

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 285**

[I.D. 081396A]

Atlantic Tuna Fisheries; Massachusetts Audubon Society Petition

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

ACTION: Decision on petition for rulemaking.

SUMMARY: NMFS hereby announces denial of the petition for rulemaking submitted by the Massachusetts Audubon Society (MAS). MAS petitioned NMFS to: Ban the retention of all juvenile Atlantic bluefin tuna (ABT) less than 73 inches (185 cm), develop a tag-and-release program for juvenile ABT, require better reporting of fish caught in the Angling category to facilitate the collection of more accurate population data and to ensure compliance with International Commission for the Conservation of Atlantic Tuna (ICCAT) recommendations, and carry out better enforcement of catch allocation quotas.

ADDRESSES: Copies of the MAS petition for rulemaking are available upon request from Christopher Rogers, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, 301-713-2347.

SUPPLEMENTARY INFORMATION:**Background**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Under § 285.22, the U.S. quota is divided among the various domestic fishing categories.

In March 1996, NMFS received a petition from MAS to eliminate the fishery for small ABT. In the preamble to the 1996 proposed rule for Atlantic tunas (61 FR 18366, April 25, 1996), NMFS requested comments on the petition as part of the rulemaking process.

NMFS Response to the MAS Petition

Recommendation: Ban the retention of all juvenile ABT less than 73 inches (185 cm).

Response: Harvest of these fish provides important scientific information. The small fish index is one of the main indices used by the Standing Committee on Research and Statistics (SCRS) for stock assessment of western ABT. Retaining juveniles allows for the collection of biological data that can not be obtained through tagging data alone. Catch-at-age data are also provided by this fishery. The fishery for small ABT is of tremendous socio-economic importance to coastal communities and the recreational fishery. While commercial revenues would increase due to the resulting quota reallocation, employment associated with the recreational fishery and expenditures in coastal communities would decrease. Also, as the 1995 Final Environmental Impact Statement (FEIS) demonstrates, the western ABT stock is expected to rebuild for all scenarios analyzed, including scenarios that increase the allocation of small ABT. Thus, while eliminating the fishery for small ABT would hasten stock recovery, the loss of scientific data for quota monitoring and the socio-economic costs associated with closure of the small fish fishery would be significant.

Recommendation: Develop a tag-and-release program for juvenile ABT.

Response: NMFS already has a tag-and-release program in place for all ABT. Also, when fisheries are closed, NMFS still allows fishers with tagging kits to practice catch-and-release.

Recommendation: Require better reporting of fish caught in the Angling category to facilitate the collection of more accurate population data and to ensure compliance with ICCAT recommendations.

Response: NMFS agrees with the merits of this recommendation and has reviewed the large pelagic survey (LPS) methodology, conducted meetings, and participated in workshops, including the American Sportfishing Association (ASA) workshop in New Orleans, LA, to consider alternatives to the LPS for quota monitoring. NMFS continues to work toward this goal.

Recommendation: Carry out better enforcement of catch allocation quotas.

Response: NMFS always strives to enforce fishery regulations and quotas to the greatest extent possible. NMFS monitors the tuna quota as closely as possible and closes the fishery when needed.

Public Comments

Numerous comments were received via letter, telephone and at the public hearings held on the proposed rule. Those commenters who supported MAS' petition felt that anglers should be restricted to a tag-and-release fishery only and that those interested in ABT have everything to gain from a tag-and-release fishery. Commenters who opposed MAS' petition felt that the juvenile fishery provides important scientific monitoring data and that the petition ignored the economic importance of this fishery to the mid-Atlantic area.

Other comments included: agree that ABT populations need to be restored but in a different manner; the latest SCRS report shows recovery of ABT under 73 inches (185 cm); banning the retention of fish under 73 inches (185 cm) is not required for stock recovery, ICCAT recommendations for recovery reflect the catch of ABT at various sizes; continued harvest of juveniles undermines the efforts of the U.S. delegation to ICCAT in seeking compliance by eastern Atlantic and Mediterranean Sea fishing nations; and, because Angling category landings are estimated from surveys, the method of data collection is highly subjective, thus, thousands of fish may go unrecorded.

Decisions

NMFS has decided not to proceed with rulemaking to eliminate the fishery of small ABT as requested by MAS. Retaining a small fish quota is needed, because the Angling category fishery is not only essential for collection of stock assessment data but is of tremendous socio-economic importance to the coastal communities and anglers involved in the recreational fishery.

As demonstrated in the FEIS (July 1995), the stock is expected to rebuild for all scenarios analyzed. From a socio-economic perspective, the MAS proposal is not optimal or desirable. The result would be a shift in quota allocation and, therefore, an increase in commercial revenues. However, employment associated with the recreational fishery and its economic impact on coastal communities would decline. It is not clear that the losses in the recreational sector would be commensurate with the gains to the commercial sector from such a quota transfer.

Nevertheless, NMFS continues to address certain elements of the MAS request such as the tag-and-release program for all ABT, improving reporting of fish caught in Angling

category, and enforcing catch allocation quotas.

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

Dated: August 15, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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50 CFR Part 679

[I.D. 081296A]

RIN 0648-A170

Fisheries of the Exclusive Economic Zone Off Alaska; Allocations of Pacific Cod in the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 46 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area for Secretarial review. Amendment 46 would allocate the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod

total allowable catch (TAC) among vessels using trawl gear, fixed gear (hook-and-line and pot), and jig gear and would provide authority for the fixed gear allocation to be divided into seasonal allowances.

DATES: Comments must be submitted on or before October 15, 1996.

ADDRESSES: Comments should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 46 and the Environmental Assessment/Regulatory Impact Review prepared for the amendment are available from the Council, 605 West Fourth Avenue, Anchorage, AK 99501-2252; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received

during the comment period in determining whether to approve the FMP or amendment.

Amendment 46 would allocate the BSAI TAC among vessels using trawl gear, fixed gear, and jig gear. This amendment also would provide authority for the fixed gear allocation of Pacific cod to be divided into seasonal allowances, and would allow any unused portion of one gear's allocation to be reallocated to other gear types. This amendment is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the Council and is intended to further the goals and objectives of the FMP.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 46 has been submitted for Secretarial review and approval. The proposed rule to implement this amendment is scheduled to be published within 15 days of this document.

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

Dated: August 14, 1996.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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