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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140115049-4273-01]

RIN 0648-XD092

Atlantic Highly Migratory Species; 2014 Atlantic Bluefin Tuna Quota Specifications

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

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

SUMMARY: NMFS proposes 2014 quota specifications for the Atlantic bluefin tuna (BFT) fisheries and seeks comments from the public on the allocation of available underharvest among the fishing categories under certain circumstances. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before [insert date 30 calendar days after the date of publication in the FEDERAL REGISTER]. NMFS will host an operator-assisted public hearing conference call and webinar on April 16, 2014, from 2 to 4 p.m. EDT, providing an opportunity for individuals from all geographic areas to participate. See SUPPLEMENTARY INFORMATION for further details.

ADDRESSES: You may submit comments on this document, identified by “NOAA-NMFS-2014-0008,” by either of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0008](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0008), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Sarah McLaughlin, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930
- Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

The public hearing conference call information is phone number 1-800-619-7481; participant passcode 5246202. Participants are strongly encouraged to log/dial in 15

minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar, go to:

<https://noaa-meets.webex.com/noaa-meets/j.php?MTID=m1c122efdcf020f0807ff335b43858362>,

enter your name and email address, and click the “JOIN” button. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

Supporting documents such as the Environmental Assessments and Fishery Management Plans described below may be downloaded from the HMS website at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/). These documents also are available by sending your request to Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 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. As an active member of ICCAT, the United States implements binding ICCAT recommendations. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out 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, NMFS.

#### 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 a

framework process 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 (TAC) of western Atlantic BFT, and since 1991 ICCAT has recommended specific limits (quotas) for the United States and other Contracting Parties with BFT fisheries.

On October 2, 2006, NMFS published a final rule in the Federal Register (71 FR 58058), 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 2006 Consolidated HMS FMP maintained an allocation scheme, established in the 1999 FMP, for dividing the baseline annual U.S. BFT quota among several domestic quota categories based on gear type (i.e., Harpoon, Purse Seine, Angling, General, Longline, and Trap categories).

The baseline quota has remained unchanged from 2013, and the 2014 BFT quota specifications are necessary to adjust the annual U.S. baseline BFT quota to account for any underharvest or overharvest of the adjusted 2013 U.S. BFT quota. Preliminary information indicates an underharvest of the 2013 adjusted BFT quota. Final 2013 landings and the preliminary 2013 pelagic longline dead discard estimate will be available in late spring 2014.

In May 2011, NMFS prepared an Environmental Assessment (EA)/Regulatory Impact Review and Final Regulatory Flexibility Analysis for a final rule that: (1) implemented and allocated the U.S. BFT quota for 2011 and for 2012, (2) adjusted the

2011 U.S. quota and subquotas to account for unharvested 2010 quota allowed to be carried forward to 2011 and to account for a portion of the estimated 2011 dead discards up front, and (3) implemented several other BFT management measures (76 FR 39019, July 5, 2011). Although it is not necessary to prepare an EA for quota specifications alone (in accordance with the approach described in the 2006 Consolidated HMS FMP), NMFS prepared a Supplemental EA for the 2013 BFT Quota Specifications (78 FR 36685, June 19, 2013) to present updated information regarding the affected environment, including information from a 2012 ICCAT stock assessment for BFT, among other things. ICCAT conducted a stock assessment update in 2013, although the results were not substantively different than those of the 2010 and 2012 assessments, which were analyzed in the May 2011 EA and June 2013 Supplemental EA.

NMFS is developing the 2014 specifications in accordance with the annual framework procedures set forth in the Environmental Impact Statement/ Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) prepared for the 2006 Consolidated HMS FMP. These specifications are supported by the EA/RIR/FRFA for the Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures (May 2011), and the 2013 Supplemental EA, as the ICCAT-recommended baseline quota has not changed from the 2011 level and there was no new information presented in 2013 that indicates changes in BFT stock status with respect to 2011 or changes in the effects of harvesting that quota on the environment.

#### 2010 ICCAT Recommendation and 2011 Implementing Rule

At its 2010 annual meeting, ICCAT recommended a Total Allowable Catch (TAC) of 1,750 mt annually for 2011 and for 2012, inclusive of dead discards (ICCAT

Recommendation 10-03—Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program). This amount of catch was expected to allow for continued stock growth under low and high stock recruitment scenarios developed by ICCAT’s scientific body at the 2010 BFT stock assessment. The U.S. share of the TAC for 2011 and 2012, adjusted for two specific bycatch allocations, was 54.02 percent, which resulted in a baseline quota of 923.7 mt. The total annual U.S. quota, including an additional 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), was 948.7 mt. ICCAT limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country’s quota.

Through the 2011 final rule implementing the BFT quotas and Atlantic tuna fisheries management measures (76 FR 39019, July 5, 2011), NMFS implemented the 923.7-mt baseline quota consistent with ICCAT Recommendation 10-03 and set the domestic BFT fishing category subquotas per the allocation percentages established in the 2006 Consolidated HMS FMP and implementing regulations (71 FR 58058, October 2, 2006). The baseline quota and category subquotas are codified and remain effective until changed (for instance, if any new ICCAT BFT TAC recommendation is adopted).

#### 2012 and 2013 ICCAT Recommendations

In both its 2012 recommendation (Recommendation 12-02—Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program) and its 2013 recommendation (Recommendation 13-09—Recommendation by ICCAT Amending the Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program), ICCAT recommended a one-year rollover of the

1,750-mt TAC. This amount is expected to allow for continued stock growth under both the low and high stock recruitment scenarios, considering the results of the 2013 ICCAT BFT stock assessment update. The annual U.S. baseline quota for 2014 continues to be 923.7 mt, and the annual total U.S. quota, including 25 mt to account for bycatch related to pelagic longline fisheries in the NED, continues to be 948.7 mt.

Although the baseline quota is unchanged this year because the 2013 ICCAT recommendation included the same TAC as the prior recommendation, NMFS is proposing underharvest adjustments as necessary for the 2014 fishing year through quota specifications, consistent with the 2006 Consolidated HMS FMP. Until the final specifications for 2014 are effective, the existing BFT base quotas continue to apply as codified. (See Table 1, second column.) As mentioned above, ICCAT limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota. Applied to the 2013 catch figures, this provision limits the amount of U.S. underharvest that may be carried forward this year to 94.9 mt (10 percent of the 948.7-mt total U.S. quota).

Recommendation 13-09 also calls on the United States, Canada, and Japan to prepare research plans to develop fishery-independent indices of abundance for BFT and share them by April 30, 2014, for scientific review and comments. ICCAT scientists from the western BFT Contracting Parties will exchange views on the plans prior to the second meeting of the Working Group of Fisheries Managers and Scientists in Support of the Western Atlantic Bluefin Tuna Stock Assessment ("Working Group"), planned for summer 2014, for their earliest implementation. NMFS does not currently have information about the amount of U.S. quota that may be needed for related research

activity in 2014, but would likely account for any such landings within the Reserve category. NMFS will provide further details, as appropriate, when available.

#### Accounting for Dead Discards

All ICCAT parties, including the United States, must report BFT landings data and BFT dead discard estimates to ICCAT annually. Currently, the best available annual estimate of U.S. dead discards that could be expected in 2014 is based on the 2012 estimate of 205.8 mt for the pelagic longline fishery and the observed 2013 dead discards of 13.7 mt for the purse seine fishery, totaling 219.5 mt. The purse seine observer data were gathered pursuant to ATCA to meet the requirements of an ICCAT recommendation. Using this amount as a proxy for estimated 2014 dead discards for the proposed action is appropriate because it is the best available and most complete information that NMFS currently has regarding dead discards and is consistent with the established protocol for dead discard accounting in the regulations. When the 2013 BFT pelagic longline dead discard estimate becomes available (late spring 2014), NMFS will use that estimate along with other available information about discards, including observed discards, in the final specifications and will report it to ICCAT along with total 2013 BFT landings.

Data regarding U.S. BFT dead discards are available only for the pelagic longline and purse seine fisheries for 2013. Estimates are not available for other gear types and fishing sectors that are not observed at sufficient levels for category-wide estimation and direct data are not available for trips that are not observed or for fisheries that do not report via a logbook. However, bycatch and bycatch mortality of BFT by vessels using



handgear are considered to be relatively low because the gear is actively tended and fish can be released alive.

#### 2011 through 2013 Quota Specifications

In the annual specifications for 2011 through 2013, NMFS took the proactive measure of accounting for half of the dead discard estimate “up front” (i.e., at the beginning of the fishing year). For those years, dead discard information was available only from the pelagic longline fishery. Thus, NMFS deducted that portion of the dead discard estimate directly from the Longline category quota. In the 2011 specifications, NMFS applied half of the 2010 underharvest that was allowed to be carried forward to the Longline category and maintained the other half in the Reserve category. This was intended to provide maximum flexibility in accounting for 2011 landings and dead discards.

In 2012 and 2013, NMFS proposed the same method of distributing the underharvest that was allowed to be carried forward to the following year. However, in both 2012 and 2013, NMFS closed the pelagic longline fishery to BFT retention by the time that the specifications were finalized and, therefore, ultimately provided a larger portion to the Longline category in the final rule to account for actual BFT landings. Specifically, in 2012, NMFS closed the Longline category fishery to BFT retention in the southern area on May 29 (77 FR 31546, May 29, 2012), and in the northern area on June 30 (77 FR 38011, June 26, 2012), for the remainder of 2012, because landings had met the codified subquotas for those areas. Given that the incidental Longline fishery for BFT was closed, NMFS accounted fully for those landings in the final rule by applying 76.2 of the available 94.9-mt underharvest to the Longline category (resulting in an

adjusted Longline category subquota of 78.4 mt, not including the separate 25-mt allocation for the Northeast Distant gear restricted area) and maintaining the remaining underharvest (18.7 mt) in the Reserve category (77 FR 44161, July 27, 2012). Providing this amount to the Longline category allowed NMFS to adjust the Longline South and Longline North subquotas to the amounts actually taken in those areas at the time of the closure, and to provide greater transparency than year-end accounting would.

In 2013, NMFS closed the southern and northern areas effective June 25 and applied all of the 2012 underharvest that could be carried forward to 2013 (i.e., 90.9 mt) to the Longline category, resulting in an adjusted Longline category subquota of 46 mt ( $74.8 \text{ mt} - 119.75 \text{ mt} + 90.9 \text{ mt} = 46 \text{ mt}$ ), not including the separate 25-mt allocation for the Northeast Distant gear restricted area (78 FR 36685, June 19, 2013). For the last 3 years, NMFS has maintained all of the directed fishing categories at their baseline quotas.

#### 2014 Quota Specifications

The 2014 BFT quota specifications NMFS proposes here are necessary to adjust the current annual U.S. baseline BFT quota to account for underharvest of the adjusted 2013 U.S. BFT quota. Based on preliminary data available as of February 10, 2014, BFT landings in 2013 totaled approximately 518 mt. Adding the 219.5-mt estimate of dead discards results in a preliminary 2013 total catch of 737.5 mt, which is 306.1 mt less than the amount of quota (inclusive of dead discards) allowed under ICCAT Recommendation 12-02, which applied in 2013 (i.e., 948.7 mt plus 94.9 mt of 2012 underharvest carried forward to 2013, totaling 1,043.6 mt). ICCAT limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a

country's quota, which limits the amount of 2013 U.S. underharvest that may be carried forward to 2014 to 94.9 mt.

For 2014, NMFS proposes to account up front (i.e., at the beginning of the fishing year) for half of the expected dead discards for 2014, using the best estimate of dead discards, from the Longline and Purse Seine category subquotas, as applicable. NMFS proposes to apply the full amount of underharvest that is allowed to be carried forward to 2014 to the Longline category. In contemplating how to account for dead discards and allocate the underharvest that is allowed to be carried forward in these 2014 proposed specifications, NMFS has considered the operational issues facing the pelagic longline fishery as the fleet continues directed fishing operations for swordfish and other tunas. This includes the possibility that deducting half of the estimate of dead discards from the baseline Longline category subquota would result in little to no quota for that category for 2014 prior to application of any available underharvest. Another consideration is the possibility that NMFS may need to close the Longline category fishery to BFT retention based on codified quotas, as was the case in 2012 and 2013, prior to or concurrent with finalizing the quota specifications. In preparing the quota specifications for the last few years, NMFS has balanced the need of the pelagic longline fishery to continue fishing for swordfish and Atlantic tunas with the need of directed BFT fisheries participants to receive their base quota.

Specifically, NMFS would deduct half of the pelagic longline dead discard estimate of 205.8 mt (i.e., 102.9 mt) from the 2014 baseline Longline category subquota of 74.8 mt and apply the 94.9 mt allowed to be carried forward to 2014 to the Longline category, for an adjusted Longline subquota of 66.8 mt (i.e.,  $74.8 - 102.9 + 94.9 = 66.8$

mt), not including the 25-mt allocation set aside by ICCAT for the NED. For the Purse Seine category, NMFS would deduct half of the category's dead discard estimate from the baseline Purse Seine category subquota of 171.8 mt for an adjusted quota of 164.9 mt (i.e.,  $171.8 \text{ mt} - 6.9 \text{ mt} = 164.9 \text{ mt}$ ). The adjusted Longline category subquota of 66.8 mt would be further subdivided in accordance with the 2006 Consolidated HMS FMP (i.e., allocation of no more than 60 percent to the south of  $31^{\circ}$  N. latitude) as follows: 26.7 mt to pelagic longline vessels landing BFT north of  $31^{\circ}$  N. latitude, and 40.1 mt to pelagic longline vessels landing BFT south of  $31^{\circ}$  N. latitude. NMFS would account for landings under the 25-mt NED allocation separately from other Longline category landings.

For the handgear categories, as well as the Trap category (in which BFT may be caught incidentally), NMFS is proposing the baseline BFT subquotas (i.e., the allocations that result from applying the scheme established in the 2006 Consolidated HMS FMP to the baseline U.S. BFT quota).

Thus, in accordance with ICCAT Recommendation 13-09, the 2006 Consolidated HMS FMP allocation scheme for the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS proposes quota specifications for the 2014 fishing year as follows: General category – 435.1 mt; Harpoon category – 36 mt; Purse Seine category – 164.9 mt; Angling category – 182 mt; Longline category – 66.8 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 23.1 mt. These allocations are shown in Table 1.

NMFS will make any necessary adjustments to the 2014 specifications in the final rule after considering updated 2013 landings and dead discard information, as well as public comment. It is important to note that NMFS and ICCAT have separate schedules and approaches for accounting for landings and dead discards. At the beginning of the year, NMFS accounts proactively for half of the best estimate of dead discards, whereas total 2014 U.S. landings and dead discards will be accounted for at the end of the year and reported to ICCAT in 2015. ICCAT usually assesses quota compliance at its annual meeting in November by comparing the prior year's landings and reported dead discards against the adjusted U.S. quota. At the 2014 ICCAT annual meeting, ICCAT will compare actual U.S. 2013 landings and dead discards against the total 2013 adjusted U.S. quota of 1,043.6 mt (i.e., the 948.7-mt base quota for 2013, plus a maximum of 94.9 mt allowed to be carried forward from 2012 to 2013, if available), to determine the United States' compliance with 2013 ICCAT recommendations.

#### Relation to Other Rulemaking

From 2007 through 2010, there were substantial underharvests of some of the commercial BFT subquotas. Consistent with the 2006 Consolidated HMS FMP and its implementing regulations, NMFS provided the Longline category a substantial portion of the prior year's U.S. underharvest that was allowed to be carried forward (limited to 50 percent of the total U.S. quota at that time) during the annual specifications process at the beginning of the fishing year. This provided quota sufficient for the pelagic longline fleet to operate for the entire fishing year while also accounting for dead discards "up front," using the best available estimate of anticipated dead discards. NMFS was also able to increase the directed categories' quotas and the Reserve category quota using available

underharvest. Starting in 2011, ICCAT reduced the amount of underharvest that could be carried forward to 10 percent of a country's total quota, which resulted in insufficient quota available to maintain this approach.

NMFS considers the specifications approaches taken in 2011 through 2013 and proposed here as a transition from the method used for 2007 through 2010, as NMFS continues to develop Amendment 7 to the 2006 Consolidated HMS FMP. Among other things, Amendment 7 would reallocate BFT quota among categories in a way to more accurately reflect annual fishery operations and needs while decreasing bycatch in the non-directed fisheries. This amendment will address related BFT fishery management issues consistent with the need to end overfishing and rebuild the stock, including revisiting quota allocations; reducing and accounting for dead discards; adding or modifying time/area closures or gear-restricted areas; and improving the reporting and monitoring of dead discards and landings in all categories. NMFS published the proposed rule for Amendment 7 on August 21, 2013 (78 FR 52032). Depending on the management measures implemented in the Amendment 7 final rule, the quota specifications process may be substantially different in upcoming years. The extended comment period for the proposed rule ended January 10, 2014. NMFS anticipates publishing a final rule to implement Amendment 7 in mid-2014, with implementation dates varying by topic.

In the meantime, management of the BFT fishery continues under the current Consolidated HMS FMP, implementing regulations, and ICCAT Recommendations. In November 2014, ICCAT will renegotiate the western Atlantic bluefin tuna recommendation for 2015.

Table 1. Proposed 2014 Atlantic Bluefin Tuna Quotas and Quota Specifications (in metric tons)

Category (% Share of Baseline Quota)	Baseline Allocation (per Current ICCAT Recommendation and the 2006 Consolidated HMS FMP Allocations)	2014 Quota Specifications		
		Dead Discard Deduction	2013 Underharvest to Carry Forward to 2014 (94.9 mt Total)	Adjusted 2014 Fishing Year Quota
Total (100)	923.7 <sup>1</sup>			908.8
Angling (19.7)	182.0 <u>SUBQUOTAS:</u> 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			182.0 <u>SUBQUOTAS:</u> 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
General (47.1)	435.1 <u>SUBQUOTAS:</u> Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6			435.1 <u>SUBQUOTAS:</u> Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6
Harpoon (3.9)	36.0			36.0
Purse Seine (18.6)	171.8	-6.9 <sup>2</sup>		164.9
Longline (8.1)	74.8 <u>SUBQUOTAS:</u> North (-NED) 29.9 NED 25.0* South 44.9	-102.9 <sup>3</sup>	+94.9	66.8 <u>SUBQUOTAS:</u> North (-NED) 26.7 NED 25.0* South 40.1
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1			23.1

<sup>1</sup> 25-mt ICCAT set-aside to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

<sup>2</sup> (1/2 of 2013 observed purse seine dead discards of 13.7 mt as estimate for 2014)

<sup>3</sup> (1/2 of 2012 pelagic longline dead discard estimate of 205.8 mt)

### Request for Comments

NMFS solicits comments on this proposed rule through [insert date 30 calendar days after the date of publication in the FEDERAL REGISTER]. See instructions in ADDRESSES section above. NMFS specifically invites public comment on the proposed allocation of the anticipated underharvest (currently estimated to be limited to the maximum of 94.9 mt), as well as possible allocation approaches should the amount that can be carried forward need to be reduced. If the final 2013 landings and dead discard information for 2013 result in a total of greater than 948.7 mt, but less than the adjusted 2013 U.S. BFT quota of 1,043.6 mt, then the amount of 2013 underharvest that the United States may carry forward to 2014 would need to be reduced from 94.9 mt accordingly. Given the amount of dead discards the United States has reported to ICCAT in the last few years (ranging from 122 to 206 mt), NMFS considers this potential situation to be unlikely, as the dead discard estimate would need to be approximately 430 mt. At this point, NMFS does not envision needing to adjust the baseline subquotas for the directed handgear fishing categories and Trap category.

If the complete 2013 landings and dead discard information exceed 1,043.6 mt, NMFS may need to take further action, consistent with the BFT quota adjustment regulations and ICCAT recommendations, and the United States may be subject to adjustment of the U.S. BFT quota. NMFS considers this potential situation to be very unlikely, as the dead discard estimate would need to be approximately 525 mt. To address the possibility of overharvest of the adjusted U.S. quota, NMFS requests public comment on potential regulatory options to consider for the final 2014 quota and



subquotas. For example, the Reserve category quota could be reduced as necessary, or the overall 2014 BFT quota could be reduced, which would affect all category subquotas.

#### Public Hearing Conference Call

NMFS will hold a public hearing conference call and webinar on April 16, 2014, from 2 p.m. to 4 p.m. EDT, to allow for an additional opportunity for interested members of the public from all geographic areas to submit verbal comments on the proposed quota specifications.

The public is reminded that NMFS expects participants at public hearings and on conference calls to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting.

#### Classification

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 is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., the Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasoning for this certification is as follows:

These annual BFT quota specifications (effective January 1 through December 31, 2014) are necessary to implement ICCAT recommendations, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. Under ATCA, the United States must promulgate regulations as necessary and appropriate to implement binding recommendations of ICCAT.

On July 5, 2011, NMFS published a final rule (76 FR 39019) that modified the U.S. baseline quota to 923.7 mt to implement ICCAT Recommendation 10-03 (Supplemental Recommendation by ICCAT concerning the Western Atlantic Bluefin Tuna Rebuilding Program) and set the category subquotas per the allocation percentages established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP, 71 FR 58058, October 2, 2006). At its 2013 annual meeting, ICCAT recommended a 1-year rollover of the annual Total Allowable Catch (TAC) of 1,750 mt that was set for 2011, 2012, and 2013 (ICCAT Recommendation 13-09).

Although the baseline quota is unchanged this year because the 2013 ICCAT recommendation included the same TAC as the prior recommendation, NMFS will make underharvest and overharvest adjustments as allowable for the 2014 fishing year through quota specifications, consistent with the 2006 Consolidated HMS FMP and the current

ICCAT recommendation that carryover not exceed 10 percent of a country's baseline quota (94.9 mt for the United States). Initial estimates indicate that the actual underharvest of the 2013 U.S. quota exceeds 94.9 mt, although no more than that amount would be available to carry forward. The proposed quota specifications were developed in accordance with the framework process set forth in the Environmental Impact Statement/Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) prepared for the 2006 Consolidated HMS FMP and is supported by the Environmental Analysis/RIR/FRFA for the Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures (May 2011), and Supplemental EA (June 2013) (see ADDRESSES).

As summarized in the 2013 Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species, there were approximately 8,029 commercial Atlantic tunas or Atlantic HMS permits in 2013, as follows: 3,783 in the Atlantic Tunas General category; 14 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 252 in the Atlantic Tunas Longline category; 7 in the Atlantic Tunas Trap category; and 3,968 in the HMS Charter/Headboat category. This constitutes the best available information regarding the universe of permits and permit holders recently analyzed.

This proposed rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. In general, the HMS Charter/Headboat category permit holders can be regarded as small businesses, while HMS Angling category permit holders are typically obtained by individuals who are not considered small entities for purposes of the RFA. The SBA has

established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than \$7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. *Id.* at 37400 (Table 1). NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. The new size standards do not affect analyses prepared for this action.

The current ICCAT recommendation requires dead discards to be included within countries' allocations. Category-wide data regarding U.S. BFT dead discards are available only for the pelagic longline and purse seine fisheries for 2013. Estimates are not available from other gear types and fishing sectors that are not observed at sufficient levels for category-wide estimation and direct data are not available for trips that are not observed or for fisheries that do not report via a logbook. The United States is not required by ICCAT or current regulations to account for the total amount of dead discards

until the end of the fishing season. However, in the annual specifications for 2011 through 2013, NMFS took the proactive measure of accounting for half of the dead discard estimate “up front,” (i.e., at the beginning of the fishing year) and deducting that portion directly from the Longline category quota.

The current ICCAT recommendation limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country’s quota. This restriction limits the amount of underharvest that may be carried forward to 94.9 mt (10 percent of the 948.7-mt total U.S. quota). In the 2011 specifications, NMFS applied half of the 2010 underharvest that was allowed to be carried forward to the Longline category and maintained the other half in the Reserve category. This was intended to provide maximum flexibility in accounting for 2011 landings and dead discards. In 2012 and 2013, NMFS proposed the same method of distributing the underharvest that was allowed to be carried forward to the following year. However, in both 2012 and 2013, NMFS closed the pelagic longline fishery to BFT retention by the time the specifications were finalized and, therefore, ultimately provided a larger portion to the Longline category in the final rule to account for actual BFT landings (placing the remainder in the Reserve category in 2012). For the last 3 years, NMFS has maintained the directed fishing categories at their baseline quotas.

For the 2014 quota specifications, NMFS similarly proposes to deduct half of the dead discards up front from both the Longline category and Purse Seine category, to carry the 94.9 mt forward to 2014, and to apply that amount in the same manner as finalized in 2013, i.e., to the Longline category. This would provide the Longline category a reasonable amount of quota for 2014 and would reduce potential “regulatory

discards” that may otherwise result if closure of the Longline category fishery to BFT retention is necessary mid-year. The directed handgear fishing categories and the Trap category (in which BFT may be caught incidentally) would continue to receive their baseline subquotas. NMFS will make any necessary adjustments to the 2014 specifications in the final rule after considering updated 2013 landings information and the dead discard estimate for 2013, which should be available in late spring 2014.

The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the proposed 2014 subquotas (i.e., 2013 prices for the General, Harpoon, and Longline/Trap, and Purse Seine categories). The 2014 subquotas could result in estimated gross revenues for each category, if finalized and fully utilized, as follows: General category: \$6.9 million (435.1 mt \* \$7.19/lb); Harpoon category: \$535,700 (36 mt \* \$6.75/lb); Purse Seine category: \$2.3 million (164.9 mt \* \$6.20/lb); Trap category: \$11,700 (0.9 mt \* \$5.92/lb); and Longline category: \$872,000 (66.8 mt \* \$5.92/lb). Estimated potential 2014 revenues on a per vessel basis, considering the number of permit holders listed above and the proposed subquotas, could be \$1,824 for the General category; \$38,264 for the Harpoon category; \$3,460 for the Longline category; \$460,000 for the Purse Seine category; and \$1,671 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

This proposed rule would not change the U.S. Atlantic BFT baseline quota, amount of carryover, or implement any new management measures not previously considered. The baseline quota and category subquotas are codified and remain effective until changed (for instance, if any new ICCAT western Atlantic bluefin tuna TAC

recommendation is adopted). Thus, the affected entities will not experience any negative, direct economic impacts as a result of this rule.

The annual specification process that this proposed rule follows, including application of underharvests and overharvests, is described in detail in Chapters 2 and 4 of the 2006 Consolidated HMS FMP. Because the economic impacts of carrying forward the allowable unharvested quota are expected to be generally positive, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

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

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