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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 150121066-5717-02]**

**RIN 0648-BE81**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas**

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

**ACTION:** Final rule; notice of adjusted 2015 Purse Seine and Reserve category quotas.

**SUMMARY:** NMFS hereby modifies the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna (BFT). Specifically for 2015, NMFS augments the Reserve category quota with available underharvest of the 2014 adjusted U.S. BFT quota and also recalculates the Purse Seine and Reserve category quotas that were announced earlier this year (consistent with the Amendment 7 annual reallocation process) to reflect the increased U.S. quota. Furthermore, NMFS makes minor modifications to the regulations regarding Atlantic tunas purse seine auxiliary vessel activity under the "transfer at sea" provisions. This action is necessary to implement binding 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).

**DATES:** Effective September 26, 2015.

**ADDRESSES:** Supporting documents such as the Environmental Assessments and Fishery Management Plans described below may be downloaded from the HMS website at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/). These documents also are available upon request from Sarah McLaughlin or Brad McHale at the telephone number below.

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

**SUPPLEMENTARY INFORMATION:** Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as “Atlantic tunas”) are managed under the dual authority of the Magnuson-Stevens Act and ATCA. As an active member of ICCAT, the United States implements binding ICCAT recommendations. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

## **Background**

Background information about the need to modify the U.S. BFT base quota and the subquotas for all domestic fishing categories, as well as the regulatory text regarding Atlantic tunas purse seine auxiliary vessel activity under the "transfer at sea" provisions, were provided in the preamble to the proposed rule (80 FR 33467, June 12, 2015) and most of that information is not repeated here.

### *Changes from the Proposed Rule*

In this final rule, NMFS is changing text at § 635.27(a)(4)(ii), to reflect the equal allocation of the baseline Purse Seine category quota that is finalized in this action among the five individual Purse Seine category participants. NMFS inadvertently omitted this calculation in the regulatory text for the proposed rule. Specifically, in the proposed rule, NMFS proposed updating the baseline Purse Seine quota to 184.3 mt (§ 635.27(a)(4)(i)) to reflect the increased U.S. quota. However, NMFS did not carry this change through to the codified text in § 635.27(a)(4)(ii) to reflect the division of that Purse Seine category quota equally among the five individual Purse Seine fishery participants. The existing regulatory text specifies that annually, NMFS will make equal allocations of the baseline Purse Seine category quota described under paragraph (a)(4)(i) of the section to individual Purse Seine participants. To reflect the increase in the baseline Purse Seine category quota to 184.3 mt for each Purse Seine category participant, NMFS is updating the amount in the regulatory text at § 635.27(a)(4)(ii) to 36.9 mt (i.e.,  $184.3 \text{ mt}/5=36.9 \text{ mt}$  each). Because the change in the final rule simply reflects a mathematical function of the amount in § 635.27(a)(4)(i) and corrects the now-outdated number for the individual Purse Seine participants in § 635.27(a)(4)(ii) and does not alter the formula used or substance of the proposed rule, NMFS has determined that it is appropriate to make this change in this final rule.

### *2014 ICCAT Recommendation*

At its November 2014 meeting, ICCAT adopted a western Atlantic BFT TAC of 2,000 mt annually for 2015 and 2016 after considering the results of the 2014 BFT stock assessment and following negotiations among Contracting Parties (ICCAT

Recommendation 14-05). This TAC, which is an increase from the 1,750-mt TAC that has applied annually since 2011, is consistent with scientific advice from the 2014 stock assessment, which indicated that annual catches of less than 2,250 mt would have a 50-percent probability of allowing the spawning stock biomass to be at or above its 2013 level by 2019 under either recruitment scenario, and that annual catches of 2,000 mt or less would continue to allow stock growth under both the low and high recruitment scenarios for the remainder of the rebuilding program. All TAC, quota, and weight information discussed in this notice are whole weight amounts.

For 2015 and 2016, the ICCAT Recommendation also makes the following allocations from the western BFT 2,000-mt TAC for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED): 15 mt for Canada and 25 mt for the United States. Following subtraction of these allocations from the TAC, the recommendation allocates the remainder to the United States (54.02 percent), Canada (22.32 percent) Japan (17.64 percent), Mexico (5.56 percent), UK (0.23 percent), and France (0.23 percent). For the United States, 54.02 percent of the remaining 1,960 mt is 1,058.79 mt annually for 2015 and 2016. This represents an increase of approximately 135 mt (approximately 14 percent) from the U.S. baseline BFT quota that applied annually for 2011 through 2014. Thus, the annual total U.S. quota, including the 25 mt to account for bycatch related to pelagic longline fisheries in the NED, is 1,083.79 mt.

As a method for limiting fishing mortality on juvenile BFT, ICCAT continued to recommend a tolerance limit on the annual harvest of BFT measuring less than 115 cm (straight fork length) to no more than 10 percent by weight of a Contracting Party's total BFT quota over the 2015 and 2016 fishing periods. The United States implements this

provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches (68.5 to less than 119 cm curved fork length)) as appropriate to not exceed the 10-percent limit over the two-year period.

*Domestic Allocations and Quotas*

The table below shows the final baseline quotas and subquotas that result from applying the process established in Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Amendment 7) to the higher U.S. BFT quota that ICCAT recommended in 2014. These quotas are codified at § 635.27(a) and will remain in effect until changed (for instance, if any new ICCAT western BFT TAC recommendation is adopted). Because ICCAT adopted TACs for 2015 and 2016 in Recommendation 14-05, NMFS currently anticipates that these annual base quotas would be in effect through 2016, but they will remain in place unless and until a new TAC is adopted by ICCAT.

**Table 1. Final Atlantic bluefin tuna (BFT) annual baseline quotas (in metric tons)**

Category	Annual Baseline Quotas and Subquotas			
	Quota	Subquotas		
General	466.7			
		January-March <sup>1</sup>	24.7	
		June-August	233.3	
		September	123.7	
		October-November	60.7	
		December	24.3	
Harpoon	38.6			
Longline	148.3			
Trap	1.0			
Purse Seine	184.3 <sup>2</sup>			
Angling	195.2			
		School	108.4	
		Reserve		20.1
		North of 39°18' N. lat.		41.7
		South of 39°18' N. lat.		46.6
		Large School/Small Medium	82.3	
		North of 39°18' N. lat.		38.9
		South of 39°18' N. lat.		43.5
		Trophy	4.5	
		North of 39°18' N. lat.		1.5
		South of 39°18' N. lat.		1.5
		Gulf of Mexico		1.5
Reserve	24.8 <sup>2</sup>			
<b>U.S. Baseline BFT Quota</b>	<b>1,058.9<sup>3</sup></b>			
<b>Total U.S. Quota, including 25 mt for NED (Longline)</b>	<b>1,083.9<sup>3</sup></b>			

<sup>1</sup> January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached or projected to be reached, or through March 31, whichever comes first.

<sup>2</sup> Baseline amount shown. Does not reflect the annual adjustment process (for the Purse Seine and Reserve category quotas) adopted in Amendment 7, discussed below.

<sup>3</sup> Totals subject to rounding error.

The proposed rule described how Amendment 7 also changed the way that NMFS adjusts the U.S. annual quota for any previous year's underharvest. Rather than publishing proposed and final quota specifications annually to adjust the quota for the underharvest as NMFS has in the past, NMFS will automatically augment the Reserve category quota to the extent that underharvest from the previous year is available. Such adjustment will be consistent with ICCAT limits and will be calculated when complete BFT catch information for the prior year is available and finalized. Consistent with the quota regulations, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota pursuant to regulatory determination criteria described at 50 CFR 635.27(a)(8), or for scientific research.

In the proposed rule, NMFS stated that the preliminary 2014 landings and dead discard estimate (i.e., using the 160.6-mt total of the 2013 estimated longline dead discards (156.4 mt) and the observed 2014 purse seine dead discards (4.2 mt) as a proxy for estimated 2014 dead discards) indicated an underharvest of approximately 218 mt. The preliminary 2014 pelagic longline dead discard estimate of 138.8 mt is now available from the NMFS Southeast Fisheries Science Center. Adding the 2014 observed dead discards of 4.2 mt for the purse seine fishery, the best available annual estimate of U.S. dead discards that could be expected in 2015 is now 143 mt. As anticipated and explained to the public at the proposed rule stage, NMFS is using the updated total in this final rule because it is the best available and most complete information NMFS has regarding dead discards. Based on data available as of July 7, 2015, BFT landings in 2014 totaled 667.3 mt. Adding the 143-mt estimate of dead discards results in a preliminary 2014 total catch of 810.3 mt, which is 233.3 mt less than the amount of quota

(inclusive of dead discards) allowed under ICCAT Recommendation 13-09 (i.e., 948.7 mt plus 94.9 mt of 2013 underharvest carried forward to 2014, totaling 1,043.6 mt). Thus, the underharvest for 2014 is 233.3 mt. Per the 2014 ICCAT recommendation, only 10 percent of the total 2014 U.S. quota, or 94.9 mt, of that underharvest is carried forward to the 2015 fishing year. NMFS anticipated this amount of available underharvest to carry forward to 2015 in the proposed rule.

Consistent with the process adopted in the Amendment 7 implementing regulations, NMFS calculated at the beginning of the year the quota available to individual Atlantic Tunas Purse Seine category fishery participants for 2015 based on BFT catch (landings and dead discards) by those fishery participants in 2014. Based on that information, 87.4 mt of the baseline Purse Seine category quota of 159.1 mt was reallocated to the Reserve category for the 2015 fishing year. This process resulted in a total of 71.7 mt for Purse Seine fishery participants for 2015 and 108.8 mt (i.e., the base Reserve quota of 21.4 mt + 87.4 mt from the Purse Seine category) for the Reserve category (80 FR 7547, February 11, 2015). As discussed in the proposed rule, NMFS is first adjusting the 2015 Purse Seine category quota based on the ICCAT quota increase in this rule. As a result, the baseline Purse Seine category quota would increase by 25.2 mt to 184.3 mt. We then recalculate the amounts of quota available to individual Purse Seine fishery participants for 2015 applying the final baseline Purse Seine category (184.3 mt), and adjust the 2015 Purse Seine and Reserve category quotas as appropriate. This process results in a total of 82.9 mt for Purse Seine fishery participants in 2015, with the remainder (i.e.,  $184.3 - 82.9 = 101.4$  mt) added to the Reserve category. Consistent with § 635.27(a)(4)(v)(C), NMFS will notify Atlantic Tunas Purse Seine fishery

participants of the adjusted amount of quota available for their use in 2015 through the Individual Bluefin Quota (IBQ) electronic system and in writing.

NMFS recently implemented two inseason transfers from the Reserve category for 2015 (34 mt to the Longline category and 40 mt to the Harpoon category), so the adjusted 2015 Reserve category quota as of publication of this action, including the allowable underharvest described above, would be  $24.8 - 34 - 40 + 101.4 + 94.9 = 147.1$  mt (80 FR 45098, July 29, 2015 and 80 FR 46516, August 5, 2015, respectively).

#### *Atlantic Tunas Purse Seine Auxiliary Vessel Activity*

Currently, HMS regulations specify that an owner or operator of a vessel for which an Atlantic Tunas Purse Seine category permit has been issued may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which an Atlantic Tunas Purse Seine category permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits. NMFS is making minor modifications to this regulatory text to clarify that this text was not meant to allow “transfer at sea,” which clearly is prohibited by ICCAT Recommendation 14-05, but is only meant to allow the routine, limited operations of an auxiliary vessel (i.e., a skiff) in assisting its associated purse seine vessel in catch operations for BFT. Such activities are not the type of activity meant to be prohibited by that Recommendation. This clarification is administrative, reflects current practice, and would have no environmental impacts or effects on current fishing operations.

#### *Comments and Responses*

NMFS received two written comments on the proposed rule, as well as two verbal comments through the public conference call/webinar. Few of the comments NMFS received focused specifically on the proposed rule. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period. The comments that were outside the scope of this rule are summarized under “Other Issues” below.

*Comment 1:* One commenter suggested that, for conservation reasons and to allow the BFT stock to grow, NMFS should not increase the quota.

*Response:* The western Atlantic BFT TAC, which includes the U.S. quota, is expected to allow for continued BFT stock growth under the both the low and high stock recruitment scenarios considered by ICCAT’s Standing Committee on Research and Statistics (SCRS) and is consistent with ICCAT recommendations, ATCA, and domestic and international management objectives. Furthermore, NMFS is required under the Magnuson-Stevens Act and ATCA to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

*Comment 2:* Two commenters, representing fishing industry organizations, supported finalizing the rule as proposed but encouraged NMFS to increase BFT daily retention limits to allow more of the available quota to be harvested.

*Response:* This rulemaking does not address daily retention limits. Adjusting daily retention limits occurs through separate inseason actions. NMFS has the authority to adjust the daily retention limits for the General, Harpoon, and Angling categories inseason, based on consideration of applicable regulatory determination criteria at § 635.27(a)(8). In adjusting Angling category limits, NMFS also considers the ICCAT

tolerance limit of school BFT, which NMFS manages as appropriate to not exceed 10 percent (108.4 mt) of the annual U.S. BFT quota over each two-consecutive-year period (starting with 2015-2016). To date in 2015, NMFS has taken two inseason actions to increase the General and Angling category retention limit from the default levels (79 FR 77943, December 29, 2014, and 80 FR 27863, May 15, 2015). These actions may result in more of the General and Angling category subquotas to be harvested, relative to 2014, depending on the availability of BFT to the fisheries. NMFS also may adjust recreational effort controls inseason based on the best information available, but landings data are not available with the timing and frequency of commercial data (submitted within 24 hours to NMFS through required landings reports for each fish) such that adjustments in recreational fishing effort may need to be made in subsequent fishing years.

*Comment 3:* One representative of an environmental non-governmental organization commented that the proposed rule is reasonable but expressed disappointment in ICCAT's recommendation to increase the TAC, given stock assessment uncertainties, and expressed concern that a quota increase could jeopardize rebuilding the stock by 2019.

*Response:* The TAC recommended by ICCAT in 2014 followed the scientific advice of ICCAT's SCRS and considered the results of the 2014 stock assessment update while also taking into account remaining uncertainties. The SCRS indicated that annual catches of less than 2,250 mt would have a 50 percent probability of allowing the spawning stock biomass to be at or above its 2013 level by 2019 under either recruitment scenario, and that annual catches of 2,000 mt or less would continue to allow stock growth under both the low and high recruitment scenarios for the remainder of the

rebuilding program. NMFS is committed to the sustainable, science-based management of BFT and is hopeful that the updated information and new data that will be incorporated into the next benchmark/full stock assessment will help to reduce some of the scientific uncertainty that the SCRS has identified for this stock.

*Other Issues*

In addition to the above comments specifically on the content of the proposed rule, other commenters raised issues that are outside the scope of this rule, particularly regarding Amendment 7 implementation. These comments included concern about the potential impact of quota transfers to the Longline category on IBQ shareholders and interest in how the reporting by commercial handgear vessel owners is proceeding during the initial implementation this year.

Although outside the scope of this rulemaking, NMFS is noting here that it carefully considers the regulatory determination regarding inseason adjustments before making an inseason quota transfer. These criteria include the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS would consider, among other things, how such a transfer would optimize fishing opportunity and contribute to full accounting for landings and dead discards, while still supporting the broader objectives of the fishery management plan. NMFS considered these and other requisite factors in its recently published inseason action transferring 34 mt of quota from the Reserve to the Longline category (80 FR 45098, July 29, 2015). NMFS will report on the progress of Amendment 7 implementation (including the IBQ program and vessel catch reporting) at upcoming meetings of the

HMS Advisory Panel, and these presentations and transcripts will be publically accessible through the HMS website (see **ADDRESSES**).

### **Classification**

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law.

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

In compliance with section 604 of the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to analyze the impacts of the alternatives for implementing and allocating the ICCAT-recommended U.S. quota for 2015 and 2016; and to clarify the purse seine transfer at sea regulations for Atlantic tunas.

Section 604(a)(2) of the RFA requires agencies to summarize significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of

such issues, and a statement of any changes made as a result of the comments. NMFS received a few comments on the proposed rule (80 FR 33467, June 12, 2015) during the comment period. A summary of these comments and the Agency's responses are included in Section 13 of the EA/RIR/FRFA and are included in this final rule. However, NMFS did not receive comment specifically on the IRFA.

Section 604(a)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. This final rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. In general, the HMS Charter/Headboat category permit holders can be regarded as small entities for RFA purposes. HMS Angling (recreational) category permit holders are typically obtained by individuals who are not considered small entities for purposes of the RFA. The SBA has established size criteria for all major industry sectors in the United States including fish harvesters (79 FR 33647; June 12, 2014). A business involved in fish harvesting is classified as a "small business" if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts (revenue) not in excess of \$20.5 million for all of its affiliated operations worldwide (NAICS code 114111, finfish fishing). NAICS is the North American Industry Classification System, a standard system used by business and government to classify business establishments into industries, according to their economic activity. The United States government developed NAICS to collect, analyze, and publish data about the economy. In addition, the SBA has defined a small

charter/party boat entity (NAICS code 487210, for-hire) as one with average annual receipts (revenue) of less than \$7.5 million.

As described in the final rule to implement Amendment 7 to the 2006 Consolidated HMS FMP (79 FR 71510, December 2, 2014), the average annual gross revenue per active pelagic longline vessel was estimated to be \$187,000 based on the 170 active vessels between 2006 and 2012 that produced an estimated \$31.8 million in revenue annually. The maximum annual revenue for any pelagic longline vessel during that time period was less than \$1.4 million, well below the SBA size threshold of \$20.5 million in combined annual receipts. Therefore, NMFS considers all Atlantic Tunas Longline category permit holders to be small entities. NMFS is unaware of any other Atlantic Tunas category permit holders that potentially could earn more than \$20.5 million in revenue annually. NMFS is also unaware of any charter/headboat businesses that could exceed the \$7.5 million thresholds for those small entities. HMS Angling category permit holders are typically obtained by individuals who are not considered small entities for purposes of the RFA. Therefore, NMFS considers all Atlantic Tunas permit holders and HMS Charter/Headboat permit holders subject to this action to be small entities.

This action would apply to all participants in the Atlantic BFT fishery, i.e., to the over 27,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic Tunas permit as of October 2014. This final rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT fishery or fishing

services for recreational anglers. As summarized in the 2014 SAFE Report for Atlantic HMS, there were 6,792 commercial Atlantic tunas or Atlantic HMS permits in 2014, as follows: 2,782 in the Atlantic Tunas General category; 14 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 246 in the Atlantic Tunas Longline category; 3 in the Atlantic Tunas Trap category; and 3,742 in the HMS Charter/Headboat category. In Amendment 7, authorized 136 Longline category permits for IBQ shares. This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. No impacts are expected to occur from the clarification of the transfer at sea prohibition regulatory text.

NMFS has determined that this action would not likely directly affect any small government jurisdictions, as that term is defined under the RFA.

Under section 604(a)(4) of the Regulatory Flexibility Act, agencies are required to describe any new reporting, record-keeping, and other compliance requirements. There are no new reporting or recordkeeping requirements in any of the alternatives considered for this action.

Under section 604(a)(5) of the RFA, agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These alternatives and their impacts are discussed below. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives include: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of

compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, no alternatives are discussed that fall under the first and fourth categories described above. Amendment 7 implemented criteria for determining the availability of quota for Purse Seine fishery category participants and IBQs for the Longline category. Both of these and the eligibility criteria for IBQs and access to the Cape Hatteras GRA for the Longline category can be considered individual performance standards. NMFS has not yet found a practical means of applying individual performance standards to the other quota categories while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. In this rulemaking, NMFS analyzed two quota implementation alternatives: first, the status quo U.S. baseline quota and quotas established in 2011, and second, the preferred alternative to implement the U.S. quota to domestic categories in accordance with the 2014 ICCAT Recommendation, Amendment 7, and implementing regulations. NMFS considered a third quota alternative, which would use an allocation scheme other than the one recently established in Amendment 7 for the purpose of implementing BFT fishing category subquotas, but did not analyze this alternative further because it would not satisfy the purpose and need of the action (i.e., modifications to domestic management of BFT

outside the limitations of the 2006 Consolidated HMS FMP, as amended, and current ICCAT recommendations do not satisfy the purpose and need for the action).

NMFS has estimated the average impact that establishing the increased baseline annual U.S. BFT quota for all domestic fishing categories would have on each quota category and the vessels within those categories. As mentioned above, the 2014 ICCAT recommendation increased the annual U.S. baseline BFT quota for each of 2015 and 2016 to 1,058.79 mt and provides 25 mt annually for incidental catch of BFT related to directed longline fisheries in the NED. The baseline annual subquotas would be adjusted consistent with the process established in Amendment 7 (79 FR 71510, December 2, 2014), and these amounts would be codified.

To calculate the average ex-vessel revenues under this action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under each of the subquotas (i.e., 2014 prices for the General, Harpoon, Purse Seine, and Longline/Trap categories). For comparison, in 2014, gross revenues were approximately \$7.8 million, broken out by category as follows: General—\$5.9 million, Harpoon—\$544,778, Purse Seine—\$391,607, Longline—\$953,055, and Trap—\$0. The baseline subquotas could result in estimated gross revenues of \$11 million, if finalized and fully utilized, broken out by category as follows: General category: \$6.8 million (466.7 mt \* \$6.60/lb); Harpoon category: \$611,851 (38.6 mt \* \$7.19/lb); Purse Seine category: \$1.9 million (184.3 mt \* \$ 4.77/lb); Longline category: \$1.7 million (148.3 mt \* \$5.22/lb); and Trap category: \$11,508 (1.0 mt \* \$ 5.22/lb). This rule implements the recently adopted ICCAT-recommended U.S. quota and applies the

allocations for each quota category as recently amended in the implementing regulations for Amendment 7 to the 2006 Consolidated HMS FMP. This action would be consistent with ATCA, under which the Secretary promulgates regulations as necessary and appropriate to carry out ICCAT recommendations.

No affected entities would be expected to experience negative, direct economic impacts as a result of the preferred alternative. On the contrary, each of the quota categories would increase relative to the baseline quotas that applied in 2011 through 2014 and the quotas finalized in Amendment 7. To the extent that Purse Seine fishery participants and IBQ participants could receive additional quota as a result of Amendment 7-implemented allocation formulas being applied to increases in available Purse Seine and Longline category quota, those participants would receive varying increases, which would result in direct benefits from either increased fishing opportunities or quota leasing.

To estimate potential average ex-vessel revenues that could result from this action, NMFS divides the potential annual gross revenues for the General, Harpoon, Purse Seine, and Trap category by the number of permit holders. For the Longline category, NMFS divides the potential annual gross revenues by the number of active vessels as defined in Amendment 7. This is an appropriate approach for BFT fisheries, in particular because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data (particularly from non-Longline participants) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.), so net revenue for each participant cannot be

calculated. As a result, NMFS analyzes the average impact of the alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish) but for the sake of estimating potential revenues per vessel, category-wide revenues can be divided by the number of permitted vessels in each category. For the Longline fishery, the number of permits authorized for IBQ shares is used, and actual revenues would depend, in part, on each vessel's IBQ in 2015. Although HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits, because it is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT fishery, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category vessels only.

Estimated potential 2015 revenues on a per vessel basis, considering the number of permit holders listed above and the final subquotas, could be \$2,441 for the General category; \$43,703 for the Harpoon category; \$387,618 for the Purse Seine category; \$12,549 for the Longline category, using the 136 permits authorized for IBQ shares; and \$3,836 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

Consistent with Amendment 7 regulations, NMFS calculated the quota available to Purse Seine fishery participants for 2015 and then reallocated the remaining 87.4 mt of available Purse Seine category quota to the Reserve category (80 FR 7547, February 11, 2015). NMFS has recalculated those amounts based on the final U.S. baseline BFT quota

and subquotas in this rule, with an increase of 11.2 mt and 17.4 mt for the Purse Seine and Reserve categories, respectively.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues above may overestimate the probable economic impacts to those categories relative to recent conditions.

Additionally, there has been substantial interannual variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors.

The modifications to the regulatory text concerning Atlantic tunas purse seine transfer at sea are intended to clarify the prohibition on transfer at sea. They apply to the five Purse Seine fishery participants only and are not expected to have significant economic impacts as they are administrative in nature, reflect current practice, and would not result in changes to Atlantic tunas purse seine operations.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a brochure summarizing fishery information and regulations for Atlantic tuna fisheries for 2015. This brochure also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

## **List of Subjects in 50 CFR Part 635**

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

Dated: August 20, 2015.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

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.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, revise paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4) introductory text, (a)(4)(i), (a)(4)(ii), (a)(5), (a)(6), (a)(7)(i), and (a)(7)(ii) to read as follows:

#### **§ 635.27 Quotas.**

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph

(a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,058.79 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (466.7 mt); Angling—19.7 percent (195.2 mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (38.6 mt); Purse Seine—18.6 percent (184.3 mt); Longline—8.1 percent (80.3 mt) plus the 68-mt allocation (i.e., 148.3 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.0 mt); and Reserve—2.5 percent (24.8 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) \* \* \*

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit

has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 466.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (24.7 mt);

(B) June 1 through August 31—50 percent (233.3 mt);

(C) September 1 through September 30—26.5 percent (123.7 mt);

(D) October 1 through November 30—13 percent (60.7 mt); and

(E) December 1 through December 31—5.2 percent (24.3 mt).

\* \* \* \* \*

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 195.2 mt. No more than 2.3 percent (4.5 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, over each two-consecutive-year period (starting with 2015-2016), no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (i.e., 108.4 mt). The Angling

category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (46.6 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school bluefin tuna Angling category quota (41.7 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (43.5 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium bluefin tuna Angling category quota (38.9 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) One third (1.5 mt) of the large medium and giant bluefin tuna Angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18' N. lat.; south of 39°18' N. lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 148.3 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic

longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) *Purse Seine category quota--(i) Baseline Purse Seine quota.* Pursuant to paragraph (a) of this section, the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 184.3 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

(ii) *Allocation of bluefin quota to Purse Seine category participants.* Annually, NMFS will make equal allocations of the baseline Purse Seine category quota described under paragraph (a)(4)(i) of this section to individual Purse Seine participants (i.e., 36.9 mt each), then make further determinations regarding the allocations per paragraph (a)(4)(v) of this section. Allocations of individual bluefin quota to individual Purse Seine participants may only be transferred through leasing in accordance with procedures and requirements at § 635.15(c) and other requirements under this paragraph (a)(4).

\* \* \* \* \*

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 38.6 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 1.0 mt.

(7) \* \* \*

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 24.8 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (20.1 mt) of the total school bluefin tuna Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

\* \* \* \* \*

3. In § 635.29, revise paragraph (c) to read as follows:

**§ 635.29 Transfer at sea and transshipment.**

\* \* \* \* \*

(c) An owner or operator of a vessel for which an Atlantic Tunas Purse Seine category permit has been issued under §635.4 may use an auxiliary vessel (i.e., a skiff) associated with the permitted vessel to assist in routine purse seine fishery operations, provided that the auxiliary vessel has not been issued an Atlantic Tunas or HMS vessel permit and functions only in an auxiliary capacity during routine purse seine operations (i.e., it conducts limited assistance activities such as assistance with purse seine deployment and removal of BFT from the purse seine). The auxiliary vessel may transfer large medium and giant Atlantic BFT to its associated purse seine vessel during routine purse seine operations, provided that the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

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