

**Alternative to Required Use of TEDs; Termination**

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on October 24, 2005, unless it is explicitly extended through another notification published in the **Federal Register**.

**Classification**

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an environmental situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Prior notice and opportunity to comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry relief from the effects

of Hurricane Katrina in a timely manner.

The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Many fishermen may be unable to operate under these conditions without an alternative to the use of TEDs. Therefore, The AA finds that there is good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) to provide alternatives to comply with the sea turtle regulations in a timely manner. For the reasons above, the AA finds that this temporary rule should not be subject to a 30-day delay in effective date, pursuant to 5 U.S.C. 553(d)(1).

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: September 23, 2005.

**James W. Balsiger,**

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

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[I.D. 091405F]**

**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 catch limit adjustment.

**SUMMARY:** NMFS has determined that the daily retention limit for Atlantic

bluefin tuna (BFT) in the General category should be adjusted to allow maximum utilization of the General category October-January time period. In addition, NMFS is prohibiting the retention of school BFT less than 47 inches (119 cm) in the recreational fishery for the remainder of the fishing year to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA).

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

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

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of ATCA and the Magnuson-Stevens Fishery Conservation and Management Act 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. During the rulemaking for the final initial 2005 BFT specifications and General category effort controls that were published on June 7, 2005 (70 FR 33033), NMFS specifically requested comment on options related to a recommendation of ICCAT regarding a four-consecutive-year average 8 percent landings limit for 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 Atlantic tunas General, Highly Migratory Species (HMS) Charter/Headboat, and HMS Angling categories throughout the 2005 fishing year.

**Daily Retention Limits**

Pursuant to this temporary 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	October 1, 2005, through January 31, 2006, inclusive	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS—Continued

Permit Category	Effective Dates	Areas	BFT Size Class Limit
Charter/Headboat	October 1, 2005, through May 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 47 to less than 73 inches (119 to less than 185 cm) CFL
Angling	October 1, 2005, through May 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 47 to less than 73 inches (119 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 (RFDs)) 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 remained in effect through August 31, 2005, inclusive. Because of low catch rates during the previous time-period, on August 18, 2005 (70 FR 48490), NMFS again adjusted the General category retention limit to two large medium or giant BFT per vessel per day/trip for the month of September. On October 1, 2005, the General category retention limit is scheduled to revert to the default limit of one large medium or giant BFT per vessel per day/trip.

Catch rates have remained low through August and early September 2005. The total quota allocated to the June-August and September time-periods for the 2005 fishing year was 808.5 metric tons (mt). As of September 1, 2005, 59.9 mt have been landed in the General category, which equates to an estimated catch rate of approximately 0.5 mt per day. In combination with the previous subquota rollover from the June-August time-period and current catch rates, NMFS anticipates the full adjusted September time-period subquota of 748.6 mt will not be harvested, which would result in a large rollover of quota into the October through January time-period. The initial subquota for the October through January time-period was established in the initial 2005 BFT fishery specifications as 89.8 mt.

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 October 1, 2005, through January 31, 2006, 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 January 31, 2006. It is highly likely that the combination of the amount of General category quota available and the RFDs scheduled to begin in November will allow the coastwide General category season to extend into January, 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 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP).

### Adjustment of HMS Charter/Headboat and Angling 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 50 CFR 635.23 set the daily recreational retention limits for BFT and allow for adjustments of the retention limits to use/extend 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 vessel 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. On August 18, 2005 (70 FR 48490), NMFS announced an increase in the Charter/Headboat retention limit beginning on September 1, 2005, through September 30, 2005, 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. Starting on October 1, 2005, the Charter/Headboat category daily retention limit is scheduled to revert to the default of one BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL in the school, large school, or small medium size classes.

The default Angling category retention limit of one BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL in the school, large school, or small medium size classes, as established at 50 CFR 635.23(b)(2)(ii), has been in effect for private vessels since the season began on June 1, 2005.

NMFS has received recent information indicating high catches and catch rates of school BFT. As indicated in the proposed initial BFT 2005 fishing year specifications (March 23, 2005; 70 FR 14630), school BFT landings were approximately 9.3 percent of the base quota for 2003 and preliminary estimates for 2004 appear to be approximately 12.5 percent. Since 2005 is the third year in the accounting for the ICCAT recommended four-consecutive-year average 8 percent landings limit of school BFT, NMFS has determined it is necessary to take action to avoid exceeding the ICCAT 8 percent landings limit.

Thus, based on available quota, BFT availability on the fishing grounds, current recreational BFT catch information derived from the Maryland BFT tagging program and Automated Landing Reporting System (ALRS), and historical information regarding fish migration patterns, NMFS has determined that a prohibition on the retention of school fish sized 27 inches to less than 47 inches CFL (69 to less than 119 cm) for both HMS Charter/Headboat and Angling category permitted vessels is warranted. NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat and HMS Angling categories, effective October 1, 2005, through May 31, 2006, inclusive, to one BFT per vessel per day/trip measuring 47 to less than 73 inches (119 to less than 185 cm) CFL in the large school or small medium size classes.

### Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, analyzing the available quota for the 2005 fishing year, and taking into consideration public comment on the options to achieve the ICCAT recommended four-consecutive-

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. 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 fishing grounds. This increase in abundance provides the potential to increase General category landings rates if participants are authorized to harvest two large medium or giant BFT per day. The regulations implementing the 1999 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 to allow maximum utilization of the U.S.

domestic bluefin tuna quota as required by ATCA.

Delays in increasing the General category 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 could hinder full utilization of the U.S. domestic BFT quota. Limited opportunities to access the General category quota may have negative social and economic impacts to U.S. fishermen that either depend on catching the available quota or depend on multiple BFT retention limits to attract individuals to book charters. For both the General and the HMS Charter/Headboat sectors, the retention limits should be adjusted as expeditiously as possible for the affected sectors to benefit from the adjustment.

In order to avoid exceeding the ICCAT school size category landings limit, NMFS needs to act promptly to prohibit retention of school BFT by HMS Angling and HMS Charter/Headboat category fishermen. Recent information available to NMFS indicates high catches and catch rates of school BFT occurring on the fishing grounds. A prohibition on harvest of school fish, with continued access to a school catch-and-release fishery and harvest of large school and small medium size categories for the HMS Angling and Charter/Headboat categories, will balance concerns regarding continued utilization of available quota in the HMS Angling category, while reducing the risk of exceeding the ICCAT school size category landings limit recommendation.

A delay in prohibiting the landing of school BFT could result in school landings in excess of the 2005 school quota, which could ultimately risk exceeding the ICCAT recommendation on the four-consecutive-year average 8 percent landings limit of school BFT.

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 a portion of this action relieves a restriction (i.e., General category default retention limit of one fish per vessel/trip is relaxed to allow retention of two 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: September 22, 2005.

**Alan D. Risenhoover,**

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Fisheries, National Marine Fisheries Service.*

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