



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 210730-0155]

RIN 0648-BK37

#### Atlantic Highly Migratory Species; General Category Restricted-Fishing Days

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

**ACTION:** Final rule.

**SUMMARY:** This final rule sets Atlantic bluefin tuna (BFT) General category restricted-fishing days (RFDs) for the 2021 fishing year; clarifies the regulations regarding applicability of RFDs to Highly Migratory Species (HMS) Charter/Headboat permitted vessels; and corrects references to the Atlantic Tunas General category permit in a section of the Atlantic HMS regulations. This final rule establishes RFDs for specific days during the months of September through November 2021. On an RFD, Atlantic Tunas General category permitted vessels may not fish for (including catch-and-release or tag-and-release fishing), possess, retain, land, or sell BFT. On RFDs, persons aboard HMS Charter/Headboat permitted vessels with a commercial sale endorsement are prohibited from fishing commercially for BFT. Persons aboard all HMS Charter/Headboat permitted vessels can fish recreationally for BFT under the applicable Angling category restrictions and retention limits.

**DATES:** This final rule is effective on [*insert date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Copies of this rule and supporting documents, including the Final Regulatory Flexibility Analysis (FRFA) for this action, are available from the HMS

Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Larry Redd at [larry.redd@noaa.gov](mailto:larry.redd@noaa.gov) or 301-427-8503.

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**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States, among the various domestic fishing categories per the allocations established in the 2006 Consolidated HMS FMP and its amendments. Among other restrictions and retention limits, section 635.23 specifies the retention limit provisions for Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels, including those applicable to persons aboard such permitted vessels on RFDs and on days other than RFDs.

## **Background**

Specific information regarding RFDs, requests for their resumed use, the current U.S. quota and General category subquotas, and the need to clarify the regulations regarding the applicability of RFDs to HMS Charter/Headboat permitted vessels, was provided in the preamble to the proposed rule (86 FR 25992, May 12, 2021) and is not repeated here.

As described in the proposed rule, NMFS undertook this rulemaking to address and avoid repetition of certain issues that affected the General category BFT fishery in

2019 and 2020 and earlier. These issues include the shortened time to fish under the General category subquotas that occurs when the quota is filled quickly, increasing numbers of BFT that are landed but not sold to dealers because of market gluts, and the resulting decreased price of BFT.

The comment period for the proposed rule closed on June 11, 2021. NMFS received 67 written comments, including comments from commercial and recreational fishermen, Atlantic tuna dealers, and the general public, as well as oral comments at a public webinar and at the HMS Advisory Panel meeting and public comment sessions at that meeting. The comments received, and responses to those comments, are summarized below in the Response to Comments section.

After considering public comments on the proposed rule in light of the management goals of this action, NMFS decided to implement the RFD schedule as proposed (except for changing the start date of the first RFD to account for the date of publication of this final rule). Compared to the fishery in 2019 and 2020, implementing RFDs should slow the rate of landings and extend fishing opportunities for General category permit holders through a greater portion of the subquota periods while also addressing the issues mentioned above. As such, this final rule establishes RFDs for the 2021 BFT fishing year for the General category and makes minor revisions in the HMS regulations at 50 CFR part 635. As described below, except for changing the start date of the first RFD to account for the date of publication of this final rule, no changes were made from the proposed rule. Implementing this RFD schedule, with the ability to waive scheduled RFDs, would slow the rate of landings to provide available quota throughout a longer duration of the General category subquota periods while providing reasonable fishing opportunities, including some fishing tournament opportunities, for all General category participants.

Specifically, NMFS sets RFDs for the 2021 fishing year on the following days: all Tuesdays, Fridays, and Saturdays from September 3 through November 30, 2021. On an RFD, Atlantic Tunas General category permitted vessels are prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT. On these designated RFDs, persons aboard HMS Charter/Headboat permitted vessels with a commercial sale endorsement also are prohibited from fishing commercially for BFT. Persons aboard all HMS Charter/Headboat permitted vessels can fish recreationally for BFT under the applicable Angling category restrictions and retention limits.

NMFS may waive previously scheduled RFDs under certain circumstances. Consistent with § 635.23(a)(4), NMFS may waive an RFD by adjusting the daily BFT retention limit from zero up to five on specified RFDs, after considering the inseason adjustment determination criteria at § 635.27(a)(8). This would include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS will announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. Such adjustments will be effective no less than 3 calendar days after the date of filing for public inspection with the Office of the Federal Register. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT as allowable under § 635.26(a). However, should NMFS waive previously designated RFDs while the General category fishery is open, persons aboard vessels permitted in the General category may conduct catch and release or tag-and-release fishing for BFT as allowable under § 635.26(a). NMFS will not modify RFDs set by this final rule during the fishing year in other ways (such as changing an RFD from one date to another or

adding RFDs) other than waiving designated RFDs based on the circumstances described above.

This final rule also clarifies existing regulatory text at § 635.23(c) about the applicability of RFDs to HMS Charter/Headboat permitted vessels, and makes a minor change to correct two permit title references in § 635.23 of the regulations.

### **Response to Comments**

All written comments can be found at [www.regulations.gov](http://www.regulations.gov) by searching for NOAA-NMFS-2021-0040. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period.

*Comment 1:* NMFS received comments from General category fishermen, charter/headboat fishermen, and tournament operators both in support of and in opposition to General category RFDs for the 2021 fishing year. Most commenters in support of resuming the use of RFDs noted that RFDs should prevent market gluts and should lengthen the General category season within the subquota time-periods and the season overall. These commenters felt that lengthening the season into the fall/winter months when BFT are of better quality would result in higher prices for fishermen. Other commenters expressed concern that the proposed rule seemed to be economic in nature and would inappropriately manipulate the market. Additionally, several commenters opposed to RFDs expressed concern that this action is premature due to the unique impacts of COVID-19 in 2020, noting that global markets and economies are stabilizing and similar impacts should not be expected in 2021. Furthermore, some commenters expressed concern that RFDs would not result in extending the fishery, but instead would lead to a derby fishery resulting in flooded markets, lower BFT prices, and safety-at-sea concerns associated with fishing in bad weather conditions.

*Response:* RFDs can slow the rate of General category landings and extend fishing opportunities through a greater portion of the General category time-period

subquotas. This final rule is not driven by purely economic-related objectives. The primary objective of the final rule is to slow the harvest rate of BFT in order to extend the period of time that the fishery may remain open to provide fishing opportunities longer in the season. The proposed rule did discuss past market conditions and recognized that this action should also help prevent large numbers of BFT from entering the market at the same time, and would potentially alleviate some negative economic impacts experienced by General category and Charter/Headboat permitted fishermen who could not find buyers for their BFT. This was not the primary objective of the rule, however. The primary objective of this action is to slow the rate of General category landings to extend fishing opportunities through a greater portion of the subquota periods. NMFS notes that BFT prices generally increase over the summer and fall period. NMFS acknowledges the unique impacts of COVID-19 in 2020; however, NMFS has observed the issues that contribute to the need for this action for several years, and those issues were exacerbated in both 2019 and 2020. Specifically, over the past several years, landings have been highest from mid-August through November, contributing to derby-like conditions, contributing to market gluts, shortening the time it takes to fill relevant subquotas, and resulting in inseason closures earlier than desired. If NMFS does not take action this year, it is likely these trends would continue. Overall, NMFS believes that by spreading out fishing effort over a longer period of time, safety-at-sea issues should decrease, as the conditions that encourage derby-like behavior would be diminished. NMFS recognizes that the weather is unpredictable, particularly in the second half of October and early November, and that poor weather may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates merit waiving RFDs, NMFS could adjust the daily retention limit on waived days with a minimum 3-day notification to fishermen, by filing such an adjustment in the **Federal Register**, under 50 CFR 635.23(a)(4).

*Comment 2:* NMFS received comments both supporting the proposed Tuesday, Friday, and Saturday schedule of RFDs, and opposing the proposed schedule. Some commenters suggested modifications to the proposed schedule, including implementing RFDs earlier in June and/or avoiding weekends. One commenter objected to the proposed RFD schedule while also suggesting to start RFDs in September. Some commenters noted that Fridays and Saturdays are the days on which the demand to buy and sell BFT is greatest.

*Response:* NMFS' proposed schedule of RFDs was based on a review of average daily catch rate data for recent years and a review of past years' RFD schedules and how they worked to extend the use of the General category quota. The Tuesday, Friday, and Saturday RFD schedule allows for two-consecutive-day periods twice each week (Sunday-Monday; Wednesday-Thursday) for General category and Charter/Headboat permitted vessels with a commercial sale endorsement to fish for and sell BFT. NMFS believes that two-consecutive-day periods twice each week would allow BFT products to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.*, Sundays). Given that the proposed rule published in May, and the comment period ended on June 11, 2021, NMFS could not implement RFDs starting June 1, 2021. However, NMFS is establishing RFDs starting in September, when catch and landing rates substantially increase, resulting in General category subquotas being met and closures of applicable General category time-periods.

NMFS recognizes that many General category fishery participants would like to maintain the opportunity to fish and sell on Fridays and weekends. However, NMFS selected Tuesdays, Fridays, and Saturdays based on input from Atlantic tunas dealers, General category participants, and members of the Atlantic HMS Advisory Panel. NMFS believes that this weekly schedule of RFDs should increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the

subquota periods (similar to some past RFD schedules that applied in previous fishing years). It would also allow for two-consecutive-day periods twice each week (Sunday – Monday; Wednesday – Thursday) for BFT product to move through the market and also allow for some commercial fishing activity each weekend (*i.e.*, Sunday).

*Comment 3:* NMFS received several comments from General category and Charter/Headboat captains expressing support for this action, noting that RFDs allow Charter/Headboat captains the opportunity to sell fish on non-RFD days and to continue to charter on RFD days (*i.e.*, under the Angling category regulations). These captains noted that recreational trips potentially will have higher catch rates as vessels can fish without having to compete with commercial fishing vessels.

*Response:* As described in the proposed rule, resuming RFDs will allow persons aboard Charter/Headboat permitted vessels with a commercial sale endorsement the opportunity to fish commercially for BFT on non-RFDs and to charter on an RFD under the Angling category restrictions and limits. NMFS recognizes that the use of RFDs may allow for an increase in recreational catches of BFT on RFDs, but the purpose of this action is to extend the General category BFT fishery for the 2021 fishing year. Although recreational landings may increase on RFDs, Charter/Headboat permitted vessels must abide by established retention limits; thus, NMFS anticipates that recreational landings would remain within the current annual Angling category quota.

*Comment 4:* NMFS received comments, from both those in support of and opposed to RFDs, regarding the potential negative impacts of RFDs on BFT fishing tournaments. These commenters noted the economic importance of fishing tournaments on local economies and suggested that NMFS exempt participants in registered fishing tournaments from the RFD restrictions or increase the retention limit (*i.e.*, waive RFDs) on tournament days.



*Response:* NMFS acknowledges that RFDs that occur on a tournament date may affect BFT fishing at those tournaments as General category participants are prohibited from fishing for BFT on RFDs. However, on an RFD, General category participants may still participate in non-BFT fishing during the tournament, and may land sharks, swordfish, billfish, bigeye, albacore, yellowfin, and/or skipjack tunas recreationally as otherwise permitted. Additionally, on an RFD, Charter/Headboat permitted vessels may participate recreationally in HMS fishing tournaments, including for BFT, under the applicable Angling category restrictions and retention limits. Under the current regulations, tournament operators are required to register their tournament with NMFS at least four weeks prior to the start of the tournament. As such, NMFS is aware of several fishing tournaments that will likely include BFT that often occur in August through November. Should a tournament change its dates of operation, NMFS encourages tournament operators to contact NMFS to update the dates for which their tournament is registered. NMFS does not plan to waive RFDs specifically to accommodate tournaments, as doing so could eliminate the benefits of RFDs by allowing General category and Charter/Headboat permitted vessels with a commercial sale endorsement the opportunity to land and sell commercial size BFT on those scheduled RFD dates. Furthermore, as explained above, General category and Charter/Headboat fishermen could still participate in tournaments during RFDs, albeit with the additional RFD restrictions and retention limits. NMFS will closely monitor BFT landings and catch rates and, should NMFS determine that waiving RFDs is warranted, NMFS could waive an RFD by adjusting the daily retention limits with a minimum 3-day notification to fishermen, by filing such an adjustment in the **Federal Register**, under 50 CFR 635.23(a)(4).

*Comment 5:* NMFS received several comments suggesting that NMFS should waive RFDs during HMS registered fishing tournaments because tournaments are a source of valuable scientific data and information for BFT.

*Response:* NMFS understands the importance of fishing tournaments for the collection of scientific data on catch, effort, and participants, and the collection of biological samples. The scheduled RFDs will still allow the opportunity for valuable scientific data collection as recreational fishing tournaments can still proceed throughout the year. General category and Charter/Headboat fishermen could still participate in tournaments during RFDs, consistent with the applicable retention limits and RFD restrictions. Scientists who collect biological samples during fishing tournaments could still do so, even on an RFD, by collecting samples from those fish landed recreationally (under the Angling category) or as authorized under exempted fishing permits. NMFS will closely monitor BFT landings and catch rates and, should NMFS determine that waiving RFDs is warranted, NMFS could adjust the daily retention limits with a minimum 3-day notification to fishermen in the **Federal Register**, under 50 CFR 635.23(a)(4). Without RFDs, subquota time-periods in the later part of the year often close early, even if BFT are available, which in turn limits valuable data collection among General category participants. NMFS believes that extending the fishing year via RFDs and other inseason actions will benefit scientific data collection by allowing for collection of data during time-periods when the General category fishery is otherwise closed.

*Comment 6:* NMFS received comments of concern that increasing the General category retention limit from the default of one fish to three fish to begin the June through August time-period subquota (86 FR 27814, May 24, 2021) was counterproductive to the goal of setting RFDs. Several commenters requested the use of mechanisms other than RFDs to extend the fishery, such as maintaining the default

retention limit throughout the season, limiting entry into the fishery, considering different closure dates at the end of subquota periods, and increasing the price for fishing permits. These commenters noted that increasing outreach and education before permit issuance and promoting tagging could benefit the fishery.

*Response:* This action focuses on implementing RFDs, as currently authorized in the regulations, to slow the rate of General category landings, prevent early closures, and extend fishing opportunities through a greater portion of the General category time-period subquotas for the 2021 fishing year. NMFS will continue to use retention limits, RFDs, and other available management tools to manage the BFT fisheries, within the available BFT quota and established subquotas. In recent years, because the rate of landings is typically slow in early June, NMFS has regularly set the daily retention limit for the beginning of the June through August period at three fish, following consideration of the relevant criteria provided under § 635.27(a)(8), including supporting scientific data collection. As appropriate, NMFS then typically reduces the limit to the one-fish default level based on catch rates associated with the various authorized gear types (*e.g.*, harpoon, rod and reel) to ensure fishing opportunities in all respective time-period subquotas and to ensure that the available quota is not exceeded.

As with other mechanisms mentioned above, RFDs are an available effort control mechanism that can be used to extend time-period subquotas and provide additional inseason management flexibility regarding quota use and distribution and season length. Unlike other mechanisms, in the current regulations, RFDs may only be used to assist with the management of the BFT General category fishery (*i.e.*, permit categories that fish against the General category quota). NMFS is not considering the use of limited entry for the General category fishery at this time, although NMFS has used limited entry in other BFT fisheries, such as the pelagic longline fishery. Throughout the season, NMFS monitors landings and catch rates and will close the fishery or modify retention

limits as appropriate to ensure the quotas are not exceeded. NMFS establishes the price of the permits based on the costs to administer the issuance of the permits; the price of the permits is not used as a means to limit or reduce entry to the fishery. NMFS will continue to monitor and evaluate the effectiveness of all these management measures in the context of current conditions to determine whether other actions are necessary.

*Comment 7:* NMFS received comments noting issues with dealer practices, particularly regarding sale of poor quality BFT, and requesting that NMFS not resume use of RFDs. Several individuals noted that if the dealers would like better control over supply and demand related to state and international markets, those dealers should continue to limit their own purchases as was done in 2019 and 2020.

*Response:* NMFS does not control or regulate the activities of Federal Atlantic tunas dealers regarding the quality of fish sold on domestic or international markets. Instead, NMFS requires that dealers obtain a Federal dealer permit to purchase, trade, or barter any HMS and abide by the regulations under both § 635.4 and § 635.5. As described in the proposed rule, NMFS received communications from dealers and fishermen regarding the self-imposed no (or limited) purchase days in 2019 and 2020. While these actions by dealers may have prevented an oversupply of BFT on the market and may have lengthened the time-period for some subquotas, because these actions were not pre-scheduled or consistently implemented across the fishery, some General category and Charter/Headboat permitted fishermen experienced negative impacts, and opportunities may not have been equitably distributed among all permitted vessels. Thus, NMFS is implementing a schedule of RFDs to apply consistently across the fishery to ensure that the General category fishery is extended for a greater portion of the subquota time-periods. This may have positive impacts for all General category and Charter/Headboat (commercial) BFT fishery participants by allowing for more equitable distribution of opportunities.

*Comment 8:* NMFS received several comments that the proposed action would disadvantage General category fishermen because Harpoon category participants can fish for and sell BFT on RFDs. One commenter suggested that RFDs should apply across all categories.

*Response:* NMFS disagrees that this action disadvantages General category fishermen. As noted above, BFT catch rates have increased over recent years in the General category, shortening the time to fill subquotas, resulting in untimely subquota closures and unstable markets. NMFS believes that this rulemaking will benefit General category participants by spreading out fishing effort over time, which would extend fishing opportunities through a greater proportion of the subquota time-periods. Other categories (*e.g.*, Harpoon, Purse Seine, Longline, and Trap) are not experiencing these issues because of the unique characteristics (including gear, timing, and participation) of those fisheries. As such, at this time, NMFS does not intend to implement RFDs for any other category.

*Comment 9:* NMFS received a comment supporting RFDs but expressing concern regarding the impact of RFDs on General category fishermen targeting non-BFT.

*Response:* General category fishermen are still allowed to fish for, retain, land, and sell non-BFT species on RFDs under the applicable General category permit restrictions and retention limits. The RFD prohibition only applies to General category fishermen when fishing for (including catch-and-release or tag-and-release fishing), possessing, retaining, landing, or selling BFT.

*Comment 10:* NMFS received several comments requesting that RFDs be implemented as a pilot program for 2021 and that NMFS re-evaluate RFDs for future years.

*Response:* Due to high landings rates in recent years and the fact that the fishery has continued to close earlier than desired, and based on the expectation that landings

rates in 2021 will be similar to landings rates in recent years without additional measures, NMFS is implementing RFDs for 2021 through this final rule. While NMFS is not implementing this change as a pilot program, NMFS will continue to monitor landings rates to determine whether RFDs are necessary in future fishing years, and will take appropriate action when warranted.

*Comment 11:* NMFS received several comments from part-time commercial fishermen noting that this action would have negative impacts on those fishermen that work other jobs full-time during the week and supplement their income with weekend fishing trips.

*Response:* NMFS acknowledges that this action may affect part-time commercial fishermen who fish on the weekend. Note that NMFS manages the BFT fishery to allow equitable fishing opportunities for all participants. Therefore, as described in the proposed rule, and above in the response to Comment 2, NMFS developed the 2021 RFD schedule to allow for some commercial fishing activity each weekend by maintaining Sunday as an open fishing day.

*Comment 12:* NMFS received several comments noting that the BFT stock has rebounded and is healthy, and that, therefore, this action is unwarranted. Additionally, some commenters noted that NMFS is overly restrictive to BFT fishermen in New England.

*Response:* NMFS disagrees that this action is unwarranted. The purpose of this action, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments and other applicable laws, is to set a schedule of RFDs for the 2021 fishing year as an effort control for the General category quota, and to extend General category fishing opportunities through a greater portion of the General category time-period subquotas than have been available in recent years. NMFS does not manage the General category fishery by region. Instead, these regulations are applicable to all General

category permit holders and Charter/Headboat permitted vessels that fish commercially for BFT.

Regarding the status of BFT, the western Atlantic BFT stock is assessed by ICCAT. Currently the stock status remains unknown, and, for 2021, ICCAT continues to manage the stock under an interim conservation and management plan. In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17-06 (83 FR 51391, October 11, 2018). In 2020, following a stock assessment update, ICCAT adopted Recommendation 20-06, which maintained the total allowable catch of 2,350 metric tons (mt) and the associated U.S. quota. As such, as described in § 635.27(a), the current baseline U.S. quota remains 1,247.86 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). This action helps manage the BFT fisheries within that available quota and the category subquotas as established in existing regulations.

*Comment 13:* One commenter suggested that NMFS launch an outreach campaign to the general public regarding the importance of seafood consumption to improve domestic market conditions.

*Response:* This comment is outside the scope of this rulemaking, which pertains only to RFDs. Additionally, NMFS already has an outreach campaign, titled “Eat Seafood, America!,” designed to provide information about sustainable seafood and the importance of seafood consumption. More information can be found at <https://www.fisheries.noaa.gov/topic/sustainable-seafood#eat-seafood,-america!>.

### **Changes from the Proposed Rule**

Except for changing the 2021 RFD schedule start date from July 20, 2021, to September 3, 2021 to accommodate the time needed to fully consider comments and prepare this final rule, this final rule contains no changes from the proposed rule.

## **Classification**

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

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

Pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator has determined that there is good cause to waive the 30-day delay in the date of effectiveness for this final action. Because the fishing year is already underway, delaying the effectiveness of these regulations could undermine the purpose of this action to implement a RFD schedule that would help manage the fishery within the existing General category subquotas and extending the duration of the fishery throughout the subquota time-periods. Waiting 30 days to make the rule effective increases the likelihood of the General category subquotas being met and exceeded, resulting in inseason closures earlier than desired.

Implementing RFDs as soon as possible provides NMFS additional inseason management flexibility. Although the General category has a relatively large quota for the 2021 fishing year, the General and HMS Charter/Headboat permit category have the ability to harvest a large amount of General category quota in a short period of time, specifically from late July through November. Establishing RFDs during this time span is essential to extend fishing opportunities within each subquota time-period while also preventing market gluts, which, in recent years, have resulted in an increase in the number of BFT that are landed and not sold and have resulted in lower prices for the BFT that are sold. Additionally, establishing RFDs earlier in the fishing year provides better business planning opportunities for Atlantic Tunas General category permittees and HMS



Charter/Headboat owners/operators. As such, NMFS believes that a 30-day delay in setting RFDs would be contrary to the public interest.

For the reasons described above, the Assistant Administrator finds good cause to make this rule effective immediately upon publication in the **Federal Register**.

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, our responses to those comments and a summary of the analyses completed to support the action. The full FRFA is available from NMFS (see **ADDRESSES**). A summary is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires agencies to state the need for and objective of, the final action. The objective of this final rulemaking is to set a schedule of RFDs for the 2021 fishing year that should slow the rate of General category landings to extend fishing opportunities through a greater portion of the subquota periods (similar to past RFD schedules that set RFD schedules for the fishing year). Additionally, this final rule clarifies the regulations regarding applicability of RFDs to vessels permitted in the HMS Charter-Headboat category.

Section 604(a)(2) requires that a FRFA include a summary of significant issues raised by public comment in response to the IRFA and a summary of the agency's assessment of such issues, and a statement of any changes made in the rule as a result of such comments. As described above, during the public comment period, NMFS received comments both in support of and opposed to resuming RFDs. No comments specifically referenced the IRFA, although some comments raised a variety of economic concerns including whether RFDs would affect the market (see comments 1 and 7), whether RFDs would affect some parts of the fishery more than others (see comments 8 and 11), and whether RFDs would negatively affect tournaments (see comments 4 and 5). NMFS' responses to those comments are summarized above. After careful consideration of all the

comments received, except for changing the start date of the first RFD to account for the date of publication of this final rule, no other changes were made to the proposed rule.

Section 604(a)(3) of the RFA requires NMFS to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule and provide a detailed statement of any change made to the proposed rule as a result of the comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA on the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes (50 CFR 200.2). The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$8.0 million. Therefore, NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of \$11 million and \$8 million. The 2019 total ex-vessel annual revenue for the BFT fishery was \$9.8 million. Since a small business is defined as having annual receipts not in excess of \$11.0 million, each individual BFT fishing entity would fall within the small business definition. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA. The numbers of relevant annual Atlantic Tunas or Atlantic HMS permits as of October 2020 are as follows: 2,645 General category permit holders and 3,839 HMS

Charter/Headboat permit holders, of which 1,681 hold HMS Charter/Headboat permits with a commercial sale endorsement.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This final rule does not contain any new collection of information, reporting, or record-keeping requirements. This final rule would set a schedule of RFDs for 2021 as an effort control for the General category quota and would clarify existing regulatory text about the applicability of RFDs to HMS Charter/Headboat permitted vessels.

Section 604(a)(6) of the RFA requires agencies in the FRFA to describe any steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

This final rule does not change the U.S. Atlantic BFT quotas or implement any new management measures not previously considered under the 2006 Consolidated HMS FMP and its amendments. This final rule will instead resume the use of RFDs, set a schedule of RFDs for 2021, clarify existing regulatory text about the applicability of RFDs to HMS Charter/Headboat permitted vessels, and make a minor change to correct two permit title references in a section of the regulations. Under the regulations, when a General category time-period subquota is reached or projected to be reached, NMFS closes the General category fishery. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of a particular subquota time-period. According to communications with dealers and fishermen, several of the high-volume HMS Atlantic tunas dealers in 2019 and 2020 were limiting their purchases of BFT and buying no or very few BFT (such as harpooned fish only) on certain days during the

beginning portion of the June through August subquota time-period in order to extend the available quota until later in the subperiod given market considerations. However, while these actions may have prevented large numbers of BFT from entering the market at the same time and may have lengthened the time before any particular subquota was closed, because these actions were not pre-scheduled or consistently implemented across the fishery, some General category and Charter/Headboat permitted fishermen especially those who could not find buyers for their BFT -- experienced negative impacts. As a result, a number of BFT that normally would have been sold were not, and opportunities may not have been equitably distributed among all permitted vessels. Table 1 shows the number and total metric tons (mt) of BFT that were landed but not sold by fishermen fishing under the General category quota for 2017 through 2020. The number and weight of unsold BFT has been increasing since 2017 and increased substantially (from 20 to 173 BFT and 3.8 to 31.4 mt) between 2019 and 2020.

**Table 1 -- The Number (count) and Weight (mt) of BFT That Were Landed but Unsold by General Category Participants by Year**

Year	Count	Weight (mt)
2017	0	0
2018	14	2.6
2019	20	3.8
2020	173	31.4
Total	207	37.8

In addition to reviewing the data regarding the amount of unsold BFT, NMFS also reviewed the average ex-vessel price. Table 2 shows the average ex-vessel price per pound of BFT during each General category subquota time-period for the years 2017 through 2020. On an annual basis, the ex-vessel price tends to be lower for the June through August subquota time-period, with an average (2017 through 2020) price of \$6.04, and increases over the summer and fall period (\$6.30 for September period and

\$6.49 for the October through November period). NMFS understands that several factors influenced dealers' decisions to not purchase BFT in 2019 (*e.g.*, fish conditions, daily retention limits, and market conditions) and that in 2020, the worsening of global market conditions was an additional factor impacting the number of BFT unsold. These conditions generally occurred in June through August 2019, and were repeated in June through August 2020, with conditions and prices improving by the fall. However, in 2020, the average price per pound was lower for the June through December subquota time-periods than in any of the three previous years.

**Table 2 -- Average Ex-Vessel Price per Pound (\$) of BFT by General Category Subquota Time-Period (2017-2020)**

Year	Subquota Time-Period				
	January through March	June through August	September	October through November	December
2017	\$7.37	\$6.72	\$7.08	\$7.56	\$9.83
2018	\$7.43	\$6.92	\$6.55	\$7.58	\$9.56
2019	\$6.06	\$5.61	\$6.36	\$5.53	\$12.25
2020	\$6.13	\$4.91	\$5.21	\$5.30	\$5.76
2017 through 2020 average	\$6.75	\$6.04	\$6.30	\$6.49	\$9.35

To help address these issues, NMFS is establishing a schedule of RFDs for the 2021 fishing year that will regulate specific days on which fishing and sales will not occur. Specifically, the schedule allows for two-consecutive-day periods twice each week for BFT products to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.*, Sundays), thus providing opportunities for participants who may only fish on the weekend. Because this schedule of RFDs will apply to all participants equally, NMFS anticipates that this schedule will extend fishing opportunities through a greater proportion of the subquota time-periods in which they apply by spreading fishing effort out over time. Furthermore, to the extent that the ex-

vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically-caught BFT is on the market at one time, the use of RFDs may result in some increase in BFT price, and the revenue generated by the General category subquotas could increase. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed and the same amount of BFT would be landed per vessel, there may be some positive impacts to the General category and Charter/Headboat (commercial) BFT fishery. Using RFDs may more equitably distribute fishing opportunities for longer durations within the subquota time-periods. However, the RFD schedule may have a negative impact to some General category fishermen who might only be able to fish on weekends, as Saturdays would be RFDs through November 30, 2021. To mitigate the loss of fishing days, NMFS is allowing fishing opportunities to occur on Sundays.

Thus, if NMFS does not implement a schedule of RFDs, as in this final rule, it is possible that the trends of increasing numbers of unsold BFT (Table 1) and decreasing ex-vessel prices (Table 2) would continue. If these trends continue, many participants could continue to experience negative economic impacts.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

### **Small Entity Compliance Guide**

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 rule. As part of this rulemaking process, NMFS has prepared a

booklet summarizing fishery information and regulations for Atlantic BFT General category RFDs for the 2021 fishing year. That booklet notice 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, Statistics, Treaties.

Dated: July 30, 2021.

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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 § 635.2, revise the definition of “Restricted-fishing day (RFD)” to read as follows:

**§ 635.2 Definitions.**

\* \* \* \* \*

*Restricted-fishing day (RFD)* is a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel issued:

(1) An Atlantic Tunas General category permit may not fish for, possess, retain, land, or sell a BFT; and

(2) A Charter/Headboat permit with a commercial endorsement may not fish commercially for BFT under the General category rules, but may fish for, possess, retain, or land BFT under the Angling category restrictions and retention limits.

\* \* \* \* \*

3. In § 635.23, revise paragraphs (a)(1) and (3) and (c)(1) through (3) and add paragraph (c)(4) to read as follows:

**§ 635.23 Retention limits for bluefin tuna.**

\* \* \* \* \*

(a) \* \* \* (1) No person aboard a vessel that has an Atlantic Tunas General category permit may possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

\* \* \* \* \*

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has an Atlantic Tunas General category permit. On days other than RFDs, when the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port, once the applicable limit for large medium or giant BFT is retained.

\* \* \* \* \*

(c) \* \* \*

(1) When fishing in the Gulf of Mexico, the restrictions and retention limits applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed or on an RFD, the restrictions and retention limits applicable to the Angling category specified in paragraphs (b)(1) through (b)(3) of this section apply.



(3) When fishing other than in the Gulf of Mexico when the General category fishery is open and not on an RFD, a person aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement may fish under either the General category restrictions and retention limits as specified in paragraphs (a)(1) through (3) of this section or the Angling category restrictions and retention limits as specified in paragraphs (b)(1) through (3) of this section. The size category of the first BFT retained will determine whether the General category or Angling category restrictions and retention limits apply to the vessel that day.

(4) When fishing other than in the Gulf of Mexico when the General category fishery is open and not on an RFD, a person aboard a vessel that has been issued an HMS Charter/Headboat permit without a commercial sale endorsement permit may only fish for, possess, retain, or land BFT under the Angling category restrictions and retention limits as specified in paragraphs (b)(1) through (3) of this section.

\* \* \* \* \*