

Dated: May 31, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 050209033-5033-01; I.D. 053105G]

RIN 0648-AS97

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Trip Limit Reduction for Gulf of Mexico Grouper Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason action.

**SUMMARY:** NMFS reduces the combined trip limit for the commercial shallow-water and deep-water grouper fisheries in the exclusive economic zone of the Gulf of Mexico to 7,500 lb (3,402 kg) per trip. The intended effect of trip limit reduction is to moderate the rate of harvest of the available quotas and, thereby, reduce the adverse social and economic effects of derby fishing, enable more effective quota monitoring, and reduce the probability of overfishing.

**DATES:** Effective 12:01 a.m., local time, June 9, 2005, through December 31, 2005, unless changed by further notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727-824-5305, fax: 727-824-5308, e-mail: [Phil.Steele@noaa.gov](mailto:Phil.Steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Gulf of Mexico Fishery Management Council. This FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Regulations at 50 CFR 622.44(g)(1)(ii) require NMFS to reduce the commercial trip limit for Gulf deep-water and shallow-water grouper, combined, to

7,500 lb (3,402 kg) if on or before August 1 more than 50 percent of either the shallow-water grouper quota or red grouper quota is reached or is projected to be reached. Based on current statistics, NMFS has determined more than 50 percent of the 5.31 million-lb (2.41 million-kg) commercial quota for red grouper will be reached on June 8, 2005. Accordingly, NMFS is reducing the combined trip limit for deep-water grouper (misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, and speckled hind) and shallow-water grouper (black grouper, gag, red grouper, yellowfin grouper, scamp, yellowmouth grouper, rock hind, and red hind) to 7,500 lb (3,402 kg) per trip in the Gulf of Mexico exclusive economic zone effective 12:01 a.m., local time, on June 9, 2005, through December 31, 2005, unless changed by further notification in the **Federal Register**.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.44(g)(1)(ii) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 1, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05-11290 Filed 6-2-05; 2:30 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 050317076-5145-02; I.D. 030405C]

RIN 0648-AT01

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications and General Category Effort Controls

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS announces the final initial 2005 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories and to set General category effort controls. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** The final rule is effective July 7, 2005 through May 31, 2006.

**ADDRESSES:** Supporting documents, including the environmental assessment (EA), final Regulatory Flexibility Act analysis, and regulatory impact review, are available by sending your request to Dianne Stephan, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930; Fax: 978-281-9340. These documents are also available from the HMS Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hmspg.html> or at the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dianne Stephan at (978) 281-9260 or email [Dianne.Stephan@noaa.gov](mailto:Dianne.Stephan@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under

the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

### Background

Background information about the need for the final initial BFT quota specifications and General category effort controls was provided in the preamble to the proposed rule (70 FR 14630, March 23, 2005), and is not repeated here. By this rule, NMFS announces the final initial BFT quota specifications and General category effort controls. In the proposed rule, comments were specifically requested on options to remain below the ICCAT recommended school BFT provision implemented at 50 CFR 635.27(a)(2) which requires that the proportion of school landings to overall U.S. landings remain below a four-year average of eight-percent. The final rule attempts to balance concerns regarding the eight-percent provision with requests for additional quota, higher retention limits, and longer seasons. NMFS will allocate the full proposed school BFT quota for the 2005 fishing year, and make inseason adjustments as necessary. In addition, NMFS may implement inseason adjustments to retention limits and seasons as discussed under the Comments and Responses section (Comment 4) below. Several comments regarding early retention limits and a late season Southern area fishery for the General category were also received, and are addressed under Comment 5.

### Changes From Proposed Rule

Updated landings estimates for the 2004 fishing year were available for several BFT fishery categories, which affected quota allocations for 2005 in the Reserve and Longline categories, and are incorporated in this rule. Total additional landings of 36.7 mt in the Longline category occurred since the landings for the proposed rule were analyzed. These landings occurred in the subcategories as follows: 2.7 mt additional landings in the north (outside of the Northeast Distant area (NED)) and 34.0 mt additional in the south. The quota available for the 2005 fishing year in each of the Longline subcategories is 51.6 mt in the north (outside the NED), 64.7 mt in the NED, and 72.1 mt in the south. In addition, new information regarding the dead discards in the 2004 longline fishery showed that the Longline category had exceeded the 68 mt dead discard allowance by 3.8 mt, according to preliminary estimates for calendar year (CY) 2004. Pursuant to 50 CFR 635.27(a)(9)(iv), any dead discard

overage must be subtracted from the category in which it occurred. Thus, the overall Longline category quota is reduced by 40.5 mt (36.7 mt + 3.8 mt) to a total of 188.4 mt and the Reserve category is reduced by 7.8 mt to account for the previously estimated dead discard underage for 2004.

Data became available since analyses for the proposed rule showing additional landings in the Angling category of 5.7 mt for the 2004 fishing year. Since data available for the proposed rule indicated that the Angling category had over-harvested the 2004 quota, the Reserve category for the 2005 fishing year was reduced by 5.7 mt in this final rule to account for the additional Angling category landings.

### 2005 Final Initial Quota Specifications

In accordance with the 2002 ICCAT quota recommendation, the ICCAT recommendation regarding the dead discard allowance, the 1999 HMS fishery management plan (1999 FMP) percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS establishes final initial quota specifications for the 2005 fishing year as follows: General category—908.3 mt; Harpoon category—90.0 mt; Purse Seine category—530.0 mt; Angling category—288.6 mt; Longline category—188.4 mt; and Trap category—3.8 mt. Additionally, 45.9 mt are allocated to the Reserve category for inseason adjustments, including potentially providing for a late season General category fishery, or to cover scientific research collection and potential overharvest in any category except the Purse Seine category.

Based on the above initial specifications, the Angling category quota of 288.6 mt is further subdivided as follows: School BFT 117.2–mt, with 45.1 mt to the northern area (north of 39°18' N. latitude), 50.4 mt to the southern area (south of 39°18' N. latitude), plus 21.7 mt held in reserve; large school/small medium BFT 164.8–mt, with 77.8 mt to the northern area and 87.0 mt to the southern area; and large medium/giant BFT—6.6 mt, with 2.2 mt to the northern area and 4.4 mt to the southern area.

The 2002 ICCAT recommendation includes an annual 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the NED. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance to the North/South allocation percentages mentioned below. Thus, the Longline category quota of 188.4 mt is subdivided as

follows: 51.6 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 72.1 mt to pelagic longline vessels landing BFT south of 31° N. latitude, and 64.7 mt (39.7 mt from 2004 + 25.0 mt for 2005) to account for bycatch of BFT related to directed pelagic longline fisheries in the NED.

### General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the 1999 FMP and are designed to address concerns regarding the allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The regulations implementing the 1999 FMP divide the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-January. These percentages would be applied to the adjusted 2005 coastwide quota for the General category of 908.3 mt, minus 10.0 mt reserved for the New York Bight set-aside fishery. Therefore, of the available 898.3 mt coastwide quota, 539.0 mt would be available in the period beginning June 1 and ending August 31, 2005; 269.5 mt would be available in the period beginning September 1 and ending September 30, 2005; and 89.8 mt would be available in the period beginning October 1, 2005, and ending January 31, 2006.

In addition to time-period subquotas, NMFS also has implemented General category restricted fishing days (RFDs) to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional fine scale inseason flexibility. For the 2005 fishing year, NMFS establishes a series of solid blocks of RFDs to extend the General category for as long as possible through the October through January time-period.

Therefore, persons aboard vessels permitted in the General category are prohibited from fishing, including catch-and-release and tag-and-release, for BFT of all sizes on the following days while the fishery is open: all Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive. These RFDs are implemented to improve distribution of fishing opportunities during the late

season without increasing BFT mortality.

### Comments and Responses

*Comment 1:* Many commenters supported the quota allocation in the proposed rule and the timing of the proposed rule and comment period relative to the start of the BFT season. One commenter stated that each category should be responsible for its overages and underages in future years.

*Response:* The final rule implements the proposed quota allocation, with minor modifications to account for minor additional recreational landings and minimal landings under experimental fishing permits, and a minor adjustment for dead discards. NMFS intends to publish annual specifications with enough notice and sufficient information so constituents can plan for the BFT fishing year. When setting annual specifications, NMFS strives to ensure each category's overages and underages are applied within the same category. However, transfer of quota among categories is provided for in regulations at 50 CFR 635.27(a)(8). In general, NMFS may choose to transfer quota among categories to maximize fishing opportunities and help achieve optimum yield in BFT fisheries, while this valuable stock undergoes rebuilding.

*Comment 2:* Some commenters supported the proposed RFDS while others did not. The commenters that supported the RFDs recognized that the RFDs would serve several purposes, including maximizing the market value of the catch by distributing the available quota over a longer time period and allowing the charter/headboat and recreational fleets the opportunity to fish without the presence of the commercial fleet. Commenters who opposed the RFDs noted that the RFDs would disadvantage non-resident commercial fishermen since they may have to pay for lodging or docking during non-fishing days and that some General category fishermen are only able to fish on the weekends. Commenters opposed to the RFDs also stated that waiving RFDs during previous fisheries had occasionally been untimely, and that weather would serve to moderate the landings for the last subperiod. A commenter also asked that the RFD for Thanksgiving be removed so that fishermen could have the option to fish.

*Response:* The final rule maintains the following schedule of RFDs, as proposed: Fridays, Saturdays, and Sundays between November 18 and January 31 and Thursday, November 24.

The purpose of the RFDs is to assist with distribution and achievement of optimum yield, and to extend the late season General category fishery. NMFS recognizes that three day consecutive RFDs could negatively impact non-resident fishermen. The intent of the configuration of the RFDs is to separate the commercial and recreational fisheries temporally (*i.e.* General category fishes Monday through Thursday, Angling category fishes Friday through Sunday) in order to improve conditions on the fishing grounds for both fisheries. Market value of BFT is expected to increase as a result of spreading the fishery out over the late season, and could mitigate any potential extra costs of non-resident fishermen for boat dockage and overnight fees. General category fishermen with situations such as other full time jobs on Monday through Friday may need to make other arrangements such as taking annual leave in order to fish during weekdays.

NMFS recognizes that the weather is unpredictable during this time period of the fishery (*i.e.* November 18 through January 31), and that poor weather conditions may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates during the late season fishery merit the waiving of RFDs, under 50 CFR 635.23(a)(4), NMFS may adjust the daily retention limits with a minimum three day notification to fishermen.

Thanksgiving (November 24, 2005) and other holidays during November through January for 2005–6 are maintained as RFDs to provide fishermen the opportunity to spend holidays with family or friends without disadvantaging them in the fishery. Providing U.S. holidays (*i.e.* November 24, December 24–25, December 31 and January 1) as RFDs is a new approach for management of the General category fishery, and may be re-evaluated in future years based on experience gained from this year's fishery. In this year's fishery, holidays other than Thanksgiving happen to occur on Friday, Saturday, or Sunday, which have been established as RFDs for other purposes. Thus, the evaluation of providing holidays will rest on the experience of Thanksgiving day for 2005. As discussed above, RFDs can be waived as the season progresses if warranted by conditions in the fishery.

*Comment 3:* Several commenters stated a need to change the way BFT recreational landings are counted. Commenters stated that landings estimates in recent years were much higher than what seemed to be more

reasonable estimates from prior years. Several commenters requested that a tail-tag program similar to the landings programs in place in North Carolina and Maryland be implemented on a coastwide basis. A commenter noted that real-time recreational landings estimates are necessary for inseason adjustments to keep the recreational fishery open during the entire season and from exceeding its quota. Similar comments regarding the need for improvement to HMS recreational landings statistics were presented by the HMS Advisory Panel during a March 2005 meeting.

*Response:* NMFS collects recreational landings data for HMS through the following three programs: (1) Large Pelagics Survey (LPS); (2) Automated Landing Reporting System (ALRS), and (3) comprehensive tagging of recreationally landed BFT in the states of Maryland and North Carolina. Each of these programs has limitations, and none of them provides real-time data on a coastwide basis, but they are the best data available. NMFS considers improving recreational landings data for HMS to be a high priority, and continues to investigate options for improving the reliability and utility of these data. Specifically, an ad hoc committee of NMFS scientists was formed to review the 2002 and 2003 methods and estimates of U.S. recreational fishery landing of BFT, white marlin, and blue marlin reported by NMFS to ICCAT to verify that the reported estimates were the most accurate that could be made with available data. A report stating the Committee's findings was released in December 2004. Based on the findings of this report, and consultations with the contractor that performs the LPS, methods of fish measurement and length/weight conversion will be further scrutinized. Proposals to implement an Atlantic-wide tail-tag monitoring program remain under discussion among coastal states and within NMFS and include issues regarding specifics of logistics, implementation, and establishment of partnerships with coastal states.

*Comment 4:* Many comments regarding the 2005 recreational season were received; most in response to the agency's request for comments on addressing ICCAT's eight-percent provision for school size BFT as set forth in 50 CFR 635.27(a)(2). In addition, a joint letter from several recreational advocacy groups outlined specific bag limits and season requests for the 2005 recreational fishing year, and several other commenters requested that sufficient quota be available for the

southern area recreational fishery, and that it be extended in time beyond that available in previous years. The comments regarding the eight-percent tolerance provision received included support of a limit of one school size BFT per vessel per day and support of a one fish (any size category) limit per vessel per day. Shifting some of the quota into the large school/small medium subquota was supported by one commenter but not by another because of concern over increasing pressure on spawning fish. Several commenters suggested harvesting the entire school allotment for the next two years during 2005. Several other commenters expressed concern over postponing action to limit school size catches until 2006 and any other actions that could jeopardize a school size fishery in 2006. A commenter opposed completely prohibiting the catch of school size BFT in 2005 since it could negatively impact the charter industry. One commenter proposed use of a bonus tag system for additional harvest for vessels with a bonus tag and another commenter suggested that the recreational fishery be closed after October.

*Response:* To balance concerns regarding the eight-percent ICCAT provision with requests for more quota, higher retention limits and longer seasons, and to ensure that the Angling category does not exceed the school size subquota set forth in 50 CFR 635.27(a)(2), the final action maintains the proposed allocation of 117.2 mt in the school subquota. NMFS is considering several scenarios for season openings/closings and potential adjustments to Angling category retention limits. However, inseason establishment of retention limits and seasons per 50 CFR 635.23(b)(3) and 635.28(a)(3), respectively, takes into consideration information that is only available as the season progresses, including but not limited to catch rates and the availability of fish on the fishing grounds, and are accomplished during the season via inseason actions. Potential inseason adjustments to retention limits and seasons are being considered by NMFS, and are provided here to assist for constituent planning purposes. However, these adjustments are only potentially being considered for implementation, and may be adjusted based on incoming data as the season progresses. Retention limits under consideration include raised retention limits for the CHB fishery early in the season as well as during the month of September, and access for all recreational vessels to the large school/small medium size classes (47 up to 73

inches) from October 1, 2005 through March 15, 2006, after which the fishery may close. The limits under consideration would be in addition to the one trophy fish per year for Angling category vessels. The intent of this planned recreational season is to provide fishermen recreational opportunities throughout the geographic range of the fish and for the season to extend slightly longer than the average fishery for recent prior years. Establishing a bonus tag program is outside the scope of this action and may be considered as part of the ongoing research into the recreational data programs.

*Comment 5:* Several individuals commented on management of the General category, including requests from several commenters that a multiple fish retention limit be established for the start of the 2005 season. A commenter requested that any underage from the June through August subquota not be rolled over but moved to the reserve category for harvest by the southern area fishery. Several commenters requested that 150 mt be available for the southern area fishery and one commenter asked that 10.5 percent of any quota transferred to the General category from another category during an inseason action be moved into the third subperiod quota. Another commenter requested that the subperiod percentages in the General category remain the same. One commenter stated that the southern area fishery should be closed since it appears to be negatively impacting the traditional New England fishery.

*Response:* Similar to the Angling category season and retention limits discussed above in the previous response, seasonal management of the General category takes into account time-sensitive information such as current catch rates, among other information, and retention limits are established with inseason actions per 50 CFR 635.23(a)(4), respectively. Potential inseason adjustments to retention limits are being considered by NMFS, and are provided here to assist for constituent planning purposes. However, these adjustments are only potentially being considered for implementation, and may be adjusted based on incoming data as the season progresses. NMFS is considering setting a two fish retention limit for the General category early in the season and adjusting this to one fish per vessel per day after September 1. The increased retention limit early in the season is being considered in expectation of low landings rates during June through August and the availability of a large amount of quota for the fishing

year. Should catch rates accelerate, NMFS has the ability to responsively adjust the retention limit in order to ensure availability of quota throughout the range of the fishery. Unused quota in General category time periods is traditionally rolled over from one time period to the next; however, 50 CFR 635.27(a)(8) does allow the transfer of quotas among subcategories and § 635.27(a)(7) identifies specific criteria that must be considered. Any actual transfers between subcategories or categories may be addressed in subsequent actions. NMFS continues to be aware of the interests of Southern area fishermen, particularly off North Carolina, for some limited but fixed General category quota allocation. In the past several years, NMFS has endeavored and succeeded in meeting this request and will continue to do so in 2005. NMFS is considering several alternatives for restructuring General category subquotas in the consolidated HMS FMP (68 FR 40907, July 9, 2003) currently under development to provide a long-term, codified solution to quota allocation for the December to January timeframe.

*Comment 6:* Several commenters requested that more notice be given for opening and closing of seasons so that participants and other affected businesses (e.g., tackle shops) have more planning opportunities. One commenter requested a fixed opening date for the southern area fishery. Another commenter requested the General category fishery be kept open until the entire quota is harvested.

*Response:* NMFS inseason management of the BFT fishery attempts to balance the constituents' need to plan business affairs and recreational activities with maximizing responsiveness to the changing availability of fish stocks, changes in regional fishery participation, and enforcement of regulations and administrative requirements. For example, establishing fixed opening and/or closing dates provides a certain degree of predictability; however, the availability of BFT on the fishing grounds is not predictable. In addition, daily landings of fisheries that vary based on fleet size, weather, and fish availability are unpredictable in nature, and a fixed closing date could result in quota overages or underages. NMFS will continue to strive to provide sufficient notification of season openings, closings, and retention limit adjustments while maximizing fishing opportunities within the bounds of the established BFT fishery management program.

*Comment 7:* Several commenters requested that NMFS investigate the effect of the herring fishery and the abundance of dogfish on the BFT catch and fishery in New England.

*Response:* NMFS recognizes the importance of considering ecosystem interactions in fishery management planning, and addresses ecosystem management as one of the goals of the NMFS Strategic Plan. The agency continues to work toward integrating an ecosystem approach into fishery management practices. Currently, Atlantic herring is managed under a separate FMP by the New England Fishery Management Council (NEFMC) and spiny dogfish is managed by the Mid-Atlantic Fishery Management Council (MAFMC). The Atlantic herring FMP is being amended, and a public hearing document is expected to be available in the near future. An amendment to the spiny dogfish FMP was initiated several years ago and is currently under development. A framework action to increase the time period for fishery specifications is currently underway, by the NEFMC and MAFMC jointly. Little information is available regarding the interaction between these three fisheries. As council and NMFS FMPs are amended, NMFS will continue to evaluate the information available regarding this issue.

*Comment 8:* Several commenters opposed establishing two-tiered retention limits that allow charter/headboat operators to retain more fish than other Angling category vessels. Another commenter supported a higher retention limit for charter/headboats during the fall season of one fish for every four to six passengers. One commenter suggested that charter/headboat limits vary with the size of the fish (e.g., keep a greater number of smaller fish and fewer large fish).

*Response:* Angling category and CHB retention limits for the 2005 fishing year is discussed in the response to Comment 4. Establishment of retention limits is regularly addressed by inseason actions during the fishing year. NMFS regulations at 50 CFR 635.23(b)(3) explicitly provide for retention limits within the Angling category based upon vessel type, including differentiation of bag limits for private, charterboat and headboat vessels. Differentiation has been used in past actions based on the different and unique practices of each respective vessel type.

*Comment 9:* One individual stated that there should be more public meetings where fishermen can provide input, and that anecdotal information should be better incorporated into the

management process. Several commenters were dissatisfied with the locations of the public hearings, and stated that none were available to recreational fishermen between Gloucester, MA and Morehead City, NC. Another commenter stated that commercial fishermen should be excluded from the fishery management process.

*Response:* The Magnuson-Stevens Act and ATCA specifically provide for the involvement of the public and fishery participants (commercial and recreational) in the Federal fishery management process. NMFS provided several opportunities for commenting on this rulemaking, including publications requesting comments at the proposed rule state and a total of two public hearings on April 8 and April 11, 2005. Rulemaking background documents were made available by request and on several internet websites. Public hearings are scheduled based on anticipated attendance and distribution of user groups, and may be limited by the constraints of both time and funding. NMFS is interested in receiving feedback about potential locations for future public hearings relative to this topic. Please see the Addresses section for suggestion submissions.

*Comment 10:* One commenter requested that the purse seine category be eliminated. Several commenters requested that the size limit for the General category be reduced, while one commenter requested that it be increased. A commenter requested that the minimum size in the young school size category be increased, and that the commercial sector quota be cut by five percent across the board. Another commenter requested that BFT quotas be cut by 50 percent this year and 10 percent per year on a continuing basis. The commenter opposed the allowance of 68 mt of dead discards in the BFT fishery.

*Response:* This final rule is designed to provide for the fair and efficient harvest of the BFT quota that is allocated to the United States by ICCAT and is consistent with ATCA and the Magnuson-Stevens Act. This action establishes BFT quotas based on a 2002 ICCAT recommendation, which includes a dead discard allowance, subdivided among the U.S. domestic fishing fleet categories according to percentages established by the 1999 FMP and implemented in NMFS regulations at 50 CFR 635.27(a). The remaining requested actions are all outside the scope of this action and would require changes to the 1999 FMP, implementing regulations, and/or

ICCAT recommendations. These issues are not currently being considered in the development of the amendment to the 1999 FMP.

*Comment 11:* Several commenters indicated that NMFS is only concerned about management of the commercial fishery. Another commenter believed that recreational fishermen should be allowed to sell fish.

*Response:* The Magnuson-Stevens Act, 1999 FMP, and implementing regulations all explicitly recognize the value of both commercial and recreational fisheries, and identify the promotion of domestic commercial and recreational fisheries, under sound conservation and management principles. This final rule is consistent with all applicable law including the Magnuson-Stevens Act, and the 1999 FMP. Recreational anglers are prohibited from selling BFT subject to NMFS' intent to manage the commercial and recreational sectors of the BFT fishery under different objectives, as indicated in the 1999 FMP. Implementing regulations at 50 CFR 635.4(d)(2) strictly prohibit the sale of Atlantic HMS caught on board vessels holding an HMS Angling permit. The General category fishery is an open-access commercial fishery, and permits in this category are available to any fisherman that submits a complete application package. Allowing recreational fishermen to sell fish is outside the scope of this rulemaking.

#### Classification

These final specifications and General category effort controls are published under the authority of the Magnuson-Stevens Act and ATCA. The AA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries, and are consistent with the Magnuson-Stevens Act and National Standards.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. No comments were received on the IRFA concerning the economic impact of this final rule that would change the conclusions of the IRFA. One comment stated that the RFDs in the proposed rule could negatively impact non-resident fishermen. As discussed in the IRFA and Final Regulatory Flexibility Analysis (FRFA), this potential impact could be mitigated by the potential increased value of landings dispersed over a greater time period as a result of the RFDs. A summary of the FRFA is provided below.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. In order to do this, NMFS estimated the average impact that the selected alternative to establish the 2005 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories.

As mentioned above, the 2002 ICCAT recommendation increased the BFT quota allocation to 1,489.6 mt, to be redistributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish fisheries and other regulated tuna (bigeye, albacore, yellowfin, and skipjack) fisheries in the NED. Both these quota modifications were established in the 2003 and 2004 specifications. In 2004, the annual gross revenues from the commercial BFT fishery were approximately \$5.2 million. There are approximately 9,500 vessels that are permitted to land and sell BFT under four BFT quota categories (including charter/headboat vessels). The commercial categories and their 2004 gross revenues are General (\$4,346,814), Harpoon (\$317,104), Purse seine (\$231,791), and Longline (\$305,180). The analysis for the FRFA assumes that each vessel within a category will have similar catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various selected alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative two (selected alternative) which would implement the 2002 ICCAT recommendation. NMFS considered a third alternative that would have allocated the 2002 ICCAT recommendation in a manner other than that designated in the 1999 FMP that was meant to address issues regarding specific set-asides and allocations for fishing groups which are not currently considered in the 1999 FMP. However, since the third alternative could have resulted in a defacto sub-period quota reallocation, an FMP amendment would be necessary for its implementation, and it was not further analyzed. In a concurrent rulemaking, the development of the consolidated HMS FMP has been initiated (68 FR 40907, July 9, 2003) to consider sub-period quota allocations in the BFT fishery, among other things.

As noted above, Alternative two would implement the 2002 ICCAT recommendation in accordance with the 1999 FMP and consistent with ATCA. Under ATCA, the United States is obligated to implement ICCAT-approved quota recommendations. The selected alternative would apply this quota and have positive impacts for fishermen. The no action alternative would keep the quota at pre-2002 ICCAT recommendation levels (*i.e.*, 77.6 mt less) and would not be consistent with the purpose and need for this action and the 1999 FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002 or recent prior years, but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT recommendation and as mandated by ATCA. This alternative was rejected because it was inconsistent with ATCA, the 1999 FMP, and the purpose and need for this action.

Alternative two also included consideration of several options for reducing catch of school bluefin tuna, including: (1) Taking no action until 2006; (2) reallocating all or a portion of the 2005 school subquota to the large school/small medium subquota for 2005; (3) maintaining the default Angling category retention limit of one fish per vessel per day for the entire 2005 season; or (4) prohibiting landing of school BFT in 2005 and carrying over the subquota to 2006. During the public comment period, comment was specifically sought on these options. Because of limited economic data regarding recreational HMS fisheries, economic impacts of the various options cannot be quantified. However, the options that include some reduction in school BFT landings in 2005 (Options 2, 3 and 4) could have minor negative economic impacts for 2005. Any modest economic impacts to charter/headboat or recreational fisheries as a result of option 2 could be mitigated by the shift of quota to the large school/small medium subquota. In addition, the apparent recent increase in school BFT landings could indicate an increase in abundance of young BFT, some of which could be recruited into the large school/small medium size class in 2005, thus mitigating any reduction in school BFT from Options 2 or 4. Impacts from Option 3 are less likely to be mitigated by shifts in quota or abundance since the one fish retention limit would be in place for the entire season, and the small retention limit could have greater impacts on charter/headboat fisheries than the other options. Options 2, 3, and

4 were rejected because each was more likely to have negative impacts on the 2005 fishing year as describe above than Option 1. Under Option 1, the selected alternative, there would be few negative impacts in the coming fishing year compared to the other alternatives; however, more severe measures may be required to reduce school harvest in 2006. NMFS intends to use inseason actions to the extent possible to adjust retention limits and moderate the catch of school BFT during the 2005 fishing year to maximize fishing opportunities and mitigate impacts in 2005 and 2006.

For the General category effort controls, two alternatives were considered: The selected alternative to designate RFDs according to a schedule published in the initial BFT specifications and the no action alternative (no RFDs published with the initial specifications, but implemented during the season as needed). In the past, when catch rates have been high, the use of RFDs (selected alternative) has had positive economic consequences by avoiding oversupplying the market and extending the season as late as possible. Implementing RFDs to extend the late season may have negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time as indicated under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Despite the possible negative impacts, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of the fish migration, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues.

The no action alternative would not implement any RFDs with publication of the initial specifications but rather would use inseason management authority established in the 1999 FMP to implement RFDs during the season, should catch rates warrant. This alternative is most beneficial during a season of low catch rates and would have positive economic consequences if slow catch rates were to persist. Overall, the season would regulate itself and fishermen could choose when to fish or not based on their own preferences. However, even with low catch rates and

no RFDs, this alternative was rejected because it is unlikely that there will be enough quota in the General category to sustain an extended late season commercial handgear fishery off south Atlantic states.

The action would not result in additional reporting, recordkeeping, compliance, or monitoring requirements for the public. This final rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment with implementation of this final rule. 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 proposed rule, are available from NMFS via the Federal e-Rulemaking Portal (*see ADDRESSES*).

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

This final rule contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. 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. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative (RPA) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize

the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is working on implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NMFS published an advance notice of proposed rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The measures in this action are not expected to have adverse impacts on protected species. Although the 2002 ICCAT recommendation increased the BFT quota, which may result in a slight increase in effort, NMFS does not expect this slight increase to alter current fishing patterns. Any option to reduce mortality of school BFT are expected to have negligible ecological impacts and not adversely impact protected species. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Thus, the action would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

The area in which this action will occur has been identified as 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. NMFS does not anticipate that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

NMFS has determined that the actions in this final rule are consistent with the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). The rule establishing quota specifications and effort controls was submitted to the responsible state agencies for their review under section 307 of the CZMA on March 23, 2005. As of May 6, 2005, NMFS has received five responses, all concurring with NMFS' consistency determination. Because no responses were received from other states, their concurrence is presumed.

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: June 1, 2005.

**Rebecca Lent,**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 052405D]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) General and Charter/Headboat Permit category daily retention limits should be adjusted for the 2005 fishing year, which begins on June 1, 2005 and ends May 31, 2006. The adjustment will allow maximum utilization of the General category June through August time-period subquota, and will enhance recreational BFT fishing opportunities aboard Charter/Headboat vessels in the early portion of the season. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial General category