

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[I.D. 122704C]

**Atlantic Highly Migratory Species; Bluefin Tuna Fisheries**

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

**ACTION:** Fishery reopening; quota transfer.

**SUMMARY:** NMFS has determined that a reopening of the coastwide General category Atlantic bluefin tuna (BFT) fishery is warranted. In addition, NMFS has determined that a BFT quota transfer from the Atlantic tunas Purse seine category to the Reserve category is warranted. These actions are being taken 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), and to meet domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP).

**DATES:** The effective date for the General category reopening, as specified in this rule, is 12:30 a.m. on January 2, 2005, through 11:30 p.m. on January 4, 2005, inclusive. The effective date of the BFT quota transfer is December 29, 2004 through May 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at (978) 281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the ATCA (16 U.S.C. 971 *et seq.*) and the 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 ICCAT among the various domestic fishing categories, and together with General category effort controls are specified annually under procedures specified at 50 CFR 635.23(a) and 635.27(a). The proposed initial 2004 BFT Quota and General category effort controls published in the **Federal Register** on December 10, 2004 (69 FR 71771).

**General Category Reopening**

The coastwide General category BFT fishery reopened on December 8, 2004, and closed on December 20, 2004 (69 FR 71732, December 10, 2004). The intent of this 13-day reopening was to provide commercial fishing opportunities to both Atlantic tunas General and HMS Charter/Headboat category fishery participants to harvest the remainder of the available General category quota. Catch rates were lower than anticipated, primarily due to inclement weather and approximately 70 metric tons (mt) of the available 107 mt was landed during this time period. Therefore, 37 mt remains available, which is nearly the same amount as landings attributed to southern area fishermen during the winter commercial BFT fishery in January 2004.

Recent information indicates that commercial sized BFT are off the coast of North Carolina and are available to General and Charter/Headboat category fishery participants. In consideration of historical General category catch rates in January, the unpredictable nature of the weather, the availability of BFT on the fishing grounds, and the amount of available quota, NMFS has determined that a coastwide General category reopening period of three days should allow harvest of the remaining quota without risking overharvest. Therefore, the coastwide General category is scheduled to reopen at 12:30 a.m. on January 2, 2005, and close at 11:30 p.m. on January 4, 2005.

**General Category Limits**

The General category daily retention limit during this reopening is one large medium or giant BFT, measuring 73 inches or greater (185 cm or greater) curved fork length (CFL) per vessel/day/ trip. This limit applies in all fishing areas, for all vessels fishing under the General category quota (i.e., permitted Atlantic tunas General and HMS Charter/Headboat vessels). Fishing for, retaining, possessing, or landing large medium or giant BFT by persons fishing under the General category quota must cease at 11:30 p.m. local time January 4, 2005.

**BFT Quota Transfer**

The ATCA and the Magnuson-Stevens Act both address the issue of setting quotas for the U.S. domestic fishery when a species is subject to an allocation negotiated through an international agreement. Specifically, NMFS is charged to enable harvest of the full amount of these agreed quotas. To balance the collective legislative requirements to prevent overharvest of

the overall U.S. quota, to allocate available quota consistent with traditional fishing practices, and to provide a reasonable opportunity to harvest the quota, some flexibility is needed to adapt to seasonal variations in the migratory patterns of bluefin tuna. Current regulations provide this flexibility in the following three ways: (1) placement of a portion of the total quota in a Reserve category (50 CFR 635.27(a)(7)); (2) inseason transfers of unharvested quota between fishing categories or to the Reserve category (50 CFR 635.27(a)(8)); and (3) carryover of overharvested or unharvested amounts to the subsequent fishing year (50 CFR 635.27(a)(9)).

While NMFS exercises discretion in adapting to prevailing fishery conditions by balancing reserves, transfers, and carryover there are certain criteria which guide the decision making process for transfers. Those criteria include: (1) the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP. If it is determined, based on the indicated factors and the likelihood of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take the initial quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

In considering these criteria, NMFS also recognizes the unique nature of the Purse seine category which is managed by an individual vessel quota system. As such, the Purse seine vessels are vested with a greater degree of autonomy for managing their allocations, including: fishing days, transfers between vessels, and planning for carryover. Consequently, NOAA Fisheries has elected to exclude Purse seine allocations from past inseason transfers between fishing categories on the premise that the vessels are always able to harvest their remaining allocations or to elect to carry them

over, after considering: current market conditions, the need to avoid discards in setting the gear when only small amounts of allocation remain, and the possibilities for transfers between vessels to consolidate residual allocations. While this approach has worked reasonably well in past years, anomalous fishery conditions since 2002 have resulted in the carryover of unprecedented amounts of unharvested Purse seine quota. Given this atypical situation, NMFS has reconsidered how the inseason transfer provisions should be applied to the Purse seine category in 2004.

The 2004 fishing year proposed initial BFT quota specifications were prepared in accordance with: the 2002 ICCAT quota recommendation, the ICCAT recommendation regarding the dead discard allowance, the HMS FMP percentage shares for each of the domestic categories including restrictions on landings of school BFT, and the addition or subtraction of any underharvest or overharvest from the previous fishing year (69 FR 71771, December 10, 2004). NMFS proposed initial quota specifications for the 2004 fishing year as follows: General category – 659.0 mt; Harpoon category – 81.4 mt; Purse Seine category – 389.4 mt; Angling category – 65.5 mt; Longline category – 171.2 mt; Trap category – 2.3 mt; and the Reserve category – 36.6 mt. Subsequently, NMFS transferred 300 mt from the General category, 45 mt from the Longline category, and 40 mt from the Harpoon category (69 FR 71732, December 10, 2004). These transfers resulted in additions of 223.1 mt to the Angling category and 161.9 mt to the Reserve.

NMFS has determined that a transfer of 100 mt from the Purse Seine category to the Reserve is warranted, based on the 2004 proposed BFT specifications, the subsequent transfers, an assessment of the commercial and recreational landings data to date, carryover of unharvested amounts from prior years, and considering the factors governing quota transfers between categories. The Reserve category was established, in part, for the purpose of compensating overharvest in any category and to ensure overall U.S. landings do not exceed ICCAT recommended quotas. Given the suspension of Purse seine fishing activity for the remainder of the 2004 fishing year and continued fishing activity in several other categories through May 31, 2005, it is likely that allowing for full utilization of the U.S. quota may require additional transfers from the Reserve.

The effects on rebuilding and overfishing as a result of this transfer are

predicted to be neutral. The prime effect is to transfer quota among categories and no additional harvest above the level authorized in the BFT rebuilding plan is anticipated. The transfer is consistent with the objectives of the HMS FMP as it would provide for fair and reasonable fishing opportunities and allow for maximum utilization of the 2004 U.S. BFT allocation while preventing an overharvest of that allocation.

#### *Monitoring and Reporting*

NMFS selected the duration of the reopening and the daily retention limit based on a review of available quota, dealer reports, daily landing trends, the availability of BFT on the fishing grounds, and previous fishing years effort and landings rates for the month of January. NMFS will continue to monitor the General category BFT fishery closely via the commercial BFT landing reports submitted by authorized BFT dealers. Once the General category BFT fishery has closed, NMFS will assess reported landings and available quota and determine if a subsequent reopening is warranted.

#### **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. The General category BFT fishery closed on December 20, 2004, after a 13 day reopening. Catch rates were slower than anticipated, due primarily to inclement weather and the full 107 mt of quota that was available was not attained. Since the closure, NMFS has compiled all commercial BFT landing reports submitted by permitted dealers and determined that approximately 37 mt is still available for a limited General category BFT fishery in the month of January. Recent information shows BFT in the commercial size classes are now available off southern Atlantic states in nearshore areas and accessible to commercial anglers as well as Charter/Headboat operations. Under ATCA and the HMS FMP, NMFS is required to provide fishing opportunities to catch the available quota.

Delaying this action would be contrary to the public interest as BFT are now available in nearshore waters and will soon migrate out of range of the commercial and charter/headboat fleets. As the General category is currently closed, fishery participants are not currently able to access these BFT while they are available. It is in the public interest to act quickly to open the

fisheries while the BFT are accessible so that the short window of fishing opportunity is not lost. 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 (e.g., reopens fisheries), there is good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

These actions are being taken under 50 CFR 635.23(a)(4) and 50 CFR 635.27(a)(8) and are exempt from review under Executive Order 12866.

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

Dated: December 28, 2004.

**Bruce C. Morehead**

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

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

[Docket No. 041110317–4364–02; I.D. 110404B]

**RIN 0648–AR51**

### **50 CFR Part 648**

#### **Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2005 and 2006 Summer Flounder Specifications; 2005 Scup and Black Sea Bass Specifications**

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

**ACTION:** Final rule; final specifications for the 2005 and 2006 summer flounder fisheries and for the 2005 scup and black sea bass fisheries, and preliminary 2005 quota adjustment; notification of 2005 commercial summer flounder quota harvest for Delaware.

**SUMMARY:** NMFS issues final specifications for the 2005 and 2006 summer flounder fisheries and for the 2005 scup and black sea bass fisheries, and makes preliminary adjustments to the 2005 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2005. Regulations governing the summer