



(c) *Primary constituent elements.* The primary constituent elements essential to the conservation of Cook Inlet beluga whales are:

(1) Intertidal and subtidal waters of Cook Inlet with depths <30 feet (MLLW) and within 5 miles of high and medium flow anadromous fish streams.

(2) Primary prey species consisting of four (4) species of Pacific salmon (Chinook, sockeye, chum, and coho), Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole.

(3) The absence of toxins or other agents of a type or amount harmful to beluga whales.

(4) Unrestricted passage within or between the critical habitat areas.

(5) The absence of in-water noise at levels resulting in the abandonment of habitat by Cook Inlet beluga whales.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 0907171140-91141-01]

RIN 0648-XQ38

#### Atlantic Highly Migratory Species; 2010 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 hearings.

**SUMMARY:** NMFS proposes 2010 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories. 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 January 4, 2010.

The public hearing dates are:

1. December 14, 2009, 3 p.m. to 5 p.m., Silver Spring, MD.

2. December 15, 2009, 3 p.m. to 5 p.m., Gloucester, MA.

**ADDRESSES:** You may submit comments, identified by "0648-XQ38", 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 the Portal <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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The hearing locations are:

1. Silver Spring - - NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

2. Gloucester - - NMFS, 55 Great Republic Drive, Gloucester, MA 01930. Supporting documents including the draft Supplemental 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.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 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).

## I. Background

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, 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.

The 2010 annual specifications are necessary to implement the 2008 ICCAT quota recommendation (ICCAT Recommendation 08–04) for BFT, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. The proposed rule would establish quota specifications consistent with the ICCAT Western Atlantic BFT rebuilding program by adjusting the ICCAT-recommended U.S. quota as necessary for the 2010 fishing year (January–December 2010) and distributing the quota (adjusted for underharvest) among the domestic fishing categories.

NMFS has prepared a draft Supplemental Environmental Assessment (SEA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) for this action, which would implement minor changes to the quotas implemented in the 2009 BFT Quota Specifications and Effort Controls (74 FR 26110, June 1, 2009). These quotas were analyzed in the Environmental Analysis/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) that accompanied the June 2009 action. A copy of the draft SEA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

NMFS plans to make daily retention limit adjustments, if and as needed, for the 2010 fishing year via **Federal Register** notices separate from the final 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.

## II. ICCAT Recommendation, Including Carryforward of Underharvest

At its 2008 meeting, ICCAT recommended the 2,100–mt western Atlantic BFT Total Allowable Catch (TAC) be reduced to 1,900 mt (including dead discards) for 2009, and to 1,800 mt (including dead discards) for 2010. These TACs are intended to achieve maximum sustainable yield, and would end overfishing as defined by the Magnuson-Stevens Act. From these TACs the following allocations were made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 95 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and, 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. These allocations are subtracted from the TAC (resulting in an ‘adjusted TAC’), and the adjusted TAC is allocated to certain ICCAT contracting parties. The resulting U.S. share of the adjusted TAC is 57.48 percent, or 1,009.9 mt, for 2009 and 952.4 mt for 2010. Accounting for the 25–mt NED allocation, the total U.S. quota allocation was 1,034.9 mt for 2009 and is 977.4 mt for 2010 (i.e., a decrease of 57.5 mt or 5.6 percent from the 2009 total U.S. quota).

The current ICCAT recommendation also retains an earlier-enumerated provision allowing a contracting party with a TAC allocation to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations. For the United States, the 15–percent limit on TAC allocation transfer equals 146.6 mt. Consistent with 50 CFR 635.27(a)(8), NMFS would consider several factors in deciding whether the United States would enter into an arrangement with another contracting party with a TAC allocation. These factors include, but are not limited to, the amount of quota to be transferred; the projected ability of U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year; the potential benefits of the transfer to U.S. fishing participants; potential ecological impacts; and the contracting party’s ICCAT compliance status. Should NMFS consider a transfer of U.S. quota to another qualified ICCAT contracting party, NMFS would publish a separate action in the **Federal Register**, in which NMFS would provide detail of the transaction considered, including information regarding the factors above.

Further, as a method for limiting fishing mortality on juvenile BFT, ICCAT has recommended a tolerance limit for the annual harvest of BFT measuring less than 115 cm to no more than 10 percent by weight of the total BFT quota for each Contracting Party and Cooperating Contracting Party, Entity or Fishing Entity (CPC) over the 2009–2010 period. NMFS implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches) as appropriate to not exceed the 10–percent limit over the 2–year period.

The 2008 ICCAT BFT Recommendation limits the amount of TAC allocation a CPC may carry over for 2010 to 50 percent of its initial TAC allocation (488.7 mt for the United

States). ICCAT Recommendation 08–04 also provides that, for 2010, Mexico will transfer a portion of its BFT underharvest to Canada, such that Canada's initial allocation is 480 mt, and that if such a transfer results in an initial Canadian allocation of less than 480 mt, then the United States would transfer sufficient BFT underharvest to Canada to bring Canada's initial 2010 allocation to 480 mt. At this time there is no indication that Mexico will not be able to provide the full transfer amount to Canada, and no U.S. quota transfer is currently under consideration.

Although landings estimates will not be complete until the end of the current calendar fishing year (December 31°, 2009), NMFS is planning to set quotas to be effective at the beginning of the fishing year, which reverted to a calendar year in 2008. This planning is possible because, based on commercial landings reports through October 21, 2009, and anticipated recreational landings estimates for 2009 (based on recent annual estimates), NMFS anticipates a large amount of 2009 quota underharvest, i.e., an amount that exceeds the ICCAT limitation on the carryforward of unharvested quota. Thus, for the purposes of this proposed rule and for the reasons described above, NMFS assumes that the United States will be able to carry forward the full 488.7 mt to 2010. Further information will be available later in the rulemaking, and adjustments may be made in the Final Rule.

### III. Domestic Allocations and Quotas

The 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years. The baseline percentage quota shares established in the 1999 FMP 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 proposed 2010 fishing year specifications would allocate the 2008 ICCAT-recommended quota allocation for the 2010 fishing year among these established domestic fishing categories, and would allocate 25 mt for bycatch related to directed longline fisheries in the NED.

Consistent with how NMFS implemented the 2009 BFT Quota Specifications, NMFS is proposing to establish the 2010 domestic baseline quota at the ICCAT-recommended level and to carry over the full amount of BFT underharvest allowed by ICCAT from the 2009 fishing year to the 2010 fishing year quota. The underharvest carryover would be distributed among the various categories as necessary to achieve the following goals: (1) ensure that the Longline category has sufficient quota to operate during the 2010 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 United States must report dead discard estimates to ICCAT annually, and account for this mortality as part of the domestic specification calculation process. To be consistent with reports from the United States to the ICCAT Standing Committee on Research and Statistics for stock assessment purposes, NMFS reports dead discards as an estimate generated via extrapolation of pelagic longline vessel logbook tallies by pooled observer data, as warranted. Since dead discard estimates for 2009 are not yet available, the 2008 estimate of 172.8 mt is used as a proxy.

Per ICCAT Recommendation 08–04, which specifies a U.S. quota allocation that includes dead discards, and is consistent with the BFT quota regulations at 50 CFR § 635.27(a), NMFS proposes to subtract the 172.8 mt of estimated dead discards from the amount of quota available for the Longline category for the 2010 fishing year. NMFS proposes to apply 170.7 mt of the total underharvest to the pelagic longline fishery in anticipation of both landings (approximately 75 mt) and projected discards, and thus allow the fishery to plan for operations for the entire 2010 fishing year.

Additionally, NMFS proposes to place 146.6 mt (15 percent of the domestic baseline quota of 977.4 mt) of 2009 fishing year underharvest in the Reserve, and to distribute the remainder of the potential 2009 underharvest (171.4 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with allocations in the Consolidated HMS FMP.

### IV. 2010 Quota Specifications

In accordance with the ICCAT Recommendation 08–04, 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 2010 fishing year as follows (as shown in the table below): General category 538.9 mt; Harpoon category 44.6 mt; Purse Seine category 212.8 mt; Angling category 225.4 mt; Longline category 75 mt; and Trap category 1.1 mt. A total of 170.4 mt (146.6 mt 2009 underharvest plus the Consolidated HMS FMP quota share of 23.8 mt) would be 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. Adjustments to these 2010 quotas and subquotas will be made, if necessary, based on year-end 2009 landings information, in the final rule.

The proposed General category quota of 538.9 mt would be divided into the time period allocations established in the Consolidated FMP. Thus, 28.6 mt (5.3 percent) would be allocated to the General Category for the period beginning January 1, 2010, and ending January 31, 2010; 269.4 mt (50 percent) for the period beginning June 1, 2010, and ending August 31, 2010; 142.8 mt (26.5 percent) for the period beginning September 1, 2010, and ending September 30, 2010; 70.1 mt (13 percent) for the period beginning October 1, 2010, and ending November 30, 2010; and 28 mt (5.2 percent) for the period beginning December 1, 2010, and ending December 31, 2010.

The Angling category quota of 225.4 mt would be further subdivided as follows: School BFT 97.7 mt, with 37.6 mt to the northern area (north of 39° 18' N. latitude), 42.1 mt to the southern area (south of 39° 18' N. latitude), plus 18.1 mt held in reserve; large school/small medium BFT 122.5 mt, with 57.8 mt to the northern area and 64.7 mt to the southern area; and large medium/giant BFT 5.2 mt, with 1.7 mt to the northern area and 3.5 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 75 mt would be subdivided as follows: 30 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 45 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.

**Table 1. Proposed Atlantic Bluefin Tuna Final Quota Specifications (in metric tons) for the 2010 Fishing Year**

(January 1-December 31, 2010)

Category (% share of baseline quota)	Baseline Allocations	Dead Discard Deduction	Proposed Adjustment to Baseline Quota <sup>1</sup>	Proposed 2010 Fishing Year Quota
<b>Angling (19.7)</b>	187.6 <b>SUBQUOTAS:</b> School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 85.6 North 40.4 South 45.2 Trophy 4.3 North 1.4 South 2.9		37.8	225.4 <b>SUBQUOTAS:</b> School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 122.5 North 57.8 South 64.7 Trophy 5.2 North 1.7 South 3.5
<b>General (47.1)</b>	Total: 448.6 <b>SUBQUOTAS:</b> Jan 23.8 Jun-Aug 224.3 Sept 118.9 Oct-Nov 58.3 Dec 23.3		90.3	538.9 <b>SUBQUOTAS:</b> Jan 28.6 Jun-Aug 269.4 Sept 142.8 Oct-Nov 70.1 Dec 28.0
<b>Harpoon (3.9)</b>	37.1		7.5	44.6
<b>Purse Seine (18.6)</b>	177.2		35.6	212.8
<b>Longline (8.1)</b>	77.1 <b>SUBQUOTAS:</b> North (-NED) 30.9 NED 25.0 <sup>3</sup> South 46.2	-172.8	170.7 <sup>2</sup>	75.0 <b>SUBQUOTAS:</b> North (-NED) 30.0 NED 25.0 <sup>3</sup> South 45.0
<b>Trap (0.1)</b>	1.0		0.2	1.1
<b>Reserve (2.5)</b>	23.8		146.6 <sup>4</sup>	170.4
<b>Total (100)<sup>5</sup></b>	952.4	-172.8	488.7	1,268.3

(1) For the purposes of the proposed rule, NMFS assumes that the full amount of 2009 underharvest allowed to be carried forward to 2010 will be available at the end of the 2009 fishing year. The distribution of 488.7 mt of underharvest (per ICCAT recommendation) to the quota categories is consistent with FMP allocations, after considerations as calculated below for the Longline category and the Reserve.

(2) Adjustment to Longline category quota is intended to provide sufficient quota for the 2010 fishing year. Longline category quota=77.1-172.8+170.7=75 mt. Dead discard deduction consistent with § 635.27(a)(10).

(3) 25 mt to account for bycatch of BFT in directed longline fisheries in the NED. Not included in total baseline allocation, which is allocated according to the category percentages contained in the Consolidated HMS FMP.

(4) Allocation of 15% of the U.S. quota (146.6 mt) to the Reserve for potential ICCAT transfer and other domestic management objectives.

(5) Totals are subject to rounding error.

## V. Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, 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**).

NMFS has prepared an IRFA to analyze the impacts on small entities of the alternatives considered for establishing 2010 fishing year BFT quotas for all domestic fishing categories. The IRFA assesses the impacts of the alternatives on the vessels that participate in the BFT fisheries, many of which are considered small entities. In order to do this, NMFS has estimated the average impact on individual categories and the vessels within those categories of the alternatives considered to establishing the 2010 BFT quota for all domestic fishing categories. As mentioned above, the 2008 ICCAT recommendation reduces the U.S. BFT quota allocation for 2010 to 977.4 mt. This quota allocation includes 25 mt to account for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the adjusted (baseline) quota of 952.4 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2008, the annual gross revenue for all participants in the BFT commercial fishery combined was approximately \$5.0 million. Approximately 9,871 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2008 gross revenues are General (\$4.0 million), Harpoon (\$31°3,781), Purse Seine (\$0), and Longline (\$722,016). 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 lacks data on the net revenues of individual fishermen, so the

economic impact of the alternatives is averaged across each category. NMFS considers this a reasonable approach for BFT fisheries. More specifically, available landings data (weight and ex-vessel value of the fish in price/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. NMFS also cannot determine whether net revenue varies among individual fishery participants within each category, and therefore whether (and how) the economic impact of a regulation would vary between individual participants. 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 purpose 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. Resulting ex-vessel revenue losses [per vessel in each category] are estimated to be as follows: General category (including Charter/Headboat vessels): \$63; Harpoon category: \$1,402; Longline/Trap (incidental): \$188; and Purse Seine category: \$56,942. These values likely overestimate potential revenue losses for vessels that actively fish and are successful in landing at least one BFT.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

### Public Hearings

The hearing locations are 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 meeting.

## List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Management, Treaties.

Dated: November 25, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, 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.*

2. 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 952.4 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 (448.6 mt); Angling - 19.7 percent (187.6 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (37.1 mt); Purse Seine - 18.6 percent (177.2 mt); Longline - 8.1 percent (77.1 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.0 mt). The remaining 2.5 percent (23.8 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 (448.6 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31° - 5.3 percent (23.8 mt);

(B) June 1 through August 31° - 50 percent (224.3 mt);

(C) September 1 through September 30 - 26.5 percent (118.9 mt);

(D) October 1 through November 30 - 13 percent (58.3 mt); and

(E) December 1 through December 31° - 5.2 percent (23.3 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 (187.6 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (4.3 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 2 consecutive-year period (starting in 2009, 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 (42.1 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 (37.6 mt) may be caught, retained, possessed or landed north of 39° 18' N. lat.

(ii) An amount equal to 52.8 percent (45.2 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 (40.4 mt) may be caught, retained, possessed or landed north of 39° 18' N. lat.

(iii) An amount equal to 66.7 percent (2.9 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 (77.1 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent (46.3 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 as specified at § 635.23(f)(3).

(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 (177.2 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.

\* \* \* \* \*

(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 (37.1 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery closes on November 15 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 (23.8 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 (18.1 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.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363-91412-01]

RIN 0648-XS44

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2010 and 2011 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2010 and 2011 harvest specifications and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2010 and 2011 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received by January 4, 2010.