

no RFDs, this alternative was rejected because it is unlikely that there will be enough quota in the General category to sustain an extended late season commercial handgear fishery off south Atlantic states.

The action would not result in additional reporting, recordkeeping, compliance, or monitoring requirements for the public. This final rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment with implementation of this final rule. The EA presents analyses of the anticipated impacts of these regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule, are available from NMFS via the Federal e-Rulemaking Portal (*see ADDRESSES*).

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

This final rule contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp), issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative (RPA) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize

the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is working on implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NMFS published an advance notice of proposed rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The measures in this action are not expected to have adverse impacts on protected species. Although the 2002 ICCAT recommendation increased the BFT quota, which may result in a slight increase in effort, NMFS does not expect this slight increase to alter current fishing patterns. Any option to reduce mortality of school BFT are expected to have negligible ecological impacts and not adversely impact protected species. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Thus, the action would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

The area in which this action will occur 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 HMS Management Division of the Office of Sustainable Fisheries at NMFS. NMFS does not anticipate that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

NMFS has determined that the actions in this final rule are consistent with the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). The rule establishing quota specifications and effort controls was submitted to the responsible state agencies for their review under section 307 of the CZMA on March 23, 2005. As of May 6, 2005, NMFS has received five responses, all concurring with NMFS' consistency determination. Because no responses were received from other states, their concurrence is presumed.

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

Dated: June 1, 2005.

**Rebecca Lent,**

*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. 052405D]

#### 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 Atlantic bluefin tuna (BFT) General and Charter/Headboat Permit category daily retention limits should be adjusted for the 2005 fishing year, which begins on June 1, 2005 and ends May 31, 2006. The adjustment will allow maximum utilization of the General category June through August time-period subquota, and will enhance recreational BFT fishing opportunities aboard Charter/Headboat vessels in the early portion of the season. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial General category

and recreational Charter/Headboat fishing opportunities in all areas without risking overharvest of the General and Angling category quotas. The final initial 2005 BFT Specifications and General category effort controls are provided in a separate **Federal Register** document.

**DATES:** The effective dates for the 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. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

**Daily Retention Limits**

TABLE 1.—EFFECTIVE DATES

Permit category	Effective dates	Areas	BFT size class limit
General .....	June 1 through June 5, 2005, inclusive .....	All .....	One BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger.
	June 6 through August 31, 2005, inclusive .....	All .....	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger.
	September 1, 2005, through January 31, 2006, inclusive.	All .....	One BFT per vessel per day/trip, measuring 73 inches (185) CFL or larger.
Charter/Headboat ...	June 1–16, 2005, inclusive .....	All .....	One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL.
	June 17 through July 31, 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.
	August 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.
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), NOAA Fisheries 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. Starting on June 1, 2005, the default commercial General category daily retention limit at 50 CFR 635.23(a)(2), will apply at one large medium or giant BFT (measuring 73 inches curved fork length (CFL)) or greater per vessel per day/trip. This retention limit applies to permitted HMS Charter/Headboat vessels (when commercially fishing under the General category) and General category permitted vessels.

NOAA Fisheries has been continuing to receive information from fishermen regarding the start of the season and requests for an increase of the retention limit in the General category starting as close as possible to the start of the fishery on June 1 and for increased recreational Charterboat limits mid June to end of July. Fishermen have indicated that, if the action is not conducted expeditiously, at the opening of the season, then a subsector of General category fishermen (particularly in

northern New England) will lose the opportunity to enjoy the increased fishing opportunities while the fish are briefly offshore in the Gulf of Maine and northern New England fishing areas.

Therefore, NOAA Fisheries adjusts the General category daily retention limit June 6 through August 31, 2005, inclusive, to two large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip. The default retention limit of one BFT greater than 73 inches will apply through June 5, 2005 inclusive, and the retention limit will revert back to the default on September 1, 2005. It is highly likely that with a combination of the default bag limit of one BFT starting on September 1, 2005, and the large amount of General category quota, that there will be sufficient quota for a full general category season extending into the winter months and for southern area fishermen on an order of magnitude of recent prior years.

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

Starting on June 1, 2005, the default recreational daily retention limit at 50 CFR 635.23(b), will apply at one school, large school or small medium BFT (measuring 27 inches to less than 73 inches curved fork length (CFL)) per vessel per day/trip. This retention limit

applies to permitted HMS Charter/Headboat vessels (when recreationally fishing under the Angling category) and to HMS Angling permitted vessels. These regulations also allow for adjustment to the daily retention limit to provide for maximum utilization of the quota over the longest possible period of time. NOAA Fisheries 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 specific vessel types, such as private vessels, headboats, and charter boats.

NOAA Fisheries has recently received more information from charter operators and recreational industry leaders related to recreational BFT fishing opportunities in the mid-Atlantic area. Among other matters, NOAA Fisheries has learned about a tuna tournament starting on June 17, 2005, and concerns regarding how the default one BFT retention limit might negatively impact charterboat operations early in the season particularly in tournaments where higher limits will attract more participants. Charterboat operators have requested an increased retention limit, and expressed concern that a recreational retention limit of less than three or four BFT per vessel per day/trip

does not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Fishermen have also emphasized that an early season retention limit adjustment should be announced as soon as possible so that Charterboat operators have sufficient time to announce and plan the scheduling of trips. Another consideration is the need to ensure the United States meets ICCAT's recommendation regarding quota allocation and specifically regarding the catch of school BFT to no more than eight percent by weight of the total domestic landings quota over each four-consecutive-year period. The 2005 fishing year is the third year in the current accounting period. This multi-year block quota approach provides NOAA Fisheries with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes.

Over the past several weeks HMS staff have received information related to retention limit adjustments for a variety of recreational fishing sectors along the entire Atlantic coast and for the duration of the 2005 fishing year. HMS staff have considered this information as well as issues raised at the HMS Advisory Panel meeting held in March 2005 and received from public comment on the proposed initial 2005 BFT specifications (70 FR 14630, March 23, 2005). The final initial specifications are currently in preparation and take into account recently available estimates of total recreational landings from the 2004 fishing year. These analyses show that a modest increase in the daily retention limit, of limited duration, is feasible without risking overharvest of available quota for the early part of the 2005 recreational season.

Thus, NOAA Fisheries adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, effective June 17 through July 31, 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 August 1, 2005, the default daily recreational retention limit at 50 CFR 635.23(b) will apply in all areas, for all vessels fishing under the recreational angling quota and regulations. However, NOAA Fisheries is also aware of the needs of a late summer or September Charterboat fishery and will consider

the possibility of again providing a modest retention limit adjustment closer to that time frame based on several factors, including but not limited to, the landings and quota data as well as other fishery information gathered from the monitoring programs discussed below, experience of this early season retention limit adjustment, information from fishermen and the public regarding fishing opportunities, and the availability of migrating BFT.

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 recreational retention limits and their duration after examining previous fishing year catch and effort rates, receiving public comment, and analyzing the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention 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 Automated Landings Reporting System via toll-free phone at (888) 872-8862; or the Internet <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. NOAA Fisheries published proposed initial 2005 BFT specifications (70 FR 14630) on March 23, 2005, and solicited public comment through 4/18/2005. NOAA Fisheries specifically requested comment on options to achieve the ICCAT recommended 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 Angling categories throughout the 2005 fishing year. NOAA Fisheries is in the process of publishing the final initial specifications.

Since the end of the comment period to the present day, the HMS Management Division has continued to receive more information refining its understanding of both the commercial and recreational sectors' specific needs regarding retention limits early in the season. HMS staff recent calculations from the specifications process show that there is sufficient quota for an increase in the General category retention limit from the start of the season. Prior experience from the past several years also leads us to predict that the General category season will start slowly and an adjustment of the retention limit will be necessary to maximize fishing opportunities on the June through August subquota and minimize excessive rollovers of quota into the October subquota category. The data also show that a limited increase in the angling retention limit is possible for the recreational Charterboat fleet while minimizing risks of exceeding the ICCAT allocated quota and the school limit recommendation.

Delays in increasing the retention limits would adversely affect those General and 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, 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 upon 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 recreational sectors, an adjustment to the retention limits needs to be done

as close to the start of the season on June 1 as possible for the impacted sectors to benefit from the adjustment and for fishermen who only have access to the fishery at the beginning of the season to not be precluded from early season fishing opportunities.

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: June 1, 2005.

**Alan D. Risenhoover,**  
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 041110317-4364-02; I.D. 053105F]

**Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that it has approved the request of the State of North Carolina to transfer 82,774 lb (37,546 kg) of commercial summer flounder quota to the States of Maine, Connecticut, New York, and Maryland, and the Commonwealth of Massachusetts, in accordance with the Atlantic States Marine Fisheries Commission (ASMFC) Addendum XV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective June 2, 2005 through December 31, 2005, unless NMFS publishes a superseding document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mike Ruccio, Fishery Management Specialist, (978) 281-9104, FAX (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The ASMFC adopted Addendum XV to the FMP in November 2004. The Addendum is being implemented under the adaptive management and framework procedures that are part of the FMP. Addendum XV establishes a program, for 2005 and 2006, that

allocates the increase in commercial summer flounder quota (from the 2004 amount) differently than the existing allocation scheme, in order to reduce the amount of fish that must be discarded as bycatch in the commercial fishery in states with relatively low summer flounder quotas. The transfer of quota from donor states will allow recipient states to marginally increase trip limits, thereby decreasing the amount of summer flounder discarded at sea.

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations. The Regional Administrator has reviewed those criteria and approved the quota transfer requests submitted by the State of North Carolina.

Consistent with Addendum XV, North Carolina, a designated “donor state,” has voluntarily employed the quota transfer provisions of the FMP to transfer a total of 82,774 lb (37,546 kg) to be allocated as follows: Maine 1,639 lb (743 kg); Connecticut 22,917 lb (10,395 kg); New York 17,085 lb (7,750 kg); Maryland 23,153 lb (10,502 kg); and Massachusetts--17,980 lb (8,156 kg) (see Table 1).

TABLE 1. SUMMER FLOUNDER COMMERCIAL QUOTA TRANSFERS

State	Amount Transferred		2005 Quota <sup>1</sup>		2005 Revised Quota	
	lb	kg	lb	kg	lb	kg
North Carolina	-82,774	-37,546	4,680,519	2,123,089	4,597,745	2,085,537
Maine	1,639	743	9,820	4,454	11,459	5,198
Massachusetts	17,980	8,156	1,191,519	540,473	1,209,499	548,629
Connecticut	22,917	10,395	423,396	192,052	446,313	202,448
New York	17,085	7,750	1,387,434	629,336	1,404,519	637,090
Maryland	23,153	10,502	365,381	165,737	388,534	176,239

<sup>1</sup> Reflects quotas as published on May 24, 2005 (70 FR 29645), inclusive of previous Addendum XV and “safe harbor” transfers.

**Classification**

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: June 1, 2005.

**Alan D. Risenhoover,**  
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.  
[FR Doc. 05-11289 Filed 6-2-05; 2:30 pm]

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