

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

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5. Structural Integrity

Two complementary structural integrity tests should be performed. Structural strength and distortion tests should be performed at the Bus Testing Center, and the structural durability test should be performed at the test track.

a. Structural Strength and Distortion Tests

(1) A shakedown of the bus structure should be conducted by loading and unloading the bus with a distributed load equal to 2.5 times the fully loaded weight. The bus should then be unloaded and inspected for any permanent deformation on the floor or coach structure. This test should be repeated a second time, and should be repeated up to one more time if the permanent deflections vary significantly between the first and second tests.

(2) The bus should be loaded to its fully loaded weight, with one wheel on top of a curb and then in a pothole. This test should be repeated for all four wheels. The test verifies:

- (i) Normal operation of the steering mechanism; and
- (ii) Operability of all passenger doors, passenger escape mechanisms, windows, and service doors. A water leak test should be conducted in each suspension travel condition.

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Issued on: March 8, 2011.

Peter M. Rogoff,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132-1133-01]

RIN 0648-BA65

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures

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 to modify Atlantic bluefin tuna (BFT) base quotas for all domestic fishing categories; establish BFT quota specifications for the 2011 fishing year; reinstate pelagic

longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); amend the Atlantic tunas possession at sea and landing regulations to allow removal of Atlantic tunas tail lobes; and clarify the transfer at sea regulations for Atlantic tunas. 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 solicits written comments and will hold public hearings to receive oral comments on these proposed actions.

DATES: Written comments must be received on or before April 14, 2011.

The public hearing dates and times are:

1. March 21, 2011, 3 to 5 p.m., Gloucester, MA.
2. March 22, 2011, 6:30 to 8:30 p.m., Barnegat, NJ.
3. March 28, 2011, 7 to 9 p.m., Manteo, NC.
4. April 5, 2011, 5:15 to 7:15 p.m., Silver Spring, MD.

ADDRESSES: You may submit comments, identified by “0648-BA65”, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** 978-281-9340, Attn: Sarah McLaughlin.
- **Mail:** Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

• **Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. To be considered, electronic comments must be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>. Do not submit electronic comments to individual NMFS staff.

Supporting documents, including the draft Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis, are available by sending your request to Sarah McLaughlin at the mailing address specified above. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>.

The public hearing locations are:

1. Gloucester—NMFS, 55 Great Republic Drive, Gloucester, MA 01930.
2. Barnegat—Ocean County Library, 112 Burr Street, Barnegat, NJ 08005.
3. Manteo—Town Hall, 407 Budleigh Street, Manteo, NC 27954.
4. Silver Spring—Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

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

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as “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, 1999, 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). The 1999 FMP included framework provisions to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. Since 1982, ICCAT has recommended a Total Allowable Catch of BFT, and since 1991, ICCAT has recommended specific limits (quotas) for the United States and other BFT Contracting Parties.

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) a final rule, effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (*i.e.*, sharks, swordfish, tunas, and billfish)

into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635. Among other things, the Consolidated HMS FMP maintained an allocation scheme, established in the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), for dividing the baseline annual U.S. BFT quota among several domestic quota categories.

Adjustment of the BFT annual quota is necessary to implement the 2010 ICCAT quota recommendation for western Atlantic bluefin tuna (western BFT), as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. It is necessary to establish the 2011 quota specifications in order to adjust the 2011 BFT baseline quota and subquotas to account for dead discards as well as the amount of 2010 underharvest (of 2010 adjusted quota) allowed by ICCAT to be carried forward to 2011. In addition to modifying the BFT base quotas and establishing the quota specifications, NMFS is proposing three Atlantic tunas management measures, including reinstating pelagic longline vessel target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); clarifying the regulations concerning Atlantic tunas possession at sea and landing to allow removal of Atlantic tunas tail lobes; and clarifying the Atlantic tunas transfer at sea regulations to address concerns raised in a recent decision by a NOAA Administrative Law Judge (see Atlantic Tunas Transfer at Sea section for case reference).

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).

NMFS plans to make daily retention limit adjustments, if needed, for the 2011 fishing year via **Federal Register** notices separate from the final quota specifications. Federal regulations at 50 CFR 635.23 allow the establishment and adjustment of General and Angling category retention limits via inseason actions, and NMFS has in the past used

inseason actions for this purpose (*i.e.*, to adjust daily retention limits).

ICCAT Recommendation, Including the Carrying Forward of Underharvest

ICCAT adopted a western BFT Total Allowable Catch (TAC) of 1,750 mt annually for 2011 and 2012 after considering the results of the 2010 western BFT stock assessment and following protracted negotiations among western BFT Contracting Parties (ICCAT Recommendation 10–03—Supplemental Recommendation by ICCAT concerning the western BFT Rebuilding Program). The 1,750-mt TAC, reduced from 1,800 mt for 2010, is expected to allow for continued stock growth under both the low and high stock recruitment scenarios.

ICCAT Recommendation 10–03 includes a revised allocation scheme that now includes the United Kingdom (in respect of Bermuda, France (in respect of St. Pierre and Miquelon), and Mexico. These three ICCAT Contracting Parties previously received western BFT allocations as specific tonnage directly from the TAC prior to application of the agreed allocation scheme (to the United States, Canada, and Japan). The amount of TAC allocated to the Contracting Parties depends on the amount of the overall recommended TAC. For 2011 and 2012, the net effect is that these Contracting Parties will receive the same amounts as they did in 2009 and 2010 (*i.e.*, 4 mt, 4 mt, and 95 mt, respectively, for the United Kingdom, France, and Mexico).

For 2011 and 2012, the ICCAT Recommendation makes the following allocations from the 1,750-mt TAC for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED): 15 mt for Canada and 25 mt for the United States. Following subtraction of these allocations directly from the TAC, the recommendation allocates the remainder to the UK (0.23 percent), France (0.23 percent), Mexico (5.56 percent), the United States (54.02 percent), Canada (22.32 percent) and Japan (17.64 percent). For the United States, 54.02 percent of the remaining 1,710 mt is 923.7 mt annually for 2011 and 2012. This represents the baseline annual U.S. BFT quota analyzed in this EA. Accounting for the 25-mt NED allocation, the total U.S. quota is 948.7 mt annually (*i.e.*, a decrease of 28.7 mt or 2.9 percent from the 2010 total U.S. quota of 977.4 mt).

The current ICCAT recommendation also maintains a provision from previous recommendations allowing a Contracting Party with a quota allocation to make a one-time transfer

within a fishing year of up to 15 percent of its quota allocation to other Contracting Parties with quota allocations. Contracting Parties with an allocation of 4 mt or less may transfer up to 100 percent of their allocation. The ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a Contracting Party that receives a one-time quota transfer may not re-transfer that quota. Further, as a method for limiting fishing mortality on juvenile BFT, ICCAT continues to recommend a tolerance limit on the annual harvest of BFT measuring less than 115 cm to no more than 10 percent of the total bluefin quota per Contracting Party over the 2011 and 2012 fishing period. The United States implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches (68.5 to less than 119 cm curved fork length)) as appropriate to not exceed the 10-percent limit over the 2-year period.

Notably, ICCAT Recommendation 10–03 limits the amount of unused quota Contracting Parties may carry forward to 2011 to 10 percent of their total quota. This would limit the amount of 2010 U.S. underharvest carried forward to 2011 to 94.9 mt (10 percent of the 948.7 mt total U.S. quota). Previously, ICCAT Recommendation 06–06 reduced the amount of underharvest parties could carry forward from 100 percent of a Contracting Party's total allocation to 50 percent. This aspect of the ICCAT recommendation was maintained through 2010, but ICCAT recommended in 2008 that the amount be reduced effective for 2011 onward (Recommendation 08–04).

Domestic Allocations and Quotas

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, based on historical share, fleet size, effort, and landings by category, and stock assessment data collection needs. The baseline percentage quota shares established in the 1999 FMP and continued in the Consolidated HMS FMP (effective since June 1, 1999), 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 second column of the table below shows the proposed quotas that result from application of the Consolidated HMS FMP quota shares to

the 2010 ICCAT-recommended baseline annual U.S. BFT quota. These quotas would be codified at § 635.27(a) and would remain in effect until ICCAT adopts a subsequent ICCAT western BFT recommendation. Because ICCAT adopted TACs for 2011 and 2012 in Recommendation 10–03, NMFS currently anticipates these base quotas to be in effect for 2012. NMFS would adjust these base quotas for the 2012 fishing year based on the best estimate of dead discards and information regarding over- or underharvests when the 2012 BFT quota specifications are prepared (likely in early 2012). As described below, 160 mt is used as a proxy for dead discards based on the 2009 estimate, which is the latest and best available estimate.

2011 Quota Specifications

In recommendations that applied from 1999 through 2006, ICCAT historically recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance was 68 mt. ICCAT recommendations from 2006 onward have neither included a recommended dead discard allowance nor specified a dead discard reporting methodology for compliance purposes. Nevertheless, the ICCAT-recommended TAC and U.S. quota are inclusive of dead discards. The United States accounts for this mortality as part of the domestic specification calculation process and reports dead discard estimates to ICCAT annually.

In 2007 through 2010, NMFS accounted for pelagic longline dead discards within the Longline category quota, and deducted the best available estimate of dead discards from the current year Longline base quota. In the quota specifications for these years, NMFS also carried forward the full amount of prior-year underharvest allowed by ICCAT and distributed the underharvest to: (1) Ensure that the Longline category has sufficient quota to operate during the fishing year after the required accounting for BFT dead discards; (2) maintain 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 Consolidated HMS FMP. The amount of prior-year underharvest allowed to be

carried forward to 2007 through 2010 was sufficient to provide the Longline category enough quota to operate after the required accounting for BFT dead discards.

Since dead discard estimates for 2010 are not yet available, the 2009 estimate of 160 mt is used as a proxy. 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. Use of the 2009 estimate as a proxy is appropriate because it is the best available and most complete information NMFS currently has regarding dead discards. In accordance with the 2010 ICCAT recommendation, the United States must subtract 160 mt from its baseline allocation.

It is important to note that the ICCAT recommendation to limit the carrying forward of underharvest to 10 percent of a party's total allocation, combined with the level of dead discards in recent years, makes using the method employed in 2007 through 2010 impracticable for 2011 onward. The amount of underharvest that the United States may carry forward to 2011 (94.9 mt) is insufficient to cover dead discards (160 mt). Deducting the dead discards from the Longline category (with a baseline subquota of less than 75 mt) would result in a subquota of 0 mt for the Longline category in 2011 and the need for reduction of the directed fishing category subquotas and the Reserve to make up the difference (i.e., about 85 mt). The Longline category baseline quota allocation (currently 8.1 percent of the baseline annual U.S. BFT quota) may need to be revisited in the future, although adjustments to the FMP-based allocation scheme would require an amendment to the Consolidated HMS FMP.

To establish the 2011 quota specifications, NMFS would subtract the dead discard estimate of 160 mt from the U.S. baseline quota of 923.7 and add the 94.9 mt of underharvest allowed to be carried forward, for an adjusted total of 858.6 mt. NMFS then would apply the allocation scheme established in the Consolidated HMS FMP to the adjusted total (as shown in the final column of the table below) and described here. Thus, in accordance with the ICCAT Recommendation 10–03, the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at

§ 635.27(a)(10), NMFS proposes domestic category quotas for the 2011 fishing year as follows: General category—404.4 mt; Harpoon category—33.5 mt; Purse Seine category—159.7 mt; Angling category—169.1 mt; Longline category—69.5 mt; and Trap category—0.9 mt. The amount 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 would be 21.5 mt.

The proposed General category quota of 404.4 mt would be divided into the time period allocations established in the Consolidated HMS FMP. Thus, 21.4 mt (5.3 percent) would be allocated to the General Category for the period beginning January 1, 2011, and ending January 31, 2011; 202.2 mt (50 percent) for the period beginning June 1, 2011, and ending August 31, 2011; 107.2 mt (26.5 percent) for the period beginning September 1, 2011, and ending September 30, 2011; 52.6 mt (13 percent) for the period beginning October 1, 2011, and ending November 30, 2011; and 21 mt (5.2 percent) for the period beginning December 1, 2011, and ending December 31, 2011.

The Angling category quota of 169.1 mt would be further subdivided, pursuant to the area subquota allocations established in the Consolidated HMS FMP, as follows: School BFT—94.9 mt, with 36.5 mt to the northern area (north of 39°18' N. latitude), 40.8 mt to the southern area (south of 39°18' N. latitude), plus 17.6 mt held in reserve; large school/small medium BFT—70.4 mt, with 33.2 mt to the northern area and 37.2 mt to the southern area; and large medium/giant BFT—3.9 mt, with 1.3 mt to the northern area and 2.6 mt to the southern area.

The Longline category would be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude) in the Consolidated HMS FMP. Thus, the proposed Longline category quota of 69.5 mt would be subdivided as follows: 27.8 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 41.7 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS would account for landings under the 25-mt NED allocation separately from other Longline category landings.

PROPOSED ATLANTIC BLUEFIN TUNA QUOTAS AND QUOTA SPECIFICATIONS (IN METRIC TONS) FOR THE 2011 FISHING YEAR

[January 1–December 31, 2011]

Category (% share of baseline quota)	Baseline allocation for 2011 and 2012 (per 2010 ICCAT recommendation and consolidated HMS FMP allocations)	2011 Quota specifications		
		Dead discard deduction (2009 proxy)	2010 underharvest to carry forward 2011	2011 fishing year quota
Total (100)	923.7	- 160.0	+94.9	858.6
Angling (19.7)	182.0 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8			169.1 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 70.4 North 33.2 South 37.2 Trophy 3.9 North 1.3 South 2.6
General (47.1)	SUBQUOTAS: Jan 23.1 Jun–Aug 217.6 Sept 115.3 Oct–Nov 56.6 Dec 22.6			SUBQUOTAS: Jan 21.4 Jun–Aug 202.2 Sept 107.2 Oct–Nov 52.6 Dec 21.0
Harpoon (3.9)	36.0			33.5
Purse Seine (18.6)	171.8			159.7
Longline (8.1)	74.8 SUBQUOTAS: North (-NED) 29.9 NED 25.0* South 44.9			69.5 SUBQUOTAS: North (-NED) 27.8 NED 25.0* South 41.7
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1			21.5

* 25 mt to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

Reinstatement of NED Target Catch Requirements

NMFS has implemented a series of management measures designed to regulate the incidental catch of BFT in non-directed Atlantic fisheries. Target catch requirements for the retention of BFT have been in effect for the pelagic longline fishery since 1981 (46 FR 8012, January 26, 1981) and are currently as follows: One large medium or giant BFT (*i.e.*, measuring 73 inches or greater) per vessel per trip may be landed, provided that at least 2,000 lb of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold; two large medium or giant BFT may be landed incidentally to at least 6,000 lb of species other than BFT; and three large medium or giant BFT may be landed incidentally to at least 30,000 lb

of species other than BFT (68 FR 32414, May 30, 2003).

Pursuant to a 2001 Biological Opinion, NMFS closed the NED in July 2002 to HMS-permitted pelagic longline vessels and conducted a research experiment in this area on various pelagic longline gear modifications to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery (67 FR 45393, July 9, 2002). The NED is the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long.; 35°00' N. lat., 60°00' W. long. This fishing ground covers virtually the entire span of the western north Atlantic, as far east as the Azores and the Mid-Atlantic Ridge.

The regulations were adjusted to allow vessels to fish in the NED if they met specific gear requirements and practiced safe handling and release of sea turtles during the research experiment. Beginning in November 2003, these vessels were allowed to retain all commercial-sized (large medium and giant) BFT taken incidental to fishing for other species while in that area, up to the 25-mt NED allocation with no attendant target catch requirement (68 FR 56788, October 2, 2003). However, after the research experiment was completed and the NED reopened, NMFS did not reinstate the target catch requirements. Under the current regulations, it is only once the 25-mt allocation is met that the target catch requirements apply in the NED.

From 2004 until 2009, NED landings were less than the available quota for that area (25 mt), despite the lack of

NED target catch requirements. In 2009, the 25-mt NED allocation was met during the fishing year, while northern area longline activity was ongoing. As a result, the bluefin tuna target catch requirements specified for the longline category became applicable in the NED from October 20–December 31, 2009 (74 FR 53671, October 20, 2009).

NMFS proposes to reinstate target catch requirements for pelagic longline vessels fishing in the NED. This action would effectively remove the exemption from target catch requirements that has applied in the NED since November 2003. NMFS would remove the provision that allows unlimited retention of commercial-sized BFT taken incidental to fishing for other species in the NED up to the amount allocated for the NED (currently 25 mt). Instead, the same target catch requirements (described in the first paragraph of this section) would apply in all areas (*i.e.*, both inside and outside of the NED).

Reinstating the target catch requirements in the NED would result in the same target catch requirements applying to all Longline category participants regardless of where they fish. Over the last several years, many individuals and environmental organizations have expressed concern that the lack of target catch requirements in the NED provides economic incentive to increase fishing effort to retain BFT in what is intended to be an incidental fishery. This action would help NMFS align BFT catch (landings and discards) with available quotas. In 2009, approximately 51 mt of BFT were landed from the NED, and total landings were 131 mt, 31 percent greater than the total 100 mt (landings

quota) available for the Longline category. Constraining Longline category BFT landings to its quota serves to allow the fleet to continue to participate in their directed fisheries (*e.g.*, Atlantic yellowfin tuna (YFT) and swordfish) year-round with less risk of fishery interruption due to insufficient BFT quota availability. Further, it would reduce the need for BFT quota reallocation from directed fisheries or the Reserve to cover excess pelagic longline BFT landings. To address similar issues, as well as to increase the survival of spawning BFT, NMFS published a proposed rule to require weak hook use in the Gulf of Mexico pelagic longline fishery (76 FR 2313, January 13, 2011), and final rulemaking is forthcoming. Both of these efforts regarding the pelagic longline fishery are consistent with the agency's efforts to address bycatch issues and manage BFT catch and landings within available quotas.

Atlantic Tunas Possession at Sea and Landing Form

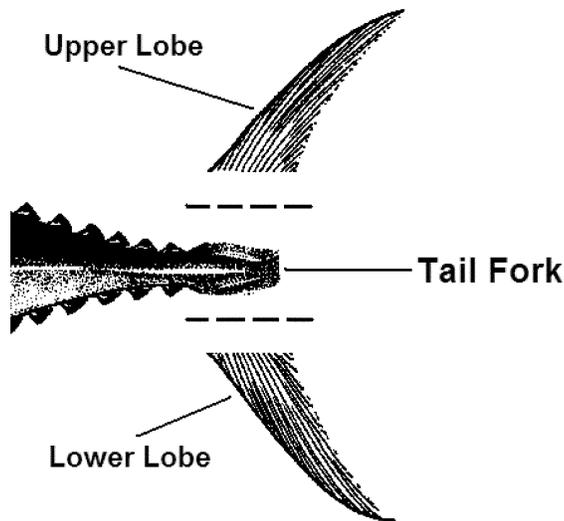
The sole criterion for determining the size and/or size class of whole or round (head on) Atlantic tunas is a curved fork length (CFL) measurement, which is the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

When the head of an Atlantic tuna is removed, pectoral fin curved fork length (PFCFL) is the legal means of measuring the fish. PFCFL is the length of a fish measured from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the

pectoral fin and the top of the caudal keel. The fork of the tail must be attached to the fish to attain proper CFL and PFCFL measurements. For a BFT with the head removed, the CFL is determined by multiplying the PFCFL by a conversion factor of 1.35. The resulting CFL is the sole criterion for determining the size class of a BFT with the head removed. For a bigeye or yellowfin tuna, NMFS prohibits the removal of the head if the remaining portion would be less than 27 inches from the fork of the tail to the forward edge of the cut.

The regulations regarding possession at sea and landing specify that managed Atlantic tunas landed in an Atlantic coastal port must be maintained through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. NMFS has received requests from commercial Atlantic tuna fisheries participants in the last few years, including via the HMS Advisory Panel, to allow removal of Atlantic tuna tails at sea to make fish storage more efficient. NMFS proposes to clarify the regulations regarding Atlantic tunas possession at sea and landing to specify that as long as the fork of the tail remains intact, the upper and lower lobes of the tail may be removed (as shown in the figure below). This would balance the need for maintaining a standardized method of measuring Atlantic tunas with the request to allow Atlantic tunas to be stored at sea in a more efficient manner. This rulemaking will not affect the measurement methodology or requirements for species other than Atlantic tunas.

Figure 1. Depiction of allowed removal of the upper and lower lobes of the tail, leaving the fork of the tail intact to preserve the ability to obtain a curved fork length measurement.



Atlantic Tunas Transfer at Sea

Currently, the regulations regarding transfer at sea specify that, with a specific exception for owners and operators of a vessel for which a Purse Seine category Atlantic Tunas category permit has been issued, persons may not transfer an Atlantic tuna in the Atlantic Ocean, regardless of where the fish was harvested. Following a recent NOAA Administrative Law Judge decision involving the transfer of a BFT at sea [In the Matter of Brant McMullan & Roger A. Gales, Docket No. SE0900591FM (December 7, 2010)], NMFS has decided to clarify the intent of the Atlantic tunas transfer-at-sea regulations and prohibitions. NMFS proposes to add a sentence to the regulatory text regarding transfer at sea of Atlantic tunas that would read: "Notwithstanding the definition of "harvest" at § 600.10, for the purposes of this part, transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing gear in the water from one vessel to another vessel." In the future, NMFS may make similar clarifications regarding transfer at sea for other Atlantic highly migratory species via separate actions pertaining to those species.

Request for Comments

NMFS solicits comments on this proposed rule through April 14, 2011. See instructions in **ADDRESSES** section above.

The public hearings will be physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281-9279, at least 7 days prior to the hearing date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (*see ADDRESSES*).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to analyze the impacts of the alternatives for implementing and allocating the ICCAT-recommended U.S. quota for 2011 and 2012; adjusting

the 2011 U.S. quota and subquotas to account for BFT dead discards and unharvested 2010 quota allowed by ICCAT to be carried forward to 2011; reinstating pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area; amending the Atlantic tunas possession at sea and landing regulations to allow removal of tail lobes; and clarifying the transfer at sea regulations for Atlantic tunas.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to implement ICCAT recommendations, including accounting for BFT dead discards and underharvest of the 2010 adjusted quota in the 2011 quota specifications, implement uniform target catch requirements for Longline category participants regardless of where they fish, and clarify the regulations concerning Atlantic tunas possession at sea and landing and Atlantic tunas transfer at sea.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The proposed quota action would apply to all participants in the Atlantic BFT fisheries, all of which are considered small entities, because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small

Business Administration (SBA) size standards for defining a small versus large business entity in this industry. This action would apply to all participants in the Atlantic BFT fishery, all of which are considered small entities. As shown in Table 5 of the IRFA, there are over 32,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of October 2010. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats.

Reinstatement of target catch requirements in the NED would affect those Longline category permitted vessels that fish in the NED. As shown in Table 9 of the IRFA, over the last 5 years, an annual total ranging from 6 to 10 vessels have reported trips in the NED and an annual total ranging from 4 to 8 vessels have landed BFT from the NED. However, to the extent that this action could avoid the need for fishery interruption due to insufficient BFT quota availability, it could affect all 248 Longline category permitted vessels.

Clarification of the Atlantic tunas landing form and transfer at sea regulations would be informative to owners and operators of Atlantic tunas permitted vessels and Atlantic HMS permitted vessels fishing for tunas, although material impacts are not expected to occur from the related changes in this action.

Under section 603(b)(4) of the Regulatory Flexibility Act, agencies are required to describe any new reporting, recordkeeping and other compliance requirements. There are no new reporting or recordkeeping requirements in any of the alternatives considered for this action.

Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

Under section 603(c) of the Regulatory Flexibility Act, agencies are required to describe any alternatives to the

proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the EA. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described 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. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective. The alternatives considered and analyzed are described below. The IRFA assumes that each vessel within a category will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

NMFS has estimated the average impact that the alternative to establish the 2011 and 2012 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2010 ICCAT recommendation reduced the U.S. baseline BFT quota for 2011 and 2012 to 923.7 mt and provides 25 mt for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the baseline quota of 923.7 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2010, the annual gross revenues from the commercial BFT fishery were

approximately \$8.9 million. As of October 2010, there were 8,311 vessels permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2010 gross revenues are General (\$7.8 million), Harpoon (\$202,643), Purse Seine (\$0), and Longline (\$878,908).

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative A2 (preferred alternative), which would implement the 2010 ICCAT recommendation. NMFS considered a third alternative (A3) that would have allocated the 2010 ICCAT recommendation in a manner other than that designated in the Consolidated HMS FMP. Alternative A3 would result in a de facto quota reallocation among categories, and an FMP amendment would be necessary for its implementation. Preparation of an FMP amendment is not possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2010, and the 2011 fishing year, the bulk of which begins in June. Therefore, Alternative A3 was not analyzed. But, if an FMP amendment was feasible, positive economic impacts would be expected to result on average for vessels in permit categories that would receive a greater share than established in the FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than established in the FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to participants.

As noted above, Alternative A2 would implement the 2010 ICCAT recommendation 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. The no action alternative would keep the quota at pre-2010 ICCAT recommendation levels (approximately 29 mt more) and would not be consistent with the purpose and need for this action, the Consolidated HMS FMP, and ATCA. The economic impacts to the United States and to local economies would be similar in distribution and scale to 2010 (e.g., annual commercial gross revenues of approximately \$8.9 million, as described above), 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 growth is hindered, 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 6 of the EA/RIR/IRFA describes potential revenue losses per commercial quota category based on each category's proposed base quota reduction and price-per-pound information from 2010 (*i.e.*, \$206,251 for the General category, \$13,944 for the Harpoon category, \$25,150 for the Longline category, and \$1,093 for the Trap category); although the Purse Seine category had no BFT landings in 2010, potential revenue losses of \$69,639 were estimated. As described in Section 4 of the EA/RIR/IRFA, because the directed commercial categories have underharvested their subquotas in recent years, particularly 2004–2008, 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. This is an appropriate approach for BFT fisheries, in particular because available landings data (weight and ex-vessel value of the fish in price-per-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 are estimated as follows: General category (including Charter/Headboat vessels): \$26; Harpoon category: \$480; Longline category (incidental): \$101; Trap category (incidental): \$182; and Purse Seine category: \$13,928. Section 6 of the EA/RIR/IRFA describes potential revenue losses per commercial quota category based on each category not having access to quota that would be available through the carrying forward of 2010 underharvest, were it not for the ICCAT recommendation that limits the amount that may be carried forward to 10 percent of a Contracting Party's total quota beginning effective for 2011. Potential ex-vessel revenue losses resulting from this change are estimated as follows: General category (including Charter/Headboat vessels): \$107; Harpoon category: \$4,808; Longline category (incidental): \$1,014; Trap category (incidental): \$519; and Purse Seine category: \$139,278. These values likely overestimate potential revenue losses for vessels that actively fish and are successful in landing at least one BFT.

The proposed reinstatement of target catch requirements for pelagic longline vessels in the NED could, as described in Section 6.6.2 of the IRFA, result in a potential loss of \$341,228. If this reduction is calculated for the universe of vessels participating in the NED over the last 5 years (range of 6–10 vessels), it would represent average potential ex-vessel reductions of \$34,123–\$56,871 per vessel. If the reduction is calculated across Longline category vessels, it would be \$1,376 per vessel. In Section 6.6.2 of the IRFA, acknowledging that the 2009 number of BFT taken in the NED in 2009 may have been anomalous, NMFS also provided a figure for potential revenue loss of \$42,408. This would represent average potential ex-vessel reductions of \$4,241–\$7,068 per vessel. If the reduction is calculated across Longline category vessels, it would be \$171 per vessel.

However, the preferred alternative is expected to result in the most positive short and long-term socio-economic impacts for the majority of BFT fishery participants, including Longline category participants, as it would increase the likelihood that the Longline category quota will be available through the end of the year, without interruption, and decrease the potential need for reallocation from directed quota categories or quota reductions in

subsequent years to cover Longline category excesses.

The other considered alternative was a no action alternative (maintaining the de facto exemption from target catch requirements for pelagic longline vessels fishing in the NED). The no action alternative risks exceeding the available Longline category quota, particularly in years where availability of commercial-sized BFT is high in the NED during directed pelagic longline activity for target species.

The modifications to the regulations concerning Atlantic tunas possession and landing form and Atlantic tunas transfer at sea are intended to facilitate Atlantic tunas storage and provide clarification, respectively. While these changes would apply to all vessels holding Atlantic tunas, HMS Charter/Headboat, and HMS Angling category permits (totaling approximately 33,000 vessels), they are not expected to have significant economic impacts. Therefore, NMFS has not analyzed alternatives beyond the preferred alternatives and no action. Specific estimates of economic impacts of these preferred alternatives are not quantifiable.

List of Subjects in 50 CFR Part 635

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

Dated: March 9, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be 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.*

§ 635.23 [Amended]

2. In § 635.23, remove paragraph (f)(3).

3. 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 923.7 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 (435.1 mt); Angling—19.7 percent (182.0 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (36.0 mt); Purse Seine—18.6 percent (171.8 mt); Longline—8.1 percent (74.8 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap—0.1 percent (0.9 mt). The remaining 2.5 percent (23.1 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) * * *

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

(A) January 1 through January 31—5.3 percent (23.1 mt);

(B) June 1 through August 31—50 percent (217.6 mt);

(C) September 1 through September 30—26.5 percent (115.3 mt);

(D) October 1 through November 30—13 percent (56.6 mt); and

(E) December 1 through December 31—5.2 percent (22.6 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 (182 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (4.2 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 2-consecutive-year period (starting in 2011, 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 (40.8 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 (36.5 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (43.8 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 (39.1 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) An amount equal to 66.7 percent (2.8 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 (74.8 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent (44.9 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.

(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 (171.8 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 (36.0 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 (23.1 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (17.6 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.

* * * * *

4. In § 635.29, paragraph (a) is revised to read as follows:

§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, roundscale spearfish, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was

harvested. Notwithstanding the definition of "harvest" at § 600.10, for the purposes of this part, transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing gear in the water from one vessel to another vessel. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

* * * * *

5. In § 635.30, paragraph (a) is revised to read as follows:

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas.* Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. The upper and lower lobes of the tuna tail may be removed for storage purposes as long as the fork of the tail remains intact.

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[FR Doc. 2011-5858 Filed 3-11-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648-BA35

Fisheries Off West Coast States; Highly Migratory Species Fisheries; Amendment 2

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) for

Secretarial review. Amendment 2 would modify the current suite of management unit species, establish a new category of ecosystem component species, modify the process for revising numerical estimates of maximum sustainable yield and optimal yield, and specify status determination criteria so that overfishing and overfished determinations can be made for all management unit species.

DATES: Comments on Amendment 2 must be received on or before May 13, 2011.

ADDRESSES: You may submit comments on the NOA identified by "RIN 0648-BA35", by any of the following methods:

- *Federal e-Rulemaking portal:*

<http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

- *Fax:* (562) 980-4047.

Instructions: All comments received are part of the public record and generally will be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft EA and RIR prepared for this proposed rule are available at <http://swr.nmfs.noaa.gov/> or may be obtained from Rodney R. McInnis (*see ADDRESSES*).

Copies of Amendment 2, which includes an Environmental Assessment/Regulatory Impact Review, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220-1384.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, at 760-431-9440, ext. 303 or Kit Dahl, Pacific Fishery Management Council, at 503-820-2422.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (MSA), 18 U.S.C. 1801 *et seq.*, requires each regional fishery management council to submit any amendment to an

FMP to NMFS for review and approval, disapproval, or partial approval. The MSA also requires that NMFS, upon receiving an amendment to an FMP, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the public comment period in determining whether to approve, disapprove, or partially approve Amendment 2.

Amendment 2 would revise the HMS FMP to ensure it is consistent with advisory guidelines published at 50 CFR 600.310. The guidelines describe fishery management approaches to meet the objectives of National Standard 1 (NS1) of the MSA, Section 301. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended the MSA to include new requirements for annual catch limits (ACLs) and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. NMFS revised NS1 Guidelines in response to these changes in the MSA. The NS1 Guidelines were published in the **Federal Register** on January 16, 2009. The Guidelines are intended to meet the objectives of NS1 by providing guidance on:

1. Specifying maximum sustainable yield (MSY) and optimal yield (OY);
2. Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes that are part of a fishery;
3. Preventing overfishing and achieving OY, incorporation of scientific and management uncertainty in control rules, and adaptive management using ACLs and measures to ensure accountability (AM); and
4. Rebuilding stocks and stock complexes.

The revisions to the NS1 guidelines also dictate that fisheries undergoing overfishing have ACLs and AMs in place to end overfishing by 2010, and all fisheries to have ACLs and AMs in place to prevent or end overfishing by 2011, and beyond. However, a stock or stock complex may not require an ACL and AMs if it qualifies for an MSRA-defined exception. The most important of these with respect to highly migratory species is the so-called "international exception" described at § 660.310(h)(2)(ii) for stocks managed under an international agreement to which the United States is a party. The NS1 Guidelines also have other provisions related to classifying stocks in the FMP.