

under 25 U.S.C. 1915(c). Indicate “yes” or “no.” If the state title IV–E agency indicated “yes,” then the state title IV–E agency must indicate the basis for good cause in paragraph (i)(13) of this section. If the state title IV–E agency indicated “no,” then the state title IV–E agency must leave paragraph (i)(13) blank.

(13) *Basis for good cause, adoption.* If the state title IV–E agency indicated “yes” in paragraph (i)(16), indicate the state court’s basis for determining good cause to depart from ICWA adoptive placement preferences by indicating “yes” or “no” in each paragraph (i)(13)(i) through (v) of this section.

(i) Request of one or both of the child’s parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the adoptive placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.

(iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the adoptive placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular adoptive placement.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 240213–0046]

RIN 0648–BM66

#### Atlantic Highly Migratory Species; Bluefin Tuna General Category Effort Controls and Related Regulations

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is proposing to codify a schedule of restricted-fishing days (RFDs) for the 2024 fishing year and subsequent fishing years; reestablish a General category default retention limit for large medium or giant bluefin tuna (BFT) on open days; and make

clarifications to the BFT dealer regulations and the definition of a bluefin statistical document (BSD) tag. This proposed action is necessary to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time period subquotas. Lastly, this proposed action would clarify existing regulations to ensure better understanding and compliance by General category quota participants.

**DATES:** Written comments may be submitted via <https://www.regulations.gov> and must be received by March 25, 2024. Comments may also be submitted at a public hearing or webinar. NMFS will hold a public hearing via conference call and webinar for this proposed rule on March 19, 2024, from 2 p.m. to 4 p.m., Eastern Time. Information for registering and accessing the webinar can be found at <https://www.fisheries.noaa.gov/action/proposed-rule-set-general-category-effort-controls-and-clarify-related-atlantic-bluefin-tuna>. Requests for sign language interpretation or other auxiliary aids should be directed to Larry Redd, Jr., (see **FOR FURTHER INFORMATION CONTACT** section) at least 7 days prior to the meeting. The public is reminded that NMFS expects participants at conference calls and webinars to conduct themselves appropriately. At the beginning of each conference call and webinar, the moderator will explain how the conference call and webinar will be conducted and how and when participants can provide comments. NMFS will structure the conference call and webinar so that all members of the public will be able to comment. Participants are expected to respect the ground rules, and those that do not may be asked to leave the conference calls and webinars.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2024–0021, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and type “NOAA–NMFS–2024–0021” in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the “Comment” icon, complete the required fields, and enter or attach your comments. Written comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the

public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of this proposed 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, Jr., or Erianna Hammond (see **FOR FURTHER INFORMATION CONTACT** section).

**FOR FURTHER INFORMATION CONTACT:** Larry Redd, Jr., [larry.redd@noaa.gov](mailto:larry.redd@noaa.gov), or Erianna Hammond, [erianna.hammond@noaa.gov](mailto:erianna.hammond@noaa.gov), at 301–427–8503.

#### SUPPLEMENTARY INFORMATION:

##### Background

BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.23 describes the daily retention limits for BFT including retention limits on RFDs. Section 635.27 divides the U.S. BFT quota, established by the United States and other members of the International Commission for the Conservation of Atlantic Tunas (ICCAT), among the various domestic fishing categories per the allocations established in the FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The BFT fishery is a quota-managed fishery, and the annual U.S. BFT quota is established by binding recommendations of ICCAT. The U.S. BFT quota established through that process is implemented domestically through rulemaking and allocated among six quota categories (General, Angling, Harpoon, Longline, Trap, and Reserve). This proposed rule considers actions specific to the General category

quota and General category quota participants, which include Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels when fishing commercially. As described in § 635.27(a), the overall baseline U.S. annual quota is 1,316.14 metric tons (mt). The General category baseline quota is 710.7 mt which is suballocated into time period subquotas as follows: January through March, 5.3 percent (37.7 mt); June through August, 50 percent (355.4 mt); September, 26.5 percent (188.3 mt); October through November, 13 percent (92.4 mt); and December, 5.2 percent (37 mt) (§ 635.27(a)(1)(i)(A) through (E)).

#### *BFT General Category RFDs*

NMFS originally established regulatory authority to set so-called “no-fishing” days for BFT in the General category fishery in 1995 (60 FR 38505, July 27, 1995). In that final rule, NMFS described no-fishing days as an effort control that could be used to extend the General category fishing season, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. The regulation provided that scheduled no-fishing days would be published in the **Federal Register** for a comment period of 30 days, and waiver of such days would be filed with the **Federal Register** a minimum of 5 days in advance of the scheduled no-fishing days if NMFS determined that the effort control would impede landing of the monthly quotas. *Id.* at 38506. In 1996, NMFS began using the term “RFD” rather than “no-fishing days” (61 FR 30183, June 14, 1996). From 1995 through 2007, NMFS set RFDs on annual basis. NMFS stopped scheduling RFDs in 2008, as General category landings over that timeframe were lower compared to the late 1990s and the General category fishery did not need to be closed.

Due to increased BFT landings rates in the General category in 2019 and 2020 and numerous requests from members of the Atlantic HMS Advisory Panel, General category quota participants, and Atlantic tunas dealers, NMFS proposed to schedule RFDs on all Tuesdays, Fridays, and Saturdays from July 20 through November 30, 2021 (86 FR 25992, May 12, 2021). Due to administrative timing issues related to publication in the **Federal Register**, NMFS established RFDs on all Tuesdays, Fridays, and Saturdays from September 3 through November 30, 2021 (86 FR 43421, August 9, 2021). Because the use of RFDs in 2021 succeeded in extending fishing

opportunities through a greater portion of the relevant time periods and the fishing year overall consistent with management objectives for the fishery, NMFS finalized an RFD schedule for the 2022 fishing year of all Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2022 (87 FR 33056, June 1, 2022). In 2023, NMFS proposed the same weekly schedule for the July through November timeframe, along with extending RFDs to the winter fishery (*i.e.*, the December and January through March time periods). Based on public comment and a review of average daily catch rates in previous fishing years, NMFS determined that finalizing an RFD schedule for the December 2023 or January through March 2024 time periods was unwarranted at that time. Thus, NMFS finalized an RFD schedule of all Tuesdays, Fridays, and Saturdays from July 1 to November 30, 2023 (88 FR 33839, May 25, 2023).

#### *BFT General Category Retention Limits*

NMFS established a default daily retention limit for large medium and giant BFT of one fish per vessel in 1995 (60 FR 38505, July 27, 1995). To provide for maximum utilization of the quota, NMFS had the flexibility to increase or decrease the large medium and giant BFT daily retention limit over a range of zero (on RFDs) to a maximum of three per vessel via an inseason action. In 2011, NMFS adjusted the upper limit of this range to five fish per vessel to increase opportunities to harvest the General category quota while maintaining the default retention limit of one fish per vessel (76 FR 74003, December 30, 2011). The default retention limit was maintained through 2018, when NMFS published a final rule that made editorial corrections amending the regulations for HMS (83 FR 33148, July 17, 2018). In that action, NMFS inadvertently removed regulatory text stating the default retention limit on non-RFD fishing days. To correct this technical error, with this action NMFS proposes to again establish default General category retention limits on non-RFDs.

#### **Proposed RFD and Retention Limit Measures**

The purpose of this proposed action is to modify the process of scheduling RFDs and reestablish General category default daily retention limits for large medium or giant BFT on open days. As effort controls, both RFDs and daily retention limits are meant to extend General category fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and

improve distribution of fishing opportunities without increasing BFT mortality. NMFS has prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) that present and analyze the anticipated environmental, social, and economic impacts of each alternative considered for this proposed rule. A brief summary of the alternatives considered is provided below. Additional information regarding this action and BFT management overall can be found in the FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation Reports, and online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

Under Alternative B, which NMFS is considering as four sub-alternatives (B1 is the preferred alternative), NMFS would modify the process for setting an RFD schedule. Under these alternatives, instead of conducting an annual rulemaking to set an annual RFD schedule, NMFS would set a default RFD schedule for specific General category time periods and days for the 2024 fishing year and subsequent years. If the scheduled RFDs are codified, NMFS may remove them or establish additional RFDs, as appropriate, through further rulemaking. In recent years, NMFS has noticed that the number of BFT landed but unsold by General category quota participants have increased in association with high rates of landings. Codifying RFDs would provide General category quota participants and dealers advanced time (*i.e.*, more than a month) to plan and coordinate activities for the expected time periods with high BFT landings rates, potentially decreasing the amount of BFT that are landed but unsold. Under the preferred alternative for an RFD schedule (Alternative B1), NMFS would codify a 3-day RFD schedule for every Tuesday, Friday, and Saturday from July 1 through November 30. NMFS has used this RFD schedule since 2022 to correspond with the time periods when catch rates have been historically high in the General category often resulting in premature closures of the fishery. The preferred RFD schedule would allow for two consecutive 2-day periods each week (Sunday–Monday; Wednesday–Thursday). This schedule would increase the efficient utilization of the BFT resource. It would allow dealers to plan to move BFT product through the market and therefore reduce the amount of General category BFT landed but unsold. Additionally, codifying this schedule could allow for

some commercial fishing activity each weekend (*i.e.*, on Sunday). Providing the opportunity for the time periods to last as long as possible would likely increase General category participation by commercial fishermen and provide access to fishing grounds while BFT are available. Furthermore, because this schedule would allow for at least 1 day of fishing on a weekend, which is when many tournaments operate, this specific RFD schedule would allow General category quota participants the opportunity to participate in at least 1 day of fishing tournaments.

NMFS may waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five after considering the 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 would 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 tag-and-release fishing for BFT under § 635.26(a).

Under the preferred alternative for a General category daily retention limit (Alternative D3), NMFS would establish a General category daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT per vessel on open days for all other months in time periods where the fishery is open (*i.e.*, January through March and July through December; note that the General category BFT fishery is not open during the months of April and May). In recent years, NMFS has increased the daily retention limit to three BFT in June when landing rates are low and then decreased the daily retention limit to one BFT when landing rates increased. This alternative would allow the continuation of a three-fish retention limit during the month of June when landing rates are low, thus providing some benefit to those General category quota participants that could retain more than one BFT during a period in which NMFS typically has increased the retention limit.

These preferred alternatives would help General category quota participants, tournament operators, and dealers with fishery-related planning (*e.g.*, fishers' travel to fishing grounds or engage in other fishing endeavors) by providing an advance schedule of open

and closed days and the applicable retention limits when the fishery is open. Furthermore, the preferred alternatives would provide an administrative cost savings as the Agency would publish fewer **Federal Register** actions setting RFD schedules on an annual basis and inseason retention limits adjustments for the General category fishery. Overall, these preferred alternatives meet the goals and objectives of this action and are expected to have neutral to minor beneficial ecological, social, and economic impacts.

In addition to the proposed measures, in the draft EA for this action, NMFS analyzed a status-quo alternative (Alternative A) that would maintain the recent practice of NMFS conducting annual rulemaking to set a schedule of RFDs for upcoming fishing years. NMFS does not prefer the no action alternative as administrative timing issues could occur related to final publication of an RFD schedule (similar to the 2021 RFD rulemaking) resulting in a later start of RFDs. Furthermore, Alternative A would not provide the same benefit to General category quota participants, tournament operators, and dealers in terms of being able to plan for RFDs. The draft EA for this action also describes the impacts of three other RFD schedules: a 3-day-per-week RFD schedule for every Thursday, Friday, and Saturday from July 1 through November 30 (Alternative B2); a 3-day-per-week RFD schedule for every Friday, Saturday, and Sunday from July 1 through November 30 (Alternative B3); and a 4-day (or more)-per-week RFD schedule from July 1 through November 30 (Alternative B4). Although Alternatives B2, B3, and B4 could pace landings just as or more effectively than the preferred alternative, implementing any of these alternatives is unlikely to allow adequate time for fish products to move through the market. Consecutive RFDs could result in market gluts leading to an influx of BFT product (*i.e.*, consecutive fishable days per week could lead to an oversupply of BFT that are landed and unable to be sold). These market gluts as a result could continue the recent trend of BFT being landed by General category quota participants but not sold to dealers.

The draft EA also describes the impacts of eliminating RFDs (Alternative C). NMFS does not prefer this alternative as it would not meet the objectives of this rulemaking inasmuch as it would result in shorter time periods when fishing is allowed and thus reduced fishing opportunity.

Lastly, the draft EA describes the impacts of two other alternatives for

General category default daily retention limits as follows: maintain the current regulations at § 635.23(a)(3), which do not establish a default retention limit on open days (*i.e.*, non-RFDs) when the General category is open (Alternative D1); and establish a General category default daily retention limit of one large medium or giant BFT (*i.e.*, one fish measuring 73 inches (185 cm) curved fork length or greater) per vessel on open days when the General category is open, for all General category time periods, or unless adjusted with an inseason action, if warranted (Alternative D2). NMFS does not prefer Alternatives D1 and D2 because General category quota participants may be limited by either not knowing the retention limit until publication of an action or by having a one-fish retention limit which may slightly adversely impact those fishermen who might be able to land and retain more than one BFT during the month of June when NMFS typically increases the retention limit.

#### **Proposed Regulatory Clarification of Dealer Activities on RFDs**

Dealer reporting regulations apply to all dealers who first receive HMS products (§ 635.5(b)). Under § 635.2, "first receive" means to take possession for commercial purposes of any HMS or any part thereof by purchasing, trading or bartering for it from the fishing vessel owner or operator once it is offloaded, except when such possession is solely for transport. A BFT dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received from a U.S. vessel immediately upon offloading the BFT (§ 635.5(b)(2)(ii)). As defined under § 635.2, a dealer tag is a numbered, flexible, self-locking ribbon issued by NMFS to a dealer for the identification of BFT sold to a permitted dealer. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. *Id.* Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report. *Id.* The dealer tag must remain on the fish until it is cut into portions. *Id.* If the BFT or BFT parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on the outside of any package containing the tuna. *Id.* Such tag number also must be recorded on any document accompanying the shipment of BFT for commercial use or export. *Id.*

With the recent use of RFDs, NMFS has received questions about dealer requirements relative to RFDs (*e.g.*, timing of transfer and sale to a dealer,

timing of affixing a dealer tag). NMFS is also aware of situations in which permitted dealers provide an individual with dealer tags on open days and RFDs in an attempt to allow the individual to act as a dealer's agent for the purposes of tagging a commercially landed BFT when a dealer is unavailable to first receive BFT on that day. To address these ongoing questions and concerns and assist with enforcement of RFDs, NMFS is proposing clarifications to the regulations as outlined below.

Currently, 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 (§ 635.23(a)(2)). HMS Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions that preclude fishing commercially for BFT or selling the 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 (§ 635.23(c)(2)). NMFS is not proposing changes to these restrictions that apply on RFDs.

Accordingly, regardless of when a BFT is landed by a General category permitted vessel or an HMS Charter/Headboat permitted vessel with a commercial sale endorsement fishing commercially for BFT under the General category restrictions and retention limits, BFT that is intended for sale must be in the possession of a permitted dealer no later than 2400 local time the day prior to an RFD (*i.e.*, the open day before an RFD). Any commercially landed BFT that is in the possession of a General category permit holder or an HMS Charter/Headboat permit holder with a commercial sale endorsement operating under the commercial restrictions and regulations at 0000 local time on an RFD is in violation of the RFD regulations at §§ 635.2 and 635.23(a). Atlantic Tunas General category and HMS Charter/Headboat permit holders that intend to sell BFT must land and transfer the BFT to a permitted dealer or dealer's agent no later than 2400 local time the day prior to an RFD. If the permit holder is unable to sell or otherwise transfer the BFT to a permitted dealer before 2400, the permit holder must follow the restrictions applicable to landed but not sold BFT specified at § 635.5(a)(3). Such permit holders may not be in possession of a BFT after 0000 local time on an RFD. NMFS is proposing changes to §§ 635.23(a) and 635.31(a) to incorporate these clarifications. To remain in compliance, NMFS

encourages fishermen and dealers to plan ahead and make arrangements to land, tag, and sell BFT before midnight when the following day is an RFD. No BFT may be possessed, landed, tagged, or sold on an RFD, even if the BFT was harvested on an open day but the vessel returned to port too late to meet a dealer.

NMFS is also proposing modifications to the applicable dealer regulations in section § 635.5(b) to clarify that, on an RFD, a dealer or dealer's agent may not purchase or place a dealer tag on a BFT that is on or has been offloaded from an Atlantic Tunas General category or HMS Charter/Headboat category permitted vessel, regardless of when the fish was landed. Similarly, NMFS proposes in section § 635.5(b)(2)(ii)(A) that a dealer or dealer's agent must affix a dealer tag to each BFT purchased or first received from a U.S. vessel immediately upon offloading the BFT. On an RFD, a dealer or dealer's agent may continue to first receive, place dealer tags on, or purchase BFT from vessels with other Atlantic Tunas permits (*i.e.*, Harpoon, Longline, Trap) (§ 635.4(d)(1)). NMFS is also proposing to clarify that a dealer's agent is a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are received; and fills out dealer reports as required under § 635.5. This interpretation of a dealer's agent is consistent with the description of a dealer proxy under § 635.8(b)(4). Finally, NMFS is clarifying the meaning of "BSD" in the definition of a BSD tag at § 635.2 to be "bluefin statistical document." The effects of these changes are primarily administrative and no environmental or economic effects are anticipated.

#### Classification

Pursuant to section 304(g) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

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

Although the agency has concluded that the proposed rule will not have a significant economic impact on a substantial number of small entities, in the interest of transparency an IRFA was prepared consistent with the standards in section 603 of the Regulatory Flexibility Act (RFA). The IRFA

describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES** section).

Section 603(b)(1) of the RFA requires agencies to describe the reasons why the action is being considered. The purpose of this proposed rulemaking is, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, to modify the process of scheduling RFDs and reestablish a General category default daily retention limit for large medium or giant BFT on open days. As effort controls, both RFDs and daily retention limits are meant to extend General category fishing opportunities through a greater portion of the General category time period subquotas, prevent overharvest of quota in any period, and improve distribution of fishing opportunities without increasing BFT mortality. Lastly, this action would clarify existing HMS dealer regulations and the definition of a BSD tag to improve the understanding of vessel and dealer restrictions and requirements for participants in the General category BFT fishery.

Section 603(b)(2) of the RFA requires agencies to state the objectives of, and legal basis for, the proposed action. The objective of this proposed rulemaking to simplify and clarify the regulatory process regarding RFDs. RFDs increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time period subquotas. Additionally, this proposed action would clarify the General category retention limit on open days for better understanding by General category quota participants and clarify the existing dealer requirements to ensure better compliance by dealers and dealers' agents when operating on an RFD. The legal basis for the proposed rule is the Magnuson-Stevens Act.

Section 603(b)(3) of the RFA requires agencies to provide 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 Industry 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 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. As of October 2022, there are 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 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements. This proposed rule would modify the process of scheduling RFDs, set a schedule of RFDs for 2024 fishing year and subsequent fishing years, reestablish a General category default retention limit for BFT on open days (*i.e.*, non-RFDs), and make modifications to the HMS dealer regulations to clarify dealer and dealer agent activities on RFDs.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

Under section 603(c) of the RFA, agencies must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Specifically, the RFA (5 U.S.C. 603(c)(1) through (4)) lists four general categories of significant alternatives to assist an agency in the development of significant

alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities, and thus the requirements are already designed for small entities. Regarding the third category, NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives. NMFS did not develop alternatives for the regulatory clarifications of dealer activities on RFDs. The effects of these changes are primarily administrative and no environmental or economic effects are anticipated.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Under Alternative A, the status-quo alternative, NMFS would maintain the status quo and, as needed, would conduct annual rulemaking for RFDs. The average annual revenue for BFT landed in the General category is approximately \$9.9 million based on the average ex-vessel price from 2018 through 2022 and adjusted for inflation using the GDP Deflator. Overall, RFDs do not modify the General category quota and are designed to extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time. To the extent that the ex-vessel revenue for 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 short-term increase in BFT prices, and the

value of BFT for the applicable General category time periods could increase. These increases in price are unlikely to impact the overall average annual revenue. NMFS expects this status quo alternative would have neutral economic impacts as it does not expect this alternative to have new economic impacts on small entities participating in the fishery.

Under Alternative B, which NMFS is considering as four sub-alternatives (B1 is the preferred alternative), NMFS would modify the process for setting an RFD schedule. Under this alternative, NMFS would no longer conduct an annual rulemaking to set an RFD schedule but would codify the General category time periods and days in which RFDs would be applied. NMFS may waive these scheduled RFDs for the specific time periods and days on which they apply by adjusting the daily BFT retention limit from zero up to five after considering the criteria at § 635.27(a)(7). 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 tag-and-release fishing for BFT under § 635.26(a). Codification of RFDs would provide greater certainty and predictability than annual RFD rulemaking, providing some positive economic impacts to General category participants and dealers in terms of business planning. As stated above, the average annual revenue for BFT landed in the General category is approximately \$9.9 million based on the average ex-vessel price from 2018 through 2022 and adjusted for inflation using the GDP Deflator. To the extent that the ex-vessel revenue for 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 short-term increase in BFT prices, and the value of BFT for the applicable General category time periods could increase.

As part of Alternative B, NMFS is considering four sub alternatives specifying different days of the week when RFDs would take place to the RFD schedule for 2024 and subsequent years. In general, three of the sub alternatives (B1, B2, B3) have similar economic impacts because they establish the same number of RFDs and RFDs do not modify the General category quota and are designed to extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time. To the extent that the ex-

vessel revenue for 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 short-term increase in BFT prices, and the value of the General category time period subquotas could increase.

Under Alternative B1, the preferred alternative, NMFS would codify a 3-day-per-week RFD schedule for every Tuesday, Friday, and Saturday from July 1 through November 30. This sub alternative could have neutral to minor beneficial economic impacts on small entities participating in the fishery beyond those currently occurring because of the ability to plan provided by the schedule of RFDs, but these short-term increases in price are unlikely to impact the overall average annual revenue.

Under Alternative B2, NMFS would codify a 3-day-per-week RFD schedule for every Thursday, Friday, and Saturday from July 1 through November 30. This sub alternative could have neutral to minor adverse economic impacts on small entities participating in the fishery as four consecutive landings days could increase the influx of BFT products into the market resulting in a short-term decrease in ex-vessel prices and revenues for General category participants. This short-term decrease in BFT prices are unlikely to impact the overall average annual revenue.

Under Alternative B3, NMFS would codify a 3-day-per-week RFD schedule for every Friday, Saturday, and Sunday from July 1 through November 30. This sub-alternative could have neutral to minor adverse economic impacts on small entities participating in the fishery as RFDs for an entire weekend could negatively impact General category participants who can only commercially fish on the weekends. Many participants are known to work in other sectors on weekdays and are only available to fish part-time on weekends. Additionally allowing four consecutive landing days could increase the influx of BFT products into the market resulting in a short-term decrease in ex-vessel prices and revenues for General category participants. This short-term decrease in BFT prices are unlikely to impact the overall average annual revenue.

Under Alternative B4, NMFS would codify a 4-day (or more)-per-week RFD schedule. This sub alternative could have minor adverse to adverse economic impacts on small entities participating in the General category fishery as four

or more RFDs could, rather than extending fishing opportunities, actually limit opportunities for General category participants to land the quota and subquotas resulting in derby-like conditions. This derby-like effect could lead to an influx of BFT products into the market that could result in a decrease in ex-vessel prices and revenues for General category participants, which may negatively impact overall average revenue. In addition, variable weather conditions where General category participants may be unable to take advantage of more limited open days may lead to an underharvest of the General category quota and subquotas, and underutilization of the available fishery resource.

Under Alternative C, NMFS would remove RFDs from the existing HMS regulations and no longer set RFDs for the General category. As stated earlier in this document, the goal of RFDs are to extend General category fishing opportunities through a greater portion of the General category time periods. Without RFDs, high catch rates early in each time period would prompt NMFS to prematurely close the General category because the quota has been reached, even though fish may still be available on fishing grounds. This premature closure would mean commercial fishermen operating under the General category could not fish for, possess, retain, or sell commercial sized fish. To the extent that the ex-vessel revenue for 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 short-term increase in BFT prices, and the value of the General category time period subquotas could increase. This alternative could have neutral to minor adverse economic impacts on small entities participating in the fishery. General category participants would likely land the subquotas over an extremely short time period increasing the influx of BFT products into the market, potentially resulting not only in an earlier closure of the fishery but also a slight decrease in ex-vessel prices and revenues for General category participants which may negatively impact overall average revenue.

Under Alternative D1, the status-quo alternative, NMFS would maintain the current regulations at § 635.23(a)(3) which do not establish a default retention limit on open days (*i.e.*, non-RFDs) when the General category is open. Under this alternative NMFS may

set the General category default daily retention limit for large medium or giant BFT over a range of zero (on RFDs) to five BFT per vessel for each time period in an action published in the **Federal Register**. The daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Overall, the use of retention limits would likely have neutral to minor beneficial economic impacts on small entities participating in the General category fishery as they could extend the length of the General category time periods when BFT can be landed, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in a short-term increase in ex-vessel prices for General category participants. This short-term increase in BFT prices are unlikely to impact the overall average annual revenue. NMFS expects the status-quo alternative to have neutral economic impacts as it does not change existing management.

Under Alternative D2, NMFS would establish a General category default daily retention limit of one large medium or giant BFT per vessel on days when the General category is open. The daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Retention limits would likely have neutral to minor beneficial economic impacts on small entities participating in the General category fishery as they could extend the length of the General category time periods when BFT can be landed, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in a short-term increase in ex-vessel prices for General category participants. However, since the current practice in recent years is to set a daily retention limit of three large medium or giant BFT per vessel on days when the General category is open, starting June 1 through June 30, a default of one BFT could potentially constrain the revenue of vessels that might have been able to land two or three BFT on open days from June 1 through June 30. Although this alternative may have a short-term minor adverse impact on a limited number of individuals and their revenues (likely resulting in a short-term decrease in ex-vessel prices), NMFS expects that the

overall average annual revenue would unlikely be impacted.

Under Alternative D3, the preferred alternative, NMFS would establish a General category daily retention limit of three large medium or giant BFT per vessel on open days in June and one large medium or giant BFT on days during all other months when the fishery is open (*i.e.*, January through March and July through December; the General category BFT fishery is not open during the months of April and May) unless adjusted with an inseason action. The daily retention limit would apply to General category permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Retention limits would likely have neutral to minor beneficial economic impacts on small entities participating in the General category fishery as retention limits could extend the length of the General category time periods when BFT can be landed, providing additional fishing opportunities while also reducing the influx of BFT products into the market which could result in an increase in a short-term increase ex-vessel prices for General category participants. Implementation of these default retention limits would align with current management practices and provide additional fishing opportunities in all respective time periods. Codifying the current retention limits management practices would potentially reduce some uncertainty regarding future retention limits for General category participants and dealers and thus lead to some positive economic impacts associated with their improved business planning. NMFS expects that the overall average annual revenue would be unlikely to be impacted.

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

#### List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: February 15, 2024.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 635 as follows:

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.2, revise the definition for “BSD tag” to read as follows:

##### § 635.2 Definitions.

\* \* \* \* \*

Bluefin statistical document (BSD) tag means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

\* \* \* \* \*

■ 3. In § 635.5, revise paragraph (b)(2)(ii)(A) to read as follows:

##### § 635.5 Recordkeeping and reporting.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) *Affixing dealer tags.* A dealer or a dealer’s agent must affix a dealer tag to each BFT purchased or first received from a U.S. vessel immediately upon offloading the BFT. A dealer’s agent is a person who is currently employed by a place of business covered by the dealer’s permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are received; and fills out dealer reports as required under § 635.5. If a vessel is placed on a trailer, the dealer or dealer’s agent must affix the dealer tag to the BFT immediately upon the vessel being removed from the water. The dealer tag must be affixed to the BFT between the fifth dorsal finlet and the caudal keel. Regardless of when the BFT was landed, on an RFD (as specified at § 635.23(a)), no dealer or dealer’s agent shall purchase, first receive, or affix a dealer tag to a BFT that is on or from a vessel that has an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement.

\* \* \* \* \*

■ 4. In § 635.23, revise paragraphs (a) and (c)(3) to read as follows:

##### § 635.23 Retention limits for bluefin tuna.

\* \* \* \* \*

(a) *General category.*

(1) No school, large school, or small medium size class BFT may be possessed, retained, landed, or sold on or from a vessel that has an Atlantic Tunas General category permit.

(2) The following default daily retention limits apply to vessels that have an Atlantic Tunas General category permit or HMS Charter/Headboat permit

with a commercial sale endorsement fishing under the General category restrictions and retention limits when the General category is open and the day is not an RFD and the retention limit has not been adjusted per paragraph (a)(3) of this section.

(i) January 1 through March 31—one large medium or giant BFT, per vessel per day;

(ii) June 1 through June 30—three large medium or giant BFT per vessel per day; and

(iii) July 1 through December 30—one large medium or giant BFT per vessel per day.

(3) To provide for maximum utilization of the quota for BFT, NMFS may adjust the daily retention limit of large medium or giant BFT over a range from zero (on RFDs) to a maximum of five per vessel per the inseason criteria provided under § 635.27(a)(7).

(4) Regardless of the length of trip, no person may land, possess, or retain more than the daily retention limit in effect for that day. When the applicable retention limit for large medium or giant BFT has been reached, no person aboard such vessels may continue to fish, and the vessel must immediately proceed to port.

(5) From July 1 through November 30 of each year, every Tuesday, Friday, and Saturday is an RFD unless waived per paragraph (a)(7) of this section. On an RFD, no person who has been issued an Atlantic Tunas General category permit or issued an HMS Charter/Headboat permit and fishing commercially may fish for, possess, retain, land, or sell a BFT of any size class; or catch and release or tag and release, as specified under § 635.26(a), a BFT of any size class.

(6) NMFS may remove or establish additional designated RFDs, as appropriate, following public comment via publication in the **Federal Register**.

(7) Designated RFDs may be waived in the following circumstances.

(i) If the General category fishery is closed under § 635.28(a), any remaining RFDs for the relevant time period(s) are waived so that persons aboard vessels issued an Atlantic Tunas General category permit may conduct tag-and-release for BFT under § 635.26(a).

(ii) If, based on the criteria at § 635.27(a)(7), NMFS determines that RFDs are not necessary, NMFS may waive RFDs by increasing the daily retention limit per paragraph (a)(3) for a specific time period(s) via publication in the **Federal Register**.

\* \* \* \* \*

(c) \* \* \*

(3) When fishing other than in the Gulf of Mexico when the General



category fishery is open and no RFD is in effect, a person aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement may fish under either the General category restrictions and retention limits as specified in paragraphs (a)(1) through (2) and paragraphs (4) through (5) of this section or the Angling category restrictions and retention limits as specified in paragraphs (b)(1) through (3) of this section. The size category of the first BFT retained will determine whether the General category or Angling category restrictions and retention limits apply to the vessel that day.

\* \* \* \* \*

■ 5. In § 635.31, revise paragraph (a)(1) and add paragraph (a)(2)(iii) to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

(a) \* \* \*

(1) A person who owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit with a commercial sale endorsement; a valid Atlantic Tunas General, Harpoon, Longline, or Trap category permit; or a valid HMS Commercial Caribbean Small Boat permit issued under this part and the appropriate category has not been closed as specified at § 635.28(a). No person may sell a BFT smaller than the large medium size class. No large medium or giant BFT may be sold if caught by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time or outside the Gulf of Mexico when the General category fishery has been closed (see § 635.23(c)). A person may sell Atlantic BFT only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear. A person issued an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement must land, sell or transfer a BFT to a dealer that has a valid permit for purchasing Atlantic tunas no later than 2400 local time the day prior to an RFD, as specified at § 635.23(a). If that person is unable to sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas no later than 2400, the person must follow the restrictions applicable to landed but not sold BFT specified at § 635.5(a)(3). In no case shall such person possess a BFT on an RFD.

(2) \* \* \*

(iii) Dealers may not first receive a BFT from a vessel that has a valid Atlantic Tunas General permit or HMS Charter/Headboat permit with a commercial sale endorsement after 0000 local time on an RFD, as specified at § 635.23(a).

\* \* \* \* \*

■ 6. In § 635.71, revise paragraphs (b)(13) and (29) to read as follows:

**§ 635.71 Prohibitions**

\* \* \* \* \*

(b) \* \* \*

(13) As a vessel with an Atlantic Tunas General category permit, fail to immediately cease fishing and immediately return to port after catching the applicable limit of large medium or giant bluefin tuna on a commercial fishing day, as specified in § 635.23(a)(4).

\* \* \* \* \*

(29) As a dealer or dealer's agent, purchase, first receive, or affix a dealer tag to a BFT that is on or from a vessel that has been issued an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement, as specified in § 635.5(b)(2)(ii)(A) after 0000 local time on an RFD.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 240214-0048]

RIN 0648-BM83

**Fisheries of the Northeastern United States; 2024 and 2025 Summer Flounder and Scup, and 2024 Black Sea Bass Recreational Management Measures**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes Federal management measures for the summer flounder and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of this action is to set

management measures that allow the recreational fisheries to achieve, but not exceed, the recreational harvest targets and thereby prevent overfishing.

**DATES:** Comments must be received by March 11, 2024.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2024-0020 by the following method:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and type NOAA-NMFS-2024-0020 in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Policy Analyst, (978) 281-9116, or [Emily.Keiley@noaa.gov](mailto:Emily.Keiley@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage summer flounder, scup, and black sea bass. The Council and the Commission's Management Boards meet jointly each year to recommend recreational management measures. For summer flounder and black sea bass, NMFS must implement coastwide measures or approve conservation-equivalent measures per 50 CFR 648.102(d) and 648.142(d), as soon as possible following the Council and Commission's recommendation. This action proposes establishing conservation equivalency (*i.e.*, waiving Federal recreational management measures) for both species in 2024 and for summer flounder in 2025. For scup, no adjustments to the Federal