

the migratory nature of this species, and the regional variations in the BFT fishery. Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen who depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective June 1, 2010, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities for fishermen who have

access to the fishery only during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., the default General category retention limit is one fish per vessel/trip whereas this action increases that limit and allows retention of additional fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and (b)(3), and is exempt from review under Executive Order 12866.

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

Dated: May 26, 2010.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010-13204 Filed 5-27-10; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100317152-0176-01]

RIN 0648-AY77

Atlantic Highly Migratory Species; 2010 Atlantic Bluefin Tuna Quota Specifications

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

ACTION: Final rule.

SUMMARY: NMFS is establishing Atlantic bluefin tuna (BFT) quota specifications for 2010. 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).

DATES: Effective July 2, 2010.

ADDRESSES: Supporting documents, including the Supplemental Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis, are available from Sarah McLaughlin, Highly Migratory Species (HMS) Management Division,

Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic 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 ATCA. 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, NOAA (AA).

Background

Background information about the need for the 2010 BFT quota specifications was provided in the preamble to the proposed rule (74 FR 63095, December 2, 2009), and is not repeated here.

Changes from the Proposed Rule

Consistent with NMFS' implementation of the 2009 BFT Quota Specifications, NMFS establishes the 2010 U.S. baseline quota at the ICCAT-recommended level and carries over the full amount of available BFT underharvest allowed by ICCAT from 2009 to 2010, and distributes that underharvest to: (1) provide the Longline category sufficient quota to operate during 2010 after the required accounting for BFT dead discards; (2) maintain up to 15 percent of the 2010 U.S. quota in Reserve for potential transfer to other ICCAT contracting parties and other domestic management objectives, if warranted; and (3) provide the non-Longline quota categories a share of the remainder of the underharvest consistent with the allocation scheme established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP).

When NMFS prepared the proposed rule, landings information was incomplete, and NMFS anticipated the full amount of 2009 underharvest allowed under the 2008 ICCAT recommendation for the western Atlantic bluefin tuna stock (ICCAT Recommendation 08-04), i.e., 50 percent of the U.S. quota, or 488.7 mt, would be available and carried forward to 2010. NMFS indicated that

adjustments to the quota specifications based on actual underharvest would be made in the final rule. Complete information on 2009 landings is now available, and it indicates a total 2009 underharvest of 388.6 mt. Thus, in this final action, NMFS carries forward 388.6 mt of 2009 underharvest to 2010, for a total adjusted 2010 BFT quota of 1,168.2 mt.

Consistent with the proposed rule, NMFS is applying 170.7 mt of the total underharvest to the pelagic longline fishery in anticipation of both landings and projected discards. This is intended to allow the fishery to operate for the entire 2010 fishing year, i.e., to avoid potential closure of the pelagic longline fishery prior to the end of the year while the fleet is conducting directed operations for swordfish and other Atlantic tunas. NMFS is placing 46.5 mt of 2009 underharvest in the Reserve and is distributing the remainder of the quota carryover (171.4 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories, consistent with the allocation percentage shares in the Consolidated HMS FMP. The amount NMFS is placing in the Reserve is 100.1 mt less than was proposed. This change allows NMFS to maintain the proposed amounts of underharvest to be allocated to the Longline fishery and to the directed fishing categories for 2010, as well as their respective adjusted quotas. Because the Reserve is not a specific fishing category, but rather serves as a pool from which NMFS may allocate quota for inseason or annual adjustments to any category quota in the

BFT fishery, the smaller amount of Reserve in this final rule would have no direct impact on any particular fishing category.

As described in the Comments and Responses section below, following requests for information regarding the start date of the Harpoon category fishery, NMFS clarifies in the regulatory text of this action the dates on which the Harpoon category commences and the Purse Seine fishery closes, consistent with existing NMFS guidance and publications, including the Consolidated HMS FMP.

2010 Final Quota Specifications

In accordance with ICCAT Recommendation 08-04, 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 2010 quota specifications as follows (as shown in the table below): General category - 538.9 mt; Harpoon category - 44.6 mt; Purse Seine category - 212.8 mt; Angling category - 225.4 mt; Longline category - 75 mt; and Trap category - 1.1 mt. A total of 70.3 mt (46.5 mt of 2009 underharvest plus the Consolidated HMS FMP quota share of 23.8 mt) would be 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.

The General category quota of 538.9 mt is subdivided as follows: 28.6 mt for

the period beginning January 1, 2010, and ending January 31, 2010; 269.4 mt for the period beginning June 1, 2010, and ending August 31, 2010; 142.8 mt for the period beginning September 1, 2010, and ending September 30, 2010; 70.1 mt for the period beginning October 1, 2010, and ending November 30, 2010; and 28 mt for the period beginning December 1, 2010, and ending December 31, 2010.

The Angling category quota of 225.4 mt is subdivided as follows: School BFT - 97.7 mt, with 37.6 mt to the northern area (north of 39°18' N. latitude), 42.1 mt to the southern area (south of 39°18' N. latitude), plus 18.1 mt held in reserve; large school/small medium BFT - 122.5 mt, with 57.8 mt to the northern area and 64.7 mt to the southern area; and large medium/giant BFT - 5.2 mt, with 1.7 mt to the northern area and 3.5 mt to the southern area.

The 25-mt Northeast Distant gear restricted area (NED) set-aside quota is in addition to the overall incidental longline quota, to be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude). NMFS accounts for landings under the 25-mt NED allocation separately from other Longline category landings. Thus, the Longline category quota of 75 mt is subdivided as follows: 30 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 45 mt to pelagic longline vessels landing BFT south of 31° N. latitude.

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Table 1. Atlantic Bluefin Tuna Final Quota Specifications (in metric tons) for the 2010 Fishing Year (January 1-December 31, 2010)

Category (% share of baseline quota)	Baseline Allocation	Dead Discard Deduction	Adjustment to Baseline Quota ¹	Final 2010 Fishing Year Quota
Angling (19.7)	187.6 <u>SUBQUOTAS:</u> School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 85.6 North 40.4 South 45.2 Trophy 4.3 North 1.4 South 2.9	37.8		225.4 <u>SUBQUOTAS:</u> School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 122.5 North 57.8 South 64.7 Trophy 5.2 North 1.7 South 3.5
General (47.1)	Total: 448.6 <u>SUBQUOTAS:</u> Jan 23.8 Jun-Aug 224.3 Sept 118.9 Oct-Nov 58.3 Dec 23.3	90.3		538.9 <u>SUBQUOTAS:</u> Jan 28.6 Jun-Aug 269.4 Sept 142.8 Oct-Nov 70.1 Dec 28.0
Harpoon (3.9)	37.1	7.5		44.6
Purse Seine (18.6)	177.2	35.6		212.8
Longline (8.1)	77.1 <u>SUBQUOTAS:</u> North (-NED) 30.9 NED 25.0 ₃ South 46.2	-172.8	170.7 ₂	75.0 <u>SUBQUOTAS:</u> North (-NED) 30.0 NED 25.0 ₃ South 45.0
Trap (0.1)	1.0	0.2		1.1
Reserve (2.5)	23.8	46.5 ₄		70.3
Total (100)⁵	952.4	-172.8	388.6	1,168.2

(1) The distribution of 388.6 mt of underharvest (per ICCAT recommendation) to the quota categories is consistent with FMP allocations, after considerations as calculated below for the Longline category and the Reserve.

(2) Adjustment to Longline category quota is intended to provide sufficient quota for the 2010 fishing year. Longline category quota=77.1-172.8+170.7=75 mt. Dead discard deduction consistent with § 635.27(a)(10).

(3) 25 mt to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in total baseline allocation, which is allocated according to the category percentages contained in the Consolidated HMS FMP.

(4) Allocation of 46.5 mt to the Reserve for potential ICCAT transfer and other domestic management objectives.

(5) Totals are subject to rounding error.

Comments and Responses

Below, NMFS summarizes and responds to all comments made specifically on the proposed quota specifications. In addition, NMFS received comments on issues that were not considered part of this rulemaking, as described below.

A. BFT Quotas

Comment 1: A few commenters support a total closure of the BFT fishery, or substantial cuts to the U.S. BFT quota, and stricter domestic management measures for the sustainability of the stock. One stated that the BFT stock is a natural resource belonging to all, not only those who profit from its use.

Response: These specifications are promulgated in accordance with ICCAT Recommendation 08–04, domestic legislation, such as the Magnuson-Stevens Act, ATCA, and their implementing regulations, and the Consolidated HMS FMP. In Recommendation 08–04, ICCAT adopted a western Atlantic BFT Total Allowable Catch (TAC) of 1,800 mt for the U.S. fisheries for 2010, based on scientific advice and projections that, at these harvest levels, the stock would rebuild by the end of the rebuilding period under the low recruitment scenario. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota. Further, no regulation promulgated under ATCA may have the effect of increasing or decreasing any allocation or quota of fish to which the United States agreed pursuant to an ICCAT recommendation. NMFS allocates the U.S. quota to ensure that available fishing opportunities are distributed over as wide a range as possible with regard to time of year, geographic area, and type of participation while maintaining consistency with measures taken to rebuild the BFT fishery.

Comment 2: One commenter is concerned that the fishery for BFT measuring less than 73 inches is insufficiently regulated and monitored. The commenter suggested that NMFS enforce a hard Angling category quota, or stop the recreational BFT fishery on September 1, to prevent Angling category quota excesses.

Response: To monitor the recreational BFT fishery, NMFS depends primarily on the Large Pelagics Survey (LPS) for landings estimation, and uses information from catch card reporting in North Carolina and Maryland as well as the Automated Landings Reporting

System to verify or supplement landings estimates. The LPS is specifically designed to collect information on recreational fishing directed at large pelagic species, including tunas. This specialized survey allows for higher levels of sampling of fishing trips targeting BFT and other HMS, which ultimately improves estimates of total catch and effort. NMFS considers the BFT estimates produced by the LPS, in combination with the landings reports collected via the other programs described above, to constitute the best information available with regard to recreational BFT landings.

Although NMFS also may adjust recreational effort controls inseason based on the best information available, landings data generally are not available until the end of the calendar year. Using the data sets above along with retrospective analysis, NMFS is able to estimate approximate landings following the end of the year, and make adjustments to recreational daily retention limits for the upcoming year to maintain overall landings within the ICCAT-recommended quotas.

Comment 3: A representative from a commercial handgear organization states that the General category BFT allocation scheme, which allocates 89.5 percent of the General category quota to the summer and fall fishery, which traditionally take place in New England, is inequitable and violates National Standard 4 of the Magnuson-Stevens Act (i.e., it discriminates against residents of different states). The industry group seeks reallocation generally, and requests that NMFS allocate quota from the 2010 adjusted Reserve to the January and December 2010 subquotas.

Response: The current General category quota allocation scheme was established in the 2006 Consolidated HMS FMP. During the development of the previous HMS FMP, in 1999, the emergence of a General category BFT fishery in the southern Atlantic region was extensively discussed by the HMS Advisory Panel (AP) and the public. At the time, the majority of General category fishing activity took place in the summer and fall off the New England and Mid-Atlantic coasts. However, the HMS AP did not agree on how the HMS FMP should address the scope of a southern area late season General category BFT fishery. In the early 2000s, NMFS performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the 1999 HMS FMP, which allowed the General category BFT fishery to extend into the winter months (i.e., late November -

December). In 2002, NMFS received a Petition for Rulemaking from the North Carolina Division of Marine Fisheries to formalize this winter fishery and extend fishing opportunities for the General category into January (67 FR 69502, November 18, 2002). On December 24, 2003, NMFS extended the General category end date from December 31 to January 31 (68 FR 74504) to address some of the concerns raised in the Petition, as well as to increase fishing opportunities and optimum yield for the fishery overall. In 2006, NMFS modified the General category time period subquotas to allow for a formalized winter fishery via the Consolidated HMS FMP (71 FR 58058, October 2, 2006). These subquotas remain in effect.

However, in November 2009, NMFS published a proposed rule that, if finalized, could, among other things, allow the General category season to remain open past January 31 until the entire subquota is utilized (74 FR 57128, November 4, 2009). This proposed action was initiated with the intent to more thoroughly utilize available U.S. BFT quota and, in particular, extend fishing opportunities beyond the end of January, if quota is still available. The comment period for this proposed rule was extended through March 31, 2010.

Comment 4: A representative from a commercial handgear organization objects to the allocation of underharvest carried forward from 2009 to the Longline category, and would prefer allocation of this underharvest to the directed fishing categories that use live-release methods and do not result in discards.

Response: NMFS is applying 170.7 mt of the 2009 underharvest to the Longline category quota to provide the Longline category sufficient quota to operate during the entire 2010 fishing year, after the required accounting for BFT dead discards. The regulations regarding determination criteria and annual adjustment of the BFT quota at §§ 635.27(a)(8) and 635.27(a)(10) allow NMFS to transfer quotas among categories based on several criteria (such as a review of landing trends, the projected ability of the vessels fishing under a particular category quota to harvest the additional amount of BFT before the end of the fishing year, the estimated amounts by which quotas for other categories might be exceeded, the effects of the adjustment on accomplishing the objectives of the fishery management plan, etc.). These regulations provide NMFS the flexibility to apply the underharvest to the overall quota for the following fishing year, and distribute the underharvest as needed, provided that the total of the adjusted

category quotas and the Reserve is consistent with the ICCAT recommendation.

Distribution of the available underharvest solely to the directed fishing categories potentially could result in a closure of the pelagic longline fishery prior to the end of the year, while the longline fleet is conducting directed operations for swordfish and other Atlantic tunas. NMFS acknowledges that high landings and discards are a growing issue for the pelagic longline fleet given the limited quota for incidental retention of BFT, and continues to work with stakeholders and the HMS AP to more fully understand the scope of the problem and possible solutions.

Comment 5: A BFT dealer asks if NMFS can transfer quota from the Purse Seine category, which has not made full use of its quota in recent years, to the Longline category for 2010.

Response: As described in the response to Comment 4, NMFS may conduct annual adjustments or year-end quota transfers among any of the categories based on the determination criteria listed in the BFT quota regulations.

Comment 6: A representative of the longline industry opposes the BFT longline dead discard methodology in place since the 2006 ICCAT Annual Meeting, and is concerned about the potential for BFT quota shortages in the near term, combined with potential increased longline interactions with BFT as the stock recovers.

Response: The United States applies the ICCAT Standing Committee on Research and Statistics (SCRS) approved methodology to calculate dead discards. The United States must report dead discard estimates to ICCAT annually, and account for this mortality as part of the domestic specification calculation process. Changes to the approved method would require consideration and approval by the SCRS prior to U.S. implementation. As described in the response to Comment 4, NMFS will continue to seek solutions to the issue of BFT bycatch in the pelagic longline fishery.

Comment 7: A commercial handgear fisherman requests that NMFS manage the BFT fishery based on what the science shows to be available to the U.S. fishery, i.e., allow greater access to small medium BFT, because they have moved to grounds off New England.

Response: The current quota allocation scheme and minimum sizes are as established in the 2006 Consolidated HMS FMP. Increased availability of small medium BFT (measuring 59 to less than 73 inches)

has presented increased fishing opportunities for recreational fishery participants at this time. However, there is little certainty that this availability will continue for the long-term.

Furthermore, changes to the commercial minimum size need to be carefully considered in the context of impacts to the stock and rebuilding program, as well as the socio-economic impacts for the commercial and recreational BFT fisheries. In addition, because the United States landed its 2009 base quota, and because ICCAT Recommendation 08–04 limits the amount of quota that can be carried forward to 10 percent starting in 2011, providing additional access to small medium BFT potentially could result in U.S. overharvest and U.S. non-compliance with the ICCAT Recommendation.

B. Other Issues

1) Extension of the General and Harpoon Category Seasons

Some of the Gloucester public hearing participants sought clarification of the Harpoon category fishery start date, and some requested that NMFS allow General and Harpoon category fishing to commence May 1 rather than June 1, particularly given recent underharvests of those categories.

2) ICCAT Negotiations

A few industry representatives request that the U.S. delegation to ICCAT renegotiate the amount that western Atlantic ICCAT contracting parties may carry forward to the next year (from 10 percent to at least 25 percent), as U.S. landings are variable from year to year and may increase as a result of eastern Atlantic and Mediterranean TAC reductions and mixing.

Response to Comments on Other Issues: The suggestions listed above are beyond the scope of the rulemaking and NEPA analysis for this action. However, in the regulatory text of this action, NMFS clarifies that the Harpoon category fishery commences June 1 each year. NMFS also clarifies that the Purse Seine fishery closes on December 31 of each year. This information has been presented in numerous HMS documents, including the Consolidated HMS FMP, the annual Commercial Compliance Guides, and the annual Atlantic Tunas Regulations brochures, but addressing it in the regulatory text will provide needed clarity within the fishery that is the subject of this rule.

In considering any change to the ICCAT recommendation on allowed carryforward of underharvest, NMFS

must consider carefully the potential effects on the stock rebuilding, particularly when they result in potential total catches that are greater than the scientifically recommended TAC.

Classification

NMFS publishes this final rule 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 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA revises the Initial Regulatory Flexibility Analysis (IRFA), and 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 RFA 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 RFA requires the Agency to state the objective of and need for the rule. The objective of this rule is to establish 2010 BFT quotas. This action is needed specifically to implement the 2008 ICCAT BFT recommendation for 2010. The action is also necessary and appropriate pursuant to ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. Because BFT quotas and allocations are codified in the HMS regulations at § 635.27, a regulatory amendment is required to modify the baseline U.S. quota from 1,009.9 mt (recommended for 2009) to 952.4 mt (recommended for 2010), and the allocations (in mt) to the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, per the percentage allocation shares set forth in the Consolidated HMS FMP.

Section 604(a)(2) of the RFA requires the Agency to summarize significant issues raised by public comments in response to the 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 did not

receive any comments specifically on the IRFA.

Section 604(a)(3) of the RFA 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 approximately 34,000 vessels that held a 2009 Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit and will hold one again in 2010. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats. Of these, 8,318 permit holders (the combined number of commercial category permit holders, including charter/headboat vessels) are considered small business entities according to the Small Business Administration's standard for defining a small entity.

Section 604(a)(4) of the RFA 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 RFA 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, section 603(c)(1)-(4) of the RFA lists four general categories of "significant" alternatives that would assist an agency in the development of 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 an increase or decrease of reporting requirements

for small entities (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 two alternatives in this final rulemaking and justified its selection of the preferred alternative to achieve the desired objective. Specifically, NMFS analyzed a no-action alternative, and a preferred alternative that would implement the 2008 ICCAT recommendation.

NMFS has estimated the average impact that the preferred alternative to establish the 2010 BFT quota for all domestic fishing categories would have on individual permit categories and the vessels within those categories. As mentioned above, the 2008 ICCAT recommendation reduces the U.S. BFT quota for 2010 to 977.4 mt. This quota allocation includes 25 mt to account for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the adjusted (baseline) quota of 952.4 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2009, the annual gross revenues from the commercial BFT fishery were approximately \$6.9 million. As described above, 8,318 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2009 gross revenues are General (\$5,040,772), Harpoon (\$498,877), Purse Seine (\$149,934), and Longline (\$1,247,600). The FRFA assumes that each vessel within a category would have similar catch and gross revenues, to show the relative impact of the proposed action on vessels.

In its analysis of alternatives, NMFS found that implementation of the preferred alternative would be in accordance with the Consolidated HMS FMP and consistent with ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations as necessary and appropriate. The preferred alternative would implement this quota, and have slightly positive impacts for fishermen in the long-run as the stock rebuilds. The no-action alternative would keep the quota at the 2009 levels (approximately 58 mt more), and would be inconsistent with the purpose and need for this action as well as the Consolidated HMS FMP. It would retain economic impacts to the United States and to local economies at a distribution

and scale similar to 2009, or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery, in the short term. In the long term, however, as stock rebuilding is delayed, negative impacts would result.

It is difficult to estimate average potential ex-vessel revenues to commercial participants, largely because revenues depend heavily on the availability of large medium and giant BFT to the fishery. Section 4 of the Supplemental Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis describes potential revenue losses per commercial quota category, based on each category's proposed base quota reduction and price-per-pound information from 2009. This was found to be \$454,059 for the General category, \$27,888 for the Harpoon category, \$46,420 for the Longline category, \$0 for the Trap category, and \$139,278 for the Purse Seine category. Because the directed commercial categories have underharvested their subquotas in recent years, the potential decreases in ex-vessel revenues above overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors. Generally, the interannual differences in ex-vessel revenues per category have been larger than the potential impacts described above.

Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. NMFS considers this a reasonable approach for BFT fisheries, in particular because 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. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish), but for the sake of estimating potential revenue loss per vessel, category-wide revenue losses can be divided by the number of permitted vessels in each category. Because HMS

Charter/Headboat vessels may fish commercially under the General category quota and retention limits, Charter/Headboat permitted vessels are considered along with General category vessels when estimating potential General category ex-vessel revenue changes. Potential ex-vessel revenue losses have been estimated as follows: General category (including Charter/Headboat vessels): \$57; Harpoon category: \$1,213; Longline category (incidental): \$171; Trap category (incidental): \$0; and Purse Seine category: \$46,426. These values likely overestimate potential revenue losses for vessels that actively fish and are successful in landing at least one BFT.

List of Subjects in 50 CFR Part 635

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

Dated: May 26, 2010.

Eric C. Schwaab,

*Assistant Administrator for Fisheries,
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 § 635.27, paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(7)(i), and (a)(7)(ii) 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 952.4 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. The baseline annual U.S. BFT quota is divided among the categories as follows: General - 47.1

percent (448.6 mt); Angling - 19.7 percent (187.6 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (37.1 mt); Purse Seine - 18.6 percent (177.2 mt); Longline - 8.1 percent (77.1 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.0 mt). The remaining 2.5 percent (23.8 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) * * *

(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 (448.6 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31 - 5.3 percent (23.8 mt);

(B) June 1 through August 31 - 50 percent (224.3 mt);

(C) September 1 through September 30 - 26.5 percent (118.9 mt);

(D) October 1 through November 30 - 13 percent (58.3 mt); and

(E) December 1 through December 31 - 5.2 percent (23.3 mt).

* * * * *

(2) Angling category quota. In accordance with the framework procedures of the Consolidated 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 (187.6 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (4.3 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 2-consecutive-year period (starting in 2009, 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 (42.1 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 (37.6 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (45.2 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 (40.4 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) An amount equal to 66.7 percent (2.9 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 (1.4 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 (77.1 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent (46.2 mt) 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 (177.2 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. The Purse Seine category fishery closes on December 31 of each year.

* * * * *

(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 (37.1 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

* * * * *

(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 (23.8 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 (18.1 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount 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.

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[FR Doc. 2010-13207 Filed 5-27-10; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0908191244-91427-02]

RIN 0648-XW47

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

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2010 commercial summer flounder quota to the Commonwealth of Virginia. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective May 27, 2010 through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, 978-281-9257.

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

The final rule implementing Amendment 5 to the Summer Flounder,

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

North Carolina has agreed to transfer 10,975 lb (4,978 kg) of its 2010 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a North Carolina vessel that was granted safe harbor in Virginia due to mechanical problems on April 9, 2010. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2010 are: North Carolina, 3,371,527 lb (1,529,299 kg); and Virginia, 2,908,930 lb (1,319,468 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: May 27, 2010.

Carrie Selberg,

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

[FR Doc. 2010-13205 Filed 5-27-10; 4:15 pm]

BILLING CODE 3510-22-S