

landing large medium BFT for both the Harpoon and Purse Seine categories. In developing this rule, it has become apparent that additional information on the size distribution of fish encountered/caught (as opposed to fish landed) is needed, and NMFS plans on obtaining this information through the previously approved logbook and observer programs.

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

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

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act (ESA). 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. NMFS is currently implementing the reasonable and prudent alternative required by the BiOp. This final rule would not have any additional impact on sea turtles as these actions do not affect the use of pelagic longline gear, would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this final action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

NMFS has determined that the final regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. On November 10, 2003, the proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. As of November 28, 2003, NMFS has received 3 responses, all concurring with NMFS' consistency determination. Because no responses were received from the other states, their concurrence is presumed.

The area in which this final action is planned has been identified as an Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. Based on the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, which analyzed the impacts of purse seine, harpoon, and rod and reel gear on EFH, this action is not anticipated to have any adverse impacts to EFH.

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

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

Dated: December 19, 2003.

**Rebecca Lent,**

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

■ For the reasons set out in the preamble, 50 CFR part 635 is amended 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 § 635.23, paragraphs (d) and (e)(1) are revised to read as follows:

##### § 635.23 Retention limits for BFT.

\* \* \* \* \*

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant BFT per day. An incidental catch of only two large medium BFT per vessel per day may be retained, possessed, or landed.

(e) \* \* \*

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the total amount of giant BFT landed during that fishing year.

\* \* \* \* \*

■ 3. In § 635.27, paragraphs (a)(1)(i)(C), (a)(4)(i), and (a)(5) are revised to read as follows:

##### § 635.27 Quotas.

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) October 1 through January 31 - 10 percent.

\* \* \* \* \*

(4) \* \* \*

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be filed less than 14 calendar days prior to July 15.

\* \* \* \* \*

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

\* \* \* \* \*

■ 4. In § 635.28 paragraph (a)(2) is revised to read as follows:

##### § 635.28 Closures.

(a) \* \* \*

(2) From the commencement date of the directed BFT purse seine fishery, as provided under § 635.27(a)(4)(i), through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season. Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

\* \* \* \* \*

■ 5. In § 635.71 paragraphs (b)(10) and (b)(17) are revised to read as follows: