

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

### § 73.202 [Amended]

■ 1. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Crested Butte, Channel 246C3.

■ 2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Adams, Channel 224A.

■ 3. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Channel 241A at Ashtabula.

■ 4. Section 73.202(b), the Table of FM allotments under Pennsylvania, is amended by adding Lawrence Park, Channel 224A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05-4345 Filed 3-4-05; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 05-414; MB Docket No. 02-72, RM-10399; RM-10639; and RM-10640]

### Radio Broadcasting Services; East Harwich, Nantucket, and South Chatham, MA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Brewster Broadcasting Co. in its counterproposal to a petition for rulemaking by John Garabedian, allots Channel 254A at East Harwich, Massachusetts, as the community's first local FM service. Channel 254A can be allotted to East Harwich, Massachusetts, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 km (3.5 miles) southeast of East Harwich. The coordinates for Channel 254A at East Harwich, Massachusetts, are 41-40-33 North Latitude and 69-58-03 West Longitude.

**DATES:** Effective April 4, 2005.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report*

*and Order*, MB Docket No. 02-72, adopted February 16, 2005, and released February 18, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding East Harwich, Channel 254A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05-4346 Filed 3-4-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 041203341-5047-02; I.D. 072304B]

RIN 0648-AR86

### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications, General Category Effort Controls, and Catch-and-Release Provision

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces the final initial 2004 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories, to set General category effort controls, and to establish a catch-and-release provision for recreational and commercial BFT handgear vessels during a respective quota category closure. 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).

**DATES:** The final rule is effective from April 4, 2005.

**ADDRESSES:** Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the 1999 Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan (1999 FMP) may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division website at [www.nmfs.noaa.gov/sfa/hmspg.html](http://www.nmfs.noaa.gov/sfa/hmspg.html) or at the Federal e-Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at (978) 281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

### Background

Background information about the need for the final initial BFT quota specifications, General category effort controls, and establishment of a catch-and-release provision was provided in the preamble to the proposed rule (69 FR 71771, December 10, 2004), and is not repeated here. Therefore, by this final rule, NMFS announces the final

initial BFT quota specifications, announces the applicable General category effort controls, and implements a catch-and-release provision for recreational and commercial BFT handgear vessels during a respective quota category closure.

### Changes From Proposed Rule

#### *Angling Category Landings*

Two corrections to BFT recreational landing estimates contained in the proposed rule have been incorporated in this final rule. The first correction adjusts the 2002 BFT recreational landings estimate from 651.1 mt, to 641.6 mt; a difference of minus 9.5 mt. Also, the 2003 BFT recreational landings estimate of 411.7 mt has been corrected to 410.7 mt, a difference of minus 1.0 mt. NMFS made these corrections per a review of landings estimates made in the 2002–2003 U.S. Recreational Fishery Landings Estimates for White Marlin, Blue Marlin, and Bluefin Tuna Report, available at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/).

#### *Restricted Fishing Days*

For the 2004 fishing year, NMFS proposed a series of blocks of restricted fishing days (RFDs) to extend the General category for as long as possible through the October through January time-period. The coastwide General category closed on January 4, 2005 (70 FR 302, January 4, 2005) and therefore the proposed RFDs were not needed.

#### 2004 Final Initial Quota Specifications

In accordance with the 2002 ICCAT Recommendation, the ICCAT Recommendation regarding the dead discard allowance, the 1999 FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS establishes final initial quota specifications for the 2004 fishing year as follows: General category — 659.0 mt; Harpoon category — 81.4 mt; Purse Seine category — 389.4 mt; Angling category — 76.5 mt; Longline category — 171.2 mt; and Trap category — 2.3 mt. Additionally, 36.6 mt will be allocated to the Reserve category for inseason allocations, including providing for a late season General category fishery, or to cover scientific research collection and potential overharvest in any category except the Purse Seine category. The overall final initial BFT quota for the 2004 fishing year equals 1416.4 mt.

Based on the above final initial specifications, the Angling category quota of 76.5 mt will be further subdivided as follows: School BFT —

24.6 mt, with 9.5 mt to the northern area (north of 39° 18' N. latitude), 10.7 mt to the southern area (south of 39° 18' N. latitude), plus 4.4 mt held in reserve; large school/small medium BFT — 49.7 mt, with 23.5 mt to the northern area and 26.2 mt to the southern area; and large medium/giant BFT — 2.2 mt, with 0.7 mt to the northern area and 1.5 mt to the southern area.

The 2002 ICCAT Recommendation included an annual 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the vicinity of the management area boundary, defined as the Northeast Distant statistical area (NED) (68 FR 56783, October 2, 2003). This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance to the North/South allocation percentages mentioned below. Thus, the Longline category quota of 171.2 mt will be subdivided as follows: 58.2 mt to longline vessels landing BFT north of 31° N. latitude; 49.2 mt to longline vessels land BFT harvested from the NED; and 63.8 mt to longline vessels landing BFT south of 31° N. latitude.

### General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the 1999 FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The 1999 FMP divides the annual General category quota into three time-period subquotas. Each time-period and percentage of General category quota allocated to that time-period are as follows: June-August, 60 percent; September, 30 percent; and for October-January, 10 percent. These percentages are applied to the final initial 2004 coastwide General category quota of 659.0 mt, minus 10.0 mt reserved for the New York Bight fishery. Therefore, of the available 649.0 mt coastwide quota, 389.4 mt are available in the period beginning June 1 and ending August 31; 194.7 mt are available in the period beginning September 1 and ending September 30; and 64.9 mt are available in the period beginning October 1 and ending January 31, 2005.

### 2004 Fishing Year Inseason Adjustment Summary

During the 2004 fishing year, NMFS conducted two inseason quota transfers using the authority under the implementing regulations at 50 CFR § 635.28(a)(8). For each inseason transfer, NMFS determined it was warranted based on the consideration of the criteria governing quota transfers between categories, the 2004 proposed BFT specifications including carryover adjustments from prior years and an assessment of the commercial and recreational landings data to date. The first inseason adjustment transferred 223.1 mt of General category quota to the Angling category and transferred a combined quota of 161.9 mt from the General, Harpoon, and Incidental Longline categories to the Reserve category (69 FR 71732, December 10, 2004). The second inseason adjustment transferred 100 mt from the Purse seine category to the Reserve category (70 FR 302, January 4, 2005). The result of these inseason transfers is an adjustment of any remaining available quota from these final initial specifications.

### Catch and Release Provision

NMFS implements a rule change to allow vessels participating in the BFT recreational and commercial handgear fisheries to catch and release BFT after their respective quota categories have closed. This provision addresses concerns that requiring BFT to be tagged, once a closure has taken place, may lead to unnecessary post-release mortality associated with anglers who are inexperienced with proper tagging techniques and may improperly place the tag on the BFT, unintentionally killing or injuring the fish. This provision allows vessels owners/operators to tag-and-release BFT after a respective quota category closure has taken place, but would not require them to do so as part of a catch-and-release program.

### Comments and Responses

*Comment 1:* One commentor did not specifically address the substantive aspects of the proposed rule, but rather indicated general support for establishing marine sanctuaries, adopting the Pew Foundation reports' findings on overfishing, and concern over the fact that NMFS may be relying on biased information for conducting stock assessments.

*Response:* This final rule is designed to provide for the fair and efficient harvest of the BFT quota that is allocated to the United States by the

International Commission for the Conservation of Atlantic Tunas (ICCAT) and is consistent with the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and management Act. The final quota specifications divide the proportion of the overall western Atlantic bluefin tuna quota allotted to the United States among domestic categories. Time-period subquotas are a means of controlling fishing effort and are also included in this action. These measures are consistent with the BFT rebuilding program established in the 1999 FMP and implemented to achieve domestic management objectives. NMFS does use commercial logbook data to conduct stock assessments, however, fishery-independent data, intercept surveys, and results from scientific surveys are also employed to provide a more accurate representation of a stocks' population dynamics.

*Comment 2:* NMFS received a comment related to both this action and an ongoing amendment to the 1999 FMP that is currently in the pre-draft stage. The commentor believes that the Agency should allocate 150 metric tons to the December-January General category time-period subquota. This allocation would ensure extended fishing opportunities for General category fishermen in the south Atlantic.

*Response:* NMFS is considering several alternatives as part of the amendment to the 1999 FMP to address BFT management in general and specifically sub-quota allocation for BFT in the General category. It is a goal for NMFS and the 1999 FMP to ensure that fishing and economic opportunities are sustained for participants. The process for amending the 1999 FMP includes public comment, analyses of a full range of alternatives, and draft and final Environmental Impact Statements.

*Comment 3:* A commentor supported the elimination of the tag-and-release requirement for recreational fishermen after a season has closed.

*Response:* This action replaces the tag-and-release provision with a catch-and-release provision in order to reduce post-release mortality due to tagging by inexperienced anglers and increase fishing opportunities for recreational fishermen after a season has closed.

*Comment 4:* A commentor indicated support for the RFDs as proposed.

*Response:* NMFS implements RFDs as an effective means of slowing the pace of the winter fishery and extending available quota over a longer period of time. The coastwide General category BFT fishery closed on January 4, 2005 (70 FR 302, January 4, 2005) and

therefore the proposed RFDs were not needed.

*Comment 5:* A commentor expressed concern at the Agency's inability to capture and assess previous years' landings data for BFT in an accurate and efficient manner, compromising timely season openings and allocations. Specifically, the commentor stated that there are discrepancies in the methods used by NMFS' contracted field agents under the Large Pelagics Survey (LPS) when converting fish lengths to estimated fish weights. The commentor stated that these discrepancies resulted in the pre-mature closure of the November 2003 Angling category fishery which had significant economic consequences on state participants. The commentor suggested initiating a coast-wide tail tag monitoring program to address this issue.

*Response:* This past year, NMFS reviewed the 2002 estimates of U.S. recreational fishery landing of BFT, white marlin, and blue marlin reported to ICCAT. NMFS reviewed the data collection and estimation methods that were used to verify that the reported estimates were the most accurate that could be made with available 2002 data. NMFS also considered methods to be used for estimation of 2003 recreational fishery landings, as well as using those methods to produce landings estimates from the available 2003 recreational fishery data. A report summarizing findings of this review was made available on December 9, 2004. This report can be obtained at the HMS Management Division website located at [www.nmfs.noaa.gov/sfa/hms](http://www.nmfs.noaa.gov/sfa/hms). Based on the findings of this report, and consultations with the LPS contractor, methods of fish measurement and length/weight conversion will be further scrutinized. Proposals to implement an Atlantic-wide tail-tag monitoring program remain under discussion among coastal states and within NMFS and focus on issues regarding specifics of logistics and implementation as well as funding sources.

#### Classification

These final initial specifications, general category effort controls, and the catch-and-release provision are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (AA) has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the

proposed rule and submitted it to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this final rule. A summary of the Final Regulatory Flexibility Analysis (FRFA) is provided below.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. For the quota allocation alternatives, NMFS has estimated the average impact of the alternatives on individual categories and the vessels within those categories. As mentioned above, the 2002 ICCAT recommendation increased the BFT quota allocation to 1,489.6 mt. This increase, in comparison to pre-2002 levels, includes 77.6 mt to be redistributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed pelagic longline fisheries in the NED. In 2003, preliminary annual gross revenues from the commercial BFT fishery were approximately \$11.5 million. There are approximately 10,914 vessels that are permitted to land and sell BFT under four BFT quota categories. The four quota categories and their preliminary 2003 gross revenues are General (\$7,476,461), Harpoon (\$772,810), Purse seine (\$2,546,236), and Incidental Longline (\$635,498). Note that all dollars have been converted to 1996 dollars using the Consumer Price Index Conversion Factors for comparison purposes. The analysis for the FRFA assumes that all category vessels have similar catch and gross revenues. While this assumption may not be entirely valid, the analyses are sufficient to show the relative impact of the various preferred alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, three alternatives were considered: the No Action alternative, the final action that will allocate the ICCAT-recommended quota to domestic categories in accordance with the 2002 ICCAT recommendation and the 1999 FMP, and a slight variation of the final action, that also included a 25 mt limit on the amount of quota that can accumulate from year-to-year within the pelagic longline quota set-aside in the NED.

The no action alternative was rejected because it was not consistent with the purpose and need for this action, ATCA, and the 1999 FMP. It would maintain U.S. BFT quota levels at a scale and distribution similar to the 2002 fishing

year and would deny fishermen additional fishing opportunities as recommended by the ICCAT, an estimated \$1,000,000 in potential, additional gross revenues. The 2002 ICCAT quota recommendation specified a 1,489.6 mt total quota for the United States, a 102.6 mt increase from pre-2002 quota levels. Under ATCA, the United States is obligated to implement ICCAT-approved recommendations. The final action will increase the overall quota by 77.6 mt resulting in an approximate increase in gross revenues of \$750,000, and will also create a set-aside quota of 25 mt to account for incidental harvest of BFT in the NED by pelagic longline vessels, resulting in a potential increase in gross revenues of \$250,000. Unharvested quota from this set aside will be allowed to roll from one fishing year to the next. The final action is expected to have positive economic impacts for fishermen, because of the modest increase in quota. Under the slight variation of the final action, the annual specification process would limit the NED set-aside to 25 mt and would not take into account any unharvested set-aside quota from the prior fishing year. Unharvested quota would not be rolled over from the previous fishing year, nor would it be transferred or allocated to other domestic fishing categories. This alternative was rejected because it is not expected to have the same positive economic impacts as the final action, however it would allow for overall positive economic impacts for fishermen due to the increase in gross revenues associate with the 77.6 mt quota increase.

For the General category effort controls, two alternatives were considered: the alternative to designate RFDs according to a schedule published in the initial BFT specifications; and the selected no action alternative, which does not publish RFDs with the initial specifications, but would implement them during the season as needed. No other alternatives were considered as they would not have met the purpose and need for this issue. The no action alternative was selected due to the coastwide General category BFT fishery closing for the season on January 4, 2005 (70 FR 302). The economic impacts associated with this selected alternative would be considered neutral as the General category BFT fishery harvested, almost in entirety, the available quota for the 2004 fishing year. The economic impacts associated with the rejected alternative would also be considered neutral, as the final initial

specifications would have published after this fishery had closed.

For the catch-and-release provision, NMFS considered three alternatives: no action alternative (maintain the tag-and-release requirement once a handgear quota category has been closed), an alternative to disallow all fishing for BFT once a handgear quota category has been closed, and the final action which will allow vessels to catch-and-release BFT once a handgear quota category has been closed.

Although NMFS understands that recreational HMS fisheries have a large influence on the economies of coastal communities, even when vessels are engaged in tag-and-release or catch-and-release fishing, NMFS has little current information on the costs and expenditures of anglers or the businesses that rely on them. Based on conversations with representatives of the handgear sectors of the BFT fishery, NMFS has rejected the no action alternative because it would have slightly negative economic impacts. This assessment is attributed to vessel owner/operators, who are not comfortable tagging BFT, or those owner/operators who are unable to obtain a tagging kit in a timely fashion, not taking trips to pursue BFT. The second alternative was rejected because it would have even greater negative economic impacts by prohibiting vessels from taking trips targeting BFT after a quota is attained. The final action will have positive economic impacts on those associated with the BFT handgear fishery. This final action, will positively impact numerous economic aspects of the BFT handgear fishery due to the willingness of more vessel owner/operators to actively take trips targeting BFT after a closure has taken place. This final action will also allow for the tagging of BFT, but would not require owner/operators to do so.

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

NMFS prepared an Environmental Assessment (EA) for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA and other analytical documents prepared for this final rule, are available from NMFS via the Federal e-Rulemaking Portal (see ADDRESSES).

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

This final rule contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number

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

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is working on implementing the other RPMs and other measures in the 2004 BiOp. On August 12, 2004, NMFS published an Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further

reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as necessary, to implement any management measures that are required under the 2004 BiOp. The majority of the measures that will be implemented by this current rule are not expected to have adverse impacts. However, the 2002 ICCAT recommendation increased the BFT quota which may result in a slight increase in effort which could potentially increase the number of protected species interactions. Due to current restrictions on the BFT fishery and more specifically the pelagic longline fishery, NMFS does not expect this slight increase in effort to alter current fishing patterns.

The area in which this final action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. It is not anticipated that this final action will have any adverse impacts to EFH and, therefore, no consultation is required.

NMFS has determined that the list of actions in this final rule are consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). On December 10, 2004, the proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management

Act. As of February 11, 2005, NMFS has received six responses, all concurring with NMFS' consistency determination. Because no responses were received from other states, their concurrence is presumed.

**List of Subjects in 50 CFR Part 635**

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

Dated: March 1, 2005.

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

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

**PART 635—ATLANTIC HIGHLY  
MIGRATORY SPECIES**

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.23, paragraphs (a)(2) and (a)(4) are revised to read as follows:

**§ 635.23 Retention limits for BFT.**

\* \* \* \* \*

(a) \* \* \*

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

\* \* \* \* \*

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily

retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct catch-and-release or tag-and-release fishing for BFT under § 635.26.

\* \* \* \* \*

■ 3. In § 635.26, paragraph (a)(1) is revised to read as follows:

**§ 635.26 Catch and release.**

(a) \* \* \*

(1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a catch-and-release or tag-and-release program. When fishing under a tag-and-release program, vessel owner/operators should use tags issued or approved by NMFS. If a BFT is tagged, the tag information, including information on any previously applied tag remaining on the fish, must be reported to NMFS. All BFT caught under the catch-and-release or tag-and-release programs must be returned to the sea immediately with a minimum of injury.

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[FR Doc. 05-4378 Filed 3-4-05; 8:45 am]

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