

observers on all selected trips. NMFS is working towards improving observer coverage by increasing the sampling of trips to eight percent and facilitating increased communication between vessel operators and observer program coordinators, particularly in regards to safety requirements for the placement of observers (see 50 CFR 600.746), and the need to have all safety equipment on board as required by the U.S. Coast Guard.

Comment 7: Numerous comments stated support for the inseason adjustment authority, but stated that the 30-day delayed effectiveness prior to the regulation changes is too long. NMFS should employ a 2-week notice to be timely responding to resource concerns.

Response: In the proposed rule, NMFS had proposed adjusting the limits through an inseason action, with 30 days public notice. However, NMFS agrees that the highly migratory nature of BFT could result in rapid changes of fishing gear interaction rates. In order for in-season adjustments to work effectively, NMFS must respond quickly. In addition, NMFS is concerned about providing adequate notice of changes to fishing vessels at sea. Therefore, NMFS has reconsidered the balance between prompt action and notification and reduced the public notice period to no less than 21 days, which is the expected trip length for larger vessels fishing further offshore.

Comment 8: NMFS should define "target catch" so as to prohibit the landing of unmarketable species just to reach a minimum threshold to retain a BFT and encourage the release of all live BFT caught by pelagic longline vessels.

Response: The current regulations addressing target catch limits at 635.23 (f)(1) state that species other than BFT must be legally caught, retained, and offloaded from the same trip and recorded on the dealer weighout slip as sold. The current regulatory language meets the intent of preventing the landing of unmarketable species just to reach a minimum threshold. In regard to release of BFT retrieved alive by pelagic longline vessels, NMFS is currently working on a national bycatch reduction strategy. To view the goals, objectives, and strategies please visit www.nmfs.noaa.gov.

Comment 9: NMFS should consider various physical oceanographic parameters and re-examine the Mid-Atlantic closure area because it is not used as a spawning area. Forcing vessels to move further offshore may produce a safety issue. Other comments stated that NMFS should analyze data gathered during the Northeast Distant

experimental fishery to adjust management measures for the pelagic longline fishery in the future.

Response: NMFS' intent in creating the Mid-Atlantic closure area was to ensure compliance with ICCAT recommendations to reduce the bycatch and dead discards of BFT by pelagic longline vessels, not to protect a potential BFT spawning area. The available data, based on logbooks submitted by fishermen, indicate a substantial decline in BFT bycatch throughout the year, indicating the closed area may be effective at reducing discards. Although NMFS realizes that it may be necessary to adjust the time and/or area of the closure based on new data including changed physical oceanographic patterns, fishing activity etc., available information does not warrant such changes at this time. NMFS will continue to analyze logbook and observer data from the Northeast Distant experimental fishery in order to consider possible adjustments to target catch requirements for landing BFT by longline vessels, or to make other adjustments as necessary in order to minimize dead discards.

Classification

These regulatory amendments are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. An Initial Regulatory Flexibility Analysis was prepared for the proposed rule and submitted to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this rule. The analyses of the FRFA found that the final actions under this rule would have beneficial impacts; therefore, consideration of alternatives to minimize impacts to small entities is contrary to the purposes of the Regulatory Flexibility Act. The proposed rule (67 FR 78404, December 24, 2002) sets forth the purpose and need for this action and a description of the alternatives considered and impacts of those alternatives, which are not repeated here. There are approximately 171 pelagic longline vessels that are permitted to retain Atlantic tunas and swordfish, all of which are considered small entities, and average annual gross revenues per vessel are approximately

\$168,000. Annual gross revenues from the Atlantic pelagic longline fishery are approximately \$29 million. NMFS selected this final action because the selected target catch requirements will minimize BFT discards while allowing retention of truly incidentally caught BFT and preventing a directed fishery. One target catch alternative considered was rejected because it would not reduce BFT discards as much as the final action, and it would have negative economic impacts. While the other alternatives generally had positive economic impacts, NMFS did not select them because they maintained differential target catch requirements, which no longer seemed warranted based on available data, or because they would not have reduced BFT discards as much as the final action. The final action will have a positive economic impact on revenues approximately a 1.2 to 1.5% increase of pelagic longline vessels. While the new north/south boundary line and inseason adjustment authority will not have any direct economic impacts, NMFS selected these measures as part of the final action because they could help prevent negative impacts on small entities due to closures. In addition, the new boundary line was selected to address confusion regarding the applicability of regulations. A copy of the FRFA and other analytical documents prepared for this rule are available from NMFS (see **ADDRESSES**).

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA and other analytical documents prepared for this rule, are available from NMFS (see **ADDRESSES**).

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

The regulations implemented through this final rule are not expected to have any additional impact on sea turtles or other endangered species or marine mammals as this action is not likely to increase or decrease pelagic longline effort, nor is it expected to shift effort into other fishing areas. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the