

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 130214139–3315–01]

RIN 0648–XC513

**Atlantic Highly Migratory Species; 2013 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 2013 quota specifications for the Atlantic bluefin tuna (BFT) fishery, and seeks comments from the public on the allocation of available underharvest among the fishery 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 May 13, 2013. Public hearings will be held on April 29, 2013, from 2 to 4 p.m., and on May 3, 2013, from 1 to 3 p.m. See **SUPPLEMENTARY INFORMATION** for further details.

**ADDRESSES:** You may submit comments on this document, identified by “NOAA–NMFS–2013–0042,” by any 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-2013-0042](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0042), 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 Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930

- *Fax:* 978–281–9340, Attn: Sarah McLaughlin

- *Instructions:* 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 locations are:

1. Gloucester, MA—NMFS, 55 Great Republic Drive, Gloucester, MA 01930.
2. Silver Spring, MD—NMFS Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

Supporting documents, including the Supplemental Environmental Assessment, as well as others, such as the Fishery Management Plans described below may be downloaded from the HMS Web site 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 to comply with this international treaty. 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 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 2012, and the 2013 BFT quota specifications are necessary to adjust the annual U.S. baseline BFT quota to account for any underharvest or overharvest of the adjusted 2012 U.S. BFT quota. Preliminary information indicates an underharvest of the 2012 adjusted BFT quota. Final 2012 landings and dead discard information will be available in late spring 2013.

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 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 Consolidated HMS FMP), NMFS has prepared a Supplemental EA to present updated information regarding the affected environment, including information from a 2012 ICCAT stock assessment for BFT, among other things. The results of the 2012 stock assessment update were not substantively different than those of an assessment that ICCAT conducted in 2010.

**2010 ICCAT Recommendation and 2011 Implementing Rule**

At its 2010 annual meeting, ICCAT recommended a 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 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 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 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 ICCAT Recommendation*

At its 2012 annual meeting, ICCAT recommended a one-year rollover of the 1,750–mt TAC as part of ICCAT Recommendation 12–02—Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program. This amount is expected to allow for continued stock growth under the both the low and high stock recruitment scenarios, considering the 2012 ICCAT BFT stock assessment results. The annual U.S. baseline quota for 2013 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 2012 ICCAT recommendation included the same TAC as the prior recommendation, NMFS is proposing underharvest or overharvest adjustments as necessary for the 2013 fishing year through quota specifications, consistent with the Consolidated HMS FMP. Until the final specifications for 2013 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 2012 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).

#### *Accounting for Dead Discards*

The United States must report BFT landings data and BFT dead discard estimates to ICCAT annually. Currently, the best available annual estimate of dead discards is the 2011 estimate of 145.2 mt. Using the 2011 estimate as a proxy for estimated 2013 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 follows the established protocol in the regulations. When the 2012 BFT dead discard estimate becomes available (late spring 2013), it will be used to prepare the final specifications and will be reported to ICCAT along with total 2012 BFT landings. Only pelagic longline dead discard estimates are available at this time. Estimates from other gear types and fishing sectors that are not observed at sufficient levels for estimation and that do not report via a logbook are not included in this calculation. However, bycatch and bycatch mortality of BFT by vessels using handgear and purse seine gear is considered to be relatively low.

#### *2013 Quota Specifications*

The 2013 BFT quota specifications NMFS proposes here are necessary to adjust the current annual U.S. baseline BFT quota to account for underharvest or overharvest of the adjusted 2012 U.S. BFT quota. Based on preliminary data available as of February 26, 2013, BFT landings in 2012 totaled 713.2 mt. Adding the 145.2–mt estimate of dead discards results in a preliminary 2012 total catch of 858.4 mt, which is 185.2 mt less than the amount of quota (inclusive of dead discards) allowed under ICCAT Recommendation 10–03, which applied in 2012 (i.e., 948.7 mt plus 94.9 mt of 2011 underharvest carried forward to 2012, 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 2012 U.S. underharvest that may be carried forward to 2013 to 94.9 mt.

NMFS proposes to account up front (i.e., at the beginning of the fishing year) for half of the expected dead discards for 2013, using the best available estimate of dead discards, and deducting that portion directly from the Longline category subquota. This is the same approach that NMFS took for the 2011 and 2012 BFT quota specifications. Accounting for dead discards in the Longline category in this way may provide further incentive for pelagic longline fishermen to reduce those interactions that may result in dead discards. NMFS would apply half of the amount of underharvest that is allowed to be carried forward to 2013 to the Longline category, and maintain the other half in the Reserve category. Maintaining this portion of the underharvest in the Reserve category until later in the fishing year would provide maximum flexibility in accounting for 2013 landings and dead discards. Consistent with determination criteria at 50 CFR § 635.27(a)(8), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any other quota category.

Specifically, NMFS would deduct half of the dead discard estimate of 145.2 mt (i.e., 72.6 mt) from the 2013 baseline Longline category subquota of 74.8 mt and apply half of the 94.9 mt allowed to be carried forward to 2013 to the Longline category (i.e.,  $74.8 - 72.6 + 47.5 = 49.7$  mt adjusted Longline subquota, not including the 25–mt allocation set aside by ICCAT for the NED). NMFS would add the remainder of the 2012 underharvest that can be carried forward to 2013 (47.4 mt) to the Reserve category's baseline allocation of 23.1 mt, for an adjusted Reserve category quota of 70.5 mt. The adjusted Longline category subquota (49.7 mt) would be further subdivided in accordance with the Consolidated HMS FMP (i.e., allocation of no more than 60 percent to the south of 31° N. latitude) as follows: 19.9 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 29.8 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.

For the directed fishing categories (i.e., the Angling, General, Harpoon, Purse Seine categories) as well as the Trap category, in which BFT may be caught incidentally, NMFS is not proposing adjustments to the baseline BFT subquotas (i.e., the allocations that result from applying the scheme established in the Consolidated HMS FMP to the baseline U.S. BFT quota).

Thus, in accordance with the ICCAT Recommendation 12–02, the 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 2013 fishing year as follows: General category—435.1 mt; Harpoon category—36 mt; Purse Seine category—171.8 mt; Angling category—182 mt; Longline category—49.7 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 70.5 mt. These allocations are shown in Table 1.

NMFS will make any necessary adjustments to the 2013 specifications in the final rule after considering updated 2012 landings information and the final dead discard estimate for 2012. 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 2013 U.S. landings and dead discards will be accounted for at the end of the year and reported to ICCAT in 2014. 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 2013 ICCAT annual meeting, ICCAT will compare actual U.S. 2012 landings and dead discards against the total 2012 adjusted U.S. quota of 1,043.6 mt (i.e., the 948.7-mt base quota for 2012, plus the 94.9 mt allowed to be carried forward from 2011 to 2012), to determine the United States' compliance with 2012 ICCAT recommendations.

#### *Request for Public Comments*

If the final 2012 landings and dead discards information result in a total of greater than 948.7 mt, but less than 1,043.6 mt, then the amount of 2012 underharvest that the United States may carry forward to 2013 would need to be reduced from 94.9 mt accordingly. NMFS invites public comment on possible allocation approaches should the carry forward amount be reduced. One option might be to provide half of the carry forward amount to the Longline category and the other half to the Reserve category. For example, if the 2012 landings and the final dead discard estimate total 963.6 mt, 80 mt would be available to carry forward and NMFS could provide 40 mt to each of

these two categories). Another option might be to provide the entire amount to the Longline or Reserve category, particularly if the amount is small (e.g., 20 mt) or to allocate the amount other ways after considering domestic management needs for 2013. As described below, NMFS took this approach in the 2012 final BFT specifications (77 FR 44161, July 27, 2012). In any event, the baseline subquotas for the directed fishing categories and Trap category would not be changed.

In exploring options, one consideration is the possibility that deducting of half of the final estimate of dead discards from the baseline Longline category subquota would result in little to no quota for that category for 2013 prior to application of any available underharvest. Another consideration is the possibility that NMFS may, in the final specifications, need to close the Longline category fishery to BFT retention based on codified quotas. This was the case in 2012. NMFS closed the Longline category fishery to BFT retention in the southern area on May 29, 2012 (77 FR 31546), and in the northern area on June 30, 2012 (77 FR 38011), for the remainder of the year, 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 and maintaining the remaining underharvest (18.7 mt) in the Reserve category. 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.

If the complete 2012 landings information and final dead discard estimate exceed the adjusted 2012 U.S. BFT quota of 1,043.6 mt, NMFS may need to take further action, consistent with the BFT quota adjustment regulations and with ICCAT Recommendation 10–03. Also, the United States may be subject to adjustment of the U.S. BFT quota, consistent with ICCAT recommendations. Given the amount of dead discards the United States has reported to ICCAT in the last few years (ranging from 122 to 204 mt), NMFS considers this potential situation to be unlikely, as the dead discard estimate would need to be approximately 330 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 2013 quota and subquotas. For example, the Longline and/or the Reserve category quotas could be reduced as necessary, or the overall 2013 BFT quota could be reduced, which would affect all category subquotas.

NMFS considers the proposed specifications approach as a transition from the method used for 2007 through 2010, as NMFS continues to develop draft Amendment 7 to the 2006 Consolidated HMS FMP. From 2007 through 2010, there were substantial underharvests of some of the commercial BFT subquotas. Consistent with the Consolidated HMS FMP and its implementing regulations, NMFS provided the Longline category a substantial portion of prior year 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 specification 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.

Draft Amendment 7 to the 2006 Consolidated HMS FMP will explore related BFT fishery management issues consistent with the need to end overfishing and rebuild the stock. NMFS anticipates that measures in draft Amendment 7 would address several of the long-standing challenges facing the fishery and will examine, among other things, 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 anticipates that draft Amendment 7 will publish in mid-2013.

In the meantime, management of the BFT fishery continues under the current Consolidated HMS FMP, implementing regulations, and ICCAT Recommendations. In contemplating how to account for dead discards within the BFT quota and allocate the underharvest that is allowed to be carried forward, NMFS believes that the operational issues facing the pelagic longline fishery as the fleet continues directed fishing operations for swordfish and other tunas should be considered. NMFS anticipates that dead discards in the pelagic longline fishery may be reduced due to continued

implementation of the weak hook

requirement in the Gulf of Mexico in  
2011 (76 FR 18653, April 5, 2011).

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Table 1. Proposed 2013 Atlantic Bluefin Tuna Quotas and Quota Specifications (in metric tons)

Category (% share of baseline quota)	Baseline Allocation (per current ICCAT Recommendation and Consolidated HMS FMP allocations)	2013 Quota Specifications		
		Dead Discard Deduction (1/2 of 2011 proxy of 145.2 mt)	2012 Underharvest to Carry Forward to 2013 (94.9 mt total)	Adjusted 2013 Fishing Year Quota
Total (100)	923.7*			946.0
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			171.8
Longline (8.1)	74.8 <u>SUBQUOTAS:</u> North (-NED) 29.9 NED 25.0* South 44.9	-72.6	+47.5	49.7 <u>SUBQUOTAS:</u> North (-NED) 19.9 NED 25.0* South 29.8
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1		+47.4	70.5

\*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.

*Request for Comments*

NMFS solicits comments on this proposed rule through May 13, 2013.

See instructions in **ADDRESSES** section above.

**Public Hearing Dates and Locations**

1. April 29, 2013, 2 to 4 p.m.,  
Gloucester, MA—NMFS, 55 Great  
Republic Drive, Gloucester, MA 01930

2. May 3, 2013, 1 to 3 p.m., Silver Spring, MD—NMFS Science Center, 1301 East-West Highway, Silver Spring, MD 20910

The public hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281-9279, at least 7 days prior to the meeting. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; 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 hearing.

#### Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 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, 2013) 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.

The proposed rule would adjust the annual U.S. baseline BFT quota to account for any underharvest or overharvest of the adjusted 2012 U.S. BFT quota. Preliminary information indicates an underharvest of the 2012 adjusted BFT quota. This proposed action was developed in accordance with the framework process set forth in the Consolidated HMS FMP, and is supported by the Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for the Consolidated HMS FMP, the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for the 2011 final rule implementing BFT quotas and Atlantic tuna fisheries management, and the Supplemental Environmental Assessment prepared for these 2013 quota specifications (see **ADDRESSES**).

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 2012 annual meeting, ICCAT recommended a one-year rollover of the annual Total Allowable Catch (TAC) of 1,750 mt that was set in 2010 for 2011 and 2012 (ICCAT Recommendation 12-02).

Although the baseline quota is unchanged this year because the 2012 ICCAT recommendation included the same TAC as the prior recommendation, NMFS will make underharvest and overharvest adjustments as necessary for the 2013 fishing year through quota specifications, consistent with the Consolidated HMS FMP. Preliminary information indicates an underharvest of the 2012 adjusted bluefin tuna quota. The proposed quota specifications were developed in accordance with the framework process set forth in the Consolidated HMS FMP, and is supported by the Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for the Consolidated HMS FMP and the Supplemental Environmental Assessment prepared for this action.

As summarized in the 2012 Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species, there were approximately 8,492 commercial Atlantic tunas or Atlantic HMS permits in 2012, as follows: 4,084

in the Atlantic Tunas General category; 13 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 253 in the Atlantic Tunas Longline category; 8 in the Atlantic Tunas Trap category; and 4,129 in the HMS Charter/Headboat category. This constitutes the best available information regarding the universe of permits and permit holders recently analyzed.

Under the Small Business Administration's (SBA) regulations implementing the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a small fishing entity is one that has less than \$4 million in annual revenue (\$6.5 million for charter/party boats). This action would apply to all participants in the Atlantic bluefin tuna fishery, all of which are considered small entities.

The U.S. Atlantic bluefin tuna quota includes dead discards. Although 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, in both the 2011 and 2012 proposed specifications, 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 both 2011 and 2012, NMFS proposed allocating half of the amount of underharvest that was allowed to be carried forward to the Longline category and maintaining the other half in the Reserve category. This recommendation was intended to provide maximum flexibility in accounting for landings and dead discards at the end of the year. In 2012, when the pelagic longline fishery reached the incidental Longline bluefin tuna subquota, NMFS prohibited further retention of bluefin tuna in that fishery for the remainder of the year before finalizing the quota specifications. Therefore, NMFS provided a slightly larger portion to the Longline category in the final rule to account for actual bluefin tuna landings, and placed the remainder in the Reserve category. For the last two years, NMFS has maintained the directed fishing categories at their baseline quotas.

NMFS proposes to carry 94.9 mt forward to 2013 and distribute that amount in the same manner as proposed for 2011 and 2012, i.e., half to the

Longline category quota and half to the Reserve category quota. The directed fishing categories would continue to receive their baseline subquotas. This would result in the same subquotas as were finalized in 2011. NMFS will make any necessary adjustments to the 2013 specifications in the final rule after considering updated 2012 landings information and the final dead discard estimate for 2012, which should be available in late spring.

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 2013 subquotas (i.e., 2012 prices for the General, Harpoon, and Longline/Trap, and Purse Seine categories). The 2013 subquotas could result in estimated gross revenues for each category, if finalized and fully utilized, as follows: General category: \$8.8 million (435.1 mt \* \$9.13/lb); Harpoon category: \$724,600 (36 mt \* \$9.13/lb); Purse Seine category: \$4.7 million (171.8 mt \* \$12.46/lb); Trap category: \$12,300 (0.9 mt \* \$6.19/

lb); and Longline category: \$678,000 (49.7 mt \* \$6.19/lb). Estimated potential 2013 revenues on a per vessel basis, considering the number of permit holders listed above and the proposed subquotas, could be \$2,144 for the General category; \$55,739 for the Harpoon category; \$2,681 for the Longline category; \$943,845 for the Purse Seine category; and \$1,535 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 bluefin tuna 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 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 Consolidated HMS FMP. Because the economic impacts of the carryover of underharvest, to the extent that there are any, 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.*

Dated: April 8, 2013.

**Alan D. Risenhoover,**  
*Director, Office of Sustainable Fisheries,*  
*performing the functions and duties of the*  
*Deputy Assistant Administrator for*  
*Regulatory Programs, National Marine*  
*Fisheries Service.*

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