

Commission's Yellowfin Regulatory Area (CYRA) means the waters bounded by a line extending westward from the mainland of North America along the 40° N. latitude parallel, and connecting the following coordinates:

40° N. lat., 125° W. long.;
20° N. lat., 125° W. long.;
20° N. lat., 120° W. long.;
5° N. lat., 120° W. long.;
5° N. lat., 110° W. long.;
10° S. lat., 110° W. long.;
10° S. lat., 90° W. long.;
30° S. lat., 90° W. long.; and then eastward along the 30° S. latitude parallel to the coast of South America.

Convention Area means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

Fish aggregating device (FAD) means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

Fishing trip means a period of time between landings when fishing is conducted.

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Floating object means any natural object or FAD around which fishing vessels may catch tuna.

Incidental catch or incidental species means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

Land or Landing means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

Observer means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

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Regional Administrator means the Administrator, Southwest Region, NMFS.

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Tender vessel means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

Transship means to unload fish from a vessel that caught fish to another vessel.

Transshipment receiving vessel means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.

4. In § 300.28, the section heading is revised, paragraphs (a) through (c) are redesignated as (e) through (g), and new

paragraphs (a) through (d) are added to read as follows:

§ 300.28 Prohibitions.

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(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish with purse seine gear on floating objects in the Convention Area after the Regional Administrator has closed the fishery on floating objects in that area.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

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5. Section 300.29 is added to subpart C to read as follows:

§ 300.29 Eastern Pacific fisheries management.

(a) *Notification of IATTC recommendations.* The Regional Administrator will directly notify owners or agents of U.S. tuna vessels of any fishery management recommendations made by the IATTC and approved by the Department of State that will affect fishing or other activities by U.S. parties with fishery interests in the Convention Area. As soon as practicable after such notification, NMFS will announce approved IATTC recommendations in the **Federal Register**.

(b) *Tuna quotas.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when the Regional Administrator closes the fishery for a specific species.

(2) The Regional Administrator may close the U.S. fishery for yellowfin, bigeye, or skipjack tuna or any other tuna species in the Convention Area or portion of the Convention Area when advised by the Director of Investigations of the IATTC that the associated quota has been or is projected to be reached. Any such closure may include:

(i) An allowance for an incidental catch that may be landed while fishing for other tuna species;

(ii) A prohibition on the further setting of purse seines on floating objects by U.S. vessels in the Convention Area;

(iii) Provisions for vessels that are at sea during an announced closure to fish unrestricted until the fishing trip is completed;

(iv) Provisions for vessels at sea with an observer on board during any closure to land fish unrestricted if the landing occurs after December 31; or

(v) Other measures to ensure that the conservation and management measures of the IATTC are achieved.

(3) NMFS will announce any such closures directly to the owners or agents of U.S. vessels who are fishing in or eligible to fish in the Convention Area.

(4) As soon as practicable after being advised of the quota attainment or projection under paragraph (b)(2) of this section, NMFS will publish an announcement of the closure in the **Federal Register**.

(c) *Use of tender vessels.* No person subject to these regulations may use a tender vessel in the Convention Area.

(d) *Transshipments at sea.* No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

PART 300—[AMENDED]

6. In addition to the amendments set forth under the authority of 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*, in part 300, revise all references to “Regional Director” to read “Regional Administrator”.

[FR Doc. 99–4712 Filed 2–24–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 990217050-9050-01; I.D. 010799A]

RIN 0648–AM17

Atlantic Highly Migratory Species Fisheries; Fishery Management Plan; Atlantic Bluefin Tuna Fishery

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

ACTION: Notice of availability and proposed rule; supplemental.

SUMMARY: NMFS by an earlier document proposed regulations to implement the draft Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (Highly Migratory Species or HMS). NMFS has prepared an addendum to the draft HMS FMP (the Addendum). This document announces the availability of the Addendum for public comment and supplements the earlier document by proposing supplemental regulations to implement the Addendum. The supplemental

proposed regulations would set Atlantic bluefin tuna (BFT) fishing category quotas for 1999 and subsequent years, close an area off the New England and mid-Atlantic coast to pelagic longline gear to reduce BFT incidental catch, provide quota adjustment procedures to limit catch of school BFT and to account for dead discards of BFT, and clarify the mandatory nature of certain scientific information collections. In addition, this document proposes BFT General category effort control specifications for the 1999 fishing season. The supplement to the earlier document is necessary to implement the 1998 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 fishery management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be submitted on or before March 4, 1999.

ADDRESSES: For copies of the draft HMS FMP, the proposed regulations to implement the draft HMS FMP, the draft HMS FMP Addendum, or the schedule of public hearings, write to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282, (301) 713-2347. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information aspects of the supplemental proposed regulations to Rebecca Lent and to the Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Pasquale Scida or Sarah McLaughlin, (978) 281-9260, or Chris Rogers at (301) 713-2347.

SUPPLEMENTARY INFORMATION: On October 26, 1998, NMFS announced the availability of the draft HMS FMP (63 FR 57093). Information regarding the management of HMS under the draft HMS FMP was provided in the preamble to the proposed regulations to implement that FMP (64 FR 3154, January 20, 1999) and is not repeated here.

NMFS did not identify a preferred alternative for BFT stock rebuilding in the draft HMS FMP because new information on stock status and/or recovery trajectories from the September 1998 stock assessment by the Standing Committee on Research and Statistics (SCRS), as well as the results of

negotiations at the November 1998 ICCAT meeting, was not available at the time, and, if it had been available, it could have resulted in the development of new rebuilding alternatives for the BFT stock. NMFS had indicated that the preferred alternative for western Atlantic BFT rebuilding would be identified following the November 1998 ICCAT meeting, that the preferred alternative and associated analyses would be published as an Addendum to the draft HMS FMP, and that proposed measures to implement the preferred rebuilding alternative would be published in a supplement to the proposed rule.

The Addendum contains only alternatives and updated information for BFT; it specifically covers BFT rebuilding, domestic allocations, quota adjustment procedures and measures to reduce dead discards of BFT. This supplement to the proposed regulations would implement the rebuilding and bycatch reduction measures of the FMP Addendum. Additionally, this rule proposes BFT General category effort controls for the 1999 fishing season and clarifies mandatory data collection requirements. Comments on this supplement to the proposed regulations will be received at hearings previously scheduled to receive public comment on the proposed regulations to implement the draft HMS FMP, announced in the **Federal Register** on January 22, 1999 (64 FR 3486).

Bluefin Tuna Rebuilding Program

ICCAT has identified the western stock of BFT as overexploited and recommends fishing quotas for contracting parties. NMFS identified western BFT as overfished in the September 1997 Report to Congress required under the Magnuson-Stevens Act, which triggered the requirement to develop a rebuilding program. Based on the 1998 revised stock assessment, parties at the 1998 meeting of ICCAT adopted a 20-year BFT rebuilding program, beginning in 1999 and continuing through 2018. ICCAT has adopted an annual total allowable catch (TAC) of 2,500 metric tons (mt) of BFT inclusive of dead discards, to apply annually until such time as the TAC is changed based on advice from SCRS. The annual landing quota allocated to the United States was increased by 43 mt from 1,344 mt to 1,387 mt.

Reducing Dead Discards

The ICCAT rebuilding program specifies that all contracting and non-contracting parties must monitor and report on all sources of BFT fishing mortality, including dead discards, and

must minimize BFT dead discards to the extent practicable. The recommendation deducts 79 mt from the TAC as an allowance for dead discards; the U.S. portion of this allowance is 68 mt.

The preamble to the proposed regulations to implement the draft HMS FMP describes ongoing and proposed efforts to minimize, to the extent practicable, bycatch and bycatch mortality of protected species and finfish in HMS fisheries. Specifically for BFT, NMFS has analyzed existing databases and examined several alternatives to reduce BFT dead discards. Preliminary results of these analyses have been shared with the public and at meetings of the HMS Advisory Panel throughout 1998. In general, the public has been supportive of NMFS' efforts to reduce BFT dead discards and has suggested various alternatives to effect reduction.

One of the findings of the analyses is that there is no statistically significant relationship between the level of target catch and the level of BFT bycatch. Although there has been extensive public comment in support of changes to target catch requirements (thus increasing landings of incidental catch), NMFS has no basis to conclude that such changes would also result in reducing BFT dead discards. However, the analyses did show that the majority of the dead discards occur in a limited area over a relatively short time period and primarily from the use of pelagic longline gear.

In order to provide the greatest reduction in discards while minimizing the negative impact to targeted fishing activities, NMFS proposes to implement the preferred alternative: the closure of a 4° x 4° area (57,000 square nautical miles), from 37° to 41° N. lat. and from 70° to 74° W. long., for the month of June, to pelagic longline gear. Based on BFT catch and discard rates from 1992 to 1997, it is estimated that closure of this area (the Northeastern United States closed area) would reduce total discards (alive and dead) of BFT by approximately 60 percent.

Although certain negative impacts would be expected, displacement of vessels to other areas during June may mitigate these impacts to some extent. Longline vessels operating outside the closed area would still be able to catch the annual swordfish quota and could use longline gear to target tunas other than BFT. Also, longline vessels would still be allowed to transit the closed area during June provided that their gear is stowed in accordance with the proposed regulations. A separate NMFS proposal for vessel monitoring systems, if implemented, would also enhance the

enforceability of the time-area closure while still allowing transit.

Once implemented, NMFS would evaluate the efficacy of this closure in reducing BFT dead discards, given the distribution of BFT and expected redistribution of fishing effort. Further, NMFS would monitor impacts to the users of pelagic longline gear to determine what, if any, future action or modifications to the proposed time/area closure may be necessary. Such actions could be accomplished by regulatory amendment under the framework procedures of the HMS FMP.

Domestic Quota Allocation

In the proposed regulations to implement the draft HMS FMP, NMFS proposed no changes to the baseline quotas previously established, except that the Purse Seine category quota be no greater than the 1998 level set at 250 mt. Under this proposal, NMFS would maintain the baseline annual quota specifications (i.e., percentage allocations to each fishing category) until further changes are deemed necessary, either to achieve domestic management objectives or to implement new ICCAT rebuilding recommendations.

Given the current ICCAT recommendation on rebuilding BFT, NMFS proposes to specify fishing category allocations consistent with the previously proposed allocation scheme and the 1387 mt U.S. allocation. In specifying the 1999 BFT allocations, however, NMFS must also consider carryover adjustments from the 1998 fishing year, new provisions for the discard allowance and limitations on school BFT catch, and additional adjustments to accommodate the establishment of the proposed new fishing year.

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the appropriate quota category for the following fishing year, provided that such carryover does not result in overharvest of the total annual quota and is consistent with all applicable ICCAT recommendations, including restrictions on catch of school BFT. Therefore, NMFS proposes to adjust the 1999 annual quota specifications for the BFT fishery to account for underharvest and overharvest in 1998. At the end of 1998, the following subquotas had not been harvested: 1 mt in the General category, 2 mt in the Purse Seine category, 67 mt in the Angling category, and 26 mt in the Incidental category;

and additionally, 15 mt remained in the Reserve.

In the proposed regulations to implement the draft HMS FMP, NMFS proposed an adjusted fishing year for Atlantic tunas of June 1 through May 31 of the subsequent calendar year. Therefore, a separate quota would be necessary for the bridge period of January 1–May 31, 1999. Additionally, NMFS proposed to reorganize the Incidental quota category into a Longline category and a Trap category (for pound nets and fish weirs). Through this supplement to the proposed rule, NMFS proposes to use the 1998 underharvest from the Angling and Incidental categories for the bridge period, a time period in which only the Angling, Longline, and Trap categories are open. Note that the reorganization of the Incidental category into the Longline and Trap categories will not take effect until the HMS FMP and implementing regulations are finalized. Any underharvest from the bridge period would be added to the annual quota for the adjusted 1999 fishing year, beginning June 1.

NMFS proposes to subdivide the Angling category bridge period quota of 79 mt as follows: Large school/small medium bluefin—75 mt, with 16 mt to the northern area and 59 mt to the southern area; and large medium/giant bluefin—4 mt, allocated entirely to the southern area given the likely distribution of large BFT during the proposed bridge period.

NMFS proposes to subdivide the Longline category bridge period quota of 26 mt as follows: 1 mt to longline vessels operating north of 34° N. lat. and 25 mt to longline vessels operating south of 34° N. lat. Because the Incidental category subquota for gear other than longlines was fully harvested in 1998, no bridge period allocation would be made to the proposed Trap category.

For fishing years beginning June 1, 1999, NMFS would make the annual quota of 1,387 mt available. The proposed specifications for 1999 and beyond would set the General category quota at 653 mt, the Harpoon category quota at 54 mt, the Purse Seine category quota at 250 mt, the Angling category quota at 273 mt, the Longline category quota at 113 mt, the Trap category at 1 mt, and the Reserve at 43 mt.

In the proposed regulations to implement the draft HMS FMP, NMFS proposed geographic subdivision of the Angling and Longline category allocations as percentages of the respective category quotas based on historical catches reported for the respective fishing areas. Additionally,

NMFS proposed to establish a separate reserve allocation for school BFT within the Angling category to ensure consistency with the ICCAT recommendation to limit the take of school BFT. Taking these proposals into account, the Angling category quota of 273 mt would be divided as follows: School bluefin—111 mt (8 percent of the annual 1,387 mt), with 48 mt to the northern area (New Jersey and north), 42 mt to the southern area (Delaware and south), and 21 mt held in reserve; large school/small medium bluefin—156 mt, with 83 mt to the northern area and 73 mt to the southern area; and large medium/giant bluefin—6 mt, with 2 mt to the northern area and 4 mt to the southern area. Likewise, the annual Longline category quota of 113 mt would be subdivided as follows: 24 mt to longline vessels operating north of 34° N. lat. and 89 mt to longline vessels operating south of 34° N. lat.

Given the above baseline allocations and accounting for overharvest or underharvest in the General, Purse Seine, and Angling categories in 1998, the adjusted quotas for the 1999 fishing year would be as follows: 654 mt for the General category; 252 mt for the Purse Seine category; and 99 mt for the Angling category school BFT subquota (with 43 mt to the northern area, 38 mt to the southern area, and 18 mt held in reserve).

General Category Effort Controls

In the last 4 years, NMFS has implemented General category time period subquotas and restricted fishing days (RFDs) to increase the likelihood that fishing would continue throughout the summer and fall for scientific monitoring purposes. The subquotas were also designed to address concerns regarding allocation of fishing opportunities, to allow for a late season fishery, and to improve market conditions.

In the proposed regulations to implement the draft HMS FMP, NMFS proposed to maintain the General category quota subdivisions as established for 1998, as follows: 60 percent for June–August, 30 percent for September, and 10 percent for October–December. Given the carryover quota for the General category, adjustments are necessary to allocate the carryover across the established subperiods.

These percentages would be applied only to the new coastwide baseline quota for the General category of 643 mt, with the remaining 10 mt being reserved for the New York Bight fishery. Thus, of the 643 mt baseline General category quota, 386 mt would be available in the period beginning June 1 and ending

August 31, 193 mt would be available in the period beginning September 1 and ending September 30, and 64 mt would be available in the period beginning October 1 and ending December 31. Given the carryover of 1 mt underharvest from 1998, the adjusted quota of 644 mt for the 1999 fishing season would be divided as follows: 387 mt would be available in the period beginning June 1 and ending August 31, 193 mt would be available in the period beginning September 1 and ending September 30, and 64 mt would be available in the period beginning October 1 and ending December 31.

As indicated in the proposed regulations to implement the draft HMS FMP, the remaining 10 mt of the annual General category quota would be set aside for the General category New York Bight fishery. However, the proposed regulatory text inadvertently omitted a change in the administration of the set-aside effected by a prior final rule (63 FR 27862, May 21, 1998). That rule change provided NMFS greater flexibility to open the set-aside fishery in any quota period rather than to wait until the end of the General category fishing season. That inadvertent omission is corrected in this supplement to the proposed regulations.

In the last 4 years, NMFS has also implemented RFDs in the General category. In 1997, NMFS amended the Atlantic tunas regulations to prohibit persons aboard General category vessels from fishing, including tag-and-release, for all sizes of BFT on designated RFDs. The proposed regulations to implement the draft HMS FMP states that NMFS will annually publish a schedule of RFDs in the **Federal Register**.

For the 1999 fishing year, NMFS proposes a schedule of RFDs similar to that implemented for 1998, making the necessary calendar adjustments to coordinate with Japanese market holidays. Persons aboard vessels permitted in the General category would be prohibited from fishing, including tag-and-release, for BFT of all sizes on the following days: July 7, 11, 14, 18, 21, 25, and 28; August 1, 4, 8, 10, 11, 12, 15, 18, 22, 25, and 29; September 1, 5, 8, 12, 15, 19, 22, 26, and 29; and October 1. These proposed RFDs would improve distribution of fishing opportunities without increasing BFT mortality.

Quota Adjustment Procedures

Although the ICCAT rebuilding recommendation for BFT requires carryover of underharvest and overharvest, certain additional provisions regarding dead discards and harvest of school BFT apply. Specifically, if a contracting party's

fishing activity results in an amount of dead discards in excess of the allowance, it must deduct the excess from the amount of BFT catch that can be retained. Conversely, if the actual amount of dead discards is less than the allowance, one-half of the difference may be added to the allocation of BFT catch that can be retained. NMFS proposes to amend the annual quota adjustment procedures to incorporate the provisions of the dead discard allowance.

The ICCAT rebuilding recommendation also requires that catch of school BFT (less than 30 kg or 115 cm straight fork length) be limited to no more than 8 percent by weight of the total domestic quota over each 4-consecutive-year period. NMFS proposes to implement this provision through the establishment of the school BFT reserve specified here and through annual adjustments to the school BFT landings and reserve categories as necessary to meet the ICCAT requirement. Given the 4-year accounting period, NMFS proposes that adjustments for estimated overharvest or underharvest of school BFT not be restricted to automatic carryover between fishing years. Instead, flexible adjustments would be made to enhance fishing opportunities and the collection of information on a broad range of BFT size classes, provided that the 8 percent landings limit is met over the applicable 4-year period.

Scientific Data Collections

ATCA and the Magnuson-Stevens Act authorize NMFS to require permitting and reporting for commercial and recreational HMS fisheries. The HMS FMP addresses the need for accurate and timely information for the purposes of quota monitoring and stock assessment, as well as the need for required studies on fishing communities and economic impacts of regulations. To meet the needs of the HMS FMP, NMFS has implemented logbooks, surveys, and specialized studies in addition to direct reporting and observer programs.

This supplement to the proposed regulations clarifies the obligation to report by explicitly stating it as a condition for the issuance of the required permits. Failure to report or to respond to any information collection approved by the Office of Management and Budget (OMB) is prohibited. Applications for permits will not be considered complete if required reports have not been submitted or applicants have not responded, as required, to specialized data collections.

Technical Correction

In the proposed regulations to implement the draft HMS FMP, one aspect of the BFT landings quota allocation was inadvertently omitted. Given the proposed 250 mt cap on purse seine landings of BFT, any excess that would result from applying the purse seine percent allocation to the total landings quota must be redistributed. When it occurs, NMFS proposes to allocate such excess to the Reserve category, for inseason redistribution according to the established criteria.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* Preliminarily, the Assistant Administrator for Fisheries, NMFS, has determined that the specifications and regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

NMFS amended the Environmental Impact Statement prepared for the proposed regulations to implement the draft HMS FMP with a preliminary finding of no significant impact on the human environment for these specific BFT provisions. In addition, a draft Regulatory Impact Review was prepared with a preliminary finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the supplemental proposed regulations, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed supplemental regulations would set Atlantic bluefin tuna (BFT) fishing category quotas for 1999 and subsequent years, close an area off the New England and mid-Atlantic coast to pelagic longline gear to reduce BFT incidental catch, provide quota adjustment procedures to limit catch of school BFT and account for dead discards of BFT, and clarify the mandatory nature of certain scientific information collections, in accordance with rebuilding and discard reduction recommendations of the International Commission for the Conservation of Atlantic Tunas and domestic fishery management objectives. The proposed supplemental regulations also would specify General Category effort controls (time period subquotas and restricted-fishing days) for the 1999 fishing season. Because fishing category quota allocations would remain the same or increase, and the designated restricted-

fishing days have been scheduled to correspond directly to Japanese market closures, the likelihood of extending the fishing season is increased and additional revenues would accrue to many small businesses as market prices received by U.S. fishermen may improve. The analysis predicts that only a minimal number of HMS longline fishermen (5 in 1996, 2 in 1997) would experience a reduction in gross revenues of over 5 percent. The analysis also predicts that no pelagic longline fishermen would be forced to cease business operations. Also, as this proposed regulation does not decrease the quota in any fishery, fishermen would still have the opportunity to land the same amount of fish that they usually do. The proposed measures to minimize dead discards of BFT to the extent practicable would affect only the pelagic longline fleet, and reductions in gross revenues to this sector of the fishery are expected to be insignificant based on agency criteria for preparation of a Regulatory Flexibility Analysis.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS initiated formal consultation for all HMS commercial fisheries on September 25, 1996, under section 7 of the ESA. NMFS again reinitiated formal consultation on the HMS FMP and Billfish Amendment on May 12, 1998. The consultation request concerned the possible effects of management measures in the Billfish Amendment and the HMS FMP, including implementation of the Atlantic Offshore Cetacean Take Reduction Plan measures for the pelagic longline fishery. In a Biological Opinion issued on May 29, 1997, NMFS concluded that operation of the longline and purse seine components of the Atlantic tunas fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction and that continued operation of the handgear fisheries is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction. The biological opinion was amended August 29, 1997, by identifying a reasonable and prudent alternative regarding the driftnet component of the swordfish and tuna fisheries, and is not relevant to the BFT fishery.

NMFS has determined that proceeding with this proposed rule would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative

measures to reduce adverse impacts on protected resources. This proposed rule would implement a domestic quota slightly greater than that of 1998, with minor quota adjustments to individual category quotas to account for underharvest in 1998 and to specify BFT General category effort controls (time period subquotas and restricted fishing days) for the 1999 fishing season and, therefore, would not likely increase fishing effort nor shift activities to new fishing areas. The proposed time/area closure is intended to shift fishing effort away from areas with high BFT discards without changing overall fishing effort. The areas where fishing may be displaced are not expected to increase endangered species or marine mammal interaction rates.

This supplement to the proposed regulations refers to several collections of information subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The mandatory nature of required reports has been clarified but the initial proposed regulations contain the specific reporting requirements in question and has solicited public comment on those requirements, which have been submitted to OMB for approval. The supplement to the proposed regulations also makes it mandatory for persons with permits to respond to surveys on fishing activity; OMB approval for such surveys will be obtained prior to their use and public comment on the specific surveys will be solicited at that time.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

Comments on the Draft HMS FMP, the Addendum to the HMS FMP, the proposed rule to implement the HMS FMP, and on this supplement to that proposed rule are invited and will be accepted if received by March 4, 1999.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: February 18, 1999.

Hilda Diaz-Soltero,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR new part 635, as proposed at 64 FR 3154, January 20, 1999, is proposed to be further 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 § 635.2, definition for “Northeastern United States closed area” is added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 41°00' N. lat., 74°00' W. long.; 41°00' N. lat., 70°00' W. long.; 37°00' N. lat., 70°00' W. long.; and 37°00' N. lat., 74°00' W. long.

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3. In § 635.4, paragraphs (j)(1) and (j)(2) are revised to read as follows:

§ 635.4 Permits and fees.

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(j) *Permit issuance.* (1) Except for ILAPs, the Office Director or the RA will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

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4. In § 635.5, paragraph (g) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

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(g) *Additional data and inspection.* Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, whether or not retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. As part of OMB-approved surveys, a person issued a permit under § 635.4 is required to provide requested information about fishing activity, and a person, whether or not issued a permit under § 635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for

inspection by NMFS or its designees upon request.

5. In § 635.21, paragraphs (c)(2)(v) and (c)(4) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(2) * * *

(v) (Northeastern United States closed area)—June 1 through June 30.

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(4) *Transiting.* Notwithstanding paragraph (c)(2) of this section, vessels carrying longline gear may transit the Northeastern United States closed area provided that all anchors and buoys are secured and all pelagic longline gear is stowed.

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6. In § 635.27, paragraph (a)(1)(iv) is removed, and paragraphs (a) introductory text, (a)(1)(iii), (a)(2) introductory text, and (a)(9) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total amount of BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap -

0.1 percent. In addition, NMFS is holding in reserve 2.5 percent of the BFT quota for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. Should the total landing quota, when multiplied by the Purse Seine percent allocation, exceed 250 mt, the amount above 250 mt shall be redistributed to the Reserve. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas. BFT quotas are specified in whole weight.

(1) * * *

(iii) When the coastwide General category fishery has been closed in any quota period under § 637.28(a)(1), NMFS may publish a notification in the *Federal Register* to make available up to 10 mt of the quota set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38°47' N. lat. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1)(i) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

(2) *Angling category quota.* The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an Angling Category Atlantic Tunas Permit or an HMS Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT quota. No more than 2.3 percent of the annual Angling category quota may be large medium or giant BFT and, over each 4-consecutive-

year period, no more than 8 percent of the overall U.S. BFT quota may be school BFT. The Angling category quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

* * * * *

(9) *Annual adjustments.* If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, NMFS may subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards. Regardless of the estimated catch 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 1999 fishing year does not exceed 8 percent by weight of the total BFT quota allocated to the United States for that period. If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the total amount of BFT that can be landed in the subsequent fishing year. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the total amount of BFT that can be landed. NMFS will file at the Office of the Federal Register a notification of the amount to be subtracted or added and the basis for the quota reductions or increases made pursuant to this paragraph.

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