

**I. General Information****A. Does this Action Apply to Me?**

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

**B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?**

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-300891A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity

Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

**II. What Action is the Agency Taking?**

In the **Federal Register** of July 21, 1999 (64 FR 39068), EPA issued an order by final rule revoking tolerances in § 180.259 for the use of propargite on apples; apricots; beans, succulent; cranberries; figs; peaches; pears; plums (fresh prunes); and strawberries. EPA revoked the tolerances on the grounds that previous cancellation of the underlying uses for propargite rendered the tolerances unnecessary. In the final rule, EPA set an effective date of October 19, 1999 for the revocations.

Any person adversely affected by the July 21, 1999 Order was allowed 60 days to file written objections to the order and a written request for an evidentiary hearing on the objections.

EPA received an objection from Uniroyal Chemical Company requesting EPA to modify the effective date of revocation for propargite on apples; and plums (fresh prunes). Uniroyal also requested an evidentiary hearing.

By this document, in § 180.259(a)(1), EPA is staying the removal of the tolerances for apples; and plums (fresh prunes) from October 19, 1999 until November 18, 1999 in order to allow EPA to determine whether to grant the request for modification and if so, for what length of time. The addition of the entries for hops, dried; and tea, dried into the table under paragraph (a)(2) is not affected by this stay. Revocations for the remaining tolerances, apricots; beans, succulent; cranberries; figs; peaches; pears; and strawberries, subject to the July 21, 1999 rule remain effective October 19, 1999.

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

**Lois Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended to read as follows:

**PART 180—[AMENDED]****1. In part 180:**

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

b. In § 180.259, the table to paragraph (a)(1) is amended, effective from October 19, 1999 until November 18, 1999, by reinstating the entries for "apples" and "plums (fresh prunes)," to read as follows:

**§ 180.259 Propargite; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity	Parts per million
* * * * *	*
Apples .....	3
Plums (fresh prunes) .....	7
* * * * *	*

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 990811217-9286-02; 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:** Final rule.

**SUMMARY:** NMFS amends 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 will be 18.6 percent of the total landings quota available to the United States. This regulatory amendment is necessary to achieve domestic management objectives for HMS fisheries as set forth in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). NMFS also amends the regulations governing the Atlantic HMS fisheries to reinstate the transferability of partial purse seine vessel quota allocations from one vessel to another, which was inadvertently dropped from the regulations when NMFS published the final consolidated rule to implement the HMS FMP.

**DATES:** Effective December 1, 1999.

**ADDRESSES:** Copies of supporting documents, including a Final Environmental Assessment (EA), which includes a Regulatory Impact Review (RIR), are available from Pat Scida, Highly Migratory Species Management Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Pat Scida, 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 information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (64 FR 44885, August 18, 1999) in the HMS FMP, and in the final consolidated rule to implement the HMS FMP (64 FR 29090, May 28, 1999) and is not repeated here. The final EA contains further detail on the consequences of this action and alternatives. Copies of the final EA can be obtained from NMFS (see **ADDRESSES**).

By this final rule, NMFS removes the purse seine allocation cap under the framework provisions described in the FMP, and reinstates the transferability of Purse Seine category vessel allocations on a partial basis.

### Comments and Responses

NMFS conducted two public hearings on the proposed rule and received written and oral comments over a 45-day comment period. The majority of the comments received were in support of the proposed rule, although NMFS did receive comments in opposition. Responses to the comments on the Purse Seine category allocation issue are provided here.

### Opposed to the Proposed Rule

*Comment 1:* The Purse Seine category allocation gives too much quota to too

few people, even with the cap. This is a misappropriation of a public resource.

*Response:* As described in the HMS FMP, NMFS bases the quota allocations on consideration of several factors, including the collection of the broadest possible array of scientific data and the optimization of social and economic benefits. When NMFS established the current limited entry system with non-transferable individual vessel quotas (IVQs) for purse seining in 1982, NMFS considered the relevant factors outlined in section 303(b)(6) of the Magnuson-Stevens Act. In 1992, NMFS established "baseline" quotas for all categories, which were based on the historical share of landings in each of these categories from 1983 through 1991 and were consistent with the need to collect scientific information required to monitor the stock. In 1995, NMFS reduced the Purse Seine category base quota by 51 mt, in large part because the West Atlantic BFT quota was a scientific monitoring quota at the time, and the Purse Seine category does not contribute to a catch per unit effort time series used to estimate trends in stock size, and other categories that do provide this information were subject to premature closures. This reduced quota was the basis for the allocations to the Purse Seine category from 1996 through 1998. Considering the historical participation of those in the purse seine fishery, NMFS does not believe that the 18.6 percent allocation to the Purse Seine category, with respect to the FMP objectives, constitutes an excessive share of the bluefin tuna quota.

*Comment 2:* The Purse Seine category cap should be maintained for the time being, and, eventually, the Purse Seine category quota should be reduced because there would be greater economic benefits to the Nation by distributing more quota to the recreational sector.

*Response:* Although reallocation of quota from the commercial sector to the recreational sector may provide greater economic benefits to the Nation, the Magnuson-Stevens Act requires allocations to be fair and equitable, to take into consideration traditional fishing patterns, and to minimize economic displacement. In addition, overfishing restrictions and recovery benefits (i.e., quota decreases or increases) must be shared by all sectors of a fishery. In fact, National Standard 5 states that no conservation and management measure should have economic allocation as its sole purpose. Considering all relevant factors, removal of the cap is justified.

*Comment 3:* The Purse Seine category should be eliminated, and the fishery

should only be for rod and reel fishermen.

*Response:* NMFS disagrees. The purse seine fishery is a historical sector of the U.S. BFT fishery. As mentioned earlier, based on consideration of the historical participation of those in the fishery, NMFS does not believe that the allocation to the Purse Seine category constitutes an excessive share of the bluefin tuna quota.

*Comment 4:* The cap on the Purse Seine category should remain in place so long as the Purse Seine category is closed to new participants and other categories are open access.

*Response:* The fact that the Purse Seine category is managed under a limited access IVQ system and purse seine vessels remain somewhat isolated from competition while the other quota categories are not, was part of the justification for NMFS adopting the purse seine allocation cap in the HMS FMP. However, NMFS did note that the HMS Advisory Panel (AP) did not have an opportunity to address the Purse Seine quota in the context of a quota increase from ICCAT, and further noted that the agency would consider the future input of the AP on this issue. After extensive discussion, a clear majority of the AP favored removal of the cap on the Purse Seine category. Removal of the cap is consistent with the Magnuson-Stevens Act; otherwise, one quota category would have a cap while others do not. Thus, removing the cap contributes to the goal of fair and equitable allocation of restrictions needed to prevent overfishing. Furthermore, NMFS continues to investigate limited access in the other BFT quota categories (limited access has already been implemented for the Longline category) and will assess whether limited access in these other categories would be more effective in reducing the derby nature of these fisheries than increased allocations.

*In Support of the Proposed Rule*

*Comment 5:* Removal of the cap is consistent with the Magnuson-Stevens Act and the objectives of the HMS FMP. Specifically, allocations should be fair and equitable, should take into consideration traditional fishing patterns, and should minimize economic displacement. In addition, overfishing restrictions and recovery benefits (i.e., quota decreases or increases) must be shared by all sectors of a fishery. The Purse Seine category cap precludes one fishing sector from sharing the benefits of stock recovery.

*Response:* NMFS agrees. In this instance, limiting the quota allocation of one fishing sector while not limiting others is inconsistent with the

Magnuson-Stevens Act requirement of allocating overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery. This action is also consistent with the objectives of the FMP to preserve traditional fisheries and historical fishing patterns. The purse seine fishery is a historical part of the overall U.S. BFT fishery, having participated in the fishery since the 1950's.

**Comment 6:** The purse seiners have already had their quota reduced by a significant amount over the last decade and should not have their quota decreased further. Maintaining the cap would require greater allocation to other sectors, allowing smaller fish to be caught - the opposite of what stock rebuilding requires.

**Response:** NMFS agrees that the Purse Seine category BFT quota has been reduced over the past decade, as described. However, NMFS disagrees that, at current catch levels, maintaining the purse seine cap would negatively affect stock rebuilding. The amount of quota reallocated to other categories (8 mt under current quotas) if the cap were maintained would not significantly affect the size-composition of catch in order to effect rebuilding.

**Comment 7:** The AP supported removal of the cap, and NMFS should follow the AP's advice; otherwise, the AP process is undermined.

**Response:** As mentioned earlier and in the EA/RIR, the AP met in June 1999, and, after extensive discussion of the Purse Seine category cap issue, a clear majority favored removal of the cap. Given the considerations stated, it is appropriate in this instance to follow the AP's advice.

**Comment 8:** Elimination of the cap is inconsistent with the policy of promoting limited access. By capping only one sector of the fishery, citing the fact that it is limited access as a reason for the cap, sends a message that limiting access in a fishery may result in a category having its quota capped or reduced.

**Response:** The purpose of the purse seine cap was not related to promoting or discouraging limited access. NMFS continues to investigate limited access in the other BFT quota categories (limited access has already been implemented for the Longline category) and will assess whether limited access in these other categories may be more effective at reducing the derby nature of these fisheries than increased allocations.

**Other**

**Comment 9:** The removal of the cap on the Purse Seine category BFT allocation should not be tied by

regulation or other administrative action to restrictions on current or future participation by purse seine vessels in the yellowfin tuna fishery. Through a 1995 rulemaking, the United States has already implemented the 1993 ICCAT recommendation to cap fishing effort on yellowfin tuna, with respect to purse seine gear, by limiting the number of vessels authorized to fish for yellowfin tuna.

**Response:** While action to limit access (vessel permits) to the purse seine fishery for yellowfin and other Atlantic tunas was taken in 1995 to implement the 1993 ICCAT recommendation, NMFS clarifies that no additional action is being taken at this time to restrict purse seine effort targeting Atlantic tunas other than bluefin. However, it is recognized that removing the cap on BFT allocation may contribute to limiting purse seine effort on yellowfin tuna by increasing purse seine effort in the BFT fishery. Further action may be necessary to implement the ICCAT yellowfin tuna recommendation in the future, including action affecting the purse seine fishery.

#### Classification

This 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.* The AA has determined that the regulations contained in this final rule are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The reasons this action is being adopted and the objectives of, and legal basis for, the final rule are as stated in the EA/RIR and the preamble to the proposed rule. There are no relevant Federal rules which duplicate, overlap, or conflict with the final rule. NMFS considered alternatives to the final action, including: no action (maintaining cap of 250 mt for the Purse Seine category) and reduction of the Purse Seine category share 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 final 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 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. No comments were received that would alter the basis for this determination. Therefore, no Regulatory Flexibility Analysis was prepared.

This final 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. The BO states that it is NMFS' opinion 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. NMFS' Office of Protected Resources has concluded that this rulemaking would not cause any effect on listed species not previously considered in the BO and that reinitiation of consultation on the HMS FMP due to this rulemaking is not required.

The area in which purse seine fishing for BFT takes place has been identified as essential fish habitat 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: October 26, 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 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.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 990304063-9063-01; I.D. 102699D]

##### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

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

**ACTION:** Inseason adjustment; request for comments.

**SUMMARY:** NMFS issues an inseason adjustment closing the season for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area

(BSAI). This adjustment is necessary to prevent the underharvest of the 1999 pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

**DATES:** Effective 1800 hrs, Alaska local time (A.l.t.), October 26, 1999, until 2400 hrs, A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with section 206(b)(1) of the American Fisheries Act, 50 percent of the remainder of the pollock TAC in the BSAI after the subtraction of the allocation to the pollock Community Development Quota and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species shall be allocated as a directed fishing allowance to catcher vessels harvesting pollock for processing by the inshore component. The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999), and subsequent reallocation (64 FR 56474, October 20, 1999), established the final 1999 amount of pollock allocated for processing by the inshore component of the Bering Sea subarea as 424,187 metric tons.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is in excess of 5,000 mt per day.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Administrator, Alaska Region, NMFS, has determined that the remaining portion of the allocation to the inshore component would be underharvested if a 1200 hrs closure were allowed to occur.