

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

[Docket No. 030613152-3152-01 ; I.D. 051903B]

RIN 0648-AQ38

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specification, General Category Effort Controls, and Permit Revisions

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

ACTION: Proposed initial 2003 quota specifications, General category effort controls, permit revisions, and definition of the management boundary area; request for comments.

SUMMARY: NMFS proposes initial 2003 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established fishing categories, to set General category effort controls, to allocate 25 metric tons of BFT to account for incidental catch of BFT by pelagic longline vessels in the vicinity of the management boundary area, to define the management boundary area and applicable restrictions, and to revise permit requirements to allow General category vessels to participate in registered recreational HMS fishing tournaments and to allow permit applicants a 10-day period to make permit category changes to correct errors. The proposed initial quota specifications, including the quota allocation to account for incidental catch of BFT by pelagic longline vessels in the vicinity of the management boundary area and the General category effort controls, are 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). The proposed definition of the management boundary area is to assist management, monitoring, and enforcement of the 25 mt allocated to the Longline category. The proposed permit revisions to allow General category permitted vessels to participate in registered recreational HMS fishing tournaments and to allow a time period for permit category

changes are intended to relieve restrictions and help achieve domestic management objectives.

DATES: Written comments must be received on or before August 8, 2003. Public hearings on this proposed rule will be held in July 2003. Times and locations for the public hearings will be specified in a separate document in the **Federal Register** to be published at a later date.

ADDRESSES: Written comments on the proposed initial quota specifications, General category effort controls, definition of management boundary area, and permit revisions should be sent to Brad McHale, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr. Gloucester, MA 01930. Comments also may be sent via facsimile (fax) to (978) 281-9340. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Brad McHale (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 implement binding recommendations of 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).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) that was adopted and made available to the public in April 1999. These proposed initial specifications are published in accordance with the HMS FMP and are necessary to implement the 2002 ICCAT Recommendation, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. In 2002, ICCAT recommended increasing the Total Allowable Catch (TAC) for the western Atlantic management area from 2,500 mt to 2,700 mt, consistent with the 1998 rebuilding plan for western Atlantic bluefin tuna. The 2002 quota increase is inclusive of a 25-mt quota to account for bycatch of BFT related to directed longline fisheries for other species in the vicinity of the management boundary area. The ICCAT recommendation did not elaborate further as to how the vicinity of the management boundary area was

to be defined. These proposed initial quota specifications would be consistent with the BFT rebuilding program as set forth in the HMS FMP, would allocate the 2002 ICCAT-recommended quota for the 2003 fishing year (June 1, 2003 - May 31, 2004) among the several established domestic fishing categories based on the current BFT quota allocation percentages established in the HMS FMP, would allocate 25 metric tons to the longline north subquota and define "vicinity of the management boundary area" to the application of the 25 metric tons, and would carry over any unharvested 2002 fishing year quota. Also, in accordance with the HMS FMP, NMFS proposes the General category effort control schedule, including time-period subquotas and restricted fishing days (RFDs), for the 2003 fishing season.

On December 18, 2002, NMFS established the Atlantic HMS Angling category permit requirement (67 FR 77434) and required all vessels participating in HMS recreational fishing activities, except for HMS Charter/Headboats, to obtain an HMS Angling category permit. As vessels are not authorized to possess two permits during the same fishing year, General category vessels are no longer allowed to fish for and/or to retain sharks, swordfish, and/or billfish under the daily recreational retention limits, thus precluding General category vessels from participating in recreational HMS fishing or in registered recreational HMS fishing tournaments. This action proposes to amend the current regulations regarding HMS Angling category permits to allow General category permit holders to participate in registered recreational HMS fishing tournaments.

On June 12, 2003, NMFS issued a temporary rule (68 FR 35185), effective through June 9, 2003, to address comments that the new permit category and the change to activities formerly allowed under General category rules have caused confusion. Due to this confusion, many permit holders obtained Atlantic Tunas General category vessel permits in error. Due to the circumstances of the new HMS Angling permit requirement, that temporary rule provides a 30-day period for Atlantic Tunas General category permit holders to change their permit category and obtain Atlantic HMS Angling category permits.

Since the issuance of the June 12, 2003, temporary rule, NMFS received numerous comments on a daily basis that other permits have been issued in incorrect categories due to confusion about the new HMS Angling permit

category, human error in selecting the permit due to unfamiliarity with the automated permitting system, or to possible administrative error. Currently, the existing regulations do not provide any mechanism for addressing such errors made by permittees or NOAA Fisheries' permit contractor. Persons issued permits in the Atlantic Tunas General and Harpoon and Atlantic HMS Angling and Charter/Headboat categories have also contacted NOAA Fisheries to seek relief for permits issued in incorrect categories. Due to the circumstances of the new HMS Angling permit requirements and to the numerous errors in permit category issuance, NMFS issued a second temporary rule, effective June 23, 2003, through December 31, 2003, to provide a 10-day period for all Atlantic Tunas General, Harpoon, and Trap categories and Atlantic HMS Angling and Charter/Headboat category permit holders to correct permit category errors (68 FR 38233).

A number of issues regarding the domestic management of BFT were discussed at length during the most recent HMS Advisory Panel (AP) meeting held in Silver Spring, MD, many of which are beyond the scope of this action and will be addressed in future regulatory or FMP amendments. These issues may include, but are not limited to, adjustment of domestic quota allocation percentages, adjustment of General category time-period subquotas, addressing the Petition for Rulemaking submitted by the North Carolina Department of Marine Fisheries (*see* Notice of Receipt of Petition, 67 FR 69502, November 18, 2002), adjustment of quota category opening and closure dates, and adjustment of large medium BFT size tolerances in the Harpoon and Purse seine categories. Because many of these issues require further analysis and public input and because these initial specifications need to be issued as soon as possible given that the 2003 fishing year started on June 1, NMFS intends to address these issues as separate rulemaking activities and publish a Notice of Intent in the **Federal Register** to begin the process of addressing those issues requiring an HMS FMP amendment.

After consideration of public comment, NMFS will issue final initial specifications and effort controls and publish them in the **Federal Register**. The final initial quota specifications and effort controls may subsequently be adjusted during the course of the fishing year, consistent with the provisions of the HMS FMP. Such adjustments will be published in the **Federal Register**.

Domestic Quota Allocation

The HMS FMP and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that had been developed by NMFS over several years. The baseline percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999, to the present are as follows: General category -- 47.1 percent; Harpoon category -- 3.9 percent; Purse Seine category -- 18.6 percent; Angling category -- 19.7 percent; Longline category -- 8.1 percent; Trap category -- 0.1 percent; and Reserve -- 2.5 percent. The 2002 ICCAT-recommended U.S. BFT quota of 1,464.6 mt, not including the 25 mt set aside for pelagic longline vessels, would be allocated in accordance to these percentages. However, in addition to the 2002 ICCAT quota Recommendation, quota allocations are adjusted based on overharvest or underharvest from prior fishing year's activity and results of U.S. data on dead discards and on the use of the ICCAT dead discard allowance. Each of these adjustments is discussed below and then applied to the results of the above percentage shares to determine the 2003 fishing year proposed initial specifications.

2002 Underharvest/Overharvest

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the following fishing year, provided that such carryover does not result in overharvest of the total annual BFT quota and is consistent with all applicable ICCAT Recommendations, including restrictions on landings of school BFT. Therefore, NMFS proposes to adjust the 2003 fishing year quota specifications for the BFT fishery to account for underharvest and/or overharvest in the 2002 fishing year.

The General category fishery for BFT was closed, as of December 15, 2002, for the remainder of the 2002 fishing year (June 1, 2002 - May 31, 2003; 67 FR 77433, December 18, 2002). Overall U.S. landings figures for the fishing year are still preliminary, since other categories were open and final data from these categories have not yet been analyzed. Thus, the landings figures may be updated before the 2003 specifications are finalized. For the 2002 fishing year, NMFS has preliminarily determined that General category landings were higher than the adjusted General category quota by 16.3 mt. Purse Seine

category landings were fewer than the adjusted Purse Seine category quota by 110.0 mt. Regulations at 50 CFR 635.27(a)(9)(i) require that Purse Seine category underharvests or overharvests be subtracted from or added to each individual vessel's quota allocation, as appropriate. Based on the estimated amount of Reserve that NMFS is maintaining for the landing of BFT taken during ongoing scientific research projects, NMFS estimates that 10.3 metric tons of Reserve remains unharvested from the 2002 fishing year. This remaining Reserve quota will be used to partially address the General category overharvest in 2002.

The Angling, Longline, Trap, and Harpoon category fisheries remained open through May 31, 2003. As NMFS anticipates publication of final BFT quota specifications for the 2003 fishing year prior to the availability of final 2002 fishing year landings figures for these four categories, best estimates based on current landings patterns will be used to determine carryover amounts, if any. Harpoon category landings are less than the adjusted Harpoon category quota by approximately 20.7 mt. Angling category under/over harvests vary by size class for the 2002 fishing year: School BFT -- 136.0 mt underharvest, large school/small medium BFT -- 76.1 mt underharvest, large medium/giant BFT -- 1.5 mt overharvest, and school reserve -- 20.5 mt underharvest. Overharvest in the large medium/giant size class will be addressed by transfer from the large school/small medium category. Longline category landings are less than the adjusted quota by 233 mt. In 2002, no landings were recorded in the Trap category leaving 2.3 mt. For the above four categories that remain open, the final initial 2003 BFT quota specifications will be issued based on updated 2002 landings.

For all categories with underharvests from the 2002 fishing year, these initial specifications include provisions to carry forward remaining quota to the same category for the 2003 fishing year. However, the unused school reserve (approximately 20.5 mt) is proposed to be allocated to the Reserve category.

Dead Discards

As part of the BFT rebuilding program, ICCAT recommends an allowance for dead discards. The U.S. dead discard allowance is 68 mt. The 2001 preliminary estimate of U.S. dead discards, as reported in pelagic longline vessel logbooks, totaled 25.0 mt (U.S. National Report to ICCAT 2002). As estimates of BFT dead discards for the 2002 fishing year will not be available

for some time, the estimate for the 2001 calendar year was used to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2003 as a result of dead discards. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. As U.S. fishing activity is estimated to have resulted in less dead discards than its allowance, the ICCAT Recommendation and U.S. regulations state that the United States may add one half of the difference between the amount of dead discards and the allowance (i.e., $68.0 \text{ mt} - 25.0 \text{ mt} = 43.0 \text{ mt}$, $43.0 \text{ mt} / 2 = 21.5 \text{ mt}$) to its total allowed landings for the following fishing year, or to individual fishing categories, or to the Reserve. NMFS proposes to allocate the 21.5 mt to the Reserve category quota.

2003 Proposed Initial Quota Specifications

Therefore, in accordance with the 2002 ICCAT Recommendation, the ICCAT Recommendation regarding the dead discard allowance, the HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS proposes initial quota specifications for the 2003 fishing year as follows: General category -- 683.8 mt; Harpoon category -- 77.8 mt; Purse Seine category -- 382.4 mt; Angling category -- 499.2 mt; Longline category -- 166.9 mt; and Trap category -- 3.8 mt. Additionally, 78.6 mt would be allocated to the Reserve category for inseason allocations, including providing for a late season General category fishery, or to cover scientific research collection and potential overharvest in any category except the Purse Seine category.

Based on the above proposed initial specifications, the Angling category quota of 499.2 mt would be further subdivided as follows: School BFT -- 233.1 mt, with 130 mt to the northern area (north of $39^{\circ} 18' \text{ N}$. latitude), 103.1 mt to the southern area (south of $39^{\circ} 18' \text{ N}$. latitude), plus 22.1 mt held in reserve; large school/small medium BFT -- 237.4 mt, with 127.6 mt to the northern area and 109.8 mt to the southern area; and large medium/giant BFT -- 6.6 mt, with 2.2 mt to the northern area and 4.4 mt to the southern area. These subquotas reflect the adjusted north-south dividing line ($39^{\circ} 18' \text{ N}$. latitude) and percentage quota allocations in the northern and southern areas for the Angling category, as

implemented by NMFS through a final rule on August 15, 2001 (66 FR 42801).

The 2002 ICCAT recommendation includes a 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the vicinity of the management area boundary. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance to the North/South allocation percentages mentioned below. NMFS recently adjusted the boundary line between the northern and southern areas to $31^{\circ} 00' \text{ N}$. latitude, near Jekyll Island, Georgia (an area with little longline fishing activity nearby), and adjusted the Longline quota distribution to allocate 40 percent to the northern area and 60 percent to the southern area (68 FR 32414, May 30, 2003). Thus, the proposed Longline category quota of 166.9 mt would be subdivided as follows: 49.8 mt to longline vessels landing BFT north of 31° N . latitude and 92.1 mt to longline vessels landing BFT south of 31° N . latitude. The 25 mt allocated by ICCAT for longline vessels in the vicinity of the management boundary area would be allocated to the Longline north subcategory. Accounting for landings under this additional quota would be maintained separately from other landings under the Longline north subcategory.

Should adjustments to the final initial 2003 BFT quota specifications be required based on final 2002 BFT landings figures, NMFS will publish the adjustments in the **Federal Register**.

General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the HMS FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The HMS FMP divides the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages would be applied to the adjusted 2003 coastwide quota for the General category of 683.8 mt, minus 10.0 mt reserved for the New York Bight fishery. Therefore, of the available 673.8 mt coastwide quota, 404.3 mt would be available in the

period beginning June 1 and ending August 31; 202.1 mt would be available in the period beginning September 1 and ending September 30; and 67.4 mt would be available in the period beginning October 1 and ending December 31, 2003.

In addition to time-period subquotas, NMFS also has implemented General category RFDs to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional finer-scale inseason flexibility. For the 2003 fishing year, NMFS proposes a schedule of RFDs that would assist in extending the General category BFT fishery into the late season to provide southern Atlantic General category participants commercial fishing opportunities on large medium and giant BFT.

Therefore, NMFS proposes that persons aboard vessels permitted in the General category would be prohibited from fishing, including tag-and-release, for BFT of all sizes on the following days: November 15 through November 30 inclusive. These proposed RFDs would improve distribution of fishing opportunities without increasing BFT mortality.

General Category Permit Revision

Since the HMS FMP, changes have been made to the Atlantic HMS and Atlantic tunas permit categories regarding allowed activities as well as clarification of definitions of permitted operations for certain permit categories in order to further meet domestic management objectives. Recent rulemaking established a new recreational permit category for all HMS and replaced the previous Atlantic tunas Angling permit category (67 FR 77434, December 18, 2002). The owner/operator of each vessel used to fish recreationally for Atlantic HMS, except for HMS Charter/Headboats, or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit. HMS FMP implementing regulations allow only one type of permit to be issued to a particular vessel. Until recently, General category permit holders were allowed to fish recreationally for swordfish, sharks, and billfish (i.e. marlins) under the recreational size and retention limits. Now, because the new HMS Angling permit is required for these recreational fishing activities, General category permit holders must choose whether to retain their commercial General category permit and forgo recreational HMS fishing opportunities or to switch permit categories to an Atlantic HMS Angling permit. Since the new permit

regulations have become effective, NMFS has received comment from vessel owners/operators and tournament directors that many vessels that had historically participated in tournaments would no longer be able to do so. In order to provide some flexibility and allow General category fishermen access to recreational HMS fisheries, NMFS proposes to allow General category vessels to participate in recreational HMS fisheries provided they register and participate in a recreational HMS fishing tournament that is registered according to HMS tournament registration and participation regulations at § 635.5(d), and according to the regulations of the tournament. It is incumbent upon the General category fishermen to verify that a tournament is registered.

When General category vessels participate in registered tournaments, HMS Angling category regulations, as well as any specific tournament rules, would apply to General category vessels when fishing for tuna (other than BFT), sharks, swordfish, and billfish. For BFT, General category vessels participating in tournaments must comply with all General category regulations. Thus, they would still not be allowed to fish for BFT less than 73" and would be subject to restricted fishing days. As HMS tournaments must be registered, NMFS would also be able to collect data on catch and effort for management purposes and make further revisions should they be necessary.

Time Period for Permit Category Changes

NMFS also proposes to allow permit applicants to make permit category changes within 10 days of the date of issuance of the permit (e.g., if a permit is issued on July 1, then corrections to the permit category must be made by July 10). Partly as a result of the establishment on HMS Angling permit and of the potential confusion during the permit application process, applicants have found themselves with a permit other than the one intended. As permit holders cannot make more than one change a year or change categories after they have renewed a permit, permit holders are finding they are unable to obtain the correct category and may be unable to engage in their intended fishing activity for the current year if they do not meet a particular permit requirement (e.g., cannot sell fish in the Angling category, or do not hold a Captain or Master's license with a Charter/Headboat permit, etc). NMFS proposes to authorize a permit holder to make a permit category change within 10 days of the date of issuance of the

permit. Ten days should provide enough time for a permit applicant to obtain his or her permit, check that it is the correct permit, and contact the NMFS permit contractor to correct an error.

Definition of Management Boundary Area

NMFS proposes to define "vicinity of the management boundary area" as the Northeast Distant (NED) area to facilitate management, monitoring, and enforcement of the 25 mt allocated to the longline north category, per the ICCAT recommendation. This definition matches exactly the definition of NED closed area in which the experimental fishery is occurring. NMFS is in the third year of the 3-year sea turtle bycatch reduction experiment in the NED area, and pelagic longline vessels are prohibited from fishing in that area unless they are actively participating in, and complying with, the terms and conditions of the NED experiment. Such vessels participate in the NED experiment pursuant to an Endangered Species Act Section 10 permit and exempted fishing permits with 100 percent observer coverage. As the NED area straddles the management boundary area from 60° to 20° W. Longitude and 35° to 55° N. Latitude and given the strict controls of the terms of the experimental fishery, NMFS should be able to monitor, manage, and enforce the 25 mt incidental BFT allocation to the longline north category. NMFS further proposes to allow retention of 25 mt of BFT caught incidentally to fishing under the NED experimental fishery with no target catch requirements because the strict controls of the experiment may prevent fishermen from meeting the target catch requirements such that all BFT would be discarded. Once the 25 mt limit is reached, retention limits and target catch requirements would apply to all incidentally caught BFT in the NED area.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (AA) has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

NMFS has prepared a regulatory impact review and an Initial Regulatory Flexibility Analysis (IRFA) that examine the impacts of the selected alternatives discussed previously in this rulemaking.

The purpose of this proposed action is to implement the 2002 ICCAT Recommendation regarding the BFT quota, propose 2003 specifications for the BFT fishery that allocates the quota among domestic fishing categories, including 25 mt of BFT quota to the Longline category, implement General category effort controls, and revise permit regulations.

The analysis for the IRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. In order to do this NOAA Fisheries has estimated the average impact that the alternative to establish the 2003 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2002 ICCAT Recommendation increased the BFT quota allocation to 1,489.6 mt. This increase includes 77.6 mt to be redistributed to the domestic fishing categories based on the allocation percentages established in the HMS FMP as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and BAYS fisheries in the vicinity of the management area boundary. In 2002, the annual gross revenues from the commercial BFT fishery were approximately \$18 million (Table 9). There are approximately 11,091 vessels that are permitted to land and sell BFT under four BFT quota categories. The four quota categories and their 2002 gross revenues are General (\$13,948,190), Harpoon (\$588,884), Purse Seine (\$3,066,034), and Incidental Longline (\$588,352). The analysis for the IRFA assumes that all category vessels have similar catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various preferred alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, two alternatives were considered: no action and a preferred alternative that would allocate the ICCAT-recommended quota to domestic categories in accordance with the 2002 ICCAT recommendation and HMS FMP. The 2002 ICCAT recommendation specified a 1489.6 mt total quota for the United States. Under ATCA, the United States is obligated to implement ICCAT-approved recommendations. The preferred alternative would increase the quota by 77.6 mt and would have positive impacts for fishermen. The no action alternative would not be consistent with the purpose and need for this action and the HMS FMP. It would maintain

economic impacts to the United States and to local economies at a distribution and scale similar to 2002 but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT Recommendation and as mandated by ATCA.

For the General category effort controls, three alternatives were considered: designate RFDs according to a published schedule, no action (no initial RFDs and publish a schedule during the season), and a preferred alternative to establish RFDs late in the season to provide a late Fall, southern Atlantic fishery. The impacts of designating RFDs according to a published schedule vary according to the pace of the fishery. When catch rates have been high, a published schedule has had positive economic consequences by avoiding market gluts and providing access to higher quality fish later in the season. Positive social impacts have also occurred as fishermen have commented that knowing the exact schedule of RFDs prior to the season facilitates planning and scheduling of trips. However, if catch rates are slow as in recent years, RFDs have been waived and caused confusion and disrupted fishermen's activity, with some negative impacts. The no action alternative would have positive economic consequences if another season of low catch rates occurs. However, even with low catch rates and no RFDs, it is unlikely that there will be enough quota in the General category to sustain a late season commercial handgear fishery off south Atlantic states. Thus, if the 2003 season should be similar to the 2002 fishery, there may be negative economic impacts to fishermen in southern states unless inseason management actions (similar to those in 2002, i.e. inseason transfers) are taken to directly address these concerns and potential impacts. The preferred alternative could have potentially negative economic impacts to those northern area fishermen who would have otherwise caught and sold fish earlier in the season, but would have positive economic impacts to those south Atlantic fishermen. Impacts would be slightly mitigated if northern area fishermen are willing to travel south late in the season. Overall, however, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen and access to the fishery over a greater range of the fish migration.

For permit categories, four alternatives were considered: no action (General category vessels cannot participate in recreational HMS fisheries and no permit changes are allowed once

a permit has been issued), a preferred alternative to allow General category vessels to participate in recreational HMS registered fishing tournaments, allow dual permits and require declarations by General category vessels prior to every trip regarding which permit is to be used, and a preferred alternative to allow 10 days from the date of issuance of the permit to change categories. The no action alternative would maintain perceived negative impacts because General category vessels would remain excluded from all HMS recreational fishing opportunities. The no action alternative would also not allow permit category changes to correct errors and would have negative economic impacts for those vessels who intended to engage in commercial activity but could not due to an incorrect permit. The preferred alternative to allow General category vessels to participate in recreational HMS registered tournaments have positive economic impacts by relieving a restriction on General category vessels. The alternative to allow dual permits would further liberalize the restriction and alleviate any negative economic impacts by allowing General category vessels to choose on any given day whether they wish to fish commercially or recreationally. However, there would be some administrative impacts to vessel owners/operators wishing as they would have to declare with NOAA Fisheries their intent before making the trip, and difficulties in monitoring and enforcing the declarations in real-time and providing multiple permits for the same vessel and may end up causing more confusion within the fishery than alleviating any perceived negative economic impacts. The preferred alternative to provide a time period for permit holders to change their permit category if they found an error would ease an administrative issue with positive economic impacts.

For the definition of the management boundary area, four alternatives were considered: no action (no definition of the area and operational procedures would account for quota allocated to the area), a preferred alternative to define the area as the Northeast Distant area and allow retention of the 25 mt quota of BFT with no target catch requirements, defining the area as 5 degrees on both sides of the management boundary line, and defining the area as east of the management boundary line. All but the no action alternative would also restrict the quota to vessels participating in the NED experimental fishery. Under the no action alternative and the two non-

preferred alternatives, more BFT would likely be discarded than under the preferred alternative and negative economic impacts may occur due to lost revenues from discarded BFT. However, any negative impacts are expected to be minor because BFT are caught incidentally to fishing for other species, thus there are no costs. The preferred alternative would provide slight positive economic impacts by allowing more retention of incidentally caught BFT relative to the other alternatives because no target requirements would apply.

None of the proposed alternatives in this document would result in additional reporting, record keeping, compliance, or monitoring requirements for the public.

NMFS prepared a draft Environmental Assessment (EA) for this proposed rule, and the AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule were implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule, are available from NMFS (*see ADDRESSES*).

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

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act (ESA). A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS is currently implementing the reasonable and prudent alternative required by the BiOp. These proposed quota specifications and effort controls would not have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this proposed action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

The area in which this proposed action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council,

the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

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

Dated: July 3, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

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

2. In § 635.4, revise paragraph (c) and add new paragraph (j)(4) to read as follows:

§ 635.4 Permits and fees.

(c) *HMS Angling permits.* (1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in § 635.4(c)(2). Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same

fishing year, regardless of a change in the vessel's ownership.

(2) A vessel issued an Atlantic Tunas General category permit under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has notified NMFS as required under § 635.5(d). When a vessel issued an Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in § 635.4(c)(3).

(3) A vessel issued an Atlantic Tunas General category permit fishing in a tournament, as permitted in § 635.4(c)(2), shall comply with Atlantic Tunas General category regulations when fishing for, retaining, possessing, or landing BFT.

* * * * *

(j) * * *

(4) Except for Atlantic Tunas Longline and Purse Seine category permits, a vessel owner issued a permit under paragraphs (b), (c) or (d) of this section may change the category of the vessel's permit within 10 days of the date of issuance of the permit. Beyond 10 days after the date of issuance of the permit, no permit category changes may be made.

* * * * *

3. In § 635.23, paragraph (f)(3) is added to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(f) * * *

(3) For pelagic longline vessels participating in an experimental fishery in the Northeast distant area, as defined under § 635.2, under exempted fishing permits issued under § 635.32, all BFT taken incidental to fishing for other species while in the Northeast distant area may be retained up to a maximum of 25 mt for all vessels so authorized, notwithstanding the retention limits and target catch requirements specified in

paragraph (f)(1) of this section. Once the 25 mt limit is attained, the retention limits and target catch requirements specified in paragraph (f)(1) of this section or as adjusted pursuant to paragraph (f)(2) of this section will apply to such vessels.

* * * * *

4. In § 635.27, paragraph (a)(3) is revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(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 for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. In the initial quota specifications issued under paragraph (a) of this section, no more than 60.0 percent 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 participating in an experimental fishery in the Northeast distant area, as defined under § 635.2, under exempted fishing permits issued under § 635.32.

* * * * *

5. In § 635.71, add new paragraph (b)(29) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(29) Participate in any HMS recreational fishing activity aboard a vessel issued an Atlantic Tunas General category permit unless, as specified at § 635.4(c)(2) and (3), the vessel has registered and paid an entry fee to, and is fishing under the rules of, a recreational HMS fishing tournament registered as required under § 635.5(d).

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