

Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 26, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 30, 2009.

Kathleen Sebelius,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 090508897–91141–02]

RIN 0648–AX85

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

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes to adjust the Atlantic bluefin tuna (BFT) fishery regulations to increase the General category maximum daily retention limit, allow the General category season to remain open until the January subquota is reached, and increase the Harpoon category daily incidental retention limit. The intent of this proposed rule is to enable more thorough utilization of the available U.S. BFT quota, while ending BFT overfishing, rebuilding the BFT stock by 2019, and minimizing bycatch and bycatch mortality to the extent practicable. NMFS solicits written comments and will hold public hearings to receive oral comments on these proposed actions.

DATES: Written comments must be received on or before December 21, 2009.

The public hearing dates are:

1. December 14, 2009, 3 p.m. to 5 p.m., Silver Spring, MD.
2. December 15, 2009, 3 p.m. to 5 p.m., Gloucester, MA.

ADDRESSES: You may submit comments, identified by “0648–AX85”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- Fax: 978–281–9340, Attn: Sarah McLaughlin
- Mail: Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: All comments received are a part of the public record and will generally be posted to Portal <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter “n/a” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The hearing locations are:

1. Silver Spring – NMFS Science Center, 1301 East West Highway, Silver Spring, MD 20910.
2. Gloucester – NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

Supporting documents including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) for this action are available by sending your request to Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (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).

I. Background

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated

management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

In recent years, U.S. BFT landings have fallen below their respective ICCAT-recommended quotas. Factors that may have played a role in the underharvest of the domestic BFT fishery since 2004 include reduced availability of BFT for harvest, possibly due to recent changes in BFT regional availability and/or a reduced BFT population level, and reduced effort due to operational expenses (such as fuel costs). While the recreational Angling category and the commercial Longline category have been able to fill their subquotas in recent years, the commercial handgear categories (General and Harpoon) have not. In 2008, approximately 48 percent of the baseline and 31 percent of the adjusted General category quota was landed, and approximately 56 percent of the baseline and 36 percent of the adjusted Harpoon category quota was landed.

At its 2008 meeting, ICCAT recommended a reduction in the western Atlantic BFT Total Allowable Catch (TAC), set to allow for rebuilding of the stock through 2018, from 2,100 mt to 1,900 mt for 2009 and 1,800 mt for 2010. The baseline U.S. quotas for 2009 and 2010, respectively, are 1,009.9 and 952.4 mt, not including the annual allocation of 25 mt to account for incidental catch of BFT by pelagic longline vessels fishing in the Northeast Distant Area. Under the Consolidated HMS FMP, the General and Harpoon categories are allocated 47.1 and 3.9 percent, respectively, of the annual baseline BFT quota. For 2009, the General and Harpoon categories received base quotas of 475.7 mt and 39.4 mt, respectively, and adjusted quotas of 623.1 mt and 51.6 mt, respectively (74 FR 26110, June 1, 2009).

Over the last year, NMFS has received comments suggesting changes that could increase domestic BFT landings within existing quotas and subquotas. NMFS received these suggestions at the HMS Advisory Panel meetings in 2008 and 2009, during the 2009 BFT quota specifications public hearings, and in recent constituent and congressional correspondence. In response to these suggestions and related ones regarding the Atlantic swordfish fishery, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) (74 FR 26174, June 1, 2009), requesting specific comment on potential regulatory changes that would potentially increase fishing opportunities in the BFT and

swordfish fisheries. NMFS specifically requested comment on the following potential changes to the BFT regulations: increasing the General category maximum daily retention limit (currently three BFT greater than 73 inches (185 cm)) or eliminating it; extending the General category season (currently closed February through May); decreasing the commercial minimum size for the General and Harpoon categories and reallocating quota within those categories to allow access to fish under 73 inches; eliminating a retention limit restriction for the Harpoon category; allowing HMS Charter/Headboats to fish both commercially and recreationally on the same day; and allowing removal of Atlantic tunas tails at sea.

Comment received on the ANPR ranged from complete support by some industry participants (who generally feel that the regulations were needed when established to limit landings to the quota but should be relaxed now that commercial landings are relatively low compared to available quota) to complete opposition by some recreational fishermen, environmental organizations, and other individuals (who generally are concerned that relaxation of the regulations would compromise NMFS' BFT rebuilding and bycatch reduction efforts). The latter were particularly concerned about the potential impacts of a reduction in the BFT commercial minimum size, and several commenters suggested more conservative protections for the BFT fishery, such as an increase in commercial minimum size to reflect recent research on the age of BFT maturity and the prohibition of pelagic longlining for other target species during BFT spawning season in known spawning areas.

Following consideration of the wide range of comments received on the ANPR, NMFS proposes this action to increase fishing opportunities for BFT within the existing U.S. quota, particularly within the General and Harpoon category subquotas, which have been underharvested for several years. These three effort controlling actions would affect only when and where BFT mortality occurs, and not the magnitude. The magnitude of mortality has been defined by finite quotas and fish size limits established under a 20-year rebuilding program for BFT (analyzed in the 1999 HMS FMP Environmental Impact Statement), and other recommendations by ICCAT. The 2008 ICCAT recommendation was made after consideration of scientific and statistical information, including the 2008 BFT stock assessment. The

projected BFT rebuilding program is based on total allowable catch (in weight) and assumes that the pattern of fishing mortality (e.g., fish caught at each age) will not be changed dramatically. As long as the U.S. quota is not exceeded and there is no significant change in the selectivity of the fisheries, the proposed actions would not be expected to impact the rebuilding program.

Other than prohibiting directed fishing in the Gulf of Mexico, time period subquotas are used in the General category to regulate effort, which helps achieve optimum yield by considering the social and economic interests of the participants. This proposed action is intended to enable more thorough utilization of the available U.S. quota, while ending BFT overfishing, rebuilding the BFT stock by 2019, and minimizing bycatch and bycatch mortality to the extent practicable.

NMFS has prepared a draft EA/RIR/IRFA which presents and analyzes anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this proposed rule. The complete list of alternatives and their analysis is provided in the draft EA/RIR/IRFA, and is not repeated here in its entirety. A copy of the draft EA/RIR/IRFA is available from NMFS (see **ADDRESSES**).

II. Adjustment of the General Category Maximum Daily Retention Limit

Effort controls, such as daily retention limits and restricted-fishing days (not implemented for several years), are meant to maximize the opportunity for catching the quota and achieving biological, social, and economic benefits while balancing relative costs and negative impacts. For example, certain effort controls might provide more flexibility for the fishery by increasing retention limits when fish are known to be available on the fishing grounds in certain areas, and then reducing limits at other times so that limited quota may be available to other areas at other times.

Under the current BFT retention limit regulations at § 635.25, the default daily retention limit of large medium and giant BFT (measuring 73 inches or greater) is one fish per vessel. This limit has been in place since 1995. To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on restricted fishing days, if applicable) to a maximum of three per vessel, under NMFS' inseason action authority. Such increase or

decrease will be based on the determination criteria and other relevant factors provided under § 635.27(a)(8), which are:

(i) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(ii) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.

(iii) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(iv) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(v) Effects of the adjustment on BFT rebuilding and overfishing.

(vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan.

(vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.

(viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

(ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

The General category quota is utilized by vessels permitted in the Atlantic Tunas General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT. HMS Charter/Headboat category participants may retain and land BFT under the daily limits and quotas applicable to the Angling or the General category, except when fishing in the Gulf of Mexico (where only one recreational "trophy" large medium or giant BFT may be landed). The size of the first BFT retained determines the category applicable that day (e.g., if the first BFT retained is a large medium BFT, the vessel may fish only under the General category limit that day).

During the comment period for the 2009 BFT Quota Specifications and Effort Controls and for the ANPR, NMFS received comments requesting a change to or elimination of the General category maximum daily retention limit to increase opportunities to utilize the General category quota, which has been underharvested for several years.

NMFS proposes to increase the maximum daily retention limit to five fish per vessel, such that NMFS could increase or decrease the daily retention limit of large medium and giant BFT over a range from zero to a maximum of five per vessel via an inseason action

based on the determination criteria and other relevant factors provided under § 635.27(a)(8). The intent of this alternative would be to increase opportunities to harvest the General category quota.

Impacts of handgear used to fish for Atlantic tunas under the Atlantic Tunas General category and Harpoon categories are described in full in the Consolidated HMS FMP. NMFS anticipates that this action would have neutral to slightly negative ecological impacts. To the extent that large medium and giant BFT that would otherwise be discarded dead could be converted to landings, the impact would be neutral. Negative impacts could result from increased bycatch and bycatch mortality of small medium BFT (measuring 59 (150 cm) to less than 73 inches), which would have to be discarded as retention of BFT under 73 inches is prohibited in the commercial fisheries, and increased bycatch and bycatch mortality of large medium and giant BFT caught in excess of the five fish daily retention limit, if NMFS sets the limit at five fish via inseason action. The removal of a greater number of large medium and giant BFT than under current regulations may decrease spawning potential and subsequently have negative impacts on the stock. Some environmental organizations have commented during the ANPR that elimination of the maximum retention limit could also result in a substantial proportion of a school of BFT being taken at one time, having widespread age and/or genetic impacts on the stock. However, the limited nature of this action, particularly given the low General category success rate in retaining the current maximum daily retention limit of three fish, is unlikely to have any differential impacts on the life history or overall biological distribution of the western Atlantic BFT stock.

NMFS also considered a no action alternative, which is not preferred because of the potential negative socioeconomic impacts and likelihood of decreased optimum yield, and an alternative to increase the maximum daily retention limit to five large medium or giant BFT per vessel, which is not preferred because of the potential negative ecological impact of a relatively large potential increase in BFT mortality, including undersized fish.

Regardless of the alternative selected, NMFS would continue to maintain and exercise its authority to increase or decrease the daily retention limit as necessary following consideration of the determination criteria described above.

This provision of the regulations provides some safeguard, if needed, to reduce potential negative impacts of fishing effort. Although few data are available, it is believed that the selective nature of hook and line and harpoon gear used by vessels fishing under the General category quota have minimal impact on discards or interactions with non-target species.

The potential socioeconomic impacts associated with this proposed action could consist of increased ex-vessel revenues per trip and increased optimum yield. Increased socioeconomic impacts would depend on availability of large medium and giant BFT to the fishery, as well as the daily retention limit set by NMFS through inseason action. Nonetheless, this action would provide General and Charter/Headboat category vessels a reasonable opportunity to harvest the allocated General category quota in its designated time frame and allow greater fishing efficiency (i.e., by allowing vessels to attain a higher level of landings in a fewer number of trips and by increasing incentives for vessel operators to take multi-day trips). This alternative also would have positive socioeconomic impacts associated with converting dead discards of large medium and giant BFT to landings.

III. Adjustment of the General Category Season

Prior to 2004, the General category quota was available to all commercial handgear tuna fishermen from the opening of the fishing year on June 1 through the end of the season on December 31. Due to high participation and limited quota, NMFS used effort controls such as restricted fishing days and time period subquotas to slow down the catch rate and distribute landings both geographically and over time. Prior to 1999, despite the implementation of effort controls in the General category, the quota was attained and the General category closed in mid to late summer while BFT were still off northern New England states. Despite the seasonal General category closure, a BFT fishery on large mediums and giants emerged off the coast of North Carolina during February and March. This southern fishery was recreational in nature because it occurred after the General category season closing. In later years, fish began to arrive in the region during the late fall/early winter, and interest in a commercial fishery developed.

During the development of the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, the emergence of a General category BFT fishery in the southern

Atlantic region was extensively discussed by the Highly Migratory Species Advisory Panel (HMS AP) and the public. At the time, the majority of General category fishing activity took place in the summer and fall off the New England and Mid-Atlantic coasts. However, the HMS AP did not agree on how the HMS FMP should address the scope of a southern area late season General category BFT fishery. In the early 2000s, NMFS performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the HMS FMP, which allowed the General category BFT fishery to extend into the winter months (i.e., late November - December). In 2002, NMFS received a Petition for Rulemaking from the North Carolina Division of Marine Fisheries to formalize this winter fishery and extend fishing opportunities for the General category into January (67 FR 69502, November 18, 2002). In December 2003, NMFS extended the General category end date from December 31 to January 31 (68 FR 74504, December 24, 2003) to address some of the concerns raised in the Petition, as well as to increase fishing opportunities and optimum yield for the fishery overall. In the 2006, NMFS modified the General category time period subquotas to allow for a formalized winter fishery via the Consolidated HMS FMP. These subquotas remain effective and are shown, in Figure 1. The December and January time periods are currently allocated 5.2 percent and 5.3 percent of the General category base quota, respectively.

The BFT fishery was managed on a fishing year basis (June through May) versus a calendar year basis (January through December) starting with the implementation of the 1999 FMP in 2000. In January 2008, management reverted to a calendar year basis per implementation of the Consolidated HMS FMP. As of 2008, the January time period and associated fishing activities now occur at the beginning rather than the end of the General category season.

During the comment period for the 2009 BFT Quota Specifications and Effort Controls and for the ANPR, NMFS received comments requesting extension of the General category season as well as changes to the time period subquotas to increase opportunities to utilize the General category quota.

NMFS proposes to allow the General category to remain open at the beginning of the calendar year until the January subquota is determined to be fully harvested. To effect this change, NMFS would adjust the BFT quota regulation that specifies the time period

for which the first General category subquota is available, such that the period that begins January 1 would end upon the effective date of a closure notice that NMFS would file with the Office of the **Federal Register** when the quota apportioned to the period that begins January 1 is projected to be reached, or May 31, whichever comes first. NMFS would continue to carry forward unharvested General category quota from one time period to the next time period. NMFS expects that this action effectively would lengthen the General category season by a few weeks, but the duration of the extension would depend on weather conditions and availability of large medium and giant BFT to the fishery during the winter months.

This action may result in a shift in BFT landings, both temporally (to later in the season) and geographically to the South (i.e., off the South Atlantic states of North Carolina, South Carolina, Georgia, and the Florida East Coast). However, the number of BFT harvested from the large medium and giant size classes would remain consistent with the levels of BFT mortality used in the stock assessment. These temporal and spatial shifts in landings could result in a slight decrease or increase in protected resource interactions, discards, and incidental catch of other finfish. However, given the limited nature of this action, which would likely extend the winter fishery by less than a few weeks, NMFS does not expect any adverse ecological impacts.

NMFS expects that this proposed action would increase the likelihood of winter General category participants and Charter/Headboat participants, when fishing commercially, being able to harvest the full January subquota, particularly if the adjusted January quota is established during the winter portion of the season. An increase in optimum yield may result from a potential increase in the geographic and temporal distribution of landings. Increases in positive socioeconomic impacts would depend on the availability of large medium and giant BFT to the fishery from the beginning of February until the BFT January subquota (base or adjusted, as applicable) is reached.

NMFS also considered a no action alternative, which is not preferred because the potential negative socioeconomic impacts and likelihood of decreased optimum yield, as well as an alternative to establish a year-round General category fishing season and establish equal monthly time periods and subquotas, which is not preferred at this time as NMFS believes the topic of

quota location merits further consideration and analyses.

IV. Adjustment of the Harpoon Category Daily Incidental Retention Limit

When the Harpoon category was created in 1980, it was allocated a small portion of the handgear quota of giant tuna in recognition that harpooning had long been used as a method of catching giant tuna in the northern fishery and merited a historical niche in the giant fishery. In 1992, NMFS limited incidental retention large medium BFT to one per day as well as an unlimited number of giant BFT (measuring 81 inches (205 cm) or greater), within the Harpoon category quota (57 FR 32905, July 24, 1992). This action was taken to reduce the fishing mortality on large medium BFT, thus allowing for an increase in the spawning potential of the western Atlantic BFT stock, while allowing for the incidental take of large medium BFT to minimize regulatory discards and negative economic impacts.

In 2003 (68 FR 74504, December 24, 2003), NMFS increased the large medium BFT tolerance limit to two fish per day to allow greater opportunity for Harpoon category participants to fully harvest its subquota and to address Harpoon vessel operator concerns about not being able to locate schools of exclusively giant BFT on the fishing grounds due to the mixing of the larger size classes within schools.

During the comment period for the 2009 BFT Quota Specifications and Effort Controls and for the ANPR, NMFS received comments requesting an increase to, or elimination of, the Harpoon category incidental retention limit of large medium BFT.

NMFS proposes to increase the daily incidental retention limit of large medium BFT to four per vessel. This action is intended to provide Harpoon category vessels a reasonable opportunity to harvest the allocated Harpoon category quota in its designated time frame and convert dead discards to landings.

This action is expected to have neutral to slightly negative ecological impacts with regard to large medium BFT. To the extent that large medium BFT discards could be converted to landings, the impact would be neutral. Negative impacts could result from increased bycatch and bycatch mortality of small medium BFT (measuring 59 to less than 73 inches) and large medium BFT in excess of the incidental limit while attempting to catch giant BFT, particularly as NMFS anticipates potential increases in large medium BFT

abundance in the next few years. The removal of a greater number of large medium BFT than the status quo may decrease spawning potential and subsequently have negative ecological impacts on the stock. Although few data are available, it is believed that the selective nature of harpoon gear has minimal impact on discards or interactions with non-target species.

The potential socioeconomic impacts associated with this proposed action could consist of increased ex-vessel revenues per trip and increased optimum yield. Increased socioeconomic impacts would depend on availability of large medium BFT to the fishery. This alternative also would have positive socioeconomic impacts associated with converting dead discards of large medium BFT to landings.

NMFS also considered a no action alternative, which is not preferred because of the potential negative socioeconomic impacts (to the extent that the incidental limit constrains large medium BFT landings) and potential decreased optimum yield, as well as an alternative to eliminate the Harpoon category daily incidental retention limit, which is not preferred because of the potential negative ecological impact of a relatively large potential increase in large medium BFT mortality.

V. Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to analyze the impacts of the alternatives for adjusting the General category maximum daily retention limit, extending the General category season,

and adjusting the Harpoon category daily incidental retention limit on small entities. The IRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT General and Harpoon category fisheries, all of which are considered "small entities." In order to do this, NMFS has estimated the average impact that each alternative would have on individual categories and the vessels within those categories.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to enable more thorough utilization of the available U.S. BFT quota, while ending BFT overfishing, rebuilding the BFT stock by 2019, and minimizing bycatch and bycatch mortality to the extent practicable. Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry. As of December 31, 2008, 9,871 vessels were permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels), with specifically 4,721 vessels in the General category, 4,827 in the Charter/Headboat category, and 26 in the Harpoon category.

Under section 603(b)(4) of the Regulatory Flexibility Act, agencies are required to describe any new reporting, record-keeping and other compliance requirements. There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This

proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

Under section 603(c) of the Regulatory Flexibility Act, agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the EA. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed are described below. In 2008, the annual gross revenues from the commercial BFT fishery were approximately \$5.0 million. The commercial quota categories and their 2008 gross revenues are General (\$4.0 million), Harpoon (\$313,781), Purse Seine (\$0), and Longline (\$722,016). The IRFA assumes that each vessel within a category will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Three alternatives were analyzed for the adjustment of the General category maximum daily retention limit. Alternative A1, the status quo

alternative, would maintain the current maximum daily retention limit of three large medium BFT. The status quo alternative could result in negative socioeconomic impacts to the extent that the daily retention limit constrains large medium and giant BFT landings. The inability of the General category to land and sell its full allotted quota results in decreased optimum yield.

Alternative A2, an increase in the maximum daily retention limit to five fish per vessel, could have positive economic impacts, if NMFS increases the daily retention limit from the default level of one fish to five fish via a separate action, due to the increased potential to land additional large medium and giant BFT rather than discarding fish in excess of the current maximum daily retention limit (e.g., if a fourth commercial size BFT is caught in one day). Ex-vessel revenues per trip could increase on average by approximately \$8,500 per active vessel (2 fish x the 2008 average fish weight of 500 lb x \$8.44 General category ex-vessel average price/lb), depending on availability of large medium and giant BFT to the fishery. Allowing a higher maximum daily retention limit could also reduce the trip costs per fish landed, and thus improve profitability of trips when additional fish are available. Alternative A2 is the preferred alternative, as it would increase opportunities for General and Charter/Headboat category vessels to land the General category quota while balancing concerns regarding BFT stock health.

Alternative A3, elimination of the maximum daily retention limit, would have positive socioeconomic impacts associated with the increased potential to land all large medium and giant BFT in excess of the current maximum daily retention limit rather than discarding them. Although this alternative would provide the most positive economic impacts, it is not preferred because of the potential negative ecological impact of a relatively large potential increase in BFT mortality, including undersized fish.

Three alternatives were analyzed for the adjustment of the General category season. Under Alternative B1, the status quo alternative, the General category season would end on January 31 of each fishing year or when the General category January subquota is harvested, whichever comes first. Under this alternative, NMFS anticipates neutral impacts on General and Charter/Headboat category vessels relative to 2008.

Under preferred Alternative B2, which would allow the General category

to remain open until the date NMFS determines that the January subquota (adjusted if applicable) has been met, NMFS anticipates that overall economic impacts of this alternative to the General category and Charter/Headboat 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. However, General category fishermen in the southern region (approximately 1,300 vessels) would be positively affected by this alternative as it would allow increased opportunities to land and sell BFT commercially and increased utilization of existing investment in gear and equipment, especially if quota is still available for harvest after January 31.

Under Alternative B3, which would establish a January through December General category season and establish 12 equal monthly General category time periods and subquotas (of 8.3 percent each), resulting impacts would be mixed, but positive overall. Winter fishery participants would benefit from increased opportunities to harvest large medium and giant BFT, if available, during the months of February through March. General category and Charter/Headboat category participants in the New England area, or those participants that pursue BFT in the summer months, might experience some adverse social and economic impacts due to the shift in quota to the earlier (winter) portion of the season. However, these effects would be mitigated by the effects of the carryforward of unharvested quota from one time period to the next. This is not the preferred alternative at this time as NMFS believes the topic of quota location merits further consideration and analyses.

Three alternatives were analyzed for the adjustment of the Harpoon category incidental daily retention limit. Alternative C1, the status quo alternative, would maintain the current incidental daily retention limit of two large medium BFT. The status quo alternative could result in negative socioeconomic impacts to the extent that the incidental limit constrains large medium BFT landings. The inability of the Harpoon category to land and sell its full allotted quota results in decreased optimum yield.

Alternative C2, an increase in the incidental daily retention limit to four large medium BFT, would have positive socioeconomic impacts associated with the increased potential to land additional large medium BFT rather than discarding fish in excess of the current incidental limit (e.g., if a third

large medium is caught while pursuing giant BFT). Ex-vessel revenues per trip could increase, depending on availability of large medium BFT to the fishery. Ex-vessel revenues per trip could increase on average by approximately \$4,600 per active vessel (2 fish x the 2008 average Harpoon category fish weight of 360 lb x \$6.36 Harpoon category ex-vessel average price/lb), depending on availability of large medium BFT to the fishery. Allowing a higher daily incidental retention limit could also reduce the trip costs per fish landed, and thus improve profitability of trips when additional fish are available. Alternative C2 is the preferred alternative as it would increase opportunities for Harpoon category vessels to land the Harpoon category quota while balancing concerns regarding BFT stock health.

Alternative C3, elimination of the incidental limit, would have positive socioeconomic impacts associated with the increased potential to land all large medium BFT in excess of the current incidental limit rather than discarding them. Although this alternative would provide the most positive economic impacts, it is not preferred because of the potential negative ecological impact of a relatively large potential increase in large medium BFT mortality.

VI. Public Hearings

The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281-9260, at least 7 days prior to the meeting.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Management, Treaties.

Dated: October 29, 2009.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is 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, paragraphs (a)(4) and (d) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the **Federal Register**, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

* * * * *

(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 four large medium BFT per vessel per day may be retained, possessed, or landed.

* * * * *

3. In § 635.27, paragraph (a)(1)(i)(A) is revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or until May 31, whichever comes first - 5.3 percent (25.2 mt);

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