

#### B. MCR Guidance

On March 28, 2002, EPA issued a memorandum entitled “Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration.” Attached to that memorandum is a technical guidance document dated January 2002 entitled “Recommended Approach For Performing Mid-course Review of SIP’s To Meet the 1-hour NAAQS for Ozone.” <http://www.epa.gov/ttn/oarpg/t1/memoranda/policymem33d.pdf>.

The technical guidance contains three basic steps: (1) Perform an administrative test (e.g., demonstrate whether the appropriate emission limits were adopted and implemented); (2) analyze available air quality, meteorology, emissions and modeling data and document findings; and (3) document conclusions regarding whether progress toward attainment is being made using a weight of evidence determination (which may or may not include new modeling analyses).

#### C. Review of MCR Submittals from Connecticut

EPA reviewed the MCR documents Connecticut submitted for the two areas in Connecticut required to submit an MCR. The review compared the MCRs with EPA guidance. EPA concluded that the two MCRs meet EPA guidance and fulfill the commitment Connecticut made in their one-hour attainment demonstrations. Specifically, both of Connecticut’s MCRs include an emission reduction regulation review, as well as a trend analysis and air quality monitoring data. A TSD with more detail on Connecticut’s MCRs and EPA’s review of these MCRs has been prepared and is available from EPA at the address provided in the **ADDRESSES** section above.

#### III. Final Action

EPA has reviewed the MCR documents submitted by Connecticut and has determined that Connecticut has adequately met its commitment to perform a MCR. This action is being taken for the following one-hour ozone nonattainment areas: The Connecticut portion of the New York-Northern New Jersey-Long Island ozone nonattainment area; and the Greater Connecticut 1-hour ozone nonattainment area.

EPA has sent a letter to Connecticut finding that their MCRs fulfill the commitment made by Connecticut in their 1-hour ozone attainment demonstrations. A copy of this letter is available from EPA at the address provided in the **ADDRESSES** section above.

#### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves a state commitment as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this finding approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state commitment as meeting a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, as well as submission of reports that fulfill a state commitment, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a

prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, as well as submission of reports that fulfill a state commitment, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 6, 2007.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*  
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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 635

**[Docket No. 070330073-7116-02; I.D. 030507A]**

**RIN 0648-AU87**

##### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications and Effort Controls

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces the final rule to set 2007 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery, including quotas for each of the established domestic fishing categories and effort controls for the General category and Angling category. This action is necessary to implement 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). This action also makes a minor administrative change to the permit regulations.

**DATES:** The rule is effective July 18, 2007, except that the General category retention limit found within the preamble of this rule is effective July 18, 2007 through August 31, 2007, and the Angling category retention limit found within the preamble of this rule is effective July 18, 2007 through December 31, 2007.

**ADDRESSES:** Supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), are available from Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or at the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

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

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and the ATCA. The 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 the ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The consolidated FMP regulations are at 50 CFR part 635.

## Background

Background information about the need for the BFT quota specifications and effort controls for the 2007 fishing year (June 1 through December 31, 2007) was provided in the preamble to the proposed rule (72 FR 16318, April 4, 2007), and is not repeated here. The proposed rule reflected landings information through January 15, 2007. Since that date, additional landings have occurred, resulting in a slight modification of the 2006 landings figures. Revised landings estimates (calculated as of April 30, 2007, and therefore preliminary) are as follows: General category -- 165.0 mt (an increase of 5.2 mt); Harpoon category -- 22.2 mt; Longline category -- 57.0 mt [an increase of 25.6 mt, i.e., 1 mt in the North, 0.7 mt in the Northeast Distant gear

restricted area (NED), and 23.9 mt in the South]; Angling category -- 191.0 mt (an increase of 4.2 mt); Trap category -- 0 mt; and Purse Seine category -- 3.6 mt. These landings estimates, totaling 438.8 mt, indicate that the preliminary 2006 fishing year underharvest is 2,400.4 mt. However, as the underharvest from the 2006 fishing year is capped at 595.1 mt, these adjusted landings do not change the 2007 fishing year quotas.

## 2007 Final Quota Specifications

In accordance with the 2006 ICCAT quota recommendation, the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS establishes final quota specifications for the 2007 fishing year as follows: General category -- 643.6 mt; Harpoon category -- 53.3 mt; Purse Seine category -- 254.1 mt; Angling category -- 269.2 mt; Longline category -- 200 mt; and Trap category -- 1.4 mt. Additionally, 207.6 mt are 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.

Based on the above specifications and considerations regarding the school BFT fishery, the Angling category quota of 269.2 mt is further subdivided as follows: School BFT -- 119 mt, with 45.8 mt to the northern area (north of 39°18' N. latitude), 51.2 mt to the southern area (south of 39°18' N. latitude), and 22 mt held in reserve; large school/small medium BFT -- 144 mt, with 68 mt to the northern area and 76 mt to the southern area; and large medium/giant BFT -- 6.2 mt, with 2.1 mt to the northern area and 4.1 mt to the southern area.

The 2006 ICCAT recommendation includes an annual 25-mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the NED. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance with the North/South allocation percentages mentioned below. Thus, the Longline category quota of 200 mt is subdivided as follows: 80 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 120 mt to pelagic longline vessels landing BFT south of 31° N. latitude, with 25 mt set-aside for bycatch of BFT related to directed pelagic longline fisheries in the NED.

## General Category Effort Controls

NMFS implements General time-period subquotas to increase the

likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the Consolidated HMS FMP and are designed to address concerns regarding the allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The regulations implementing the Consolidated HMS FMP divide the annual General category quota into five time-period subquotas as follows: 50 percent for June-August, 26.5 percent for September, 13 percent for October-November, 5.2 percent for December, and 5.3 percent for January. Because the fishing year is changing back to a calendar year effective January 1, 2008, NMFS is distributing the 5.3 percent of the General category quota that would be assigned to the January time period to the four time periods that will occur during the 2007 fishing year. Accordingly, the available 643.6-mt coastwide quota is divided as follows: 339.8 mt for the period beginning June 1 and ending August 31, 2007; 180.1 mt for the period beginning September 1 and ending September 30, 2007; 88.4 mt for the period beginning October 1 and ending November 30, 2007; and 35.3 mt for the period beginning December 1 and ending December 31, 2007. The January 2008 subquota will be included in the 2008 specifications, which NMFS plans to publish prior to the start of the fishing year on January 1, 2008. As discussed in the Consolidated HMS FMP, NMFS plans to work with the affected constituents through the 2008 specifications process to determine the most appropriate disposition of any under- or overharvest that has accrued in the General category by the end of December 2007.

In addition to time-period subquotas, NMFS also implements General category restricted fishing days (RFDs) to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional inseason management flexibility. Although the General category has a relatively large quota for the 2007 fishing year, this permit category has the ability to harvest a great amount of quota in a short period of time, and the RFDs are necessary as a way to manage effort in the subperiods at the end of the fishing year. Therefore, NMFS establishes a series of RFDs for the 2007 fishing year to extend the BFT fishery for the General category for as long as possible during the October through December time period. Persons

aboard vessels permitted in the General category are prohibited from fishing (including catch-and-release and tag-and-release) for BFT of all sizes on the following days while the fishery is open: all Saturdays and Sundays from November 17, 2007, through December 31, 2007, plus November 22 and December 25, 2007. NMFS implements these RFDs to improve fishing opportunities during the October through December time period without increasing BFT mortality. NMFS may consider waiving the RFDs if the pace of landings indicates that the November and/or December General category subquotas will not be met by the end of the associated subperiod. NMFS' intention is to propose RFDs for January 2008 as part of the 2008 quota specifications and effort controls, scheduled to be published before January 1, 2008.

Because of the large quota available for the General category, NMFS increases the retention limit of BFT for the first subperiod of the General category fishery. Therefore, persons aboard vessels permitted in the General category may retain three large medium or giant BFT (measuring 73 inches (185.4 cm) or greater) per vessel per day/trip from the effective date of this final rule through August 31, 2007. This BFT retention limit may be extended via inseason action, if warranted, under § 635.23(a)(4).

#### Angling Category Effort Controls

This final rule establishes an Angling category retention limit of one school BFT (27 inches (68.6 cm) to less than 47 inches (119.4 cm)), and two large school/small medium BFT (i.e., two BFT measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per vessel. This retention limit is effective for persons aboard vessels permitted in the Angling category from the effective date of this rule through December 31, 2007. This retention limit may be changed via inseason action, if warranted, under § 635.23(b)(3).

#### Permit Category Changes

Because of the scheduled change to a calendar year fishing year beginning January 1, 2008, and because Atlantic Tunas, HMS Charter/Headboat, and HMS Angling category permits issued for the 2007 fishing year are effective through December 31, 2008, NMFS will allow permit holders to make a permit category change for the 2008 fishing year, i.e., once during the period of January 1, 2008, through May 31, 2008.

#### Comments and Responses

Below, NMFS summarizes and responds to all comments received on the proposed quota specifications and effort controls for the General and Angling categories. In addition, NMFS received comments on issues that were not considered part of this rulemaking. For example, NMFS received a request to relax all General category restrictions, including season duration and minimum size. Conversely, NMFS received several comments that, noting the overfished status of the stock, requested reduction of the U.S. BFT quota and commercial and recreational retention limits in general, an increase to the recreational minimum size, and prohibition of purse seine use due to bycatch concerns. While NMFS acknowledges that consideration of these concerns is important, these issues are not addressed in this action because they were not considered part of this rulemaking.

##### A. BFT Quotas

*Comment 1:* NMFS received a range of comments on the quota specifications. Some commenters supported the quotas as proposed. Others requested that NMFS distribute the underharvest carryover amount (595 mt) according to FMP percentages rather than as proposed. One commenter urged NMFS to set the Reserve at 40.7 mt, i.e., 2.5 percent of the adjusted U.S. quota and stated that unused Reserve should not be carried forward to the Reserve for the following fishing year. One commenter felt that underharvest should not be added to the following year's BFT quota given stock concerns and potential underreporting of landings.

*Response:* The specifications included in this rule reflect appropriate distribution of the underharvest allowed to be carried forward for the 2007 fishing year. Such distribution provides for several existing and potential management needs, namely: (1) Setting aside sufficient quota for a potential transfer to another ICCAT Contracting Party, if warranted; (2) providing sufficient quota for pelagic longline operations; (3) appropriately accounting for dead discards; and (4) distributing the remainder per the Consolidated HMS FMP allocation percentages. NMFS allocates 2.5 percent of the baseline 2007 U.S. quota in the Reserve, consistent with the Consolidated HMS FMP. The rollover of quota in the Reserve from one year to the next (rather than reallocation of the unused Reserve to one or more quota categories) allows NMFS to consider several factors (as established in § 635.27(a)(8)), within the

fishing year, prior to making quota adjustments from the Reserve. The regulations regarding annual adjustment of the BFT quota at § 635.27(a)(10) provide NMFS the flexibility to apply the underharvest to the overall quota for the following fishing year, provided that the total of the adjusted category quotas and the Reserve is consistent with the ICCAT recommendation.

*Comment 2:* One commenter opposed allocation of 40 percent of the carryover amount to the Longline category, indicating such action is inappropriate given that the longline fishery incidentally catches BFT.

*Response:* The application of 236.6 mt of the 2006 underharvest to the Longline category quota is conducted for two reasons: (1) To provide sufficient quota for the subtraction of past longline dead discards; and (2) to provide for the continued operation of the Longline category vessels during the 2007 fishing year, including anticipated future dead discards as well as allowed incidental landings under current retention limits. The TAC for each Contracting Party is now inclusive of dead discards. The 2006 ICCAT recommendation changed the accounting practices for dead discards by eliminating an additional dead discard allowance, and, therefore, NMFS must deduct the best estimate of dead discards from the fishing year quota. As these dead discards are attributed to the pelagic longline fishery, the dead discards are specifically deducted from the Longline category quota. Furthermore, distribution of the carryover amount by the FMP percentages would result in 48.2 mt added to the baseline amount (94.4 mt), for a total of 142.6 mt for the Longline category for the 2007 fishing year. After accounting for an estimated amount of dead discards (i.e., approximately 131 mt, assuming the amount is similar to the most recent available estimate), the quota for the Longline category would be 11.6 mt. This quota would not provide a sufficient amount of quota to allow for the legal landing of BFT taken incidental to catches of swordfish and other tunas.

*Comment 3:* Some commenters opposed the potential transfer of U.S. quota to other ICCAT Contracting Parties. One commenter specifically objected to the use of the Reserve in making such a transfer to any ICCAT Contracting Party with an allocation. This commenter's understanding of the agreement at ICCAT was that the transfer to a specific Contracting Party could be undertaken at the request of industry, using the quota associated with that industry.

**Response:** The 2006 ICCAT recommendation allows the United States to transfer up to 15 percent of its TAC, consistent with domestic obligations and conservation considerations. Before considering a possible quota transfer, the United States, through NMFS, would evaluate several factors, including the projected ability of U.S. vessels to harvest the U.S. TAC during the fishing year, and potential impacts to the stock. The United States would need to explore and analyze these factors prior to transferring quota through a separate action. In this action, NMFS is placing 178.5 mt (15 percent of the U.S. TAC) in the Reserve so that, if the United States were to approve a transfer, the quota could be from the Reserve and not from category-specific quotas.

#### *B. General Category Effort Controls*

**Comment 1:** NMFS received comments on the General category retention limit that ranged from support for the proposed three-BFT limit to a request for a zero-BFT limit.

**Response:** The regulations allow NMFS to adjust the General category retention limit of large medium and giant BFT over a range of zero (on RFDs) to three. Given the low early season harvest rate in recent years, NMFS is setting the June through August retention limit at three BFT to allow General category fishermen the maximum harvest of BFT possible while keeping within the quota of the first General category subperiod.

**Comment 2:** NMFS received a comment that the setting of RFDs for the 2007 fishing year may be an unnecessary administrative effort given the low harvest rate in recent years.

**Response:** NMFS sets the RFDs in this action to ensure that the agency has the flexibility to manage the pace of the fishery should the need arise. If NMFS determines during the fishing season that the November and December RFDs are not necessary, NMFS will take the appropriate inseason action to waive them.

#### *C. Angling Category Effort Controls*

**Comment 1:** NMFS received comments on the Angling category effort controls that were supportive of the retention limit and season as proposed. NMFS received comments from a recreational fishing organization that supported the retention limits as proposed, but requested a fishing season of June 21 through December 31. Some commenters requested an increased retention limit for school BFT during specific time periods, due to the importance of catching school BFT in

the charter fishing sector and in fishing tournaments. One commenter requested that NMFS shorten the school BFT fishing season by approximately two months.

**Response:** NMFS has considered adjustment of the retention limits for certain time periods as implemented for 2006. However, based on the large number of comments received that supported the proposed retention limits, an evaluation of retention limits and landings estimates over recent years, and the ICCAT recommendation that Contracting Parties not exceed the tolerance of school BFT over the 2007–2010 period, NMFS is setting the Angling category retention limit at one school BFT and two large school/small medium BFT per vessel per day/trip from the effective date of the final rule through the end of the fishing year.

**Comment 2:** Several commenters expressed concern about implementing a higher BFT retention limit, particularly for school BFT, because of the overfished nature of the western Atlantic BFT stock and because ICCAT recommends a “tolerance” on school BFT landings rather than a targeted fishery.

**Response:** NMFS agrees that the school BFT retention limit should be no more than one fish for the 2007 fishing year to ensure that landings are within the ICCAT-recommended 10-percent limit.

#### **Classification**

NMFS publishes these final specifications and effort controls under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (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, and are consistent with the Magnuson-Stevens Act and its National Standards.

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

In compliance with Section 604 of the Regulatory Flexibility Act, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives that could minimize economic impacts on small entities. Each of the statutory requirements of Section 604 of the Regulatory Flexibility Act has been addressed and a summary of the FRFA is below. The full FRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires the Agency to state the objective and need for the rule. As stated earlier, the objective of this rule is to set BFT quotas and effort controls for the General and Angling categories for the 2007 fishing year consistent with the Consolidated HMS FMP. This rule is needed to implement ICCAT recommendations pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act.

Section 604(a)(2) of the Regulatory Flexibility Act requires the Agency to summarize significant issues raised by the public comment in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the Agency's assessment of such issues, and a statement of any changes made as a result of the comments. NMFS received one comment specifically on the IRFA. The commenter wrote that the 2006 annual gross revenues (\$3.4 million), if applied to the 8,751 commercially permitted vessels, would average less than \$400 per vessel. The commenter felt that this must be an error given the expenses involved with fishing for BFT. The gross revenues presented in the analysis (which was updated for this final rule) represent the total of recorded sales of BFT in all commercial categories. NMFS agrees that the 2006 gross revenues were low and, for the General and Harpoon categories, were the lowest in over 10 years. However, availability of BFT to the commercial sector has been low in recent years, and many commercial participants are not solely dependent on BFT for fishing revenues. In addition, NMFS received two comments (one from an individual angler and one from an organization representing recreational anglers, the charter sector, and supporting industries) requesting an increased retention limit for BFT during certain windows of time due to the importance of school BFT to the charter sector and/or during tournaments. NMFS has considered this comment, as well as the many comments supporting the retention limits as proposed. NMFS finalizes the retention limit of one school BFT and two large school/small medium BFT per vessel per day/trip to ensure that the ICCAT-recommended tolerance of school BFT is not exceeded over the 2007–2010 period while allowing continued access to this fishery.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. The final action could directly affect the 35,075 vessel owners

permitted in the HMS Angling category, the HMS Charter/Headboat category permit holders, or the Atlantic tunas commercial permit categories (General, Harpoon, Purse Seine, Longline, and Trap categories). Of these, 9,001 permit holders (the combined number of commercial category permit holders) are considered small business entities according to the Small Business Administration's standard for defining a small entity.

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. 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 final rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities, because all of the affected businesses (commercial vessel permit holders) are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two 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.

As described below, NMFS analyzed several alternatives in this final rulemaking and provides justification for selection of the preferred alternatives to achieve the desired objective.

NMFS has estimated the average impact that the alternative to establish the 2007 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories.

As mentioned above, the 2006 ICCAT recommendation reduced the U.S. BFT TAC to 1,190.12 mt, which is distributed to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP. This quota allocation includes a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and non-BFT tuna fisheries in the NED.

In 2006, the annual gross revenues from the commercial BFT fishery were approximately \$3.3 million. Approximately 9,000 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2006 gross revenues are General (\$2.4 million), Harpoon (\$265,951), Purse Seine (\$33,819), and Longline (\$588,828). The FRFA assumes that vessels within a category will have similar catch and gross revenues in order to consider the relative impact of the final action on vessels. Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. More specifically, available landings data (weight and ex-vessel value of the fish in price/pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. NMFS cannot determine whether net revenue varies among individual fishery participants within each category, and therefore whether the economic impact of a regulation would have a varying impact among individual participants. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative (A1) and the preferred alternative (A2), which would implement the 2006 ICCAT recommendation. NMFS considered a third alternative (A3),

which would allocate the 2006 ICCAT-recommended quota in a manner other than that designated in the Consolidated HMS FMP. However, since Alternative A3 would result in a *de facto* quota reallocation among categories, and an FMP amendment would be necessary for its implementation, NMFS did not further analyze it. Per the Consolidated HMS FMP, NMFS prepares quota specifications annually for the upcoming fishing year. Preparation of an FMP amendment would not be possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2006, and the start of the 2007 fishing year on June 1, 2007. Therefore, analysis of the impacts of Alternative A3 is not available. But, if an FMP amendment was feasible, positive economic impacts would be expected to result on average for vessels in permit categories that would receive a greater share than established in the FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than established in the FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to participants.

As noted above, the preferred alternative (A2) would implement the 2006 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with the ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations. Alternative A2 would have slightly positive impacts for fishermen. The no action alternative (A1) would keep the quota at pre-2006 ICCAT recommendation levels (approximately 300 mt more) and would not be consistent with the purpose and need for this action and the Consolidated HMS FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2006 or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery. For these reasons, NMFS selects the preferred alternative (A1).

The preferred alternative also would implement the provision of the 2006 ICCAT recommendation that limits school BFT landings to 10 percent of the U.S. TAC, calculated on a four-year average. This is expected to have neutral impacts on fishermen who fish for school BFT, particularly those who rely exclusively on the school size class for BFT harvest, since the available quota is the same as the level when the limit was

8-percent of the U.S. TAC under the 2002 ICCAT recommendation.

Two alternatives were considered for effort control using RFDs in the General category. The no action alternative would not implement any RFDs with publication of the specifications but rather would use inseason management authority established in the Consolidated HMS FMP to implement RFDs during the season. This alternative could be most beneficial during a season of low catch rates and could have positive economic consequences if slow catch rates were to persist during the late season fishery, as General category participants would be able to fish every day while the fishery is open. During a slow season, fishermen could choose when to fish or not based on their own preferences. However, these positive economic effects may not be realized because it is impossible for NMFS to predict in advance whether the BFT fishing season will have low or high catch rates.

The preferred alternative would designate RFDs according to a schedule published in the BFT specifications. NMFS has used RFDs to avoid oversupplying the market with BFT and extending the fishing season as late as possible. In addition, establishing RFDs at the season onset provides better planning opportunities than implementing RFDs during the season, since charter/headboat businesses could book trips and recreational and commercial fishermen could make plans ahead of time rather than waiting until the last minute to see if an RFD is going to be implemented. However, implementing RFDs to extend the late season may have some negative economic impacts to fishermen fishing in northern Atlantic states who choose to travel to fish off southern states during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high, as is intended under this alternative. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Overall, extending the season as late as possible and establishing formalized RFDs at the season onset would enhance the likelihood of increasing participation by fishermen in southern states, increase access to the fishery over a greater range of the fish migration, provide a reliable mechanism for slowing a fishery that has an ability to generate extremely high catch rates, and is expected to provide better than

average ex-vessel prices with an overall increase in gross revenues. For these reasons, NMFS selects the preferred alternative over the no action alternative.

A retention limit of three BFT (measuring 73 inches (185.4 cm) or greater per vessel per day/trip) is the preferred alternative for the opening retention limit for the General category, which would be in effect through August 31, 2007. This alternative is expected to result in the most positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market, thus maximizing gross revenues. Thus, this alternative was selected over other alternatives considered, i.e., the no action alternative (one BFT measuring 73 inches or greater per vessel per day/trip) and a retention limit of two BFT (73 inches or greater per vessel per day/trip). Both of the non-selected alternatives are expected to be too restrictive given the large amount of quota available for the General category during the 2007 fishing year and could result in the negative economic impact of lower gross revenues. Although early season landings seldom occur at a rate that could oversupply the market, NMFS will monitor landings closely to ensure that the increased retention limit does not contribute to an oversupply.

Six alternatives were considered for Angling category retention limits for the 2007 fishing year. The selected alternative (D1b) is a three BFT retention limit (two fish measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm) and one fish measuring 27 inches (68.6 cm) to less than 73 inches) per vessel per day/trip for all sectors of the Angling category for the entire 2007 fishing year. The other two alternatives providing the same daily retention limits (per vessel) for both private recreational and charter/headboats were the no action alternative (D1a, i.e., one fish measuring 27 inches to less than 73 inches) and Alternative D1c (two fish measuring 47 inches to less than 73 inches and two fish measuring 27 inches to less than 73 inches). Alternative D1a was not selected because it could unnecessarily restrict the amount of Angling category landings which could result in an underharvest of the quota and a negative economic impact. Alternative D1c was not selected because it could result in an overharvest of the quota, with negative economic consequences.

Three other alternatives were considered that would provide different retention limits for the Angling category sectors. The first (D2a) would allow a

private vessel daily retention limit of three fish (two measuring 47 inches to less than 73 inches and one measuring 27 inches to less than 47 inches) and a charter/headboat daily retention limit (per vessel) of five fish (three fish measuring 47 inches to less than 73 inches and two fish measuring 27 inches to less than 47 inches). The second alternative (D2b) would allow three fish (two measuring 47 inches to less than 73 inches and one measuring 27 inches to less than 47 inches) for each vessel per day/trip for the season, with an increase to five fish (three measuring 47 inches to less than 73 inches and two measuring 27 inches to less than 47 inches) per vessel for charter/headboats during June 15, 2007 through July 31, 2007, and the month of September 2007. The third alternative (D2c) would allow two fish (measuring 27 inches to less than 73 inches) less than 47 inches) for each vessel per day/trip for the season, with an increase to three fish (measuring 27 inches to less than 73 inches) per vessel for charter/headboats during June 15, 2007 through July 31, 2007, and the month of September 2007. Alternatives D2a and D2b were not selected because they were considered to be potentially too liberal with a greater potential for exceeding the Angling category quota for 2007. Alternative D2c was not selected because it was considered to be unnecessarily restrictive, with a greater potential for negative economic impacts associated with not harvesting the entire quota. In addition, the D2 subalternatives were not selected since they could result in perceived inequities between the two sectors of the Angling category fishery, i.e., due to potential greater fishing opportunities for charter/headboat anglers than for private vessel anglers.

Alternative D1b was selected because it would allow the landing of the Angling category quota without overharvesting it, provide sufficient retention limits to offset costs, reduce any perceived inequities between the charter/headboat and private recreational vessel sectors of the Angling category fishery, and provide economic benefits to all regional sectors of the fishery.

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

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

Dated: June 11, 2007.

**John Oliver,**  
Deputy Assistant Administrator for  
Operations, 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 § 635.4, paragraph (j)(3) is revised to read as follows:

### § 635.4 Permits and fees.

\* \* \* \* \*

(j) \* \* \*

(3) A vessel owner issued an Atlantic tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 10 calendar days of the date of issuance of the permit. After 10 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season, except during the period of January 1, 2008, through May 31, 2008, when one additional change is authorized.

\* \* \* \* \*

■ 3. In § 635.27, paragraphs (a) introductory text, (a)(1) heading, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(6), (a)(7)(i), (a)(7)(ii), (a)(10)(iii), and (a)(10)(iv) are revised to read as follows:

### § 635.27 Quotas.

(a) **BFT.** Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 1,165.1 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of the baseline annual U.S. BFT quota are: General - 47.1 percent (548.8 mt);

Angling - 19.7 percent (229.5 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (45.4 mt); Purse Seine - 18.6 percent (216.7 mt); Longline - 8.1 percent (94.4 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.2 mt). The remaining 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) *General category quota.* \* \* \*

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (548.8 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31 - 5.3 percent (29.1 mt);

(B) June 1 through August 31 - 50 percent (274.4 mt);

(C) September 1 through September 30 - 26.5 percent (145.4 mt);

(D) October 1 through November 30 - 13 percent (71.3 mt); and

(E) December 1 through December 31 - 5.2 percent (28.5 mt).

\* \* \* \* \*

(2) *Angling category quota.* In accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (229.5 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (5.3 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 4 consecutive-year period (starting in 2007, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this

section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (51.2 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school BFT Angling category quota (45.8 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (55.6 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium BFT Angling category quota (49.6 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) An amount equal to 66.7 percent (3.5 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large medium and giant BFT Angling category quota (1.8 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (94.4 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00' N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23 (f)(3).

(4) \* \* \*

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (216.7 mt) of the baseline annual U.S. BFT 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** prior to July 1.

\* \* \* \* \*

(5) **Harpoon category quota.** The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (45.4 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

(6) **Trap category quota.** The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.2 mt) of the baseline annual U.S. BFT quota.

(7) \* \* \*

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (22 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

\* \* \* \* \*

(10) \* \* \*

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4 consecutive-year period beginning in the 2007 fishing year does not exceed 10 percent by weight of the total annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, for that period.

(iv) NMFS may subtract the best available estimate of dead discards from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards.

\* \* \* \* \*

[FR Doc. E7-11630 Filed 6-15-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070213032-7032-01]

RIN 0648-XA82

### Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish, Pacific Ocean Perch, and Pelagic Shelf Rockfish for Catcher Vessels Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish allocated to catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2007, through 2400 hrs, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish allocated to catcher vessels participating in the rockfish limited access fishery in the Central GOA will be necessary as incidental catch to support other

anticipated groundfish fisheries for the 2007 fishing year. Consequently, the Regional Administrator is establishing a directed fishing allowance of 0 mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 8, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: June 11, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E7-11634 Filed 6-15-07; 8:45 am]

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