, these proposed specifications for 1997 which appear as an attachment to this document do not include any adjustments relative to landings in 1996.

Relation to Proposed Consolidation

A proposed rule to consolidate all the Atlantic highly migratory species regulations was published by NMFS on November 6, 1996, in the **Federal Register** at 61 FR 57361. That proposed rule would significantly reorganize and condense regulatory text regarding the Atlantic tuna fisheries. In particular, regulations governing the Atlantic tuna fisheries, currently found at 50 CFR part 285, were proposed to be combined with other regulations governing highly migratory species under 50 CFR part 630. The quotas contained in these proposed specifications have been written to be consistent with the previously proposed consolidation.

Additionally, under the consolidation, regulatory text regarding annual quotas for ABT was proposed to be eliminated and replaced by annual quota specifications to be published in the **Federal Register**. Under the proposed new procedures, NMFS would issue proposed quota specifications and applicable supporting analyses (EA/RIR, Initial Regulatory Flexibility Analysis (IRFA)), provide for a public comment period, and issue final quota specifications. These proposed ABT quota specifications for 1997 are drafted in a format to enable the public to place these changes in the context of the proposed consolidated regulations

under part 630. Copies of the proposed consolidation rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

Relation to Advance Notice of Proposed Rulemaking (ANPR)

These proposed specifications address in part comments submitted to NMFS in response to an ANPR (61 FR 48876, September 17, 1996). In the ANPR, NMFS requested comment on measures necessary to implement quota modifications and/or any other management recommendations for Atlantic tunas following the 1996 meeting of ICCAT. As stated in the ANPR, NMFS is required under ATCA to establish ABT quotas consistent with the recommendations of ICCAT. Under this legislative requirement, allocation of the U.S. ABT quota has been designed to collect the scientific information necessary to monitor the status of the ABT resource and, consistent with this, to achieve an equitable distribution of fishing opportunities to all fishing categories and all geographic areas.

The ANPR established a 30-day comment period during which NMFS received numerous comments on quota allocations. NMFS received 141 comments that the amount of quota allocated to the handgear categories should be increased substantially, given recent estimates of bluefin biomass. Some commenters requested that NMFS substantially reduce, and ultimately eliminate, the Purse Seine quota. A few individuals commented that the Charter/Headboat and Angling category quotas should reflect the economic benefits of those recreational fisheries.

In addition to comments submitted in response to the ANPR, NMFS has received a petition for rulemaking regarding Atlantic bluefin tuna quotas. The petitioner requested that NMFS reallocate the domestic quota in a manner that reduces the Purse Seine category quota to the proportion established prior to the 1983 reallocation and increases the combined quotas of the General and Angling categories by the same amount. NMFS requests comment on the merits and impacts of this petition for rulemaking. Copies of the petition are available from NMFS (see **ADDRESSES**).

Proposed Fishing Category Quotas

In the 1992 final rule (57 FR 32905, July 24, 1992), NMFS established quotas for the various commercial and recreational categories in the ABT fishery, based upon the historical share of catch in each of these categories

during the period 1983 through 1991 (see table). These base quotas were modified in 1995 by an increase of 76 mt to the overall U.S. quota at ICCAT and by reducing the Purse Seine category quota to 250 mt. Both the overall quota increase and the purse seine transfer were added to the Reserve, resulting in a total Reserve of 145 mt. The 1995 adjusted base quotas have been used as a reference point for the 1997 quota specifications proposed here.

The total 1997 quota allocated by ICCAT to the United States is 1,344 mt, a 33 mt increase over 1996. NMFS proposes to modify quotas by gear category and the Reserve to achieve a geographic and temporal distribution of fishing effort and catch that reflects the scientific monitoring nature of the quota. While NMFS has attempted to allocate the U.S. quota consistent with maintaining the traditional user groups and taking into account recent trends in fishing fleet activity, these socio-economic concerns are secondary to the collection of scientific data for the purposes of stock assessment.

The proposed specifications would set the Reserve at 33 mt, would maintain the Purse Seine category quota at 250 mt, would maintain the Incidental quota at 110 mt, would increase the General category quota from 531 mt to 633 mt, would maintain the Harpoon category quota at 53 mt, and would increase the Angling category quota from 222 mt to 265 mt.

Reserve Category

The Reserve category was established to ensure that the annual U.S. quota allocated by ICCAT is not exceeded. Since there is a lag time in reporting catches and landings of ABT in all commercial and recreational fishing categories, there is some uncertainty in real-time harvest estimates. In addition, some reasonable advance notice of closure is required, and weather conditions can affect the level of fishing effort prior to the announced closing date. All these factors lead to uncertainty in forecasting fishery closures, thus allocations from the Reserve are made to cover potential overharvest or to allow fishing to continue in a category for the collection of scientific data.

The 33 mt increase from ICCAT for calendar year 1997 would be placed in the Reserve. Given the existing measures for quota monitoring of all categories and the additional measures that will be implemented in 1997 for Angling category quota monitoring, it is not necessary to maintain as much tonnage in the Reserve as had been

established in 1995 (145 mt). NMFS plans to implement a FAX/OCR system for commercial dealer reporting and has proposed direct reporting by recreational anglers (62 FR 9726, March 4, 1997). Additionally, NMFS has proposed changes to the Atlantic Tunas Permit Program that should improve information collection through dockside and telephone surveys. Consequently, NMFS believes that a 33 mt Reserve is adequate to ensure that the overall quota is not exceeded.

Purse Seine Category

The Purse Seine category has been managed as a limited entry fishery of five vessels since 1982. Each vessel is annually allocated an equal share of the category quota, which may be harvested or traded to another authorized purse seine vessel. In contrast to the handgear fisheries, the Purse Seine category is the only ABT fishing category that has not been subject to increased participation and premature closure in recent years.

NMFS has received numerous comments that the limited entry Purse Seine category is allocated an inordinate share of the national quota and that the allocation restricts fishing opportunities for other fishermen. Many individuals have requested that the purse seine quota be reduced and redistributed to the handgear fisheries. In recent years, NMFS has reallocated some of the purse seine quota to try to collect scientific information, particularly catch-per-unit effort, over the broadest geographic and temporal range as possible.

NMFS is specifically seeking comment on the issue of reallocation of the purse seine quota. Further, NMFS has decided that reallocation issues warrant further consideration by the Atlantic Tunas Advisory Panel (AP) to be created as required under the Magnuson-Stevens Fishery Conservation and Management Act. The AP, required by law to be of balanced representation, would consider comments submitted under these proposed specifications and will discuss reallocation schemes and provide additional opportunities for public comment. For this reason, NMFS proposes to utilize the AP for further discussion and recommendations to the agency, and proposes no immediate change to the Purse Seine category quota.

General and Angling Categories

Participation in the General and Angling categories has increased markedly in recent years and has resulted in early closures for these categories. Because of the reliance on the large fish and small fish catch-per-

unit-effort (CPUE) indices for stock assessment, the General and Angling category fisheries should be kept open as long as possible to achieve high survey sampling rates over the widest possible geographic area and temporal range.

Also, in response to recommendations from the National Research Council, NMFS has increased scientific sampling of ABT, working with outside organizations in conducting genetic studies, microconstituent analysis, sexual maturity determination, tagging studies, and age and growth studies.

Given the need to improve data collection, NMFS proposes to reallocate the 145 mt that had been in the 1995 Reserve to the Angling and General categories in proportion to the 1995 base quotas established for the two categories. In 1995, a total of 753 mt was allocated to the two categories: 222 mt (29.5 percent) for Angling and 531 mt (70.5 percent) for General. Allocating the 145 mt on the basis of these proportions would increase the Angling category by 43 mt and the General category by 102 mt.

The proposed increase in allocation to the Angling category would be used partially to cover harvest that has occurred during the collection of additional scientific information on the winter fishery in North Carolina. Approximately 150 archival tags have been surgically implanted in bluefin tuna in order to gather data to address movement as part of the exchange rate between the east and west Atlantic populations. ICCAT has stated in the 1996 session of the Commission that large numbers of archival tagged fish would be necessary to resolve the mixing question relative to the Mediterranean and Gulf of Mexico spawning stocks.

Additional Angling category quota is also needed to account for collection of data relating to the use of circle hooks and discard mortality and the use of conventional tags to assess maturation rates for ABT of all sizes throughout their geographic range. The concentration of bluefin tuna in the Cape Hatteras area and the high catch rate makes this an ideal location for these scientific programs.

The winter ABT fishery, while predominantly a catch-and-release fishery for giant fish, also resulted in considerable harvest of small medium fish in 1996 and 1997. While NMFS recognizes the value of scientific data collection from this uniquely high catch rate fishery, restrictive management measures are needed to ensure that scientific data collection and fishing opportunities in northern areas are not

adversely impacted. For these reasons, NMFS lowered the landing allowance for the winter fishery to one per vessel per day and issued a final rule (62 FR 8634, February 26, 1997) to allow for interim closures of the Angling category while the ABT migrate to other areas. Apart from these measures, however, additional allocation is needed because the summer and fall ABT fisheries have traditionally harvested the full amount allocated.

Under the ABT stock recovery program, ICCAT has recommended that the United States limit catch of school bluefin tuna to 8 percent of the national quota. NMFS proposes the maximum permissible tonnage under the 8 percent ICCAT limit (108 mt) to allow for increased biological sampling of school bluefin. A large number of muscle, heart, otolith, and vertebrae samples are needed to continue with genetic and microconstituent analyses. These biological materials are to be obtained through dockside sampling of angler catches during the summertime recreational fishery. Broad-based sampling of young fish will help resolve important issues relative to stock structure and spawning site fidelity.

NMFS also proposes to increase the Angling category trophy class (large medium and giant ABT) from 3 mt to 6 mt. Most of the fish implanted with archival tags are in these size classes. Increasing fishing opportunities in the trophy class and establishing northern and southern area subquotas should improve chances for archival tag recovery.

For the reasons indicated, the Angling category quota would be increased from 222 mt to 265 mt. In addition to the total quota change, NMFS has previously proposed to increase the geographical and seasonal scope of data collection by subdividing the Angling category quota (62 FR 9726, March 4, 1997). Consistent with that proposal, and the ICCAT limitation on catch of school bluefin tuna, the 265 mt would be subdivided as follows: School bluefin—108 mt, with 57 mt to the northern area (New Jersey and north) and 51 mt to the southern area (Delaware and south); large school/small medium bluefin—151 mt, with 80 mt to the northern area and 71 mt to the southern area; large medium/giant bluefin—6 mt, with 2 mt to the northern area and 4 mt to the southern area.

NMFS has previously implemented measures to address broadening the fishing opportunities and scientific data collection for the General category. These measures have included monthly quotas and restricted-fishing days. Despite these measures, and new

measures previously proposed for 1997 (62 FR 9726, March 4, 1997), NMFS recognizes that additional quota is needed to balance the increased participation in this fishery with the need for broad-based data collection. NMFS therefore proposes to increase the General category to 633 mt. NMFS will consider subdivision of this total General category quota on a seasonal or geographic basis, and possible effort controls, in a separate action.

Harpoon Category

Although comments have been received indicating that catch rates and effort have increased in the Harpoon category, the data obtained from this fishery have not been as useful as other data in performing stock assessments. Due to the nature of the fishery, it is difficult to standardize CPUE. Thus far, harpoon catch data have not been incorporated into any useful index of abundance. Therefore, NMFS proposes that the 1997 quota remain at 53 mt for the Harpoon category.

Incidental Category

The Incidental category was established to reduce waste in recognized situations of ABT bycatch. At the time that the ABT scientific monitoring quota was established by ICCAT, there was no directed longline fishery for bluefin tuna by U.S. vessels. However, incidental catch of bluefin tuna by vessels in the swordfish, shark, bigeye tuna, and yellowfin tuna fisheries was well documented. In addition, limited bycatch was known to occur in pound nets, traps, gillnets and non-tuna purse seine fisheries. Failure to include these catches in the U.S. quota would have led to wasteful discards and ABT fishing mortality over and above that which would occur in the directed handgear and purse seine fisheries.

NMFS has previously established target catch requirements for the Incidental category to reduce incentives for targeting bluefin tuna with these types of fishing gear. As prices for ABT increased in the mid-1980s, it became necessary to implement trips limits and revise the target catch requirements to ensure that catch of ABT remained as an incidental occurrence in the traditional directed fisheries. In recent years, these landings restrictions have led to situations in which the incidental catch quota has not been met, yet substantial discards are being recorded and reported to ICCAT. The United States reported to ICCAT that longline discards averaged 125 mt a year from 1991 to 1995.

Because of the high level of reported discards, and the increased ABT mortality that results when quota not landed against the Incidental category is reallocated to other directed fishing categories, ICCAT recommended that the U.S. take measures in 1997 to decrease discards of ABT. NMFS is currently analyzing observer reports, vessel logs, and dealer reports to more fully assess ABT interaction rates, patterns of fishing activity, and economic factors in all ABT fishing categories. Once all available data are analyzed, NMFS plans to propose measures to reduce ABT discards in a separate rulemaking.

For these reasons, NMFS proposes that the Incidental category quota remain at the 1995 base level. The total quota of 110 mt would be allocated as follows: 86 mt to longline vessels operating south of 34 degrees N. Lat.; 23 mt to longline vessels operating north of 34 degrees N. Lat.; and 1 mt to fishermen using traps, fixed gear, and purse seines in the non-tuna fisheries. Pending the results of the analysis on discards, these quotas could be adjusted by allocations from the Reserve, if necessary, to conform to future management measures designed to reduce ABT discards in this fishing category.

Dates, Times, and Locations of Public Hearings

The public hearing schedule is as follows:

Tuesday, April 22, 1997, Silver Spring, MD, 2–5 p.m.

NOAA/NMFS, 1315 East-West Highway, Room 4527, Silver Spring, MD 20910

Tuesday, April 29, 1997, Gloucester, MA, 7–10 p.m.

Milton Fuller School, 4 School House Road, Gloucester, MA 01930

Wednesday, April 30, 1997, Brunswick, ME, 7–10 p.m.

Atrium Inn and Conference Center, Cooks Corner, Brunswick, ME 23502

Wednesday, April 30, 1997, Islip, NY, 7–10 p.m.

Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779

Thursday, May 1, 1997, Manteo, NC, 7–10 p.m.

North Carolina Aquarium, Airport Road, Manteo, NC 27954

Friday, May 2, 1997, Ocean City, MD, 7–10 p.m.

City Hall, 3rd Street & Baltimore Avenue, Ocean City, MD 21842

Wednesday, May 7, 1997, Toms River, NJ, 7–10 p.m.

Holiday Inn, 290 State Highway 37 East, Toms River, NJ 08753

Wednesday, May 7, 1997, St. Petersburg, FL, 7-9 p.m.
 NMFS Southeast Regional Office,
 9721 Executive Center Drive, North,
 St. Petersburg, FL 33702
 Thursday, May 8, 1997, Plymouth, MA,
 7-10 p.m.
 Plymouth North High School, Obery
 Street, Plymouth, MA 02360

Classification

These proposed quota specifications are published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that the regulations contained in these proposed specifications are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

NMFS prepared a draft EA for these proposed specifications with a preliminary finding of no significant impact on the human environment. In addition, a draft RIR was prepared with a preliminary finding of no significant

impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed specifications would allocate the Total Allowable Catch (TAC) for the Atlantic bluefin tuna fishery in accordance with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and domestic fishery management objectives. For all fishing categories, quotas are proposed at levels similar to or slightly higher than prior years. Because the overall bluefin tuna quota has increased, additional revenues will accrue to many small businesses.

Because of this certification, an IRFA was not prepared.

These proposed specifications have been determined to be not significant for purposes of E.O. 12866.

NMFS reinitiated consultation on the Atlantic tuna fishery under Section 7 of the Endangered Species Act on September 25, 1996. This consultation will consider new information concerning the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. This proposed rule would implement quotas similar to prior years, making minor allocation changes. Therefore, the proposed rule is not expected to increase endangered species or marine mammal interaction rates.

Dated: April 15, 1997.

Nancy Foster,

*Acting Assistant Administrator for Fisheries,
 National Marine Fisheries Service.*

ATTACHMENT—PROPOSED ABT QUOTAS BY FISHING CATEGORY

	1992 Base quota	1995 Base quota ^d	Proposed 1997 quota
General	531	531	633
Harpoon	53	53	53
Incidental	113	110	110
Other	4	1	1
Longline	109	109	109
North	23	23	23
South	86	86	86
Purse Seine	^a 301	250	250
Angling	219	222	265
School ^b	100	100	108
North	53	53	57
South	47	47	51
Large School/Small Medium	119	119	151
North .....	.....	.....	80
South .....	.....	.....	71
Trophy ^c .....	.....	3	6
North .....	.....	.....	2
South .....	.....	.....	4
Reserve	31	145	33
Total	1248	1311	1344

^aThe 1992 base quota of 301 mt was reduced to 250 mt in 1995.

^bICCAT recommendation limits school size class subquota to 8% of U.S. allocation.

^cTrophy quota category first established in 1995. In prior years, large medium and giant ABT landed by Angling and Charter/Headboat vessels were counted against Incidental-Other gear category.

^dActual 1995 quotas included adjustments to base due to overharvest/underharvest from 1994.

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