

Type of proceeding	Fee
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving \$25,000 or less .....	75
(ii) Petitions involving over \$25,000 .....	150
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	250
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c). .....	\$42 per document.
(84) Informal opinions about rate applications (all modes) .....	250
(85) A railroad accounting interpretation .....	1,100
(86) (i) A request for an informal opinion not otherwise covered .....	1,500
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR part 1013 and 49 CFR 11804(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 11802(a).	5,200
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.	500
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR part 1108:	
(i) Complaint .....	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration .....	75
(iii) Third Party Complaint .....	75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration .....	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award .....	150
(88) Basic fee for STB adjudicatory services not otherwise covered .....	250
(89)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent .....	33 per delivery.
(97) Request for service or pleading list for proceedings .....	25 per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that:	
(i) Does not require a <b>Federal Register</b> notice:	
(a) Set cost portion .....	150
(b) Sliding cost portion .....	\$48 per party.
(ii) Does require a <b>Federal Register</b> notice:	
(a) Set cost portion .....	400
(b) Sliding cost portion .....	\$48 per party.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam .....	150
(ii) Practitioners' Exam Information Package .....	25
(100) Carload Waybill Sample data:	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD–R.	\$250 per year.
(ii) Specialized programming for Waybill requests to the Board .....	\$112 per hour.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 120306154–2241–02]**

**RIN 0648–XA920**

**Atlantic Highly Migratory Species; 2012 Atlantic Bluefin Tuna Quota Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS establishes 2012 quota specifications for the Atlantic bluefin tuna (BFT) fisheries. This action is necessary to implement binding

recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective August 27, 2012 through December 31, 2012.

**ADDRESSES:** Supporting documents, including the 2011 Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis, as well as others, such as the Fishery Management Plans and the scoping document described below may be downloaded from the HMS Web site at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/). These documents also are available by request to Sarah McLaughlin at the telephone number below.

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

**SUPPLEMENTARY INFORMATION:** Atlantic bluefin tuna (BFT) are managed under

the dual authority of the Magnuson-Stevens Act and ATCA. The United States is an active member of ICCAT, which implements binding conservation and management recommendations for species including bluefin tuna. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

**Background**

ICCAT Recommendation 10–03 (Supplemental Recommendation by ICCAT concerning Western Atlantic Bluefin Tuna) established the total allowable catch for western Atlantic bluefin tuna for 2011 and 2012, including the United States' bluefin tuna quota. Through a final rule (76 FR 39019, July 5, 2011), NMFS implemented the United States' baseline quota and set domestic BFT fishing category quotas per the allocations

established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and as allowed in implementing regulations (71 FR 58058, October 2, 2006) (See Table 1, first column). The baseline quota and category subquotas are codified (See Table 1, second column) and will be effective until changed. Additionally, consistent with the Consolidated HMS FMP and NMFS implementing regulations, and as allowed by ICCAT recommendation, certain adjustments are made to the baseline quotas for underharvest from the previous year. This final action adjusts the quota as appropriate and allowable for the 2012 fishing year. Further background information, including the need for the 2012 BFT quota specifications, was provided in the preamble to the proposed rule (77 FR 15712, March 16, 2012) and is not repeated here.

#### Changes From the Proposed Rule

NMFS determines the amount of BFT quota actually available for the year by adjusting the ICCAT-recommended baseline BFT quota for overharvest or underharvest from the previous fishing year and any accounting for dead discards. At the time the proposed rule was prepared, NMFS used the 2010 estimate of 122.3 mt as a proxy for potential 2012 dead discards because the BFT dead discard estimate for 2011 was not yet available. The more recent 2011 dead discard estimate, 145.2 mt, became available from the NMFS Southeast Fisheries Science Center in mid-June 2012. As anticipated and explained to the public at the proposed rule stage, NMFS is using the more recent dead discard estimate as a proxy in this final rule because it is the best available and most complete information NMFS currently has regarding dead discards.

Based on data available as of June 5, 2012, landings for 2011 totaled 738.5 mt. Adding the 2011 dead discard estimate (145.2 mt) results in a preliminary 2011 total catch of 883.7 mt, which is 159.9 mt less than the amount of quota (inclusive of dead discards) allowed under ICCAT Recommendation 10-03 (948.7 mt plus 94.9 mt of 2010 underharvest carried forward to 2011, totaling 1,043.6 mt). Thus, the underharvest for 2011 is approximately 160 mt. The current ICCAT recommendation limits the amount of underharvest the United States may carry forward to 2012 to 10 percent of the total U.S. quota or 94.9 mt.

As proposed, NMFS is accounting up front (i.e., at the beginning of the fishing

year) for half of the expected dead discards for 2012, using the best available estimate of dead discards (2011), and deducting that portion directly from the Longline category subquota. This is the same approach that NMFS took for the final 2011 BFT quota specifications. Accounting for dead discards in the Longline category in this way may provide further incentive for pelagic longline fishermen to reduce interactions that can result in dead discards.

Regarding the unharvested 2011 BFT quota, NMFS had proposed to carry the 94.9 mt of available underharvest forward to 2012 and distribute that amount in the same manner as specified for 2011 (i.e., half to the Longline category and half to the Reserve category), and stated that any necessary adjustments to the 2012 specifications would be made in the final rule after considering updated 2011 landings information and the 2011 dead discard estimate. NMFS also stated that it could allocate the amount carried forward in another manner after considering domestic management needs for 2012.

During preparation of the final rule, NMFS closed the southern area incidental Longline bluefin tuna fishery on May 29, 2012 (77 FR 31546), and the northern area incidental Longline bluefin tuna fishery on June 30, 2012 (77 FR 38011), for the remainder of the year, because landings had met the codified subquotas for those areas. While pelagic longline fishing for swordfish and other target species may continue in the northern and southern Longline areas (with the separation at 31° N. lat., around the Georgia/Florida border), BFT may no longer be retained, possessed, or landed by longline vessels in those areas. Given that the incidental Longline fishery for bluefin tuna in these areas is over, accounting for these landings now is appropriate and allows for greater transparency than year-end accounting. The incidental Longline fishery for bluefin tuna in the Northeast Distant gear restricted area, an area far offshore the northeastern United States, remains open at this time under a separate, ICCAT-recommended allocation of 25 mt.

Taking all of this information into consideration, NMFS is deducting half of the estimated dead discards up front, is applying 76.2 of the 94.9 mt (the available underharvest) to the Longline category, and is maintaining the remaining underharvest (18.7 mt) in the Reserve category. Providing this amount to the Longline category adjusts the Longline South and Longline North subquotas to the amount actually taken in those areas this year, as detailed

below. Consistent with determination criteria at § 635.27(a)(8), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any other quota category. In the proposed rule, NMFS anticipated the possibility of such moderate alterations between the proposed and final amounts and distribution, based on updated information and management objectives.

The incidental Longline fishery for bluefin tuna in the Northeast Distant gear restricted area, an area far offshore the northeastern United States, remains open at this time under a separate, ICCAT-recommended allocation of 25 mt.

#### 2012 Quota Specifications

Specifically, NMFS in this final rule deducts half of the 2011 dead discard estimate of 145.2 mt (i.e., 72.6 mt) directly from the baseline Longline category quota of 74.8 mt and applies 76.2 of the 94.9 mt allowed to be carried forward to 2012 to the Longline category (i.e.,  $74.8 - 72.6 + 76.2 = 78.4$  mt adjusted Longline subquota, not including the 25-mt allocation set aside by ICCAT for the Northeast Distant gear restricted area (NED)). NMFS adds the remainder of the 2011 underharvest that can be carried forward to 2012 (18.7 mt) to the Reserve category's baseline allocation of 23.1 mt, for an adjusted Reserve category quota of 41.8 mt for 2012. For the directed fishing categories (i.e., the Angling, General, Harpoon, Purse Seine categories) as well as the Trap category, NMFS is not adjusting the codified baseline BFT quotas and subquotas that were established in July 2011 (76 FR 39019, July 5, 2011).

Thus, in accordance with ICCAT Recommendation 10-03, the domestic category allocations established in the Consolidated HMS FMP, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS establishes BFT quota specifications for the 2012 fishing year as follows, and as shown in the fifth column of Table 1): General category—435.1 mt; Harpoon category—36 mt; Purse Seine category—171.8 mt; Angling category—182 mt; Longline category—78.4 mt; and Trap category—0.9 mt. The Longline category quota of 78.4 mt is subdivided as follows: 27.6 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 50.8 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS accounts for landings under the 25-mt NED allocation separately from other Longline category landings. The amount allocated to the Reserve category for inseason adjustments, scientific research

collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers is 41.8 mt.

As described in the proposed rule, NMFS considers the deduction of half of the dead discard estimate from the Longline category a transitional approach from the method used for 2007 through 2010—in which the full

dead discard estimate was deducted from the Longline category quota up front—that is appropriate to use again for 2012 as NMFS begins developing Amendment 7 to the Consolidated HMS FMP (Amendment 7) (77 FR 24161, April 23, 2012). Several potential management measures included in the Amendment 7 scoping document (see **ADDRESSES**) are intended to reduce and

account for bluefin tuna dead discards. After public scoping on Amendment 7 has been completed, NMFS will prepare a draft Environmental Impact Statement and proposed rule. Management of the BFT fisheries continues under the current Consolidated HMS FMP, implementing regulations, and ICCAT recommendations.

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Table 1. Final 2012 Atlantic Bluefin Tuna Quotas and Quota Specifications (in metric tons)

Category (% share of baseline quota)	Baseline Allocation for 2011 and 2012 (per 2010 ICCAT Recommendation and Consolidated HMS FMP allocations)	2012 Quota Specifications		
		Dead Discard Deduction (1/2 of 2011 proxy of 145.2 mt)	2011 Underharvest to Carry Forward to 2012 (94.9 mt total)	Adjusted 2012 Fishing Year Quota
<b>Total (100)</b>	<b>923.7*</b>			<b>946.0</b>
<b>Angling (19.7)</b>	<b>182.0</b> <u>SUBQUOTAS:</u> School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8			<b>182.0</b> <u>SUBQUOTAS:</u> School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8
<b>General (47.1)</b>	<b>435.1</b> <u>SUBQUOTAS:</u> Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6			<b>435.1</b> <u>SUBQUOTAS:</u> Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6
<b>Harpoon (3.9)</b>	<b>36.0</b>			<b>36.0</b>
<b>Purse Seine (18.6)</b>	<b>171.8</b>			<b>171.8</b>
<b>Longline (8.1)</b>	<b>74.8</b> <u>SUBQUOTAS:</u> North (-NED) 29.9 NED 25.0* South 44.9	<b>-72.6</b>	<b>+76.2</b> North 26.7 South 39.5	<b>78.4</b> <u>SUBQUOTAS:</u> North (-NED) 27.6 NED 25.0* South 50.8
<b>Trap (0.1)</b>	<b>0.9</b>			<b>0.9</b>
<b>Reserve (2.5)</b>	<b>23.1</b>		<b>+18.7</b>	<b>41.8</b>

\*25-mt ICCAT set-aside to account for bycatch of BFT in pelagic longline fisheries in the NED not included in totals at top of table.

## BILLING CODE 3510-22-C

**Comments and Responses**

NMFS received five written comments on the proposed rule, and oral comments from the 13 participants who attended the two public hearings that NMFS held in Gloucester, MA, and Silver Spring, MD. Few of the comments

NMFS received were focused specifically on the proposed quota specifications. The majority of those comments generally supported the proposed adjustment of the baseline BFT quota and subquotas. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule received during the

comment period. In addition, NMFS received comments on issues that were not part of this rulemaking. These comments are summarized under "Other Issues" below. Finally, NMFS addresses a comment received after the end of the comment period from the Center for Biological Diversity, the

Plaintiff in an ongoing legal case regarding bluefin tuna management.

#### A. 2012 Quota Specifications

*Comment 1:* One commenter stated that NMFS' proposed methodology to allocate the quotas is appropriate because it is the same methodology used in 2011 and it allows for continued participation by all of the fishery's user groups. Another stated that NMFS should hold each category directly accountable for its own overharvests.

*Response:* The approach used for these final 2012 quota specifications is an appropriate continuation of the approach used in 2011 as a transition from the method used from 2007 through 2010. Changes in ICCAT's approach to western Atlantic bluefin tuna management in 2006 (i.e., discontinuation of the dead discard allowance and a new provision that the western BFT Total Allowable Catch include dead discards) have had implications for NMFS's domestic management of the fishery quota subcategories, as now the total of U.S. landings and dead discards is limited by the U.S. quota. Through this interim approach, NMFS is balancing the needs of the pelagic longline fishery to continue fishing for swordfish and Atlantic tunas with the needs of directed bluefin tuna fisheries participants. This action may provide some incentive for pelagic longline fishermen to reduce BFT interactions that can result in dead discards. Regarding the comment that NMFS should hold each subcategory accountable for its own dead discard, at this time there are no estimates of dead discards in other categories upon which to hold them accountable. NMFS is considering how best to modify data collection programs to provide dead discard estimates in the future in Amendment 7.

*Comment 2:* One commenter requested that if, based on final 2011 dead discard information, the amount of 2011 underharvest that the United States could carry forward to 2012 is less than the amount anticipated in the proposed rule (94.9 mt), NMFS should deduct the difference from the Longline category quota. Another commenter requested that NMFS take any difference from the Reserve category quota and asked that NMFS not give out extra quota for directed fisheries to land as that could result in an overharvest of the U.S. BFT quota.

*Response:* Because final landings and dead discard information for 2011 indicates that the amount of 2011 underharvest is greater than 94.9 mt, the full 94.9 will be available as anticipated

in the proposed rule, and no adjustment is necessary. Therefore, the question of how to divide a reduced amount of underharvest between the Longline category and the Reserve is moot. However, after considering the updated 2011 BFT landings information and final dead discard estimate, NMFS has decided to apply 76.2 of the 94.9 mt (the available underharvest) to the Longline category and maintain the remainder (18.7 mt) in the Reserve category.

*Comment 3:* One commenter expressed concern that NMFS may, in order to stay within the ICCAT-recommended U.S. quota, close directed BFT fisheries in the event that unused quota, including the Reserve quota, is insufficient to account for Longline category landings overharvests and dead discards.

*Response:* The United States must account for dead discards, regardless of which fishery they occur in, to comply with ICCAT recommendations. It is important to consider that the BFT quota allocations in the Consolidated HMS FMP were based on historic landings and were established initially in 1992. Baseline quotas were modified in 1995 and 1997, but have remained the same since implementation of the 1999 FMP, when a separate discard allowance was provided for in the ICCAT BFT recommendation. Following ICCAT's elimination of the dead discard allowance and change to include dead discards within TACs in 2006, NMFS has not modified the allocation scheme to include dead discards in the baseline quotas. The United States has accounted for this mortality as part of the domestic specification calculation process for the last several years and reports dead discard estimates to ICCAT annually. Regarding the concern about potential closure, NMFS manages each fishing category to its landings quota for a given year, and it is highly unlikely that NMFS would close a fishery prior to the available quota for that category being met.

As indicated above and below, through Amendment 7, NMFS is considering how best to reduce and account for BFT dead discards and methods to improve reporting and monitoring of discards and landings.

*Comment 4:* NMFS should add to the Reserve category quota the shares of the two purse seine vessels that historically have participated in the BFT Purse Seine category fishery but that have recently been sold and are involved in non-tuna fisheries.

*Response:* The current BFT quota regulations, which implement the allocation shares set out in the Consolidated HMS FMP, require that

NMFS make equal allocations of the available Purse Seine category quota to the Purse Seine category permit holders that request allocation for a given fishing year (§ 635.27(a)(4)(iii)). Thus, current regulations do not allow NMFS to initially allocate the Purse Seine category quota the way the commenter requests. Any change to the procedures for initially allocating Purse Seine category quota would require amendment to the Consolidated HMS FMP. NMFS is currently in the scoping process of Amendment 7, with comments on the scoping document (see **ADDRESSES**) being accepted through July 15, 2012.

#### B. Other Issues

NMFS received comments on issues beyond the scope of this rulemaking, as outlined under seven subheadings below. NMFS has included several of these topics in the scoping document for Amendment 7. NMFS has also requested comments and/or suggestions on any of the Consolidated HMS FMP management objectives, as well as any potential management measures that may achieve those objectives so they can be incorporated for future public input. Potential management measures include, but are not limited to: revision of baseline quota allocations, reduction of and accounting for dead discards; new and/or modified time and area closures; and methods to improve reporting and monitoring of discards and landings. The potential measures listed in the scoping document are intended to be catalysts for scoping, and should not be viewed as the entire range of options NMFS is taking into consideration.

##### (1) BFT Baseline Quotas and Allocations

NMFS received various requests to consider catch data rather than just landings data to establish a more effective distribution of quota, enabling better quota utilization and fewer discards; to provide all categories with more quota if the Total Allowable Catch increases; and to reduce all BFT quotas by 50 percent.

##### (2) Bycatch and Dead Discards

NMFS received a request to use the term "regulatory discards" rather than "dead discards," to provide a clear explanation of the dead discards estimation methodology that is understandable by laypersons, to require observer coverage and logbook use for all permit categories, and to calculate the anticipated reduction in dead discards from weak hook use in the Gulf of Mexico when considering a

proxy for the 2011 dead discard estimate.

### (3) Permits

NMFS received a request to change all BFT permits from open access to limited access. The commenter stated that the open access nature of the fishery compounds the quota allocation issue.

### (4) Data

NMFS received a comment that the Angling category landings are completely estimated and may be significantly incorrect, and a comment that NMFS should collect more information on all BFT (commercial and recreational), whether landed or discarded dead.

### (5) ICCAT

NMFS received a comment that the stock assessment science considered by ICCAT lags behind what the U.S. fishermen are seeing on the water, resulting in U.S. fishermen fighting among themselves while eastern Atlantic and Mediterranean BFT fishermen benefit. Some commenters stated that the U.S. delegation to ICCAT should renegotiate the BFT recommendation to increase quotas and the amount of underharvest allowed to be carried forward from one year to the next and should pursue two-year balancing periods for increased flexibility.

### (6) Inseason BFT Fishery Management

NMFS received requests to set the General category daily retention limit for June through August at four fish, to close the Longline category southern area BFT fishery as soon as the quota is met, and to carefully monitor pelagic longline activity on the east coast of Florida.

### (7) Public Hearings

NMFS received a request to hold hearings in all areas, despite budget restraints, so that all affected fishermen have the opportunity to present their perspectives on any rule that may affect them. Another commenter requested that NMFS hold more meetings generally, with at least half being conducted in metropolitan areas rather than specifically in areas where participants profit from fisheries.

#### *C. Comment From the Center for Biological Diversity*

On May 4, 2012, 18 days after the comment period for this proposed rule ended, the Center for Biological Diversity (Center) submitted comments on the rule, including a request that NMFS supplement the Environmental

Assessment prepared for the final 2011 quota rule (76 FR 39019, July 5, 2011) to consider information about the Deepwater Horizon/BP oil spill and alleged illegal fishing on the eastern Atlantic and Mediterranean BFT stock, due to the potential effects of mixing on western Atlantic BFT stock recovery. The Center claims that the proposed 2012 quota specifications would violate National Standards 1 and 2 by carrying forward any of the 2011 bluefin tuna underharvest to 2012 and allocating it to fishermen, because they argue that the proposed rule fails to prevent overfishing and use the best available science on the effects of the Deepwater Horizon/BP oil spill and the effects of mixing of eastern and western BFT stocks. Under National Standard 1, conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. Under National Standard 2, conservation and management measures shall be based upon the best scientific information available. In December 2011, the Center filed a complaint against the Secretary of Commerce, NOAA, and NMFS, regarding a November 2011 final rule implementing Adjustments to the Atlantic Bluefin Tuna General and Harpoon Category Regulations (76 FR 74003, November 30, 2011). The Center claims that the rule violated the Magnuson-Stevens Act, the National Environmental Policy Act, and the Administrative Procedure Act.

NMFS is not required under the Administrative Procedure Act to respond to comments received following the end of a rule's comment period. NMFS typically takes late comments "into consideration" without formally responding to those comments, but has the option of formally addressing such comment in a final rule. Nonetheless, NMFS will respond to the Center's comments. Below, NMFS addresses the portions of the Center's comment that are relevant to this rulemaking.

#### **Deepwater Horizon/BP Oil Spill**

In 2010, in response to a petition to list BFT under the Endangered Species Act submitted by the Center, NMFS convened a status review team (Team) to review the status of western BFT. As described on pages 48 through 50 of the BFT Status Review Report (available at: [www.nmfs.noaa.gov/stories/2011/05/docs/bft\\_srr\\_final.pdf](http://www.nmfs.noaa.gov/stories/2011/05/docs/bft_srr_final.pdf)) the Team modeled the potential effect of the Deepwater Horizon/BP oil spill on the future abundance of BFT. The Team compared projections made by the

ICCAT Standing Committee on Research and Statistics (SCRS) in 2010 with similar projections that assume the number of BFT yearlings (one-year-old fish) in 2011 would be reduced by 20 percent. The value of 20 percent was based on a report by the European Space Agency that suggested that about 20 percent of the spawning habitat was oiled. The Team noted that another study suggested that considerably less than 20 percent of the spawning habitat for western BFT was affected by the spill. However, given other factors, the Team regarded 20 percent as a reasonable upper bound for the mortality rate of BFT larvae owing to the spill event. The 20 percent reduction in the 2010 year-class (2011 yearlings) results in less than a 4 percent reduction in spawning biomass when future catches are within the range historically allowed under ICCAT management (i.e., 2,500 mt or less). This result is not surprising because BFT are a relatively long-lived species and the 2010 year class is only one of multiple year classes that will contribute to the spawning biomass in any given year. If the TAC remains less than 2,500 mt, as is expected, then the western BFT stock would be expected to continue to increase despite the Deepwater Horizon/BP oil spill; if however, catches are allowed to exceed 2,500 mt, then the western stock would be expected to decline and any reduction in the 2010 year class would hasten that decline.

The Team also conducted projections using the 'MAST' model (Multistock Age-Structured Tag-Integrated assessment model), which uses electronic tagging data in an effort to account for intermixing between the eastern and western stocks, under the assumption that future catches in the western Atlantic would be 1,800 mt and future catches in the east would be 13,500 mt (slightly greater than allowed by the current management plans). The results of these modeling projections were very similar to those above. In this case, a 20-percent reduction in the 2010 year-class would be projected to cause only a 3-percent reduction in spawning biomass.

The Team also considered the potential impacts of scenarios in which 20 percent of the adult BFT were also killed in 2010, in which case the spawning biomass would be immediately reduced by 20 percent, which might lead to additional reductions in the 2011 and subsequent year-classes (relative to what they would have been in the absence of the spill), and in turn, reductions in future spawning biomass levels. The Team noted, however, the absence of any

evidence that any portion of adults were actually deleteriously affected, and noted that all of the electronically-tagged bluefin tuna that were known to have spent time in the Gulf of Mexico during the actual spill event (8 fish) survived long after leaving the Gulf of Mexico.

#### Best Available Science

In the 2011 SCRS Executive Summary (Section 8.5 of the recent ICCAT biennial report, which can be found at [www.iccat.int/Documents/BienRep/REP\\_EN\\_10-11\\_II\\_2.pdf](http://www.iccat.int/Documents/BienRep/REP_EN_10-11_II_2.pdf)), the SCRS acknowledges that the conclusions of the 2010 assessment do not capture the full degree of uncertainty in the assessments and projections, and that an important factor contributing to uncertainty is mixing between fish of eastern and western origin. Limited analyses were conducted of the two stocks with mixing in 2008, but little new information was available in 2010. The SCRS states that management actions taken in the eastern Atlantic and Mediterranean are likely to influence recovery in the western Atlantic, because even small rates of mixing from East to West can have significant effects on the West due to the fact that the Eastern plus Mediterranean resource is much larger than that of the West. However, the extent of mixing is currently unknown, and is currently the subject of significant research.

Regarding impacts of the Deepwater Horizon/BP oil spill, NMFS considers the information summarized in the BFT Status Review to be the best scientific information of the effect of the Deepwater Horizon/BP oil spill on bluefin tuna on which to base management actions at this time and no additional information is available upon which to change that basis. Regarding catch levels in the eastern Atlantic and Mediterranean on western Atlantic BFT, NMFS considers the information summarized in the reports of the SCRS to be the best scientific information to serve as the basis of management actions at this time, both internationally and domestically, but notes that a new scientific paper on the MAST model is available. NMFS expects this new information will be reviewed and incorporated by the SCRS in the upcoming 2012 BFT stock assessments, as appropriate. Until that time, however, the SCRS assessments remain the best scientific information available.

NMFS continues to rely upon the 2010 SCRS stock assessment as the best scientific information available. That stock assessment was subject to rigorous analysis and review by a panel of experts from participating ICCAT

countries. A new stock assessment is expected in fall 2012, along with a new ICCAT recommendation on total allowable catch and country quotas and other bluefin conservation and management measures. The newly available MAST that addresses mixing of eastern and western Atlantic bluefin tuna stocks will be reviewed and incorporated as appropriate in that upcoming assessment process. Thus, while the MAST model is available for review, it has not been subject to the rigorous analysis and review by ICCAT's panel of experts. Therefore, NMFS' actions in implementing the ICCAT quota consistent with the ICCAT Rebuilding Program and the 2010 stock assessment are consistent with the Magnuson-Stevens Act's National Standard 2 to utilize the best available scientific information.

The 2010 SCRS stock assessment analyzed the status of the western Atlantic bluefin tuna stock using two recruitment scenarios: a "high recruitment" and "low recruitment" scenario. SCRS concluded that there was no basis for choosing one scenario over the other (i.e., both scenarios are equally likely). Under the low recruitment scenario, the stock is considered rebuilt, overfishing is not occurring, and a total allowable catch of up to 2,500 metric tons would maintain the stock biomass above the level that can support MSY. Under the high recruitment scenario, the stock remains overfished with overfishing occurring and will not rebuild by the end of 2018 (under the 20-year rebuilding period that began in 1999) even with no catch. The SCRS indicated that a total allowable catch of 1,800 metric tons would allow the stock to grow under both recruitment scenarios. ICCAT adopted a total allowable catch of 1,750 mt, which was a reduction of 50 mt from the TAC for 2011.

The quotas as implemented remain consistent with the ICCAT Rebuilding Program that was adopted domestically in the rule implementing the 1999 FMP and that was continued in regulations under the 2006 Consolidated HMS FMP. The main objective of the ICCAT Rebuilding Program is to maintain western Atlantic bluefin tuna populations at levels that will support MSY. Therefore, NMFS' actions are consistent with National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) for the fishery.

#### Carrying Underharvest Forward

NMFS maintains that the carryforward of underharvest is consistent with ICCAT Recommendation 10-03, ATCA, and the Magnuson-Stevens Act. Beginning with the 2011 fishing year, ICCAT Recommendation 10-03 limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota. This amount was reduced from the 50-percent limit in the 2006 ICCAT western Atlantic BFT recommendation (06-06), which was in effect for 2007 through 2010. Prior to 2007, a country could carry forward the full amount of its underharvest to the following year. The United States has supported ICCAT's efforts to control quota stockpiling as part of bluefin tuna management recommendations, such as establishing limits on the amount of unused quota that can be carried from one year to the next, for fairness and conservation reasons.

Under ATCA, NMFS is authorized to promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations. Under the Magnuson-Stevens Act (16 U.S.C. 1854(g)(1)(D)), NMFS is required to provide U.S. fishing vessels with "a reasonable opportunity to harvest" any allocation or quota to which the United States has agreed under ICCAT. To meet the multiple goals for the BFT fisheries, NMFS considers the importance of all of the national standards when making fishery management decisions, including those intended to provide reasonable fishing opportunities to a wide range of users and gear types, coastwide, throughout the calendar year.

#### Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act, ATCA, and other applicable law, and is necessary to achieve domestic management objectives under the Consolidated HMS FMP.

This final rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a brochure summarizing fishery information and regulations for Atlantic tuna fisheries for 2012. This brochure also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

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

Dated: July 24, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 640

[Docket No. 110908576-2240-02]

RIN 0648-BB44

#### Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 11

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 11 to the Fishery Management Plan for the Spiny Lobster Fishery in the Gulf of Mexico and South Atlantic (FMP), as prepared and submitted by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). This final rule limits spiny lobster trap fishing in certain areas in the exclusive economic zone (EEZ) off the Florida Keys to

protect threatened species of corals and addresses the requirements of a 2009 Endangered Species Act (ESA) biological opinion on the spiny lobster fishery.

**DATES:** This rule is effective August 27, 2012.

**ADDRESSES:** Electronic copies of Amendment 11, which includes a supplemental environmental impact statement and a regulatory flexibility analysis, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sf/pdfs/Final\\_Spiny\\_Lobster\\_Amend\\_11\\_April\\_05\\_2012.pdf](http://sero.nmfs.noaa.gov/sf/pdfs/Final_Spiny_Lobster_Amend_11_April_05_2012.pdf).

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727-824-5305, or email: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery of the Gulf of Mexico (Gulf) and the South Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR parts 622 and 640 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

A 2009 ESA biological opinion on the continued authorization of the spiny lobster fishery contained specific terms and conditions required to implement the prescribed reasonable and prudent measures and requires NMFS and the Councils to work together to protect areas of staghorn and elkhorn coral. This final rule addresses the required measure to create new or expand existing closed areas for lobster trap fishing where colonies of these threatened species are present.

On September 19, 2011, NMFS published a notice of intent to prepare a supplemental environmental impact statement for Amendment 11 and requested public comment (76 FR 57958). On April 27, 2012, NMFS published a notice of availability for Amendment 11 and requested public comment (77 FR 25116). On May 15, 2012, NMFS published a proposed rule for Amendment 11 and requested comment (77 FR 28560). The proposed rule and Amendment 11 outline the rationale for the action contained in this final rule. A summary of the action being implemented by this final rule is provided below.

This final rule prohibits spiny lobster trap fishing in 60 closed areas that cover a total of 5.9 mi<sup>2</sup> (15.3 km<sup>2</sup>), distributed throughout the South Atlantic EEZ off the Florida Keys. These areas were chosen to protect threatened coral colonies with high conservation value and areas of high coral density. The

closed areas meet the applicable requirements of the 2009 ESA biological opinion.

#### Comments and Responses

NMFS received five public comment submissions on Amendment 11 and the proposed rule, including three comments from individuals. Two Federal agencies stated they had no comment on the rule. Specific comments related to the actions contained in Amendment 11 and the proposed rule, as well as NMFS' respective responses, are summarized below.

*Comment 1:* Lobster trapping destroys reefs and should be prohibited.

*Response:* Amendment 11 does not address the general use of traps in the lobster fishery. The purpose of Amendment 11 is to implement the specific terms and conditions of the 2009 ESA biological opinion, one of which is to create new or expand existing closed areas to protect elkhorn and staghorn coral. The purpose of this final rule is to implement Amendment 11 and is not intended to address all possible management measures for the lobster fishery as a whole. The prohibition of lobster trap fishing in the 60 areas implemented through Amendment 11 will help protect reefs in the designated areas. As explained in Amendment 11, these areas were selected by identifying elkhorn and staghorn coral colonies and applying six general criteria to choose the areas that will provide the greatest benefit. In consultation with various stakeholders, NMFS and the Councils selected areas to be closed to lobster trap fishing that protect threatened coral colonies with high conservation value and areas of high coral density.

*Comment 2:* Closing areas to lobster trap fishing is long overdue.

*Response:* The measures contained in this final rule were developed to meet specific terms and conditions of the 2009 ESA biological opinion. NMFS and the Councils gathered data on identified elkhorn and staghorn coral colonies, then worked with fishermen, scientists, and managers to select areas to close to lobster trap fishing. This collaborative and deliberative process took time, but is intended to ensure that the areas selected will protect elkhorn and staghorn coral with the highest conservation value without overly restricting access to lobster fishing areas.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is