

per month to an Internet service provider or \$180 per month in toll charge credits for toll charges imposed for connecting to an Internet service provider.

■ 9. Amend § 54.625 by revising paragraph (a) to read as follows:

§ 54.625 Support for services beyond the maximum supported distance for rural health care providers.

(a) The maximum support distance is the distance from the health care provider to the farthest point on the jurisdictional boundary of the city in that state with the largest population, as calculated by the Administrator.

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[FR Doc. 03-31683 Filed 12-23-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98-67; FCC 00-56]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces the effective date of the amendments to the Commission's rules for governing telecommunications relay services (TRS) and related customer premises equipment for persons with disabilities that contained information collection requirements.

DATES: 47 CFR 64.604(b)(2), (c)(1), (c)(5)(i) and 64.605(f) published at 65 FR 38432, June 21, 2000, are effective June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer & Governmental Affairs Bureau, Disability Rights Office, (202) 418-2517 (voice), (202) 418-0416 (TTY).

SUPPLEMENTARY INFORMATION: On March 6, 2000, the Commission released a *Report and Order*, published at 65 FR 38432, June 21, 2002, in CC Docket No. 98-67; FCC 00-56. The information collections contained in the *Report and Order* were approved by OMB on June 20, 2000. The OMB approval of the information collections contained in the *Report and Order* was announced in the **Federal Register** on June 29, 2000. See 65 FR 40093, June 29, 2000.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no persons shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418-0217. The OMB Control Number is 3060-0463.

Synopsis

In the *Report and Order*, the Commission amended its rules governing the delivery of TRS to expand the kinds of relay services available to consumers and to improve the quality of relay service. The Commission also amended its rules to better conform to the statutory mandate that TRS must be "functionally equivalent" to voice telecommunications service to the extent possible. Among other things, these rules are intended to improve the speed at which calls are answered and conversations relayed.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications relay service.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 03-31767 Filed 12-23-03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 031028268-3321-02; I.D. 091603F]

RIN 0648-AR12

Atlantic Highly Migratory Species; Bluefin Tuna Season and Size Limit Adjustments

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

ACTION: Final rule.

SUMMARY: Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) governing the

Atlantic bluefin tuna (BFT) fishery, NMFS amends the regulations regarding the opening date of the Purse seine category, closure dates of the Harpoon and General categories, and size tolerances of large medium BFT for the Purse seine and Harpoon categories. The intent of this final rule is to further achieve domestic management objectives under the HMS FMP and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA).

DATES: This rule is effective on January 23, 2004, except for § 635.27(a)(1)(i)(C) which is effective December 24, 2003.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) may be obtained from Dianne Stephan, 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 Web site at <http://www.nmfs.noaa.gov/sfa/hmspg.html>.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan at (978) 281-9397.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background information regarding these regulatory changes was provided in the preamble to the proposed rule (68 FR 63747, November 10, 2003), and is not repeated here. By this final rule, NMFS announces the new Purse seine start date of July 15; the new Harpoon category closure date of November 15 or when the quota is reached, whichever comes first; the General category closure date of January 31 or when the quota is reached, whichever comes first; and new large medium BFT tolerances for the Purse seine and Harpoon categories. The large medium tolerance limit for each vessel in the Purse seine category is 15 percent by weight of that vessel's

annual landings, and the large medium tolerance for the Harpoon category is two BFT per vessel per day.

Changes From the Proposed Rule

Several sections of regulatory text have been modified to be consistent with the change to the Purse seine category start date, specifically, § 635.28 (a)(2) and §§ 635.71(b)(10) and (b)(17). In addition, the final rule also includes a provision to delay the Purse seine category start date to no later than August 15 should it further assist in achieving the objective of the rule to reduce gear conflicts or overlap between fishing categories.

Comments and Responses

Comment 1 - NMFS received numerous comments in favor of a change in the Purse seine category start date from August 15 to July 15. Many commenters supported the July 15 Purse seine category start date for a variety of reasons including providing a greater length of time over which to spread Purse seine category landings, providing more time for purse seine vessels to catch their quota, and providing more opportunity to fish when the weather is better. In supporting the July 15 start date, some commenters stated that as the bulk of General category landings now occur later in the year than they had occurred when the August 15 purse seine start date was originally established, the date should be adjusted to July 15. Commenters stated that this change would be consistent with the original purpose of a purse seine start date that reduces overlap between fishing categories. One commenter also stated that currently the peak General category and Purse seine category landings coincide, which results in negative economic impacts for all in the fishery. This commenter noted that although a change to July 15 may negatively affect the Harpoon category, the proposed increase in allowance of two large mediums per vessel per day for the Harpoon category may mitigate these negative impacts by providing more of an opportunity for the Harpoon category to attain its quota by July 15, prior to the commencement of the Purse seine category fishing season.

Response - The final action establishes a start date for the Purse seine category of July 15. The intent of this action is to maximize positive economic impacts to the BFT fishery as a whole while minimizing negative impacts to the Harpoon category. Increasing the length of the season for the Purse seine category should help alleviate the overlap of large catches in the late summer and fall by allowing for

the distribution of purse seine catches throughout more of the season, should improve market prices in the Purse seine and General categories, and would minimize gear conflict on the water. The increase of the Harpoon category large medium retention limit may mitigate impacts by improving the ability of the Harpoon category to land the annual quota, perhaps prior to the commencement of the Purse seine category season. In addition, the final rule includes a provision for delaying the start date to no later than August 15 if a delay would further reduce gear conflicts or overlap between the different categories. Any adjustment to the start date would be filed with the Office of the **Federal Register** but would not be filed less than 14 calendar days prior to July 15. Because there are only five vessels in the Purse seine category, NMFS will be able to provide actual notice to the affected fishermen.

Comment 2 - NMFS also received comments suggesting alternative start dates for the Purse seine category as well as other commercial fishing categories. Some commenters opposed to a July 15 Purse seine category start date supported the status quo August 15 date, and stated that the slower, late fall market could probably better withstand the fiscal impacts of large purse seine catches. One commenter preferred a start date for the Purse seine category later than August 15 and creation of an earlier start date than June 1 for the commercial handgear categories to reduce overlap. One commenter specifically requested an earlier season opening date of the General and Harpoon categories on May 1. A few commenters supported a purse seine start date earlier than July 15, and a number of commenters specifically requested that all categories start on the same date. One commenter requested that the purse seine season be open year-round.

Response - NMFS analyses for this action determined that with the status quo purse seine start date of August 15, the early fall market for the overall fishery suffers from reduced ex-vessel prices that are temporally associated with the height of Purse seine and General category landings. A July 15 start date is intended to shift purse seine landings to earlier in the season and improve ex-vessel prices during the early fall, which is when the General category harvests most of its quota. Alternative dates do not appear to meet the objectives of the rulemaking to assist overall fishery prices and avoid overlap between the Purse seine and General categories. A start date later than August 15 would shorten the season and could

thereby negatively affect the ability of the Purse seine category to harvest its quota, which contradicts one objective of this final rule. A start date earlier than July 15 would allow for a longer period of time during which purse seine and harpoon landings would overlap and therefore could increase negative impacts to the Harpoon category, which are somewhat mitigated by the increase in the large medium tolerance for that category. Harmonizing all commercial fishery start dates to the same date would undermine the objective of this action to minimize gear conflicts on the water and to improve ex-vessel prices. Opening the start date for any fishery prior to June 1 would require adjustment of the fishing year, which must be accomplished through an FMP amendment. A year-round fishery for the Purse seine category was not considered as an alternative since it does not address the need to reduce gear conflicts identified in the original purpose for this action. However, as it is likely that market conditions and landing rates will vary among categories and from fishing year to fishing year the final rule includes a provision to provide some flexibility for adjusting the commencement of the Purse seine start date to no later than August 15.

Comment 3 - Several commenters opposed a July 15 start date because it was inconsistent with a current industry agreement regarding operations of spotter aircraft in the purse seine fishery. For this reason, one commenter supported a July 28 start date. The commenter noted that this fishing year was relatively calm regarding spotter plane activity and that the fishery would benefit from a permanent regulation regarding a July 28 start date for purse seine operations and their associated spotter aircraft.

Response - The 2003 fishing year was the first year for implementation of an industry agreement regarding the use of spotter planes throughout the industry. The July 28 start date for purse seine vessels and associated spotter aircraft established in the industry agreement is not an enforceable provision of NMFS regulations and could change based on revised industry arrangements. Consequently, it could be problematic to link season openings to actions not in NMFS control. NMFS recognizes the benefits of industry communication and cooperation on the issue of use of spotter planes in the fishery, and encourages the industry to continue to work together towards a constructive arrangement. The final rule includes a provision to provide some flexibility to the commencement of the Purse seine start date and any influence of spotter

planes on landings rates could be considered as part of the deliberations to delay the opening from July 15 to a more appropriate date but no later than August 15.

Comment 4 - Several comments were received regarding quota allocation to the Purse seine category, the impact of purse seine landings on the market, and timing of BFT market forces on ex-vessel prices in general. Several commenters stated that the purse seine fishery interfered with both the General and Harpoon category fisheries, that the Purse seine category should be eliminated altogether, and the quota redistributed among the other commercial categories with higher ex-vessel value landings. These comments noted that there has been ample opportunity for purse seine vessels to catch available quota, i.e., if they had chosen to fish off southern states later in the season, and that purse seine fishing operations this year tended to disrupt the biology and behavior of the fish as well as other traditional fishing patterns and agreements. A commenter stated that shifting the start date to avoid market gluts was not going to help as the volume of fish landed by purse seiners would flood the market regardless of when they were landed. Several commenters noted that adjustment of start and opening dates among the categories would not necessarily assist prices of ex-vessel landings as the markets in Japan were dominated by imports from other countries. In addition, they noted that Japan had business interests in farm raised BFT in pens around the world and could control the flow of tuna from these pens depending on the Japanese domestic market need. A few commenters also mentioned that there was now a strong U.S. domestic market for BFT and that controlling or even banning imports of BFT into the United States could provide stronger prices for U.S. domestic fishermen for BFT destined for internal domestic markets.

Response - One of the purposes of this action is to provide modest changes to the current timing of several commercial categories to assist in increasing economic yield in the fishery overall. To achieve this objective, NMFS analyzed means of decreasing the overlap of the General category and Purse seine category fisheries to improve market conditions and reduce conflicts as these two fishing categories are responsible for the greatest amount of landings in the BFT fishery. This action was intended to provide modest adjustments, pending development of an FMP amendment, to address allocation issues that have arisen. The

final rule provides flexibility for fine tuning of the commencement of the Purse seine category between July 15 and August 15 to further assist in achieving the objective of reducing gear conflicts and overlap between fishing categories based on, among others, data from landings and market conditions. NMFS recently published a Notice of Intent to prepare an FMP amendment (68 FR 40907; July 9, 2003) which will address BFT allocation as well as other issues. Elimination of the Purse seine category would require an FMP amendment as well. Information from ICCAT's Bluefin Statistical Document Program indicates that Japan imports BFT from many countries and that the U.S. domestic market for BFT has grown over the past several years. Controlling this international flow of product to improve United States domestic prices is beyond the purview of this rulemaking and would involve international trade negotiations with careful consideration of consequences to existing trade treaties and agreements. While this action will not be able to address BFT imports, it will provide modest adjustments to alleviate overlap in sectors of the U.S. Atlantic BFT fisheries, which could contribute to improved ex-vessel prices and reduce gear conflicts on the water.

Comment 5 - Comments were generally in favor of the November 15 end date for the Harpoon category. Commenters supported implementation of the end date as a means of preserving the Harpoon category quota for the traditional fishery. A few comments were opposed to establishing an end date. One comment stated it was creating two different standards for categories within the fishery especially when NMFS was considering extending the General category season. A few commenters requested that the end date be established on November 1.

Response - The final action includes a November 15 end date for the Harpoon category. This action is intended to maintain the Harpoon category quota for the traditional Gulf of Maine fishery, which upholds the purpose of the 1980 action that established the Harpoon category (45 FR 40118; June 13, 1980). Unlike other categories, the original intent of this fishery and quota allocation was for a particular geographic sector of traditional harpoon fishermen. November 15 is the approximate date by which most or all BFT have migrated out of the Gulf of Maine area. By closing the fishery on November 15, fishermen in other areas will not be able to land BFT against the Harpoon category quota. However, use of a harpoon to harvest BFT will

continue to be available to all fishermen under the General category when the General category season is open. NMFS did not consider a November 1 end date because BFT landings in New England have occurred in mid-November, and November 15 attempts to provide the traditional fishery with all available opportunities to harvest the quota while still avoiding investment in a fishery outside the New England area.

Comment 6 - NMFS received several comments in favor of extending the General category end date. Many commenters supported the temporal extension of the General category fishery to include a winter fishery off south Atlantic states, and noted the important economic contribution this fishery makes to the local economy. Several commenters noted that they had invested in this fishery by purchasing equipment and needed more certain annual access to the fishery as opposed to depending upon potential remaining late season quota. One commenter stated that the 2003 quota increase from ICCAT would provide for this action with minimal impact on the summer and fall New England General category fishery. Other commenters noted that this would address some of the concerns raised by the North Carolina Division of Marine Fisheries petition, such as providing more fair and equitable access to BFT when they are available off the south Atlantic coast. A number of commenters requested that the January 31 season end date be applicable for the 2003 fishing year, i.e., for January 2004.

Response - The final action includes a January 31 end date for the General category season. The intent of this action is to more broadly distribute General category fishing opportunities both temporally and geographically. Although there may be a small negative impact on General category fishermen in the northern areas of the fishery, NMFS agrees that the recent increase in the ICCAT quota as well as NMFS' continuing management of the fishery with annual specifications and inseason actions will minimize these impacts. In addition, northern area General category vessels could mitigate impacts by traveling south to participate in the winter fishery. This action addresses, in part, a petition for rulemaking submitted by the North Carolina Division of Marine Fisheries to provide a reasonable opportunity for southern fishermen to harvest BFT when they are available in the southern area. NMFS published a **Federal Register** notice requesting public comment on the petition (67 FR 69502; November 18, 2002), and received 28 comments which ranged from support to opposition.

Other aspects of the petition relate to changes in the BFT quota allocations, which would require an FMP amendment process with further analyses and input from the HMS Advisory Panel (AP) and the public. The AP generally supported a late season commercial General category fishery for southern Atlantic states, depending upon the details and impacts on other fishery participants. In particular, AP members were generally supportive of using some proportion of the additional BFT quota allocated by ICCAT in 2002 towards meeting the objectives of the petition. The AP will revisit BFT allocation issues at its next meeting scheduled for February 9 - 11, 2004.

Comment 7 - Several commenters were opposed to extending the General category season and recommended alternative General category closure dates. A few commenters stated that the fishery off North Carolina was a new fishery rather than a traditional fishery, and thus should not be considered in setting the General category season and no extension should be provided. Several commenters proposed an alternative end date for the General category season of November 30, and requested that the General category retention limits early in the season be increased in order to provide northern area fishermen with a greater opportunity to harvest the quota. Several comments stated concern that if the General category was open during December, there may not be enough quota for the extended fishery in January and thus preferred opening the General category for either December or January but not both. Other comments suggested providing for a distinct set-aside quota and time period for a North Carolina fishery.

Response - The intent of this action is to more broadly distribute General category fishing opportunities both temporally and geographically and provide for an increase in optimum yield for the fishery overall. At the time of development of the HMS FMP, the General category quota tended to be harvested prior to the migration of BFT to waters off the southern states. However, since that time, the fishery has changed and General category quota has been available later into the season. Unlike the Harpoon category quota, the General category quota was not established for use solely by a traditional New England fishery. The potential increase in gross revenues provided by a winter General category fishery could help maximize optimum yield for the BFT fishery overall. Reallocation of quota among time periods or establishing set-aside quotas

for particular areas would require an FMP amendment and is beyond the scope of this rulemaking. These issues may be addressed in HMS FMP Amendment Two which is currently under development. A Notice of Intent to prepare this amendment was published in the **Federal Register** on July 9, 2003 (68 FR 40907).

Comment 8 - Comments were generally in favor of the increase in tolerance limit for the Harpoon category. Commenters stated that this fishery is selective, that it is fair and equitable to adjust the tolerance if doing so for the Purse seine category, and an increase in the tolerance limit would not result in an increase in dead discards. A few commenters opposed any tolerance of large medium BFT. One commenter noted that the decrease in availability of giant BFT and any concerns regarding additional mortality of large medium were insignificant when compared to mortality of small fish in the eastern Atlantic and Mediterranean.

Response - The final action increases the tolerance limit for large medium BFT retention in the Harpoon category to two fish per vessel per day. The intent of this action is to balance mortality of pre-spawning fish with the requirement to provide a reasonable opportunity for the Harpoon category to attain its annual quota while avoiding dead discards. Although NMFS stated at the proposed rule stage that logbooks were not expected to be implemented, it is clear that additional information about at-sea operations is needed in order to better evaluate the affect of tolerance limits on dead discards and overall mortality of pre-spawning BFT. NMFS will pursue collection of such information through the implementation of previously approved vessel logbook and/or observer programs. To avoid duplication, existing programs for other fisheries such as the Northeast Region Vessel Trip Report will be evaluated relative to developing HMS specific reporting mechanisms.

Comment 9 - NMFS received comments both in favor of and opposed to the proposed increase in tolerance limit for the Purse seine category. Some commenters were opposed to any increase in tolerance limit, while others opposed the proposed tolerance in favor of a higher one.

Many commenters who were in favor of the change in tolerance limits stated that purse seine vessels would not target smaller fish as a result of a tolerance limit increase. Some commenters also noted that the mortality of undersized fish in the purse seine fishery was negligible when compared with mortality of small fish in the east

Atlantic or even mortality of small fish in the U.S. Angling category. Commenters stated that increasing tolerance was particularly relevant when one considered the new data regarding mixing rates between east and west Atlantic stocks, and the uncertainty of BFT size and age at maturity.

Some commenters opposed to an increase in tolerance limit stated that the preferred alternative (15 percent by weight) would result in purse seine vessels targeting smaller fish, and could result in an increase of dead discards. Many commenters requested a thorough study of the effect of any increase in tolerance limits on dead discards. A commenter stated that purse seine vessels already had many advantages over other fishing categories, and that perhaps larger mesh nets would reduce catch of undersized BFT. Another commenter noted that there is a higher mortality associated with release of undersized BFT from purse seine nets compared to those released alive off hook-and-line. This commenter could only support up to a 50-percent increase if observers were deployed on all vessels; otherwise both trip and annual limits should remain the same. At least one commenter specifically requested that a trip limit remain in place for the Purse seine category.

Several commenters suggested a higher tolerance limit than that proposed, and some suggested waiving the tolerance limit all together and proposed a 73-inch (185.4 cm) minimum size for the Purse seine category. A commenter stated that there is a large potential for discards and wasted mortality because of the preponderance of schools of mixed BFT sizes, and suggested that the tolerance be increased to 50 percent by weight as a form of mitigation. This commenter stated that approximately 315 more large medium BFT would be harvested at a 25 percent tolerance limit than a 15 percent tolerance limit, and that 315 more BFT would be biologically insignificant. Several commenters broadened this request to establish 73-inch as a minimum size for all commercial fishing categories. Several commenters emphasized the need for the United States to ensure all possible quota is utilized in order to support domestic needs at ICCAT negotiations. A number of commenters referred to the 25-percent tolerance limit provided in year 2003 exempted fishing permits (EFPs), and encouraged NMFS to continue with what they considered a successful approach.

Response - The final action includes an increase in tolerance for large

medium BFT in the Purse seine category of up to 15 percent of landings (by weight). The intent of this action is to balance mortality of large medium BFT while increasing the ability of the Purse seine category to catch the annual quota. NMFS has determined that only a modest increase in large medium tolerance is appropriate at this time, in light of the uncertainty of the effect of a greater tolerance limit on overall mortality of large mediums including dead discards, stock rebuilding, and dead discards of undersized BFT. NMFS estimates that an increase in the tolerance limit of up to 50 percent would result in an additional direct mortality of approximately 1,066 more large medium BFT over the current status quo direct mortality of 251 fish, i.e. over a four-fold increase.

Data from the 2003 season, which relaxed tolerance limits for the purse seine fishery to 25 percent under EFPs, show that purse seine vessels were able to increase landings over 2002 levels with the increased tolerance limit. Further evaluation of this data, in addition to socio-economic data to be provided from the 2003 EFP fishery, will assist NMFS with future management of this fishery sector, including compliance and enforcement of revised tolerance limits. NMFS will be collecting data on dead discards and other variables in this fishery through previously approved programs including vessel logbooks and/or observers. Additional data regarding discard rates and mortality of large medium BFT in the Purse Seine category will help to determine the biological impacts of adjusting the tolerance limits.

Comment 10 - One commenter requested that electronic comments via email be accepted in the future.

Response - NMFS has implemented pilot programs which accepted electronic comments for past rulemakings with some success. The agency intends to pursue the use of electronic media for public comment in the near future.

Comment 11 - One commenter noted that reciprocity should be established for commercial fishermen from other states to fish in North Carolina waters.

Response - The issue of fishing access in state waters by out of state fishermen is a matter of state jurisdiction and not under the purview of NMFS. However, NMFS notes that the State of North Carolina has provided reciprocity for commercial BFT fishermen from other states. In order to fish commercially for BFT in North Carolina, BFT commercial fishermen from other states are now able to obtain a "license to sell" which

allows them to sell their catch in North Carolina. Out of state vessels are also allowed to fish within state waters with a permit from North Carolina Division of Marine Fisheries.

Comment 12 - A commenter suggested providing a "mulligan" or tolerance limit of some set number of undersized fish per vessel in all categories that would allow vessels to retain and land accidentally caught undersized fish and reduce discards. The commenter stated that this approach could also help reduce incentives to sell these undersized fish illegally, and that the Japanese market has a preference for these smaller sized fish and offers relatively higher prices per pound.

Response - Adjusting size limits or tolerance limits for reasons other than improving the ability of the Purse seine and Harpoon categories to harvest their respective quotas was beyond the objective for this action. A more comprehensive approach towards eliminating dead discards will be addressed in HMS Amendment Two.

Comment 13 - Comments were received regarding decreasing quotas for all species; eliminating the use of gill nets, seine nets, longlines, and harpoons; and including environmentalists on agency panels. One commenter noted that an ecosystem imbalance caused by a reduction in the number of herring available in New England waters has resulted in a decreased availability of BFT in New England. Many commenters opposed the recent closing of the BFT Angling category.

Response - These issues are outside the scope of the current rulemaking. NMFS has issued a notice of intent for preparation of an amendment to the HMS FMP (68 FR 40907; July 9, 2003) which could address many of these issues, as well as others, during the FMP amendment process. The Herring fishery is managed under the Herring Fishery Management Plan and is currently in the amendment process. The New England Fisheries Management Council is the responsible council for the Herring FMP amendment and has analyzed several alternatives for action that include considerations of the impact of herring on elements of the ecosystem such as predator-prey relationships. The BFT Angling category was closed on November 17 (68 FR 64990, November 18, 2003) because of recent data indicating an over-harvest of this category in 2002. NMFS is reviewing these data to determine if further action is necessary.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The AA has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries. NMFS has determined that these regulations are consistent with the Magnuson-Stevens Act, ATCA and ICCAT recommendations.

This action relieves a restriction by extending the BFT General category end date until January 31, thus providing this category with approximately 30 more days in the fishing season. The General category closed on December 10 because the General category had attained its quota. However, there is additional quota available in other categories that NMFS intends to transfer into the General category in January 2004, after updating and reviewing landings data. This action will re-open the General category to fishing through January 31 to allow for the harvest of the additional quota. Therefore, pursuant to 5 U.S.C. 553(d)(1), the 30-day delayed effectiveness period is not applicable to Section 635.27(a)(1)(i)(c), the General category end date provision.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule and submitted it to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this final rule. A summary of the FRFA is provided below.

The analysis for the FRFA examines the impacts of the alternatives for adjusting the Purse seine category start date, establishing a Harpoon category end date, adjusting the General category end date, and adjusting the retention limit for large medium BFT in the Harpoon and Purse seine category fisheries on small entities. The purpose of this final action is to ensure the BFT fishery is managed consistently with the objectives of the HMS FMP and its implementing regulations, applicable statutes including the Magnuson-Stevens Act and ATCA, and the 1998 ICCAT Rebuilding Plan for western Atlantic BFT.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. This final action would affect vessels in three permit categories, namely the Purse seine, Harpoon, and General categories. The gross revenues for 2002, and number of vessels to date for 2003 for

each category are as follows: General category, \$13.9 million, 6,797 vessels; Purse seine category, \$3.0 million, 5 vessels; and the Harpoon category, \$0.5 million, 59 vessels.

Three alternatives were analyzed for the adjustment of the Purse seine category start date, including the no action/status quo alternative of an August 15 start date, the same start date as all other categories - June 1, and the selected alternative of a July 15 start date. These alternatives were evaluated to determine their ability to improve optimum yield and ex-vessel prices for the Purse seine and General categories while minimizing negative impacts to other commercial categories, specifically the Harpoon category. Because of the various factors that affect ex-vessel prices for BFT (i.e., supply, quality, etc.), the exact effect of different Purse seine category season start dates on ex-vessel prices is unknown. NMFS estimated these impacts by assuming that the amount of product on the market was the primary factor affecting ex-vessel prices.

Under the no action alternative, both the General and Purse seine categories appear to be negatively affected by depressed ex-vessel prices which appears to result from a mid-season glut of BFT on the market. However, under this alternative the Harpoon category benefits with higher ex-vessel prices early in the season before the Purse seine category commences.

Another alternative, opening the Purse seine category on June 1, could shift Purse seine category landings to earlier in the year and result in positive impacts for the Purse seine and General categories by relieving the mid-season market glut and distributing landings more uniformly over the fishing year. However, the Harpoon category could suffer the most negative impacts under this alternative because of the overall net increase in early season landings resulting from the overlap with the Purse seine category fishery season that would increase by 76 days. This overlap would occur during the time period when the Harpoon category traditionally experiences the best ex-vessel prices and on average annually lands the bulk (87 percent) of its product.

The selected alternative of a July 15 start date appears to minimize the negative impacts on the Harpoon category by reducing by more than half the amount of overlap with the Purse seine category season relative to the June 1 start date alternative, while still reducing the mid-season market glut, which should positively impact Purse seine and General category ex-vessel prices. Under this alternative, increase

in overlap with the Harpoon category would be reduced to 30 days and such overlap would occur during the time period when the Harpoon category averages approximately 26 percent of its gross revenues annually. Due to the large amount of landings, gross revenues and numbers of participants attributed to the Purse seine and General category commercial BFT sectors, this alternative is expected to provide the greatest positive impacts to the BFT fishery as a whole, even though the smaller Harpoon category may experience slightly negative economic impacts. Any negative impact to the Harpoon category could be partially mitigated by the increase in this final rule of the Harpoon category tolerance limit for large medium BFT to two fish per vessel per day, which would improve the ability of the Harpoon category to catch its annual quota. In addition, in response to comment, the final rule for this alternative includes a provision for delaying the start date to no later than August 15 if such a delay would further reduce gear conflicts or overlap between the different categories. Any adjustment to the start date would be filed with the Office of the **Federal Register** but would not be filed less than 14 calendar days prior to July 15. Because there are only five vessels in the Purse seine category, NMFS will be able to provide actual notice to the affected fishermen.

Three alternatives were also considered for the Harpoon category end date. The no action/status quo alternative would maintain an open Harpoon category season year round, provided there is Harpoon category quota available. Alternative two (selected) would close the Harpoon category season on November 15, and alternative three would establish a flexible season end date based on the actual dates of the BFT fall migration.

The no action/status quo alternative is expected to result in negative impacts for the traditional northern Harpoon category fishery since BFT could be harvested under the Harpoon category quota in areas outside the New England area, thereby reducing the quota available to the traditional fishery. In addition, the status quo may encourage the development of, and investment in, a southern area Harpoon category fishery, which has not yet occurred.

Alternative two is designed to maintain the Harpoon category quota for the traditional New England fishery and impact only the Harpoon category vessels. This alternative is selected as it is expected to provide positive impacts for the traditional New England Harpoon category fishery since it would close the fishery near the time period

when BFT migrate out of the New England area. Negative impacts to southern area fishermen interested in participating in the Harpoon category fishery under this alternative are expected to be negligible since there had been no BFT landings against the Harpoon category quota in such area prior to 2002, few vessels have participated in the Harpoon category fishery in the south Atlantic since that time, and there has been little investment in gear and equipment in a Harpoon category fishery outside of the New England area. Finally, vessel owners/operators that fish outside the traditional New England area that wish to use a harpoon as a primary gear type would still be allowed to do so under the General category permit, albeit under General category retention limits and restrictions.

The third alternative is also designed to affect only Harpoon category vessels and maintain the Harpoon category quota for the traditional New England fishery. Unlike the status quo and alternative two, it could provide additional positive impacts to the traditional New England Harpoon category fishery since it would more closely track the BFT fall migration, and could eliminate the landing of any BFT under the Harpoon category quota outside of the area of the traditional fishery. However it could be difficult to administer due to the difficulty in tracking the BFT migration and may lead to uncertainty for members within the Harpoon category regarding closure of the fishery. Alternative three also would have negligible impacts on southern area fishermen, for the same reasons noted above for alternative two.

The General category season is scheduled to end on December 31 of each fishing year or when the General category quota is harvested, whichever comes first. A winter fishery for large medium and giant BFT has existed in the south Atlantic since the early 1990s, and when quota is available, fish have been harvested under the General category. Two alternatives (in addition to the no action/status quo alternative) were considered that would both extend the General category season to provide southern Atlantic fishermen with more access to the General category BFT quota in the late fall and winter. Under the status quo the General category season would close on December 31 regardless of whether the full allocated quota has been attained or not. Southern area fishermen have been adversely affected this closure date as it occurs when BFT appear off southern states and commercial fishing opportunities

have been denied to them after December 31.

Alternative two (selected) would move the General category end date to January 31 of each fishing year. Overall economic impacts of this alternative to the General category BFT fishery as a whole would be neutral since the same overall amount of the General category quota would be landed and the value of the General category quota would not be changed. General category fishermen in the northern region may experience negative economic and social impacts, when compared to the status quo, since any unharvested quota as of December 31 would otherwise be rolled over to the following year. General category fishermen in the southern region would be positively affected by this alternative as it would allow greater utilization of existing investment in gear and equipment if quota was still available for harvest after December 31, and since BFT are usually available in the southern region during the end of the calendar year due to the fall migration from the north.

Under alternative three, extending the General category end date to May 31, overall impacts would again be neutral but northern General category fishermen could be more negatively affected and southern region fishermen could be more positively affected, due to the BFT fall migration, and depending on the amount of quota that remains after the season would have usually been closed. Alternative two was the alternative selected since it minimizes negative impacts to northern area fishermen by providing a more limited southern fishery extension and provides positive impacts for southern area fishermen by allowing further utilization of gear and equipment previously invested in a southern area large medium and giant BFT fishery. Negative impacts on northern area fishermen could be slightly mitigated if they are willing to travel south late in the season, provided there is reciprocity among different states' permitting costs and out-of-state fishermen are allowed under a coastal state's regulations to participate in a BFT commercial fishery, regardless of whether it occurs in federal or state waters.

As discussed above, the Purse seine and Harpoon categories have recently experienced difficulties in landing the full annual quota provided for each of these categories with the result of decreased annual gross revenues. Each alternative considered would modify the tolerance limits for landing large medium BFT and was analyzed to determine the increased likelihood of harvesting the respective quotas in the

designated time frames while balancing any ecological impacts of increased fishing mortality against the potential to reduce dead discards. As NMFS currently has insufficient information on discards, data will be collected through previously approved information collection programs (i.e., vessel logbooks and/or observers) to determine the effect of adjusting tolerance limits for large medium BFT in the Harpoon and Purse seine categories on mortality of pre-spawning fish and the ability of these categories to harvest allocated quotas.

Alternative one, the no action/status quo alternative, has had negative impacts with a resulting decrease in optimum yield for both the Purse seine and Harpoon categories since they have been unable to land and sell the full allotted quota. Alternatives two, three, and four, all related solely to the Purse seine category, were all designed to increase access to large medium BFT for the Purse seine category and to increase the possibility of full quota attainment while balancing the need to control overall mortality and increased pressure on the large medium size class of BFT. Alternative two removes the 10-percent annual tolerance limit and maintains the 15-percent trip limit which could increase landings and gross revenue for the Purse seine category. Alternative three (selected), which eliminates the trip limit and establishes the annual limit at 15 percent, would provide access to the same total amount of landings as alternative two, but may also increase net revenues by increasing flexibility in meeting the annual tolerance limit. Alternative four could provide the greatest increase in access by decreasing the minimum size to 73 inches (185 cm) for the Purse seine category; however, it was not selected because of the associated potential negative ecological impact of a relatively large increase in overall BFT mortality within the large medium size class of BFT.

Alternatives five and six, related solely to the Harpoon category, were designed to increase access to large medium BFT for the Harpoon category and, similar to considerations with the Purse seine category, balance the attainment of the quota allocation with concerns regarding an increase in mortality and negative ecological impacts. Alternative five would allow an increase in the daily retention limit for the Harpoon category from the status quo of one large medium BFT per day to two large medium BFT per day, and was selected since it is expected to provide an acceptable balance between positive economic effects and a modest

increase in mortality of large medium BFT. Large medium BFT mortality is not expected to increase significantly under this alternative because of a harpooner's ability to visually determine the size class of BFT prior to throwing a harpoon. Alternative six would allow full access to the large medium size class by reducing the minimum size limit for the Harpoon category to 73 inches (185 cm), and would provide the most positive economic impacts. However, it was not chosen because of the potential negative ecological impact of a relatively large increase in mortality on large medium fish.

Finally, alternative seven, unlike all other alternatives, would eliminate the tolerance for large medium size class and raise the minimum size of BFT to 81 inches (206 cm) in both the Purse seine and Harpoon categories. This alternative was considered due to the potential positive ecological impacts that would enhance western Atlantic BFT stock rebuilding, but would likely have negative economic and social impacts and further impede full attainment of quota and optimum yield. By narrowing the universe of fish available for harvest to just the giant size class, it would be more difficult for these categories to harvest the allocated quotas, thus the original objective for this action would be contradicted.

This final rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule does not contain any new information collection, reporting, recordkeeping or other compliance requirements. Logbook and observer data collection schemes were proposed and made final in the HMS Fishery Management Plan issued in 1999 and the Office of Management and Budget approved the information collections as part of that rulemaking process. Both the Purse Seine and Harpoon fisheries for BFT were included in the approved information collection requests for these programs. NMFS has faced resource constraints in implementing the approved information collections and has tried to reduce costs and avoid duplication by examining all possible avenues of accessing data on catch, effort and discards in these fisheries. In this final rule, NMFS balanced requirements to reduce dead discards against the requirements to limit mortality on pre-spawning fish and provide a reasonable opportunity for U.S. fishermen to harvest the quotas allocated to each category under the international rebuilding program for BFT and the HMS FMP allocation sector scheme. NMFS addressed this issue by adjusting the tolerance limits for

landing large medium BFT for both the Harpoon and Purse Seine categories. In developing this rule, it has become apparent that additional information on the size distribution of fish encountered/caught (as opposed to fish landed) is needed, and NMFS plans on obtaining this information through the previously approved logbook and observer programs.

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

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

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

NMFS has determined that the final regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. On November 10, 2003, the proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. As of November 28, 2003, NMFS has received 3 responses, all concurring with NMFS' consistency determination. Because no responses were received from the other states, their concurrence is presumed.

The area in which this final action is planned has been identified as an Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. Based on the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, which analyzed the impacts of purse seine, harpoon, and rod and reel gear on EFH, this action is not anticipated to have any adverse impacts to EFH.

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 19, 2003.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 635 is 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, paragraphs (d) and (e)(1) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant BFT per day. An incidental catch of only two large medium BFT per vessel per day may be retained, possessed, or landed.

(e) * * *

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the total amount of giant BFT landed during that fishing year.

* * * * *

■ 3. In § 635.27, paragraphs (a)(1)(i)(C), (a)(4)(i), and (a)(5) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through January 31 - 10 percent.

* * * * *

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be filed less than 14 calendar days prior to July 15.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

* * * * *

■ 4. In § 635.28 paragraph (a)(2) is revised to read as follows:

§ 635.28 Closures.

(a) * * *

(2) From the commencement date of the directed BFT purse seine fishery, as provided under § 635.27(a)(4)(i), through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season. Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

* * * * *

■ 5. In § 635.71 paragraphs (b)(10) and (b)(17) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *
 (10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets if there is no remaining BFT allocation made under § 635.27 (a)(4).

* * * * *

(17) As a vessel with a Purse Seine category Atlantic tunas permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to the commencement date of the directed BFT purse seine fishery, as specified in § 635.27(a)(4).

* * * * *

[FR Doc. 03-31758 Filed 12-23-03; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 021122284-2323-02; I.D. 121803C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Transfer

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 357,867 lb (162,326 kg) of commercial summer flounder quota to the Commonwealth of Virginia from its 2003 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: DATES: Effective December 19, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT:

Jason Blackburn, Fishery Management Specialist, (978) 281-9326, FAX (978) 281-9135, *Jason.Blackburn@Noaa.gov*

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2003 calendar year was set equal to 13,980,028 lb (6,341,235 kg). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, and in North Carolina is 27.44584 percent. This resulted in an initial commercial quota for Virginia of 2,980,089 lb (1,351,746 kg), and for North Carolina of 3,836,936 (1,740,405 kg) (68 FR 60, January 2, 2003). The 2003 allocation for Virginia was further reduced to 2,968,429 lb (1,346,457 kg), and for North Carolina to 3,821,924 lb (1,733,596 kg), due to research set-aside (January 2, 2003). The 2003 allocation for Virginia was also adjusted downward due to an estimated overage of the 2002 quota of 76,024 lb (34,484 kg), as of October 31, 2002, so that the resulting adjusted 2003 commercial quota for Virginia was 2,904,065 lb (1,317,275 kg) as of January 2, 2003 (68 FR 60). However, NMFS later found that the estimate of a 76,024-lb (34,484-kg) overage as of October 31, 2002, was in error, and restored that amount to Virginia's 2003 quota for a revised total of 2,968,429 lb (1,346,457 kg) on March 3, 2003 (68 FR 9905). The North Carolina quota allocation was not affected by overages from 2002. Therefore, their quota allocation remained at 3,821,924 lb (1,733,596 kg) (68 FR 9905).

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 357,867 lb (162,326 kg) of its 2003 commercial quota to Virginia. This transfer is prompted by a problem with shoaling in the Oregon Inlet, caused by the recent Hurricane Isabel, that is preventing some North Carolina fishing vessels from landing at their normal ports. Landing their catch in Virginia represents the next best alternative, but requires a transfer to account for an increase in Virginia landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2003 are: Virginia, 3,326,296 lb (1,508,783 kg); and North Carolina, 3,464,057 lb (1,571,270 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 18, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-31720 Filed 12-19-03; 2:32 pm]

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