

Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

**Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, \$100 million or more in any one year the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

**List of Subjects in 49 CFR Part 10**

Privacy.

In consideration of the foregoing, DOT proposes to amend Part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 10 would continue to read as follows:

**Authority:** Pub. L. 93-579; 49 U.S.C. 322.

2. Appendix to Part 10 would be amended as follows:

a. By revising the introductory text of Part I.

b. By amending Part II.A. by revising the introductory text; by adding new paragraphs 19 and 20; by adding a new paragraph 3. to the undesignated paragraph after paragraph 20; by revising paragraph G, introductory text; and by adding new paragraph G.2.

c. By adding Part II.H.

The revisions and additions read as follows:

**Appendix to Part 10—Exemptions**

**Part I. General Exemptions**

Those portions of the following systems of records that consist of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing,

confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 U.S.C. 552a except subsections (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (e)(1) (Relevancy and Necessity of Information); (e)(4)(A) through (F) (Publication of existence and character of system); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to person other than an agency and other than pursuant to a Freedom of Information Act request), (7) (Restrict recordkeeping on First Amendment rights), (9) (Rules of conduct), (10) (Safeguards), and (11) (Routine use publication); and (i) (Criminal penalties):

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**Part II. Specific Exemptions**

A. The following systems of records are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1) (Relevancy and Necessity of Information), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 U.S.C. 552a(k)(2):

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19. Transportation Workers Employment Investigations System (TWEI), DOT/TSA 002, maintained by the Transportation Security Administration.

20. Transportation Security Enforcement Record System (TSEER), DOT/TSA 001, maintained by the Transportation Security Administration.

These exemptions are justified for the following reasons:

\* \* \* \* \*

3. From subsection (e)(1), because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of the laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

\* \* \* \* \*

G. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552(b)(1) are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1) (Relevancy and Necessity of Information), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

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2. Transportation Workers Employment Investigations System (TWEI), DOT/TSA 002,

maintained by the Transportation Security Administration.

\* \* \* \* \*

H. Those portions of the following systems of records consisting of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information or testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process, are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records) of 5 U.S.C. 552a, to the extent that disclosure of such material would reveal the identity of a source who provided information to the Government under an express or, prior to September 27, 1975, an implied promise of confidentiality (5 U.S.C. 552a(k)(5) and (6)).

1. Personnel Background Investigation Files System (PBF), DOT/TSA 004, maintained by the Transportation Security Administration.

The purpose of these exemptions is to prevent disclosure of the identities of sources who provide information to the government concerning the suitability, eligibility, or qualifications of individuals for Federal civilian employment, contracts, access to classified information, or appointment or promotion in the armed services, and who are expressly or, prior to September 27, 1975, impliedly promised confidentiality. The purpose of these exemptions is also to preserve the value of these records as impartial measurement standards for appointment and promotion within the Federal service. (5 U.S.C. 552a(k)(5) and (6)).

Issued in Washington, DC, on December 9, 2002.

**Eugene K. Taylor, Jr.,**

*Acting Chief Information Officer.*

[FR Doc. 02-31755 Filed 12-23-02; 8:45 am]

**BILLING CODE 4910-62-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 001113318-2297-02; I.D. 110200D]**

**RIN 0648-AO75**

**Atlantic Highly Migratory Species; Incidental Catch Requirements of Bluefin Tuna**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to amend regulations governing the Atlantic bluefin tuna (BFT) fishery as they affect landing of BFT in the Atlantic pelagic longline fishery. The intent of this action is to minimize dead discards of BFT and improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and allowing harvest consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS will hold public hearings to receive comments from fishery participants and other interested members of the public regarding these issues. Public hearings on this proposed rule will be announced in a separate **Federal Register** document.

**DATES:** Written comments on the proposed rule must be received by 5 p.m. on February 7, 2003.

**ADDRESSES:** Comments on the proposed rule should be sent to, and copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA, 01930. These documents are also available from the Highly Migratory Species Division website at [www.nmfs.noaa.gov/sfa/hmspg.html](http://www.nmfs.noaa.gov/sfa/hmspg.html). Comments also may be sent via facsimile (fax) to 301-713-1917. Comments will not be accepted if submitted via e-mail or on the Internet.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Dianne Stephan, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic highly migratory species (HMS) fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). Implementing regulations at 50 CFR part 635 are issued under the dual authority of the Magnuson-Stevens Act (codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

#### Management of Bluefin Tuna

The first ICCAT management recommendations for Atlantic BFT were adopted in 1974, and established a minimum size and limited fishing mortality to then recent levels. With the passage of ATCA in 1975, the United

States took action to comply with the ICCAT recommendations and limited U.S. harvest by imposing quotas and size limits. In spite of the ICCAT recommendations and U.S. compliance with these recommendations, western Atlantic BFT stock abundance continued to decline. In 1981, NMFS prohibited the use of longlines for a directed BFT fishery and implemented an incidental catch limit for two geographically distinct areas where different BFT catch limits would apply (46 FR 8012, January 26, 1981). After conducting a series of stock assessments, ICCAT's scientific body, the Standing Committee on Research and Statistics, recommended in 1981 that catches from the western Atlantic stock be severely reduced to as near zero as possible to stem the decline of the stock. Based on this recommendation, allowable landings of western Atlantic bluefin have been restricted since 1982. Also in 1982, an ICCAT consultation among officials representing the governments of Brazil, Canada, Japan, and the United States agreed, *inter alia*, that there be no directed fishery on the spawning stock of Atlantic bluefin tuna in the Gulf of Mexico. Domestic regulations to carry out the ICCAT recommendations were implemented in 1982 and 1983, which included designating authorized gears and quotas for the established fisheries.

#### The U.S. Atlantic Pelagic Longline Fishery

The U.S. Atlantic pelagic longline fishery is a multi-species fishery that operates throughout the western Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea. Pelagic longline gear is composed of several parts. The primary fishing line, or mainline of the longline system, can vary from five to 40 miles in length, with approximately 20 to 30 hooks per mile. Each individual hook is connected by a leader to the mainline. Pelagic longline gear and fishing method can be modified to target certain species, most commonly swordfish and yellowfin and bigeye tunas. At least 30 different species have been recorded as caught in this gear throughout the range of the fishery. Many of the non-target species are landed and sold. However, some of those species are discarded as bycatch (dead or alive) for economic or regulatory reasons. Bluefin tuna are one such incidentally caught species that are marketable but may be discarded when required by regulations on landings restrictions.

#### Incidental Catch Regulations

Since 1977, NMFS has implemented a series of management measures designed to regulate the incidental catch of BFT in non-directed Atlantic fisheries. In 1981, NMFS prohibited the use of longlines for a directed BFT fishery, implemented incidental catch limits, and established northern and southern management areas where different catch limits applied (46 FR 8012, January 26, 1981). Longline fishermen were restricted to two BFT per vessel per trip in the southern region and two percent by weight of all other fish on board in the northern region. In 1982, ICCAT recommended a ban on directed fishing for BFT in the Gulf of Mexico. Over the following decade, the value of BFT increased dramatically and fishing practices evolved with respect to incidental catch of BFT. In response, NMFS established various strategies to discourage pelagic longline vessels from developing a target fishery for this valuable species while allowing for the retention of incidentally caught BFT.

In 1992, as BFT continued to be released as bycatch in the longline fishery and most of those fish were reported as being discarded dead, NMFS determined that existing catch limits in the southern region (up to two BFT per trip, without any requirement that BFT be landed in conjunction with other species) were not effective at reducing the incentive to target BFT, and target catch requirements were implemented (57 FR 365, January 6, 1992). NMFS required longline vessels to land, offload, and sell at least 2,500 lbs. (1,136 kg) of other species as a condition for landing a maximum of one BFT. NMFS continued to evaluate bycatch in the longline fishery, and, consistent with objectives of preventing a target fishery while allowing for retention of incidental catch, moved the boundary line for the northern and southern areas from 36° N. Latitude to 34° N. Latitude and further altered the southern area target catch requirements in 1994 (59 FR 2814, January 19, 1994).

The current target catch requirements, unchanged since 1994, restrict longline vessels to one fish per vessel per trip in the southern region (south of 34° N. Latitude) with a minimum of 1,500 lbs. (680 kg) of other fish landings from January through April, and 3,500 lbs. (1,588 kg) of other fish landings from May through December. North of 34° N. Latitude, BFT landings by longline vessels are restricted to two percent by weight of all other landed catch. Despite efforts to alter target catch requirements and adjust geographic management

areas, bycatch and discards of BFT by U.S. pelagic longline vessels have continued. Consequently, NMFS has continued to evaluate management alternatives to achieve a balance between allowing the retention of truly incidentally caught BFT while preventing a directed fishery and reducing discards.

### **Bycatch Reduction**

In 1999, NMFS published the HMS FMP and implementing regulations (64 FR 29090, May 28, 1999), which included a measure to close an area of ocean off the Mid-Atlantic Bight to longline fishing during the month of June in an attempt to minimize bycatch of BFT and ensure compliance with ICCAT recommendations. The HMS FMP also considered, but did not implement, further modifications to target catch requirements because of the difficulty in determining catch levels and landings allowances that would likely reduce dead discards. The lack of correlation between the level of target catch and bluefin tuna discards indicated that bluefin tuna catches were truly incidental. While an area closure was selected as the most expedient means of reducing dead discards, NMFS also concluded that future analyses of catch rates may provide guidance for a change in the target catch requirements.

Since that time, NMFS has continued to evaluate alternatives to achieve a balance between minimizing bycatch (*i.e.*, allowing retention of BFT) and discouraging directed longline fishing effort on BFT. Members of the pelagic longline industry have commented that the target catch requirements are overly restrictive, resulting in excessive dead discards of incidentally caught BFT. Consequently, the Longline category BFT quota is not being landed, which then results in additional mortality as unused Longline category quota is transferred to other BFT fishing categories.

NMFS analyzed additional data on the landing patterns of longline vessels, and published an Advance Notice of Proposed Rulemaking (ANPR) (65 FR 69492, November 17, 2000). Highly Migratory Species Advisory Panel (AP) members discussed the target catch requirements at their meetings in April 2001 and April 2002, and generally favored modifying the target catch requirements to minimize bycatch of BFT in the pelagic longline fishery. However, AP members cautioned against adjusting target catch requirements in such a way that would provide an incentive to target BFT with pelagic longline gear.

### **Evaluation of Existing Regulations**

In the 2001 and 2002 Stock Assessment and Fishery Evaluation (SAFE) Reports, NMFS evaluated the effectiveness of the June closed area in minimizing discards of BFT. The available data, based on logbooks submitted by fishermen, indicate a substantial decline in BFT bycatch throughout the year, indicating the closed area may be effective at reducing dead discards.

The BFT Longline category is allocated 8.1 percent of the total U.S. BFT landings quota. The Longline category quota is split between northern and southern areas, with 78.9 percent allocated to the southern area and 21.1 percent allocated to the northern area.

Estimates of dead discards for 2000 fishing year totaled 30 metric tons (mt). In 1997 and 1998, discards were higher proportionally (dead discards to BFT landed) in the northern area compared to the southern area (mostly Gulf of Mexico), but this relationship changed in 1999 and 2000, where a higher proportion of the dead discards being reported through the pelagic logbook occurred in the southern area.

NMFS evaluated observer data for 1998–2000, which indicate that two or less BFT were caught on 88 percent of all longline trips. In addition, over this same time period, median values for landed catch (not including BFT) by pelagic longline vessels were approximately 3,000 lbs. (1,361 kg) in the southern region in the winter and early spring (January through April) and 3,500 lbs. (1,588 kg) in that area in May through December. Median landings in the northern area throughout the year were 3,800 lbs. (1,724 kg). Target catch and dead discards information was used in developing potential alternatives to the current target catch requirements.

### **Alternatives Considered**

In addition to taking no action at this time, NMFS considered various combinations of catch limits for the northern and southern areas including: (1) requiring 3,500 lbs. (1,588 kg) of catch for one BFT to be landed in the northern area but no change to the southern area requirements; (2) requiring 3,500 lbs. (1,588 kg) of catch for one BFT to be landed, and 6,000 lbs. (2,722 kg) of other catch to land two BFT in the northern area, but no change to the southern area requirements; (3) the same as (2) for the northern area, but also allowing two BFT to be landed on a trip with 6,000 lbs. (2,722 kg) of other catch in the southern area; (4) lowering minimum target catch requirements in all areas, at all times, to 2,000 lbs. (907

kg) to retain one BFT and 6,000 lbs. (2,722 kg) to retain two BFT (the preferred alternative); and (5) lowering minimum target catch requirements in all areas, at all times, to 1,500 lbs. (680 kg) to retain one BFT and 6,000 lbs. (2,722 kg) to retain two BFT.

NMFS prefers to alter the target catch requirements for both geographic management areas to reduce dead discards of BFT in all areas. NMFS therefore does not prefer alternatives which take no action or do not affect the southern area limit. In addition, landings per trip do not differ between the southern and northern areas as much as they have in the past, and similar retention limits for the different areas now seem warranted. The alternative that would lower the target catch requirements to 1,500 lbs. (680 kg) in all areas at all times may result in the longline incidental catch quota of BFT being filled quickly, which could lead to subsequent discarding of BFT, and is therefore is not preferred. The preferred alternative would require 2,000 lbs. (907 kg) of other fish landings to retain one BFT, and 6,000 lbs. (2,722 kg) of other fish landings to retain two BFT, in all areas.

The preferred alternative would maintain a boundary line between the northern and southern areas to account for seasonal differences in the fisheries and prevent one area from consuming all the incidental longline quota, but would move the boundary line to an area with little longline fishing activity nearby and adjust the longline quota subdivision to reflect the change in areas. Seasonal differences in bluefin tuna migration patterns between northern feeding migrations and southern spawning migrations affect fishing interaction rates and the condition of the fish in terms of fat content and ability to survive the capture experience. Any division line should account for such seasonal differences in the fisheries and correspond with interaction rates to ensure that catches are incidental and do not result in excess discards. In addition, any division line should not be near an area where fish are usually landed, *i.e.*, it should be clear that fish caught in a particular area will be landed in that area. The North/South boundary line is proposed to be moved to 31°00' N. Latitude, near Jekyll Island, Georgia, and the North/South quota subdivision within the Longline category would be adjusted to allocate 30 percent to the northern area and 70 percent to the southern area.

### Impacts of the Preferred Alternative

The preferred alternative would likely result in a reduction in BFT discards in all areas, and would allow longline fishermen fishing in the northern area to retain a BFT on more trips. It would also allow more BFT to be landed by fishermen in the southern area, but only if they retain 6,000 lbs. (2,722 kg) of other fish species on a trip. The preferred alternative is estimated to reduce discards of BFT by longline vessels by 23.5 percent on a coastwide basis. In addition, it is estimated that the preferred alternative would allow longline vessels to retain an additional 38 mt of BFT coastwide, an increase of approximately 60 percent from 2000 levels but still within the quota allocated for incidental catch.

The positive economic impacts of this alternative are likely to be felt by pelagic longline fishermen in all areas. Gross revenues and net revenues to pelagic longline vessels would increase as a result of the increased landings of BFT. While revenues from BFT would increase by an amount similar to the increase in landings, the overall increase in revenues to the longline fishery would be relatively small (about 1.1 percent), as BFT make up only a small percentage of longline catch and landings. However, overall, no net increase in BFT revenues is expected because total BFT landings for all fishing categories will not increase. In past years, the BFT quota not actually landed by pelagic longline vessels has been transferred to and landed by vessels in other fishing categories but total BFT landings are limited by the overall total allowable catch (TAC) system through which the United States issues annual quotas.

This alternative may have some positive impacts on the western Atlantic BFT stock because total mortality should decrease. The preferred alternative would maintain BFT landings by pelagic longline vessels within the previously established Longline category BFT quota. However, because discards would likely decrease, the United States would use less of its dead discard allowance, which would have positive impacts on the stock as, per the ICCAT recommendation, half the unused portion of the dead discard allowance cannot be carried over to future years and is, in that sense, invested in stock rebuilding. The preferred alternative would also likely reduce the extent of reallocating unused longline BFT quota to other categories, as the longline fishery will likely land more of its quota. Such reallocation is consistent with legislative requirements

to allow U.S. fishermen the opportunity to land the U.S. quota, but has led to increased overall mortality, as BFT that could not be landed (and a proportion were discarded dead) by pelagic longline vessels were transferred to and landed by other fishing categories.

Because pelagic longline fishermen routinely catch BFT incidental to other fishing operations, this alternative would not likely result in increased pelagic longline effort and therefore would not affect catches or discards of other managed finfish species or increased interaction with protected species.

### Inseason Adjustments

Currently, regulations provide the authority for NMFS to adjust the BFT retention limits in the Angling and General categories during the fishing season by publishing a notice in the **Federal Register** and providing three days advanced notice. The preferred alternative would provide NMFS with similar authority for BFT retention limits in the Longline category. Specifically, NMFS could adjust the BFT retention limits for pelagic longline vessels by number over a range from zero to three fish per trip and/or by weight within 25 percent of the target catch requirements (*e.g.*, 2,000 lbs. to 2,500 lbs.).

The purpose of providing NMFS inseason adjustment authority for BFT retention by longline vessels would be to increase the likelihood of meeting the management objectives for the BFT fishery on an inseason basis. This authority would provide NMFS with the additional ability to achieve a balance between allowing the retention of truly incidentally caught BFT while preventing a directed fishery, reducing discards, and keeping all BFT fisheries within their allocated quotas. This balance can be affected by variation in BFT abundance and migration patterns. Thus, inseason adjustment authority would enhance NMFS' ability to reduce discards while ensuring that landings are maintained within the quota.

### Classification

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

NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule and has requested

comments from the Chief Counsel for Advocacy of the Small Business Administration. A summary of the IRFA follows:

The annual gross revenues from the Atlantic pelagic longline fishery are approximately \$29 million. There are approximately 171 pelagic longline vessels that are permitted to retain Atlantic tunas and swordfish, all of which are considered small entities, and average annual gross revenues per vessel are approximately \$168,000. The analyses for the IRFA assume that all pelagic longline vessels have similar levels of catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various alternatives on vessels. NMFS considered five alternatives regarding changing the target catch requirements for bluefin tuna retention by pelagic longline vessels: (1) no action/status quo; (2) adjusting the target catch requirements to allow pelagic longline vessels landing north of 34° N. latitude to land one bluefin tuna per trip, provided they also land 3,500 lbs. of other catch from the same trip; (3) adjusting the target catch requirements to allow pelagic longline vessels landing north of 34° N. latitude to land one bluefin tuna per trip, provided they also land 3,500 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip; (4) adjusting the target catch requirements to allow pelagic longline vessels in all areas to land one bluefin tuna per trip, provided they also land 3,500 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip, with pelagic longline vessels landing south of 34° N. latitude allowed to land their one bluefin tuna per trip with only 1,500 lbs. of other fish from the same trip from January through April; (5) adjusting the target catch requirements to allow pelagic longline vessels in all areas and times to land one bluefin tuna per trip, provided they also land 2,000 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip (preferred alternative); and (6) adjusting the target catch requirements to allow pelagic longline vessels in all areas and times to land one bluefin tuna per trip, provided they also land 1,500 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip.

NMFS separated out pelagic longline vessels into three groups: vessels homeported in the northern area that landed more than one bluefin tuna on an individual trip during 1998–2000; vessels homeported in the northern area that landed one or less bluefin tuna on individual trips during 1998–2000; and vessels homeported in the southern area. Northern area vessels were separated into two groups because Alternative 2 would have a negative impact on the vessels that landed more than one bluefin tuna on a particular trip, as it would only allow retention of one bluefin tuna per trip in the northern area, whereas the status quo does not limit the number of bluefin tuna so long as the percentage of bluefin tuna did not exceed

two percent of the weight of the other landings. During 1998–2000, six vessels landed more than one bluefin tuna on individual trips, and two vessels landed two bluefin tuna twice (total of eight trips). For these analyses, NMFS assumed that these six vessels would each have a trip in which they would have been able to land two bluefin tuna under the status quo.

The change in annual gross revenues for pelagic longline vessel as a result of the various alternatives to adjust the target catch requirements was estimated by calculating the difference in the number of bluefin tuna that could be retained by the particular group of vessels, multiplying that number of fish by the average weight and price per pound for that area during 2000. In the northern area, the average weight of bluefin tuna landed by longline vessels in 2000 was 456 lbs., and the average per pound was \$5.56, for an estimate of \$2,535 per fish. In the southern area, the average weight of bluefin tuna landed by longline vessels in 2000 was 537 lbs., and the average price per pound was \$5.31, for an estimate of \$2,851 per fish.

For Alternative 2, vessels in the northern area would land 72 bluefin tuna, 16 more than were landed in 2000. Using the average weight and price information for the northern area, the revenues from the additional 16 fish were divided among the 102 vessels in the northern area, for an average increase in gross revenues of \$398. For the six vessels that could have landed two bluefin tuna on a trip however, these vessels would lose the revenues from the second bluefin tuna, \$2,535. Thus, the change in gross revenues for each of these six vessels would be -\$2,137 (\$398 - \$2,535), approximately a -1.2% change. Vessels in the southern area would not experience any change in revenues under this alternative, as the target catch requirements would not change. The impacts on revenues for the other alternatives were estimated in a similar manner. Other than Alternative 2, no alternative would have a negative impact on any vessel in the pelagic longline fishery, but even Alternative 2 would have a positive impact on all but a few vessels. Alternatives 4, 5 (preferred alternative), and 6 would have a positive impact on revenues for vessels in all areas. Thus, only one non-preferred alternative considered would have negative economic impacts; all preferred alternatives would minimize current negative impacts such that consideration of significant alternatives to minimize impacts to small entities is unnecessary.

NMFS considered three alternatives regarding moving the North/South division line and reallocating Longline category bluefin tuna quota including (1) no action/status quo; (2) moving the Longline category North/South division line to 31°00' N. latitude near Jekyll Island, Georgia, and adjusting the Longline category subquotas to allocate 70 percent to the southern area and 30 percent to the northern area (preferred alternative); and (3) eliminating the Longline category North/South division line and establish one quota for the Longline category for all areas. Alternatives 1 and 2 should not have any direct impact on small entities, although Alternative 2 should address

current confusion regarding applicability of regulations and could help prevent negative impacts on small entities due to closures. Alternative 3 could have negative impacts if a fishery closure occurred.

NMFS considered three alternatives regarding providing NMFS with inseason authority to modify bluefin tuna retention limits by pelagic longline vessels including (1) no action/status quo; (2) providing NMFS with authority to adjust the bluefin tuna retention limits for pelagic longline vessels from a range of zero to three fish per trip; and (3) providing NMFS with authority to adjust the bluefin tuna retention limits for pelagic longline vessels by number from a range of zero to three fish per trip and by weight within 25 percent of the target catch requirements (preferred alternative). None of these three alternatives should have any direct impact on small entities because the total bluefin tuna quota is not changed. The preferred alternative, however, which would provide NMFS with inseason authority, could help prevent negative impacts on small entities due to closures.

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

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

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the actions in this proposed rule are expected to have any additional impact on sea turtles as these actions are not likely to increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas.

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

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

Dated: December 17, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

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

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

2. In § 635.23, paragraph (f) is revised to read as follows:

#### **§ 635.23 Retention limits for BFT.**

\* \* \* \* \*

(f) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally in fishing for other species. For vessels fishing North or South of 31°00' N. lat., limits on retention, possession, landing and sale are as follows:

(1) One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) NMFS may increase or decrease the Longline category retention limit of large medium and giant BFT over a range from zero to a maximum of three per trip, or, for a given BFT retention limit, increase or decrease the target catch requirement by 25 percent from the level specified in paragraph (f)(1) of this section. Such increase or decrease in the BFT retention limit or target catch requirement will be based on a review of dealer reports, observer reports, vessel logbooks, landing trends, availability of the species on the fishing grounds, and any other relevant factors, and will consider the likelihood of increasing dead discards of BFT and/or exceeding the incidental landings quota established for the pelagic longline fishery. Such adjustments may be made separately for vessels fishing North or South of 31°00' N. lat. NMFS will adjust the retention limits and target catch requirements specified in paragraph (f)(1) of this section by filing with the Office of the Federal Register for

publication notification of the adjustment. Such adjustment will not be effective until at least 30 calendar days after notification is filed with the Office of the Federal Register for publication.

\* \* \* \* \*

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

**§ 635.27 Quotas.**

(a) \* \* \*

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued

is 8.1 percent of the overall U.S. BFT quota. No more than 70.0 percent of the Longline category quota may be caught, retained, possessed, or landed in the area south of 31°00' N. lat.

\* \* \* \* \*

[FR Doc. 02-32431 Filed 12-23-02; 8:45 am]  
**BILLING CODE 3510-22-S**