

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 228A at Corinth and adding Channel 296A at Corinth, by removing Channel 296A at Hudson Falls, and by adding Scotia, Channel 229A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 010326079-1170-02; I.D. 010301C]

**RIN 0648-AO96**

**Atlantic Highly Migratory Species (HMS); 2001 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 quota specifications and General category effort controls.

**SUMMARY:** NMFS announces the final initial quota specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quota and General category effort controls for the 2001 fishing year. The final initial quota specifications and General category effort controls are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as 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 July 13, 2001, through May 31, 2002.

**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 or Pat Scida at 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (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 annual quota specifications and effort controls for the BFT fisheries. The final initial quota specifications allocate the total ICCAT-recommended quota (including the allocation of the unused portion of the dead discard allowance) among the several established fishing categories, carry over any unharvested quota in 2000 from a specific category to the same category for 2001, and are consistent with the BFT rebuilding program as set forth in the 1998 ICCAT recommendation and the HMS FMP. Further background information and rationale for these final initial quota specifications and General category effort controls were provided in the preamble to the proposed initial quota specifications and General category effort controls (66 FR 17520, April 2, 2001) and are not repeated here.

**Changes From the Proposed Specifications**

Based on consideration of comments received during the comment period, NMFS is reducing the number of restricted fishing days (RFDs) scheduled for the 2001 fishing year. The revised schedule is indicted in the section addressing effort controls. In addition, minor modifications have been made to the 2001 fishing year quotas based on revised landings for the 2000 fishing year.

**Fishing Category Quotas**

NMFS implements U.S. domestic quota allocations for the 2001 fishing year, beginning June 1, 2001, consistent with the HMS FMP and the 1,387-metric ton (mt) U.S. allocation. The percentage

quota shares established in the HMS FMP for fishing years beginning June 1, 1999 are as follows (tonnage in parentheses corresponds to 1,387 mt total quota): General category: 47.1 percent (653.3 mt); Harpoon category: 3.9 percent (54.1 mt); Purse Seine category: 18.6 percent (258.0 mt); Angling category: 19.7 percent (273.2 mt); Longline category: 8.1 percent (112.3 mt); Trap category: 0.1 percent (1.4 mt); and Reserve: 2.5 percent (34.7 mt).

Based on these percentages and on quota adjustments resulting from overharvests or underharvests in the 2000 fishing year, the adjusted quotas for the 2000 fishing year are as follows: 609.3 mt for the Angling category; 666.7 mt for the General category; 55.0 mt for the Harpoon category; 193.2 mt for the Longline category; 3.9 mt for the Trap category; 255.6 mt for the Purse Seine category; and 42.5 mt for the Reserve.

The Angling category quota is subdivided as follows: School BFT--247.8 mt, with 134.3 mt to the northern area (north of 38°47' N. lat.), 113.5 mt to the southern area (south of 38°47' N. lat.), and 20.6 mt held in reserve; large school/small medium BFT--330.0 mt, with 171.1 mt to the northern area and 158.9 mt to the southern area; and large medium/giant BFT--10.9 mt, with 4.8 mt to the northern area and 6.1 mt to the southern area. NMFS proposed a rule (65 FR 76601; December 7, 2000) that would adjust the location of the Angling category north-south dividing line to 39° 18' N. lat. and change the percentage quota allocations in the northern and southern areas. Should a final rule be issued to implement these changes during the 2001 fishing year, that final rule will also revise the 2001 Angling category subquotas contained in this document based on any changes made to the quota allocations for the northern and southern areas.

The Longline category is subdivided as follows: 24.9 mt to longline vessels landing BFT north of 34° N. latitude and 168.3 mt to longline vessels landing BFT south of 34° N. latitude.

**General Category Effort Controls**

For the 2001 fishing year, NMFS implements General category quota subdivisions as established in the HMS FMP, as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the underharvest of the 2000 fishing year General category quota, these percentages are applied to the adjusted coastwide quota for the General category of 656.7 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 394.0 mt

are available for the period beginning June 1 and ending August 31; 197.0 mt are available for the period beginning September 1 and ending September 30; and 65.7 mt are available for the period beginning October 1 and ending December 31.

The New York Bight set-aside area is the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. When the coastwide General category fishery has been closed in any quota period, NMFS may publish notification in the **Federal Register** to make available up to 10 mt of the quota set aside for the New York Bight area. A

Attainment of the subquota in any quota period will result in a closure until the beginning of the following quota period. The subquota for the following quota period will be adjusted by any underharvest or overharvest in the previous quota period. Announcements of closures will be filed for publication with the Office of the **Federal Register**, stating the effective date of closure, and will be disseminated by the HMS Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line (978-281-9305 or 888-872-8862) to check the status of the fishery before leaving for a fishing trip.

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 in 2001: August 11, 12, and 13; September 2, 3, 5, 9, 10, 12, 16, 17, 19, 23, 24, 26, and 30; and October 1 and 3. Persons aboard vessels permitted in the Atlantic HMS Charter/Headboat category are prohibited from fishing for large medium and giant BFT under the General category quota on the indicated RFDs. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality and are consistent with the objectives of the HMS FMP.

## Comments and Responses

### Quota Carryover Provisions

*Comment:* Some commenters stated there should be no changes to the current quota carryover provisions. The agency should address any excessive amounts of quota with inseason transfers. Some commenters stated the

amount of quota proposed to be carried over in the Angling category due to underharvest of the quota for that category during the 2000 fishing year is very large. NMFS should use the inseason transfer criteria specified in the regulations to make the quota available to other users within the domestic fishery, specifically to the commercial categories, in which each fish landed is reported. Inseason quota transfers should also take place in the beginning of the season, or as early as possible, to avoid late season transfers that can prolonging the fishery late into the season when the weather is usually the worst. Other commenters stated that if a carryover cap was put into place it should be a high percentage of the initial quota allocation for that category. A few commenters stated that capping the amount of tonnage that may be carried over could be problematic as determining an appropriate cap level would be difficult and contentious. Thus, instead categories should be provided a reasonable opportunity to catch their quota. Some comments received stated that if a particular category's quota is not harvested, and this pattern repeats itself for a couple of years, this could have serious ramifications under the current carryover regulations. Some commenters stated that with the amount of quota available in the Angling category, increased mortality on a specific year class could have devastating effects on the overall rebuilding plan. One commenter pointed out that categories are not guaranteed the quota allocated to them, fishermen are provided an ample opportunity to catch that quota, there is no private ownership of the quota, and the agency must do what it believes is good for the fishery as a whole.

*Response:* For the 2001 fishing year NMFS has decided to continue the current system to address quota transfers, namely: (1) inseason quota transfers in accordance with HMS FMP transfer criteria and (2) end-of-the-year carryover provisions, to ensure all reasonable opportunities are provided for U.S. fishermen to harvest the available quota. NMFS recognizes the concerns regarding the excess build up of quota in any one category due to annual quota carry-overs, such as potential negative biological impacts, precedents for starting new unsustainable fisheries, etc., and NMFS will continue to monitor the fishery and take appropriate inseason action. In addition, NMFS may consider, in consultation with the HMS Advisory

Panel, addressing excessive quota carry-overs through rulemaking.

### Restricted Fishing Days

*Comment:* Some commenters stated that NMFS should remove RFDs from the June through August time period sub-quota while keeping the Sunday, Monday, Wednesday schedule for September, as well as the October through December, time period sub-quotas. Some commenters stated that over the past few seasons catch rates have been relatively low for much of the season and that RFDs have impeded fishermen from having a reasonable opportunity to land the quotas previously established for particular time periods. In addition many commenters stated that NMFS should use its ability to institute or "waive" RFDs during the season as necessary. Some commenters stated that NMFS should not implement October RFDs, especially beyond the first few days of October. October weather alone should dictate when fishermen make a trip and by not allowing fishermen a reasonable opportunity to catch the quota the agency runs the risk of not complying with ATCA. Some commenters stated that the RFD schedule should remain as it was last year to extend the season as long as possible.

*Response:* NMFS removes 25 RFDs from the schedule announced in the proposed specifications. The days removed are primarily in the June through August time-period subquota, except for a Japanese market holiday that takes place mid-August. NMFS also recognizes that the weather is unpredictable in the later portion of the season, particularly in the later half of October, and poor weather conditions may limit participation without the need for RFDs after the first week in October. Thus, the RFD schedule does not include RFDs after the first week of October. If it appears that catch rates are extremely high in the early portion of the season, NMFS may establish additional RFDs as deemed necessary to moderate the fishery and assist in attaining Optimum Yield.

### 2001 Fishing Year Quota Allocations

*Comment:* Many commenters stated that the Harpoon category should receive an increase in quota. This increase should be of an amount that would put the Harpoon category at approximately 10-12 percent of the General category quota for 2001. NMFS should use quota from either the unused portion of dead discard allowance, or the underharvest from the 2000 fishing year quota, or the quota from the Reserve, to boost the Harpoon quota this

season and then do either a framework action or an amendment to the HMS FMP to increase the Harpoon category quota over the long term.

*Response:* NMFS is allocating 55.0 mt to the Harpoon category, as proposed, based upon the annual quota allocation percentages and annual carryover provisions established in the HMS FMP. As appropriate, NMFS may use the authority to make inseason transfers from one category to another based on transfer criteria established in the HMS FMP. NMFS will closely monitor the season to determine the status of the Harpoon category and whether inseason transfers are warranted. In addition, NMFS may consider, in consultation with the HMS FMP, whether an amendment to the HMS FMP is appropriate.

*Comment:* Some commenters stated that the Longline category should not receive a carryover from a previous year because it is an incidental fishery. The unlanded quota from this category should be used to restore the Harpoon and Purse seine categories to their historical levels. Other commenters stated that target catch requirements in the Longline category have been too strict in the past and should be relaxed to allow a reasonable opportunity to harvest the category's quota before transferring that quota to one of the other categories.

*Response:* NMFS is implementing a Longline category quota of 193.2 mt based on annual carryover procedures established in the HMS FMP. The Longline incidental BFT quota and incidental target catch limits have been the subject of extensive public debate. NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on November 17, 2000 requesting comment on this subject. At the recent HMS Advisory Panel meeting held in April, various options for revising the Longline limits were considered. NMFS intends to examine this issue comprehensively through subsequent rulemaking.

*Comment:* Some commenters stated that North Carolina (NC) should have its own General and Angling category set aside quotas. By not allowing NC a commercial fishery the agency is violating national standard 4. Other comments received stated historical fisheries must be restored before any new fisheries, such as a commercial handgear fishery in NC, are created.

*Response:* NMFS continues to believe that allowing new gear types and fisheries for BFT at this time would be inconsistent with rebuilding overfished stocks and preventing overfishing. 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 new fishery and establishing a set-aside for a NC General category fishery was extensively discussed by the HMS Advisory panel (AP) and the public. However, the HMS AP did not reach consensus on whether or not to allow a new southern fishery. NMFS' position remains that allowing new gear types and fisheries for BFT would not be consistent with rebuilding overfished stocks and preventing overfishing at this time.

#### *Specifications*

*Comment:* Some commenters stated that the minimum size for a commercial BFT should be reduced to 65 inches (165 cm). Historically the Large school/ Small medium size class were caught by General category vessels and were sold or retained for personal use. Once that changed, in 1991, there has been no fishery for that size class to speak of, thus the large amounts of unharvested quota. NMFS should reduce the commercial minimum size and alleviate some of this excess quota carryover.

*Response:* NMFS believes that the 73-inch (185 cm) commercial minimum size should be maintained. The current commercial minimum size limit was implemented in 1992, and was not adjusted 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 the number of BFT landed could increase, which may affect longterm 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 a re-allocation of quota, which would have to be considered in a separate rulemaking.

*Comment:* Some commenters stated that NMFS should use multiple fish retention limits in the General category to assure that time period sub-quotas are harvested within their allotted time frame. Some commenters 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. If NMFS were to consider allowing multiple catch in the General category,

it should also reconsider allowing buyboats back into the fishery.

*Response:* NMFS has 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 BFT per day should provide the greatest opportunity for a longer season providing maximum fishing opportunities to the greatest number of fishery participants over the greatest geographic area. Buyboats were eliminated with the adoption of the HMS FMP in 1999, due to the lack of use and potential enforcement problems. Given the limited potential for use, there is no compelling reason to authorize buyboats in the BFT fishery at this time.

*Comment:* Commenters stated that the May 15 deadline to change categories should be changed. If fishermen are going to be held to this arbitrary date, so should the agency be held to a requirement to publish a final rule in a timely manner. The final rule should be available to fishermen before they are forced to make a business decision. Other commenters stated that as the new web-based permitting system fishermen can provide permits in real-time via computer or fax, the May 15 date should be adjusted to the end of May to allow the agency more time to publish a final rule.

*Response:* NMFS agrees that it should publish final specifications before the beginning of the fishing year. Part of the rationale for the adjustment of the fishing year from a calendar year to one that begins June 1 was to provide adequate time for the development of proposed and final specifications after the annual ICCAT meeting in November. The workload within the HMS Division this spring delayed publication of the proposed specifications. However, as the measures contained in the specifications do not change the status quo as presented in the HMS FMP (except for the addition of RFDs in October), NMFS believes that there was minimal, or no, impact on decisions regarding choice of permit categories. NMFS did, however, extend the deadline for permit category changes until May 31, 2001 due to technical problems with the permitting system.

*Comment:* NMFS should limit BFT commercial gear to rod and reel only.

*Response:* NMFS disagrees. Vessels using gear other than rod and reel gear, for example, harpoon and purse seine gear, have a long history of participation in the BFT fishery. Prohibiting the use of these gears in the Atlantic tuna fisheries is inconsistent with the objectives of the FMP. Bycatch concerns, for these gear types, are minimal and, in the case of purse seine gear, the number of vessels in the fishery is limited. Regarding pelagic longline gear, this gear is primarily used to target swordfish and other fish species. Prohibiting this gear in the Atlantic tunas fisheries could result in increased tuna discards, as BFT are occasionally caught incidentally on longline gear when fishing for swordfish and other tunas. In addition, longline gear is restricted in the BFT fisheries with strict target catch requirements for incidental catch retention. All permitted gear types in the commercial and recreational BFT fisheries are regulated and subject to the overall U.S. BFT quota.

*Comment:* The quota allocation percentage for school size BFT should be increased from its current level of eight percent. Other commenters suggested that this is an ICCAT issue that should be raised with the ICCAT Advisory Committee.

*Response:* This issue does not fall within the parameters of this rulemaking. This issue is more appropriately addressed by the ICCAT Advisory Committee in making a recommendation for a change in the ICCAT rebuilding program. Inseason Measures for the Recreational Fishery

*Comment:* Commenters stated that NMFS should create a third fishing area for the Angling category. Other commenters stated that, due to the amount of quota that is available for carryover from the 2000 fishing year, the retention limits should be liberalized to provide an ample opportunity to catch the quota. Commenters also stated that the season should be lengthened by having a number of sub-zones with unique retention limits depending on the time of the year. Finally, commenters stated that a different retention limit should be applied to

inspected vessels based upon some ratio of the number of passengers onboard.

*Response:* NMFS intends to address the specific issue of Angling category catch limits and seasons through its existing regulatory authority for inseason adjustments to enhance fishing opportunities for Angling category participants coastwide. Comments regarding the appropriate distribution will be considered as NMFS makes any necessary inseason adjustments in separate actions.

#### **Classification**

These final initial quota specifications and General category effort controls are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq., and ATCA, 16 U.S.C. 971 et seq. The Assistant Administrator for Fisheries, NOAA, has determined that the quota specifications and the General category effort controls are consistent with the HMS FMP, the Magnuson-Stevens Act, ATCA, and the 1998 ICCAT BFT catch recommendation.

The Chief Counsel for Regulation of the Department of Commerce 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. No comments were received that would alter the basis for this certification. Accordingly, neither an Initial or 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.

These final initial specification are not expected to increase endangered species or marine mammal interaction rates. On June 8, 2001 NMFS issued a Biological Opinion (BO) after concluding formal consultation for the HMS fisheries under Section 7 of the Endangered Species Act. The BO concluded that the pelagic longline fishery is likely to jeopardize the continued existence of threatened or endangered species. Pelagic longline vessels are not permitted to direct fishing on BFT, and are allocated a quota only for incidental take of BFT

while conducting a fishery for swordfish and other tunas. Consequently, these BFT specifications will not change fishing practices for longline vessels. NMFS plans on addressing the conclusions of the BO regarding the pelagic longline fishery through separate rulemaking. The BO concluded that the gears used in directed BFT fisheries (handgear and purse seines) may affect, but are not likely to adversely affect, threatened or endangered species. This final rule will not significantly alter current fishing practices and would not likely increase takes of listed species or interfere with the implementation of the reasonable and prudent alternative measures identified in the BO to reduce adverse impacts on protected resources.

The area in which this proposed 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 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.

These specifications and effort controls are necessary to ensure that the United States' actions are consistent with its international obligations under ICCAT and, because the fishing season is underway, a delay of effectiveness is contrary to the public interest. Additionally, a delay in effectiveness is unnecessary because these specifications and effort controls impose no requirements with which fishermen need time to come into compliance. Therefore, NMFS has determined that there is good cause to waive the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). NMFS will rapidly communicate these final specifications through the FAX network.

Dated: July 13, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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