

BFT. In the future, if circumstances and/or the data warrant, observers may also be deployed as well.

#### **Adjustment of the BFT Size Tolerance Limits for the Harpoon Category**

In 1992, NMFS implemented a tolerance limit on the large medium BFT size class for the Harpoon category (57 FR 32905, July 24, 1992) and restricted vessels permitted in the Harpoon category to one large medium BFT per vessel per day. These vessels may land an unlimited number of giant BFT, so long as the Harpoon category quota is not exceeded. This action was taken to reduce the fishing mortality on large medium BFT, thus allowing for an increase in the spawning potential of the western Atlantic BFT stock, while allowing for the incidental take of large medium BFT to minimize regulatory discards and negative economic impacts. Over the last couple of years, however, the Harpoon category has not been fully harvested, which can be attributed to a number of reasons such as oceanographic conditions, weather patterns, and migratory patterns, all of which appear to have reduced the availability of giant BFT. Also, similar to members of the Purse seine category, operators of Harpoon category vessels claim large numbers of mixed schools of BFT are comprised of different size classes, and that it has been difficult to locate schools of giant BFT on the fishing grounds. Having the ability to visually determine the size class of BFT prior to throwing a harpoon is a vital characteristic of this fishing method which will to minimize mortality on undersized BFT and reduce dead discards.

This proposed action is intended to provide Harpoon category vessels a reasonable opportunity to harvest the allocated Harpoon category quota in its designated time frame by allowing vessels permitted in the Harpoon category to retain two large medium BFT per vessel per day. Again, NMFS currently has very little data on BFT discards associated with this segment of the BFT fishery and may implement a previously approved vessel logbook program in the future to assist in determining the impact of the regulations and tolerance limits on discards in this fishery.

The potential impacts associated with this proposed action could consist of positive economic impacts by providing Harpoon category vessels more opportunities to harvest their allocated BFT quota in its designated time frame, thus increasing optimum yield. In addition, the proposed action is expected to have positive economic and

biological impacts by facilitating Harpoon category vessels to retain, land, and sell more large medium BFT that would otherwise be discarded while maintaining the focus of the fishery on BFT that have likely spawned at least once.

#### **Classification**

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The AA has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

NMFS has prepared a regulatory impact review and an Initial Regulatory Flexibility Analysis (IRFA) that examine the impacts of the alternatives for adjusting the Purse seine category start date, establishing a Harpoon category end date, adjusting the General category end date, and adjusting the retention limit for large medium BFT in the Harpoon and Purse seine category fisheries on small entities. The purpose of this proposed action is to ensure the BFT fishery is managed consistently with the objectives of the HMS FMP and its implementing regulations, applicable statutes including the Magnuson-Stevens Act and ATCA, and the 1998 ICCAT Rebuilding Plan for western Atlantic BFT.

The analysis for the IRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. Specifically, these issues affect vessels in three permit categories, namely the Purse seine, Harpoon, and General categories. The gross revenues for 2002, and number of vessels to date for 2003 for each category are as follows: General category, \$13.9 million, 6,797 vessels; Purse Seine category, \$3.0 million, 5 vessels; and the Harpoon category, \$0.5 million, 59 vessels.

Three alternatives were analyzed for the adjustment of the Purse seine category start date, including the status quo/no action alternative of an August 15 start date, the preferred alternative of a July 15 start date, and the same start date as all other categories - June 1. These alternatives were evaluated to improve optimum yield and ex-vessel prices for the Purse seine and General categories while minimizing negative impacts to other commercial categories, specifically the Harpoon category. Because of the various factors that affect ex-vessel prices for BFT (i.e., supply, quality, etc.), the exact effect of different Purse seine category season start dates on ex-vessel prices is uncertain. NMFS

estimated these impacts by assuming that the amount of product on the market was the primary factor affecting ex-vessel prices. Under the no action alternative, both the General and Purse seine categories appear to be negatively affected by depressed ex-vessel prices which may result from a mid-season glut of BFT on the market. However, under this alternative the Harpoon category benefits with higher ex-vessel prices early in the season before the Purse seine category commences. Opening the Purse seine category on June 1 could shift Purse seine category landings to earlier in the year and result in positive impacts for the Purse seine and General categories by relieving the mid-season market glut and distributing landings more uniformly over the fishing year. However, the Harpoon category could suffer the most negative impacts under this alternative because of the overall net increase in early season landings resulting from the overlap with the Purse seine category fishery season. This overlap would occur during the time period when the Harpoon category traditionally experiences the best ex-vessel prices and on average annually lands the bulk (87%) of its product. The preferred alternative of a July 15 start date appears to minimize the negative impacts on the Harpoon category by reducing the amount of overlap with the Purse seine category season relative to Alternative three, while still reducing the mid-season market glut, which should positively impact Purse Seine and General category ex-vessel prices. Increase in overlap with the Harpoon category during the time period when the Harpoon category averages approximately 26 percent of its gross revenues annually would be reduced to 30 days. Due to the large amount of landings, gross revenues and numbers of participants attributed to the Purse seine and General category commercial BFT sectors, this alternative is expected to provide the greatest positive impacts to the BFT fishery as a whole, even though the smaller Harpoon category may experience slightly negative economic impacts. In addition, it should be noted that any negative impact to the Harpoon category from the preferred alternative could be partially mitigated by the preferred alternative for Issue 2, which would increase the tolerance limit for large medium BFT to two fish per day, in an effort to improve the ability of the Harpoon category to catch its annual quota.

Three alternatives were also considered for the Harpoon category end date. The status quo alternative