

Issued: August 13, 2004.

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Chief Counsel.

[FR Doc. 04-18967 Filed 8-19-04; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 072104B]

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

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

**ACTION:** Adjustment of recreational fishery retention limits.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) Angling category daily retention limit should be adjusted in order to enhance recreational fishing opportunities for the remainder of the 2004 fishing year that began June 1, 2004, and ends May 31, 2005. Vessels permitted in the Atlantic Highly Migratory Species (HMS) Angling and Atlantic HMS Charter/Headboat categories are eligible to land BFT under the BFT Angling category quota. The adjustments to the daily retention limits for BFT are specified in the **SUPPLEMENTARY INFORMATION** section of this document. This action is being taken to provide enhanced private recreational and Charter/Headboat fishing opportunities in all areas without risking overharvest of the Angling category quota.

**DATES:** The daily recreational retention limit adjustments for vessels permitted in the Atlantic HMS Angling category or the Atlantic HMS Charter/Headboat category are effective August 20 through September 20, 2004, inclusive.

The default daily recreational retention limit at 50 CFR 635.23(b) for all vessels fishing under the Angling category quota (i.e., both HMS Angling and Charter/Headboat vessels) is effective September 21, 2004, through the remainder of the fishing year, May 31, 2005, inclusive.

**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 (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 various domestic fishing categories. A recommendation of ICCAT requires that NMFS limit the catch of school BFT, measuring 27 to less than 47 inches (69 to less than 119 cm) curved fork length (CFL), to no more than 8 percent by weight of the total domestic landings quota over each four-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the 8 percent landings limit is not exceeded over the applicable 4-consecutive-year period. The 2004 fishing year is the second year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes while minimizing the risk of overharvest of the school size class.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily retention limits for BFT and allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit or vice versa. Such adjustments to the retention limits may be applied separately for persons aboard a specific vessels type, such as private vessels, headboats and charter boats.

On June 23, 2004 (69 FR 34960), NMFS adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Angling category, to two school, large school, or small medium BFT, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL, per vessel per day/trip. This retention limit remained in effect through July 21, 2004, inclusive. Starting on July 22, 2004, the daily retention limit for vessels permitted in the HMS Angling category, reverted to one school, large school, or small medium BFT, per vessel per day/trip.

Based on communications with fishermen, available quota, and

historical information regarding fish migration patterns and availability off the east coast, particularly off the mid-Atlantic states, NMFS has determined that a modest increase in the daily retention limit, of limited duration, is appropriate and necessary without risking overharvest of available quota. Thus NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Angling category, effective August 20 through September 20, 2004, inclusive, to two BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

NMFS is aware of industry concerns that a recreational retention limit of less than three or four BFT per vessel per day/trip does not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Charter/headboat operators have requested a modified retention limit that recognizes a fee-paying client's willingness to book charters in advance based on potential retention limits. NMFS published a final rule that clarified the procedures to set differential BFT retention limits to provide equitable fishing opportunities for all types of fishing vessels (December 18, 2002; 67 FR 77434).

NMFS previously adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, to three school, large school, or small medium BFT, per vessel per day/trip, through July 21, 2004 (June 23, 2004, 69 FR 34960). Starting on July 22, 2004, the daily retention limit for vessels permitted in the HMS Charter/Headboat category, also reverted to one school, large school, or small medium BFT, per vessel per day/trip. Based on communications with fishermen and the nature of charter/headboat fishing operations stated above, NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, effective August 20 through September 20, 2004, inclusive, to three BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

Effective September 21, 2004, through the remainder of the fishing year, May 31, 2005, inclusive, the default daily recreational retention limit at 50 CFR 635.23(b)), will apply in all areas, for all vessels fishing under the Angling category quota (i.e., both HMS Angling and Charter/Headboat vessels). The default retention limit is one school, large school, or small medium BFT, measuring 27 to less than 73 inches (69

to less than 185 cm) CFL, per vessel per day/trip.

### Monitoring and Reporting

NMFS selected the daily retention limits and the duration of the daily retention limit adjustments after examining past catch and effort rates and the available quota for the 2004 fishing year. NMFS will continue to monitor the BFT fishery closely through 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. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9305 for updates on quota monitoring and retention limit adjustments. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888) 872-8862; or the Internet ([www.nmfspermits.com](http://www.nmfspermits.com)); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338-7804, and in Maryland by calling (410) 213-1531.

### Classification

The Assistant Administrator for Fisheries, NOAA (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. BFT traditionally start to migrate during the late summer and are currently available in the northern area. NMFS has already provided a 1-month window of enhanced fishing opportunities to fishermen off the coasts of mid-Atlantic states from mid-June to mid-July. In order to balance concerns regarding continued utilization of available quota while not exceeding allotted amounts and at the same time provide for recreational fishing opportunities along all of the Atlantic coast NMFS needs to act promptly to provide enhanced fishing opportunities

to northern area fishermen similar to those previous provided to the mid-Atlantic area. NMFS is now aware of an increase in BFT available in the northern area fishing grounds. Delay in increasing the retention limits would adversely affect those northern area Angling and Charter/Headboat category vessels that have a limited window of opportunity to access recreational size class BFT as the fish are expected to continue to migrate and will no longer be accessible to anglers in this region. 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., allows the retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

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

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

Dated: August 16, 2004.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 04-19165 Filed 8-17-04; 2:34 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 040429134-4135-01; I.D. 081604A]

#### Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #6—Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

**ACTION:** Modification of fishing season; request for comments.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified with a revised landing provision that no vessel may possess, land, or deliver more than 125 chinook for the open period of July 16 through July 19, 2004. The fishery then reverted back to the regulations as announced for 2004 ocean salmon

fisheries and will continue until the chinook quota or coho quota are taken, or September 15, whichever is earlier. The fishery was reopened on July 22, with an open cycle of Thursday through Monday prior to August 11, and Wednesday through Sunday thereafter, and a landing and possession limit of 125 chinook per vessel per each 5-day open period. This action was necessary to conform to the 2004 management goals. The intended effect of this action was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

**DATES:** Adjustment for the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours local time (l.t.), July 16, 2004, until the chinook quota or coho quota are taken, or 2359 hours l.t., September 15, 2004, whichever is earlier; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through September 7, 2004.

**ADDRESSES:** Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4132; or faxed to 562-980-4018. Comments can also be submitted via e-mail at the [2004salmonIA6.nwr@noaa.gov](mailto:2004salmonIA6.nwr@noaa.gov) address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206-526-6140.

**SUPPLEMENTARY INFORMATION:** The NMFS Regional Administrator (RA) modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to reopen on July 16 through July 19, with the revised provision that no vessel may possess, land, or deliver more than 125 chinook for each open period. The fishery then reverted to the regulations as announced