

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 980320071-8128-02; I.D. 012198C]

RIN 0648-AK87

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Annual Quota Specifications and Effort Controls

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

ACTION: Final specifications; final rule.

SUMMARY: NMFS announces specifications and amends the regulations for the Atlantic tuna fisheries to set annual Atlantic bluefin tuna (ABT) fishing category quotas and General category effort controls. These specifications and amendments are necessary to implement the 1996 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) required by the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives.

DATES: The final specifications are effective May 15, 1998. The amendment to 50 CFR 285.22 (a)(3) is effective June 22, 1998.

ADDRESSES: Copies of supporting documents, including a Final Environmental Assessment-Regulatory Impact Review (EA/RIR), are available from Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown at 978-281-9260; or Sarah McLaughlin at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the recommendations of ICCAT. The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

ICCAT has identified the western stock of ABT as overexploited and recommends fishing quotas for contracting parties. Based on the 1996 revised stock assessment, parties at the 1996 meeting of ICCAT adopted a

recommendation to increase the annual scientific monitoring quota of ABT in the western Atlantic Ocean from 2,200 metric tons (mt) to 2,354 mt. The share allocated to the United States was increased from 1,306 mt to 1,344 mt to apply each year for the 1997 and 1998 fishing years. NMFS amended the Atlantic tuna fisheries regulations in 1997 to implement that ICCAT recommendation as required by ATCA.

Background information and rationale for these specifications were provided in the preamble to the proposed specifications (63 FR 16220, April 2, 1998) and are not repeated here. These specifications allocate the total ICCAT-recommended quota among the several established fishing categories.

Changes From the Proposed Specifications

Based on recently revised estimates of recreational landings for 1997, NMFS has determined that 4 mt remained unharvested in the Angling category at the end of 1997. Therefore, the final specifications set the 1998 Angling category quota at 269 mt and the large school/small medium subquota at 153 mt, with 81 mt to the northern area and 72 mt to the southern area. These estimates remain preliminary. Should further revisions to the 1997 recreational landings estimates require, NMFS will effect inseason adjustments as necessary.

Based on consideration of comments received during the 30-day comment period, the following changes are made to the final specifications. Three additional restricted-fishing days are established for July in order to extend the fishery for the June-August time period. In addition, August 1 is substituted for August 2. August 2 had been proposed because it followed last year's pattern for August (Sundays, Wednesdays, and market-related days); however, August 1, which is a market-related date, is preferable.

Based on comments received, a revision is also made to the regulatory text at 50 CFR part 285. Section 285.22(a)(3) is amended to allow for more flexible timing of the New York Bight set-aside allocation, e.g., prior to October. The New York Bight set-aside will be implemented when it is determined that ABT have migrated to the New York Bight area and when the coastwide General category is closed.

These changes to the specifications and regulatory text will improve NMFS' ability to implement the ICCAT recommendation and to further the management objectives for the Atlantic tuna fisheries.

Fishing Category Quotas

No changes have been made to the baseline quotas established for 1997. However, the ICCAT recommendation allows, and U.S. regulations require, the addition of any underharvest in 1997 to that same category for 1998. Therefore, NMFS adjusts the 1998 quotas for the ABT fishery to account for underharvest in 1997. The ABT fishing category quotas for the 1998 fishing year are as follows: General category—657 metric tons (mt); Harpoon category—53 mt; Purse Seine category—250 mt; Angling category—269 mt; Incidental category—114 mt; and Reserve—52 mt.

The Angling category is subdivided as follows: School ABT—108 mt (consistent with the ICCAT limitation on annual catch of school ABT to 8 percent by weight of the total annual domestic quota, i.e., 1,344 mt), with 57 mt to the northern area (New Jersey and north) and 51 mt to the southern area (Delaware and south); large school/small medium ABT—153 mt, with 81 mt to the northern area and 72 mt to the southern area; large medium/giant ABT—8 mt, with 3 mt to the northern area and 5 mt to the southern area.

The Incidental category is subdivided as follows: 89 mt to longline vessels operating south of 34° N. lat.; 24 mt to longline vessels operating north of 34° N. lat.; and 1 mt to vessels using other gear authorized for incidental take.

The General category is distributed as follows, based upon historical catch patterns (1983-96): 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages will be applied only to the adjusted coastwide General category of 647 mt, with the remaining 10 mt being reserved for the New York Bight fishery. The New York Bight set-aside area was redefined in 1997 as 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. Thus, of the 647 mt, 388 mt will be available in the period beginning June 1 and ending August 31; 194 mt will be available in the period beginning September 1 and ending September 30; and 65 mt will be available in the period beginning October 1 and ending December 31.

When the coastwide General category fishery has been closed in any quota period, NMFS may publish a notification in the **Federal Register** to make available up to 10 mt of the quota set aside for the New York Bight area.

The daily catch limit for the set-aside area will be one large medium or giant ABT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant ABT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period may be carried over for the purpose of renewing the set-aside fishery at a later date.

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 inseason closures will be filed with the Office of the Federal Register, stating the effective date of closure, and will be disseminated by the Highly Migratory Species (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 to check the status of the fishery before leaving for a fishing trip. The phone numbers for the Atlantic Tunas Information Line are (301) 713-1279 and (978) 281-9305. Information regarding the Atlantic tuna fisheries is also available through NextLink Interactive, Inc., at (888) USA-TUNA.

Restricted-Fishing Days

NMFS has added 3 restricted fishing days in July to the proposed schedule of restricted fishing days in order to extend the fishery for the June-August time period. July 8 and 25 are added to coordinate with Japanese market closure dates and July 19, which is a Sunday on which higher catch rates are anticipated. Accordingly, persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for ABT of all sizes on the following days: July 8, 15, 16, 19, 22, 25, and 29; August 1, 5, 9, 11, 12, 13, 16, 19, 23, 26, and 30; and September 2, 6, 9, 13, 16, 19, 20, 23, 27, and 30. These restricted fishing days will improve distribution of fishing opportunities without increasing ABT mortality.

Comments and Responses

General Category Quota

Comment: NMFS received several comments that the Reserve does not

need to be increased given NMFS' ability to closely monitor the fishery and should be allocated to the General category now rather than at the end of the year, so that the historical ratio of landings before and after September 1 is preserved. Last year, 70 mt were transferred into the General category effective October 1. General category fishermen in the northern New England area feel that this action favored southern New England fishermen because of the location of ABT in the fall.

Response: To ensure that the United States does not exceed its quota and for scientific research and monitoring purposes, NMFS is maintaining the Reserve as proposed (52 mt for 1998).

Harpoon Category Quota

Comment: NMFS received over 100 comments that 15 mt of the Reserve should be allocated to the Harpoon category at the beginning of the season. The commenters do not think that it is fair that the General and Angling categories, which have had their annual quotas increased through initial allocation and inseason actions, may again receive some of the Reserve while the Harpoon category has remained at the same quota level since 1992.

Response: As stated in the 1997 final quota specifications, NMFS takes into consideration the contribution of each fishing category to catch-per-unit-effort (CPUE) indices for the purposes of stock assessment when allocating the quota. Because catch rates are strongly influenced by weather and sea conditions and many harpooners use spotter aircraft to assist in the location of ABT, it is difficult to standardize CPUE from the harpoon fishery. Although Harpoon fishery data could potentially be incorporated into an index of abundance, such an index would be less reliable than the existing rod and reel based index which covers a larger number of years, fishing areas, and size classes. NMFS is not allocating any additional quota to the Harpoon category at this time; however, longterm quota allocations are being considered by the HMS Advisory Panel (HMS AP) during the development of the fishery management plan (FMP).

Angling Category Quota

Comment: NMFS received several comments from commercial fishermen to reduce the Angling category quota, which has increased over recent years even when the quota has been exceeded. Recreational fishermen requested reallocation of quota from the commercial categories to the Angling category because of increased

participation and the economic impact on the recreational fishing industry.

Response: Because longterm quota allocations will be addressed by the HMS AP, no changes are made to the Angling category quota in the final specifications. Reallocation of quota to or from the Angling category to or from other categories or the Reserve would require further environmental and economic analyses due to changes in the size composition of landings.

Purse Seine Category Quota

Comment: NMFS received several comments, mostly from recreational fishermen, that the Purse Seine category quota should be reduced (e.g., by 50 percent) or eliminated and that the quota be reallocated to the General and Angling categories.

Some purse seiners submitted comments in support of the status quo, and some indicated that the quota should return to the pre-1995 level of 301 mt, although not at the expense of other categories. One individual commented that NMFS should treat the Purse Seine category like other categories; overharvest should be deducted from the Reserve or from the following year's quota, with no additional penalty, and underharvest should be added to the following year's quota, in accordance with ICCAT recommendations.

Response: Because longterm quota allocations will be addressed by the HMS AP, no changes are made to the Purse Seine category quota in the final specifications. Reallocation of quota to or from the Purse Seine category to or from other categories or the Reserve would require further environmental and economic analyses due to changes in the size composition of landings. NMFS is required to add any underharvest to the same category for the following year when there is an ICCAT recommendation to do so.

Incidental Category Quota

Comment: One commenter argued that the late-season transfer of quota from the Incidental category to other categories should be returned to the Incidental category. The commenter recognized that, when this issue was addressed at the January HMS AP meeting, members supported leaving the transferred quota in the General category for the 1998 fishing season, especially since the Incidental category is not likely to be filled. The commenter urged NMFS not to set such a precedent and to address the restrictive catch limits that result in the inability of longline vessels to meet their quotas.

Response: The primary issue regarding Incidental category quota allocation is the recommendation of ICCAT to reduce dead discards of ABT. This issue will be examined in the coming months as HMS prepares a proposed rule to implement that ICCAT recommendation. Once such measures are in place, NMFS may consider the longterm quota needs for this category. Therefore, NMFS maintains the status quo allocation at this time.

Time Period Subquotas

Several commenters believe that the 10 percent allocated to the General category for October should be divided between June-August and September. Some commenters proposed that the quota be divided as follows: 25 percent for June, 25 percent for July, 25 percent for August, and 25 percent for September through December. Other commenters supported an allocation of 50 percent for June through August, 35 percent for September, and 15 percent for October through December, plus a 25-mt set-aside for the New York Bight area. They also requested that NMFS be flexible regarding the opening date of the New York Bight set-aside fishery; i.e., make the quota available when ABT are present in the Mud Hole area.

Response: NMFS maintains the status quo time period subquota breakdown in these final specifications. Longterm effort control issues will be addressed by the AP in the course of FMP development. In addition, NMFS maintains the New York Bight set-aside at 10 mt. However, NMFS amends the regulations in conjunction with these final specifications to allow for more flexible timing of the New York Bight set-aside allocation. The 1997 regulations specified that only when the third period (October through December) General category catch was projected to have reached 65 mt, would NMFS open the fishery for the remaining 10 mt of the General category quota for the New York Bight set-aside. Through this final rule, NMFS amends the regulations in to allow more flexibility in managing the New York Bight set-aside, by permitting the implementation of the set-aside earlier than October, if necessary.

Restricted Fishing Days (RFDs)

Comment: A organization representing General category fishermen requested additional days for July through October to correspond with Japanese market closure dates or to enhance General category fishing opportunities and scientific monitoring by extending the season. Other commenters felt that RFDs should be

scheduled for the first half of July in the same manner as used for the second half of July. Many others felt that RFDs do not help increase market prices and are burdensome to fishermen that could otherwise fish for other species or take care of other business after the ABT season closes.

Other commenters preferred to have more fishing days with low catch rates early in the season (June through August) as opposed to only a few fishing days with high catch rates late in the season. They noted that a late season fishery (September/October) may be to the detriment of the northern New England fishery while benefitting the Southern New England (Cape Cod and Islands) fishery due to migration patterns of ABT in the fall.

NMFS also received a comment that the General category RFDs should be implemented for the Harpoon category as well to extend the Harpoon category season, and some commercial fishermen commented that tagging and releasing ABT should be allowed on RFDs for scientific monitoring purposes.

Response: NMFS has added 3 restricted fishing days in July to the proposed schedule of restricted fishing days in order to extend the fishery for the June-August time period. July 8 and 25 are added to coordinate with Japanese market closure dates, and July 19 is added, which is a Sunday on which higher catch rates are anticipated. In addition, NMFS is substituting August 1 for August 2. August 2 had been proposed because it followed last year's pattern for August (Sundays, Wednesdays, and market-related days); however, August 1, which is a market-related date, is preferable.

Because the October through December allocation is small, HMS believes that October RFDs would not appreciably extend the fishery. Also, weather is unpredictable in the October fishery, and poor sea conditions may limit participation. Should enough quota be transferred to the late season fishery to merit RFDs, NMFS could adjust the effort control calendar with a minimum 3-day notification to fishermen. NMFS maintains that, for enforcement reasons, all fishing for ABT should be prohibited on RFDs. At this time, NMFS does not intend to implement RFDs for the Harpoon category. One of the main purposes of the RFDs is to extend the season in the General category in order to collect CPUE data. As the Harpoon category is not used for collecting this type of information, RFDs are not necessary.

Spotter Aircraft

Comment: Although the use of spotter aircraft was not addressed in the proposed specifications, NMFS requested further comment on issues to be considered by the HMS AP for the HMS FMP and to implement future ICCAT recommendations. Many commenters felt that spotter aircraft use by vessels permitted in the Harpoon category should be prohibited for reasons of fairness, safety, and/or enforceability. Most commenters indicated that aircraft should continue to be used only by Purse Seine vessels.

Response: NMFS intends to gather more public comments and data, and would need to conduct further analyses on this issue prior to making any changes to the regulations. This issue will be considered by the HMS AP during FMP deliberations.

Other Comments

Angling category season. Mid-Atlantic commenters requested that NMFS establish "date-certain" seasons, whereby the Angling category fishery in a particular area will be opened at the appropriate time (when ABT are in the area) for a period of 30 days, at a designated catch limit. This would improve trip planning for Charter/Headboat captains.

Angling category geographical areas. There was some support for moving the north/south boundary from Delaware Bay to off Beach Haven, New Jersey. Others supported a third zone, intended to increase fishing opportunities in the Mid-Atlantic region. Others oppose the creation of a third zone because of the potential monitoring difficulties.

General category set-asides. NMFS received requests from North Carolina fishermen for a portion of the General category quota to allow General category and Charter/Headboat category fishermen to land and sell large medium and giant ABT in the winter months (November-December). NMFS also received requests for a set-aside for the Connecticut/Rhode Island/New York area. Many General category participants have opposed new set-asides, especially for North Carolina.

General/Angling category separation. Some commenters opposed the prohibition on recreational fishing by General category permit holders because the fishery comprises mixed size classes and trip planning is difficult when vessels are limited to one quota category.

Charter/Headboat catch limits. Some commenters opposed the new regulation that requires Charter/Headboats to fish under either the General category or

Angling category catch limits, based on the size of the first ABT retained. Some Charter/Headboat constituents found that the restriction puts undue burden on their daily fishing practices and encourages waste through discarding or highgrading. NMFS received a suggestion for a sliding scale of increasing catch limits based on Coast Guard documented passenger capacity of a Charterboat. This would enable larger boats to attract business.

Angling category monitoring. Some commenters opposed the coastwide expansion of the recreational harvest tagging pilot program in North Carolina and the use of permits to monitor the recreational fishery; enhancement of the Large Pelagic Survey is preferred.

Gear types. NMFS received several comments from spearfishermen requesting that they be allowed to spear tunas, specifically ABT. The requesters stated that they would have a minimal impact on the fishery due to the small subquota and number of fishermen involved.

Several commenters objected to the prohibition on harpoon gear in the Charter/Headboat permit category. Some argued that the harpoon is critical to safely boat an ABT and is currently in widespread use. Other commenters would like to use harpoons as fishing gear in the Charter/Headboat category while fishing for large medium, and giant ABT.

Response: NMFS intends to address the specific issue of Angling category catch limits and time/area openings and closures during the season through existing regulatory authority in order to enhance fishing opportunities for Angling category participants coastwide. Comments regarding the appropriate distribution will be considered as NMFS effects inseason adjustments.

Temporal and geographic subdivisions for all categories, quota monitoring, and modifications of catch limits and gear types are issues under discussion by NMFS and the HMS AP as a comprehensive HMS FMP is being developed. Therefore, NMFS will not address these issues in these final quota and effort control specifications, pending further consideration and appropriate analyses.

Reminder of Recent Changes for the General and Charter/Headboat Permit Categories

NMFS published by final rule on June 5, 1997 (62 FR 30741), a measure that

was effective January 1, 1998, prohibiting persons aboard vessels permitted in the General category from retaining ABT less than the large medium size class. This action effectively separated the commercial and recreational fisheries, with the exception of charter/headboats.

In the same final rule, NMFS specified that anglers aboard vessels permitted in the Charter/Headboat category may collectively fish under either the daily Angling category limits or the daily General category limit as applicable on that day. The size category of the first ABT retained or possessed will determine the fishing category of all persons aboard the vessel and the applicable catch limits for that day. On designated restricted fishing days, persons aboard vessels permitted in the Charter/Headboat category may fish for school, large school, and small medium ABT only, provided the Angling category remains open, and are subject to the Angling category catch limits in effect.

Classification

These final specifications and regulatory amendments are published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that these specifications and amendments are necessary to implement the recommendations of ICCAT and are necessary for the management of the Atlantic tuna fisheries.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications, if implemented, would not have a significant economic impact on a substantial number of small entities. This determination remains valid for the final specifications/final rule. Therefore, no Regulatory Flexibility Analysis was prepared.

These quota and effort control specifications impose no requirements with which fishermen will have to come into compliance, and are necessary to help ensure that the U.S. actions are consistent with its international obligations at ICCAT. 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 and NOAA weather radio.

These final specifications and regulatory amendments have been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 15, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

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

2. In § 285.22, paragraph (a)(3) is revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) * * *

(3) When the coastwide General category fishery has been closed in any quota period under paragraph (a)(2) of this section, the Director may publish a notification in the **Federal Register** to make available up to 10 mt of the quota set aside for an 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. The daily catch limit for the set-aside area will be one large medium or giant ABT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant ABT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

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