



March 25, 2024

Highly Migratory Species Management Division
National Oceanic and Atmospheric Administration
1305 East-West Highway
Silver Spring MD 20910

Attention: Larry Redd

(via regulations.gov)

Re: NOAA-NMFS-2024-0021-0001

Dear Mr. Redd,

ABTA appreciates the opportunity to comment on the Draft Environmental Assessment (February 2024) for this Proposed Rule. We have provided verbal public comment during the webinar on March 19, 2024, so we will refrain from repeating those comments here.

As a general statement, ABTA does not have a conceptual problem with codifying Restricted Fishing Days (RFDs) and Daily Retention Limits in the Atlantic bluefin tuna commercial handgear fishery for the expressed purpose of reducing unnecessary paperwork and as it obviates the need for annual public comment. This assumes that this codification takes into account a precautionary approach to in-season management which we will discuss in this letter.

RFDs: In-Season Flexibility

However, we wish to specifically reference the Agency's preferred alternative for the RFD schedule, per Chapter 2.1, Alternative B, as follows:

If the scheduled RFDs are codified, NMFS may remove them or establish additional RFDs, as appropriate, through further rulemaking.

Alternative B1, the Agency's preferred alternative, is to *set an RFD schedule of three days per week (Tuesday, Friday, Saturday) from July 1 through November 30.*

Our understanding basis the foregoing, is that the Agency would be able to reduce the number of codified RFDs per week, in season, if conditions warrant. We further understand that this change can be managed in a timely manner, in-season without having to resort to a lengthy regulatory process. In our opinion, the flexibility to reduce the number of RFDs per week is important, as it is precautionary.

Support for increasing flexibility

However, the precautionary approach requires us to consider the possibility that the problem, in this case, heavy landings of BFT, can increase, as well as decrease. If this should occur and conditions require increasing the number of RFDs per week above the 3 RFDs per week which the Agency would prefer to codify, *NMFS may...establish additional RFDs, as appropriate, through further rulemaking.* Our concern is for the time needed to achieve further rulemaking. We would look with a view toward avoiding having to continue for the balance of a season with an RFD schedule which was proven to be inadequate based upon landings earlier in the season.

Our preference is to set the limit for the number of RFDs per week to 6, instead of 3. Should the Agency choose to set the default number of RFDs per week going forward to a lesser number than the maximum of 6 for the purpose of this codification, it would then be understood that increasing the number of RFDs per week up to and including 6 days per week, should the conditions support this, would require an in-season action, obviating the need for time consuming rulemaking. This would save valuable time in season, would enable the Agency to make required in-season changes with alacrity, would reduce administrative overhead and would be precautionary.

Our argument in support of this approach is simple: The fact that the commercial handgear fishery for BFT is an open access fishery means that the Agency has no control over an increase or decrease in fishing effort. Fishing effort is a key component in the heavy landings this fishery has been plagued with since 2016. Presently, no data is available to accurately track fishing effort. However, should fishing effort increase, the management tools favored in the EA will be inadequate to meet stated objectives in a timely manner.

Similarly, an increase or decrease in west Atlantic BFT spawning stock biomass or an

increase or decrease in the subsidy of eastern migrants on US fishing grounds is not within our control. The SCRS is not able to advise regarding the present size of west Atlantic spawning stock biomass. The result is that we have no way of knowing if or to what degree productivity by the west stock is influencing these high catch rates. Unfortunately, the SCRS advises that estimates of recruitment for the west stock are unreliable going back to 2014. Further, it is important to note that the all-important Balearic Island Larval Index has for more than a decade continuously demonstrated a robust increase in species productivity of the east stock and it is reasonable to assume that should this trend continue, subsidy of eastern fish on our fishing grounds may increase accordingly. Discussion on this point has taken place on several occasions at the SCRS.

There are three variables - fish abundance, fishing effort and quota - that will dictate how this fishery will need to be managed. Management should be prepared for any eventuality, as these variables are outside of our control. The Agency's preferred alternative does not provide us with the in-season flexibility needed in the event the problem of heavy landings increases.

In summary, we are advocating for an approach to the number of RFDs per week that is, in a sense, identical to the way in which daily retention limits are presently managed e.g. the maximum daily retention limit is 5 fish and the limit the Agency is proposing to codify is a lesser number. However, the Agency has the authority, basis existing conditions and established criteria, to increase the daily retention limit quickly, in-season, up to a maximum of 5 BFT. We believe that RFDs should be managed in the same way.

Purpose and Need

Section 1.3 defines purpose and need, as follows:

Proposed Action: NMFS is considering modifying the process of scheduling RFDs; codifying a schedule of RFDs for the 2024 fishing year and subsequent fishing years; and reestablishing a General category default retention limit for BFT on open days (i.e., non-RFDs).

Purpose: The purpose of this proposed action is to modify the process of scheduling RFDs and establish a General category default daily retention limit for large medium or giant BFT on open days.

Need: This proposed action is needed 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.

The need for RFDs stems directly from unusually heavy landings of BFT and this fact is not found in the Environmental Assessment. The significant logistic problems experienced by our fish dealers due to these heavy landings are similarly not mentioned, notwithstanding the fact that the problems the dealers encounter due to these heavy landings will directly affect ex vessel price.¹ The Agency states that the purpose in utilizing RFDs is to address the need for increased fishing opportunity. Yet, absent these heavy daily landings, the preeminent factor requiring action, the need for RFDs is significantly lessened or eliminated entirely. The need for increasing fishing opportunity is a direct outgrowth of these heavy landings.

Social and Economic Impact

Section 4.1.2 Social and Economic Impacts, Alternative B4, states, in part:

NMFS believes that a schedule of four or more RFDs per week would limit commercial fishing participants to three or fewer fishable days per week depending on the weather, resulting in decreased fishing opportunities, which would directly conflict with the purpose and objective of this rulemaking.

We do not agree that four or more RFDs per week will result in decreased fishing opportunities. We are defining “fishing opportunity” as “time spent on the water with fishing quota available”. If fishermen are not able to fish on an open day due to weather, this may result in a reduction in landings overall for a subquota period. There are two possible outcomes from a loss of fishing opportunity due to weather: Either it will result in extending fishing opportunity during that subquota period or it may result in an underutilization of quota for a subquota period; in the former case, the result is desirable and in the latter case, any unused quota will be made available to the subsequent subquota period. Consequently, adverse weather conditions will not result in decreased fishing opportunity overall. Instead, this will result in extending, “...fishing opportunities through a greater portion of the General category time period subquotas.”

¹ Ex-vessel price, in this context, is the price reported to the Agency by fish dealers within 24 hours after landing. Most fish are sold after dealer reporting. Therefore, the ex-vessel price reported is in most cases a guess. Consequently, the accuracy of the reported ex-vessel price is questionable.

The statement at the end of the sentence in Section 4.1.2, Alternative B4, “...which would directly conflict with the purpose and objective of this rulemaking”, is incorrect. Why? It is stated in Section 1.3 (Need), “RFDs increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time period subquotas. In this context, “..increase the likelihood of pacing General category landings...” is deemed in this EA as a positive attribute of this action and is clearly part of the purpose and objective of this rulemaking.

Tournaments

Section 4.1.2, Alternative B4 (continued): *NMFS believes a schedule of four or more RFDs per week would have minor adverse to adverse social impacts and likely result in derby-like fishing conditions to land the General category time quota and subquotas. Lastly, HMS tournament operators could also encounter adverse social impacts as fishing tournament participation by General category permit holders would be limited to three or fewer open days a week and fishing tournaments would have to modify their potential start dates to correspond with the RFD schedule.*

This fishery has been constantly experiencing derby-like conditions since 2016, due to heavy landings of BFT reducing fishing opportunity. However, the most extreme example of derby-like conditions is expressed in the landings stemming from tournaments. Tournaments are a form of gambling for financial reward. Fishermen unquestionably mount their greatest fishing effort at tournaments. This is why tournament data is nearly useless for the purpose of calculating CPUE.

Every year for the last several years more tournaments have chosen to target large medium and giant BFT. New BFT giant tournaments have appeared. The impact of tournaments landings on the purpose and need for this proposed rule was not examined in the EA. Consider, given the present RFD schedule, that tournaments desiring to offer targeting of large medium and giant BFT will invariably schedule their event sometime between the last few days of June and the first few days of August, essentially a 5-week period. This is the time of year in which the weather is considered to be best and most stable. Good weather is a desirable attribute when scheduling a tournament. This period is also a time of year when heavy landings occur. Further, no tournament operator will want to assume the risk of scheduling a tournament later in August because they risk cancelling their tournament if the fishery is closed prematurely, Premature closure has been the case in August since RFDs were implemented.

Tournaments contribute significantly to already heavy landings of BFT in summer. Lacking a control on the number of tournaments that are allowed to target large medium and giant BFT and given, as previously mentioned, that these tournaments will be concentrated in the month of July are circumstances which will have a negative effect on the stated objectives in this Proposed Rule.

Summary

We realize that there are issues illuminated here that are not precisely within to scope of the various alternatives presented in the EA. For example, the recommendation of a maximum of 6 RFD's per week is not an option presented in the EA. Ensuring that we are taking a precautionary approach which addresses all outcomes is lacking in this Proposed Rule. Similarly, statistics regarding the effect of tournament landings on landings overall has not been delved into in this EA. Hence, our preference is to provide more time for a closer analysis. In delaying this Proposed Rule we are sure to arrive to improved alternatives and the cost for doing so is one more season without codification.

Thanks again for the opportunity to comment.

Cordially,

David Schalit, President
American Bluefin Tuna Association

cc: ABTA Board