

sector. The SFA Amendment states that with the exception of the charter sector, trends in landings have been previously quantified for all FMPs except those for stone crab and spiny lobster. The amendment includes recently prepared descriptions of the Florida west-coast stone crab fishery and the Florida spiny lobster fishery.

The SFA Amendment would adopt the construction characteristics of stone crab traps set forth in Chapter 46–13.002(2)(a) of Florida law.

The SFA Amendment would modify the existing Council FMPs' framework procedures for regulatory adjustments. These framework procedures provide a streamlined rulemaking process that allows the Council to propose additional or modified measures under an FMP and for NMFS to approve and implement them without an FMP amendment. The amendment would add the following measures to those that can be implemented under the framework procedures: Biomass-based estimates for MSY, OY, and MSST; new estimates of MFMT; and rebuilding schedules for reef fish. The Council would use the modified framework procedures when estimates of these added measures are provided by NMFS, reviewed by the Stock Assessment Panels, and adopted by the Council.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the SFA Amendment, the Magnuson-Stevens Act, and other applicable law. Comments received by [insert date 60 days after date of publication in the *FEDERAL REGISTER*], whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the SFA Amendment. NMFS will not consider comments received after that date in this decision. NMFS will address in the final rule all comments received on the amendment or the proposed rule during their respective comment periods.

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

Dated: August 12, 1999.

Bruce C. Morehaed,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 990811217–9217–01; I.D. 061899A]

RIN 0648–AM82

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Fishery; Regulatory Adjustment

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

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic highly migratory species (HMS) fisheries to remove the 250 metric ton (mt) limit on allocating Atlantic bluefin tuna (BFT) landings quota to the Purse Seine category. Without this restriction, the annual allocation of BFT to the Purse Seine category would be 18.6 percent of the total landings quota available to the United States. The proposed regulatory amendments are necessary to achieve domestic management objectives for HMS fisheries. NMFS received extensive comment on this issue during the comment period for the rule to implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP) and during a recent meeting of the HMS Advisory Panel (AP). However, NMFS will hold two public hearings to receive additional comments from fishery participants and other members of the public regarding these proposed amendments.

DATES: Comments are invited and must be received on or before September 27, 1999. The public hearings dates are:

1. Wednesday, September 1, 1999, 3:30–6:00 p.m. in Silver Spring, MD.
2. Tuesday, September 7, 1999, 7:00–9:00 p.m. in Fairhaven, MA.

ADDRESSES: Comments on the proposed rule should be sent to, Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Copies of supporting documents, including a Draft Environmental Assessment (EA), which includes a Draft Regulatory Impact Review (RIR), are available from Pat Scida, Highly Migratory Species Management Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

The public hearing locations are:

1. Silver Spring (Wednesday, September 1, 1999), NMFS, SSMC III - Room 4527, 1315 East-West Highway, Silver Spring, MD 20910.
2. Fairhaven (Tuesday, September 7, 1999), Seaport Inn, 110 Middle Street, Fairhaven, MA 02719.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

Background

Based on the 1998 revised stock assessment, parties at the 1998 meeting of ICCAT adopted a 20-year west Atlantic BFT rebuilding program, beginning in 1999 and continuing through 2018. ICCAT has adopted an annual total allowable catch (TAC) for western Atlantic BFT of 2,500 mt whole weight (ww), inclusive of dead discards, to be applied annually until such time as the TAC is changed based on advice from the Standing Committee on Research and Statistics. The annual landing quota allocated to the United States was set at 1,387 mt ww. Regulations at 50 CFR 635.27 subdivide the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. The HMS FMP and the implementing regulations established percentage quota shares for the ICCAT-recommended U.S. BFT landing quota for each of the domestic fishing categories. These percentage shares were based on historical allocations as had been adjusted in recent years. In the final rule, NMFS adopted a limit (cap) on the amount of the annual quota that would be

allocated to the Purse Seine category, establishing a percentage share of 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. Under this cap, if 18.6 percent of the total ICCAT recommended annual landings quota would exceed 250 mt, only the 250 mt would be allocated to the Purse Seine category and the amount over 250 mt would be allocated to the Reserve.

In the final HMS FMP it was noted that discussions held at the HMS AP meetings were not conclusive regarding the purse seine category allocation with respect to a situation of increased quotas from ICCAT. NMFS indicated that although the final HMS FMP had adopted the cap of 250 mt, further discussions with the HMS AP were needed to clarify the issue, especially since ICCAT had recommended a small increase in landings quota available to the U.S. in 1999. NMFS therefore stated in the HMS FMP that, after later consultation with the HMS AP, the purse seine cap could be adjusted by regulatory amendment under the framework provisions of the FMP. Pending that consultation with the HMS AP, NMFS proceeded to issue final BFT quota specifications for the 1999 fishing year.

Purse Seine Quota Specification

The ICCAT-recommended 1999 U.S. BFT landings quota is 1,387 mt, 18.6 percent of which is 258 mt, or 8 mt over the cap. NMFS indicated in the HMS FMP that the additional 8 mt would be held in reserve until after the AP had discussed the issue. Thus, under the regulatory cap, the Purse Seine category was initially allocated a 250 mt BFT landings quota for 1999, and the additional 8 mt were allocated to the Reserve category. Given the regulatory provisions for interannual adjustments, an additional 2 mt Purse Seine category quota that was not harvested in 1998 was added to the category's quota for 1999, for an adjusted Purse Seine category quota of 252 mt (64 FR 29806, June 3, 1999).

The AP met in Silver Spring, MD on June 10 and June 11, 1999, and discussed, among other things, the Purse Seine category cap. After extensive discussion, a majority favored removal of the cap. The AP provided information and advice to NMFS on the issue of fairness in the context of allocation to the Purse Seine category. Among the points used by the AP in support of removing the cap were the following: (1) a cap on one category and not on others is not fair and equitable, (2) a cap on the only category in the fishery which is managed under limited

access does not promote the objectives of limited access management systems, and (3) retention of a cap on the Purse Seine category's BFT quota allocation may cause purse seine vessels to increase fishing effort on yellowfin tuna, which is an important commercial and recreational species for vessels in other Atlantic tunas permit categories, and for which there is an ICCAT recommendation in place to limit effective fishing effort.

After considering the input from the HMS AP, NMFS transferred 8 mt of BFT quota from the Reserve to the Purse Seine category (64 FR 36818, July 8, 1999) for the 1999 fishing year. As a result of this transfer, the adjusted Purse Seine category quota for 1999 is 260 mt.

Proposed Management Measure

In addition to its commitment to considering the AP's advice on this issue, as stated in the FMP and its implementing regulations, NMFS is concerned that Purse Seine category vessels may increase fishing effort on yellowfin tuna if the cap is retained. As mentioned earlier, yellowfin tuna is an important commercial and recreational species for vessels in other Atlantic tunas permit categories, and for which there is an ICCAT recommendation in place to limit effective fishing effort. As yellowfin tuna is considered a fully-exploited species, and the latest ICCAT Standing Committee on Research and Statistics report indicates that the current fishing mortality may be higher than that which would support maximum sustainable yield on a continuing basis, any additional fishing effort directed at yellowfin tuna could have adverse impacts on optimum yield in that fishery.

Removing the cap on the Purse Seine category is also consistent with the Magnuson-Stevens Act in that it contributes to the goal of allocating restrictions needed to prevent overfishing and recovery benefits from rebuilding fairly and equitably among sectors of the fishery, in that no one quota category would be restricted in its allocation while others would not. It is also consistent with the objectives of the FMP to preserve traditional fisheries and historical fishing patterns, in the fact that the Purse Seine fishery is a historical component of the overall U.S. Atlantic BFT fishery, participating in the fishery since the 1950's.

NMFS proposes this action to remove the purse seine allocation cap under the framework provisions described in the FMP. NMFS believes that the allocation of a percentage of the BFT landings quota, without a cap, is consistent with management measures in the FMP, and

is an appropriate regulatory action in order to meet the goals and objectives of the FMP.

After reviewing public comments and additional information or data that may be available, NMFS will, if appropriate, make final determinations regarding the consistency of this proposed measure with the objectives of the FMP, the national standards of the Magnuson-Stevens Act, and other applicable law.

Technical Correction

When NMFS first established a limited access and individual vessel allocation system for the Purse Seine category, the vessel allocations were made transferable. Initially, the allocations were transferable in whole, but in subsequent rulemaking, the allocations were made transferable in whole or in part (61 FR 30187, June 14, 1996). The allowance for partial transfers was made to reduce bycatch mortality during the last few sets as vessels approached the limits of individual allocations. In the final consolidated rule to implement the HMS FMP, NMFS inadvertently reissued the older procedures for notification of transfer of the entire allocation from one permitted purse seine vessel to another, omitting the newer procedures for notification of partial transfers. The proposed rule would reinstate updated notification procedures for transfers.

Public Hearings and Special Accommodations

The public hearing sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Murray-Brown (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room, attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public are able to comment, if they so choose, regardless of the controversiality of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the hearing.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that the regulations contained in this proposed rule are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

NMFS prepared a draft EA for this proposed rule 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 reasons this action is being considered and the objectives of, and legal basis for, the proposed rule are as stated in the preamble here. There are no relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. NMFS considered alternatives to the preferred alternative, including: no action (maintaining cap of 250 mt for the Purse Seine category), removal of the cap on the Purse Seine category, and reduction of the Purse Seine category percentage share allocation by 50 percent.

Notwithstanding any other provision of 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 Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule restates an information collection requirement relating to purse seine landings quota allocations. Written requests for purse seine allocations for Atlantic tunas and notification of transfers as required under § 635.27 are not currently approved by OMB. However, requests for purse seine allocations and transfer notifications are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

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

The proposed rule would remove the 250 metric ton (mt) maximum allocation restriction (cap) on the Purse Seine fishery for Atlantic bluefin tuna (BFT), establishing the Purse Seine category BFT quota allocation at 18.6 percent of the overall U.S. BFT landings quota (1,347 metric tons for 1999). Because the overall U.S. BFT landings quota would remain the same, and the amount of BFT quota that would be allocated to the Purse Seine category through this proposed action (8 metric tons) was previously allocated to the Reserve, and not to any particular fishing category, additional revenues would accrue to small businesses associated with the purse seine fishery without directly affecting other fishing categories.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS initiated formal consultation on the HMS and billfish fisheries on May 12, 1998. The consultation request concerned the possible effects of management measures in the HMS FMP and Billfish Amendment. On April 23, 1999, NMFS issued a Biological Opinion (BO) under section 7 of the Endangered Species Act. The BO applies to the Atlantic pelagic fisheries for tunas, sharks, swordfish, and billfish.

The BFT purse seine fishery is currently listed as a category III fisheries under the Marine Mammal Protection Act. This fishery was observed in 1996, with near 100-percent coverage. Six pilot whales, one humpback whale, and one minke whale were observed as encircled by the nets during the fishery. All were released alive or dove under the nets and escaped before being pursed. Purse seines are set when a school of fish is located, after which the vessel pays out the net in a circle around the school. This affords considerable control over what is encircled by the net and the net does not remain in the water for any considerable amount of time. Therefore, this gear-type is not likely to result in mortality or serious injury of marine mammals or sea turtles.

The BO states that after reviewing the current status of the subject species, the environmental baseline for the action area, the effects of the continued operation of the Atlantic HMS fisheries and associated management actions, and the cumulative effects, it is NMFS' BO that the continued operation of the purse seine fishery may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction. A similar conclusion was

reached for the other fisheries which are allocated BFT quota - the Atlantic pelagic longline fishery and the harpoon, hand gear, and rod and reel fisheries for Atlantic HMS.

This proposed rule would remove the 250 mt cap on the annual Purse Seine category BFT quota allocation. Because the only fisheries which may be affected by this proposed rule are Category III fisheries, the proposed rule is not expected to increase endangered species or marine mammal interaction rates.

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 and the Highly Migratory Species Division of NMFS. It is not anticipated that this action will have any adverse impacts to EFH and therefore no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: August 12, 1999.

Andrew A. Rosenberg,
Deputy 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.* and 16 U.S.C. 1801 *et seq.*

2. In § 635.27, introductory paragraph (a) and paragraphs (a)(4)(i) and (iii) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes

the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

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(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained,

possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The Purse Seine fishery under this quota commences on August 15 each year.

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(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of

such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (mt) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether retained.

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