

mile of riparian shrub habitat per linear mile of ditch.

(B) Are performed within the historic footprint of the surface disturbance associated with ditches and related infrastructure, and

(C) Follow the Best Management Practices described in paragraphs (1)(2)(vii)(C)(1) through (3) of this section.

(1) Persons engaged in ditch maintenance activities shall avoid, to the maximum extent practicable, impacts to shrub vegetation. For example, if accessing the ditch for maintenance or repair activities from an area containing no shrubs is possible, then damage to adjacent shrub vegetation shall be avoided.

(2) Persons engaged in placement or sidelaying of silt and debris removed during ditch cleaning, vegetation or mulch from mowing or cutting, and other material from ditch maintenance shall, to the maximum extent practicable, avoid shrub habitat and at no time disturb more than ¼-mile of riparian shrub habitat per linear mile of ditch within any calendar year.

(3) To the maximum extent practicable, all ditch maintenance activities should be carried out during the Preble's hibernation season, November through April.

(D) All ditch maintenance activities carried out during the Preble's active season, May through October, should be conducted during daylight hours only.

(E) Ditch maintenance activities that would result in permanent or long-term loss of potential habitat that would not be considered normal or customary include replacement of existing infrastructure with components of substantially different materials and design, such as replacement of open ditches with pipeline or concrete-lined ditches, replacement of an existing gravel access road with a permanently paved road, or replacement of an earthen diversion structure with a rip-rap and concrete structure, and construction of new infrastructure or the movement of existing infrastructure to new locations, such as realignment of a ditch, building a new access road, or installation of new diversion works where none previously existed.

\* \* \* \* \*

Dated: June 21, 2002.

**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 635

[Docket No. 020612146-2211-02 ; I.D. 042602F]

RIN 0648-AP90

#### 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 initial 2002 quota specifications and General category effort controls.

**SUMMARY:** NMFS announces the final initial specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas and General category effort controls for the fishing year beginning June 1, 2002. The final initial quota specifications and effort controls are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), which established a rebuilding program for Western Atlantic BFT and is 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 initial quota specifications and General category effort controls are effective October 1, 2002, through May 31, 2003.

**ADDRESSES:** Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at (978) 281-9260.

**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 implement binding recommendations of ICCAT. 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

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. The HMS FMP and its implementing regulations require that NMFS issue quota specifications and effort controls for the BFT fisheries on an annual basis in accordance with internationally set quotas and domestic allocations. Further background information and rationale for these final initial quota specifications and General category effort controls were contained in the proposed initial quota specifications and effort controls (67 FR 43266, June 27, 2002) and are not repeated here.

The final initial quota specifications are necessary to implement the 1998 ICCAT recommendation, which established a rebuilding program for Western Atlantic BFT and is required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. In accordance with the HMS FMP, the final initial quota specifications allocate the total ICCAT-recommended quota, including carryover of unharvested 2001 fishing year quota, among the established domestic fishing categories and are consistent with the BFT rebuilding program.

NMFS issues the 2002 fishing year (June 1, 2002—May 31, 2003) BFT final initial quota specifications under the annual and inseason adjustment procedures of the HMS FMP. Also, in accordance with the HMS FMP, NMFS announces the General category effort control schedule, including time-period subquotas and restricted fishing days (RFDs), for the 2002 fishing year. The final initial quota specifications may subsequently be adjusted during the course of the fishing year, consistent with the provisions of the HMS FMP. Notice of any such adjustments will be published in the **Federal Register**.

## Changes From the Proposed Specifications

Based upon consideration of public comments received during the comment period, NMFS is revising the number of RFDs proposed for the 2002 fishing year. The revised schedule is indicated in the section addressing effort controls. Specifically, NMFS is not implementing the RFDs proposed for August, September, or early October, and is implementing RFDs for portions of October, and November. The intent of these revisions is to help spread out fishing effort, slow the pace of landings

only when catch rates are likely to be high, and extend the fishery. In addition, minor modifications have been made to the 2002 fishing year quotas based on revised landings for the 2001 fishing year.

#### Domestic Quota Allocation

The HMS FMP and its implementing regulations established baseline percentage quota shares of the ICCAT-recommended U.S. BFT quota for each of the domestic fishing categories. These percentage shares were based on allocation procedures that had been developed by NMFS over several years. The baseline percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999 are as follows: General category—47.1 percent; Harpoon category—3.9 percent; Purse Seine category—18.6 percent; Angling category—19.7 percent; Longline category—8.1 percent; Trap category—0.1 percent; and Reserve—2.5 percent.

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the following fishing year, provided that such carryover does not result in overharvest of the total annual quota and is consistent with all applicable ICCAT recommendations, including restrictions on landings of school BFT. Therefore, NMFS adjusts the 2002 fishing year quota specifications for the BFT fishery to account for underharvest and overharvest in the 2001 fishing year.

In accordance with ICCAT recommendations and the regulations regarding BFT quota allocation at § 635.27(a), the total landings quota will be divided among domestic user groups based on these established percentage shares mentioned above. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographical areas. Based on these established procedures NMFS finalizes specifications for the 2002 fishing year that include carryover adjustments. The final initial quotas are: General category—647.0 mt; Harpoon category—75.9 mt; Purse Seine category—317.7 mt; Angling category—429.0 mt; Longline category—140.7 mt; and Trap category—2.3 mt. Additionally, 75.3 mt would be reserved for inseason allocations or to cover scientific research collection and potential overharvest in any category except the Purse Seine category. Regulations at 50 CFR 635.27(a)(9)(i) require Purse Seine category under or overharvests to be subtracted from or added to each

individual vessel's quota allocation, as appropriate.

These final initial quotas include provisions for each category to carry forward any underharvest from 2001 to the 2002 fishing year. An exception is the unused school reserve (approximately 20.1 mt) from 2001, along with an additional 20.0 mt of unused Longline South subcategory quota, which are placed into the Reserve. This additional reserve quota will be allocated among the domestic fishing categories, as appropriate, during the 2002 fishing year, in accordance with the inseason transfer criteria in the HMS regulations.

As part of the BFT rebuilding program, ICCAT recommended an allowance for dead discards. The U.S. dead discard allowance is 68 mt. The 2000 calendar year preliminary estimate of U.S. dead discards, as reported in pelagic longline vessel logbooks, totaled 67.0 mt (U.S. National Report to ICCAT 2001). As estimates of BFT dead discards for the 2001 fishing year will not be available for some time, the estimate for the 2000 calendar year was used to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2002 as a result of dead discards. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. As U.S. fishing activity is estimated to have resulted in less dead discards than its allowance, the ICCAT recommendation and U.S. regulations state that the U.S. may add one half of the difference between the amount of dead discards and the allowance (i.e.,  $68.0 \text{ mt} - 67.0 \text{ mt} = 1.0 \text{ mt}$ ,  $1.0 \text{ mt} / 2 = 0.5 \text{ mt}$ ) to its total allowed landings for the following year, or to individual fishing categories or to the Reserve. NMFS allocates the 0.5 mt to the Reserve quota, which may then be allocated to individual fishing categories as necessary during the fishing year.

Based on the final initial specifications, the Angling category quota of 429.0 mt would be divided as follows: School BFT—175.1 mt, with 98.1 mt to the northern area (north of  $39^\circ 18' \text{ N. lat.}$ ), 77.0 mt to the southern area (south of  $39^\circ 18' \text{ N. lat.}$ ), plus 20.5 mt held in reserve; large school/small medium BFT—226.2 mt, with 120.5 mt to the northern area and 105.7 mt to the southern area; and large medium/giant BFT—7.2 mt, with 3.0 mt to the northern area and 4.2 mt to the southern area. These subquotas reflect the adjusted north-south dividing line ( $39^\circ 18' \text{ N. lat.}$ ) and percentage quota

allocations in the northern and southern areas for the Angling category, as implemented by NMFS through a final rule on August 15, 2001 (66 FR 42801).

The Longline category quota of 140.7 mt would be subdivided as follows: 30.3 mt to longline vessels landing BFT north of  $34^\circ \text{ N. lat.}$  and 110.4 mt to longline vessels landing BFT south of  $34^\circ \text{ N. lat.}$

#### 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 fishing season. The subquotas are consistent with the objectives of the HMS FMP and are designed to address concerns regarding 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 HMS FMP divides 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–December. These percentages would be applied to the adjusted 2002 coastwide quota for the General category of 637.0 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 382.2 mt would be available in the period beginning June 1 and ending August 31; 191.1 mt would be available in the period beginning September 1 and ending September 30; and 63.7 mt would be available in the period beginning October 1 and ending December 31, 2002.

In addition to time-period subquotas, NMFS also has implemented General category RFDs to extend the fishing season throughout the entire General category BFT season. The RFDs are consistent with the objectives of the HMS FMP and are designed to address the same issues addressed by time-period subquotas. This year a substantial amount of General category quota carried over from the June–August time-period subquota to the September time-period subquota due to low catch rates. Catch rates of BFT in the General category appear to have shifted in recent years from a pattern of high catch rates in the summer (June–August time period) and lower catch rates in the fall/winter (September–December time period) to a pattern of low catch rates in the summer and higher catch rates in the fall/winter. NMFS has typically adjusted retention limits and scheduled RFDs in the summer to spread out

fishing effort, slow catch rates, and extend the fishery. In recent years, NMFS had not implemented many RFDs in the fall/winter since most of the available quota had already been caught. Given the shift in catch rate pattern, NMFS believes that higher retention limits and fewer RFDs (if any) in the summer and more RFDs (and possibly, lower retention limits) in the fall/winter are appropriate to meet the objectives of maximum utilization of available quotas and equitable fishing opportunities.

Due to this apparent shift in catch rates, NMFS announces the final 2002 fishing year RFD schedule. Persons aboard vessels permitted in the General category are prohibited from fishing, including tag-and-release fishing, for BFT of all sizes on the following days: October 13, 14, 16, 20, 21, 23, 27, 28, and 30; November 13, 17, 18, 20, 24, 25, and 27. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality. The above RFD schedule may be adjusted upon consideration of actual catch rates relative to the available quota in each category.

#### Comments and Responses

*Comment 1:* Some commenters stated that NMFS should remove all RFDs because recent catch rates do not justify maintaining them as a management tool and they have impeded fishermen from having a reasonable opportunity to land the quotas previously established for particular time periods. Other commenters stated that NMFS should use its ability to institute RFDs during the season as necessary, based on some pre-determined sustained catch rate. Some comments received stated that the RFD schedule should remain as it was finalized last year to extend the season as long as possible. Many commented that NMFS should implement RFDs in the October through December time period subquota to ensure that the southern states have an equal opportunity to harvest the quota.

*Response:* NMFS has adjusted the RFD schedule from the schedule announced in the proposed specifications. NMFS had proposed three RFDs for the month of August. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that, for the months of August and September, the previously proposed RFDs should not be implemented. RFDs, in conjunction with the General category quota subdivision, help achieve HMS FMP objectives to achieve optimum yield and address allocation issues. In addition, maintaining the current

pattern and schedule of RFDs provides some benefit to fishermen as it offers a certain level of predictability and, in particular, provides the South Atlantic states an opportunity to harvest General category quota. However, over the past several years, landings have been highest during the later portion of the season, exacerbating the derby nature of the fishery and contributing to market gluts. Implementing RFDs for the later portion of the season may help spread out fishing effort, slow the pace of landings, and extend the fishery. However, NMFS recognizes that the weather is unpredictable during this time period for the fishery, particularly in the later half of October and early November, 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, NMFS could adjust the daily retention limits with a minimum 3-day notification to fisherman, and through publication of this adjustment in the **Federal Register**, under 50 CFR 635.23(a)(4).

*Comment 2:* NMFS should reinstate the incidental catch quota for herring purse seine vessels and include mid-water trawlers as well, which occasionally catch BFT incidental to their target species.

*Response:* NMFS evaluated gear types used in the Atlantic tuna fisheries during the development of the HMS FMP and determined that, in order to facilitate enforcement against unauthorized landings of BFT, only fixed "trap" gear types (i.e., pound nets and fish weirs) were eligible for incidentally caught BFT in the renamed Trap category. NMFS suggests that interested parties consult with their representatives on the HMS Advisory Panel (AP) to provide comments/guidance during the next HMS AP meeting.

*Comment 3:* NMFS received many comments that North Carolina (NC) should have its own General and Angling category set aside quotas. Some commenters stated that by not allowing NC a commercial fishery NMFS may be in violation of National Standard 4. These commenters also stated that the current General category allocation scheme discriminates between residents of different states and fails to provide equitable fishing opportunities across different geographical areas. Comments also requested that there be a December time-period subquota established for southern states. Other comments received stated that historical fisheries must be restored before any new

fisheries, such as a commercial handgear fishery in NC, are created.

*Response:* NMFS maintains the current quota allocation scheme and has not implemented a specific set-aside quota for NC. Fishermen in the state of NC have the opportunity to fish recreationally under the Angling category bag limits, and NMFS has the ability to open and close the Angling category to ensure reasonable fishing opportunities in all areas, including NC. Thus, NMFS does not believe a set-aside of Angling category quota is necessary for NC or any other area. During FMP development, the issue of opening a southern commercial BFT fishery and establishing a set-aside for a NC General category fishery was extensively discussed by the HMS AP and the public. However, the HMS AP did not reach consensus on how to address the requests for a southern commercial fishery. NMFS maintains its position that allowing new gear types and/or increasing the scale of fisheries for BFT would not be consistent with the rebuilding plan currently in place. NMFS is currently assessing the magnitude and scope of the fishing activities, and is continuing to work with the HMS AP on issues associated with a NC General category BFT fishery. NMFS maintains the status quo time-period subquota breakdown in the 2002 final initial specifications. Long-term effort controls were addressed in the HMS FMP to achieve a variety of FMP objectives. Specifically, the status quo regime for the General category assists attainment of optimum yield, and addresses allocation issues by lengthening the season over time and space in a category with high participation and catch rates.

Pursuant to 50 CFR 635.27(a)(8), NMFS also has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) 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; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the

HMS FMP. If it is determined, based on the above factors and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota. Such transfers could address the concerns of those participants in the late season fisheries.

*Comment 4:* An incidental take allowance of Large school/Small medium BFT should be allowed for commercial handgear vessels. Historically, the Large school/Small medium size class BFT were caught by General category vessels and were sold or retained for personal use. Commenters asserted that, due to a change in 1991, there has been no fishery for that size class to speak of, resulting in a potential for unharvested quota and increased regulatory discards. Commenters stated NMFS should allow commercial handgear vessels an annual allowance of BFT below the commercial minimum size to alleviate some of this excess quota carryover and to minimize waste of the BFT resource.

*Response:* NMFS maintains the 73-inch (185-cm) commercial minimum size at this time. With the development of an international market in Japan for giant BFT and high ex-vessel prices, the distinction between U.S. recreational and commercial fisheries for BFT became blurred and much of the traditional recreational catch for medium and giant BFT was being sold for shipment to Japan. In 1992, NMFS responded by implementing the current commercial minimum size limit and this limit was maintained in the HMS FMP, as it is consistent with the objectives of the HMS FMP and achieving optimum yield in the fishery. By lowering the commercial minimum size to allow incidental takes, the number of BFT landed (hence, mortality) could increase, which may affect long-term rebuilding. Currently, all BFT less than 73 inches (185 cm) are allocated to the Angling category, and lowering the commercial minimum size to allow the sale of these fish by vessels in commercial permit categories would be considered a re-allocation of quota, which is beyond the scope of this rulemaking.

*Comment 5:* Some commenters stated that NMFS should use multiple fish retention limits in the General category to assure that time-period sub-quota are harvested within their allotted time frame. Some stated that multiple fish retention limits should be implemented early in the season, while others stated

that they should be implemented in the end of the season.

*Response:* NMFS maintains the authority to increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero to a maximum of three per vessel. NMFS may use this flexibility in the daily limit to provide fishermen a reasonable opportunity to achieve the General category quota. Starting the season with a multiple fish retention limit could work to the fishermen's disadvantage if the season has to be closed early in the fishing year. Starting at one large medium or giant per day should provide the greatest opportunity for a longer season, thus providing maximum fishing opportunities to the greatest number of fishery participants over the greatest geographic area.

*Comment 6:* NMFS should use the previous fishing year's final initial quota specifications as the proposed specification in the following year.

*Response:* Due to the varying and complex nature of the BFT fisheries from year to year, as well as the results of inseason transfers and adjustment due to underharvests and/or overharvests from one year to the next, domestic quota category allocations could significantly change. Thus, the specification from one year may not correspond well for a following year. NMFS suggests that interested parties consult with their representatives on the HMS AP to provide comments/guidance on the quota specification process during the next HMS AP meeting.

*Comment 7:* The General category fishery should not have a cap date of December 31, but should continue through March.

*Response:* Prior to implementation of the HMS FMP in 1999, the Atlantic tunas fishing year coincided with the calendar year, with the General category season ending December 31. These time-period subquotas were selected as the preferred alternative and final action in the HMS FMP. The FMP also established the Atlantic tunas fishing year as June through May 31 of the following year. As specified in the HMS FMP, the change to the new fishing year was not intended to authorize new fishing seasons or change fishing patterns. NMFS has stated its intent clearly in the HMS FMP and several other NMFS documents, including the 2000 final annual specifications published on July 12, 2000 (65 FR 42883), which indicate an end date of December 31 for the General category season. Adjustments to this end date would require a separate rulemaking. NMFS would need to assess the

potential impacts and the order of magnitude of the fishing activities that would be associated with January through March General category BFT fishery. NMFS suggests that interested parties consult with their representatives on the HMS AP to provide comments/guidance on the season length during the next HMS AP meeting.

### Subsequent Adjustments

The 2002 BFT fishing year runs from June 1, 2002 through May 31, 2003. Development of BFT quota specifications and effort controls is dependent upon landings information from the previous fishing season. However, final landings data are not available before the start of the new season. When the proposed rule for this action was issued on June 27, 2002, the 2001 BFT landings data upon which it relied were preliminary and subject to change. NMFS may receive further data on 2001 landings in the future, thus these final initial specifications may be adjusted later in the 2002 season. Notice of any such adjustments will be published in the **Federal Register**.

### Classification

These final initial specifications and effort controls are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The AA has determined that the final initial specifications and the effort controls are consistent with the HMS FMP, the Magnuson-Stevens Act, and the 1998 ICCAT BFT catch recommendation.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration when these initial quota specifications and General category effort controls were proposed that, if adopted, they would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification may be found in the proposed initial specifications (67 FR 43266). No comments were received regarding the differential economic impacts of these quota specifications on small entities. Accordingly, neither an Initial nor Final Regulatory Flexibility Analysis was prepared.

These final initial quota specifications and General category effort controls have 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. 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 issued a final rule on July 9, 2002 (67 FR 45393), to implement the reasonable and prudent alternative required by the BiOp. These final initial quota specifications and effort controls would not have any additional impact on sea turtles as these actions 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 action that would adversely affect the implementation of the requirements of the BiOp.

The area in which this final action is planned 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 Highly Migratory Species Management Division of the Office of Sustainable Fisheries at NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

To ensure that the United States' actions are consistent with international

obligations under ICCAT, and because the fishing season is underway, it is essential that these bluefin tuna (BFT) quota specifications and General category effort controls are effective upon publication. Therefore, pursuant to 5 U.S.C. 552 (d)(3), NMFS has determined that there is good cause to waive the 30-day delay of the effective date. NMFS will rapidly communicate these final initial specifications to affected fishermen through its FAX network.

Dated: September 25, 2002.

**Rebecca Lent,**

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

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