

(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. In accordance with paragraph (a) of this section, the total amount of bluefin tuna 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 245.9 mt. No more than 2.3 percent (5.7 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.*, 134.1 mt). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (57.7 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N lat. The remaining school bluefin tuna Angling category quota (51.6 mt) may be caught, retained, possessed or landed north of 39°18' N lat.

(ii) An amount equal to 52.8 percent (56 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N lat. The remaining large school/small medium bluefin tuna Angling category quota (50.1 mt) may be caught, retained, possessed or landed north of 39°18' N lat.

(iii) One third (1.9 mt) of the large medium and giant bluefin tuna Angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18' N lat.; south of 39°18' N lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 169.1 mt. In addition, 25 mt shall be allocated for incidental catch by

pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) * * *

(i) *Baseline Purse Seine quota.*

Pursuant to this paragraph (a), the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 232.2 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

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(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 48.7 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

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(7) * * *

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 31.2 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (24.8 mt) of the total school bluefin tuna

Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in this paragraph (a)(7)(i). Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

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(e) * * *

(1) *Annual quota.* Consistent with ICCAT recommendations, the ICCAT northern albacore management procedure, and domestic management objectives, the baseline annual quota, before any adjustments, is 711.5 mt. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220524-0121]

RIN 0648-BK99

Atlantic Highly Migratory Species (HMS); Atlantic Tunas General Category Restricted-Fishing Days (RFDs)

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

ACTION: Final rule.

SUMMARY: This final rule sets Atlantic bluefin tuna (BFT) General category restricted-fishing days (RFDs) for all Tuesdays, Fridays, and Saturdays during the months of July through November 2022. On an RFD, Atlantic Tunas General category permitted vessels may not fish for (including catch-and-release or tag-and-release fishing), possess, retain, land, or sell bluefin tuna (BFT). On an RFD, HMS Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions to preclude fishing commercially for BFT under the General category restrictions and retention limits, but such vessels may still fish for, possess, retain, or land BFT when fishing recreationally under

applicable HMS Angling category rules. RFDs are designed, in part, to slow the rate of landings and extend fishing opportunities for General category permit holders through a greater portion of the subquota periods. NMFS may waive previously scheduled RFDs under certain circumstances, but will not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another, or adding RFDs).

DATES: This final rule is effective on July 1, 2022, through November 30, 2022.

ADDRESSES: Copies of this final rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Larry Redd at larry.redd@noaa.gov or 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., larry.redd@noaa.gov or Carrie Soltanoff, carrie.soltanoff@noaa.gov, at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 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.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States, among the various domestic fishing categories per the allocations established in the 2006 Consolidated HMS FMP and its amendments. Section 635.23 specifies the retention limit provisions for Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels, including regarding RFDs.

Specific information regarding RFDs, request for comments, and the current U.S. quota and General category subquotas, was provided in the preamble to the proposed rule (87 FR 12643, March 7, 2022) and is not repeated here.

As described in the proposed rule, NMFS is undertaking this rulemaking to address and avoid repetition of certain issues that affected the General category BFT fishery in 2020 and earlier and could recur without additional action. Those issues include the shortened time to fish under the General category

subquotas that occurs when the quota is filled quickly, increasing numbers of BFT that are landed but not sold to dealers because of market gluts, and the resulting decreased price of BFT. Because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant subquota periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for the 2022 fishing year.

The comment period for the proposed rule closed on April 6, 2022. NMFS received 19 written comments, including comments from commercial and recreational fishermen, Atlantic tuna dealers, and the general public, as well as oral comments at a public hearing held by webinar. The comments received, and responses to those comments, are summarized below in the Response to Comments section.

After considering public comments on the proposed rule in light of the management goals of this action, NMFS is finalizing the 2022 RFD schedule as proposed. As described below, no changes are made from the proposed rule. Implementing this RFD schedule, with the ability to waive scheduled RFDs, should slow the rate of landings and provide available quota throughout a longer duration of the General category subquota periods while providing reasonable fishing opportunities, including some fishing tournament opportunities, for all General category participants.

Specifically, NMFS sets RFDs for the 2022 fishing year on the following days: All Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2022. On an RFD, vessels permitted in the Atlantic Tunas General category are prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT (§ 635.23(a)(2)). RFDs also apply to HMS Charter/Headboat permitted vessels to preclude fishing commercially under General category restrictions and retention limits on those days, but do not preclude such vessels from recreational fishing activity under applicable Angling category regulations and size classes, and they may participate in including catch-and-release and tag-and-release fishing (§ 635.23(c)(3)).

NMFS may waive previously scheduled RFDs under certain circumstances. Consistent with § 635.23(a)(4), NMFS may waive an RFD by adjusting the daily BFT retention limit from zero up to five on specified RFDs, after considering the inseason adjustment determination criteria at

§ 635.27(a)(8). Considerations include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS will announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. Such adjustments will be effective no less than 3 calendar days after the date of filing for public inspection with the Office of the Federal Register. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only catch-and-release or tag-and-release fishing for BFT under § 635.26(a). NMFS will not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another, or adding RFDs) other than waiving designated RFDs based on the circumstances described above.

Response to Comments

All written comments can be found at www.regulations.gov by searching for NOAA-NMFS-2022-0025. NMFS received approximately 19 comments orally at public hearings and in writing from General category fishermen, charter/headboat fishermen, tournament operators, and others from the public. Commenters both supported and opposed General category RFDs for the 2022 fishing year. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period.

Comment 1: Most commenters supporting RFDs noted that RFDs should lengthen the General category season within the subquota periods and the season overall.

Response: NMFS agrees that RFDs should lengthen the General category season within the subquota periods and the season overall. The primary objective of this action is to slow the harvest rate of BFT in order to extend the period of time that the fishery remains open, allowing fishing opportunities later in the season.

Comment 2: Some commenters supporting RFDs noted that there may be more reliance on domestic markets this year given that global markets and economies are still stabilizing, as well as due to the anticipated increase in shipping costs due to fuel prices. Other commenters expressed that RFDs were unnecessary given the impacts of COVID-19 on the recovery of domestic and international markets.

Response: NMFS considered economic factors and past and present

market conditions and economies in the proposed rule. NMFS acknowledges the unique global impacts of COVID–19 and the challenges that could be experienced as domestic and international markets recover and given higher fuel prices; however, NMFS observed the issues that contributed to the need for this action for several years, and those issues were exacerbated in both 2019 and 2020. Specifically, over the past several years, landings have been highest from mid-August through November, contributing to derby-like conditions and market gluts, shortening the time it takes to fill relevant subquotas, and resulting in inseason closures earlier than desired. In 2021, NMFS established a schedule of RFDs from September through November. Because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant subquota periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for the 2022 fishing year.

Comment 3: Some commenters expressed concern that the proposed rule seemed to be economic in nature and would negatively impact General category participants.

Response: As discussed in response to Comment 2, above, NMFS considered economic factors in developing the proposed rule for this action, but the primary purpose of the action is not solely economic in nature. Rather, the rule is designed to lengthen the General category season within the subquota periods and the season overall. Considering all relevant information, NMFS concluded that RFDs should help prevent large numbers of BFT from entering the market at the same time, which could potentially alleviate some negative economic impacts experienced by General category and Charter/Headboat permitted fishermen who could not find buyers for their BFT (as did the 2021 RFD rule).

NMFS acknowledges the unique global impacts of COVID–19 and the challenges that could be experienced due to rising fuel prices and recovering domestic and international markets. The issues that contributed to the need for this action were occurring for several years, however, not only as a result of COVID–19 market effects, although those issues were exacerbated in both 2019 and 2020. Specifically, over the past several years, landings have been highest from mid-August through November, contributing to derby-like conditions and market gluts, shortening the time it takes to fill relevant subquotas, and resulting in inseason

closures earlier than desired. In 2021, NMFS established a schedule of RFDs from September through November. Because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant subquota periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for the 2022 fishing year.

Comment 4: Some commenters opposing RFDs expressed concerns that RFDs could result in safety-at-sea concerns and could have negative impacts given fuel prices.

Response: Overall, NMFS believes that by spreading out fishing effort over a longer period of time, safety-at-sea issues should decrease, as the conditions that encourage derby-like behavior would be diminished. NMFS recognizes that the weather is unpredictable, particularly in the second half of October and early November, and that poor weather may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates merit waiving RFDs, NMFS could adjust the daily retention limit on waived days with a minimum 3-day notification to fishermen, by filing such an adjustment in the **Federal Register**, under § 635.23(a)(4).

Comment 5: NMFS received comments both supporting the proposed Tuesday, Friday, and Saturday schedule of RFDs, and opposing the proposed schedule. Some commenters suggested modifications to the proposed schedule, including implementing RFDs starting June 1, 2022, and/or avoiding weekends. One commenter objected to the proposed RFD schedule while also suggesting a weekly RFD schedule of Tuesday, Friday, and Sunday. Some commenters supported the proposed schedule of RFDs starting on July 1, 2022.

Response: NMFS' proposed schedule of RFDs was based on a review of average daily catch rate data for recent years, a review of past years' RFD schedules (including the 2021 RFD schedule) and how they worked to extend the use of the General category quota, and input from General category participants, Atlantic tuna dealers, and members of the HMS Advisory Panel. The Tuesday, Friday, and Saturday RFD schedule allows for two-consecutive-day periods twice each week (Sunday-Monday; Wednesday-Thursday) for General category and Charter/Headboat permitted vessels with a commercial sale endorsement to fish for and sell BFT. NMFS believes that two-consecutive-day periods twice each

week would allow BFT products to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.*, Sundays). NMFS acknowledges that Sunday (similar to Friday and Saturday) is a high catch and landing day. However, NMFS believes that setting Sunday as an RFD instead of Saturday would not meet the objective of this rulemaking as it would not allow adequate time for fish products to move through the market and would continue the increasing trend of BFT landed by General category participants that could not be sold, as occurred from 2018 through 2020.

NMFS disagrees that RFDs should start on June 1, 2022, as catch and landings rates are generally slow at the beginning of the June. NMFS is setting RFDs starting on July 1, 2022, as proposed, when catch and landing rates begin to substantially increase, resulting in General category subquotas being met and closures of applicable General category subquota periods. NMFS believes that this schedule of RFDs should increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the subquota periods (similar to the 2021 RFD schedule).

Comment 6: NMFS received comments, from both those in support of and opposed to RFDs, regarding the potential negative impacts of RFDs on BFT fishing tournaments. These commenters noted the economic importance of fishing tournaments on local economies. One commenter noted the negative impact that RFDs would have on fishing tournaments but suggested that NMFS maintain the proposed RFD schedule, *i.e.*, Tuesday, Friday, and Saturday RFDs beginning July 1, 2022, noting that many fishing tournaments have established their dates based around the proposed schedule. One commenter noted that RFDs did not negatively impact their fishing tournament in 2021.

Response: NMFS acknowledges that RFDs that occur on a tournament date may affect BFT fishing at those tournaments, since some tournament participants are General category permit holders and are prohibited from fishing for BFT on RFDs. However, on an RFD, General category permit holders may still participate in non-BFT fishing during the tournament, and may land sharks, swordfish, billfish, and/or bigeye, albacore, yellowfin, and skipjack tunas recreationally as otherwise allowed. Additionally, on an RFD, Charter/Headboat-permitted vessels may participate recreationally in HMS fishing tournaments, including for BFT,

under the applicable Angling category restrictions and size class limits. Under the current regulations, tournament operators are required to register their tournament with NMFS at least four weeks prior to the start of the tournament. Given past scheduled tournaments from July through November and the tournaments that have registered already for this year, NMFS anticipates or has been notified of several fishing tournaments that will likely include BFT. Should a tournament change its dates of operation, NMFS encourages tournament operators to contact NMFS to update the dates for which their tournament is registered. NMFS does not plan to waive RFDs specifically and solely to accommodate tournaments as doing so could eliminate the benefits of RFDs by allowing General category and Charter/Headboat permitted vessels with a commercial sale endorsement the opportunity to land and sell commercial size BFT on those scheduled RFD dates. NMFS will closely monitor BFT landings and catch rates and, based on that information, NMFS will consider waiving RFDs if BFT landings and catches indicate that such action is warranted, after taking into consideration the inseason adjustment determination criteria at § 635.27(a)(8). This would include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS could waive an RFD by adjusting the daily retention limits with a minimum 3-day notification to fishermen, by filing such an adjustment in the **Federal Register**, under § 635.23(a)(4).

Comment 7: NMFS received comments expressing concern that increasing the General category retention limit from the default of one fish to three fish to begin the June through August subquota period is counterproductive to the goal of setting RFDs. Some commenters requested the use of mechanisms other than RFDs to extend the fishery, such as maintaining the default retention limit throughout the season. One commenter suggested NMFS modify existing subquota allocations.

Response: This action focuses on implementing RFDs, as currently authorized in the regulations, to slow the rate of General category landings, prevent early closures, and extend fishing opportunities through a greater portion of the General category time-

period subquotas for the 2022 fishing year. NMFS will continue to use retention limits, RFDs, and other available management tools to manage the BFT fisheries, within the available BFT quota and established subquotas. In recent years, because the rate of landings and overall fishing effort in the General category is typically slow in early June, NMFS has regularly set the daily retention limit for the beginning of the June through August period at three fish, following consideration of the relevant criteria provided under § 635.27(a)(8), including supporting scientific data collection. NMFS monitors the landings closely, and, as appropriate, NMFS then typically reduces the limit to the one-fish default level to ensure fishing opportunities in all respective time-period subquotas and to ensure that the available quota is not exceeded. Any change in the retention limit considers the relevant criteria and includes consideration of the catch rates associated with the various authorized gear types (e.g., harpoon, rod and reel).

As with other mechanisms mentioned above, RFDs are an available effort control mechanism that can be used to extend time-period subquotas and provide additional inseason management flexibility regarding quota use and distribution and season length. Unlike other mechanisms, in the current regulations, RFDs may only be used to assist with the management of the BFT General category fishery (i.e., permit categories that fish against the General category quota). Throughout the season, NMFS monitors landings and catch rates and will close the fishery or modify retention limits as appropriate to ensure the quotas are not exceeded. NMFS will continue to monitor and evaluate the effectiveness of all these management measures in the context of current conditions to determine whether other actions are necessary.

NMFS is not considering modifications of the General category subquotas in this action. The proposed rule for Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) proposed modifications to the BFT category quotas which were further detailed in the Amendment 13 Final Environmental Impact Statement published on May 13, 2022 (87 FR 29310). The final rule for Amendment 13 has not been completed, and the BFT quotas and subquotas therefore are not affected by Amendment 13 at this time. NMFS also recently published a final

rule which would increase the U.S. baseline BFT quota to reflect a binding 2021 ICCAT binding and to adjust the subquotas accordingly.

Comment 8: NMFS received comments noting issues with dealer practices and requesting NMFS not to use RFDs. Several individuals noted that dealers could limit their own purchases in order to control supply and demand related to domestic and international markets.

Response: NMFS requires that dealers obtain a Federal dealer permit to purchase, trade, or barter any HMS and abide by the regulations under both § 635.4 and § 635.5. As described in the proposed rule, NMFS received communications from dealers and fishermen regarding the self-imposed no-purchase (or limited-purchase) days in 2019 and 2020. While these actions by dealers may have prevented an oversupply of BFT on the market and may have lengthened the duration of some subquota periods, these actions were not pre-scheduled or consistently implemented across the fishery. Some General category and Charter/Headboat permitted fishermen may have experienced negative impacts in this context, and opportunities may not have been equitably distributed among all permitted vessels. Thus, NMFS is finalizing a schedule of RFDs for 2022.

Comment 9: NMFS received some comments noting that the BFT stock has rebounded and is healthy, and that, therefore, this action is not necessary. Additionally, one commenter noted that NMFS is overly restrictive to BFT fishermen in New England.

Response: NMFS disagrees that this action is “unwarranted.” The purpose of this action, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments and other applicable laws, is to set a schedule of RFDs for the 2022 fishing year as an effort control for the General category quota, and to extend General category fishing opportunities through a greater portion of the General category time-period subquotas than have been available in recent years, as intended when the time-period subquotas were adopted. NMFS does not manage the General category fishery by region. Instead, these regulations are applicable to all General category permit holders and Charter/Headboat permitted vessels that fish commercially for BFT.

Regarding the status of BFT, the western Atlantic BFT stock is assessed by ICCAT, and the most recent assessment was conducted in 2021. Domestically, following the 2017 stock assessment, NMFS determined that the overfished status for BFT is unknown and that the stock is not subject to overfishing, and this status remains in effect. NMFS recently published a final rule that increased the baseline U.S. BFT quota to 1,316.14 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), as codified at § 635.27(a), consistent with Recommendation 21–07 adopted by ICCAT at the November 2021 annual meeting. Further information on the BFT stock assessment and stock status can be found in that final rule and associated Environmental Assessment. This action helps manage the BFT fisheries within that available U.S. quota and the category subquotas as established in existing regulations.

Comment 10: NMFS received comments supporting the future use of RFDs for the January through March subquota period noting that RFDs would likely result in better management of the annual quota and avoid quota exceedance during this period. One commenter expressed concerns for setting RFDs during the January through March subquota period noting unpredictable weather and the potential undesirable impacts of extending the length of time to reach the subquota if the fishery starts in mid-February. Additionally, NMFS received comments opposing the setting of three consecutive days of RFDs or setting RFDs for the December subquota period.

Response: Although NMFS requested comment on the potential setting of RFDs for the January through March subquota period, NMFS is not setting RFDs for the January through March 2023 subquota period through this action because BFT landings and catch rates do not indicate RFDs are warranted at this time. NMFS will continue to monitor landings during this subquota period and consider the input received during the public comment period for this action to determine whether RFDs are necessary for the January through March subquota period. If NMFS believes RFDs are necessary for the January through March subquota period, NMFS will publish a proposed schedule of RFDs in a future rulemaking.

Comment 11: One commenter requested that NMFS establish RFDs for fishermen fishing in the Gulf of Mexico

noting that the Gulf of Mexico is a spawning area for BFT.

Response: NMFS disagrees that RFDs should be established specifically for the Gulf of Mexico. Under the current regulations, commercial fishermen, including all General category permit holders and Charter/Headboat permitted vessels that fish commercially for BFT, may not target BFT at any time in the Gulf of Mexico, a rule that was established recognizing that the Gulf of Mexico is recognized as the primary spawning grounds for bluefin tuna. HMS Charter/Headboat permit holders fishing recreationally may retain one “trophy” BFT (>73”) per vessel per year from the Gulf of Mexico, if it is caught incidentally while fishing for other species, provided the limited “trophy” category subquota in the Gulf of Mexico is available at the time of harvest and the season has not closed. RFDs do not apply to recreational catch because RFDs only apply to General category permit holders and Charter/Headboat permitted vessels that fish commercially for BFT.

Comment 9: NMFS received a comment expressing concern that RFDs would not reduce the amount of fishing gear in the ocean.

Response: Addressing discarded gear is outside of the scope of this action.

Classification

NMFS is issuing this rule pursuant to 305(d) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments and a summary of the analyses completed to support the action. The FRFA is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires agencies to state the need for and objective of the final action. The objective of this final rulemaking is to set a schedule of RFDs for the 2022 fishing year that should slow the rate of General category landings to extend fishing opportunities

through a greater portion of the subquota periods (similar to the 2021 RFD schedule).

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency’s assessment of such issues, and a statement of any changes made as a result of the comments. As described above, during the public comment period, NMFS received comments both in support of and opposed to establishing RFDs for 2022. No comments specifically referenced the IRFA, although some comments raised a variety of economic concerns including whether RFDs would affect the market (see comments 2, 3, 5, and 8), whether RFDs would affect some parts of the fishery more than others (see comment 9), and whether RFDs would negatively affect tournaments (see comment 6). NMFS’ responses to those comments are summarized above. After careful consideration of all the comments received, no changes were made to the proposed rule.

Section 604(a)(3) of the RFA requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the SBA comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA on the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$8.0 million. NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because

they had average annual receipts of less than their respective sector's standard of \$11 million and \$8 million. The 2020 total ex-vessel annual revenue for the BFT fishery was \$8.4 million. Since a small business is defined as having annual receipts not in excess of \$11.0 million, each individual BFT permit holder would fall within the small entity definition. The numbers of relevant annual Atlantic Tunas or Atlantic HMS permits as of October 2021 are as follows: 2,730 General category permit holders and 4,055 HMS Charter/Headboat permit holders, of which 1,793 hold HMS Charter/Headboat permits with a commercial sale endorsement.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This final rule does not contain any new collection of information, reporting, or record-keeping requirements. This final rule would set a schedule of RFDs for 2022 as an effort control for the General category.

Section 604(a)(6) of the RFA, requires agencies to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives

to the rule considered by the agency which affect the impact on small entities was rejected.

This final rule does not change the U.S. Atlantic BFT quotas or implement any new management measures not previously considered under the 2006 Consolidated HMS FMP and its amendments. This final rule will instead set a schedule of RFDs for the General category in 2022. Under the regulations, when a General category subquota period is reached or projected to be reached, NMFS closes the General category fishery. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of a subquota period. According to communications with dealers and fishermen, several of the high-volume Atlantic tunas dealers in 2019 and 2020 were limiting their purchases of BFT and buying no or very few BFT (such as harpooned fish only) on certain days during the beginning portion of the June through August subquota period in order to extend the available quota until later in the subquota period given market considerations. However, while these actions may have prevented large numbers of BFT from entering the

market at the same time and may have lengthened the time before any particular subquota period was closed, because these actions were not pre-scheduled or consistently implemented across the fishery, there were negative impacts experienced by some General category and Charter/Headboat permitted fishermen, who could not find buyers for their BFT. As a result, a number of BFT that normally would have been sold were not, and opportunities may not have been equitably distributed among all permitted vessels. In 2021, NMFS set pre-scheduled RFDs for the General category fishery on certain days (Tuesdays, Fridays, and Saturdays) from September through November to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the subquota periods. Table 1 shows the number and total metric tons (mt) of BFT that were landed but not sold by fishermen fishing under the General category quota from 2017 through 2021. The number and weight of unsold BFT increased from 2018 through 2020, with a peak of unsold BFT in 2020 (161 BFT and 28.8 mt) which NMFS presumes is in part due to the pandemic, and substantially decreased in 2021 (from 161 to 14 BFT and 28.8 mt to 2.5 mt). NMFS believes this substantial decrease is in part due to the use of RFDs in 2021.

TABLE 1—NUMBER (COUNT) AND WEIGHT (MT) OF BFT LANDED BUT UNSOLD BY GENERAL CATEGORY PARTICIPANTS BY YEAR [2017–2021]

| Year | Count | Weight (mt) |
|-------------|-------|-------------|
| 2017 | 0 | 0 |
| 2018 | 8 | 1.4 |
| 2019 | 11 | 2.2 |
| 2020 | 161 | 28.8 |
| 2021 | 14 | 2.5 |
| Total | 194 | 34.9 |

Table 2 shows the average ex-vessel price per pound of BFT during each General category subquota time period from 2017 through 2021. Ex-vessel price per pound was lower for the June through August period, with an average (2017 through 2021) of \$6.29, and

increased into fall period, with an average of \$6.98 for the October through November period). In 2021, the average price per pound was higher for all time periods compared to the average price per pound during the time periods in 2020. In most time periods, the 2021

average price per pound was also higher than the 2019 average price per pound. NMFS believes that this increase in average price was in part due to the use of RFDs in 2021.

TABLE 2—AVERAGE EX-VESSEL PRICE PER POUND (\$) OF BFT BY GENERAL CATEGORY SUBQUOTA TIME PERIOD [2017–2021]

| Year | Subquota time period | | | | |
|-------------------------|-----------------------|---------------------|-----------|--------------------------|----------|
| | January through March | June through August | September | October through November | December |
| 2017 | \$7.30 | \$6.73 | \$7.08 | \$7.58 | \$9.83 |
| 2018 | 7.49 | 6.92 | 6.56 | 7.58 | 9.56 |
| 2019 | 6.07 | 5.61 | 6.36 | 5.53 | 12.25 |
| 2020 | 6.14 | 4.92 | 5.22 | 5.63 | 5.76 |
| 2021 | 6.26 | 6.96 | 6.17 | 7.40 | 8.55 |
| 2017–2021 average | 6.52 | 6.29 | 6.26 | 6.98 | 8.80 |

Table 3 shows the number of open days during each General category subquota time period from 2017 through 2021. On an annual basis, the average number of General category open days tends to be higher earlier in the fishing year (*i.e.*, 64 days for the January through March period and 79 days for the June through August period) and decreases as the season progresses into

the late fall and winter seasons (*i.e.*, 21 days for September period, 21 days for October through November period, and 20 days for the December period). In 2021, the total number of open days was higher compared to the total number of days in 2019. NMFS set RFDs for the September and October through November subquota periods in 2021. Although the number of open days for

the September 2021 subquota period was the lowest except for 2019, the October through November 2021 subquota period remained open for more days compared to the previous four years. NMFS believes that the increase in fishing days was in part due to RFDs.

TABLE 3—GENERAL CATEGORY NUMBER OF OPEN DAYS BY SUBQUOTA TIME PERIOD [2017–2021]

| Year | Subquota time period | | | | | Total |
|----------------------|-----------------------|---------------------|-----------|--------------------------|----------|-------|
| | January through March | June through August | September | October through November | December | |
| 2017 | 88 | 77 | 17 | 5 | 6 | 193 |
| 2018 | 61 | 92 | 23 | 15 | 31 | 222 |
| 2019 | 59 | 69 | 13 | 13 | 31 | 185 |
| 2020 | 55 | 91 | 27 | 11 | 14 | 200 |
| 2021 | 58 | 65 | 14 | 34 | 18 | 189 |
| 2017–2021 average .. | 64 | 79 | 19 | 16 | 20 | 198 |

NMFS is setting a schedule of RFDs for the 2022 fishing year that would specify days on which General category quota fishing and sales will not occur. Specifically, the schedule allows for two-consecutive-day periods twice each week for BFT product to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.*, Sundays). Because this schedule of RFDs would apply to all participants equally, NMFS anticipates that this schedule would extend fishing opportunities through a greater proportion of the subquota periods in which they apply by spreading fishing effort out over time, similar to the 2021 fishing season. Further, to the extent that the ex-vessel revenue of a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically-caught BFT is on the market at one time, the use of RFDs may

result in some increase in BFT price, and the value of the General category subquotas could increase, similar to that of 2021. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed as well as the same amount of BFT landed per vessel, there may be positive impacts to the General category and Charter/Headboat (commercial) BFT fishery because using RFDs may more equitably distribute opportunities across all permitted vessels for longer durations within the subquota periods.

If NMFS does not implement a schedule of RFDs, as in this final rule, without any other changes, it is possible that the trends of increasing numbers of unsold BFT (Table 1) and decreasing ex-vessel prices (Table 2) from 2017 through 2020 could continue. Additionally, without RFDs in 2022, the General category could have fewer open days later in the fishing season when ex-vessel prices tend to be higher (Table 3)

as observed from 2017 through 2020. If those trends were to continue, most active General category permit holders could experience negative economic impacts similar to those in 2019 and 2020 when dealers were limiting their purchases of BFT and buying no or very few BFT on certain days in order to extend the available quota.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rule. As part of this rulemaking process, NMFS has prepared a booklet summarizing fishery

information and regulations for Atlantic BFT General category RFDs for the 2022 fishing year. That booklet notice serves as the small entity compliance guide.

Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

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