

annual landings, and the large medium tolerance for the Harpoon category is two BFT per vessel per day.

Changes From the Proposed Rule

Several sections of regulatory text have been modified to be consistent with the change to the Purse seine category start date, specifically, § 635.28 (a)(2) and §§ 635.71(b)(10) and (b)(17). In addition, the final rule also includes a provision to delay the Purse seine category start date to no later than August 15 should it further assist in achieving the objective of the rule to reduce gear conflicts or overlap between fishing categories.

Comments and Responses

Comment 1 - NMFS received numerous comments in favor of a change in the Purse seine category start date from August 15 to July 15. Many commenters supported the July 15 Purse seine category start date for a variety of reasons including providing a greater length of time over which to spread Purse seine category landings, providing more time for purse seine vessels to catch their quota, and providing more opportunity to fish when the weather is better. In supporting the July 15 start date, some commenters stated that as the bulk of General category landings now occur later in the year than they had occurred when the August 15 purse seine start date was originally established, the date should be adjusted to July 15. Commenters stated that this change would be consistent with the original purpose of a purse seine start date that reduces overlap between fishing categories. One commenter also stated that currently the peak General category and Purse seine category landings coincide, which results in negative economic impacts for all in the fishery. This commenter noted that although a change to July 15 may negatively affect the Harpoon category, the proposed increase in allowance of two large mediums per vessel per day for the Harpoon category may mitigate these negative impacts by providing more of an opportunity for the Harpoon category to attain its quota by July 15, prior to the commencement of the Purse seine category fishing season.

Response - The final action establishes a start date for the Purse seine category of July 15. The intent of this action is to maximize positive economic impacts to the BFT fishery as a whole while minimizing negative impacts to the Harpoon category. Increasing the length of the season for the Purse seine category should help alleviate the overlap of large catches in the late summer and fall by allowing for

the distribution of purse seine catches throughout more of the season, should improve market prices in the Purse seine and General categories, and would minimize gear conflict on the water. The increase of the Harpoon category large medium retention limit may mitigate impacts by improving the ability of the Harpoon category to land the annual quota, perhaps prior to the commencement of the Purse seine category season. In addition, the final rule includes a provision for delaying the start date to no later than August 15 if a delay would further reduce gear conflicts or overlap between the different categories. Any adjustment to the start date would be filed with the Office of the **Federal Register** but would not be filed less than 14 calendar days prior to July 15. Because there are only five vessels in the Purse seine category, NMFS will be able to provide actual notice to the affected fishermen.

Comment 2 - NMFS also received comments suggesting alternative start dates for the Purse seine category as well as other commercial fishing categories. Some commenters opposed to a July 15 Purse seine category start date supported the status quo August 15 date, and stated that the slower, late fall market could probably better withstand the fiscal impacts of large purse seine catches. One commenter preferred a start date for the Purse seine category later than August 15 and creation of an earlier start date than June 1 for the commercial handgear categories to reduce overlap. One commenter specifically requested an earlier season opening date of the General and Harpoon categories on May 1. A few commenters supported a purse seine start date earlier than July 15, and a number of commenters specifically requested that all categories start on the same date. One commenter requested that the purse seine season be open year-round.

Response - NMFS analyses for this action determined that with the status quo purse seine start date of August 15, the early fall market for the overall fishery suffers from reduced ex-vessel prices that are temporally associated with the height of Purse seine and General category landings. A July 15 start date is intended to shift purse seine landings to earlier in the season and improve ex-vessel prices during the early fall, which is when the General category harvests most of its quota. Alternative dates do not appear to meet the objectives of the rulemaking to assist overall fishery prices and avoid overlap between the Purse seine and General categories. A start date later than August 15 would shorten the season and could

thereby negatively affect the ability of the Purse seine category to harvest its quota, which contradicts one objective of this final rule. A start date earlier than July 15 would allow for a longer period of time during which purse seine and harpoon landings would overlap and therefore could increase negative impacts to the Harpoon category, which are somewhat mitigated by the increase in the large medium tolerance for that category. Harmonizing all commercial fishery start dates to the same date would undermine the objective of this action to minimize gear conflicts on the water and to improve ex-vessel prices. Opening the start date for any fishery prior to June 1 would require adjustment of the fishing year, which must be accomplished through an FMP amendment. A year-round fishery for the Purse seine category was not considered as an alternative since it does not address the need to reduce gear conflicts identified in the original purpose for this action. However, as it is likely that market conditions and landing rates will vary among categories and from fishing year to fishing year the final rule includes a provision to provide some flexibility for adjusting the commencement of the Purse seine start date to no later than August 15.

Comment 3 - Several commenters opposed a July 15 start date because it was inconsistent with a current industry agreement regarding operations of spotter aircraft in the purse seine fishery. For this reason, one commenter supported a July 28 start date. The commenter noted that this fishing year was relatively calm regarding spotter plane activity and that the fishery would benefit from a permanent regulation regarding a July 28 start date for purse seine operations and their associated spotter aircraft.

Response - The 2003 fishing year was the first year for implementation of an industry agreement regarding the use of spotter planes throughout the industry. The July 28 start date for purse seine vessels and associated spotter aircraft established in the industry agreement is not an enforceable provision of NMFS regulations and could change based on revised industry arrangements. Consequently, it could be problematic to link season openings to actions not in NMFS control. NMFS recognizes the benefits of industry communication and cooperation on the issue of use of spotter planes in the fishery, and encourages the industry to continue to work together towards a constructive arrangement. The final rule includes a provision to provide some flexibility to the commencement of the Purse seine start date and any influence of spotter