

**SUMMARY:** On May 28, 1997, the FHWA published a notice of proposed rulemaking in response to a decision of the U.S. Court of Appeals, District of Columbia. In the rulemaking the FHWA proposed to incorporate a modified Safety Fitness Rating methodology, which would be used to measure the safety fitness of motor carriers against the safety fitness standard, as an appendix to its Safety Fitness Procedures regulations.

On February 7, 1997, the FHWA received data from the ATA Litigation Center on behalf of the American Trucking Association (ATA). The comments concerned the sampling methodology used by the FHWA in conducting compliance reviews, which the ATA believes to be biased. Subsequently, on May 29, 1997, the ATA asked that these comments be placed in the docket for consideration in this rulemaking.

The comments are being placed in Docket No. MC-94-22; FHWA-97-2252 and will be considered in this rulemaking.

**DATES:** Comments on this rulemaking must be received on or before July 28, 1997.

**ADDRESSES:** The ATA Litigation Center comments will be considered in this rulemaking and are being placed in Docket No. MC-94-22; FHWA-97-2252 at U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, D.C. 20590-0001. These comments and all others received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. Those persons or organizations desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366-4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except holidays.

(49 U.S.C. 104, 504, 521 (b)(5)(A), 5113, 31136, 31144, and 31502; 49 CFR 1.48)

Issued on: June 24, 1997.

**Jane Garvey,**

*Acting Administrator for the Federal Highway Administration.*

[FR Doc. 97-17308 Filed 7-2-97; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 285

[Docket No. 970626157-7157-01; I.D. 041697C]

RIN 0648-AJ65

#### Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Effort Controls

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

**ACTION:** Proposed rule; public hearings; request for comments.

**SUMMARY:** NMFS proposes to amend the regulations governing the Atlantic tuna fisheries to set Atlantic bluefin tuna (ABT) General category effort controls for the 1997 fishing year. The proposed regulatory amendments are necessary to achieve domestic management objectives. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed amendments.

**DATES:** Comments are invited and must be received on or before July 17, 1997. The hearings are scheduled as follows:

1. Tuesday, July 8, 1997, 7 to 10 p.m., Plymouth, MA.
2. Wednesday, July 9, 1997, 7 to 10 p.m., Brunswick, ME.
3. Wednesday, July 9, 1997, 7 to 9 p.m., Silver Spring, MD.

**ADDRESSES:** Comments on the proposed rule should be sent to, and copies of supporting documents, including a Draft Environmental Assessment-Regulatory Impact Review (EA/RIR), are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

The hearing locations are:

1. Plymouth—Plymouth North High School, Obery Street, Plymouth, MA 02360.
2. Brunswick—Atrium Inn and Conference Center, Cooks Corner, Brunswick, ME 04011.
3. Silver Spring—Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

These public hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent by July 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** John Kelly, 301-713-2347, or Mark Murray-Brown, 508-281-9260.

**SUPPLEMENTARY INFORMATION:** The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to carry out ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

#### Relation to Advance Notice of Proposed Rulemaking (ANPR)

These proposed amendments address in part comments submitted to NMFS in response to an ANPR (61 FR 48876, September 17, 1996). In the ANPR, NMFS requested comment on measures necessary to implement quota modifications and/or any other management recommendations for Atlantic tunas following the 1996 meeting of ICCAT. As stated in the ANPR, NMFS is required under ATCA to establish ABT quotas consistent with the recommendations of ICCAT. Under this legislative requirement, allocation of the U.S. ABT quota has been designed to collect the scientific information necessary to monitor the status of the ABT resource and, consistent with this, to achieve an equitable distribution of fishing opportunities to all fishing categories and all geographic areas.

The ANPR established a 30-day comment period during which NMFS received numerous comments on General category effort controls.

In the 1995 and 1996 General category fishery, NMFS implemented time-period subquotas and restricted fishing days to increase the likelihood that fishing would continue throughout the summer and fall for scientific monitoring purposes. These subquotas also were designed to address concerns regarding allocation of fishing opportunities, to allow for a late season fishery, and to improve market conditions. Due to delayed effectiveness, monthly quotas were not fully implemented in 1995. In order to evaluate fully the potential of an effort control system using monthly quotas and restricted fishing days, the program was reinitiated for the entire 1996 General category season. Results were mixed; quota was available for the General category to remain open later in the season, but only for a few days, and under "derby" fishing conditions (high

effort and landings concentrated in a short time period).

Based on the experience of the 1995 and 1996 seasons, NMFS has received several suggestions regarding the 1997 ABT General category season. Some constituents have requested a split season, with a certain percentage of the quota reserved for after September 1. Other constituents have argued against a split season, stating that the fishery should open June 1, and continue to be open each day until the entire General category quota is harvested. NMFS has also received many suggestions regarding the use of restricted fishing days. The suggestions have ranged from eliminating restricted fishing days entirely, to having every other day a restricted fishing day. Some have also expressed the opinion that if there are to be restricted fishing days, they should conform to market closures in Japan (the major export market).

#### Proposed Quota Subdivision

NMFS is concerned that maintaining the General category season beyond mid-July with no effort control measures in place would increase the likelihood of a premature closure in the second half of the season. Given the potential for an increased pace of landings in August, this could possibly result in severely curtailed fishing in September, with adverse consequences for scientific monitoring, the geographical distribution of the quota, and prices.

Therefore, NMFS proposes to adjust the time period subquotas of the General category quota in 1997. Based upon historical catch patterns (1983-96), the General category quota is proposed to be split into three subquotas and distributed as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages would be applied only to the coastwide General category quota of 623 metric tons, with the remaining 10 mt being reserved for the New York Bight fishery in October. Thus, of the 623 mt total, 374 mt would be available in the period beginning June 1 and ending August 31 (first period), 187 mt would be available in the period beginning September 1 and ending September 30 (second period), and 72 mt (including the 10 mt for the New York Bight fishery) would be available in the period beginning October 1 and ending December 31 (third period). When the third period General category catch is projected to have reached 62 mt, NMFS will set aside the remaining 10 mt for the New York Bight only. Upon the effective date of the New York Bight set-aside, fishing for, retaining, or landing large medium

or giant ABT is prohibited in all waters outside the set-aside area.

Attainment of subquota in any fishing period would result in a closure until the beginning of the following fishing period, whereupon any underharvest or overharvest would be carried over to the following period, with the subquota for the following period adjusted accordingly. Inseason closures would be filed with the Office of the Federal Register, stating the effective date of closure, and announced through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notice of closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713-1279 and (508) 281-9305. Information regarding the Atlantic tuna fisheries is also available through Nextlink Interactive, Inc. at (888) USA-TUNA.

The New York Bight area has most recently been defined as the 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. In recent years NMFS has received comments on the definition of the New York Bight area and on the need for a southern boundary to the New York Bight area in order to limit end-of-the-season General category fishing activity to the Mud Hole region. In 1995, NMFS addressed concerns about participation in the Mud Hole fishery by Montauk vessels and defined the set-aside area to originate at Shinnecock Inlet, as opposed to Moriches Inlet in prior years. NMFS requests comment on the definition of the New York Bight area, the need for a southern boundary, and the specific placement of the boundary line should it be established.

#### Proposed Effort Controls

NMFS also proposes to change the restricted fishing days for vessels permitted in the General category. In 1996, the restricted fishing days followed the pattern of Sunday, Monday, and Tuesday (with some exceptions for market closures and holidays) from mid-July to mid-September. Consecutive restricted fishing days in 1995 and 1996 did not appear to lengthen the fishing season significantly. Additionally, while there may be market advantages to a system in which every other day is a restricted fishing day, such a schedule could

result in enforcement problems, as well as possible difficulties for fishermen who would be forced to return to port each day. Therefore, after evaluating proposals received from associations representing General category fishermen and dealers for mutually agreeable restricted fishing days, NMFS proposes the following restricted fishing days for the 1997 season: July 16, 17, 23, and 30; and August 6, 10, 11, 12, 17, 20, 24, and 27. These proposed restricted fishing days would improve distribution of fishing opportunities without increasing ABT mortality.

In a separate action, NMFS has prohibited fishing (including tag and release fishing) for ABT of all sizes by persons aboard vessels permitted in the General category on designated ABT restricted fishing days (62 FR 30741, June 5, 1997). Persons aboard vessels permitted in the Charter/Headboat category may fish for only school, large school, and small medium ABT on designated restricted fishing days.

#### Classification

This proposed rule is published under the authority of ATCA, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that the regulations contained in this proposed rule are necessary for management of the Atlantic tuna fisheries.

NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. In addition, a draft RIR 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 proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Because many of 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 may accrue to small businesses as market prices received by U.S. fishermen are improved. Thus, 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 reinitiated consultation on the Atlantic tuna fishery under section 7 of the Endangered Species Act on September 25, 1996. This consultation considered new information concerning the status of the northern right whale. On May 29, 1997, NMFS issued a

biological opinion, which concluded that: Continued operation of the longline and purse seine component may adversely affect but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction, and continued operation of the hand gear fisheries is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction. 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 implements restricted fishing days and therefore would not likely increase fishing effort nor shift activities to new fishing areas. Therefore, the proposed rule is not expected to increase endangered species or marine mammal interaction rates.

Dated: June 30, 1997.

**Rolland A. Schmitten,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is proposed to be amended as follows:

#### **PART 285—ATLANTIC TUNA FISHERIES**

1. The authority citation for part 285 continues to read as follows:

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

2. In § 285.22, paragraph (a)(1) is revised to read as follows:

##### **§ 285.22 Quotas.**

\* \* \* \* \*

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 633, of which 374 mt are available in the period beginning June 1 and ending August 31; 187 mt are

available in the period beginning September 1 and ending September 30; and 72 mt are available in the period beginning October 1.

\* \* \* \* \*

3. In § 285.24, paragraph (a)(1) is revised to read as follows:

##### **§ 285.24 Catch limits.**

(a) *General category.* (1) From the start of each fishing year, except on designated restricted fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under this part. On designated restricted fishing days, persons aboard such vessels may not fish for, possess or retain Atlantic bluefin tuna. For calendar year 1997, designated restricted fishing days are: July 16, 17, 23, and 30; and August 6, 10, 11, 12, 17, 20, 24, and 27.

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[FR Doc. 97-17534 Filed 6-30-97; 4:55 pm]

BILLING CODE 3510-22-F