

The recreational season for South Atlantic red snapper begins on the second Friday in July. Accordingly, the 2023 recreational red snapper season opens at 12:01 a.m., local time, on July 14, 2023, and closes at 12:01 a.m., local time, on July 16, 2023. During the recreational season, the recreational bag limit is one red snapper per person, per day. After the closure of the recreational sector, the bag and possession limits for red snapper are zero.

There is not a red snapper minimum or maximum size limit for the commercial and recreational sectors during the open seasons.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.183(b)(5)(i) and 622.193(y), which were issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing the red snapper ACLs and AMs has already been subject to notice and comment, and all that remains is to notify the public of the respective commercial and recreational fishing seasons.

In addition, providing prior notice and an opportunity for public comment is contrary to the public interest because the seasons begin in early July and announcing the length of the fishing seasons now allows each sector to prepare for the upcoming harvest, provides opportunity to for-hire fishing vessels to book trips that could increase their revenues and profits, and gives the South Atlantic states the time needed to prepare for their respective data collection needs for the season.

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

Dated: May 22, 2023.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023-11218 Filed 5-22-23; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 230518-0134]

RIN 0648-BL94

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: Temporary rule.

SUMMARY: This temporary rule sets Atlantic bluefin tuna (BFT) General category restricted-fishing days (RFDs) for all Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2023. 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 BFT. On an RFD, HMS Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions and may not fish 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. 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: Effective July 1, 2023, through November 30, 2023.

ADDRESSES: Copies of this temporary 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 Erianna Hammond at erianna.hammond@noaa.gov or 301-427-8503.

FOR FURTHER INFORMATION CONTACT:

Erianna Hammond, erianna.hammond@noaa.gov, or Larry Redd, Jr., larry.redd@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 (88 FR 13771, March 6, 2023) 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 previous years 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, and the increased numbers of BFT that are landed but not sold to dealers because of market gluts. Because the use of RFDs in 2022 succeeded in extending fishing opportunities through a greater portion of the relevant General Category time periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for parts of the 2023 and 2024 fishing years.

The comment period for the proposed rule closed on April 5, 2023. NMFS received 43 written comments, including comments from commercial and recreational fishermen, Atlantic tunas 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 an RFD schedule for the June through August, September, and October through November 2023 time periods and is not finalizing an RFD schedule for the December 2023 or January through March 2024 time periods. Setting an RFD schedule for

July through November, with the ability to waive scheduled RFDs, should slow the rate of landings and provide available quota throughout a greater portion of the General category time periods while providing reasonable fishing opportunities, including some fishing tournament opportunities, for all General category participants.

Specifically, NMFS sets RFDs on the following days: all Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2023. 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 catch-and-release and tag-and-release fishing (§ 635.23(c)(2)).

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)(7). 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. 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-2023-0016. NMFS received 43 written comments from General category fishermen, Charter/Headboat fishermen, tournament operators, Atlantic tunas dealers, and others from the general public, as well as oral comments at a public hearing.

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.

Response: NMFS agrees that RFDs should lengthen the General category season within the General category time periods and the season overall. The primary objective of this action is to slow the harvest rate of BFT in order to extend General category fishing opportunities through a greater portion of the General category time periods.

Comment 2: Some commenters opposed to RFDs expressed concern that the proposed rule seemed to be economic in nature and would negatively impact General category participants. These commenters suggested that NMFS no longer use RFDs as a management tool to manage the BFT fisheries.

Response: While NMFS considered economic factors in developing the proposed rule for this action, the primary purpose of the action is not economic in nature. Rather, the rule is designed to extend General category fishing opportunities through a greater portion of the General category time periods. RFDs provide a pre-scheduled, consistent approach to slow landings across the fishery. After considering all relevant information, NMFS concluded that the use of RFDs is likely to extend the period of time that the fishery remains open resulting in more fishing opportunities later into General category time periods.

Comment 3: NMFS received comments noting that the BFT stock is healthy and therefore, this action is unwarranted. Additionally, commenters suggested that NMFS negotiate for more BFT quota at ICCAT. Some commenters suggested that NMFS modify existing subquota allocations. NMFS also received some comments supporting the proposed rule noting this action would assist with the conservation and protection of bluefin tuna. One commenter noted that BFT are an endangered species and protection of the species should be a priority of the Agency.

Response: NMFS disagrees that this action is “unwarranted” and further notes that BFT are not an endangered species. The purpose of this action, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments and other applicable laws, is to extend, to the extent practicable, General category fishing opportunities throughout the General category time

periods, as was intended when the time period subquotas were adopted. RFDs are an effective effort control that can assist with that purpose.

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. This stock status remains in effect. NMFS published a temporary rule in 2022 (87 FR 33049, June 1, 2022), 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. ICCAT Recommendation 22-10 maintained the U.S. BFT quota as specified above. Further information on the BFT stock assessment and stock status can be found in that temporary rule and associated Environmental Assessment. This action helps manage the BFT fisheries within that available U.S. quota and category subquotas as established in existing regulations.

NMFS is not considering modifications of the General category time period subquotas in this action. 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). As discussed in the final rule for Amendment 13 (87 FR 59966; October 3, 2022), NMFS determined that the current structure of the fishery provides equitable fishing opportunities and decided against modifying the General category subquota percentages. NMFS notes, that Amendment 13, among other things, eliminated the Purse Seine category and proportionally reallocated Purse Seine category quota to all of the other bluefin quota categories, including the General and Angling categories, resulting in an increase to the General category and Angling category quota and subquotas. For more information on the Amendment 13 quota allocations, please check the Amendment 13 compliance guide found on the NOAA Fisheries website.

Comment 4: NMFS received comments supporting the proposed July through November Tuesday, Friday, and Saturday schedule of RFDs as well as comments suggesting alternative days.

Some of the commenters supporting the proposed schedule specifically noted that they are in support of not adding Sunday as an RFD because adding Sunday would have negative impacts on those fishermen that work other jobs full-time during the week and supplement their income with weekend fishing trips. Other commenters suggested a weekly schedule of consecutive RFDs on Friday, Saturday, and Sunday noting that effort and landings rates traditionally are higher on the weekend. One commenter suggested a weekly schedule of Thursday, Friday, and Saturday.

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 and 2022 RFD schedules) and how they worked to extend the use of the General category quota, and input from members of the HMS Advisory Panel, General category participants, and Atlantic tunas dealers. The Tuesday, Friday, and Saturday RFD schedule allows for two-consecutive-day periods twice each week (Sunday–Monday; Wednesday–Thursday) for General category permitted vessels, 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 allows for some commercial fishing activity to occur each weekend (*i.e.*, Sundays) while also providing opportunity throughout the week to move BFT products through the market. NMFS acknowledges that Sunday is a high catch and landing day. As some commenters noted, fully restricting the weekend by adding an RFD on Sunday could have negative unintended impacts for those who could only commercially fish on the weekends. Furthermore, further restricting the weekend by adding Sunday may push those high catch rates to another open day. Additionally, if NMFS set RFDs for the entire weekend, as suggested by some commenters, or for three consecutive days, as suggested by other commenters, NMFS is concerned the schedule would not allow adequate time for fish products to move through the market and could continue the recent trend of BFT being landed by General category participants but not sold. Based on input received during the public comment period for this action and an analysis of daily landings rates, NMFS is setting the RFD schedule to be every Tuesday, Friday, and Saturday from July 1 through November 30, 2023.

Comment 5: Some commenters suggested starting RFDs on June 1 instead of July 1.

Response: NMFS disagrees that RFDs should start on June 1 because catch and landings rates are generally slow at the beginning of June, and there is no need to further reduce catch and landings rates at that time. Catch and landing rates usually begin to substantially increase around July 1. 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 time periods.

Comment 6: NMFS received comments both supporting and opposing 4 RFDs per week. Some of those in support noted that adding an additional RFD could better assist with slowing the catch, keeping the fishery open, and market gluts and some specifically noted that 3 RFDs per week have not been effective at extending the General category time periods. Others in support suggested that NMFS set RFDs on Tuesday, Friday, Saturday, and Sunday noting that weekends are high effort days. One commenter suggested a schedule of Wednesday, Friday, Saturday, and Sunday and another suggested Friday, Saturday, Sunday, and Monday.

Commenters opposed to 4 RFDs per week noted that having only 3 open days per week would be too much of an economic burden for commercial fishermen. Another expressed concerns that an additional RFD would create safety-at-sea conflicts due to more effort on open days to harvest the General category quota and subquotas. Some suggested setting 4 RFDs per week for June through November, while another suggested 4 RFDs per week specifically for September through November. NMFS also received comments suggesting NMFS set 5 RFDs per week.

Response: Although NMFS requested comment on the potential setting of 4 RFDs per week from July through November, NMFS is not setting 4 RFDs or 5 RFDs per week during these time periods through this action. NMFS acknowledges that although 4 RFDs per week from July through November might lengthen the General category season within the time periods, it would also limit commercial fishing participants to 3 or fewer fishable days per week depending on the weather, thus decreasing fishing opportunities, which would conflict directly with the objective of this rulemaking. Similarly, potentially decreasing fishing opportunities via a schedule of 5 RFDs per week would be contrary to the objective of this rulemaking. NMFS may consider 4 RFDs per week in the future, if appropriate.

Comment 7: Most commenters did not support implementing RFDs for the December 2023 and January through March 2024 time periods, noting that the unpredictable weather during those periods in combination with RFDs could result in safety-at-sea issues and potentially limit commercial fishermen from landing the relevant subquotas. One commenter suggested that NMFS implement RFDs year-round.

Response: Based on the public comments received, NMFS is not finalizing longer RFDs for the December 2023 and January through March 2024 time periods. NMFS recognizes that the weather during those periods is unpredictable and may limit participation such that setting RFDs in those periods may not be necessary. For the same reasons, NMFS does not support the use of year-round RFDs at this time. NMFS may consider RFDs for the December and January through March time periods in the future, if appropriate.

Comment 8: One commenter noted that RFDs would have a negative impact on fishing tournaments and suggested that NMFS maintain the proposed RFD schedule, *i.e.*, Tuesday, Friday, and Saturday RFDs beginning July 1, 2023. The commenter noted that many fishing tournaments have established their dates based around the proposed schedule and that any modifications to the RFD schedule could have additional negative economic impacts on BFT tournament operations and local communities.

Response: NMFS acknowledges that RFDs that occur on a tournament date may negatively 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 (if they also hold a shark endorsement), 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)(7). 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 by filing such an adjustment in the **Federal Register**, under § 635.23(a)(4).

Comment 9: NMFS received some comments expressing concern that increasing the General category retention limit from the default of 1 fish to 3 fish to begin the June through August time period is unwarranted. Some commenters suggested that NMFS increase the retention limit to 3 fish to begin the June through August time period and subsequently decrease the retention limit from 3 fish to 1 fish when landings rates begin to increase. One commenter requested that NMFS maintain the default of 1 fish during the summer and increase the retention limit to 2 or 3 fish during the fall to correspond with RFDs. One commenter suggested that NMFS increase the retention limit to 2 fish instead of 3 fish to begin the June the August time period.

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 2023 General category time periods. 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 3 fish, following consideration of the relevant criteria provided under § 635.27(a)(7), including supporting scientific data collection. NMFS monitors the landings closely, and, as appropriate, NMFS then typically reduces the limit to the 1-fish default level to ensure fishing opportunities in all respective time-periods 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). 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.

Comment 10: NMFS received comments suggesting mandatory fish handling guidelines (e.g., ice requirement) and better enforcement of safety gear requirements for commercial fishing vessels noting that a number of vessels do not have the correct safety gear and do not properly handle BFT for sale.

Response: This comment is outside of the scope of this action. NMFS notes that guidance for the commercial fishing industry regarding seafood handling can be found under the Seafood Hazard Analysis and Critical Control Point (HACCP) and the Food and Drug Administration (FDA) Food Safety Modernization Act. Additionally, provisions regarding commercial fishing vessel safety can be found under the Coast Guard regulations in 46 CFR part 28.

Comment 11: One commenter suggested going to a tag system to address safety gear concerns.

Response: It is unclear if the commenter is talking about a landing tag system or the tag-and-release program. However, this comment is outside of the scope of this action. NMFS notes that interested vessel operators can participate in a tag-and-release program where NMFS-issued conventional tags, reporting cards, and detailed instructions for their use may be obtained from the NMFS Cooperative Tagging Center ((800) 437-3936 or <https://www.fisheries.noaa.gov/southeast/atlantic-highly-migratory-species/cooperative-tagging-program>). Additionally, NMFS requires dealers to affix a dealer tag to all BFT purchased

or received from a U.S. vessel immediately upon offloading the BFT.

Classification

NMFS is issuing this rule pursuant to 304(c) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that this temporary 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 temporary rule has been determined to be not significant for purposes of Executive Order 12866.

This temporary 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 temporary rulemaking is to set a schedule of RFDs for the 2023 fishing year that should slow the rate of General category landings to extend fishing opportunities through a greater portion of the General category time periods (similar to the 2022 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 2023 and part of 2024 year. 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, 6, 8), whether RFDs would affect some parts of the fishery more than others (see comment 6), and whether RFDs would negatively affect tournaments (see comment 8). NMFS' responses to those comments are summarized above. After careful consideration of all the comments received, NMFS is not finalizing an RFD schedule for the December 2023 or January through March 2024 time periods.

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 temporary 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 (North American Industrial Classification System (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 \$14.0 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 \$14 million. The 2021 total ex-vessel annual revenue for the BFT fishery was \$11.8 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 2022 are as follows: 2,630 General category permit holders and 4,175 HMS Charter/Headboat permit holders, of which 1,873 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 temporary rule does not contain any new collection of information, reporting, or record-keeping requirements. This temporary rule would set a schedule of RFDs for July 1 through November 30, 2023 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 temporary 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 temporary 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 temporary rule will instead set a schedule of RFDs for the General category for 2023. Under the regulations, when a General category subquota is reached or projected to be reached during a General category time period, 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 time period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of a time period. According to communications with dealers and fishermen, several of the high-volume Atlantic tunas dealers in 2019, 2020, and 2022 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 time period in order to extend the available quota until later in the time 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 time 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 time periods. In 2022, NMFS again set RFDs for the General category fishery on every Tuesday, Friday, and Saturday from July 1 through November 30.

Table 1 shows the General category closure dates by time period for 2018 through 2022. The General category remained open for the entire duration of the June through August time period in 2018 and 2020, and of the December time period in 2018 and 2019. The October through November time period tends to close the earliest of any time period, and NMFS often receives requests to reopen that time period. Following the consideration of numerous factors (*i.e.*, daily landings rates, weather conditions, available quota, *etc.*), NMFS reopened the October through November time period in 2018 and 2020. In 2021, NMFS set RFDs for the September through November time periods, resulting in the General category fishing extending late into September and through the end of October through November time period. In 2022, NMFS set RFDs for the June through November time periods, with the first RFD established on July 1. Closure dates for 2022 were February 11, August 10, September 19, October 24, and December 10, respectively, for each time period. NMFS believes that the relatively early closure dates in 2022 were due in part to high daily landings rates when the time periods were open in the summer and fall. Based on a review of average daily landings rates, without the use of RFDs, NMFS likely would have needed to close the June through November time periods much earlier if the RFDs were not in place. These high landings rates continued into December 2022, resulting in that time period closing after 10 days, much earlier than in 2018 through 2021. The use of RFDs in 2022 from June through November paced the landings as much as possible and extended the fishing opportunities for the June through November time periods.

TABLE 1—GENERAL CATEGORY CLOSURE DATES BY TIME PERIOD (2018–2022)

Year	Time period				
	January through March	June through August	September	October through November	December
2018 ...	Mar 2	Aug 31	Sept 23	Closed Oct 5; Reopened Oct 31 through Nov 2; Reopened Nov 12 through Nov 26.	Dec 31.
2019 ...	Feb 28	Aug 8	Sept 13	Oct 13	Dec 31.
2020 ...	Feb 24	Aug 31	Sept 27	Closed Oct 9; Reopened Oct 28–29; Reopened Nov 7–8.	Dec 14.
2021 ...	Feb 27	Aug 4	Sept 23	Nov 30	Closed Dec 14; Reopened Dec 20–23.
2022 ...	Feb 11	Aug 10	Sept 19	Oct 24	Dec 10.

Table 2 shows the average ex-vessel price per pound of BFT during each General category time period for 2018 through 2022 adjusted to real 2022 dollars using the Gross Domestic Product (GDP) deflator. Ex-vessel price per pound was lower for the September time period, with an average (2018

through 2022) of \$6.71, and varied over the summer and fall period, with averages of \$7.04 for the June through August time period and \$7.09 for the October through November time period. In 2022, the average price per pound was higher for the January through March time period compared to the

average price per pound during that time period in 2021. In most time periods, the 2022 average price per pound was also higher than the 2020 average price per pound. NMFS believes that this increase in average price was in part due to the use of RFDs in 2022.

TABLE 2—AVERAGE EX-VESSEL PRICE PER POUND (\$) OF BFT BY GENERAL CATEGORY TIME PERIOD (2018–2022) ADJUSTED TO REAL 2022 DOLLARS *

Year	Time period				
	January through March	June through August	September	October through November	December
2018	\$8.80	\$8.13	\$7.67	\$8.83	\$11.14
2019	7.03	6.48	7.32	6.34	14.04
2020	7.00	5.62	5.92	6.33	6.50
2021	6.94	7.60	6.59	7.85	9.06
2022	8.84	7.37	6.08	6.09	7.19
2018 through 2022 average	7.72	7.04	6.71	7.09	9.59

* Adjusted using the Gross Domestic Product (GDP) Deflator.

Table 3 shows the number and total weight of BFT that were landed but not sold by fishermen fishing under the General category quota for 2018 through 2022. The number and weight of unsold BFT increased from 2018 through 2022 with a peak in 2020 (143 BFT and 25.8 mt) in part due to the COVID–19

pandemic, and substantial decrease in 2021 (from 143 to 12 BFT and 25.8 mt to 2.0 mt), followed by an increase in 2022 (48 BFT and 9.1 mt). NMFS believes this increase is in part due to an influx of domestically caught BFT entering the market at one time resulting in dealers limiting their purchases of

BFT leading to General category participants. This situation resulted in unprecedented high landings days in several time periods and BFT fishermen having a difficult time finding buyers for landed BFT.

TABLE 3—NUMBER (COUNT) AND WEIGHT (MT) OF BFT LANDED BUT UNSOLD BY GENERAL CATEGORY PARTICIPANTS BY YEAR (2018–2022)

Year	Count	Weight (mt)
2018	14	2.6
2019	20	3.8
2020	143	25.8
2021	12	2.0
2022	48	9.1
Total	237	43.3

After considering public comment, NMFS is setting a schedule of RFDs for the 2023 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 applies to all

participants equally, NMFS anticipates that this schedule would extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time, similar to the 2022 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 2022. 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 time periods.

If NMFS does not implement a schedule, without any other changes, it is possible that the General category could have fewer open days later in the fishing season when ex-vessel prices tend to be higher (Table 1) as observed in 2018 through 2022. Additionally, without RFDs the trends of increasing numbers of unsold BFT (Table 3) and decreasing ex-vessel prices (Table 2) from 2018 through 2020 could continue. If those trends were to continue, all active General category permit holders could experience negative economic impacts similar to 2019, 2020, and 2022 where 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 2023 fishing year. That booklet notice serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

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

Dated: May 19, 2023.

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[FR Doc. 2023-11079 Filed 5-24-23; 8:45 am]

BILLING CODE 3510-22-P