

designated critical habitat for each species, lead us to find that exclusion of these 23 census tracts and 2 public sector projects will not result in extinction of any of these 11 listed vernal pool plants. *Limnanthes floccosa* ssp. *californica* occurs on land protected by conservation easements on several small reserves in Butte County and at the Dove Ridge Conservation Bank. *Lasthenia conjugens* exists on protected lands on San Francisco Bay National Wildlife Refuge, Fort Ord, Travis Air Force Base, and the State Route 4 Preserve. *Chamaesyce hooveri* occurs on the Sacramento NWR Complex, the Vina Plains Ecological Preserve, Stone Corral Ecological Reserve, and the Bert King Ranch. *Castilleja campestris* spp. *succulenta* occurs on protected lands within the Big Table Mountain Ecological Reserve and the Big Table Mountain Preserve, the Kennedy Table Conservation Bank, and the Flying M Ranch (Merced Co.). *Neostapfia colusana* occurs on protected lands within the Jepson Prairie Preserve and the Flying M Ranch. *Tuctoria greenei* occurs on protected lands within the Vina Plains Preserve and on the Sacramento NWR Complex. *Orcuttia pilosa* occurs on protected lands within the Vina Plains Preserve and on the Sacramento NWR Complex. *Orcuttia viscida* occurs on protected lands within the Phoenix Field Ecological Reserve, the Arroyo Seco Conservation Bank, and the Sunrise Douglas preserve. *Orcuttia inaequalis* occurs on protected lands on the Flying M Ranch and on an ecological reserve managed by the California Department of Fish and Game. *Orcuttia tenuis* occurs on protected lands at the Boggs Lake Preserve, the Vina Plains Preserve, the Dale's Lake Ecological Reserve, the Stillwater Plains Conservation Banks, the Arroyo Seco Conservation Bank, and the Sunrise Douglas preserve. *Tuctoria*

*mucronata* occurs on protected land on the Jepson Prairie Preserve.

**References Cited**

A complete list of all reference cited herein is available upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 2007.

**Todd Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**RIN 0648-XA57**

**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 tunas General and Highly Migratory Species (HMS) Angling categories daily Atlantic bluefin tuna (BFT) retention limits should be adjusted for the 2007 fishing year, which begins on June 1, 2007, and ends December 31, 2007. The adjustment will allow for maximum utilization of the General category June through August

time-period subquota, and will enhance recreational BFT fishing opportunities aboard HMS Angling and Charter/Headboat vessels in the early portion of the season. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial and recreational fishing opportunities in all areas without risking overharvest of the General and Angling category quotas.

**DATES:** The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

NMFS has proposed 2007 fishing year specifications to set BFT quotas and to set effort controls for the General category and Angling category (72 FR 16318, April 4, 2007). NMFS intends to publish a notice in the **Federal Register** to finalize the specifications and effort controls in June 2007.

**Daily Retention Limits**

Pursuant to this action, the daily BFT retention limits for the Atlantic tunas General, HMS Angling, and HMS Charter/Headboat categories are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
Atlantic tunas General and HMS Charter/Headboat (while fishing commercially)	June 1 through July 31, 2007, inclusive, or through the effective date of the final 2007 BFT specifications, whichever occurs first.	All	Three BFT per vessel per trip, measuring 73 inches (185 cm) curved fork length (CFL) or greater.
HMS Angling and HMS Charter/Headboat (while fishing commercially)	June 1 through July 31, 2007, inclusive, or through the effective date of the final 2007 BFT specifications, whichever occurs first.	All	One school BFT measuring 27 inches to less than 47 inches CFL (69 cm to less than 119 cm) and two large school/small medium BFT, measuring 47 inches to less than 73 inches CFL (119 cm to less than 185 cm) per vessel.

### Adjustment of Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel to provide for maximum utilization of the General category quota for BFT. In addition, under 50 CFR 635.23(b)(3), NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa to provide for maximum utilization of the Angling category quota for BFT over the longest period of time.

Such adjustments, to either the commercial or recreational retention limits, are based on NMFS' consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

The proposed specification considered the same limits and received favorable public support. From June 1, 2007, until the final specifications take effect, the default commercial General category daily retention limit located at § 635.23(a)(2) is one large medium or giant BFT (measuring 73 inches (185 CM) curved fork length (CFL)) or greater per vessel per day/trip. This is the retention limit for General category permitted vessels and HMS Charter/Headboat permitted vessels (when commercially fishing under the General category). Also starting on June 1, 2007, the default recreational Angling category retention limit at § 635.23(b)(2)(ii) is one school, large school or small medium BFT (measuring 27 inches (69 cm) to less than 73 inches (119 cm) CFL) per vessel

per day/trip. This is the retention limit for permitted HMS Angling and HMS Charter/Headboat vessels (when recreationally fishing under the Angling category).

NMFS has considered the set of criteria listed above and their applicability to both the commercial and recreational BFT retention limits for the early portion of the 2007 fishing year until the final specifications become effective. Based on these considerations, NMFS has determined that the General category retention should be adjusted. Therefore, NMFS increases the General and Angling category retention limits from the default limits effective June 1 through July 31, 2007, or until the final specifications are effective. This adjustment increases the General category daily retention limit to three large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip and Angling category daily retention limit to one school BFT (27 inches (69 cm) to less than 47 inches (119 cm)), and two large school/small medium BFT (measuring 47 inches (119 cm) to less than 73 inches (185 cm)) per vessel per day/trip. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessel permitted in the General category as well as those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This Angling category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the HMS Angling category as well as those HMS Charter/Headboat permitted vessels fishing recreationally.

### Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining an array of data as it pertains to the determination criteria. This data included, but was not limited to current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access the internet at [www.hmspermits.gov](http://www.hmspermits.gov), for updates on quota monitoring and retention limit adjustments.

### Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS continues to receive information refining its understanding of both the commercial and recreational sector's specific needs regarding retention limits early in the 2007 season. NMFS assessments and analyses show that there is sufficient quota for an increase to the General category retention limit as well as an increase to the recreational BFT retention limit for the start of the 2007 season. Prior experience from the past several years also has shown that the General and Angling categories tend to start slowly and adjustment to the retention limits are necessary to maximize the utilization of the respective quotas.

NMFS has recently become aware of increased availability of large medium and giant BFT off southern Atlantic fishing grounds from fishing reports, vessels participating in other fisheries, and landings data from dealers. This increase in abundance provides the potential to increase General category landings rates if fishery participants are authorized to harvest three large medium or giant BFT per day. NMFS has also recently become aware of increased availability of recreational size class BFT in close proximity to the shores of mid-Atlantic states, as reported by researchers and recreational fishermen in the area, as well as communications with staff from state agencies. This increase in abundance provides the potential to increase positive social and indirect economic benefits from this recreational portion of the BFT fishery. Another benefit of increasing the recreational retention limit would be the continuation of the NMFS length-weight conversion study, which is important to the management of BFT fisheries.

The regulations implementing the HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery.

Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the respective General and Angling category BFT retention limits may be increased with minimal risks of exceeding the ICCAT allocated quota.

Delays in increasing these retention limits would adversely affect those General, Angling, and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limits one BFT per day and may exacerbate the problem of low catch rates, quota rollovers, or lack of booked charters/private trips. Limited opportunities to

harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend upon catching the available quota within the time periods designated in the HMS FMP, or depend on multiple BFT retention limits to attract individuals to book charters, as well as embarking on private recreational trips. For both the General and the recreational sectors, an adjustment to the retention limits needs to be effective June 1, the start of the season, for the impacted sectors to benefit from the adjustments so as to not preclude early season fishing opportunities from fishermen who only have access to the fishery at the beginning of the season.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public

comment. For all of the above reasons, and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and (b)(3) and is exempt from review under Executive Order 12866.

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

Dated: May 25, 2007.

**Alan D. Risenhoover,**  
*Director, Office of Sustainable Fisheries,*  
*National Marine Fisheries Service.*

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