

foreseeable future throughout all or a significant portion of its range. Given the expanded range, number of newly discovered population locations and individuals, the increased knowledge of the genetics of this species, and the protection offered by State and Federal landowners, we conclude, based on the best scientific and commercial information, that *H. eggertii* does not warrant the protection of the Act. Therefore, we are removing *H. eggertii* from the Federal List of Endangered and Threatened Plants.

#### Effect of This Rule

This rule will revise 50 CFR 17.12(h) to remove *Helianthus eggertii* from the List of Endangered and Threatened Plants. Because no critical habitat was ever designated for this species, this rule will not affect 50 CFR 17.96.

Once this species is removed from the List of Endangered and Threatened Plants, Endangered Species Act protection will no longer apply. Removal of *H. eggertii* from the List of Endangered and Threatened Plants will relieve Federal agencies from the need to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species.

#### Post-Delisting Monitoring

The 1988 amendments to the Act (section 4(g)(1)) require us to implement a system, in cooperation with the States, to monitor all species that have been delisted due to recovery for at least 5 years following delisting. The purpose of this post-delisting monitoring (PDM) is to verify that a species that is delisted due to recovery remains secure from the risk of extinction after it no longer has the protections of the Act. If the species does not remain secure, we can use the emergency listing authorities under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs. However, we are responsible for compliance with section 4(g) and must remain actively engaged in all phases of the PDM.

The Service has drafted a PDM plan for Eggert's sunflower and is making it available for review and comment in a separate notice in this issue of the **Federal Register** (see the Notices section of today's **Federal Register**). Following the end of the comment period, any comments will be incorporated as appropriate into the final PDM plan.

#### Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which

implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

- Alabama Natural Heritage Database. 2003. Alabama Natural Heritage Program, Montgomery, Alabama.
- Alabama Natural Heritage Database. 2004. Alabama Natural Heritage Program, Montgomery, Alabama.
- Cruzan, M.B. 2002. Population and Ecological Genetics of *Helianthus eggertii* Report. Prepared for Arnold Engineering Development Center at Arnold Air Force Base.
- Jones, R.L. 1991. Status report on *Helianthus eggertii*. Prepared for the U.S. Fish and Wildlife Service, Asheville Field Office, through the Kentucky State Nature Preserves Commission.
- Kentucky Natural Heritage Database. 2003. Kentucky State Nature Preserves Commission, Frankfort, Kentucky.
- Kentucky Natural Heritage Database. 2004. Kentucky State Nature Preserves Commission, Frankfort, Kentucky.
- Spring, O., and E.E. Schilling. 1991. The sesquiterpene lactone chemistry of *Helianthus* Sect. *Atrorubentes* (Asteraceae: Heliantheae). *Biochemical Systematics and Ecology* 19:59–79.
- Starnes, J.H. 2004. Effects of Management and Population Size on Genetic Diversity of Eggert's Sunflower (*Helianthus eggertii*; Asteraceae). Master Thesis. Western Kentucky University. 62 pp.
- Tennessee Natural Heritage Database. 2003. Tennessee Department of Environment and Conservation, Division of Natural Heritage, Nashville, Tennessee.
- Tennessee Natural Heritage Database. 2004. Tennessee Department of Environment and Conservation, Division of Natural Heritage, Nashville, Tennessee.

- U.S. Air Force. 2002. Barrens Management Plan for Arnold Air Force Base. Tullahoma, Tennessee. 63 pp.
- U.S. Air Force. 2001. Eggert's Sunflower (*Helianthus eggertii*) Management Plan for Arnold Air Force Base. Tullahoma, Tennessee. 47 pp.
- U.S. Fish and Wildlife Service. 1999a. Recovery Plan for *Helianthus eggertii* Small (Eggert's sunflower). Atlanta, Georgia. 40 pp.
- U.S. Fish and Wildlife Service. 1999b. Endangered and Threatened Wildlife and Plants 50 CFR 17.11 and 17.12; As of December 31, 1999. Special Reprint. U.S. Government Printing Office. p. 56.

#### Author

The primary author of this proposed rule is Timothy Merritt (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

#### § 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entry “*Helianthus eggertii*” under “Flowering Plants” from the List of Endangered and Threatened Plants.

Dated: July 20, 2005.

#### Marshall Jones,

Acting Director, Fish and Wildlife Service.  
[FR Doc. 05–16274 Filed 8–17–05; 8:45 am]  
**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 080405B]

#### 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 daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General and Highly Migratory Species (HMS) Charter/Headboat categories should be adjusted. The adjustment will allow maximum utilization of the General category September time-period subquota, and will enhance recreational BFT fishing opportunities aboard HMS Charter/Headboat vessels in the later portion of the season. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial General category and recreational HMS Charter/Headboat fishing opportunities in all areas while minimizing the risk of an overharvest of the General and Angling category BFT quotas.

**DATES:** The effective dates for 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. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls were provided on June 7, 2005 (70 FR 33033). During this rulemaking, NMFS specifically requested comment on

options related to a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding a four-year average, 8 percent tolerance on harvest of school BFT. Numerous comments were received on this issue as well as a wide range of topics, including inseason management measures for the General and HMS Charter/Headboat categories throughout the 2005 fishing year. Section 635.27 subdivides the U.S. BFT quota recommended by the ICCAT among the various domestic fishing categories.

#### Daily Retention Limits

Pursuant to this action and the final initial 2005 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General, HMS Charter/Headboat, and HMS Angling categories are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	August 1 through September 30, 2005, inclusive	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	October 1, 2005, through January 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger
Charter/Headboat	August 1 - 31, 2005, inclusive	All	One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL
	September 1 - 30, 2005, inclusive	All	Three BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL. Of the three BFT, a maximum of two BFT are allowed per vessel per day/trip measuring 27 to less than 47 inches (69 to less than 119 cm) CFL
	October 1, 2005, through May 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 27 to less than 73 inches (119 to less than 185 cm) CFL
Angling	June 1, 2005, through May 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL

#### Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on Restricted Fishing Days) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. On June 7, 2005 (70 FR

33039), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit was to remain in effect through August 31, 2005, inclusive. From September 1, 2005,

through January 31, 2006, inclusive, the General category daily BFT retention limit was scheduled to revert to one large medium or giant BFT per vessel per day/trip.

The June through August time-period subquota allocation for the 2005 fishing year totaled approximately 540 metric tons (mt). As of August 5, 2005, 32.5 mt have been landed in the General

category and catch rates equal approximately 0.5 mt per day. If catch rates are to remain at current levels, approximately 13 mt would be landed during the remainder of August. This projection would bring the June through August time-period subquota landings to approximately 45 mt, resulting in an underharvest of approximately 500 mt. This carryover combined with the September time-period subquota allocation of 270 mt would allow for 770 mt to be harvested in the month of September. In combination with an expected subquota rollover from the June through August time-period, the September time-period subquota allocation, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on September 1, 2005, NMFS anticipates the full September time-period subquota will not be harvested. This could result in a potential excessive rollover into the October through January time-period. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the HMS Fishery Management Plan (FMP). This issue has been discussed extensively during public comment periods for annual BFT quota specification and during HMS Advisory Panel meetings.

Therefore, based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase in the General category daily BFT retention limit effective from September 1, 2005, through September 30, 2005, inclusive, is warranted. Thus, the general category daily retention limit of two large medium or giant BFT per vessel per day/trip (see Table 1) will be extended through September 30, 2005. Starting on October 1, 2005, through January 31, 2006, inclusive, the General category default daily BFT retention limit of one large medium or giant BFT per vessel per day/trip will apply. It is highly likely that, with a combination of the default retention limit starting on October 1, 2005, and the large amount of General category quota available, there will be sufficient quota for the coastwide General category season to extend into the winter months and allow for a southern Atlantic fishery to take place on an order of magnitude of prior years.

The intent of this adjustment is to allow for maximum utilization of the U.S. landings quota of BFT while maintaining an equitable distribution of

fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

#### **Adjustment of HMS Charter/Headboat Permit Category Daily Retention Limits**

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) 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 four-consecutive-year period. The 2005 fishing year is the third 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 recreational retention limits for BFT and allow for adjustments to the daily recreational retention limits in order to provide for maximum utilization of the Angling category 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 7, 2005 (70 FR 33039), NMFS adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, to three BFT per vessel per day/trip, consisting of BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL in the school, large school, or small medium size classes. Of the three BFT, a maximum of two school BFT were allowed per vessel per day/trip, measuring 27 to less than 47 inches (69 to less than 119 cm) CFL. This retention limit remained in effect through July 31, 2005, inclusive. Starting on August 1, 2005, inclusive, the daily retention limit

for vessels permitted in the HMS Charter/Headboat category, reverted back to one school, large school, or small medium BFT, per vessel per day/trip. This default daily retention limit was scheduled to remain in place through May 31, 2006, inclusive.

Based on available quota, historical information regarding fish migration patterns, BFT availability off the east coast, particularly off the mid-Atlantic states, and current recreational BFT catch information derived from the Maryland BFT tagging program and Automated Landing Reporting System (ALRS), NMFS has determined that a modest increase in the daily retention limit, of a limited duration, is appropriate for HMS Charter/Headboat permitted vessels. NMFS deemed this modest increase as appropriate because of concerns regarding how the default one BFT retention limit might impact charterboat operations late in the season particularly where long distances must be traveled to locate BFT as well as a concern that a recreational retention limit of less than three BFT per vessel per day/trip may not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Thus, NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, effective September 1, 2005, through September 30, 2005, inclusive, to three BFT per vessel per day/trip, consisting of BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL in the school, large school, or small medium size classes. Of the three BFT, a maximum of two school BFT are allowed per vessel per day/trip, measuring 27 to less than 47 inches (69 to less than 119 cm) CFL.

Effective October 1, 2005, through May 31, 2006, the default daily recreational retention limit of 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 will apply in all areas, for all vessels permitted in the HMS Charter/Headboat category.

#### **HMS Angling Category Daily Retention Limits**

For privately owned and operated recreational vessels, permitted in the HMS Angling category, the daily recreational retention limit will remain at 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 effective June 1, 2005 through May 31, 2006, inclusive.

## Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the options to achieve the ICCAT recommended four-year average 8 percent tolerance on harvest of school BFT, and inseason management measures for the General and HMS Charter/Headboat categories received during the 2005 BFT quota specifications rulemaking process, and analyzing the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the ALRS, 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 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 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 ALRS 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.

NMFS has recently become aware of increased availability of large medium and giant BFT on the New England fishing grounds. This increase in abundance provides the potential to increase General category landings rates for the New England fishery if participants are authorized to harvest two large medium or giant BFT per day. Also, since the end of the 2005 BFT specification comment period to the present day, the HMS Management Division has continued to receive more information refining its understanding of both the commercial and charter/headboat sectors' specific needs regarding BFT retention limits. The regulations implementing the HMS FMP provide for inseason retention limit adjustments in order 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. Adjustment of retention limits is also necessary in order to avoid excessive quota rollovers to subsequent General category time-period subquotas.

Recreational size class BFT traditionally start to migrate during the early fall and are currently available in the northern area. NMFS has already provided a window of enhanced fishing opportunities to HMS Charter/Headboat vessels operating off the coast of mid-Atlantic states from mid-June through July. In order to balance concerns regarding continued utilization of available quota with not exceeding allotted amounts providing for reasonable fishing opportunities along the entire Atlantic coast, NMFS needs to act promptly to provide enhanced fishing opportunities to northern area fishermen similar to those previously provided to the mid-Atlantic area. Preliminary recreational BFT data also

show that a limited increase in the recreational BFT retention limit is possible for the HMS Charter/Headboat fleet while minimizing risks of exceeding the ICCAT allocated quota and the school limit recommendation.

Delays in increasing the retention limits would be contrary to the public interest. Such delays would adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than one BFT per day and would further exacerbate the problem of quota rollovers, and/or lack of booked charters. Limited opportunities to access the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend on 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. For both the General and the HMS Charter/Headboat sectors, an adjustment to the retention limits needs to be done as expeditiously as possible for the impacted sectors to benefit from the adjustment.

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 relaxes 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 is exempt from review under Executive Order 12866.

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

Dated: August 12, 2005.

**Anne M. Lange,**

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

[FR Doc. 05-16386 Filed 8-15-05; 3:54 pm]

**BILLING CODE 3510-22-S**