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7. Section 243.204–71 is removed.
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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No.050317076–5076–01; I.D.
030405C]

RIN 0648–AT01

**Atlantic Highly Migratory Species;
Atlantic Bluefin Tuna Quota
Specifications and General Category
Effort Controls**

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

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

SUMMARY: NMFS proposes initial 2005 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories and to set General category effort controls. 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). NMFS will hold public hearings to receive comments on these proposed actions.

DATES: Written comments must be received on or before April 18, 2005.

The public hearing dates are:

1. April 8, 2005, from 3 p.m. to 4:30 p.m. in Gloucester, MA.
2. April 11, 2005, from 7 p.m. to 8:30 p.m. in Morehead City, NC.

ADDRESSES: Comments may be submitted through any of the following methods:

- Email: 05BFTSPECS@noaa.gov.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Dianne Stephan, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930.
- Fax: 978–281–9340.

The public hearing locations are:

1. Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

2. Crystal Coast Civic Center, 3500 Arendell Street, Morehead City, NC 28557.

Supporting documents including the environmental assessment, initial Regulatory Flexibility Act analysis, and regulatory impact review are available by sending your request to Dianne Stephan, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930; fax: 978–281–9340.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan at (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

On May 28, 1998, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP).

In November 2002, ICCAT recommended a Total Allowable Catch (TAC) of BFT for the United States in the western Atlantic management area of 1,489.6 metric tons (mt), effective beginning in 2003 and continuing in subsequent fishing years until revised by ICCAT. Also in the 2002 recommendation, ICCAT allocated 25 mt annually to account for incidental catch of BFT by pelagic longline fisheries directed on other species “in the vicinity of the management boundary area.” This area was defined in the 2003 BFT annual specification rulemaking process as the Northeast Distant statistical area (NED) (68 FR 56783, October 2, 2003). The TAC of 1,489.6 mt is inclusive of the annual 25 mt pelagic longline set-aside in the NED. The initial specifications within this proposed rule are published in accordance with the 1999 FMP and are necessary to implement the 2002 ICCAT quota recommendation, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act.

This proposed rule would: (1) establish initial quota specifications consistent with the BFT rebuilding program as set forth in the 1999 FMP by

allocating the 2002 ICCAT-recommended quota for the 2005 fishing year (June 1, 2005–May 31, 2006); and (2) establish the General category effort controls, including time-period subquotas and restricted fishing days (RFDs), for the 2005 fishing season.

NMFS is also seeking public comment on options for achieving ICCAT’s recommended four-year average 8 percent tolerance on harvest of school BFT. As a method for limiting fishing mortality on school size BFT, ICCAT adopted an annual 8 percent tolerance limit in 1991, and in the 1998 rebuilding plan modified the tolerance to be calculated as a four-year average. The 2005 fishing year is the third year in the current four year period. Landings of school BFT in 2003 were approximately 138 mt, which is approximately 9.3 percent of the base quota for that year, and preliminary figures for 2004 indicate that school landings were greater than 2003 school landings. Since landings of school BFT for the first half of the four year period have exceeded 8 percent, landings for the second half must be less than 8 percent to achieve an overall average of 8 percent or below. NMFS is considering options other than providing the full school subquota for the 2005 fishery, and requests public comment on potential options for achieving the 8 percent target, including the following: (1) defer any action until the final year of the four year period (2006); (2) reallocate all or a portion of the 2005 school subquota to the large school/small medium subquota for 2005; (3) maintain the default Angling category retention limit of one fish (in any recreational size class, i.e., school, large school/small medium) per vessel per day for the entire 2005 season; or (4) prohibit landing of school BFT in 2005 and carry over the subquota to 2006.

After consideration of public comment, NMFS will issue final initial quota specifications and effort controls and publish them in the **Federal Register**, along with NMFS’ response to those comments. The specifications and effort controls may subsequently be adjusted during the course of the fishing year, consistent with the provisions of the 1999 FMP, and will be published in the **Federal Register**.

NMFS acknowledges that a number of other issues regarding the domestic management of BFT have been discussed during recent years. For instance, adjustment of domestic quota allocation percentages and General category time-period subquotas were raised as issues in a Petition for Rulemaking submitted by the North Carolina Division of Marine Fisheries

(see Notice of Receipt of Petition, 67 FR 69502, November 18, 2002). These issues were discussed at the 2003 HMS Advisory Panel (AP) meeting held in Silver Spring, MD, and most recently at public scoping meetings regarding the development of the consolidated HMS FMP. Other issues have been addressed in separate rulemakings. For instance, at the end of 2003, a final rule was published (68 FR 74504, December 24, 2003) that: (1) extended the General category season from December 31 to January 31, (2) established a Harpoon category end date of November 15 (or when the quota is reached, whichever comes first), (3) adjusted the Harpoon category tolerance limits for large medium BFT, and (4) adjusted the Purse Seine category opening date and large medium BFT tolerance limits. Additional issues may be addressed in the consolidated HMS FMP which is being developed during a current FMP amendment process (68 FR 40907, July 9, 2003) or in another future rulemaking.

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

Domestic Quota Allocation

The 1999 FMP and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years. The baseline percentage quota shares established in the 1999 FMP for fishing years beginning June 1, 1999, to the present are as follows: General category—47.1 percent; Harpoon category—3.9 percent; Purse Seine category—18.6 percent; Angling category—19.7 percent; Longline category—8.1 percent; Trap category—0.1 percent; and Reserve category—2.5 percent. The 2002 ICCAT-recommended U.S. BFT quota of 1,464.6 mt, not including the annual 25 mt set aside for pelagic longline vessels, would be allocated in accordance with these percentages. However, in addition to the 2002 ICCAT quota recommendation, quota allocations are adjusted based on overharvest or underharvest from prior

fishing year's activity and on U.S. data on dead discards as they relate to the ICCAT dead discard allowance. Each of these adjustments is discussed below and then applied to the results of the above percentage shares to determine the 2005 fishing year proposed initial quota specifications.

The 2004 Underharvest/Overharvest

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 following fishing year, provided that the total of the adjusted category quotas does not result in overharvest of the total annual BFT quota and remains consistent with all applicable ICCAT recommendations, including restrictions on landings of school BFT. Therefore, NMFS proposes to adjust the 2005 fishing year quota specifications for the BFT fishery to account for underharvest or overharvest in the 2004 fishing year.

Overall U.S. landings figures for the 2004 fishing year are still preliminary and may be updated before these 2005 fishing year specifications are finalized. Should adjustments to the final initial 2005 BFT quota specifications be required based on final 2004 BFT landing figures, NMFS will publish the adjustments in the **Federal Register**. For the 2004 fishing year, NMFS has preliminarily determined that General category landings were lower than the adjusted General category quota by approximately 16.0 mt; that Harpoon category landings were less than the adjusted Harpoon category quota by approximately 11.5 mt; that Longline category landings were less than the adjusted Longline category quota by approximately 85.3 mt; that Angling category landing estimates were in excess of the adjusted Angling category quota by approximately 59.4 mt; and that Purse Seine category landings were less than the adjusted Purse Seine category quota by approximately 257.6 mt. Regulations at 50 CFR 635.27(a)(9)(i) require that Purse Seine category underharvests or overharvests be subtracted from or added to each individual vessel's quota allocation, as appropriate. Based on the estimated amount of Reserve that NMFS maintains for the landing of BFT taken during ongoing scientific research projects and/or potential overharvests in certain categories, NMFS estimates that 298.3 mt of Reserve remains from the 2004 fishing year. This remaining Reserve quota will be used in part to address the Angling category overharvest and the rest divided between the General and

Harpoon categories in proportion to the tonnage transferred out of these categories to the Reserve category in 2004, and in consideration of the number of permit holders participating in each of these respective fisheries, and the Reserve category. For categories with under or overharvests from the 2004 fishing year, these initial specifications will subtract the overharvest from, or add the underharvest to, the same quota category for the 2005 fishing year.

Dead Discards

As part of the BFT rebuilding program, ICCAT recommends an allowance for dead discards. The U.S. dead discard allowance is 68 mt. Dead discard estimates for 2004 are not yet available, so the estimate for the 2003 calendar year is used as a proxy to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2005. The 2003 calendar year preliminary estimate of U.S. dead discards, as reported per the longline discards calculated from logbook tallies, adjusted as warranted when observer counts in quarterly/geographic stratum exceeded logbook reports, totaled 52.4 mt. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time, and thus, are not included in this calculation. As U.S. fishing activity is estimated to have resulted in fewer dead discards than its allowance, the ICCAT recommendation and U.S. regulations state that the United States may add one half of the difference between the amount of dead discards and the allowance (i.e., $68.0 \text{ mt} - 52.4 \text{ mt} = 15.6 \text{ mt}$, $15.6 \text{ mt}/2 = 7.8 \text{ mt}$) to its total allowed landings for the following fishing year, to individual fishing categories, or to the Reserve category. NMFS proposes to allocate the 7.8 mt to the Reserve category quota to assist in covering potential overharvests and provide for inseason adjustments for the upcoming fishing year.

2005 Proposed Initial Quota Specifications

In accordance with the 2002 ICCAT quota recommendation, the ICCAT recommendation regarding the dead discard allowance, the HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS proposes initial quota specifications for the 2005 fishing year as follows: General category—908.3 mt; Harpoon category—90.0 mt; Purse Seine category—530.0 mt; Angling category—288.6 mt; Longline category—

228.9 mt; and Trap category—3.8 mt. Additionally, 59.4 mt would be allocated to the Reserve category for inseason adjustments, including potentially providing for a late season General category fishery, or allocated to cover scientific research collection and potential overharvest in any category except the Purse Seine category.

Based on the above proposed initial specifications, the Angling category quota of 288.6 mt would be further subdivided as follows: School BFT—117.2 mt, with 45.1 mt to the northern area (north of 39°18' N. latitude), 50.4 mt to the southern area (south of 39°18' N. latitude), plus 21.7 mt held in reserve; large school/small medium BFT—164.8 mt, with 77.8 mt to the northern area and 87.0 mt to the southern area; and large medium/giant BFT—6.6 mt, with 2.2 mt to the northern area and 4.4 mt to the southern area.

The 2002 ICCAT recommendation includes an annual 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the vicinity of the management area boundary and referred to as the NED hereafter. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance to the North/South allocation percentages mentioned below. Thus, the proposed Longline category quota of 228.9 mt would be subdivided as follows: 58.1 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 106.1 mt to pelagic longline vessels landing BFT south of 31° N. latitude, and 64.7 mt (39.7 mt from 2004 + 25.0 mt for 2005) to account for bycatch of BFT related to directed pelagic longline fisheries in the NED. The bycatch allocation by ICCAT for pelagic longline vessels in the NED would be allocated to the Longline north subcategory. Accounting for landings under this additional quota would be maintained separately from other landings under the Longline north subcategory. Finally, regulations regarding BFT target catch requirements for pelagic longline vessels within the NED do not apply until the landings equal the available set-aside quota (§ 635.23(f)(3)). After the available quota has been landed, target catch requirements at § 635.23(f)(1) will then apply.

General Category Effort Controls

For the last several years, NMFS has implemented General category 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 1999 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 1999 FMP divide the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-January. These percentages would be applied to the adjusted 2005 coastwide quota for the General category of 908.3 mt, minus 10.0 mt reserved for the New York Bight set aside fishery. Therefore, of the available 898.3 mt coastwide quota, 539.0 mt would be available in the period beginning June 1 and ending August 31, 2005; 269.5 mt would be available in the period beginning September 1 and ending September 30, 2005; and 89.8 mt would be available in the period beginning October 1, 2005, and ending January 31, 2006.

In addition to time-period subquotas, NMFS also has implemented General category 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 fine scale inseason flexibility. For the 2005 fishing year, NMFS proposes a series of solid blocks of RFDs to extend the General category for as long as possible through the October through January time-period.

Therefore, NMFS proposes that persons aboard vessels permitted in the General category would be prohibited from fishing, including catch-and-release and tag-and-release, for BFT of all sizes on the following days: all Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and November 24, 2005, inclusive, while the fishery is open. These proposed RFDs would improve distribution of fishing opportunities during the late season without increasing BFT mortality.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (AA) has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

The purpose of this proposed action is to: (1) implement the 2002 ICCAT recommendation regarding the BFT

quota, by proposing 2005 specifications for the BFT fishery that allocates the quota among domestic fishing categories, including 25 mt of BFT quota to the Longline category; and, (2) implement General category effort controls.

NMFS has prepared an IRFA to analyze the impacts on small entities of the alternatives for establishing 2005 fishing year BFT quotas for all domestic fishing categories and General category effort controls. The analysis for the IRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. In order to do this, NMFS has estimated the average impact that the alternative to establish the 2005 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories.

As noted above, the 2002 ICCAT recommendation increased the BFT quota allocation to 1,489.6 mt, to be redistributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and BAYS fisheries in the NED. Both these quota modifications were established in the 2003 and 2004 specifications. In 2004, the annual gross revenues from the commercial BFT fishery were approximately \$5.2 million. There are approximately 29,401 vessels that are permitted to land and sell BFT under four BFT quota categories (including charter/headboat vessels). The commercial categories and their 2004 gross revenues are General (\$4,346,814), Harpoon (\$317,104), Purse Seine (\$231,791), and Longline (\$305,180). The analysis for the IRFA assumes that each vessel within a category will have similar catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various preferred alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative two (preferred alternative) which would implement the 2002 ICCAT recommendation. Alternative two included several options for reducing catch of school BFT to stay within the four-year 8 percent tolerance limit required by ICCAT. NMFS considered a third alternative that would have allocated the 2002 ICCAT recommendation in a manner other than that designated in the 1999 FMP that was meant to address issues regarding specific set-asides and allocations for

fishing groups that are not currently considered in the 1999 FMP. However, since the third alternative could have resulted in a de facto sub-period quota reallocation, an FMP amendment would be necessary for its implementation, and therefore it would not be practicable and was not further analyzed. NMFS has initiated the development of the consolidated HMS FMP (68 FR 40907, July 9, 2003) in a concurrent rulemaking, to consider sub-period quota allocations in the BFT fishery, among other things.

As noted above, alternative two would implement the 2002 ICCAT recommendation in accordance with the 1999 FMP and consistent with ATCA. Under ATCA, the United States is obligated to implement ICCAT-approved quota recommendations. The preferred alternative would apply this quota and have positive impacts for fishermen. The no action alternative would keep the quota at pre-2002 ICCAT recommendation levels (i.e., 77.6 mt less) and would not be consistent with the purpose and need for this action and the 1999 FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002 or recent prior years, but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT recommendation and as mandated by ATCA.

Alternative two also includes several options for reducing catch of school bluefin tuna, including: (1) taking no action until 2006; (2) reallocating all or a portion of the 2005 school subquota to the large school/small medium subquota for 2005; (3) maintaining the default Angling category retention limit of one fish per vessel per day for the entire 2005 season; or (4) prohibiting landing of school BFT in 2005 and carrying over the subquota to 2006. Because of limited economic data regarding recreational HMS fisheries, economic impacts of the various options cannot be quantified. However, the options that include some reduction in school BFT landings in 2005 (options 2, 3 and 4) could have minor negative economic impacts for 2005. Any modest economic impacts to charter/headboat or recreational fisheries as a result of option 2 could be mitigated by the shift of quota to the large school/small medium subquota. In addition, the apparent recent increase in school BFT landings could indicate an increase in abundance of young BFT, some of which could be recruited into the large school/small medium size class in 2005, thus mitigating any reduction in school BFT from Options 2 or 4. Impacts from Option 3 are less

likely to be mitigated by shifts in quota or abundance since the one fish retention limit would be in place for the entire season, and the small retention limit could have greater impacts on charter/headboat fisheries than the other options. Under Option 1, if action is deferred until 2006, then there would not be any impact in the coming fishing year; however, more severe measures may be required to reduce school harvest in 2006.

For the General category effort controls, two alternatives were considered: the preferred alternative to designate RFDs according to a schedule published in the initial BFT specifications and the no action alternative (no RFDs published with the initial specifications, but implemented during the season as needed). In the past, when catch rates have been high, the use of RFDs (preferred alternative) has had positive economic consequences by avoiding oversupplying the market and extending the season as late as possible. Implementing RFDs to extend the late season may have negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time as proposed under the preferred 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 would enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of the fish migration, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues.

The no action alternative would not implement any RFDs with publication of the initial specifications but rather would use inseason management authority established in the 1999 FMP to implement RFDs during the season, should catch rates warrant. This alternative is most beneficial during a season of low catch rates and would have positive economic consequences if slow catch rates were to persist. Overall, the season would regulate itself and fishermen could choose when to fish or not based on their own preferences. However, even with low catch rates and no RFDs, it is unlikely that there will be enough quota in the General category to sustain an extended late season

commercial handgear fishery off south Atlantic states. Thus, if the 2005 season is similar to the 2003 and 2004 fisheries, there may be negative economic impacts to fishermen in southern states unless inseason management actions are taken to slow down the late season fishery.

None of the proposed alternatives in this document would result in additional reporting, recordkeeping, compliance, or monitoring requirements for the public. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

NMFS prepared a draft EA for this proposed rule, and the AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule were implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule, are available from NMFS via the Federal e-Rulemaking Portal (see **ADDRESSES**).

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

This final rule contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any 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.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under Section 7 of the ESA. A BiOp, issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative (RPA) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was

issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is working on implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NMFS published an advance notice of proposed rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and

non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The measures proposed in this action are not expected to have adverse impacts on protected species. Although the 2002 ICCAT recommendation increased the BFT quota, which may result in a slight increase in effort, NMFS does not expect this slight increase to alter current fishing patterns. The options to reduce mortality of school BFT are expected to have negligible ecological impacts and not adversely impact protected species. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Thus, the proposed action would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

The area in which this proposed action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic

Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

NMFS has determined that the list of actions in this proposed rule are consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). The proposed rule establishing quota specifications and effort controls will be submitted to the responsible state agencies for their review under Section 307 of the CZMA.

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

Dated: March 18, 2005.

Rebecca Lent,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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