approved FMEPs that specifies the implementation and reporting requirements; evaluate FMEPs every 5
years and identify changes that would improve their effectiveness; and provide a public comment period (≥30 days)
before withdrawing approval of an FMEP.

(3) Tribal Exemptions. The
prohibitions of paragraph (a) of this
section relating to the threatened
Southern DPS listed in § 223.102(c)(1)
do not apply to fishery harvest or other
activities undertaken by a tribe, tribal
member, tribal permittee, tribal
employee, or tribal agent in Willapa
Bay, WA, Grays Harbor, WA, Coos Bay,
OR, Winchester Bay, OR, Humboldt
Bay, CA, and any other area where tribal
treaty fishing occurs, if those activities
are compliant with a tribal resource
management plan (Tribal Plan),
provided that the Secretary determines
that implementation of such Tribal Plan
will not appreciably reduce the
likelihood of survival and recovery of
the Southern DPS. In making that
determination the Secretary shall use
the best available biological data
(including any tribal data and analysis)
to determine the Tribal Plan’s impact on
the biological requirements of the
species, and will assess the effect of the
Tribal Plan on survival and recovery,
consistent with legally enforceable tribal
rights and with the Secretary’s trust
responsibilities to tribes.

(i) A Tribal Plan may include, but is
not limited to, plans that address fishery
harvest, artificial production, research,
or water or land management, and
may be developed by one tribe or jointly
with other tribes. The Secretary will
consult on a government-to-government
basis with any tribe that so requests
and will provide, to the maximum extent
practicable, technical assistance in
examining impacts on the Southern DPS
as tribes develop Tribal Plans. A Tribal
Plan must specify the procedures by
which the tribe will enforce its
provisions.

(ii) Where there exists a Federal court
proceeding with continuing jurisdiction
over the subject matter of a Tribal Plan,
the plan may be developed and
implemented within the ongoing
Federal Court proceeding. In such
circumstances, compliance with the
Tribal Plan’s terms shall be determined
within that Federal Court proceeding.

(iii) The Secretary shall seek comment
from the public on the Secretary’s
pending determination whether
implementation of a Tribal Plan will
appreciably reduce the likelihood of
survival and recovery of the listed
Southern DPS.

(iv) The Secretary shall publish
notification in the Federal Register of
any determination regarding a Tribal
Plan and the basis for that
determination.

(d) The exceptions of section 10 of the
ESA (16 U.S.C. 1539) and other
exceptions under the ESA relating to
deranged species, including
regulations in part 222 of this chapter II
implementing such exceptions, also
apply to the threatened Southern DPS of
North American green sturgeon listed in
§ 223.102(c)(1). Federal, state, and
private-sponsored research activities for
scientific research or enhancement
purposes that are not covered under
Scientific Research and Monitoring
Exceptions as described in paragraph
(b)(1) of this section or Scientific
Research and Monitoring Exemptions as
described in paragraph (c)(1) of this
section, may take Southern DPS fish
pursuant to the specifications of an ESA
section 10 permit. Section 9(a)(1)(B) and
(a)(1)(C) take prohibitions would not
apply to ongoing research activities if an
application for an ESA section
10(a)(1)(A) permit is received by NMFS,
preferably through the NMFS online
application Web site https://
apps.nmfs.noaa.gov, no later than
November 29, 2010. The take
prohibitions would take effect if the
permit application is rejected as
insufficient or a permit is denied. If the
permit application is received by
November 29, 2010, ongoing research
activities may continue without take
prohibitions until NMFS issues or
denies a permit.

(e) Affirmative Defense. In connection
with any action alleging a violation of
the prohibitions of paragraph (a) of this
section with respect to the threatened
Southern DPS of North American green
sturgeon listed in § 223.102(c)(1), any
person claiming that his or her take is
authorized via methods listed in
paragraph (b) of this section shall have
a defense where the person can
demonstrate that the take authorization
is applicable and was in force, and that
the person fully complied with the take
authorization requirements at the time
of the alleged violation. This defense is
an affirmative defense that must be
raised, pleaded, and proven by the
proponent. If proven, this defense will
be an absolute defense to liability under
section 9(a)(1)(G) of the ESA with
respect to the alleged violation.

DEPARTMENT OF COMMERCe
National Oceanic and Atmospheric
Administration

50 CFR Part 635
RIN 0648–XW54

Atlantic Highly Migratory Species;
Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason
General category retention limit
adjustment.

SUMMARY: NMFS has determined that
the Atlantic tunas General category
daily Atlantic bluefin tuna (BFT)
retention limit should be adjusted for
the June through August 2010 time
period, based on consideration of the
regulatory determination criteria
regarding inseason adjustments. This
action applies to Atlantic tunas General
category permitted vessels and Highly
Migratory Species Charter/Headboat
category permitted vessels (when
fishing commercially for BFT).

DATES: Effective June 1, 2010, through
August 31, 2010.

FOR FURTHER INFORMATION CONTACT:
Sarah McLaughlin or Brad McHale,

SUPPLEMENTARY INFORMATION:

Regulations implemented under the
authority of the Atlantic Tunas
Convention Act (16 U.S.C. 971 et seq.)
and the Magnuson-Stevens Fishery
Conservation and Management Act
(Magnuson-Stevens Act; 16 U.S.C. 1801
et seq.) governing the harvest of BFT by
persons and vessels subject to U.S.
jurisdiction are found at 50 CFR part
635. Section 635.27 subdivides the U.S.
BFT quota recommended by the
International Commission for the
Conservation of Atlantic Tunas (ICCAT)
among the various domestic fishing
categories, per the allocations
established in the 2006 Consolidated
Highly Migratory Species Fishery
Management Plan (2006 Consolidated
HMS FMP) (71 FR 58058, October 2,
2006).

The 2010 BFT fishing year, which is
managed on a calendar-year basis and
subject to an annual calendar year
quota, began January 1, 2010. The
General category season, which was
open for the month of January 2010,
resumes on June 1, 2010, and continues
through December 31, 2010. Starting on
June 1, the General category daily
retention limit (§ 635.23(a)(2)), is
The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds.
the migratory nature of this species, and the regional variations in the BFT fishery. Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of long catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen who depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective June 1, 2010, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., the default General category retention limit is one fish per vessel/trip whereas this action increases that limit and allows retention of additional fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30–day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and (b)(3), and is exempt from review under Executive Order 12866.

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


Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100317152–0176–01]

RIN 0648–AY77

Atlantic Highly Migratory Species; 2010 Atlantic Bluefin Tuna Quota Specifications

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

ACTION: Final rule.

SUMMARY: NMFS is establishing Atlantic bluefin tuna (BFT) quota specifications for 2010. 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).


ADDRESSES: Supporting documents, including the Supplemental Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis, are available from Sarah McLaughlin, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available from the HMS Management Division website at http://www.mnfs.nmfs.noaa.gov/sfa/hms/ or at the Federal e-Rulemaking Portal: http://www.regulations.gov.


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 2010 BFT quota specifications was provided in the preamble to the proposed rule (74 FR 63095, December 2, 2009), and is not repeated here.

Changes from the Proposed Rule

Consistent with NMFS’ implementation of the 2009 BFT Quota Specifications, NMFS establishes the 2010 U.S. baseline quota at the ICCAT-recommended level and carries over the full amount of available BFT underharvest allowed by ICCAT from 2009 to 2010, and distributes that underharvest to: (1) provide the Longline category sufficient quota to operate during 2010 after the required accounting for BFT dead discards; (2) maintain up to 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 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP).

When NMFS prepared the proposed rule, landings information was incomplete, and NMFS anticipated the full amount of 2009 underharvest allowed under the 2008 ICCAT recommendation for the western Atlantic bluefin tuna stock (ICCAT Recommendation 08–04), i.e., 50 percent of the U.S. quota, or 488.7 mt, would be available and carried forward to 2010. NMFS indicated that